Office of the Director of Public Prosecutions

‘To No One Will We Sell, To No One Deny or Delay Right or Justice’
Chapter 40, Magna Carta 1215
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The views expressed in the articles are those of the particular authors and should under no account be considered as binding on the Office.
Dear Readers,

The pandemic is ongoing, and we wish that you are staying safe. It is with the same dedication that we bring to you the 103rd issue of our monthly e-newsletter. In this issue, our law officers have put together three riveting articles for our readers. The first article addresses the relationship between cash and criminality. Furthermore, in April, two important events are commemorated globally, which no doubt, assume all their relevance amidst the COVID-19 pandemic - the Earth Day, on 22nd April, and the World Occupational Safety and Health Day, on 28th April. This year marks the 50th Anniversary of the Earth Day. In this breath, you will read on the pandemic and its impact on the global environment. Another article is provided to you in line with the slogan of the 2020 World Occupational Safety and Health Day - “Stop the pandemic: Safety and Health at work can save lives”.

Moreover, it cannot be denied that during this pandemic, we are all relying, more than ever, on computer systems, mobile devices, the social media, and the internet to work, communicate, shop, share and receive information, in our endeavor to mitigate the impact of social distancing. As such, in our ‘Quick Facts’ section, we provide to our readers several cybercrime offences under our Information and Communication Technologies Act 2001. Finally, we bring to you summaries of the Supreme Court judgments of the month.

Our special thoughts go to all our frontliners and to everyone who, directly and indirectly, is assisting in combating this crisis.

We wish you a pleasant read and always welcome your comments on odppnewsletter@govmu.org.

Anusha Rawoah
Senior State Counsel
Cash, a partner in crime

The current pandemic is causing a surge in the use of cashless transactions across the globe. Besides being more hygienic, digital transactions are traceable and deprive criminals of the veil cash provides. There is an undeniable link between cash and the occurrence of certain types of crime. A reduction in the use of cash should have a mirrored effect on the criminality rate. In turn, a lower criminality rate will lower the economic cost of crime.

(i) Relationship between Cash and Crime

As Prosecutors, we know of the bond between cash and criminality. We see it in most of the cases, if not all. At the national level, we see it in the string of larcenies, drug trafficking or even at the root of murderous assaults. Internationally, we see it in warfare, piracy or acts related to terrorism. Cash is all too often the common denominator. This is because cash is the detection-freest medium of exchange. It leaves no record, no trail and is perfect for transacting affairs in secret. For criminals, it is the preferred form of payment.¹

Cash is their most desired commodity, their prime target, and the epicenter of most crimes.²

(ii) The ubiquity of cashless transactions

Recent technological innovations have made digital transactions as convenient and safer to use than cash. Cash is no longer the only means of transacting. In Mauritius, transactions can now be made via debit or credit cards, My.t money, Juice or PayPal. In Africa, more and more transactions are being carried out digitally. In 2019, Mobile Money transactions in Sub-Saharan Africa accounted for around 64 percent of global transactions with an approximate yearly growth of 20 per cent.³ The current pandemic is set to further increase this growth and showcases the reliability, convenience and safety of digital transactions. As opposed to cash, digital transactions are recorded, traceable and, as the COVID-19 pandemic is showing, more hygienic.

(iii) Evidence of the reductive effects on criminality

Cash transactions could thus, be limited or dispensed of: (i) to cripple certain type of criminal activities, and (ii) to provide information that would reveal illicit activities.⁴ As of date, there is no pure cashless country. It is, therefore, impossible to ascertain the precise reductive effects of the elimination of cash on criminal activity. Nevertheless, certain studies do give a hopeful indication. One forecast in the United States in 1993, estimated a decrease of 15% to 40% in criminal activity.⁵

¹ Less Cash, Less Crime: Evidence from the Electronic Benefit Transfer Program, Wright and Others, IZA DP No. 8402, August 2014, p.3
³ L’Afrique subsaharienne a généré 64,15% des transactions mondiales par Mobile Money en 2019, Agence Ezoifin, 8 avril 2020.
In 2014, a study of the conversion of a United States benefit programme into an electronic one, revealed a decrease of the overall crime rate by 9.8 percent and further decreases on arrests. Interestingly, the study also noted the following:

“Because cash is critical to the pursuit of illicit action, this served as a brake on the etiological cycle that drives street crime, slowing it such that the rate of offending was lessened, not only for predatory offenses like burglary and larceny, but also for assaultive disputes fueled by the heavy drug and alcohol use associated with participation in street life.”

The authors of the study further noted “the significant drop in crime in the United States over several decades coincided with a period of steady decline in the proportion of financial transactions involving cash.”

Digital transactions are nowadays used to discourage related criminal activity. An example is the 2008 United States Department of Defense initiative, known as the “Cashless Battlefield,” which expanded the use of electronic payments in Iraq and Afghanistan. It involved shifting compensation of local suppliers and contractors from cash payments to “mobile banking.” The aim was to eliminate the logistical burden of escorting vulnerable large-scale shipments of cash through hostile territory. This would frustrate insurgent efforts to engage in robbery and extortion, in turn enhancing physical security. Another example takes us to China, where regular landline phones are used as a means of paying farmers for deliveries of chili peppers because “it’s faster and more convenient for customers and it promotes public safety. You’re not at risk of being stabbed for your money.”

(iv) Criminals will find alternatives to Cash

It falls that the more cash transactions are reduced, the more palpable effects on crime will be. If cash is entirely banned, criminals might still find alternatives such as barter system or resort to foreign currencies, gold, cigarettes or drugs. However, these would not be significant alternatives and still reduce the criminality rate. For instance, barter is too time-consuming, necessitates matching the value of items of uncertain and varying values. Also, criminals want money to buy cars, food, housing, clothes, and other goods and services from honest providers who will not accept alternatives. Regardless, even if barter or other alternatives are used, there would still be a significant decrease in criminal activities related to cash.

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6 Less Cash, Less Crime: Evidence from the Electronic Benefit Transfer Program, Wright and Others, IZA DP No. 8402, August 2014, p.27
9 Dinny McMahon, A Way to Pay in Rural China, Wall Street Journal, 10 January 2013, p. B5
(v) A rise in cyber-criminality
An increased use in digital transactions might result in a rise in cyber-criminality. It is not uncommon nowadays to hear of cyberattacks such as ransomwares or other forms of hacks. However, these are different forms of criminality and distinguishable from cash-related criminality such as drug-dealing or larceny. A decrease in cash transactions will still significantly impact the rate of certain forms of criminality. Additionally, in the unlikely event that there is a complete shift to cyber-criminality, digital transactions remain easier to monitor and trace.

(vi) Economic importance of reducing crime
As a reminder, crime does not only cause trauma to the victims and society. It also inflicts a pecuniary blow to victims for their loss but, when cumulated, amounts to heavier costs to the State. As an example, in the US, 23 million criminal offences committed in 2007 resulted to approximately $15 billion in economic losses to victims and around $179 billion in government expenditures on police protection, judicial and legal activities, and corrections.¹¹ In Singapore, a country with a more relatable demographic, the costs of drug-involved crime in 2015 alone was estimated to be S$1.23 billion and the costs of drug-attributable crime such as theft to buy drugs was estimated to be around S$0.74 billion.¹² These economic implications are serious and in turn, reverberate through all parts of society.

Conclusion
There can be no doubt as to direct relationship between cash and crime. Cash has long been an inevitable "evil" but in today’s society, digital transactions are ubiquitous because they are reliable, efficient and a safer alternative to cash. Whether it occurs naturally or otherwise, the phasing out of cash will certainly reinforce the everlasting fight against crime.

Earth Day, Cicero and COVID-19

22 April has been earmarked for Earth Day. And this year marks its 50th Anniversary. One would have expected experts to write on the 50 lessons learned ever since 1970 when more than ten million Americans took to the streets to rally for environmental protection in the face of heavy pollution. However, COVID-19 being now a pandemic overshadowed its commemoration, just like it did for other events.

Yet, admittedly the new coronavirus has made dreams of environmentalists come true: the air is almost clear of pollution; wildlife is breathing freely (deer lounge the roads in New Delhi whilst lions wander along safari tracks in South Africa). Although it was not the way they wanted environmental improvement to happen, it came as a positive outcome in terms of a drop in carbon emission and air pollution. This leads one to realise that just like air pollution affects our lungs, so does COVID-19. As such, there is a disturbing analogy between pollution, climate change and COVID-19. Uncertainty looms around how they will end.

“Salus populi suprema lex,” wrote Cicero: “the health of the people is the supreme law.” This dictum runs through history where many lawyers and statesmen have emphasised the importance of public health over ordinary laws, especially in cases of emergency. The question which arises is whether the supremacy of the people’s health would urge governments to implement environmental laws and policies in view of the vital lessons learned and still to be learned from COVID-19.

It appears that essential messages are conveyed not when people are told that such phenomenon is a planetary problem, but a human problem. Much awareness has been created on the need to “flatten the COVID-19 Curve.” A similar compelling awareness should be created for environmental protection. On the other hand, laws have been passed on wearing of masks and social distancing, i.e., on positive measures to be taken by people, once they know why they are being asked to take such measures. To the same extent, if environmental regulations impose comprehensive positive measures on people, this would go a long way towards protecting their health.

Underlying Cicero’s dictum is the right of access to clean water. Out of the 2.5% of water on Earth qualified as fresh water, only 0.1% is accessible to humans. To stop the spread of the virus, health experts have urged us to wash our hands with soap and water, and keep our surroundings clean. Lack of access to clean water, or even to water all throughout the day becomes a challenge during this pandemic. Thus, the supremacy of the people’s health would imply that there should not be inequality in the right of access to water.

With regards to inequality, that the poor bears a disproportionate burden of mortality during pandemics is not disputed. This is mainly due to underlying health conditions associated with poverty: malnutrition, psychological stress,
Earth Day, Cicero and COVID-19

high blood pressure and heart disease. Such susceptibility would require emergency measures to cater for effective access to health care in order to break the vicious circle between inequality and pandemics.

Finally, whether the measures relate to the environment, water or inequality in the context of a pandemic, the principle of the rule of law will play a key role in ensuring the legitimacy of government response to the pandemic. Such measures would invariably be evidence-led so as to meet the standard of necessity required by the exigencies of the situation. Notwithstanding the toll of the virus, the measures imposed are invariably to be proportionate to what is required to tackle the emergency. The more so, in our present constitutional framework, they should be subjected to democratic scrutiny. Such scrutiny can only ensure the reviewability of government measures, assess their openness and transparency. Ultimately, one would only expect that both the burdens and benefits of emergency measures should apply to all.

Keshri Soochit
Senior State Counsel
The Occupational Safety and Health Act 2005 and COVID-19

Mauritius has been under a curfew order since Monday 23rd March 2020 at 20.00 and such decision was taken so as to tackle the spread of the Covid-19. The Curfew Order is provided for, by the Ministry of Health and Wellness under Regulation 14(1) of the Prevention and Mitigation of Infectious Disease (Coronavirus) Regulations 2020 of the Public Health Act.

However, Regulation 14(2) allows for the Commissioner of Police to issue a permit to a person to be outdoors for the sole purpose of leaving his place of residence to his place of work and leaving his place of work to his place of residence. The work category is the following:

a) Judicial officers in respect of such minimum judicial services as the Chief Justice deems essential, and such employees of the public sector, including Ministries and government departments, public enterprises and statutory bodies, providing essential services to the public as may be designated by the Head of the public bodies concerned, and

b) Employees of the private sector providing strictly essential minimum services.

In addition, nothing in the permit issued by the Commissioner of Police shall exempt any employer from his statutory obligations pertaining to safety and health of his employees under any enactment which may be applicable.

However, on 26th of April 2020, the law was amended by Government Notice No. 81 of 2020. Amongst several other categories, a Judge or Magistrate for the purpose of attending Court and a barrister or an attorney, whose services have been retained by a person to attend a police station, place of detention or Court, do not require a permit.

Hence, the implications of the wellbeing of those who are working during the curfew order cannot be overlooked. In fact, “Stop the pandemic: safety and health at work can save lives” is the slogan of the 2020 World Occupational Safety and Health Day which was celebrated on the 28th of April 2020 and coordinated every year by the International Labour Organisation (ILO). More than ever, raising awareness on the adoption of safe practices in workplaces and the important role that occupational safety and health services play must and should always be the focus of employers.

Undoubtedly, employers owe duties to employees under Section 5 of The Occupational Safety and Health Act 2005 (OSHA 2005). They are to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all their employees who are working.

Section 5 of the OSHA 2005 reads as follows:

5. General duties of employers
(1) Every employer shall, so far as is reasonably practicable, ensure the safety, health and welfare at work of all his employees.

(2) The employer shall, so far as is reasonably practicable, in particular –

(a) (i) provide and maintain a working environment;
(ii) provide and maintain any plant or system of work;
(iii) maintain any place of work under his control, including the means of access to, or egress from it, that is safe and without risks to health;
(b) ensure that use, handling, storage or transport of articles or substances is safe and without risks to health;
(c) provide and maintain adequate facilities and arrangements for the welfare at work of his employees;
(d) provide information, instruction, training and supervision as is necessary to ensure the safety and health at work of his employees;
(e) ensure that any person not in his employment is not exposed to any risk to his safety or health.

(3) Every employer shall consult representatives of his employees who sit on the Safety and Health Committee with a view to the making and maintenance of arrangements, which will enable him and his employees to cooperate effectively in promoting and developing measures to ensure the safety and health at work of the employees, and in checking the effectiveness of such measures.

On the 16th of April 2020, the Ministry of Labour, Human Resource Development and Training also issued a communique in which it was made mentioned that employers, forming part of the essential services, are to take all the necessary measures to ensure the safety, health and welfare of their employees.

Unquestionably, exposure to Covid-19 presents a health risk to workers and other persons at a workplace. This brings us to the question as to whether: **Covid-19 can be classified as an occupational disease?** The answer is yes, Covid-19, if contracted through occupational exposure, could be considered as an occupational disease.

This has not only been confirmed by the International Labour Organization Standards (ILO Standards and Covid-19 (coronavirus) FAQ – key provisions of international labour standards relevant to the evolving Covid-19 outbreak) but the fourteenth schedule of our OSHA 2005 provides for a list of occupational diseases and makes mention of:

1.3 Biological agents
1.3.1 Infections or parasitic diseases contracted in an occupation where there is a particular risk of contamination

Covid-19, undoubtedly, falls under biological agents as described in the Fourteenth schedule.

Based on the above, employers must provide employees with the necessary tools to protect themselves and disinfect their immediate environment. Workers are putting their health and safety at risk and it is the employers’ responsibilities to ensure that their health and safety is accounted for during these volatile times. Now, more than ever, it is imperative that employers take note of the ongoing guidance that is being circulated by the Government and in response to ever changing work patterns, remain flexible, when it comes to reviewing the validity of their risk assessments and safe systems of work.
Quick Facts

The Information and Communication Technologies Act 2001 (the ‘Act’)

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<th>Penalty for committing an offence under the Act</th>
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<td>Fine not exceeding 1,000,000 rupees and penal servitude for a term not exceeding 10 years</td>
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Examples of offences under the Act

- Knowingly sending, transmitting or cause to be transmitted, a false or fraudulent message

- Dishonestly obtaining or making use of an information and communication service, with the intention to avoid payment of any applicable fee or charge

Source: stories.flipkart.com
Using an information and communication service, or any other means, to impersonate another person which is likely to cause annoyance, humiliation, inconvenience, distress or anxiety to that person

Using a telecommunication equipment to send, deliver or show a message which is obscene, indecent, abusive, threatening, false or misleading, which is likely to cause or causes annoyance, humiliation, inconvenience, distress of anxiety to any person

Knowingly providing information which is false or fabricated
SUPREME COURT JUDGMENTS SUMMARY
SUMMARY OF SUPREME COURT JUDGMENTS:
April 2020


By Hon. Judge Mrs. A.D. Narain

Fresh bail application – Supreme Court – Unlimited Jurisdiction – Procedure to be adopted – Passage of time since time of arrest - New Facts and Circumstances

The applicant was provisionally charged with drug dealing coupled with money laundering in breach of the Dangerous Drugs Act and possession of Federal Streamer in breach of the Firearms Act.

His bail application was refused by the Bail and Remand Court on 31st July 2019. He clearly stated however that the present application was not a review of that decision but a new application for his release on bail.

The co-respondents raised the following preliminary objections –

1. There is no cause of action against the respondent (Presiding Magistrate of the Bail and Remand Court.

2. The applicant is not entitled to enter the present application (fresh bail application) before the Supreme Court inasmuch as ex facie the affidavit, he had not shown that he fell within the exceptions provided for under section 19 of the Bail Act.

3. The present Court does not have jurisdiction to hear the present application.

4. Ex facie the affidavit, the applicant has failed to disclose that there are new facts and circumstances justifying the present application.

5. The present application does not give rise to any referral by the Bail and Remand Court to the Supreme Court regarding the interpretation of the Constitution.

6. The applicant has adopted the wrong procedure with regard to a fresh bail application.”

Learned Counsel for the applicant submitted that section 19 of the Bail Act had to be read narrowly since it provides for a derogation from the unlimited jurisdiction of the Supreme Court as provided for in the Constitution. He further argued that new facts and circumstances had been averred by the applicant in his affidavit where he stated that “after 14 months of detention” he still had no indication as to when he will stand trial.

The Court ruled on the issue of jurisdiction to the effect that section 19 of the Bail Act had to be read subject to the Constitution and the “exclusive jurisdiction” conferred on the Bail and Remand Court by that section cannot in any way affect or whittle down the Supreme Court’s unlimited jurisdiction to hear and determine any criminal proceedings, including any bail application, pursuant to section 76 of the Constitution.

Nonetheless, the Court made it clear that this unlimited jurisdiction does not mean that bail applications may, in any and all circumstances, be made to the Supreme Court. In this line, the Full Bench case of Rangasamy v The DPP & Anor 2005 MR 140 remains authority for the cases in which an accused party (including one who, like the applicant, has been refused bail) may apply to the Supreme Court for bail:

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“It is therefore open to an accused party who has been refused bail to have recourse to the Supreme Court for –

(a) a review of the decision of the subordinate Court, in which case a copy of the Court record will be attached to the application for bail (…);

(b) a hearing of a fresh application to have him admitted to bail on facts which were available before the lower Court as well as on new facts and circumstances, so that there is no need at all for the Court record of the subordinate Court to be annexed as the Supreme Court will hear the matter anew on the essential facts, both old and new, mentioned in the affidavits to be produced in Court.”

Applying the views of the Full Bench in Rangasamy at paragraph (b) above, which are binding, the Court held that a fresh application for bail may only be made to this Court if there are new facts and circumstances specifically mentioned in the affidavit in support of the bail application.

And the issue in the present fresh bail application was whether the passage of time since the arrest of the applicant is in itself a new fact, justifying the making of a fresh application to the Supreme Court.

In deciding this issue, the Court referred to the Law Commission of England and Wales (Law Commission No 269, 2001) entitled “Bail and the Human Rights Act 1998” to conclude that “passage of time in itself will not necessarily be a new fact or circumstance but may, depending on the particular facts of the case, constitute a change in circumstances justifying a fresh bail application”.

The Supreme Court pointed out that the present application (per the affidavit) failed to mention the passage of time as a new fact or circumstance and also failed to indicate in what way the passage of changed circumstance or had resulted in any risk identified by the Bail and Remand Court as a valid ground for not releasing him in July 2019 being minimised.

In the circumstances, the Court was not in presence of any new fact or circumstance. The preliminary objection no. 4 was thus upheld and the application was set aside.

“Knowing yourself is the beginning of all wisdom.”

— Aristotle
“TO NO ONE WILL WE SELL, TO NO ONE DENY, OR DELAY RIGHT OR JUSTICE”
Chap 4, Magna Carta 1215