



READER'S queries



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

Q: Pardon me for using informal English for I am not versed with the legal jargon used in the court of law. Getting right to the point: One can safely say that, the dealings between the landlords & the tenants in this city of ours is not governed nor enforced by well defined laws, even though, I'm certain that there are good laws in the books to regulate these contractual parties.

Questions for the panel: (1) What amount of money can a landlord ask for as security deposit; will any arbitrary sum suffice? (2) Is this deposit refundable and how much can be deducted and for what? (3) What recourse does a tenant have if the money is not refunded promptly? (4) Is there a statute of limitation for the refundable amount?

I. Rahman,
Shayesta Khan Avenue, Uttara.

Your Advocate: Your queries have an air of despair in respect of landlord-tenant relationship in our capital city in particular. I must not say that you have no reason to be fed up with the kind of culture that is prevailing in this area of our lives. Apparently it looks as if the land lords as owners of the premises, are the authority to dictate terms and the tenants are subservient to them.

Fortunately enough, the law does not say so. The Premises Rent Control Act, 1991 is the basic law governing this area. The law says that the tenant shall be bound to pay only the "standard rent" agreed upon by the parties or fixed by the Rent Controller. Section 7 of the Act imposes a restriction on arbitrary and illogical increase of rent and says, even if increased, it can not be recoverable. Section 10 of the Act strictly prohibits demand of money in any form including salami, premium, jamanot, advance etc, exceeding the amount of rent payable against one month only. Section 14 of the Act provides procedure for return or adjustment of the amount received by the land lord in excess of the amount permitted by law. Section 15 of the Act provides procedure for determination of the "standard rent." It says, inter alia, that the standard rent for a year shall not exceed 15% of the market value of the premises. Section 23 of the Act provides punishment for receiving rent exceeding the standard rent or receiving or demanding advance, salami, jamanot etc. in violation of law. If there is any specific problem with regard to the issues we are discussing it would be advisable for you to consult a lawyer.

I hope your queries stand addressed and need not be dealt with separately.

Q: After my grandfather and Grand mother's death my two maternal uncle became the owner of all the moveable and immovable property. My mother and Aunts were not aware of their legitimate right on their parent's property. They thought only sons are lawful heir of the parent's property. So, they did not thought to claim or go for legal action. When we grew up we claimed about our mother's legitimate share of the property left by our grand parents. And my mother also agreed and asked my uncles to pay her due share. But our uncles tactfully avoid and lingered the matter but gave hope that they will not deprived my mother from her due share. Since we had very pleasant relation with our uncles we did not want any embarrassed situation. Moreover, legal steps might hamper our relation and reputation and the main thing was that we could not think of being deceived by our beloved uncles. Both of my uncles are not alive and usually their son's are now owner of that property. We requested our cousins to pay our due share but they violently refused to give any of due share. They even said to go to court and do what ever we can. My questions are (a) can we claim our due share of that property legally? (b) If, yes how and if no, then what's about the law of son: daughter 2:1?

Mr. Humayun,
I-D, 4/11, Mirpur, Dhaka-1216.

Your Advocate: This is the usual tug-of-war between the siblings over the paternal property particularly in our society. Traditional values always prevented the daughters from demanding the share in their parents' property. More so your mother and aunts were not at all aware of their right to their paternal property giving a kind of walkover to your maternal uncles all these years. Now that your mother and the maternal uncles are dead the problem has landed in a different and more difficult phase. In any case you need not lose heart. Your mother's right to her parents' property is unconquerable. It can not be taken away by threat or coercion. In the peculiar circumstances a suit for partition may bring about the remedy you want.

LAWSCAPE



What is the difference between a tick and a lawyer?
A tick falls off of you when you die. *****

Why does the law society prohibit sex between lawyers and their clients?
To prevent clients from being billed twice for essentially the same service. *****

How many lawyers does it take to change a light bulb?
Six. One to change the bulb and five to write the environmental impact statement. *****

What do you call a smiling, sober, courteous person at a bar association convention?
The caterer. *****

Why are lawyers like nuclear weapons? If one side has one, the other side has to get one. Once launched, they cannot be recalled. When they land, they screw up everything forever. *****

Over a century ago, a British judge was late for court so he hailed a cab and told the driver to take him to the Royal Courts of Justice.

"Where are they," asked the driver.

"You mean to say that you don't know where the law courts are?" asked the judge incredulously.

"Oh! The law courts," replied the driver. "But you said the courts of justice."

LAW letter

Is it protection of IPR ?

Bangladesh Resource Centre for Indigenous Knowledge (BARCIK/IARD) is a non-governmental organization that works for the inclusion of indigenous knowledge in development initiatives and thus tries to establish a stand to improvise the features of intellectual property rights in favor of grassroots people. I was involved in its publications for last one year and my responsibilities included preparing a monthly newsletter and a quarterly journal in Bangla. Throughout the time I kept myself continuing the monthly (where, despite my almost-sole contribution, I was mentioned as an editorial member along with many non-involved others in the printers line) and prepared a script for the quarterly Bangla journal. As the proposed executive editor of that quarterly, I have played all possible roles of an executive editor like collecting writings and seeking author's permission to publish them in Bangla, rewriting thoroughly some half-done translations and taking care of local articles; overall planning that includes writing every prologues and the editorial. Then, one fine morning I submitted a soft copy of the journal to the Director of BARCIK/IARD.

But unfortunately this script has been remaining unpublished for months and quite surprisingly, the printing process started when I was suddenly and mysteriously asked to discontinue with this assignment. Without any prior notice I found my poor name was discarded in the printed journal, where I was supposed to be the executive editor.

If the protector himself play the role of devastator there is nothing to do'. I am saying this because BARCIK is also very vocal in favor of the protection of 'Intellectual Property Rights' of the poor people as this issue is very much of a 'hot potato' in development throughout the world. BARCIK always tries to show how much concerned it is against the bio-piracy in order to protect the IPR. But in my case their explanation was that I was 'paid' for this work. Does it reflect the voice of a real IPR protector? I became mentally upset hearing this reply. It was a big shock for me. After playing all possible roles of the executive editor of that journal, I found my name was nowhere on the credit line. Only I was mentioned for my 'assistance' in an odd sentence in the last paragraph of the editorial and unfortunately rest of the editorial was written by me. It gives me pain when I found all my works that I produced in many sleepless nights were stolen in such a way. I have committed to do this work for BARCIK as I wanted to learn regarding the indigenous knowledge issues. But this unethical act has ruined my dream.

Finally, I cannot help leaving a question to all development thinkers: if the so-called advocate of development were so much disrespectful to the IPR issue of an editor like me -- how the knowledge of the poor and indigenous people would survive?

Sumon Rahma,
House No. 16 (forth floor), Road No. 11
Nikunja-2, Dhaka 1229.

Keep the judiciary beyond dispute

The judiciary being the conscience of the country, the guardian of constitution, the last faith of the people, we should not make it disputed. But recently, confirmation of 5 additional judges and appointment of Mr Justice M. M. Ruhul Amin to the Appellate Division of Supreme Court superseding a senior judge of the High Court Division has created debate about the transparency in appointment process. Article 95(1) of our constitution says, "Chief Justice and other judges shall be appointed by the President." So according to Article 95(1) there is no obligation on the part of President to appoint senior most judges of the Appellate Division as chief justice. It has been a constitutional convention that senior most judge of the Supreme Court is appointed as Chief Justice. And President should consult with the Chief Justice before appointing other Supreme Court judges. After Mr M Reza Chowdhury's (c.j.) retirement, K.M. Hasan has been appointed as Chief Justice superseding



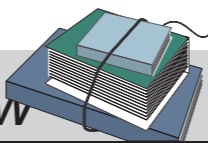
other two judges. During last govt. Justice Ruhul Amin and Justice Fazul Karim were appointed superseding the present CJ K M Hasan. So, our law minister said that previous govt. did injustice to K M Hasan and they undid that. Now a question has raised, who will undo the new injustice?

Executive should keep the judiciary above political controversies. If judges are appointed from political consideration, it is impossible for them to act impartially. This may result to break down of public confidence on judiciary.

So, please maintain constitutional convention and seniority in appointment of Supreme Court judges and restore the original constitutional provision to ensure the transparency and independence of judiciary and take necessary steps for quick separation of power.

Tipu,
Department of Law, Dhaka University.

LAW book review



A Good Initiative

LAW DESK

Journal of Law
Vol. 1, June 2003
Edited by Sheikh Hafizur Rahman Karzon.

Journal of Law, mainly for and by the students of law, was published in June 2003. It has opened an avenue for the students to conduct researches on any branch of law and put their findings in this Journal. The associates of the Journal expressed their intention to address law with reference to economics, sociology, philosophy, genetic science, information technology etc and to uncover grey areas of law.

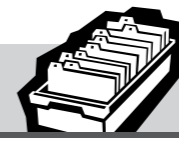
The first issue of the Journal of Law is prepared with articles on various topics of Criminology, this can exactly be considered as Criminology issue of Journal of Law. All the writers of this present Journal are second year students of Department of Law, University of Dhaka. In the first article Reagan Dey has focused impact of genetics on criminal behaviour and criminal justice system. In the second article M. Abul Hasnat has discussed different aspects of cyber crime, an ill going techno-culture. He also discusses inadequacy of legislation of different countries to combat cyber crimes and emphatically said the necessity to go for new legislation for addressing different kinds of cyber crimes. In the third article Taslima Sharmin and Tanzim Afroz have uncovered how patriarchal society is causing females and males to develop Oedipus/Electra complex and how this complex is impacting their external behaviour throughout their whole life. In the fourth article the writer has visected different aspects of anomie. In a systematic way he has pinpointed how lawlessness is taking hold in individual, national and international sphere. A research on organised criminal gangs of Dhaka City also incorporated in the journal. The writers have delineated different dimensions of organised criminal activities. The outcome of the research has been enumerated in the fifth article. In the sixth article an inquiry into the white-collar crimes prevalent in Bangladesh is made. Media impact on criminal behaviour of human being, a study on the process of criminality is also discussed in the journal.

The publication of the Journal of Law is undoubtedly a good initiative. But the associates of the Journal should be more careful about the spell (they should follow either British or American spelt), footnoting, and the language. Quality research and perfection is the hallmark of a journal. Nevertheless this initiative should be continued.

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

FACT file



Iraq:

Human rights violation continues

Dr Suhail Laibi and his son, Ahmad, were detained on 15 May 2003 for having a pistol in their car. Dr Suhail was released from Abu Ghraib Prison on 14 June 2003 and was told that his son had been transferred to Nassiriya. On his arrival there, he found no information about his son and an officer warned him against going to the prison camp because he might be arrested. Continuing his search on his return to Baghdad, Dr Suhail was finally informed by an officer that his son was in Camp Bucca. But this same officer had no idea where this was. After 66 days in detention, Ahmad was finally released on 20 July.

Former detainees told Amnesty International that people detained by Coalition Forces were held in tents in the extreme heat and were not provided with sufficient drinking water or adequate washing facilities. They were forced to use open trenches for toilets and were not given a change of clothes even after two months' detention.

Khreisani Khalis Aballej, 39, and his father, 80, were arrested at their home on 30 April. Khreisani was hooded and handcuffed and made to stand or kneel facing a wall for nearly eight days while he was being interrogated. He suffered from sleep deprivation as a bright light was placed next to his head and distorted music was playing. His knees bled so he mostly stood and by the end he said his leg was swollen to the size of a football. His father was held in the cell next to him and could hear his son's screams.

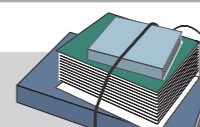
People interviewed by Amnesty International described how soldiers smashed their way into cars and cupboards even when their owners offered keys. There are also numerous reports of confiscation of property, including large sums of money, upon arrest. This property is not returned upon release.

Amnesty International has documented several incidents of shootings at Iraqi demonstrators by US soldiers in disputed circumstances. While it is true Coalition Forces are dealing with complex situations -- they are still engaged in situations of combat and others where the use of force may be necessary, like the dispersal of violent demonstrators - they must still abide by international standards.

As part of the legal reforms introduced by the Occupying Powers, the Iraqi courts no longer have jurisdiction over any Coalition personnel in relation to civil and criminal matters.

Source: Amnesty International.

LAW lexicon



Life estate

A right to use and to enjoy land and/or structures on land only for the life of the life tenant. The estate reverts back to the grantor (or to some other person), at the death of the person to whom it is given. A property right to last only for the life of the life tenant is called the estate "pur sa vie." If it is for the duration of the life of a third party, it is called an estate "pur autre vie". The rights of the life tenant are restricted to conduct which does not permanently change the land or structures upon it.

Limited partner

A unique colleague in a partnership relationship who has agreed to be liable only to the extent of his (or her) investment. Limited partners, though, have no right to manage the partnership. Limited partners are usually just investors or promoters who seek the tax benefits of a partnership.

Liquidation

The selling of all the assets of a debtor and the use of the cash proceeds of the sale to pay off creditors.

Lis pendens

Latin: a dispute or matter which is the subject of ongoing or pending litigation. Politicians will sometimes refuse to discuss a matter or an issue which is "lis pendens" because they do not want their comments to be perceived as an attempt to influence a court of law.

LAW week



Writ against withdrawal of cases rejected

The High Court Division has rejected a writ petition challenging the government's discretionary powers to withdraw any criminal case.

The writ petition was filed citing a latest move towards exempting 10 accused from prosecution for double murders at Keraniganj. A High Court Division Bench of the Supreme Court, comprising Justice Shah Abu Nayeem Mominur Rahman and Justice Md Abdul Awal, rejected the petition. saying that it was filed prematurely as the tribunal was yet to decide on the government's prayer for the impugned non-prosecution. However, the petitioner would file another writ petition if the decision of the Speedy Trial Tribunal left him aggrieved. The court allowed the counsel's prayer for filing a writ petition seeking the High Court's guideline for the trial courts in application of the Section 494 of the Code of Criminal Procedure (CrPC), which empowers the Public Prosecutors (PP) to retract any prosecution. The petition was filed on 27th July on grounds that political considerations in this process pre-empt justice. - *New Age, 29 July.*

Female Traffic Police withdrawn from duty

The Dhaka Metropolitan Police (DMP) temporarily withdrew the first batch of traffic policemen from the city due to lack of infrastructural facilities. They had to be withdrawn in the absence of restrooms and sheds near the places where they were posted. However, they will resume their duty after the required facilities are installed. At that time the traffic policemen will wear comfortable boots and a hat-like cap instead of oblong caps. Meanwhile, the duration of their duty period might also be reduced. Earlier, each team of two worked from 8:00am to 12:00 noon in the first shift and from 3:00pm to 7:00pm in the second. However, no official announcement was made as they were withdrawn temporarily. Also the DMP commissioner rejected that they were withdrawn under political pressure. - *The Daily Star, 30 July.*

Prison population increasing in the US

America's prison population grew in 2002 despite a declining crime rate. The inmate population in 2002 of more than 2.1 million represented a 2.6 per cent increase over 2001, according to a report released Sunday by the Bureau of Justice Statistics. Preliminary FBI statistics showed a 0.2 per cent drop in overall crime during the same span. Mandatory sentences, especially for non-violent drug offenders, are a major reason inmate populations have raised for 30 years. About one of every 143 US residents was in the federal, state or local custody at year's end. - *Jugantor, 29 July.*

Govt. asked to explain approval of NTV

The High Court Division has asked the govt. to show cause within six weeks why its order to allocate frequency of the satellite link for and issue no-objection certificate for import of earth station and SNG-fly way machinery to the NTV should not be declared illegal. The Court also asked the govt. and the Managing director of the International Television Channel (PVT) Limited, Enayetur Rahman, to show cause why the post facto approval of the transfer of the ownership to Rahman should not be declared void. The division bench of Justice M A Wahhab Miah and Justice Md Shamim Hossain issued the rule nisi. - *Bhorer Kagoj, 27 July.*

Enactment of tobacco control law demanded

Speakers of a round table on 'Tobacco Control Law: Bangladesh Perspective' demanded the urgent enactment of tobacco control law for Bangladesh. The programme was organized jointly by Dhaka Ahsania Mission, Bangladesh Anti-Tobacco Alliance and Work for Better Bangladesh in the auditorium of CIRDA in Dhaka on 26 July. The speakers informed that tobacco kills a man in every eight second in the world. They also revealed that by the year 2030, 10 million persons will die every year due to use of tobacco of which seven million will be in the third world countries like Bangladesh. Demanding the immediate enactment of tobacco control law, they said that if the first deteriorating condition is not effectively arrested by enacting comprehensive tobacco control law, tobacco related disease will take epidemic form. - *The Bangladesh Today, 27 July.*

FBCCI poll under court's restriction

High Court Division has issued a rule nisi asking the government to 'show cause' in three weeks why the new laws that changed the electoral process of the trade body should not be declared ultra vires. As a result of this rule the elections to the country's apex trade body FBCCI has become uncertain. A High Court Division Bench comprising Justice Amirul Kabir Chowdhury and Justice AFM Ali Asgar in response to a writ petition by A Rouf Chowdhury, a former director of FBCCI, issued the rule. The election process of the trade body has been going on since May 30 this year, when election board of FBCCI declared election schedule. According to the schedule the election is to be held on August 25. - *Ajker Kagoj, 27 July.*

Urge for consulting the Chief Justice

Supreme Court lawyers in a memorandum urged the government to ensure consultations with the Chief Justice prior to any appointment of judges to the highest court of the country. The Supreme Court Bar Association (SCBA) at a general meeting approved the memorandum, also calling for widening the consultation system to accommodate the bench as a whole and the bar. The memo urged that "the consultation system should be widened to take in the views of the judges of the Appellate and High Court Divisions, the SCBA President, the Chairman and the Vice-Chairman of the Bar Council and a number of senior advocates of the Supreme Court". The lawyers urged for an open selection criteria for appointment. To ensure consistency in the appointments, they said, the candidates' "abilities should be considered against settled and published criteria judging the relevant competencies for selecting the right candidate". In the memo the bar urged the government to review "immediately" the recent non-confirmation of additional judges of the SC. - *New Age, 27 July.*

ABA to go against Blair Govt. in ICC

The famous lawyers of Greece are preparing to file case against British Prime Minister Tony Blair and his govt. in the International Criminal Court (ICC) for the violation of international laws through the aggression in Iraq. Athens Bar Association (ABA) demands that they have enough and strong evidence to hold Mr. Blair and his govt responsible. - *Inqilab, 30 July.*

Lawyers boycotted courts at Rajshahi

Lawyers of Rajshahi Bar Association (RBA) on 28th July observed a daylong strike and staged a sit-in programme to protest the government's adverse attitude towards the lawyers. All the lawyers of the bar abstained from attending the courts and took part in the sit-in programme in front of the district judge's court. They also took out a procession and held a rally on the court premises. Later addressing a press conference, the lawyers demanded immediate withdrawal of compulsory submission of income tax return, imposition of VAT on lawyers and provision of trade license for them. - *Prothom Alo, 29 July.*

Ex-bank staffs punished for fraud

Four former officials of the Chawkbazar branch of the Pubali Bank in Dhaka have been sentenced to eight years rigorous imprisonment in a fraud case. A client of the bank was also sent to three years in jail. The Judge of the Special Court for Dhaka Division Mohammad Azizul Haq delivered the verdict. The court found the five guilty of misappropriating Tk 14,43,248 from the bank in February, 1988. A F Jamaluddin, manager of the branch, filed a fraud case accusing the five on November 18, 1992. - *The Daily Star, 29 July.*

Advocacy for ADR

Legal experts at a seminar on Alternative Dispute Resolution (ADR) said that ADR will help to reduce huge backlog of cases. The seminar was organized by Bangladesh Law Association (BLA) at CIRDA auditorium. Complaining the present dispute resolution system as excessively adversarial, lengthy, costly, prejudiced, unsatisfying, they said the ADR will provide an opportunity to resolve disputes more efficiently, effectively and amicably in a short time by finding ingenious methods of best suited to the parties. Chief Guest of the seminar Chief Justice KM Hasan said that if designed properly the newly paved ADR will be less adversarial, cheap and informal. Law Minister Barrister Moudud Ahmed, Barrister Rokonuddin Mahud, Dr. M Zahir, Mahfuz Anam, Aminur rashid Khan and Zakir Hossain, judges and lawyers of the Supreme Court and law professionals were present at the seminar. - *Daily Star, 01 July.*