



Star LAW report



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.

Q: I would like to have some advice from you on my personal issue. I appeared in the 22nd BCS exam. and passed the written exam well. I also did very well in my viva. I opted for the judicial cadre as I am a student of law and I had a long cherished dream to join the judicial service. I was expecting to be selected finally. But, unfortunately, just before the result was published, the Supreme Court stayed publication of result for appointing Assistant judges. So, we who were expecting to be appointed, are mentally very upset and devastated, who is not very unusual. I think will realise our mental condition. My question is are we any way guilty for this? If not, then who are liable? How long we have to wait? Is there any legal option open for us to get any remedy? What legal action we the sufferers can take against the persons liable for it?

A. Karim, Malibagh, Dhaka.

Your Advocate: You are a student of law and one of those brilliant students who came out successful in the 22nd BCS (Judicial) Examination but still going unemployed that too without any foreseeable prospect of being so. As a sufferer you know the causes of your sufferings better than anybody else and as such the replies are quite known to you. I suppose, the queries are made not as much for answers as for sharing the pangs of a suffering mind.

Nonetheless those are queries and I must meet them in my own way. As you are aware, in the famous Masdar Hossain's case our Supreme Court declared the creation of BCS (Judicial) cadre along with other BCS executive and administrative cadres by Bangladesh Civil Service (Reorganisation) Order, 1980, as amended in 1986, ultra vires the Constitution. Supreme Court found, amongst others, the judicial service functionally and structurally distinct and separate from civil executive and administrative services of the Republic and directed the Govt. to establish a Judicial Services Commission for recruitment to the judicial posts and to create a separate judicial pay commission. It has reaffirmed the constitutional mandate for separation of subordinate judiciary from the executive.

All the conscious citizens of the country and the legal community in particular are looking forward to seeing implementation of the directives set out in the judgement. You are aware, lawyers are still on the street, amongst others, with their demand for implementation of the separation of judiciary. Judgement in Masdar Hossain's case is passed in the 2nd day of December, 1999. Government is found taking time one after another from the Supreme Court for giving effect to the directives made in the said case. To our utter dismay, the Law Minister recently said, separation of judiciary would take further 6/7 years to be implemented which reflects the view of the Government.

You can easily feel the concern of the Supreme Court and the legal community in particular in matters of implementation of the directives made in the judgement. It is believed by many quarters that separation of judiciary is now a matter days or months. But for reasons still not clear to us the matter of such public importance is being delayed years after years. The sooner the impasse is resolved the earlier the answers of your queries would be available.

FOR YOUR information



Plurilateral Trade Agreements

Four optional trade agreements included in Annex 4 of the Agreement Establishing the World Trade Organization. They are: Annex 4(a) - Agreement on Trade in Civil Aviation; Annex 4(b) - Agreement on Government Procurement; Annex 4(c) - International Dairy Agreement; and Annex 4(d) - International Bovine Agreement.

Unlike the other annexes to the Agreement Establishing the World Trade Organizations, these agreements are not automatically binding on all member states of the World Trade Organization, but only on those states that individually ratify them.

Fact-Finding and Conciliation Commission on Freedom of Association

Special International Labor Organization committee of inquiry that considers complaints that a state has violated the International Labor Organization's freedom of association conventions. If the state consents, the inquiry can proceed even though the state is not a member of the International Labor Organization.

United Nations Convention on the Law of the Sea

United Nations sponsored treaty, opened for signature in 1982, in force since 1994, it establishes a comprehensive legal regime governing the world's oceans and seas. It is interpreted and enforced by the International Tribunal for the Law of the Sea.

United Nations Industrial Development Organization (UNIDO)

A specialized agency of United Nations responsible for coordinating industrial activities within the United Nations system. UNIDO's main objective is to promote and accelerate industrial development in developing countries and to promote industrial cooperation.

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

A lawyer may be suspended for filing false case

Bangladesh Bar Council (Tribunal No IV)
Complaint Case No 8/2001
Mr Md Ibrahim Miah ... Complainant
Mr Md Mozahidul Islam @ MM Islam,
Advocate, Dhaka Opposite party.
Before Mr. Mr Md Anisur Rahman Khan ... Chairman,
Mr Syed Ahmed ... Member and Mr Abul Kalam Azad ...
Member.
Date of judgement: 17-07-2003.

over phone.
Issues for determination
Upon the allegations stated above the present case was started against the OP Advocate. Now the points for enquiry & determination before us are:
i) Whether the OP filed false criminal cases against the complainant and
ii) Whether by filing such cases, the OP has been guilty of professional or other misconduct.

Deliberation

The OP Advocate though filed written reply to the complaint but ultimately did not turn up to contest the case. On 8-5-2003 the case was taken up for exparte disposal. The complainant Mr Ibrahim Miah deposed as PW-1. The OP did not cross examine the witness. The documents were marked as Exhibits-1 Series. After passing of the order on 17-7-2003at about 12-15 PM. the O.P. filed an application contending that he would contest the case. But the application of the O.P. was found by the Tribunal as a malafide one and the same was rejected. It is found from the order sheet that the O.P. took the allegations leveled against him very lightly and did not care to contest.

Now upon the allegations and evidence on record we are to see as to whether the O.P. advocate committed professional or other misconduct or not. The main allegations against the O.P. were that he demanded money illegally from the complainant amounting to Tk. 20,00,000/= (Taka twenty lac) only. Having failed to realise the sum the O.P. filed false criminal cases against the complainant and others one after another. Every person has a right to initiate civil or criminal case if he has a grievance. In this particular case we find that the complainant did not do anything which might have constituted personal grievance of the O.P. We have perused the petition of complaint and FIR marked Ext. 1 series and do not find anything personal that constituted a grievance of the O.P. The cases filed by him against the complainant fell to the ground i.e. the O.P. could not substantiate his allegation against the complainant.

It appears that the O.P filed the criminal case against the complainant styling himself as the former President/ Secretary of Dhaka Nodibondor Cinnomul Jubo Kalyan Punurbashan Sanirbhar Bohumukhi Samabay Samity Ltd. The O.P in his petition of complaint and in the FIR stated that the complainant tried to grab the lease property of the so-called Samity by creating forged documents. But the O.P could not substantiate his allegations of creating forged documents by the complainant.

The complainant's case was that the O.P filed false cases against him and others for illegal gratification of Tk 20,00,000/= and on being refused payment; the O.P filed the false cases. The complainant as P.W.-1 deposed in support of his allegation and his testimonies were corroborated by P.W-2 Md. Abdul Alim. The testimonies of the P.Ws went unchallenged. The O.P admitted filing of cases against the complainant though he denied demand of Tk 20,00,000= . In absence of cross examination of P.Ws and in absence of evidence adduced by the O.P Advocate we accept the case of the complainant and find that the O.P Advocate filed false cases one after another against the complainant and others being failure to get his illegal demand.

Decision

Now we are to see whether such a conduct of the O.P Advocate falls within the mischief of professional misconduct. Canons of Professional Conduct & Etiquette provide in details the conduct and duty of an 'Advocate to his clients, to the court and to the public in general. But it seems to us that the gentleman O.P has not gone through the provisions of the canons as aforesaid. The profession of law is a noble profession and a lawyer's duty is to uphold the dignity and honour of the profession. A lawyer should not do any act or thing which undermines the profession. It is not the duty of a lawyer to file-false cases against any person. Filing of the false cases by the O.P Advocate against the complainant though strictly do not come within the mischief of professional misconduct: as in those criminal cases the O.P Advocate was not engaged as a lawyer by any party, rather the O.P Advocate was himself a party to the criminal cases. But no prudent man not to speak of an Advocate has a right to file false cases against any member of the public for harassment or for illegal gains. In the present case it is proved that the O.P being an Advocate and a respectable citizen in the society filed false criminal cases against the complainant and others fully knowing well the consequences of filing false criminal cases. Filing of false criminal cases by an Advocate against an innocent definitely falls within the mischief of misconduct.

In the facts and circumstances and on evidence we find the O.P Advocate guilty of misconduct, which calls for punishment.

Hence, it is ordered that the O.P Advocate Mr. Md. Mozahidul Islam @ M.M. Islam be and is placed under suspension. He is debarred from practising Profession of law as an Advocate for a period of 5 (five) years from the date.



Background

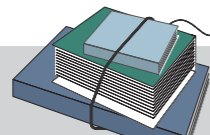
Md Anisur Rahman Khan, Chairman: The allegations of the complainant in brief are: that the Opposite Party (OP) is an Advocate enrolled by the Bangladesh Bar Council. By suppressing the fact that he is an advocate of the OP styling himself as the former President/ Secretary of Dhaka Nodibondor Cinnomul Jubo Kalyan Punurbashan Sanirbhar Bohumukhi Samabay Samity Ltd filed complaint case No 3056/1997 u/s 467/468/471/506/419/380/109 of the Penal Code against the complainant and 29 others in the Court of Chief Metropolitan Magistrate, Dhaka on 3.9.97. It is further alleged that 3/4 days after filing of the complaint case the OP along with some others met the complainant & informed him that there had been a criminal case against him & he might be imprisoned & would lose his job and thereby demanded payment of the Tk 20,00,000/- (Taka twenty lac) from the complainant for dropping the criminal case. In default of payment of the money the OP threatened the complainant with dire consequences. The complainant was taken aback at such behavior of the OP & on enquiry came to learn that the OP as complainant filed the above criminal case.

It is stated in the petition of complaint that the Id. CMM referred the complaint to OC Sutrapur PS Dhaka for investigation & report. The OC Sutrapur PS on investigation found the allegation as false & submitted his report accordingly. The OP advocate thereafter submitted a Narazi petition against the enquiry report upon which the Id CMM passed an order, for judicial enquiry and sent the case record to the court of Mr NC Das, Metropolitan Magistrate, Dhaka. On the failure of the OP to produce evidence his complaint was rejected u/s 2003 CrPC.

It is further alleged that the OP Advocate by suppressing the fact of filing the above criminal case against the complainant & some others filed another petition of complaint in the Court of CMM Dhaka against the complainant & 30 others. The complaint being numbered as petition case No 4066/99 u/s 109/467/468/471/506/419/380/420/385/423/424 of the Penal Code. The police on investigation submitted final report in the case. The OP Advocate filed a Narazi Petition in vain.

It is further alleged that the OP Advocate did not stop in filing false cases against the complainant and again filed Petition case No 4933/1999 in the Court of Chief Metropolitan Magistrate, Dhaka u/s109/467/379/143/506/382/284/420/406/372/373/476/341 of the Penal Code against the complainant & 67 ors. This case also met the same fate as those of the earlier two. It is further alleged that the OP advocate did not stop and again demanded money from the complainant and on being refused, the OP advocate filed petition case No 473/2000 against the complainant & others u/s 144/341/342/352/323/506/307/374/325 of the Penal Code. The case was rejected for default. It is further alleged that the OP Advocate again filed a false case against the complainant & as being Sutrapur PS case No 64 (3) 2000 u/s 379/426 of the Penal Code and gave threat to the complainant

LAW lexicon



Ombudsman

A person whose occupation consists of investigating customer complaints against his or her employer. Many governments have ombudsmen who will investigate citizen complaints against government services.

Onus

Latin: the burden. It is usually used in the context of evidence. The onus of proof in criminal cases lies with the state. It is the state that has the burden of proving beyond reasonable doubt. In civil cases, the onus of proof lies with the plaintiff who must prove his case by balance of probabilities. So "onus" refers both to the party with the burden, and to the scope of that burden, the latter depending whether the context is criminal or civil.

Open-ended agreement

An agreement or contract which does not have an ending date but which will continue for as long as certain conditions, identified in the agreement, exist.

Ordinance

An executive decision of a government which has not been subjected to a legislative assembly (contrary to a statute). It is often detailed and not, as would be a statute, of general wording or application. This term is in disuse in many jurisdictions and the words "regulations" or "bylaws" are preferred.

Paralegal

A person who is not a lawyer or is not acting in that capacity but who provides a limited number of legal services. Each country differs in the authority it gives paralegals in exercising what traditionally would be lawyers' work.

Pardon

A pardon is a government decision to allow a person who has been convicted of a crime, to be free and absolved of that conviction, as if never convicted. It is typically used to remove a criminal record against a good citizen for a small crime that may have been committed during adolescence or young adulthood. Although procedures vary from one state to another, the request for a pardon usually involves a lengthy period of time of impeccable behaviour and a reference check. Generally speaking, the more serious the crime, the longer the time requirement for excellent behaviour. In the USA, the power to pardon for federal offences belongs to the President.

Parens patriae

Latin: A British common law creation whereby the courts have the right to make unfettered decisions concerning people who are not able to take care of themselves. For example, court can make custody decisions regarding a child or an insane person, even without statute law to allow them to do so, based on their residual, common law-based parens patriae jurisdiction.

Pari delicto

Latin for "of equal fault." For example, if two parties complain to a judge of the non-performance of a contract by the other, the judge could refuse to provide a remedy to either of them because of "pari delicto": a finding that they were equally at fault in causing the contract's breach.

Pari passu

Latin: Equitably and without preference. This term is often used in bankruptcy proceedings where creditors are said to be "pari passu" which means that they are all equal and that distribution of the assets will occur without preference between them.

Parole

An early release from incarceration in which the prisoner promises to heed certain conditions (usually set by a parole board) and under the supervision of a parole officer. Any violation of those conditions would result in the return of the person to prison.

LAW letter

Ban smoking in public place

Smoking is detrimental to health. Medical science is trying to explore the remedial line of attack of injurious elevation of smoking but failed still now. In most of the public transports intestines, it has written noticeably, "Please don't smoke into the vehicle". But unfortunately many passengers don't tag on the written direction. Smoking into the carrying is not only destructive for the smoker but it is also by the same token injurious for the above and beyond passengers. Those who are never touch the smoking; smoking into the sedan is very nauseating for them. More than one year ago Indian Supreme Court prohibited smoking into the public transport and if anyone would go against this verdict, then he/she must be got pecuniary penalty. Can we expect such an outcome from our Supreme Court/ Government to make illegal smoking into the public transport?

Md.Zillur Rahaman, MSS Economics, Dhaka University. ****

Three and a half crore years are needed!

A recent study conducted by the general secretary of Bangladesh Economic Association in collaboration with Association for Land Reform and Development (ALRD) a non-government development organisation on land disputes in Bangladesh, its socio-economic perspective and disposal process. The study exposes some unbelievable facts relating to the present number of pending cases in the courts, speed of their disposal and its economic impact largely on the nation. According to the survey report, there are almost 32 lakh pending cases in the courts throughout the country and the number of people entangled with this cases are about 14 crore, more than the net population of Bangladesh. And surprisingly 90% of these backlog cases directly or indirectly relates to land disputes. These huge number of pending cases cost the litigants about 29 thousand crore taka every year which is two times as the net amount of our GDP.

If the present speed of disposal of cases continues and no new case is lodged from right now, it will take almost three and a half crore years for the complete disposal of the pile of backlog cases!

As the saying goes -- justice delayed is justice denied, justice has really been denied to the litigants of these pending cases and consequently this poor country has been the victim of unimaginable amount of



litigation cost which is quite unbearable for her. Confidence of the common people of getting speedy trial is being smashed day by day. Nevertheless, thousands of new cases are being lodged in the courts every month for the most trivial reasons creating more pressure over the already over-pressurised courts. Now to discover a way out, this trend of going to the court for the pettiest disputes has to be stopped anyway. Most of the land related disputes could easily be disposed of in the village by arbitration. Recently formed village government can be of help in this regard. Alternative Dispute Resolution (ADR) process has already been incorporated in our case disposal system. It's a good sign. Now intensive use of ADR must be ensured in almost all-possible cases. Speedy trial court may also be introduced in the case of civil matter.

Md Rezaul Karim, LL.B (3rd Year), Dhaka University. ****

Voice of a student of RU

I feel proud studying law. We are really lucky that our class is taking regularly comparing to other department. I firstly mention that the academic syllabus is totally outdated. The order of the course in different class is not properly settled. As for example, it is unnecessary to teach Roman Law in the first year. On the other hand jurisprudence is a critical subject which is not fit for the first year students. It should be taught in third year. Again easy subjects like Equity and Trust, Contract Law should be taught in first year. Some new courses like business law, medical jurisprudence should be introduced in the department. CPC, CrPc and Penal Code should be taught in fourth year. Because after completing L.L.B. (Hons) Degree, most of the students prepare for 'Bar Council' Enrolment examination.

Teaching method is not student friendly in our department. We have law clinic. But in law clinic we don't have learned the procedural laws. Procedural laws should be taught by the practising lawyers. They are in the right position to make the students understood nicely. It will motivate the students to be a social engineer.

There are some problems in the department. Our seminar does not have sufficient books, journals and in some cases there is only one copy of particular book. Another thing the department has very poor record of publishing journals and organising cultural programmes. The department should initiate seminar or open discussion on legal issues in different classes. Every year 'RJUALF' (Rajshahi University Association of Law Finders) organises cultural programmes. But it is not sufficient. We are just going to be a lawyer in the narrow sense.

Md Abu Bakar Siddique Palash, Student (LLM), Rajshahi University. *****

Waiting for separation of the judiciary

Article "22" of the Constitution of Peoples Republic of Bangladesh enunciates that there should be a Separate Judiciary from the executive organs of the state and such separation should be ensured by the State itself. So separation of judiciary is not a mere provision as it incorporates in the (Part II) Fundamental Principles of State Policy. The words "state shall ensure" makes it clear upon whom lies the burden to separate the Judiciary and it's not other than the Government. But, we feel shame on us that no Govt. has taken any initiative to separate Judiciary. More over the practice of the Democratic Governments is more painful as they have shown upper hand than the military regime not to separate the Judiciary from executive. Several times it happens that the political parties uphold this issue as a main objective of their election manifesto but when they form the Govt. they forget the matter and let us to remember the fact with sorrow. Separate judiciary is the sine qua non and pre-requisite to protect individual rights in a civilised society. The present govt. should immediately take all necessary steps to separate judiciary in conformity with the directions of the Supreme Court.

Abu B. Siddique Student of Law, Dhaka University.