

# Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law" Article 27 of the Constitution of the People's Republic of Bangladesh

## Copyright Act 2000: The Way Forward

by Mohammad Fazlul Karim

THE recent Copyright Act, 2000 (yet to be given effect to) is designed to amend and consolidate the law relating to copyright, repealing the Copyright Ordinance of 1962.

Copyright is defined by Black's Law dictionary as "The right of literary property as recognised and sanctioned by positive law. An intangible incorporeal right granted by Statute to the author or originator of certain literary or artistic productions, whereby he is invested for a specified period with the sale and exclusive privilege of multiplying copies of the same and publishing and selling them."

The law of Copyright is a branch of law relating to intellectual property. Copyright law affords maximum protection to authors, simultaneously securing certain benefits for the producers and publishers of the original work. The law of Copyright essentially rests upon the statutory principle, subject to certain restrictions in the interest of the public that the producers of original works, be it literary, dramatic, musical, artistic, cinematographic, films, sound recording, broadcasting or computer software, should be entitled to certain benefits derived from the creation of brain, skill and labour.

The privilege and protection of Copyright law however do not subsist in works which are not original, which are libellous, immoral, obscene and positively of irreligious tendency. Similarly, there can not be Copyright in works which though original, are against morality and public policy.

That the first Copyright Act in England, popularly known as the "Statute of St. Anne" was passed in 1709, amended subsequently from time to time until the promulgation of Copyright Act 1911 which in turn was designed to end the state of confusion in the law. On the basis of a report forwarded by the Copyright Committee formed in 1952, English Copyright Act 1956 was enacted which was subsequently

repealed by Copyright Designs and Patents Act 1988.

The pre-independence copyright statute in the subcontinent was based on its English counterpart. The Copyright Act 1911 and Copyright Act 1956 respectively formed the basis of Indian Copyright Amendment Act 1914 and 1957. The recent Copyright (Amendment) Act 1994 in India has sought to extend copyright protection to computer software and database.

In Pakistan, Copyright Ordinance, 1962 which is continuing in Bangladesh till today was promulgated with the meaning of Copyright in Section 3 (1) as the "exclusive right, by virtue of and subject to the provision of the Ordinance embracing the literary, dramatic or musical work, the artistic work, cinematography, to do and authorise the doing of the acts of reproduction in any material work, to publish the work, to perform the work in public, to produce, reproduce, perform or publish any translation of the work, to use the work in cinematographic work or make a record, to broadcast or communicate the broadcast by any means, to make adoption and to do in relation to a translation or an adoption of the work as mentioned above."

The Ordinance provided for registration of Copyrights in a prescribed manner with the Registrar of Copyright (S.39) or assignment of Copyright etc. (S.40). Copyright Ordinance, 1962 also made provisions for International Copyright, making provision for applicability of works of certain international organization (S.53) and Copyright to foreign works (S.54).

The 1962 Ordinance provided eventually as to infringement of Copyright (S.56) and provided both Civil remedy (S.60) by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right and penal remedies punishable with imprisonment or fine (S.76-95).

The Copyright Ordinance 1962

also sought to incorporate certain provisions of International Conventions for the Protection of Literary and Artistic Works 1886, otherwise known as the 'Berne Convention', which was further amended by Paris Convention, 1971. There are other International Conventions for Protection of Copyright among the state parties such as the Universal Copyright Convention signed at Geneva in 1952. The Universal Copyright Convention Paris Revision, 1971 signed in Paris and the International Convention for Protection of Performers, Producers of Phonograms and Broadcasting Organization 1961, known as Rome Convention. Bangladesh is a signatory to both the Berne Convention and the Universal Convention.

Copyright Act, 2000 has made provisions for the right of the owner, determined the period for copyright, set out the guidelines on licensing and registration of copyright. The new Act has addressed the issue of international copyright infringement (S.69-71) along with increased civil and penal remedies (S.76-95) for copyright infringement. The new Act has incorporated provisions of Trade Related Aspect of Intellectual Property Rights (TRIPS) Agreement. As a new development, the definition of 'literary work' in the Copyright Act 2000 now includes computer software.

The Copyright Act 2000 has excluded all civil and criminal liability of the 'fair users' i.e. non commercial users of literary works for research purposes.

The law of Copyright, as it stands today with the recent revolution in the information technology, advancement of mass media, operates on a much wider field than ever before. With the inclusion of computer and information technology, the dissemination of the spoken or printed words has become easier to accomplish and difficult to regulate.

"Book Piracy", the colloquial term used for breach of copyright in literary works is the most

common kind of breach of copyright in Bangladesh and has become a global problem due to the fast growing technological advancement. The problem of piracy and the necessity for taking effective anti-piracy measures have been voiced from various corners of the world and led to the Universal Copyright Convention, 1952 and has caused deep concern to owners of Copyright of member countries.

Section 32 of English Copyright Act 1956 enabled Her Majesty, who may, by order in Council make provision for applying the provisions of the Act specified in the order, in the case of a country other than the country which is a party to a Convention relating to copyright, to which United Kingdom is also a party, to which those provision of the Act do not extend in respect of Copyright if satisfied that adequate protection is required to begin to the owner of the Copyright under the Act.

S.54 of our Copyright Ordinance 1962 corresponding to the Section 68 and 69 of Copyright Act, 2000 authorises that the Government may, by order, published in official gazette, direct that all or any of the provisions of the Act shall apply to the works first published in foreign countries to which the order relates, in a manner as if they were first published in Bangladesh.

In spite of remedies provided and the restrictions imposed by the Act book piracy continue in the nature of reproduction of substantial parts of a work. Piracy often consists of unauthorised adoption, translation and incorporation of original literary work.

The Copyright Act 2000 not only recognises book piracy as an ever growing evil but also appreciates incorporeal character of copyright. The infringer has no possessory right or any kind of title in infringing part of the work and the pirate who comes with unclean hand is not entitled to any consideration in a Court of Law and such work of book piracy which in itself is an offence



can not be protected from invasion.

Copy right is a right to property. The importance of Copyright was stressed by Trollope by saying "Take away from English authors their Copyright and you would very soon take away from England her authors."

The growth of Copyright is the result of fast developed mechanical means of reproduction. The importance of Copyright has increased with the technological advancement through modern mass media of dissemination.

In spite of stringent Copyright Act and various international conventions for protection of rights of the authors, printers and publishers, infringement in the nature of piracy continues. The law of Copyright is concerned with the triangle of forces being the writer, the public and the publisher or the disseminators and our new Act has tried to

make endeavors to accommodate these conflicting parties.

The moral of the Copyright Act 2000 is based on the principle that no man shall steal what belongs to another. In recent times the Indian High Judiciary has gone as far as calling infringement of copyright as "theft". The law does not permit one to make a profit from the work of another and accrue benefit for himself out of the work produced by the labour, skill and capital of another. But the recent trends in the fast growing dissemination very often reminds us of the often quoted but frequently forgotten Eighth Commandment "Thou shalt not steal".

The author is a Judge, High Court Division of the Supreme Court of Bangladesh. This is an abridged version of his speech presented at the Seminar on "Awareness of Book Piracy", organised by the British Council.

## From Law Desk ...

### Update on Optional Protocol to the CEDAW

With the ratification of Italy on 22 September, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women has been ratified by 10 countries. It will enter into force on 22 December. States which ratify the Optional Protocol recognize the competence of the Committee on the Elimination of Discrimination against Women to consider petitions from individual women or groups of women who have exhausted all national remedies. The Optional Protocol also entitles the Committee to conduct inquiries into grave or systematic violations of the Convention. UN Press Release

### UK Aims to Protect Britons from Forced Marriage

On 4 August the British Government announced a programme to protect its citizens from forced marriage.

Based on the Working Group on Forced Marriage's findings, published in June, the Home and Foreign Offices declared a joint Action Plan. Its proposals include raised awareness of this issue among consular staff, co-operation between British and overseas police forces, compiling annual statistics, support for victims, and a credit card-sized help list for girls at risk.

The list, small enough to be hidden, contains telephone numbers for consulates, police and charities. It will be available from doctors' surgeries, advice centres, consulates, as well as the Foreign Office.

Although some groups have welcomed these measures, there has been individual criticism that they do not take the realities of the situation into account. Many girls, once abroad, are in villages without electricity or telephones and they may be locked in or watched.

Forced marriage is most prevalent among girls from South Asian communities. The Government launched an independent inquiry into this issue last August following several high-profile cases in which women had either been killed by their families or were in hiding following death threats.

The Working Group, chaired by Baroness Uddin and Lord Ahmed, clearly distinguished forced marriage from arranged marriage in that in the tradition of arranged marriages spouses have the right to choose whether to accept the arrangement.

Currently there are no figures of how many people in the UK are affected by this abuse and one of the Government's goals is to begin assessing the situation and compiling statistics.

The majority are girls tricked under the pretense of going on holiday or to visit relatives in Pakistan, India or Bangladesh.

The new plan's effectiveness will be evaluated after six months.

### The US Supreme Court Verdict on International Kidnapping

by A K Roy

"A flagrant violation of all principles of international law and agreements signed within the United Nations," declared the Peronist party of Argentina.

"Extraordinary and very disturbing," said Canadian Justice Minister Kim Campbell. "We are trying to govern relations between states with some kind of rules that we can all count on."

The verdict is in contradiction with the most basic human rights," complained Egypt's government-run newspaper *Al-Ahram*. "It makes the American judiciary into the judiciary of the whole world."

Thus did the rest of the globe react when the US Supreme Court declared that a criminal defendant can be tried in the US even if he has been kidnapped from a foreign country by agents acting for the US government. In a 6-to-3 decision that the dissenting justice said would be perceived abroad as "monstrous," the high court ruled that the US Drug Enforcement Administration (DEA) broke no US law in 1990 when it hired bounty hunters in Mexico to kidnap a suspect in the killing of a DEA agent and deliver him to US lawmen in El Paso, Texas. The abduction, wrote Chief Justice William Rehnquist for the majority, did not violate the Mexico-US extradition treaty because that document "says nothing about the obligations of the United States and Mexico to refrain from forcible abductions of people from the territory of the other nation."

Half the world, it seemed, took umbrage. The Mexican government, involved in sensitive free-trade talks with Washington, immediately declared the court ruling "invalid and unacceptable." The government suspended joint operations between Mexican police and the DEA and demanded renegotiation of the extradition treaty to prohibit future such abductions. After high-level meetings in Mexico City, the US, eager to protect the trade talks, asserted that it had the utmost respect for Mexican sovereignty, had no intention of sponsoring future abductions and was willing to discuss modifications in the treaty. Modified, the Mexican government restarted joint antidrug operations.

The man at the center of the legal and diplomatic furor was Dr. Humberto Alvarez Machain, a gynecologist accused of complicity in the 1985 torture and murder of DEA agent Enrique Camarena in Guadalajara, in a bid to discover what the US officer knew about drug-related corruption in Mexico. Alvarez's alleged role was to keep Camarena alive with shots of lidocaine, an anesthetic and heart drug, while the agent underwent brutal interrogation.

Alvarez was not the first suspect to make his way to the US by controversial means. In fact, he was the third in the Camarena case alone. (The others, Honduran Juan Matta Ballesteros and Mexican Rene Verdugo, are now serving long prison terms in the US). But Alvarez's extrajudicial capture was the first to go to the Supreme Court since 1886, and was therefore watched closely. Both Ottawa and Mexico City filed briefs, arguing that such grabs are forbidden by US extradition treaties with both countries.

The Court's contrary decision was hailed by US Attorney General William Barr as "an important victory against terrorists and narcotraffickers" which suggested that the US might continue nabbing such offenders across borders, despite the reassurances US diplomats may be offering. By failing to discourage kidnappings, Cambridge, "the court is ignoring the right of fair trial and other human rights of this Mexican citizen." McCorquodale also warned that the decision would encourage "reciprocal action" by renegade nations like Libya, eager to hunt down dissidents who have fled their own shores.

Negative reaction to the ruling was strongest in the America and the Arab world, home to dozens of drug traffickers and terrorists high on the US wanted list. The decision "sets a dangerous precedent which may turn the international community into a jungle, where the strongest do whatever they like," argued the influential Cairo newspaper *Al-Akhbar*. The government of Colombia sent a protest to the US embassy in Bogotá, while Supreme Court Justice Jaime Betancur Cuarta warned that "any de facto action to kidnap suspects would amount to a violation of Colombian juridical sovereignty."

US police officials respond that for many international criminals, particularly rich narcotraffickers, there is no justice but US justice. "The power and wealth of the bad guys is such that they can buy themselves safe heavens," says Stanley Morris, former chief of the US Marshals Service, which is responsible for pursuing US fugitives. "The only thing they fear is ending up in US courts." The difficulty is that when the power and wealth of the bad guys is used to batter through other nations laws, the US looks like the bad guy. The tactical muscle gets a short-term desired result but saps the moral authority that the US legal system has so often inspired.

Acknowledgement: Laura Lopez (Mexico City) and Elaine Shannon (Washington) of TIME International.

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## Announcement

For last five years 'Law and Our Rights' page has been expressing your views and concerns on legal and human rights issues of public importance. On past occasions this page underwent several changes in response to your suggestions.

The Daily Star intends to make this page more people friendly, informative and practical. We cordially invite you to be a part of our team to make this happen. Please send us your ideas, thoughts and recommendations to:

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## Oona King: Mainstreaming Women's Rights in Politics

by A. H. Monjurul Kabir

"AT the age of 5, I wanted to be the Prime Minister of United Kingdom."

Are you still pursuing your dream?

"Not really. The job of the Prime Minister is too demanding. You have to give your hundred per cent to politics. I have many other things to do," a smiling Oona King MP said. She was on her third visit to Bangladesh. The visit was arranged by the British Council, Bangladesh.

Oona King was born in 1967 and elected to the British Parliament (House of Commons) when she was 29. She is the second black woman elected to Parliament in Britain, and the only young black person (under 30 at the election) elected to the Parliament in Europe.

Her father Professor Perston King, is African-American, and her mother Hazel King, is Jewish. Her grandparents are of African, Scottish, Irish, Hungarian, and Native American descent. "I am truly multi-national."

Oona was born in Sheffield, England, and grew up in London. She joined Labour Party when she was 14.

Oona graduated from York University in 1990 with a degree in politics.

"I was trying to prepare myself both in academically and politically to cater the need of a new

generation politics in a changed world." She worked at the European Parliament in Brussels for 5 years as a researcher and political assistant before returning to Britain to become a trade union representing low-paid manual workers.

Oona is elected from Bethnal Green and Bow constituency where a strong Bangladeshi community forms a significant portion of the populace. "Increasingly they are becoming politically important and I am very happy to represent them in the parliament. I like to live and work in East London," Oona said.

Since her election in May 1997, Oona has succeeded in changing the law to benefit low paid local authority workers, who are mostly women and from ethnic minorities. She was also instrumental in enacting a government legislation that makes it legal for local authorities to take equality and workforce measure into account, when tendering contracts.

Oona does not like the way the House of Commons work specially its insensitive timetable. After lengthy discussions, the voting usually begins at 10 P.M. and often continues till next morning. "It does not just discriminate against women MPs, it discriminates against any parents whether mother or father and any human being who wants



a sound life. But undoubtedly women suffer the most. We have asked the concerned authority to change the hours so that we would never ever finish business later than 10 P.M." Oona asserted. But how do they cover additional burden of work by limiting working hours?

"People should realise that the British Parliament is shut in August, September and in the first half of October. We don't need such a long holiday. We can easily readjust parliament timetable shortening such an unnecessarily long vacation."

While her brief stopover in Dhaka, Oona attended an International Seminar on "Women in National Politics" organised by the British Council on October 9. The theme of the seminar revolved around the prospect of the representation of women in Bangladesh Parliament since the existing arrangement of electing women in 30 reserved seats by indirect election is due to expire in the next year. "I found the ongoing discourse on such a crucial issue stimulating and important as well."

What would be a better option for Bangladesh to keep women representation at parliamentary level?

"Firstly, I think the number of reserved women seats should be increased to, at least, 64. Any

lesser number would burden them with unjust and disproportionate obligation. But they should be elected directly by people. Secondly and more importantly, each political party should commit to nominate 30% of their candidates who are women. If you can't do that you won't allow women to be directly elected. In Britain our experience clearly show that women candidates got higher percentage of votes than male candidates. So the political parties will not lose votes, rather they will gain extra votes if they nominate more and more women candidates," a confident Oona added.

Oona is a member of the House of Commons Select Committee on International Development, and founding Chair of the All Party Group on Rwanda and Prevention of Genocide. She is well aware of the dreadful genocide committed in Bangladesh in 1971.

Bethnal Green and Bow have the highest density of poverty in the UK. Oona is active in various poverty eradication programmes there. "My particular concern is for people who have had less advantage and fewer opportunities. Most often, they are women. That's why I came into politics. And I would be really happy if a Bangladeshi woman from my constituency could replace me in the House of Commons."

## Law on Bail Needs Reform

by Imranul Kabir

THIS country has turned into cheap doll that has two ears directly linked with each other. What enters into the right ear comes out through the left. Everyday new issues are arising and those concerned are accusing each other forget everything. In a democratic society debate is encouraged to bring out the best solution. We do not debate but bark which ends up with minor injuries and bruises. Only few days ago the politicians and lawyers were debating upon the right to bail and the alleged abuse of power by the judges over granting bail. People became optimistic thinking that good suggestion would come forth and the Government would act upon those suggestions.

In the United Kingdom the government, after proposing a new legislation places it before public for criticism. After considering all the criticisms they amend the proposed legislation in the light of criticism and then place it before the two Houses of Parliament for approval. In our country we hope that the lawyers, judges and all concerned should make contribution in reforming the law. It is the government who will have to take the initiative.

Like United States we have a written Constitution that declares the liberty of the citizen. A person cannot be condemned or punished until and unless he is

proved to be guilty. Article 32 of the Constitution of the People's Republic of Bangladesh provides against deprivation of life or personal liberty save in accordance with law.

Why is there so much criticism against our judges? Under Section 496 of the Code of Criminal Procedure (CrPc) an accused has an indefeasible right to bail. He or his agents may be required by the court to provide sufficient sureties to get bail. Section 497 of the CrPc allows the court to grant bail even where the sentence for the alleged crime is death or life imprisonment if the accused is under sixteen or a woman or a sick or infirm person. Again if at any stage of the investigation, inquiry or trial it is found that there is no reasonable grounds for believing that the accused has committed a non-bailable offence but the matter requires further inquiry, in that case bail shall also be granted pending inquiry. This latter part of the CrPc needs to be amended. Why should police detain a person at the outset if they do not have minimum evidence that would provide the judge with some reasonable grounds for believing that the accused has committed the alleged non-bailable offence? If the victim is alive, if there is witnesses and if the charge sheet is free from flaws there is no reason for the judges to believe that there

is no reasonable ground for believing that the accused has not committed the non-bailable offence unless he has really committed the offence. Before denying one's right to movement the police and prosecution should have sufficient evidence to support their action.

Bail is not a gift or an act of kindness of the Judge. An accused should be free until and unless his association with the crime is proved and such cannot be known until the trial is finished. It is therefore the object of the criminal justice system that an accused should remain at large until and unless his guilt is proved. Our purpose fulfils if we can ensure that the accused will not abscond and will be present before the court for trial. This is why we need to see the gravity of the offence. The need to have the accused available for trial is paramount and all the laws and rules on bail formulated to ensure his availability. An accused is rejected bail not because the court thinks that he has committed the crime but because it fears that the accused may try to abscond thinking it imprudent to face trial.

Bail shall be granted unless the court suspect of the accused's absconding whilst free on bail. To examine the chances of his absconding the court shall look into his previous criminal

records, family ties and any other factors that may influence his decision to appear before the court for trial. The likelihood of the accused tempering with the prosecuting lawyers and to the investigating officer to provide the bail court with the personal report of the accused in which the record of his previous offences (if any), his records of absconding (if he did so) is mentioned. The investigating officer must swear on affidavit that his report is true and he has not suppressed any material fact. If later it is found that the accused had a record of absconding and the investigating officer suppressed the negative records then disciplinary action can be taken against him as well. Of course bail giving judge and the trial judge should be different to ensure justice. The lawyers must be cautious in providing surety and must not assure the court of his client's presence unless he has reasonable grounds to believe that he will be able to ensure his presence before the trial judge. The recent move to hold the surety providers should cautiously be welcomed. Anything that happens under pressure and to please persons in power may cause injustice. Enforcement of law should take place without external pressure and when enforcing it shall have to be ensured that not a single person, whether a lawyer or not,

is being taken as an 'escape goat'. We need proper training for our police force. Training not only on how to catch an accused but also on the Code of Criminal Procedure, Penal Code and the Law of Evidence. This will substantially reduce the possibility of unjustified acquittal of an accused or being granted bail. In the absence of proper training there will not be any difference between a hound and a police. The recruitment process should be free from politicisation. What can one expect from a police officer who was picked up from the arms cadre of a political party or who bribed the selectors to be recruited in the police force? The tendency to recruit in accordance with political affiliation is reprehensible. The government also needs to see why people from poorer families dislike to go to the police force? The public prosecutors should also be trained. Their salary and benefits need to be increased. Nowadays we are hearing that the lower courts are not releasing anybody on bail. One may wonder whether bail is a political consideration. What is the reason for this retreat? Is it because the police are taking care in giving charge sheet? Or is it because the judges have decided not to grant bail whatever the case may be? Whatever the criticism against the judges a deserving person must not be refused bail.

The writer is a Barrister at Law