



LAW letter

Lawyers' brawl bewilders nation



Recently political divisiveness among lawyers took an ugly turn in the Dhaka Bar Association when the Prime Minister went to inaugurate a newly built building. The pro-BNP lawyers and Jubo Dal activists swooped on the pro Awami League lawyers injuries at least 50 of them. It was utterly shocking for a young lawyer like me. It is true that political divisions exist among the lawyers and this divisions do not revolve around competing visions of better professionalism. But I ever thought that these would result in a bloody brawl. This particular act of the lawyers will definitely undermine the image of the lawyers among the citizen of the country. If the lawyers, who are supposed to protect the cause of law and justice, act in this way, then what can we expect from a lay people!

**F. Dilshad,**  
Segunbagicha, Dhaka

An eye-catching film style snapshot was published in 8th September 2003 in The Daily Star last page under captioned as "Quick Justice". We, the general people expect that the lawyers should be respectful to the constitutional rules and regulation of the state comparing lay persons. When they dishonoured the legislative law of the state like the bad-mannered person, we really feel regret. The mentioned snapshot looks like a film battle, which was unexpected and regrettable from an attorney. The legal representative could hand over the alleged pickpocket to the law enforcing agency but they instead of doing so took the law in their own hand for "Quick Justice!" We expect lawyers as law abiding citizen first.

**Md. Zillur Rahaman,**  
MSS Economics, Bangabandhu Sheikh Mujib Hall, DU.

At last some of our learned (!) lawyers have unmasked their face to the nation by their activity in Dhaka Judge Court Premises. They wear black coats and apparently they seem very polish. But some times they forget who they are, what is their job, and become indulged in political rivalry. They misbehave with their colleagues only because their political belief is different, their political support is diverse. Only for politics our

lawyers fight to each other, they break their professional unity. When the independence of our judiciary is at stake, when the dignity of judiciary is constantly losing, and therefore when there is paramount necessity of the unity of lawyers, then our lawyers are busy in beating each other. Nothing is more pathetic when our respectable lawyers fight for revenge.

**Sharin Shajahan Naomi,**  
LL.B (1st year), Dhaka University.

Speedy Trial Tribunal and some expectations

The English maxim 'Justice delayed Justice denied' is very much applicable for the present legal system of our country that is over burdened with cases. It is the Speedy Trial Tribunal, which is now playing a pioneer role in ensuring quick justice. But few initiatives are really essential for the proper utilisation of this tribunal & hence meet the public demand. At present the Speedy Trial Tribunal only deals with the sensational cases which are fixed by the Government. Now the question raises whether the cases are neutrally selected or the selection is influenced by political identity. That's why a neutral & more acceptable authority is needed to be formed. According to article 27 of the Constitution all citizens are equal before law & are entitled to equal protection of law, then why there is such inequity in this regard. It should be wide open to the mass people so that they can enjoy prompt justice. It is the sacred duty to the honourable judges of the tribunal to conform proper judgment within the fixed time. It is noted that the judgement of the tribunal will be waiting for a long time for adjudication in the High Court Division due to the backlog of the cases there. Therefore the Government should introduce Speedy Trial Tribunal in the High Court division of the Supreme Court also.

**Md. Al Amin,**  
LL.B (Hons) 1st year, DU.

The Speedy Trial Act was enacted on October 24 of 2002. The BNP lead coalition government deserves a round of applause for enacting the law. When the Act was introduced many politicians and citizens thought this Act will be abused but the apprehension proved wrong so far. The Speedy Trial Act 2002 is the landmark in the field of justice and by this law a lot of litigants are getting verdict within short time. But one regrettable thing is that there is a backlog in the higher courts. The government may ponder to set up additional high court bench for disposing of cases in short time. It would be another milestone to give speedy justice to the poor litigants. I hope BNP alliance government will take notice of the matter.

**Md. Zillur Rahaman,**  
MSS Economics, Bangabandhu Hall, DU.

Sex workers' rights Vs social values

A few days ago I attended in a premier show of the two documentaries titled "We the Citizens" & "When We Walk the Streets" made by the sex workers of

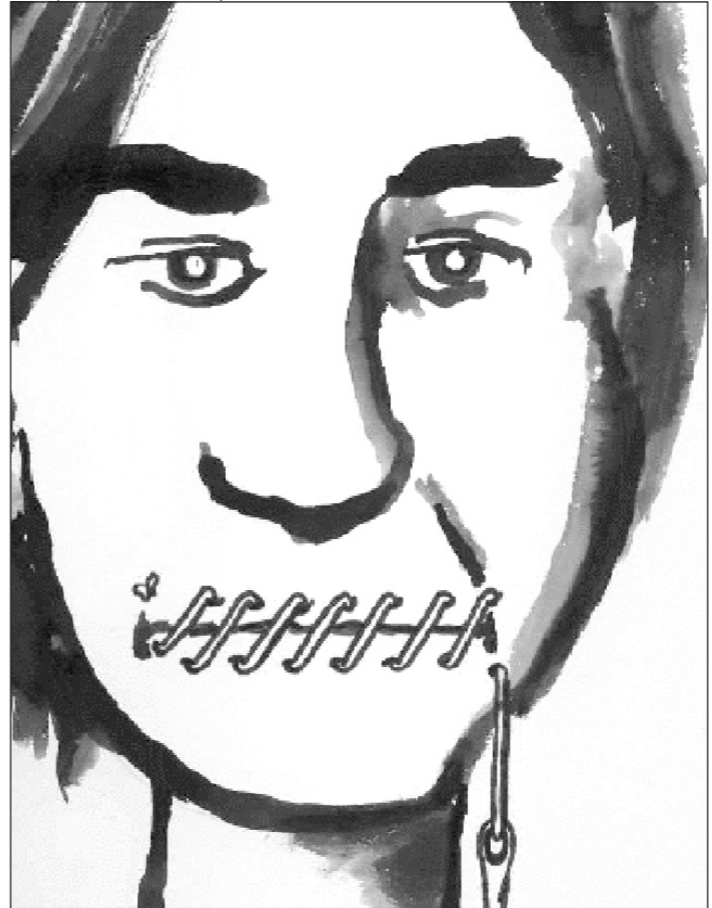
Bangladesh, held at BETS Centre Auditorium, Dhaka on 24th August. It is for the first time in Bangladesh that some documentaries are made and presented by the sex-workers. So, this initiative is of course a laudable one. In the films they mainly focused on police-atrocities on them and raised two demands regarding their rights: 1) to recognise prostitution as a normal job, and 2) to demonstrate humanistic attitudes to them. Nonetheless, these two crucial demands are not only raised by the sex-workers only but also by their close allies NGOs.

There is no doubt that we should try to develop some kind of social consciousness in respect of establishing their rights. But here the obstacle is prevailing social values. Our social values may support to response humanistic attitude to the sex-workers but it never supports prostitution as a normal job. Because our social values which is based on Islamic values never allows prostitution. Moreover, the Constitution of the Peoples Republic of Bangladesh also discourages prostitution, which entails in its Article 18(2) that "The State shall adopt effective measures to prevent prostitution and gambling."

Thus the demand regarding recognition of prostitution as a normal job is unconstitutional and is against the prevailing social values. So, if the sex-workers and their allies are tried for realising the first demand i.e., recognition of prostitution as a normal job, they must be failed. On the other hand, their second demand i.e., demonstrates humanistic attitude to them seems comparatively easier to be realised. Because, Islam, that shapes our social values, strongly commands to show due respect to all human beings irrespective of race, colour, language, culture, religion and occupation.

In this circumstance, the sex-workers and their supporting NGOs should discard the first demand of recognising prostitution as a normal job, in aim to achieve the second demand.

**Md. Mahbubur Rahman,**  
MSS, Political Science, DU.



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:** We are three brothers and my parents are still alive. All of us are living in a joint family. My father has some landed property in the city. As the eldest son I am managing all the family properties. Besides, I am also engaged in my personal business. Recently we have decided to become separate. But the problem is, my brothers are claiming that since I purchased the flat with the help of my father's money (which is not true at all), they have share in it and they are entitled to the flat. I told them that I have purchased the flat with my own money. So we are in a family crisis over the flat. Please advice me as to legal remedy.

**Khondoker Mahbubur Rahman,**  
Banani, Dhaka.

**Your Advocate:** The nature of your problem does not permit any remedy to be indicated at the moment. You have two other brothers but, as the eldest son, you are in the management of the entire property of your father. You have your own business as well. So far so good, but the family bondage sounds a note of discord around the flat purchased by you. The claim and counter-claim about the source of money the flat was purchased with is a development from within your family. There is an oft-quoted saying that the 'wearer best knows where the shoe pinches'. Your claim is that you have purchased the flat exclusively with your own money. Even if wrongly, your brothers have reservations and have already expressed their point of difference. This is absolutely a matter of personal assessment, conviction or belief of family members developed upon their own points of view. If there is any litigation over the issue the natural presumption will go against you and you will have to prove that it is exclusively your money with which you have purchased the flat. Precisely because, when the flat was purchased by you continued as the manager of a joint family and arguably failed to maintain transparency at least so far as the purchase of the flat is concerned. I wish it had not happened. You ought to have taken as much care in handling your family fund as not to permit any scope for such sticky situation to arise.

Be that as it may, for the moment, I would suggest, since you claim that it is your property you sit tight and go on with your possession and enjoyment of the flat. In the circumstances you need not pre-empt action. If your brothers are serious in their claims let them take their actions and their actions, if any, will determine your way-out.

LAW week

Bill on Bar Council passed

The Jatiya Sangsad has passed "The Bangladesh Legal Practitioners and Bar Council (Amendment) Bill, 2003" bringing in some amendments. Law Minister Barrister Moudud Ahmed tabled the bill in the parliament. The reforms include certain changes in election procedures of Bar Council and ensuring transparency in maintaining the council fund. According to the bill, no advocate would be allowed to hold office for more than two consecutive terms. Supporting the provision. It also brought changes in the council election process. The new provision says seven regional representatives would be elected through voters' franchise of their respective region instead of earlier process of executive committee elected by voters across the country. -*Ittefaq, 18 September.*

Sayedee's membership of JS canceled

A vacation bench of the High Court Division of Justice Iman Ali has declared the membership of the Jatiya Sangsad of Delwar Hossain Sayedee illegal for giving false statement of his election expenses. He was elected in a Pirojpur constituency as a four party alliance candidate in the election held on October 1, 2001 defeating Sudhangshu Shekhar Halder of Awami League. Challenging the validity of the election, S S Halder submitted a petition to the High Court Division on November 14, 2001. After nearly two years of hearing the verdict was pronounced. However the court turned down Halder's plea for declaring him elected as he had poled the second highest votes in the general election. However, Delwar Hossain Sayedee has appealed against the verdict to the Appellate Division and the Appellate Division has stayed operation of the High Court Judgement. -*Law Desk.*

OC arrested on charge of rape

Shah Alam, the officer in charge of Jibanagar Thana, has been arrested on charge of raping a woman and he is now in Chuadanga Jail hajat as his bail prayer has been rejected. He was arrested after the victim gave a statement before a First Class Magistrate alleging that she was violated at the OC's house, where she was engaged for domestic help, at the thana headquarter. Earlier the OC was closed at the Chuadanga Police Line following rape allegations against him by some local people. Meanwhile, medical test found that the woman was raped. -*Prothom Alo, 14 September.*

Telecoms Act faces more changes

Bangladesh Telecommunication Regulatory Commission (BTRC) is likely to propose amendments to the telecoms act for more power to work as an independent regulator, in addition to the amendments sought by intelligence agencies. The intelligence agencies earlier asked for amendments to the act, allowing them to breach privacy of individuals by tapping phone calls and busting e-mails. The telecoms watchdog is considering seeking amendments to some clauses of the Bangladesh Telecommunication Act 2001, which stand in its way of acting independently. The commission will also seek an amendment to have the commission chairman as chief financial officer (CFO), as the act does not specifically define the role of the chairman in financial matters. -*Law Desk.*

39,768 Gram Sarkar units formed

A total of 39,768 Gram Sarkar units, out of 40,392, have been formed across the country amid opposition by political parties. The process of formation of 15-member Gram Sarkar units in all the wards under 4,488 union parishads began on August 2 and it was scheduled to be completed within 45 days. However, 606 Gram Sarkar units could not be formed in different wards of 19 districts due to recast of wards, river erosion, pending cases, and death of ward commissioners. The 19 districts are Dhaka, Narayanganj, Narsingdi, Gazipur, Kishoreganj, Madaripur, Shariatpur, Chittagong, Brahmanbaria, Chandpur, Comilla, Noakhali, Rajshahi, Natore, Dinajpur, Pabna, Jessore, Magura and Barisal. One hundred and seventeen units are yet to be formed

Corrigendum

In the last issue we had mistaken the name of the interviewee as Mahfuz Liza. The actual name of the interviewee is Abida Sultana Liza. We regret this error.

in Comilla, 63 in Chittagong, 81 in Narayanganj, 45 in Shariatpur and 63 in Magura. The Gram Sarkar units in five unions under Barisal district could not be formed because of death of ward commissioners and recast of wards. Pending cases and recast of wards also created obstacles to forming the units in 12 other districts. And river erosion delayed the process in five unions under Madaripur district. It may be mentioned here that a writ challenging the act on the formation of the units is also pending before the High Court. -*Daily Star, 16 September.*

Amendment to Pvt. Varsity Act likely

The government is considering amendment to the Private University Act 1992 to improve standard of education, financial mismanagement and recruitment of teachers lacking proper qualification. This was said by Education Minister Osman Farruk at a cabinet meeting. The minister said, that the ministry has discussed the issues with vice-chancellors and a study is being conducted to assess the prevailing situation. A committee headed by the chairman of the University Grants Commission (UGC) is conducting the study. There are now 50 private universities in the country. -*Bhorer Kagoj, 16 September.*

Serving jail without crime

A teenage boy continues to languish in the Juvenile Correction Centre at Tongi, Dhaka, even though the court cleared him of charges about 10 months ago. Md Jamal, 14, of Iswargram under Muktagachha in Mymensingh has been in prison for two years and five months. This was revealed by a press release of Bangladesh Legal Aid and Services Trust (BLAST). Jamal was implicated by Kazi Masud Ahmed of Abhy Das Lane in a bomb-throwing case No. 82/4/2001 with Sutrapur Police Station on April 25, 2001 under the Public Safety Act. Police arrested Jamal on April 28 and produced him before a court that sent him to custody, with a one-day remand. The jail authorities sent Jamal to the correction centre on June 30, 2001. The BLAST investigation revealed that police filed the FRT (Final Report True) on July 3, 2001, which found Jamal innocent and appealed for his release to the Public Safety Tribunal-4. The judge ordered to free Jamal on November 18, 2002 that to this day goes unheeded. A resident of the city's Sayedabad area, Jamal used to live by pulling rickshaw. -*Daily Star, 16 September.*

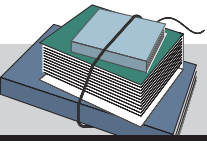
Charge framed for killing ex-MP

The Speedy Trial Tribunal-4, Dhaka Division, has framed charges against 12 accused for killing former MP Shahjahan Howlader Sujan. The Criminal Investigation Department (CID), submitted a charge sheet against 12 people on July 9, this year, showing 43 people as prosecution witnesses. Sujan, 35, a former BNP MP from Brahmanbaria-6 constituency and former vice-president (VP) of Haji Mohammad Mohshin Hall students union of Dhaka University, was abducted by his rivals. He was found dead near Dayel Chatter on the Dhaka University campus on July 3, 2001. Victim's mother Hena Akhter filed an abduction case with Motijheel Police Station the same day, accusing Dr Raushan Alam, Khorshed Alam, Giasuddin Jalali, and Phool Miah. -*Law Desk.*

Advocacy for juvenile rights

Speakers at a seminar yesterday suggested better ways of dealing with juvenile delinquents, including arranging education for them in safe custody instead of sending them to jail. The seminar was told that a magistrate, superintendent of police and jail superintendent have been asked to review the cases of juvenile delinquents in each district. Dr Kamal Uddin Siddiqui, principal secretary to the prime minister, attended the seminar as chief guest, while Shahudul Haque, inspector general of police (IGP), and E Daniel Selvanagam, executive director of World Vision Bangladesh, attended as special guests. The seminar was organised by Bangladesh Retired Police Officers Welfare Association with the assistance of World Vision. Representatives from different NGOs and officials from Dhaka Metropolitan Police attended the seminar. -*Prothom Alo, 15 September.*

LAW lexicon



Miranda warning

Also known as the "Miranda Rule", this is the name given to the requirement that police officers, in the U.S.A., must warn suspects upon arrest that they have the right to remain silent, that any statement that they make could be used against them in a court of law, that they have the right to contact a lawyer and that if they cannot afford a lawyer, that one will be provided before any questioning is so desired. Failure to issue the Miranda warning results in the evidence so obtained to not be admissible in the court. The warning became a national police requirement when ordered by the US Supreme Court in the 1966 case *Miranda v. Arizona* and that is how it got the name.

Mistrial

A partial or complete trial which is found to be null and void and of no effect because of some irregularity. The sudden end of trial before it would ordinarily end because of some reason, which invalidates it. Once a mistrial is declared, the situation is as if the trial had never occurred. Some common reasons for a mistrial include a deadlocked jury, the death of a juror or a serious procedural and prejudicial mistake made at the trial, which cannot be corrected.

Mitigating circumstances

These are facts that, while not negating an offence or wrongful action, tend to show that the defendant may have had some grounds for acting the way he/she did. For example, assault, though provoked, is still assault but provocation may constitute mitigating circumstances and allow for a lesser sentence.

Mitigation of damages

A person who sues another for damages has a responsibility to minimise those damages, as far as reasonable. For example, in a wrongful dismissal suit, the person that was fired should make some effort to find another job so as to minimise the economic damage on themselves.

Modus operandi

Latin: method of operation. Used by law enforcement officials to refer to a criminal's preferred method of committing crime. For example, car thief "George" may have a break and enter technique that leaves a long scratch mark on the door. Upon discovery of a stolen vehicle with such a mark, the law enforcement officials might include "George" in the list of suspects because the evidence at the crime scene is consistent with his "modus operandi."

Moiety

Half of something. For example, it can be said that joint tenants hold a moiety in property. In old criminal law, there were "moiety acts" which allowed half of the fine money to be handed over to the informer.

Monopoly

A commercial advantage enjoyed by only one or a select few companies in which only those companies can trade in a certain area. Some monopolies are legal, such as those temporarily created by patents. Others are secretly built by conspiracy between two or more companies and are prohibited by law.

Mortgage

An interest given on a piece of land, in writing, to guarantee the payment of a debt or the execution of some action. It automatically becomes void when the debt is paid or the action is executed. In some jurisdictions, it entails a conveyance of the land until the debt is paid in full. The person lending the money and receiving the mortgage is called the mortgagee; the person who concedes a mortgage as security upon their property is called a mortgagor.

Misdemeanour

A crime of lesser seriousness than a felony where the punishment might be a fine or prison for less than one year.

Misfeasance

Improperly doing something which a person has the legal right to do. Compare with malfeasance and nonfeasance.

YOUR information



Mercado Común del Sur (Mercosur) or Mercado Comum do Sul (Mercosul)

Common Market of the South or Common Market of the Southern Cone. Customs union made up of Argentina, Brazil, Paraguay, and Uruguay. Established by the Treaty of Asunción, drafted on March 26, 1996, Mercosur has been in operation since January 1, 1995. Its goals are to establish a program of trade liberalisation, to co-ordinate macroeconomic decisions, to create a common external tariff and to implement other trade-related agreements.

Montreal Protocol

Amendment to the Convention for the Protection of the Ozone Layer adopted on September 16, 1987, and in force from January 1, 1989. It requires states parties to equitably control the total global emissions of substances that deplete the ozone layer.

Most-favoured-nation treatment

General Agreement on Trade in Services requirement that World Trade Organisation member states accord immediately and unconditionally to services and service suppliers of other members treatment that is no less favourable than that it accords to like services and service suppliers of any other state.

Multifiber Arrangement

Agreements established under the General Agreement on Tariffs and Trade of 1947 that allowed participating states to establish restrictions on the importation of textiles on a country-by-country basis contrary to the GATT's most-favoured-nation rule. The General Agreement on Tariffs and Trade of 1994 requires that these agreements be phased out.

Multilateral Investment Guarantee Agency (MIGA)

Agency of the World Bank created by the Convention Establishing the Multilateral Investment Guarantee Agency and in operation from April 12, 1988. It promotes the flow of foreign direct investment to its developing member countries for economic development. It does so primarily through investment guarantees against the risks of currency transfer, expropriation, and war and civil disturbance ("political risks").

Test-Ban Treaty

A multilateral treaty named Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water. The treaty was adopted at Moscow, on 5 August 1963. It bans the testing of nuclear weapons in the atmosphere, outerspace, and under water.

IPIC Treaty

A multilateral treaty named Treaty on Intellectual Property in Respect of Integrated Circuits adopted at Washington on May 26, 1989. It requires members to protect integrated circuits (such as the designs on computer memory chips). The treaty is not currently in force, although the Agreement on Trade Related Aspects of Intellectual Property Rights requires that members of the World Trade Organisation observe its obligations.

Corresponding Law Desk

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