



## 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 will address your problems.

Q: I am a low paid civilian staff of Bangladesh Navy. My wife was pregnant and her E.D.D. was 14/4/2003. But suddenly on 05/4/2003 morning her labour pain started. I contacted Dr. Rehana Begum of NHQ MI room and told her about my wife's condition and requested her to provide ambulance so that I can take my wife to CMH, where my wife was being checked up regularly by the gynaecologist since 2002. But she refused to go on the plea that she did not refer to CMH. My wife was referred to CMH by SMO. She asked me to bring my wife to her so that she can write a new case history of my wife. At that time all the fluids has started coming. She (Dr. Rehana) did not provide me ambulance. At that critical moment I had to bring her to CMH by personal arrangement. CMH doctors took her to OT immediately. She gave birth to a child and both of them survived. I would like to know (a) is there any legal way to take legal action against that lady doctor, who did a heinous crime by refusing us ambulance. (b) was she correct to examine a pregnant woman for writing a new case history when her labour pain started? (c) she did not provide me the ambulance in the above-mentioned situation, is it not unethical?

An aggrieved person, Banani, Dhaka.

**Your Advocate:** It appears that you are a civilian staff at the Naval Head Quarters, Dhaka. Your pregnant wife was under regular check-up in the CMH expecting delivery on a certain date. But all on a sudden, labour pain started quite some days earlier with attendant symptoms of delivery. As a husband you made a worried call to the doctor of the NHQ requesting her to send an ambulance for immediate shifting of your wife to the CMH. The doctor refused your request on the ground that she did not refer your wife to the CMH and asked you to take your wife to her chamber so that she could examine her. At the stressful moment you somehow rushed your wife to the CMH where, CMH doctors took her to the OT immediately and a baby was born. Both the mother and the baby survived. Thank God! Your wife and the baby are safe and doing well. The ultimate joy of getting everything alright has seemingly been dimmed by the indignation caused by the conduct of the NHQ doctor. Quite natural. Any sane man will have the same feeling in the similar circumstances. As for the ethical aspect, to start with, it is not difficult to say that the conduct is sadly unethical, more so, on the part of a doctor. As for the legal aspect of things, it is a bit difficult at the moment to pass offhand opinion, precisely because, legal responsibility is determined by the law the respective person is bound by. But there is nothing in the wordings of your question indicating the duties and responsibilities of the particular NHQ doctor. More so, your wife was not under the treatment of that particular doctor. I don't say that there is no redress whatsoever for your grievance. If she is duty bound to provide you with ambulance support in times of need, you can very well sue the doctor for damages as against the mental and physical sufferings inflicted on you. Subject as above, you can also proceed departmentally for misconduct.

## FACT file



## Impact of climate change

KHALEDA PARVEN

According to Article 1(2) of United Nations Framework Convention on Climate Change, climate change means "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural variability observed over comparable time periods".

Human activity by way of their production and consumption pattern, conservation of fossil fuel, agricultural and land uses, deforestation causing the alteration in the composition of the global atmosphere and gradually increasing the concentration of GHGs in the atmosphere. So population pressures, industrialisation, new technologies are main causes of global warming or green house effect, another way which creating climate changes.

## International response

International concerns about global warming were expressed during the 1980s. A number of international scientific and diplomatic conferences and seminars held during this period brought the issue on the international plane. In November 1988, the WMO and the UNEP established the intergovernmental panel on climate change (IPCC). The purposes were to make scientific assessment, study the potential environmental and socio-economic impacts, and devise possible response strategies regarding climate change. Consequently, in December 1990 the Assembly established under its auspices an 'Intergovernmental Negotiating Committee' (INC) supported by UNEP and WMO, for the preparation of an effective framework convention on climate change, containing appropriate commitments, and any related instruments as might be agreed upon' [INC/FCCC, 1990]. The UNFCCC was adopted on 9 May 1992 and was, in the following month, signed by 155 states and the EC at UNCED held at Rio in June 1992.

## Commitments in the convention

In order to achieve the objectives of the convention all the parties are committed under Article-4 (1) to take measures, taking into account their common but differentiated responsibilities, specific national and regional development priorities, objectives and circumstances. Under this Article, all state parties have been assigned with some general commitments like that of formulating, implementing, publishing, and regularly updating national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions, by sources and removals, by sinks of all greenhouse gases and measures to facilitate adequate adaptation to climate change.

## Threats of climate change for Bangladesh

Some national and international studies have revealed devastating consequences of global warming and climate change on large scale for Bangladesh. According to these reports, the change will have severe adverse impact on several important sectors which would most likely to thwart its sustainable development programme. It has been projected that with only 1 meter rise in sea level, 17.5 percent area of the country (almost one-fifth area of Bangladesh) will go under water. This will result not only in the loss of vital agricultural lands due to inundation by saline water but will also give rise to large scale Eco-migration problems requiring urgent resettlement programmes for vast population of the country living in those areas. Scientists have found that due to climate change, the country has already been subjected to massive devastating effects. It has also been revealed that the world's largest mangrove forest located in the Southeast region of the country is under depletion due to global warming.

## Concluding remarks

Climate is a global problem; it requires global solutions involving cooperative actions by all nations. The developed nations should adopt measures to reduce GHG emissions immediately, and extending economic and technological support to developing countries so that their future contribution to global warming is curtailed without impeding development. Bangladesh should also consider additional strategies for adaptation to climate variability and change-for both the present and the future.

Khaleda Parven is LL.M student of Dhaka University.

## LAW opinion



## Lawyers learn English

SHAMSUL HOQUE

**H**e works far into the night. His head buried in the indexes, digests, books, journals, and reports stacked around and on his desk. Seven days a week. (He is used for a lawyer, both male and female.) Like him all his colleagues, both in the Supreme Court (SC) and Lower Courts, (LC) more or less, have to work hard. Perhaps that is why a lawyer's chamber has always a collection of books. He must do serious study and be a fast learner, because to win a case he needs to have everything at his fingertips: statutes, rules and regulations, precedents, their clauses, sub-clauses including all the legal niceties, before he stands in front of the Judge. So a wide knowledge is an indispensable resource a lawyer has to draw on as long as his case is in his hands.

However, knowledge alone, no matter how wide and deep it may be, cannot bring him laurels. It is how he is going to use this knowledge in doing his case is all the more important. And he does this by using such language skills as listening, reading, speaking and writing. These are the important tools of the trade, particularly the last two skills, which he uses in preparing and presenting his case. Thus, for a lawyer, using language skills is the cornerstone of his success in the profession.

The SC lawyers mostly use English in doing their professional work, while their LC counterparts mostly use Bangla, though a mix of English and Bangla is a common practice with most of them. The skill of writing in English is especially important for a SC lawyer, as he has to prepare his case in English. So he must know how to write it in clear, precise language with coherent facts and cogent arguments. On the other hand, the LC lawyer does not have to be proficient in drafting his case in English, because he may do it in Bangla.

However, acquiring his desired knowledge, no matter he practises in the SC or LC, can best be possible through reading in English. This is because, most legal books, reports, decisions, etc are in English. So to understand them properly he has to learn the skills in reading. In other words, he must know how to get the main ideas from a report or decision, how to glean detailed and specific facts, how to separate facts from opinions, how to get the meaning of technical and difficult words from the contexts, how to take notes, so on and so forth. Imagine a lawyer, who does not know these skills and, as a result, has been wasting hours and hours ploughing through volumes of legal books and documents! The truth, though bitter, is he will soon realise that the legal profession is not his territory.

The SC lawyers, especially the seniors, are left with almost no

choice but to speak English in the court. A SC lawyer cannot and should not make his submission in Bengali, while his opponent is doing so in English. If he still does, his abilities and standing as a lawyer are likely to be questioned by his client and others present in the court including the Judge. Even outside the court, while interviewing their educated clients or witnesses, for example, the SC lawyers speak English or a mixture of English and Bengali and in both the cases they are equally proficient. Therefore, the SC lawyers who use, more or less, all the four language skills can easily attain a very high level of proficiency, while their counterparts in the LC may find it difficult to acquire the only skill, i.e. reading, in isolation.

To overcome this impediment faced by the LC lawyers they should learn the other three skills (listening, speaking and writing) together with the reading skill. Also they would feel encouraged and motivated if they could envision better professional careers for them. The younger lawyers, for that matter, should not consider themselves destined to work in the Lower Courts all their life. Many of them can enter the SC Bar; some of them might become Judges; but this is possible only when they could be fully developed professionally as lawyers. And as



we have seen above, language skills all the four skills, with greater emphasis on reading can greatly contribute to this development.

Learning English is not as difficult as many young lawyers think. The simple principle to follow is: Learn English for doing your work with it. In other words, use it as much as you can in your work. Use it or lose it. Don't be discouraged, if you are making mistakes, while learning the language. Mistakes are very much in the process of learning a language. In fact, mistakes facilitate learning.

Shamsul Hoque is Director, Legal Education & Training Institute, Bangladesh Bar Council and Former Professor and ELT Adviser, Bangladesh Open University.

## LAW letter



## It is five years now



The sensational murder case of Shazneen has become five years old this year. People want to know why our learned judges use to take so many years to dispose the case. It is their supreme responsibility to wrap up any case specially which is most sensational and much talked around the country since a tiring delay just only diminishes peoples trust and faith on the learned judges. In a few cases although our learned judges could establish instances of early judgement by

these unnecessary sections? About Section 82 we can say it should be repealed or by replacing England and Ireland, India might set up. India has developed much more in legal arena and we do influence by Indian legal matters now. Section 166 is very absurd because the system of jury and assessor, which was created by the British, is not available in our country. Nevertheless this section is prevailing. This section should be repealed. Without these above two sections, Section 37 & 69 of the Evidence Act, 1872 also provides about the relevancy of the Act of the British Parliament and the document, which has executed in the United Kingdom. These sections also should be amended. Time is now to think of it. We do expect to the Parliament for necessary steps.

Atahar Ali Khokon  
LL.M student, Islamic University, Kushtia.

giving their verdict, but still it is a far cry to get judgement on the part of a common man within a shortest possible time. This is not a new story that a father who starts a case cannot see its finishing before his death and the case may continue the whole life of his grandchildren. There is a committee formed by the government to oversee pending cases and to ensure their judgement in a shortest possible time which is no doubt an event of raising courage and trust over the present judicial culture but people want to see it works more efficiently and promptly.

Our judiciary has been trying rather fighting back to keep itself detached from the executive tangles for a truly long time. If possible, it will be a milestone for ensuring people's right and proper nurturing of democratic norms and culture in their day to day life. The teeming millions actually want to see judiciary itself can keep away from its internal procedural complexities for upholding its own image and trust from the public.

Ittekhah Ahmed,  
Deputy Manager, BASIC Bank Limited, Khulna.

## The British legacy

The British has ruled over this subcontinent nearly 200 years. During this long time they had enacted many laws like civil law, criminal law, law of limitation, law of registration, law of evidence etc. Among them law of evidence is important one. In 1872 it was enacted by the British Parliament. It has amended many times after its enactment. But still today some unnecessary and inconsistent sections are prevailing. Among them section 82 and 166 is very mentionable. Section 82 provides, "when any document is produced before any court, purporting to be a document which, by the law in force for the time being in England and Ireland would be admissible in proof of any particular in any court of justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland". In this Section we see that "the Court shall presume" ant not may presume. That means it is obligatory for the Court (Section 4 of the Evidence Act 1872). Further, Section 166 provides "In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the defendant himself might put and which he considers proper."

The British has left our country before 50 years ago. Why we will remain

## FOR YOUR information

## African Charter on Human and Peoples' Rights (ACHPR)

Multilateral convention, which the Organisation of Africa Unity adopted and opened for signature January 26, 1981. It has been in force since October 21, 1986. It defines and protects individual and peoples' rights and defines and imposes individual duties.

## African Commission on Human and Peoples' Rights (ACHPR)

Organ of the Organisation of African Unity, consisting of 11 individual members, that is responsible for promoting human rights, making recommendations to member states, holding public hearings on interstate complaints of human rights violations, and undertaking confidential investigations of individual complaints.

## Agenda 21

A schedule of developmental and environmental goals for the period leading up to the year 2000 and beyond adopted by the United Nations Conference on the Environment and Development at Rio de Janeiro in June 1992. The goals include the promotion of sustainable and environmentally friendly growth, the elimination and prevention of pollution, and the protection and conservation of the earth's natural resources.

## Agreement Establishing the World Trade Organisation

Multilateral treaty drafted during the course of the Uruguay Round multilateral trade negotiations held from 1984 to 1994 and adopted as the Final Act of the Uruguay Round at Marrakech, Morocco on April 15, 1994. The Agreement came into effect, as did the World Trade Organisation, on January 1, 1995. The Agreement consists of four annexes of which three are Multilateral Trade Agreements.

## Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

A multilateral treaty adopted at Basel on March 22, 1989, and in force from May 5, 1992. It forbids exports of hazardous wastes and other wastes to non-states parties and to states parties unwilling or incapable of handling them. It also requires states to reduce their production of hazardous wastes.

## Commission on Human Rights

United Nations agency currently made up of representatives from 53 states, which operates under the supervision of the Economic and Social Council. It is responsible for conducting investigations and submitting proposals, recommendations, and reports on matters affecting human rights to Economic and Social Council and the General Assembly.

## Declaration of the Rights of the Child

United Nations General Assembly Declaration of November 20, 1959, which states that children are entitled to special protection and to the help necessary to develop in a healthy and normal manner. After the declaration Bangladesh adopted the Children's Act 1974 for in order to ensure the special treatment of the children.

## LAW week



## HC rule on judges non confirmation

A division bench of the High Court issued rule upon the government to show cause why non-confirmation of additional judges recommended by the Chief Justice should not be declared illegal and without lawful authority. The court also asked the government to show cause why it should not be directed to confirm the additional judges in accordance with the recommendations of the Chief Justice, if any. The ruling came from a larger bench comprising Justice Hamidul Haq, Justice Syed Amirul Islam and Justice MM Rubul Amin. The larger bench was constituted for hearing the writ petition. The rule is made returnable within six weeks. The rule was issued following a writ petition by three former additional judges Mohammad Faruk, Hasan Fayaz Siddiqui Shamsul Huda challenging the government's decision not to confirm their service despite the Chief Justice's recommendation. -Law Desk.

## Amendment to flag rule rejected

The cabinet has rejected the proposal to bring amendments to the Bangladesh Flag (protection) Ordinance 1982 after discussion at its two subsequent meetings. The cabinet meeting observed that the law should be enforced as it is giving protection to the national flag carriers. The cabinet also observed that the ordinance should not be changed as it would then contradict the recent High Court Division verdict. The High Court Division earlier asked the Department of Shipping to act according to the law and declared illegal a general waiver to foreign vessel. At least half a dozen ministers at the last meeting spoke in favour of keeping the ordinance intact while two ministers opposed it suggesting a revocation of the law. Those opposing it observed that the ordinance would make normal trade difficult and lengthy, while the others felt it would help shipping flourish. The local ocean going ship owners welcomed the government's decision. The ministry of shipping had first placed the proposal before the cabinet meeting seeking full scrapping of the ordinance. The ministry said it would hamper the export-import business. Later it changed its position proposing for bringing some amendments to the ordinance, exempting the container feeder service from mandatory waiver certificate before loading and unloading goods at Bangladeshi port. -Daily Star, 30 April.

## 8 policemen killed in 3 months

Eight policemen were killed and sixteen others critically injured by outlawed party cadres and criminals in South Western region of the country in the last three months. Constable Shah Alam (40) and Abdul Kalam Azad (40) were killed on 27 April in a bomb attack and gun shots fired by unidentified assailants in Bagerhat. On 05 February Constable AK Fazlul Huq and Abdul Motaleb were stabbed to death near a police out post in Sathkhira. Constable Saheb Ali of Khulna Metropolitan Police was killed on 27 February by criminals. On 1 March, Traffic Sergeant Ariful Islam was critically injured by a powerful bomb blast and died on the way to hospital at Khulna. Two other constable of KMP Romesh and Shariful were killed in a bomb attack near Sheikhpura branch of Janata bank in Sonadanga thana of Khulna district on the night of 11 March. -Law desk.

## 4660 cases pending in Meherpur

A total of 4660 cases of different nature have been laying pending in the district judge court of Meherpur until March 2003. Among them 678 cases are criminal and 3982 are civil cases. The cases are pending with the criminal court like murder, extortion, dacoity, narcotics, arms, black marketing, explosive articles, women and children repression, public safety, criminal appeal and revision while civil court cases are title suits like civil, money suit, credit and finance and family matters. The Meherpur district court is running with acute shortage assistant judges for which the litigants are being deprived of justice in due time. The court has one district and session judge, two joint district judges and two assistant judges. Compared to number of cases, the number of judges are extremely inadequate. -Bangladesh Observer, 03 May.

## Bagerhat rape &amp; killing case

Twenty-two people including two Jubo Dal leaders have been charged with killing Tapan Bhattacharya and raping three women of Thakurbari at Komorpur village in Bagerhat sadar upazila. The IO submitted the chargesheet after 55 days of the incident. Of the accused, nine are now in jail custody and the rest are absconding. Two FIR named accused have been dropped from the chargesheet. It has been stated in the chargesheet that accused swooped on the Thakurbari at Komorpur on the night of 9 March 2003. They murdered Tapan Bhattacharya and raped three women including his wife in the house. On 10 March, brother of the deceased lodged two separate FIR for murder and rape. -Prothom Alo, 04 May.

## Advocacy for women empowerment

Speakers at a dialogue called for empowering women and involving them in national development. They said women should also be allowed to exercise their rights as elected people's representatives. They called