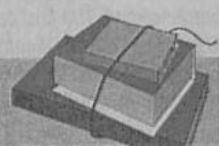
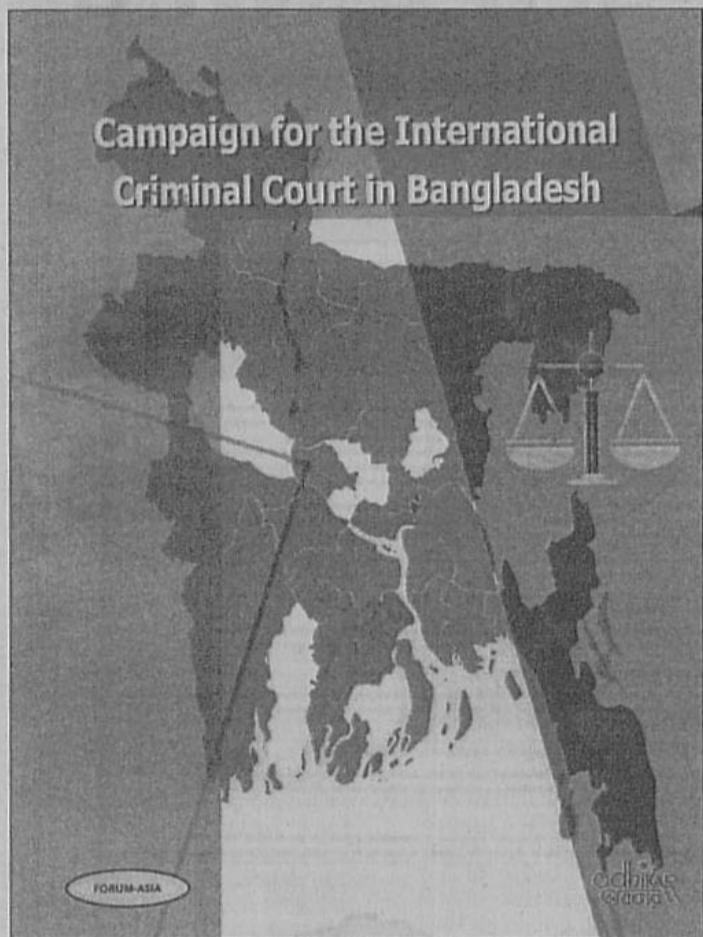




LAW book review



Ratification of Rome Statute



'Campaign for the International Criminal Court in Bangladesh', published by 'Odhikar', 113 pages.

Over the last thirty years, civil society representatives throughout the world have played a significant role in drawing the attention of governments and ordinary citizens to the need for institutional cooperation in the evolution of international law. They have also systematically contributed towards strategic interaction between international organisations. Their efforts have helped strengthen institutional capacity and the process of implementation of agreed principles.

'Odhikar', a human rights organisation in Bangladesh has been in the forefront of many issues. They were particularly associated in the creation of the International Criminal Court. This on-hand training still continues with Odhikar following up its efforts within Bangladesh for the ratification of the ICC Statute.

This publication has been made possible as part of an ICC campaign project with support from FORUM-ASIA. Both these organisations believe in the effective functioning of the Court and its potential in protecting human rights in all regions of the world. In this context, this compilation will be most useful for people interested in following the steps that have already been taken and those that need to be undertaken with regard to eventual ratification of the ICC Statute.

The importance of this publication lies in the different de-briefing reports prepared after four Workshops and two Regional Conferences on the ICC scenario.

These chapters will enlighten the readers about the historical steps that were necessary for the establishment of the International Criminal Court. They will also clarify the concept of complementarity of the ICC and its relations with/to the jurisdiction of Bangladesh. The reports will also explain how the possibility of any conflict of jurisdiction might be disregarded given the existing constitutional provisions within the Bangladesh Constitution. The book also suggests how Bangladesh can ratify the statute and yet ensure that there would be no inconformity with domestic law. It is proposed that this could be achieved by opting out of some of the existing Statute provisions.

Eminent Bangladeshi jurists have also enhanced the quality of the compilation through the

inclusion of selected speeches and articles on the subject of the ICC and human rights.

Their observations will help in increasing public awareness about the Rome Statute and establishment of the ICC. One interesting piece is the reflections of Advocate TH Khan, a former Judge of the International Criminal Tribunal on Rwanda (from 1995 to 1999). Similarly readers will profit from the learned article on the ICC by Mr. David Sproule, the former Canadian High Commissioner to Bangladesh who is presently stationed as the Canadian Ambassador in Kabul, Afghanistan. His observations with regard to the purpose of implementing legislation and options associated with implementation procedure should be of great help to legal experts in our Ministry of Law. It should help them to understand better the ICC as a carefully designed institution.

Another useful article is the 'National Interest Statute as presented by Dr. A. Ziauddin. He has dealt with the different juridical aspects that would have to be addressed if Bangladesh ratifies the Statute. Dr. Asif Nazrul in his article has also usefully referred to the procedural mechanism associated with the ICC. He has also touched on the Bilateral Immunity Agreements initiated by the USA in this regard and pointed out that according to many jurists; such individual agreements are possibly contrary to international law. I must also acknowledge the article 'The International Criminal Court-How it works', by Jesmul Hasan which also pen windows with regards to the connotation of the Rome statute in brief.

Sultana Raiza has also commented on the Rome Statute, the role and function of Victims and Witnesses. Her article treats this subject within the overall matrix of providing evidence for the purpose of prosecution. She has also significantly touched on the responsibilities and functions of the Reparation Unit and the tasks of the Registrar under the Rome Statute. These are procedural in nature but will help students of law in being able to compare such provisions with that available in domestic law in the Bangladesh judicial system.

Odhikar, most sensibly has also included several newspaper clippings. These add variety. The Members of the Bangladesh Coalition for the ICC deserve felicitation for the work that they have already achieved. It should encourage them to pursue their objectives with greater determination.

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LAW education

Copyright law in Bangladesh

MOHAMMAD MONIRUL AZAM

COPYRIGHT is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings etc. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. However, there could be slight variations in the composition of the rights depending on the work. There is no copyright in ideas. Copyright subsists only in the material form in which the ideas are expressed.

There is an acute lack of awareness on various issues relating to copyright and related rights amongst stakeholders, enforcement agencies, professional users like the scientific and academic communities and members of the public. In this article, an attempt has been made to provide a basic idea and clarifications on most of the issues relating to copyright law and its enforcement.

Objectives of copyright law

The importance of copyright was recognized only after the invention of printing press, which enabled the large production of books in large quantity practicable. However, the prime objective of copyright law is to encourage authors, composers, artists and designers to create original works by rewarding them with the exclusive right for a limited period to exploit the work for monetary gain. It protects the writer or creator of the original work from the unauthorized reproduction or exploitation of his materials.

Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others

to create.

Domestic laws

In Bangladesh (during the time of the then British regime), the first legislation of its kind, on copyright was introduced in 1914, which was mainly based on the British Copyright law of 1911. After the independence from the colonial rule, new law was promulgated in 1962. The Copyright Ordinance, 1962 is replaced again in 2000 by a new copyright Act, according to the prevailing situation in the Bangladesh and around the world.

Nature and scope of protection

Copyright subsists in original literary, dramatic, musical and artistic works etc and relates to the expression of thought, but the expression need not be original or novel. However, to accord copyright, following factors, are taken into consideration-

- The work must not be copied from another work but must originate from the author.
- Two authors independently producing an identical work will be entitled for copyright in their respective works.
- The emphasis is more on the labor, skill judgment and capital expended in producing the work.

Section 14 and 15 of the Copyright Act, 2000 laid down the broad scope of copyright protection. A copyright more or less gives the right to do and authorize the doing of any of the following acts, namely-

- i. to reproduce the work in any material form;
- ii. to publish the work;
- iii. to perform the work in public;
- iv. to produce, reproduce, perform or publish any translation of the work;
- v. to make any cinematographic film or a record in respect of work;
- vi. to communicate the work by broadcast or to communicate to the public by loud-speaker or any other similar instrument the broadcast of the work;
- vii. to make any adaptation of work etc.

Ownership of copyright

The author of the work is the first owner.

- In case the author is employed by newspaper, magazine etc under a contract of service, the

proprietor will be the first owner in the absence of an agreement to the contrary in the case of a literary, dramatic or artistic work.

- Where a photograph is taken, or a painting or portrait drawn for a valuable consideration at the instance of person, such person is the first owner.
- Where any address or speech is delivered in public, the person delivering is the first owner and where it is delivered on behalf of another person such other

person will be the first owner in original copies of a painting, a sculpture or a drawing and of original manuscripts of a literary or dramatic or musical work.

Procedure to obtain copyright

In order to secure copyright protection what is required is that the author must have bestowed upon the work sufficient judgment, skill and labor or capital. It is immaterial whether the work is



person is the first owner.

- In case of Government work, Government shall be the first owner.

In case of work made or published by or under any public undertaking, it shall be the first owner.

Copyright board

The Copyright Act provides for a quasi-judicial body called the Copyright Board consisting of a Chairman and two or more, but not exceeding six, other members for dealing with copyright issues. The Chairman of the Board is either a present or former district judge or a civil servant having the status of Additional Secretary or a lawyer having the qualification to become a judge of the High Court Division. The Board has the power to:

- i. hear appeals against the orders of the Registrar of Copyright;
- ii. hear applications for rectification of entries in the Register of Copyrights;
- iii. adjudicate upon disputes on assignment of copyright;
- iv. grant compulsory licenses to publish or republish works (in certain circumstances);
- v. grant compulsory license to produce and publish a translation of a literary or dramatic work in any language after a period of one, five or seven years as the case may be, from the first publication of the work;
- vi. hear and decide disputes as to whether a work has been published or about the date of publication or about the term of copyright of a work in another country;
- vii. fix rates of royalties in respect of sound recordings under the cover-version provision; and

wise or foolish, accurate or inaccurate or whether it has or has not any literary merit. In order to qualify for copyrights the works apart from being original, should satisfy the following conditions (except in the case of foreign works)

- 1. The work is first published in Bangladesh.
- 2. Where the work is first published outside Bangladesh the author, at the date of publication must be a citizen of Bangladesh. If the publication was made after the author's death the author must have been at the time of his death a citizen of Bangladesh.
- 3. In case of unpublished work the author is at the date of making the work a citizen of Bangladesh or domiciled in Bangladesh.
- 4. In case of the architectural work of art, the work is located in Bangladesh.

Registration of copyright

The steps for Registration

- 1. Application in triplicate with prescribed fees.
- 2. To serve notice of concerned application to every person who has any interest in the subject matter of that application.
- 3. If the Registrar receives any objection he may after holding such inquiry as he deems fit, enter such particulars of work in the register of copyright, which he considers proper.

Registrar then sends copies of the entries made in the register to the parties concerned.

Next part of the story will be published on January 28, 2006.

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FOR YOUR information

Honor Killing

Honor killing is the practice of a family member killing a female relative when the female relative has been considered to have brought "dishonor" to the family, often through unsanctioned sexual activity or in cases when a woman is raped. The killing (or "execution") of the female relative is often considered, in those societies and cultures where it is practiced, to be a private matter for the affected family alone; rarely do non-family members or the courts become involved or prosecute the

perpetrators. The United Nations Population Fund estimates that the annual worldwide total of honor killings may be as high as 5,000 women.

Definitions

Human Rights Watch defines "honor killings" as follows:

Honor crimes are acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonor upon the family. A woman can be targeted by her family for a variety of reasons including, refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce even from an abusive husband or committing adultery. The mere perception that a woman has acted in a manner to bring "dishonor" to the family is sufficient to trigger an attack.

Honor killings can also target those who choose as boyfriends/lovers or spouses members of another religious or ethnic group other than the family's own. Women who adopt customs (or a religion) of an outside group may also be more likely to be victims.

Many critics hold that the practice is self-contradictory: honor killing is justified by participants or supporters as an attempt to uphold the morals of a religion or a code which, at the same time, generally forbids killing as morally wrong (see below concerning Islamic countries).

within a household, retained the right to kill an unmarried but sexually active daughter or an adulterous wife. Europe has been familiar with the practice since ancient empires under Christian and Jewish law in which crimes such as adultery, were punished often with stoning. Such practices have long since ceased to be endemic in North America, although immigrants from North Africa and the Middle East have brought the practice with them in recent decades.

Honor killings, generally considered premeditated, are typically held to be distinct from Crimes of passion, which occur, not uncommonly, in European and Western societies and throughout the world. Crimes of passion often have special status under the law. For instance, until 1975, the French Penal Code commuted the sentence of a husband who killed his wife after finding her in the act of committing adultery [3]; this law passed into the legal frameworks of the many nations who based their modern legal codes on the Napoleonic Code. However, crimes of passion are limited in scope and are different from premeditated crimes against an adulterous spouse.

History

Similar practices have been known since ancient Roman times, when the pater familias, or senior male



LAW week



JMB man jailed for 15 yrs in first-ever verdict

In the first-ever verdict on an explosives case against a JMB operative, a court sentenced him to 15 years' rigorous imprisonment and fined Tk 2,000 or two-month jail in default. Special Tribunal Judge Bhabani Prasad Shingha awarded the punishment to Obaidullah Sumon, 25, a member of the banned Islamist militant outfit Jama'atul Mujahideen Bangladesh (JMB), for possessing explosives and bomb-making materials. Sumon is the first Islamist militant to be convicted since the August 17 countrywide near-simultaneous bomb blasts. He also stands accused in another case still under trial filed in connection with the August 17 terror strike. The police arrested him on September 14 in a Gazipur den with explosives, power gel and 50 detonators. The same day Sub-Inspector Shahjahan of Nikhlee Police Station filed the case against him under the Arms and Explosives Substances Act, which was disposed off. --The Daily Star, January 16.

Lower court judges start token protest

Judges of the lower courts across the country wore black badges during court proceedings protesting government inaction to meet all of their 11-point demand. The token protest programme was taken following the declaration of Bangladesh Judicial Service Association (BJS) at its 55th annual conference on December 21, where it vowed to carry on the protest if their demands are not fulfilled by January 10 this year. The judges would continue the protest programme for two days. The BJS on November 21 last year asked the government to provide tax-free vehicles and firearms for all the judges across the country along with personal gunmen and guards at their residences. It also pressed the government to pay Tk 50 lakh each as compensation to the families of the judges, bombed to death by Jama'atul Mujahideen Bangladesh (JMB) in Jhalakathi on November 14. --The Daily Star, January 16.

2 commissioners appointed to give CEC majority

In the wake of an impasse over preparing a fresh voter list, the government in a hasty move appointed two more election commissioners apparently to win the chief election commissioner (CEC) the majority in the commission. The CEC, who has been alone in the EC with the other two members opposing the preparation of a fresh roll, has verbally requested the government to appoint two new election commissioners as they will presumably favour the CEC's move for the fresh list, sources said. On the government's advice, President Iajuddin Ahmed appointed former judge of High Court (HC) Justice Mahfuzur Rahman and the immediate past secretary to the EC Secretariat SM Zakaria as election commissioners. With them, the number of members in the EC rose to five, the highest in the history of the commission. Awami League (AL) led 14-party opposition alliance described the appointments as 'a brazen attempt of the ruling coalition to manipulate the next parliamentary election'. It called a countrywide hartal for January 22 to protest the appointments. --Prothom Alo, January 17.

EC Secretariat seeks directives on voter list work

The Election Commission (EC) Secretariat has sought directives from the EC on the next course of action in light of the High Court's (HC) January 4 ruling on electoral roll. It, however, continues the task of preparing fresh electoral roll, ignoring the court's judgement disposing of two writ petitions that challenged the legality of the unilateral decision of the chief election commissioner (CEC) to have a new list and activities to that end. The two election commissioners, M Munsef Ali and AK Mohammad Ali, put their opinions in the file, asking to stop the work of preparing the voter list as it is not being done in accordance with the HC's directives. They also suggested convening the EC meeting immediately, sources said. The CEC has neither convened an immediate meeting of the EC nor communicated with the two other election commissioners although 12 days have passed since the HC in its ruling asked the commission to revise the existing roll and put particular stress on holding immediately a meeting of the commission. --The Daily Star, January 17.

New EC members throw weight behind CEC

The two new election commissioners on the very first day in office openly sided with the CEC, with one of them terming the High Court's directive for revising the existing voter list unlawful and beyond its jurisdiction. "It's not a High Court directive. It's its certain observations. It's absolutely [self] contradictory and beyond its (the court's) jurisdiction," new Election Commissioner Justice Mahfuzur Rahman told the press about the HC directive. "If the High Court had issued a rule and if that rule became absolute then it could be called a directive," he argued, adding, only then it would become mandatory for the Election Commission (EC) to comply with it. "Since the judgement is not lawful, the question of compliance does not arise," he said. SM Zakaria, who after taking the oath as an election commissioner had blasted election commissioners M Munsef Ali and AK Mohammad Ali on Monday for opposing the ongoing fresh voter listing, became even more offensive and slurred them. The new commissioners also demonstrated their bias to and support for Chief Election Commissioner (CEC) MA Aziz by avoiding the customary courtesy calls on Munsef and Mohammad, who are opposed to the CEC's unilateral move for preparing a fresh electoral roll. --The Daily Star, January 18.

Bandarban Rohingyas get into voter roll

The Rohingyas from Myanmar living illegally in different areas of Bandarban are being included in the fresh voter list, violating orders of the Election Commission and home ministry. Locals alleged that the Rohingyas are being enrolled in the voter list at the behest of political leaders and local government representatives in a bid to create vote banks. They, however, said these foreigners have been living illegally in areas including Naikkhongchhari, Alikadam, Lama, Roangchhari and Sadar upazila for long like Bangladeshi citizens and it is very difficult for the enumerators to identify them. An intelligence official seeking anonymity told The Daily Star that "around 15,000 Rohingyas might be listed as voter this time." Admitting that the local political leaders may be interested in fortifying their vote bank with the Rohingyas, he said Naikkhongchhari and Alikadam upazilas are more vulnerable in this regard as these areas are close to the Myanmar border. --The Daily Star, January 18.

6 former, serving PDB officials accused in ACC's first-ever case

The Anti-Corruption Commission (ACC) filed a case against six retired and serving officials of the Power Development Board (PDB) and the Ashuganj Power Station Company (APSC) for wasting Tk 10 crore of the national exchequer in implementing the overhauling of the third unit of Ashuganj power plant. These officials forced a decision on the government for their personal monetary gains between 2002 and 2003, the ACC said following an investigation. This is the first case ever filed by the ACC since its formation on November 21, 2004. The accused officials are: former PDB chairman (now retired) Syed Abdul Mueed, ex-member, generation (now retired) Dr Engineer MAK Azad, retired joint chief of Power Wing of the Planning Commission Md Golam Rasul, former deputy secretary of power ministry Golam Mostafa Kamal (now serving as member of the Rural Electrification Board), technical director of APSC Ataur Rahman and former director, finance of APSC Syed Abu Yusuf. --The Daily Star, January 18.

Huge arms hauled from Bandarban rebel den

Army and border guards arrested three foreign militants at a remote forest den and seized a huge cache of explosives, state-of-the-art firearms and ammunition in Naikkhongchhari Upazila. The haul includes 7kg TNT (trinitrotoluene used as explosives), a M1A1 machinegun and an AK47, one .303 and four M16 rifles. A long-range rocket shell, 3,500 bullets and a 500-yard coil of wire used in explosive devices were also in the cache. Though the authorities concerned did not disclose the identities of the arrestees, but a local source said all the three arrestees are Rakhains from Myanmar, while an army source said the busted rebel camp belonged to Rohingya Solidarity Organisation. On a tip-off, a joint contingent of Bangladesh Army and Bangladesh Rifles launched a surprise raid on the den hidden on a hillside in remote Bhaginar Chhara area. The 500-strong raiding party comprising privates from Ali Kadam Army Cantonment and Naikkhongchhari BDR Zone led by the zonal commander, Lt Col Abdul Awal, stormed the camp and captured the Rohingya rebels, BDR sources said. --The Daily Star, January 19.

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