সংযুক্তি ঃ খ

Report on a Reference by the Government under Sec. 6(Yo) of the Law Commission Act,1996, seeking opinion of the Commission regarding certain provisions of the Penal Code, 1860, relating to the offence of "robbery" and "dacoity".

This is a reference under ***section 6*** (Ena) of the Law Commission Act, 1996 seeking opinion of the Commission regarding certain provisions of the Penal Code, 1860, relating to the offence of "robbery" and "dacoity".

Although the reference has been made by the Ministry of Law, Justice and Parliamentary Affairs under letter no. ৫৩১ বিবিধ-ড্রা-৩/৯৮ তারিখ ২২-০৬-৯৮, it originated from another reference made by the Ministry of Home Affairs to the former upon a suggestion from the Police Head Quarters to the latter.

The main text of the letter of reference addressed to the Commission runs as follows :-

বিষয় ঃ দস্যুতা ও ডাকাতি মামলা পৃথক পৃথক ধারায় রেকর্ড না করিয়া একই ধারায় লিপিবদ্ধকরণ ও সংশ্লিষ্ট আইনের সংশোধনের বিষয়ে মতামত প্রদান প্রসঙ্গে।

সূত্র ঃ স্বরাষ্ট্র মন্ত্রণালয় নথি নং-বিবিধ-৬০/৯৭ (আইন-১)।

তারিখ ঃ ৩০-১২-৯৭ ইং।

উপরি-উক্ত বিষয়ে নির্দেশিত হইয়া সূত্রে উল্লেখিত স্বরাষ্ট্র মন্ত্রণালয়ের নথির সাথে পুলিশ সদর দপ্তর হইতে স্বরাষ্ট্র মন্ত্রণালয় বরাবরে প্রেরিত স্মারক নং পি এন্ড আর ১৬৭-৯৭/৮৫০ তারিখ ঃ ২/১১/৯৭ ইং এতদ্‌সঙ্গে সংযুক্ত করতঃ জানাইতেছি যে, "দস্যুতা" ও "ডাকাতি" এর মধ্যে অপরাধীর সংখ্যার উপর ভিত্তি করিয়া অপরাধীর সংখ্যা পাঁচ জনের নিম্নে হইলে "দস্যুতা" এবং পাঁচ বা তথোধিক হইলে "ডাকাতি" হিসাবে গণ্য করিয়া *Penal Code, 1860 (Act XLV of 1860)* এর সংশ্লিষ্ট ধারায় মামলা রেকর্ড করা হয়। অপরাধীর সংখ্যা একজন কম বা বেশী হওয়ার দরুন মামলার ধারা ও শাস্তির বিধান পরিবর্তন হইয়া যায়। মূলতঃ "দস্যুতা" এবং "ডাকাতি" একই প্রকৃতির অপরাধ। অপরাধীর সংখ্যার পার্থক্যের কারণে থানা পর্যায়ের পুলিশ কর্মকর্তাদের লঘুতর শাস্তিযোগ্য অপরাধ সংক্রান্ত ধারায় মামলা রুজু করার সুযোগ রহিয়াছে। কিন্তু দস্যুতা ও ডাকাতির জন্য একই ধারায় মামলা রুজু করা হইলে এই সুযোগ থাকিবে না। এখানে উল্লেখ্য যে, বিশ্বের উন্নত দেশসমূহে ডাকাতি শব্দটি ব্যবহৃত হয়না এবং সেখানে শুধু দস্যুতার ধারাতেই মামলা রুজু করা হয় বলিয়া পুলিশ সদর দপ্তর হইতে জানান হইয়াছে।

এমতাবস্থায়, *Penal Code, 1860 (Act XLV of 1860)* তে উল্লেখিত *"robbery"* এবং *"dacoity"* সংক্রান্ত অপরাধসমূহ একত্রিত করিয়া শুধু দস্যুতা বা ডাকাতি হিসাবে মামলা রুজু এবং শাস্তির মেয়াদ বৃদ্ধি করার জন্য *Penal Code, 1860 (Act XLV of 1860)* সংশোধন করা সঙ্গত হইবে কিনা, হইলে সেই ব্যাপারে প্রস্তাবিত খসড়া সমেত মতামত প্রদানের জন্য আইন কমিশনকে অনুরোধ করা হইল।

(মোহাম্মদ মজিবর রহমান)
উপ-সচিব (ড্রাফটিং)।

Rendered into English, the reference shows that according to it, t offences of "robbery" and "dacoity" as defined in the Penal Code, 1860 (A XLV of 1860) are offences of the same kind but the respective gravity of the offences and the consequent quantum of punishment prescribed for them in tl Penal Code, 1860, are determined by the number of persons committing tho offences. In other words, when the same offence is committed by less than fi persons and is "robbery", the maximum punishment for it is much less than whe it is committed by five persons or more than five persons and is "dacoity". Tl reference also indicates that because of the above position of law there is scop for recording a case of dacoity as a case of robbery and vice versa, but more ofte the former, by police officials at the thana level. By this reference, th Government have sought the opinion of the Commission as to-.

(1) whether it will be advisable to abolish the distinction between "robbery" an "dacoity"" and bring these two offences under a single definition;

(2) whether the quantum of punishment provided in the Penal Code, 1860, i respect of these offences should be revised if the distinction between these tw offences is abolished; and

(3) what amendment should be effected in the Penal Code, 1860, if it is found desirable to abolish the distinction between the above two offences.

The Government have also requested the Commission to send a draft of the proposed amendment.

We propose to deal with the above points of the reference one by one.

Sections 390 to Section 402 of the Penal Code, 1860, hereinafter referred to as the Code deal with the offences of "robbery" and "dacoity". "Robbery" is defined in ***section 390*** of the Code as follows :-

"390. In all robbery there is either theft or extortion.

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation :- The offender is said to be present if he is sufficiently near put the other person in fear of instant death, of instant hurt, or of instant ongful restraint."

"Dacoity" is defined in ***section 391*** of the Code as follows :-

"391. When five or more persons conjointly commit or attempt to commit a bbery, or where the whole number of persons conjointly committing or empting to commit a robbery, and persons present and aiding such commission attempt, amount to five or more, every person so committing, attempting or ding, is said to commit "dacoity".

An analysis of the definitions of "robbery" and "dacoity" quoted above ows that the acts constituting "robbery" are more limited than the acts nstituting "dacoity". In case of "robbery" the acts of theft or extortion coupled ith certain acts mentioned in ***section 390*** of the Code, such as, voluntarily ausing or attempting to cause death or hurt or wrongful restraint etc. in carrying ut the acts of theft or extortion, as the case may be, must be complete. A mere ttempt, presence and aid by some others etc. are not substantive offence of robbery", but lesser offences under ***section 393*** of the Code or under ***sections 90, 110, 115,*** etc of the Code. On the other hand, acts constituting "dacoity", nlike "robbery", are much more wider, such as, when five or more persons even **ttempt** to commit robbery, or, **aid** in the commission of robbery by remaining resent at the place of occurrence are said to have committed dacoity. Not only ompletion of the acts constituting "robbery" by five or more persons but also ttempt to commit those acts or to provide aid in committing those acts constitute he substantive offence of "dacoity" and is punishable as such under ***section 395*** of the Code. So, the offence of "dacoity" is treated as an offence distinct from 'robbery" not only because of the number of offenders committing robbery being five or more but also because of certain other acts committed by those persons such as, attempt, aid, etc. in committing robbery. The intent of the distinction is very clear. Commission of robbery by five or more persons, attempt to commit robbery by five or more persons, presence and aid by any person in commission or in attempt to commit robbery by five or more persons have been viewed as a more grave offence than commission of these acts by less than five persons. The logic behind this distinction was also very clear. Five or more persons committing robbery were perceived by the lawmakers to be capable of creating more awe, terror and devastation than when the number of offenders was less than five and the lawmakers considered that even attempt to commit robbery by five or more than five offenders and to aid five or more than five offenders in committing robbery were as grave as committing "dacoity" itself and as such, these acts were also treated as substantive offence of "dacoity".

We are, however, not oblivious of the fact that in the present-day context when robbery is committed by sophisticated fire-arms, the distinction between

"robbery" and "dacoity" on the basis of the number of offenders committing those offences has, to some extent, lost real significance, but, for the matter of that, one cannot overlook the fact that the distinction is based not only on the number of persons committing the offence but also on the inclusion of certain additional acts with the acts constituting "robbery", in the definition of "dacoity". To illustrate, an attempt to commit dacoity is a substantive offence of dacoity according to ***section 391*** of the Code and is punishable as such under ***section 395*** of the Code, whereas, an attempt to commit robbery is not a substantive offence of robbery and is an offence less in gravity than robbery and punishable as such as only an attempt under ***section 393*** of the Code.

We have given anxious consideration to decide whether the above real distinction between the two offences should be abolished only for circumventing the tendency of the thana level police officials to falsely record a real case of dacoity as a case of robbery, which is purely an administrative infraction remediable by adopting appropriate administrative measures. We cannot propose drastic alteration of any substantive provision of law in which we do not find any substantial defect, only in order to check purely administrative infraction.

In the next place, abolition of the distinction between the two offences will obviously mean merging the two offences of "robbery" and "dacoity" into a single offence of dacoity as defined in ***section 391*** of the Code. In that case, attempt to commit the said offence even by a single individual will be the substantive offence of "dacoity". To treat an attempt by a single individual to commit the offence of "dacoity" as it would stand after merger of the offences of "robbery" and "dacoity" into a single offence of "dacoity", on the same level as an attempt to commit the said offence by five or more persons and prescribe the same quantum of punishment for both would be unethical from jurisprudential point of view and would tantamount to ignore the relative gravity of the offence when committed by a limited number of persons upto four rather than when committed by a larger number of persons. The awe , violence and devastation created in the latter case are much more than in the former. It will not, therefore, be proper to abbolish the distinction between the two offences.

We are, however, not unaware of the position of law in some countries where no distinction is made between "robbery" and "dacoity".

In this connection, reference may be made to the provision of law prevailing in England in similar matter. According to the English Law, if a person, while committing theft, uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force is said to commit robbery punishable with imprisonment for life. Even an assault with intent to commit robbery is punishable with imprisonment for life in England. ***(See Section 8 of the Theft Act, 1968).*** "Robbery" in England is synonymous with "robbery" and "dacoity" (as defined in our Code) being merged into a single offence.

In Sri Lanka, no distinction is made in the Penal Code between "robbery" and "dacoity" and both the offences are covered by the expression, "robbery" which is an offence punishable with imprisonment for ten years and if committed on the highway between sunset and sunrise, with imprisonment for fourteen years ***(See sections 379 and 380 of the Sri Lanka Penal Code).*** The offence of "robbery" in Sri Lanka is synonymous with the offence of "robbery" in our Code and also includes "dacoity" (as defined in our Code) by implication as it is not a distinct offence there.

The English Law and the Sri Lankan laws are based on the respective peculiar situations prevailing in those countries. The situations obtaining in the Sub-Continent which includes Bangladesh, India and Pakistan are not the same as obtaining in England and Sri Lanka. In the latter countries formation of big gangs, as in the Sub-Continent, for committing dacoity and causing consequent widespread devastation covering wide areas is almost unknown. As such, those countries did not feel the necessity of making any distinction on the basis of the number of offenders. Moreover, in England, robbery even by a single individual has taken such a violent form that the number of offenders has no real significance. On the other hand, the number of offenders in committing such offences as are defined in ***sections 140, 390 and 391*** of the Code plays very significant roles in Bangladesh, India and Pakistan and as such, the lawmakers made the distinction on the basis of the number of offenders and India and Pakistan still retain the distinction between "robbery" and "dacoity" as defined in the Code.

We, accordingly, answer ***point no. 1*** of the reference in the negative and recommend that the distinction between "robbery" and "dacoity" as defined in the Penal Code, 1860, may not be abolished.

We, however, appreciate the problem raised in the reference and have given careful consideration to it. We are also conscious of the fact that the offence of "robbery" has taken a much more violent form now than what it had been when the Code was enacted and so is the case with "dacoity". Both the problems can be faced if the punishments for all robbery and dacoity related offences are enhanced and minimum punishments for them are fixed.

We, accordingly, answer both ***points no. 2 and 3*** in the affirmative and recommend that punishments for the offences under ***sections 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, and 402*** may be enhanced and minimum punishments may be fixed for these offences.

In the next place, a new provision corresponding to ***section 396*** of the Code relating to the offence of robbery may also be enacted.

As punishments for all the above offences are proposed to be enhanced and a new offence corresponding to ***section 396*** of the Code is proposed to be

enacted, it will be necessary to add a saving clause in the amending Act for saving all cases relating to robbery and dacoity, both at the investigation stage and trial stage, pending on the date of coming into force of the amending Act, in order to avoid conflict with ***Article 35*** of the Constitution.

Along with amendment of the relevant provisions of the Code, corresponding amendment in Schedule II of the Code of Criminal Procedure, 1898, (Act V of 1898) is also required to be made.

Recommendations.

In the light of the above observations, our recommendations are as follows :-

Point no. 1. We recommend that the distinction between the offences of "robbery" and "dacoity" as defined in the Penal Code, 1860, (Act XLV of 1860), may not be abolished.

Points no. 2 and 3. The following amendments in the Penal Code, 1860, (Act XLV of 1860) along with corresponding amendments in the Code of Criminal Procedure, 1898, (Act V of 1898) may be made :-

Section 392. The minimum term of imprisonment for the first part of the offence may be fixed at five years and for the second part of the offence may be fixed at seven years. The amended section may run as follows :-

Punishment for robbery.

"**392.** Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall not be less than five years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years, and shall not be less than seven years."

Section 393. The minimum term of imprisonment for an offence under this section may be fixed at three years. The amended section may run as follows :-

Attempt to commit robbery.

"**393.** Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall not be less than three years, and shall also be liable to fine."

Section 394. The term of rigorous imprisonment for an offence under this section may be enhanced from ten years to fourteen years and the minimum term of imprisonment may be fixed at seven years. The amended section may run as follows:-

Voluntarily causing hurt in committing robbery.

"**394.** If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to fourteen years, and shall not be less than seven years, and shall also be liable to fine."

Section 395. The term of rigorous imprisonment for an offence under this section may be enhanced from ten years to fourteen years and the minimum term of imprisonment may be fixed at seven years. The amended section may run as follows:-

Punishment for dacoity.

"**395.** Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to fourteen years, and shall not be less than seven years, and shall also be liable to fine."

Section 396. For an offence under this section the punishment may be death or imprisonment for life. The amended section may run as follows :-

Dacoity with murder.

"**396.** If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, and shall also be liable to fine."

Section 396A. A new section being section 396A making robbery with murder a punishable offence similar to the offence of dacoity with murder may be enacted. This section may run as follows :-

Robbery with murder.

"396A. If any one of more than one person, who are conjointly committing robbery, commits murder in so committing robbery, every one of those persons shall be punished with death or imprisonment for life, and shall also be liable to fine."

Section 397. The term of imprisonment for an offence under this section may be enhanced from seven years to ten years. The amended section may run as follows :-

Robbery or dacoity, with attempt to cause death or grievous hurt.

"397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than ten years.

Section 398. The term of imprisonment for an offence under this section may be enhanced from seven years to ten years. The amended section may run as follows :-

Attempt to commit robbery or dacoity when armed with deadly weapon.

"398. If at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than ten years."

Section 399. The term of rigorous imprisonment for an offence under this section may be enhanced from ten years to fourteen years and the minimum term of imprisonment may be fixed at seven years. The amended section may run as follows :-

Making preparation to commit dacoity.

"399. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall not be less than seven years, and shall also be liable to fine."

Section 400. The term of rigorous imprisonment for an offence under this section may be enhanced from ten years to fourteen years and the minimum term of imprisonment may be fixed at seven years. The amended section may run as follows :-

Punishment for belonging to a gang of dacoity.

"400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or rigorous imprisonment for a term which may extend to fourteen years, and shall not be less than seven years, and shall also be liable to fine."

Section 401. The term of rigorous imprisonment for an offence under this section may be enhanced from seven years to ten years and the minimum term of imprisonment may be fixed at five years. The amended section may run as follows :-

Punishment for belonging to gang of dacoits.

"401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to ten years and shall not be less than five years, and shall also be liable to fine."

Section 402. The term of imprisonment for an offence under this section may be enhanced from seven years to ten years and the minimum term of imprisonment may be fixed at five years. The amended section may run as follows :-

Assembling for purpose of committing dacoity.

"402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall not be less than five years, and shall also be liable to fine."

Savings. The saving clause may run as follows :-

Savings.

"**Savings.** All offences under ***sections 392, 393, 394, 395, 396, 397, 398, 399, 400, 401 and 402*** of the Penal Code, 1860, (Act XLII of 1860) committed before the coming into force of this Act shall be investigated and tried as if this Act had not been passed.

The following amendment in Schedule II of the Code of Criminal Procedure, 1898, (Act V of 1898) will also be required.

Section 392. In column 7, the expression, "10" may be substituted by the expression "14," and the expressions, "and for not less than 7 years", may be added after the comma.

Section 393. In column 7, the expressions, "and for not less than 3 years", may be added after the comma.

Section 394. In column 7, the expression, "10" may be substituted by the expression, "14," and the expressions, "and for not less than 7 years", may be added after the second comma.

Section 396. In column 7, the expression, "or," may be added after the expression, "Death," and the expressions, "or rigorous imprisonment for 10 years," may be omitted.

Section 396A. A new item may be added below ***section 396*** as follows :-

"**396A.** Murder in robbery. Ditto. | Ditto. | Ditto. | Ditto. | Ditto. | Ditto. |"

Section 397. In column 7, the expression, "7", may be substituted by the expression, "10".

Section 399. In column 7, the expression, "10", may be substituted by the expression, "14," and the expressions, "and for not less than 7 years," may be added after the comma.

Section 400. In column 7, the expression, "10", may be substituted by the expression, "14," and the expressions, "and for not less than 7 years," may be added after the "comma" occurring after the expression, "years".

Section 401. In column 7, the expression, "7", may be substituted by the expression, "10" and the expressions, "and for not less than 5 years", may be added after the comma.

Member-2 12/8/98 Member-1 12/8/98 Chairman