



## READER 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:** Sometimes we see those most hated criminals like terrorists, rapists, killers etc get bail from courts. On many occasions they are released from courts honourably. News of bail of such criminals make headlines in different news papers. I do not understand how the killers, terrorists, rapists can get bail from courts. Some times Govt is found to express concern over bail granted to the die-hard criminals. Few days back I came across a news item in a newspaper that the donors have held our police and lower courts responsible for deterioration of law and order situation, which I think, has undermined the image of our country before international community. I want to know from you how you see it as lawyer.

**Palash Ahmed Choudhury**  
Rail Road, Jessore.

**Your Advocate:** Thank you for such a worthwhile and fairly pertinent question. It is very natural for a conscious citizen to be disturbed with the sight of a news of bail granted to criminals of the kind. It may prejudice an innocent mind against the courts. I also as a professional lawyer do not relish such news. I always feel uncomfortable with bail granted to professional criminals. I wish they were not granted bail. But as a law knowing man on more occasions than not I find it difficult to say that the grounds on which they are granted bail are not good grounds for such release. After all the basic principle of law is - every person shall be presumed innocent unless found guilty by a competent court. Moreover, every moment's liberty of a citizen is guaranteed by the Constitution. It is said that law is blind. Law does not know who is a mastan, top terror, godfather etc. Law blindly requires proof. Judges sit upon cases with absolutely impartial mind and are not supposed to take notice of the alleged offender's ill repute or the particular way he is called or known in the society. If some way or other the judge acquires personal knowledge about any accused law debar him from sitting upon his case because he may not do justice to the accused with a prejudiced mind. Therefore, if the Govt, agencies cannot produce evidence enough to justify detention of the accused he is entitled under law to be released on bail or acquitted on trial whichever is applicable.

Whatever I have said should not be taken as to be said by way of justification of bail to persons, society wants to be detained and punished. Nor do I blame the law or the time-honoured principles of law. They are great. The factors responsible for such bail or release, as I see it, lie in the justice administration system of our country. There are serious weaknesses in the police-investigations. Investigating agencies in many cases lack in efficiency and professionalism. So the facts and materials necessary for connecting an alleged offender to the offence are not being collected. Moreover, the prosecutors in many cases are not well experienced. As a result though some hardened criminals are being arrested they are virtually being released for want of necessary documents and materials on records.

At the side of Govt. I think it is more a case of finding out the internal infirmities of the system and take steps to remove them than to express concern. If our investigating agencies are modernised and well equipped and the prosecution is standardised unpalatable news will substantially disappear from the pages of the news papers and the donors will get hardly any scope to blame our police or judiciary.

## CRIME & Punishment



### Extortion

#### LAW DESK

The crime of extortion in a large sense signifies any oppression that is illegal and in a more strict sense it means the unlawful taking of money or valuable matter which is not due to anybody who is engaged with the overpowering of extracting that thing. Extortion is a criminal offence, which connotes the practice of wresting anything from a person by force, by threats or by any undue exercise of power.

Section 383 of the Penal Code defined the offence. The element of dishonesty is the basic essence of this section. To constitute the offence of extortion there must be inducement which should proceed from the person charged and it should result in creating such fear in the mind of the victim as to make him give property or valuable security. It follows that there can be no offence of extortion when possession was obtained peacefully. The essence of the offence of extortion is in the actual delivery of possession of the property by the person put in fear and the offence is not complete before such delivery is finished. In extortion delivery by the person put in fear is essential. The offence must be carried out by over powering the will of the owner.

For example: Blackmail is one kind of extortion, specifically, extortion by threatening another's reputation with the disclosure of infamous statements (true or false) about him. Even if it is not criminal to disclose the information, it constitutes extortion to demand money or other consideration not to disclose it. Extortion is distinguished from robbery. In robbery, the offender steals goods from the victim whilst threatening him with force. In extortion, the victim willingly turns the goods over to avoid a threatened violence or other harm.

#### Ingredients

In a case of extortion four kinds of ingredients need to be proved before the court.

- Firstly, that the accused put the complainant in fear of some injury.
- Secondly, that such injury is either to the complainant or to some other person.
- Thirdly, that the accused did it intentionally.
- Fourthly, that the accused thereby induced the person so put in fear to deliver some property or valuable security or something signed or sealed, which was convertible into a valuable security.

#### Punishments

Section 384 to 389 of Penal Code described different situations and fixed punishments accordingly for committing the crime of extortion.

For simple kind of extortion the punishment is imprisonment upto 3 years with fine or with both. But if fear of injury is involved in any extortion then the minimum punishment is 5 years imprisonment which may extend upto 14 years or with fine or with both. If extortion is caused putting a person in fear of death or of grievous hurt then punishment may extend to imprisonment for life and shall not be less than seven years and also be liable to fine. Moreover, if extortion is committed by threat of accusation of an offence punishable with death or imprisonment for life then the accused may be punished either with ten years imprisonment or with imprisonment for life. If the accusation is of unnatural offence then the penalty provided is severer.

## LAW letter

### Legal education in Bangladesh

I am a regular reader of the Daily Star for quite a long time. But unfortunately I have not yet let you know how much I like it. This has in fact become a forum for discussing on legal issues, and perhaps only such forum so far in the country. I guess for two reasons I have not reacted earlier: first is my inherent weakness in English and second of is my poor knowledge of law. I am now writing because both the issues have been well addressed by Mr. Karzon.

The writer has proposed the introduction of English as the medium of instruction in the Law Departments and then argued that the quality of the legal education in Bangladesh is not good. My knowledge of law is poor, because I studied law in the existing system of Bangladesh and also my English is poor.

The author, however, has attributed the most of the reasons to the fast-breeding law colleges in the country. I have passed from Dhaka University. I think we have to be a bit more courageous to shoulder our own responsibilities. Forget about the Law Colleges, what about Dhaka University? I do not consider the faculties at this premier law department sufficiently equipped to teach law. Secondly, the curriculum is not upto date. I have been hearing about the change in curriculum in the department for more than ten years now. But how long will it take?

**Sodoruddin**  
On E-mail.

### Protect the consumers

In the absence of adequate laws and effective implementation of existing laws millions of people of our country are being exploited by the dishonest profit-hungry businessmen with adulterated goods, false weight and measures. They are also being cheated in price and quality. In our present laws there are very limited scope to fight against this. So to protect the right of consumer a national policy is required. To establish the legal rights of the consumer reform of related statutes like food laws, health laws as well as a complete Consumer Protection Act is required. As per our knowledge a draft of consumer Protection Act has already been formulated but we don't know how much time the lawmakers will take to pass the bill.

**Swarnaly,**  
Uttara, Dhaka.

### ICC Statute and Bangladesh

International Criminal Court is a very important step in the struggle for human rights and to establish peace and security in the international arena. It was a positive step of our Government to sign this historic treaty 'The Statute of International Criminal Court in July 1998 as a third Asian and first South Asian country. Logically after that we are waiting for the ratification process. But now the scenario is changing. When other signatory states are scrutinising the statute, our Government has signed a bilateral non-surrender agreements with US. It is understandable that our govt. is not so strong to say no to the big power, like US but frankly speaking by this the state is not bound to avoid the statute, rather, she is free to ratify the treaty.

Our government must ensure the nation's interest and take further step to ratify the statute so that no one can enjoy impunity in future. We can take the example of Afghanistan, which is one of the ratifying countries and now collaborating his municipal laws in line with the statute. As our govt. is arguing with some provision with the Statute, the problems can be solve gradually and if needed the procedural laws can be amended as per requirement. It should not be an excuse to wave the

## LAW events

### A new approach to train judicial officers

**B**ANGLADESH Institute of Law and International Affairs (BILIA) has been in the vanguard in training the judicial officers of Bangladesh for a long time now. BILIA initiated the concept of training the judicial officers in 1985. Recently, BILIA has changed its approach in training the Judges. Unlike the past, the main thrust of the current programme is entirely based on interactive and participatory approach. The judicial officers play a more proactive role in the programme through their interaction and sharing their experiences both with the resource persons and the BILIA authority. They try to throw new light on issues and create ideas for imparting novel system of orientation in developing legal education system in jurisprudence based on experience at home and abroad.

BILIA has thus developed new modules on the following topics: Protection of consumer rights, Environmental laws in Bangladesh and their application, Case management system in Bangladesh, Professional ethics and code of conduct, Taking cognizance and framing of charge and investigation and further investigation, Juvenile justice administration in Bangladesh, Theory and practice of Alternative Dispute Resolution (ADR), Development and application of the Patent Act, Design Act, Copyright Act and Trademarks Act of Bangladesh, Applicability of norms of international law in our municipal courts, Concept, development and scope of Public Interest Litigation, Concept



and development of independence of judiciary, and violence against women: current situation and trend, Existing laws and need for their Reforms.

Most recent module introduced is 'Protection of Consumer Rights'. Mr. Gene George, Director of USAID, representatives of CAB and UNDP and Justice K.M. Subhan along with Director BILIA conducted this session. Mr. Gene George observed, "The need to provide some level of protection of the general populace as consumer involvement in a number of aspects of daily life depends upon some form of purchase."

Mr. Justice Mustafa Kamal put emphasized on Modern Case Management (MCM) system for the speedy disposal of cases. About 'Professional Ethics and Code of Conduct', Barrister Mainul Hossein and Justice Anwarul Huq said that independence should be there on the part of the judges without any bias and judges should be law abiding, abstemious, truthful wise in opinion, cautious and untouched by greed. Mr. Md. Azizul Haque, director (training) JATI, and Dr. M. Zahir introduced new flavour in the areas of taking cognizance and framing of

matter by telling many confusing issues.

**Md. Zakir Hossain,**  
Nilkhet, Dhaka.

### Darkest episode in recent history

The media is regularly carrying out the devastating reports on what inhuman torture the Coalition Troop is doing to the Iraqi prisoners. These several thousand civilian prisoners, who had been picked up in random military sweeps and at highway checkpoints, including women and teenagers were fell into three loosely defined categories: common criminals, security detainees suspected of crimes against the coalition and a small number of suspected high-value leaders of the revolution against the coalition forces. These unfortunate prisoners are facing sadistic, blatant, and wanton illegal abuses like breaking chemical lights and pouring the phosphoric liquid on detainees, pouring cold water on naked detainees, beating them with a broom handle and a chair, threatening male detainees with rape, allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell, sodomising a detainee with a chemical light and perhaps a broom stick, and using military working dogs to frighten and intimidate detainees with threats of attack, and in one instance actually biting a detainee. Even many prisoners were sexually abused. There are some shocking worldwide revealed photographs and videos of these abuses, which are the evidences to support the allegations.

Such dehumanisation is strongly unacceptable in any culture especially in the Arab world. The British-American army has made themselves guilty of violations of human rights towards the prisoners. They showed utter disregard to the Geneva Conventions. Under the fourth Geneva Convention, "an occupying power can jail civilians who pose an imperative security threat, but it must establish a procedure for ensuring that only civilians who remain a security threat be kept imprisoned" and they disobeyed it. They have misused their power, which is totally intolerable. So my plea to the international lawmakers is, please take a good look at this inhuman behavior of the Coalition Troop and help the ill-fated Iraqi captives from the devilish grasp of those mongrels.

**Julius Valentine Gomes**  
Student of BBA, BRAC University.

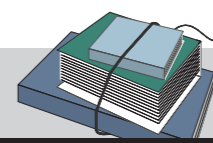


charge and investigation and further investigation leading to criminal revision. 'Concept and development of independence of judiciary' was discussed by Former Chief Justice Mr. A.T.M. Afzal, Justice Naimuddin Ahmed and Mr. Kim McQuay, Representative of the Asia Foundation.

At the concluding session State Minister for Law, Barrister Mohammad Shahjahan Omar Bir Uttam M.P., Advocate Sultana Kamal, and Justice K.M. Subhan while discussing violence against women they wanted CEDAW to be implemented.

BILIA acting Chairman Mr. Kibria and founder chairman Dr. Kamal Hossain played important role in the success of the current judicial training programme.

## LAW lexicon



#### Rape

Sex with a woman, other than a wife, without her consent. But many states have changed this basic definition to include sex with a minor (with or without consent; also known as statutory rape), sex with a man without his consent, or exempting men who force their wives to have sex.

#### Real property

Immovable property such as land or a building or an object that, though at one time a chattel, has become permanently affixed to land or a building.

#### Redemption

Buying back. When a vendor later buys the property back. A right of redemption gives the vendor the right to buy back the property. In some jurisdictions where a mortgage transfers title to the lender until the mortgage is paid off, the "buying back" of the property is known as redemption.

#### Relator

An informer; a person who has supplied the facts required for a criminal prosecution or a civil suit. In criminal prosecutions in some states, this would be indicated by the use of the expression ex. rel. as in The State of California ex. rel. Robert Smith v. George Doe.

#### Remainder

A right to future enjoyment or ownership of real property. The "left-over" after property has been conveyed first to another party. A remainder interest is what is left-over after a life estate has run its course. Contrary to a reversion, a remainder does not go to the grantor or his (or her) heirs.

#### Remo

Abbreviation for "reciprocal enforcement of maintenance orders" and the name of the international system of recognition, registration and enforcement of child and spousal support orders between countries which have agreed, between themselves, to enforce each other's maintenance orders. Originally created by England, the international REMO system now spreads over many countries. In the USA, the system is known as UIFSA or URESA.

#### Rent

This is the consideration paid by a tenant to a landlord in exchange for the exclusive use and enjoyment of land, a building or a part of a building. Under normal circumstances, the rent is paid in money and at regular intervals, such as the first of every month. The word has also come to be used as a verb as in to "rent an apartment", although the proper legal term would be to "lease an apartment."

#### Rescind

To abrogate or cancel a contract putting the parties in the same position they would have been in had there been no contract. Rescission can occur in one of two ways: either a contract can be set aside (rescinded) because of some defect in its formation (such as misrepresentation, duress or undue influence) or it can be set aside by agreement by the parties, for example if they reach a new agreement.

## LAW week



### Selection body formed for anti-graft commission

The selection committee to pick commissioners for the proposed independent Anti-corruption Commission was formed on May 9. The move follows growing pressure on the government from Bangladesh's development partners on the issue. Under the framework of the commission act, the proposed commission will have three commissioners, who will be picked for a four-year term by the president from a six-member panel chosen by the selection committee. The five-member selection committee will have a judge of the Appellate Division of the Supreme Court as its chairman and a judge of the High Court Division, the chairman of the Public Service Commission, the comptroller and auditor general and the last retired cabinet secretary as its members. The chief justice yesterday nominated Appellate Division Judge MA Aziz and High Court Division Judge Nazrul Islam Chowdhury for the selection committee. Now the committee, led by Justice MA Aziz, will meet to make a panel of commissioners. The act stipulates that people with 20 years of experience in law, education, administration, judiciary or armed forces would be eligible for the posts of commissioner. Law Minister Moudud Ahmed told The Daily Star May 9 night that he is optimistic that the selection committee will finalise the commissioner panel soon and that the commission will be functional by the month-end. The Jatiya Sangsad on February 17 passed the much-talked-about Anti-corruption Commission Bill, 2004, introduced on July 10 last year, in an amended form, making way for institution of an independent body to fight graft. - Daily Star, 10 May 2004

### Policy for welfare of women approved

The Cabinet of the Council of Ministers has approved the draft of National Women Development Policy, aiming to establish women's rights and ensure their security in all spheres of national life at the PM office Monday night 10 May with Prime Minister Khaleda Zia in the chair. At the meeting, the Cabinet was informed about the activities of the monitoring cell, set up to check trafficking of women and children. The meeting decided to impart necessary training to the members of law-enforcing agencies to make their role in checking women and children trafficking more effective and intensify campaign to raise public awareness in this regard. It also endorsed a proposal to support WHO's Framework Convention on Tobacco Control (FCTC) by Bangladesh in controlling tobacco. Another proposal to formulate a law to discourage smoking and the use of tobacco-made goods was also approved at the meeting. Besides, the meeting approved the draft bill of Birth-Death Registration Act 2004. The cabinet was also apprised of the progress of implementation of the decisions it took earlier. - Bangladesh Observer, 13 May 2004

### Court okays use of recovered arms

The Metropolitan Sessions court of Chittagong has authorised the government to use the huge arms and ammunition seized from Chittagong Urea Fertiliser Ltd (CUFL) jetty and directed to specifically decide which of the forces should be given those arms. Public Prosecutor (PP) on behalf of the home ministry filed a petition seeking permission from the Court of Chief Metropolitan Magistrate (CMM) to use the seized arms and ammunition by the Rapid Action Battalion (Rab) or armed forces. The CMM's Court referred the case to the Metropolitan Sessions Judge's court. Metropolitan Sessions Judge in his judgement asked the government to make final decision in this connection. The judge also ordered the government to keep one each from the 13 categories in the seizure list of the arms and ammunition as evidence. The government was also asked to provide every three months a detailed report on the use of the "handed over" arms until the case is disposed of. A total of 4,930 different types of sophisticated arms, 27,020 hand grenades, 840 rockets, 300 accessories of rocket launcher, 2,000 grenade launching tubes, 6,392 magazines and 11,40,520 rounds of ammunition stuffed in 1,463 wooden boxes on 10 trucks were recovered in the largest ever arms haul on 2nd April 2004 from the CUFL Jetty at Chittagong. - Law Desk.

### Open trial of US, British soldiers demanded

The War Crimes Fact Finding Committee (WCFFC) has demanded open trial of US and British soldiers under international law for their involvement in the abuse of Iraqi prisoners. In a statement, the WCFFC also demanded independent investigation to find out the nature of torture on Iraqi prisoners to uphold the human rights. The statement said that the US and the British governments have instigated their soldiers to torture the Iraqi prisoners in violation of the Geneva Convention. The WCFFC said all Iraqi prisoners including 4,400 inmates of Abu Ghraib prison must get access to ICRC and other human rights watch. It also said that the whole world is upset to see the wanton torture and horrendous crime committed by the US and the British soldiers in Iraq. - Daily Star, 10 May.

### Anti-tobacco law okayed

The cabinet has approved the draft of Tobacco Control Law 2004, seeking to ban smoking in open places and in public transport. The cabinet meeting also endorsed ratification of the Framework Convention on Tobacco Control (FCTC). Bangladesh was the first country to sign the FCTC in Geneva in 2003. The tobacco control law proposes restriction on the sale, distribution and consumption and ban on advertisement of tobacco products in public places and in print and electronic media. The draft law, placed in the meeting by the health and family welfare ministry after several reviews in the last two years, proposes Tk 1,000 in fines or up to one-year-imprisonment for violating the law. - Prothom Alo, 11 May.

### 416 women, children trafficked out in 4 years

As many as 416 women and children were trafficked out of the country during the last four years. A total of 505 cases were filed accusing 1376 people in this connection. This was revealed report of 'committee to protect women and children' of police headquarters. The report said as many 101 cases were filed against 319 people for trafficking 55 women and children in 2000. Fifty-three victims were rescued and police arrested 116 people for their alleged involvement with the trafficking. Of them, police gave final report on 23 cases as the charges brought against accused were not proved and submitted charge sheet in 78 cases. A total of 23 people were acquitted of the charges and 52 cases under investigation. The report also said that 116 cases were filed against 328 people on charge of trafficking 136 women and children in 2001. A total of 135 cases were filed against 400 people on charge of trafficking 110 women and children in 2002. In 2003 136 cases were filed against 298 people on charge of trafficking 103 women and children. In the first three months of 2004 as many as 17 cases were filed on charge of trafficking 12 women and children. Police rescued eight victims and arrested 12 people in this connection. Police submitted charge sheet in 13 cases and gave final report on two. Two people were acquitted of the charges while six others under investigation, the report added. - Manovzamin, 11 May.

### Election tribunals formed

The Election Commission (EC) has constituted election tribunals to settle disputes relating to the just concluded pourasabha polls. The district magistrates of Rangamati, Khagrachari and Bandarban and joint district judges of the respective districts have been appointed tribunal chiefs. According to the election regulations, within 30 days of the gazette notification, the candidates or their representatives will file the dispute cases with the tribunals after depositing Tk 500 with any of the branches of Sonali Bank or government treasury in favour of the respective returning officer to meet the expenses of the cases. - Daily Star, 12 May.

### Corresponding with the Law Desk

Please send your mails, queries, and opinions to: **Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email <dslawdesk@yahoo.co.uk>**