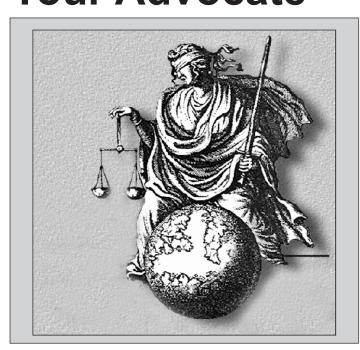




# **Your Advocate**



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law. criminal law and constitutional law. Send your queries to the Law Desk, The Daily Star. A panel of lawyers will address your problems.

Q: I am engaged in one of the export company in Pakistan. In 2000, our company sold machinery to a Chittagong based company under letters of credit. The terms of letters of credit were to release 80% payment on shipment and 20% on receipt of machinery at Chittagong port. In May 2000, Chittagong based company released the machinery from Chittagong port in terms of letter of credit but it simultaneously addressed bank for stoppage of 20% balance amount and went to file suit for money claim against bank. And our company seeking thereby restraining orders for the bank for reimbursement of balance amount of 20% and also levelled accusations for short of machinery against us. In order to defend the case, we hired two local advocates to defend our case and got vacate the status quo orders. The court then was hearing the case and after a lapse of over three years the case is still pending and our company's 20% amount is still stuck-up. Now the lawyer in Chittagong has become greedy and is demanding 5% of the recovery amount with startling contentions that in case the suit is dismissed we will get 20% amount for which we will bear 5% litigation cost payable to him. He threatened us that if we did not make payment he will not pursue the case further. This is a case of illegal and unethical practices on part of the lawyer to whom we have already paid his fees of 10,000 Taka. Can you assist me as to how we can save our interest on threats of Chittagong based lawyer and how we can seek urgent relief from that court as our funds 20% are still stuck-up with a Bangladesh bank.

### Abdul Rashid Abro

Your Advocate: Your question is essentially one of misconduct on the part of your lawyer. So far as the long pendency of your suit and a considerable amount of money being stuck in it concerned it is a problem inherent in our system and we are just trying to get rid of it in so many ways including amendment of laws. Things have by now much improved in this respect, I must say. For quick disposal of your case you have no other alternative but to ask your lawyer to take appropriate steps towards disposal of the case as soon as possible. Back to the main question, a lawyer in determining the amount of his fees is entitled, amongst others, to consider a number of things: a) the time, labour and skill required, novelty and difficulty of the question involved in conducting the case b) the customary charges of the Bar for similar services and d) the amount involved in the controversy and the benefit resulting to the client from the services. But in no circumstances a lawyer can emerge as a claimant of any share of the money or property involved in the dispute in lieu of his remuneration or as a reward or bounty or in any form. The amount you have already paid to your lawyer does not ipso facto suggest that he can not claim further fees but point is he can not do that by way of claiming any part of your money that may be due in the event of your success in the suit. In the circumstances you can rescind the appointment given to your lawyer as per Order III of the Code of Civil Procedure and also make a complaint to the Bangladesh Bar Council against him asking for an action for violating Canons of Professional Etiquette.



# Habitual offender

A person who is convicted and sentenced for crimes over a period of time and even after serving sentences of incarceration, such as demonstrates a propensity towards criminal conduct. Reformation techniques fail to alter the behaviour of the habitual offender. Many countries now have special laws that require the long-term incarceration, without parole, of habitual offenders as a means of protecting society in the face of an individual that appears unable to comply with the law.

# Hearsay

Any evidence that is offered by a witness of which they do not have direct knowledge but, rather, their testimony is based on what others have said to them. For example, if Bob heard from Susan about an accident that Susan witnessed but that Bob had not, and Bob attempted to repeat Susan's story in court, it could be objected to as "hearsay." The basic rule, when testifying in court, is that you can only provide information of which you have direct knowledge. In other words, hearsay evidence is not allowed. Hearsay evidence is also referred to as "second-hand evidence" or as "rumour." You are able to tell a court what you heard, to repeat the rumour, and testify that, in fact, the story you heard was told to you, but under the hearsay rule, your testimony would not be evidence of the actual facts of the story but only that you heard those words spoken.

# Holograph will

A will written entirely in the testator's handwriting and not witnessed. Some states recognise holograph wills, other do not. Still other states will recognise a will as "holograph" if only part of it is in the testator's handwriting (the other part being type-written).

The word includes all occasions where one human being, by act or omission, takes away the life of another. Murder and manslaughter are different kinds of homicides. Executing a death-row inmate is another form of homicide, but one which is excusable in the eyes of the law. Another excusable homicide is where a law enforcement officer shoots and kills a suspect who draws a weapon or shoots at that officer

### Hostile witness

During an examination-in-chief, a lawyer is not allowed to ask leading questions of their own witness. But, if that witness openly shows hostility against the interests (or the person) that the lawyer represents, the lawyer may ask the court to declare the witness "hostile", after which, as an exception of the examination-in-chief rules, the lawyer may ask their own witness leading auestions.

# **Husband-wife privilege**

A special right that married persons have to keep communications between them secret and even inaccessible to a court of law. While this privilege may have been varied in some states, it has always been held to be lifted where one spouse commits a crime on the other. Similar to the client-solicitor

# Consumers are worst victim of cheating

He moved from one pharmacy to another for a rare medicine badly needed for his ailing father. Azad finally found the medicine at a well-known drug store. He hurried back to hospital. His high spirit faded after the surgeons said they could not use the medicine because its use date had expired long ago. The man returned to the store only to be told that it has no other sample of the drug. The storekeeper shocked Azad by refusing to take back the date-expired drug either.

\*Lawour rights

Selling date-expired medicines, foods and beverage is too common in Bangladesh and this goes unbridled and often unprotested because of the government's too week mechanisms to regulate the market and bring the perpetrators to book.

Institute of Public Health, a government organisation, recently conducted a survey on medicines available in the market and found 70 percent of them of poor quality. Consumers Association of Bangladesh (CAB) also carried out a survey on it and found huge date-expired medicines being sold in the market. It also detected that some medicines have reprinted and faked expiry dates on their packets.

Sakera Rahman works in a private firm, where her colleagues regard her as a woman ready to fight for civic rights. One day she bought a shampoo

from the city's New Market and asked the sales assistant to give her cash memo. The shopkeeper refused to give. While using the shampoo, Sakera found it fake. The next day she returned to the shop, but the shopkeeper flatly told her that the shampoo was not bought from his

The CAB survey conducted during August-September 2002, detected that 76 percent biscuits, 51 brands of jam-jelly and almost all brands of ghee are significantly inferior as per the BSTI set standard. It also revealed that most products have no manufacturing and expiry dates and price tags. And even there is no mention about the ingredients used in products. Talking about the quality of goods sold in Bangladesh market, a BSTI official said, "We are consuming palm oil fat in condensed milk and its food value is very low. There are even condensed milk in the market, which has no milk ingredients and nutrition value." He also said that most people think the used bottles of mineral water cannot be reused because of re-fixation of caps. But a group of dishonest businessmen have invented the techniques of re-fixing caps. First, they fill the bottles with unsafe water and then heat the cap and re-fix it to the bottle.

Consumers are provided not only low quality goods. There is another

hazard they have to face unusual price hike. This is also violation of consumer rights. Another survey says the living standard rose by 8.52 percent in 2002 although the income level of the people remained almost the same. Economist Prof. Muzaffer Ahmad said, "In other countries, there are

many options for the consumers. We don't have that kind of luxury in our country. If the price of a particular item marks a rise on the international market, we need to look for substitutes instead of hiking the price locally. It's a violation of consumers right to raise the prices of essential commodities beyond the buying capacity of the commoners." Prof. Muzaffar said that the farmers would be benefited little with the increased price because the prices of agri-inputs also increased simultaneously. "We have to consider the income level of our own country. We can't give examples of our neighbouring countries like India and Pakistan because their income levels are higher than ours," he told the News Network correspondent.

The present scenario of consumer rights in Bangladesh is not encouraging. Under public pressure, the government moved to formulate a law in this regard nearly a decade ago. But the proposed law, "Consumer Protection Act," is still a draft and nothing else. To elicit suggestions and recommendations for improvement or modification of the draft law, a two-day international workshop on "Consumer Rights in Bangladesh" was held on 12-13 January Organised by the Ministry of Commerce, the workshop was addressed by experts from home and abroad, including India, Malaysia and Hong Kong.

A good number of recommendations came from different experts and the audience as well. The major recommendations included bringing public and private educational institutions under the purview of law and minimising disparity in education in rural and urban areas. The experts also suggested



avoiding incomplete description of goods and false promises in commercials, development of a national food safety policy and taking steps for the training of paramedics and ensuring food safety apart from modifying the rules, regulations and ordinances on food quality control.

# letter



Conditions of the prisons and prisoners are well known to all concerned citizens of the country. Currently there are about 71000 prisoners in all the 65 jails of the country where with the capacity of nearly 25000. Keeping this figure in mind one can easily guess in what condition the inmates are living in the jails. Almost two third of the inmates are undertrial prisoners. There are many who are languishing for years without trial. To better plight of the prisoners several commissions were set up and they accordingly made their recommendations. Some of these recommendation has been implemented but the major and important recommendations are still awaits implementation. As a result



sufferings of the prisoner continue.

They are denied basic human right guaranteed by the Constitution. Will it continue for years? I think to reduce sufferings and to improve living condition of the prisons, we first need a solution of the 'overcrowding problem' either by establishing new jails or reducing the number of 'jail worthy people. The court must apply its judicial mind before sending one to jail. A huge amount of money is being allocated from the state exchequer for the prison and prisoner. But what is the outcome? Is it helping to reduce criminality? Do the person benefit in any way while they are in prison. They are languishing in the jails for years without any positive and productive activity. As a result many of them after release again get involved in criminal activities. If we can train them with different income generating programme, they will find a fair way of income after their release. This may contribute to

reduce criminality in the society and corruption inside the jails. We may also think alternative to the prison system such as parole, probation etc.

Motejheel, Dhaka.

# Govt. should comply with the **HC** order

The High Court Division's judgement on section 54 and 167 of the

Code of Criminal Procedure is one of the milestones of the country's legal history. Almost all the laws now in force in Bangladesh were enacted by the British colonial rulers. Even after the independence, we have hardly changed any provision of these laws. Of them, section 54 of the CrPC was considered as a draconian law. This law provided the police with almost unlimited power to arrest anyone without any order of a magistrate. For that reason police abused and misused this law for a long time. All section of the society including the political parties constantly demanded repeal or amendment of the law, except the party in power. Using the term 'reasonable suspicion' police arrest innocent people and extort money from them and the government used it as a tool of oppress and suppress their political opponent. In fact there are misconceived ideas among the police regarding the power given to them under this section. In this backdrop, the High Court Division in its landmark verdict, declared the two sections (54 & 167) inconsistent with the Constitution. And it recommended for amendment of the sections. It also directed the government to implement the amendments recommended by it within six months of the date of judgement. It further asked the government to adhere to the 15 point directives till the necessary amendments. All quarter of the society welcome this judgement, as it will contribute to protect the citizens from the harassment and arbitrary arrest of police. Even the Attorney General in his reaction after the judgement said that the government would not appeal against the HC verdict. But eventually we see the government has filed a petition of appeal before the Appellate Division of the Supreme Court challenging the judgement. The Appellate division did not stay operation of the judgment, which means it is mandatory for the government to follow the directives. But there is no indication from the government to comply with the judgement. Instead, arrest under section 54 is going on as usual. And the magistrates are allowing remand of the arrested persons to police custody in violation of the judgement This is not expected of a government who claims to be democratic and committed to protect citizens' rights. By this conduct the government itself setting president and encouraging other to violate orders of the higher courts of the country.

A. Kabir, Pallabi, Mirpur, Dhaka.

# Corresponding Law Desk

Please send your mails, queries, and opinions to: post - Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email dslawdesk@yahoo.co.uk

# LAVweek



### Writ on Judges' confirmation stayed

The Appellate Division of the Supreme Court has stayed for three months all proceedings of the writ filed in the High Court Division challenging nonconfirmation of additional judges by the government. Three former additional judges and two lawyers filed the writ. The Court has also allowed the government to file an appeal against a High Court Division's order that asked the government to produce records of the Chief Justice's recommendations regarding confirmation of service of the additional judges. The appeal petition will be heard in the court during the stay period. It may be mentioned that on 27 May 2003, a three-member bench asked the government to produce all records including the recommendations of the Chief Justice. -Law Desk.

#### Bangladesh signs FCTC

Bangladesh has singed the Framework Convention on Tobacco Control (FCTC) at a formal ceremony of the World Health Organisation (WHO). Bangladesh is the only country from South Asia to sing the convention. Upon ratification by 40 countries, the convention will come into force. Norway is the first country to submit its instrument of ratification. The FCTC was adopted at the 56th WHO assembly on 31 May 2003. -Bhorer Kagoj, 17

### Bangladeshis languish in foreign prisons

More than 5000 Bangladeshis are languishing in jails and concentration camps of sixty countries. This was revealed by a report of the International Organisation for Migration (IOM). According to the report, over 200 Bangladeshis are convicts and the rest were arrested for illegal migration or stay without valid documents. Secretary of the Expatriate Welfare and Overseas Employment Ministry Mr. Daliludding Mondol said process for release of the Bangladeshis is underway, but it is very difficult as many of them do not have any document and some do not want to return home. Daily Star, 11 June.

### Punishment of police increasing

A total of 19,622 policemen were punished for their involvement in corruption and other criminal activities in the year 2002. The number was 16.913 in 2001. In 2002, 156 police personnel were fired, 55 forced into retirement. 1,778 awarded heavy punishment, 17,844 light punishment and the rest awarded various punishments. Most of those punished were lower level officials and police personnel. Only one Superintendent of Police (SP) was forced into retirement and an Additional Superintendent of Police was given light punishment. No policemen above the rank of SP were punished during this period. Two Assistant Superintendent of Police (ASPs) were given forced retirement and two others heavy punishment. Seventy-three police inspectors got heavy punishment. Besides, 8,303 sub-inspectors were punished, 145 of them fired and three forced into retirement. Those punished included 490 traffic sergeants with two of them fired and 3,501 assistant sub-inspectors, five of them were given forced retirement. The others included 892 Havilders and 404 Nayeks. Besides, 5,474 Constables were also punished in this year. -Daily Star, 11 June.

### Backlog of cases at Jessore

Over 900 cases are pending in the Artha Rin Adalat of Jessore district for realising about Tk. 70 crore from the loan defaulters of different banks. The district Artha Rin Adalat has been rearranged into a full fledged Artha Rin Adalat by shifting all criminal cases from the court to facilitate trial of bank loan defaulting cases only. The new Artha Rin Adalat started functioning from May of 2003. -Independent, 10 June.

# **Permanent Public prosecutors**

The government is finalising a bill seeking to establish a permanent legal service in which government lawyers and public prosecutors will be recruited through the Public Service Commission (PSC). The Director General (Prosecution) of the proposed permanent legal service would look after the service of the legal officers. On the operational side the Attorney General would supervise work of the legal officers at the Supreme Court, and the DG will do that in the lower courts. At present, public prosecutors are appointed every time a new government takes office. -Independent, 10

# 20 vessels fined for pollution

A mobile court at the Chittagong port has fined 20 vessels including a cargo ship of Singapore Tk. 34.24 lakh for emitting excessive black smoke and polluting the environment. Magistrate of the court Mr. Manir Chowdhur fined MV Maritime Saith of Singapore Tk. 20 lakh and 19 local vessels including seven cargo ships, seven fishing trawlers, one tugboat and four cargo trawlers Tk. 14.24 lakh. The court also asked the fishing trawlers and cargo ships not to enter the port. -Prothom Alo, 12 June.

# More rooms for prisoner

Capacity of the prisons of the country will be increased by the end of the year 2003. A project of Tk. 40 crore for expansion of nine jails is going on first pace which will accommodate 2500 more inmates. This was disclosed at the sixth meeting of the Cabinet Committee on Jail Reforms. The expansion work is taking place at Kashipmpur of Gazipur, Narayanganj, Munshiganj, Rajbari, Chittagong, Noagoan, Moulavibazar, Sathkhira and Hobigonj prisons. At present a total of 71,290 prisoners are languishing in the 65 prisons of the country against the capacity of about 25,500. Among them, 8000 inmates have been passing their days inside the prisons for a long time without any trial. -Daily Star, 16 June.

# CrPC amendment bill tabled

A bill for amendment of the Code of Criminal Procedure has been introduced in the Jatiya Sangsad styled Code of Criminal Procedure (Amendment) Bill 2003. The amendment bill provides for counting the period that an accused spends in custody and deduct that from the period of jail sentence finally handed down to the accused if he is adjudged guilty. In the explanation of the amendment it is said that such a provision has always been there, but it was up to the court's discretion. With this bill the provision is proposed to be a mandatory one. If and when implemented, this would substantially reduce government expenditure and bring relief to the overcrowded jails. -Daily Star, 16 June.

# WCRP Act amendment bill introduced

The government has introduced a bill in the parliament seeking amendment to the Women and Children Repression Prevention (WCRP) Act 2000. The bill provides for clarifying the definition of certain offences and reducing punishment to stop the abuse of the law. Under the proposed amendment the definition of a child has been given as a person of upto 16 years instead of 14 years. The bill also provides that if a baby born out of rape, the baby will be kept under the care of mother and will be known after his/her mother or father or both. Besides, the state will take the responsibility of that baby until he/she attains the age of 21 years. Under this provision, the state will realise the money spent for upbringing the baby from the rapist. It is proposed that the provision of 'indecent gesture' should be omitted from the list of sexual harassment offence, as in most cases the provision is exploited to harass rivals. - Ittefaq, 16 June.

# OC sued for sexual harassment

The Officer in-Charge (OC) of Kumarkhali Thana of Kushtia district has been charged with sexual harassment by a woman. Ambia Khatun of the Thana filed the case with the Women and Children Repression Prevention Court accusing the OC of trying to harass her sexually. According to the complainants. OC Avubur Rahman entered her room and tried to catch her when she was alone on 9 June. As she shouted for help, her neighbours rushed to her house and rescued her. She further alleged that the OC threatened her not to disclose the matter. -New Age, 16 June.

# Cases pending at Narail

A total of 4,348 cases are awaiting trial in the courts of Narail district. Of the cases, 1,424 are in Kalia, 1,312 are in Lohagara and 1,612 in Narail Sadar. Seventy-eight of the cases are relating to torture in women and children. The additional district and sessions judge who is in charge of district judge told those cases have piled up due to shortage of judges. There is only one judge for the three courts of the district. -Daily Star, 17 June.