

# **Final Report regarding a proposed amendment of certain sections of the Penal Code, 1860 (Act no XLV of 1860)**

## **Introduction**

The Penal Code was enacted as back as far in 1860 being Act No. XLV of 1860. The Penal Code has defined the offences and prescribed separate punishment for each offence. Minor amendments have been made in the Penal Code according to necessity from time to time, but no substantial change has been made in the Penal Code. Due to the enormous increase of crime during the last few years with the change of techniques of crime, we, in the Law Commission have taken up a few sections of the Penal Code for our examination with a view to finding out the need for amendment in these sections, if any. By an examination of certain provisions of the Penal Code relating to offences against the state, adulteration of food, drink and drugs and causing of death by rash and negligent driving on the public roads, extortion, and insulting the modesty of a woman, we think that under the changed circumstances and in view of the increase of such crimes in our country, there is a need for amendment of the sections relating to such offences.

Section 121 of the Penal Code prescribed a punishment of death or imprisonment for life with fine for the offence of waging war or attempting to wage war or abetting waging of such war against Bangladesh. Considering the circumstances of violence created by some militant people in the country causing rampant bomb blast by explosive substances, we are of the opinion that this punishment should be increased. We, therefore, recommend that the words “and shall also be liable to fine” should be substituted by the words “and shall forfeit all his property.”

Section 121A prescribed a punishment for imprisonment of life or imprisonment which may extend to ten years with fine for an offence of conspiracy to commit any of the offences punishable by section 121 or for a

conspiracy to deprive Bangladesh of her sovereignty or to overawe the Government, by means of criminal force or by show of criminal force.

Considering the present volatile situation prevailing in the country, we think that this punishment for life or imprisonment of ten years is not enough to cope with the present situation. We, therefore, recommend that this punishment should be enhanced to a punishment of death or imprisonment for life with further recommendation for substitution and addition of certain words in the section

Section 122 deals with the collection of man, arms or ammunitions with intention of either waging or preparing to wage war against Bangladesh. In view of huge collection of explosive substance and of causing bomb blast resulting in the death of innocent people in our present day society, we think that after the word “ammunition” the words “or explosive substance” should be added and after the words “to wage war against Bangladesh” the words “ for the purpose among others of breaking the constitutional and legal structure of the country” should be added.

Section 124A deals with sedition against the Government established by law and the punishment prescribed for sedition is imprisonment for life or imprisonment, which may extend to three years or with fine. The punishment of three years imprisonment as an alternative to life imprisonment appears to be quite inconsistent and “or with fine” only, appears to be further inconsistent. We further think that this punishment of three years imprisonment as alternative to life imprisonment is also quite inadequate. We, therefore, recommend that the alternative prescribed punishment of three years imprisonment be enhanced to fourteen years in section 124A and the words “or with fine” should be omitted.

Section 272 has prescribed a punishment for six months imprisonment or a fine of taka one thousand or with both for an offence of adulteration of food or drink. This punishment was prescribed in 1860 under the circumstances of the society prevalent at that time. But since thereafter a period of more than a century and a half has passed away and things have undergone much changes during this

period with a tendency amongst dishonest traders to earn more profit by selling adulterated food or drink. In view of the deteriorating business ethics and morale, we think that this punishment of an imprisonment for six months or a fine of taka one thousand only is not enough to check adulteration of food or drink. Moreover, the value of taka one thousand has diminished to the lowest level. Accordingly, we recommend for enhancement of the punishment of six months to a punishment of three years and the fine of taka one thousand to a fine of taka fifty thousand in section 272.

Section 273 similarly prescribed a punishment of six months imprisonment or a fine of taka one thousand or both for the offence of sale of adulterated food or drink. In view of the reasons as we have discussed in respect of section 272 above, we recommend for enhancement of the punishment of six months imprisonment to an imprisonment of three years and the fine of taka one thousand to a fine of taka fifty thousand in section 273.

Sections 274, 275 and 276 have dealt respectively with adulteration of drugs, sale of adulterated drugs, and sale of drugs as a different drug or medical preparation prescribing a punishment of six months imprisonment or with fine of taka one thousand only or with both in each section. But the largely altered fact in the field is that since the enactment of these provisions, the adulteration of drugs has increased enormously and the value of money has depreciated to a very great extent. For the purpose of checking the adulteration of drugs and sale of adulterated drugs, we are of the opinion that the punishment as prescribed in 1860 should be enhanced. We, therefore, recommend for enhancement of punishment of six months imprisonment to an imprisonment of three years and the fine of taka one thousand to a fine of taka fifty thousand in section 274, 275 and 276.

Section 278 relates to the offence of making atmosphere noxious to the health of persons in general dwelling and other places and the punishment prescribed for such offence is a fine of taka five hundred only. But at present such kind of offence of vitiating the atmosphere in many places making it noxious to the public health has been increased seriously and the value of taka five hundred at

the time of 1860 has come down to a zero level. In such a position, we recommend that section 278 be amended making the amount of fine to the extent of at least taka ten thousand.

Section 304B has prescribed a punishment of three years imprisonment or fine or both for an offence of causing death of any person by rash and negligent driving of any vehicle or riding on any public way. It may be mentioned here that there was no provision like 304B in the original Penal Code. During the last several years, rash and negligent driving of motor vehicles on public roads by reckless drivers has been causing many tragedies including many deaths of innocent persons causing irreparable loss to their families and dependants. All such tragedies had become a cause of concern for the Government and as such, a new section being section 304B was inserted in the Penal Code by Ordinance No. X of 1982 making the cause of death by rash and negligent driving on any public road punishable with fourteen years imprisonment and the offence was made non-bailable. An agitation by Bus owners, Truck owners, and drivers followed this enactment and hence the punishment of fourteen years imprisonment was substituted by seven years imprisonment by another enactment being Ordinance No. XXI of 1984. Thereafter by a further amendment of the Penal Code by Ordinance no XLVIII of 1985 the punishment of seven years imprisonment was brought down to three years imprisonment and the offence was made bailable. But it appears that at present the incidence of death by rash and negligent driving of the reckless drivers has increased alarmingly on the public roads. Such kind of death by negligent and reckless driving is taking place everyday on the public roads causing irreparable loss to the families and dependants of large number of victims of death and injuries.

In such a prevalent situation, we recommend that this punishment of three years under section 304B should be enhanced to at least seven years with fine and the offence be made non-bailable.

Section 384 relates to punishment for extortion to the extent of three years only. But in the present day society extortion has increased to a very great extent.

We, therefore, recommend that the punishment of three years be enhanced to at least five years.

Section 385 also deals with extortion by putting a person in fear of injury punishable with imprisonment of fourteen years, which shall not be less than five years, or with fine, or with both. The word “or with fine, or with both” appears to be inconsistent where it is stated that the imprisonment for this offence may extend to fourteen years and shall not be less than five years. We, therefore, recommend that the words “ or with fine, or with both” be substituted by the words “and shall also be liable to fine”.

Section 386 similarly deals with extortion by putting any person in fear of death or of grievous hurt punishable with imprisonment of ten years with fine. This punishment of ten years under section 386 again appears to be inconsistent with section 385 although the degree of offence of 386 is more than that of 385. We, therefore, recommend that the punishment of ten years under section 386 be enhanced to the extent of fourteen years.

Section 509 deals with insulting the modesty of a woman by gesture and posture or by uttering words or exhibiting any object and the punishment is prescribed for one year only. Such kind of offence has increased now a days. We, therefore, recommend that the punishment of one year under this section be enhanced to the extent of three years.

It may be mentioned here that if our recommendations as made above are accepted by the Government, then a corresponding amendment shall be necessary to be made in the schedule II of the Code of Criminal Procedure, 1898 (Act V of 1898).

In the light of our above recommendations, we are enclosing herewith a draft bill for the proposed amendment of the Penal Code, 1860 (Act XLV of 1860) as annexure “A” for convenience and ready reference.

(Dr. M. Enamul Hoque)  
Member-2

(Justice Md. Sirajul Islam)  
Member-1

(Justice Mustafa Kamal)  
Chairman

**A Draft Bill for Proposed Amendment of the Penal Code, 1860  
(Act XLV of 1860)**

**The Penal Code (Amendment) Act, 200....**

**Bill no. 200....**

WHEREAS it is expedient and necessary further to amend the Penal Code, 1860 (Act XLV of 1860), for the purposes hereinafter appearing;

Now, therefore, it is hereby enacted as follows: -

**1. Short title and commencement.** - (1) This Act may be called the Penal Code (Amendment) Act, 200..

(2) This Act shall be deemed to have come into force on the 16<sup>th</sup> day of August 2005.

**2. Amendment of Section 121, Act XLV of 1860.** - In the Penal Code, 1860 (Act XLV of 1860), hereinafter referred to as the said Act, in section 121, for the words “and shall also be liable to fine” the words “and shall forfeit all his property” shall be substituted.

**3. Amendment of section 121A, Act XLV of 1860.** - In the said Act, in section 121A, -

- (a) for the words “or the show of criminal force” the words “or the show of criminal force by bomb blast or otherwise” shall be substituted;
- (b) after the words “the Government” the words “established by law” shall be added;

- (b) for the words “imprisonment for life or of imprisonment of either description which may extent to ten years” the words “death or imprisonment for life” shall be substituted.

**4. Amendment of section 122, Act XLV of 1860.** -In the said Act, in section 122, -

- (a) after the word “ Arms” for the word “or” a “coma” shall be substituted and then, after the word “ammunition” the words “or explosive substance” shall be added;

(b) after the words “to wage war against Bangladesh” and before the “coma” the words “for the purpose among others of breaking the constitutional and legal structure of the country” shall be added.

**5. Amendment of section 124A, Act XLV of 1860.** – In the said Act, in section 124A, for the words “three years” the words “fourteen years” shall be substituted and then the words “or with fine” shall be omitted.

**6. Amendment of section 272, Act XLV of 1860.** – In the said Act, in section 272, for the words “six months” the words “three years” and for the words “one thousand taka” the words “fifty thousand taka” shall be substituted.

**7. Amendment of section 273, Act XLV of 1860.** –In the said Act, in section 273, for the words “six months” the words “three years” and for the words “one thousand taka” the words “fifty thousand taka” shall be substituted.

**8. Amendment of section 274, Act XLV of 1860.** - In the said Act, in section 274, for the words “six months” the words “three years” and for the words “one thousand taka” the words “fifty thousand taka” shall be substituted.

**9. Amendment of section 275, Act XLV of 1860.** - In the said Act, in section 275, for the words “six months” the words “three years” and for the words “one thousand taka” the words “fifty thousand taka” shall be substituted.

**10. Amendment of section 276, Act XLV of 1860.** - In the said Act, in section 276, for the words “six months” the words “three years” and for the words “one thousand taka” the words “fifty thousand taka” shall be substituted.

**11. Amendment of section 278, Act XLV of 1860.-** In the said Act, in section 278, for the words “five hundred taka” the words “ten thousand taka” shall be substituted.

**12. Amendment of section 304B, Act XLV of 1860.** - In the said Act, in section 304B, for the words “three years or with fine or with both” the words “seven years and shall also be liable to fine” shall be substituted.

**13. Amendment of section 384, Act XLV of 1860.** –In the said Act, in section 384, for the words “ three years” the words “five years” shall be substituted.

**14. Amendment of section 385, Act XLV of 1860.** – In the said Act in section 385, for the words “or with fine, or with both” the words “and shall also be liable to fine” shall be substituted.

**15. Amendment of section 386, Act XLV of 1860.** – In the said Act, in section 386, for the words “ten years” the words “fourteen years” shall be substituted.

**16. Amendment of section 509, Act XLV of 1860.** – In the said Act, in section 509, for the words “one year” the words “three years” shall be substituted.