



**LAW**  
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# &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

**FIGHTING POVERTY**  
A MATTER OF OBLIGATION  
**NOT CHARITY**

Human Rights Day  
**10**  
DECEMBER

**35**

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## COURT corridor



### Legal lies

BARRISTER MOKSADUL ISLAM

Lawyers are liars! Oops..... I am a lawyer too. Am I a liar? Well, let's examine.

The lawyers are addressed as the learned and they address others as laymen (obviously regarding jurisprudence). The common people who we the learned refer as the laymen think and believe that the lawyers are liars. On many occasions I tried to explain in vein that I do not lie for my clients however I do not think anyone believed me. I hardly have any practice in the lower judiciary which is the original jurisdiction for most of the civil and criminal matters hence I would not make any comment regarding the practicing lawyers of the lower judiciary. I will try to concentrate only about the practice in the court corridor of the Supreme Court (SC) especially in the High Court Division (HCD).

SC being the appellate court with limited original jurisdiction mostly deals with records or documents. That is why it is also called the Court of Records.

However, SC is the original jurisdiction for the writ, company and admiralty matters. A lawyer in the HCD assist the court in examining documents and in interpreting legal principles supported by the decisions and in line with the facts and circumstances of the case before the court.

When the HCD works as the appellate court; usually original or certified copies of the documents from the lower judiciary can easily be obtained. Photocopies are also accepted normally when the certified copies of them has been filed in another case. However forged certified copy of the order of the lower judiciary is also detected sometimes. As a court with original jurisdiction HCD deals both with original and photocopies of the documents.

Let us examine how the HCD deals with photocopies usually when it works as a court with original jurisdiction. The safe way is typing in the contents of the photocopy in the body of the main petition. However sometimes it is not possible or practicable to type in the entire document simply to point out a date or some other mark or remark in the document. To overcome these situations the lawyer will try to annex the photocopy with the main petition.

However he must first certify the photocopy as the "true copy" of the original. Now the question is has the lawyer always seen the original first before certifying the same as the true copy? Everyone including the court knows that is not the case. Everyone knows very well that the original cannot be taken out of the government office, or has been filed in another

Office (e.g. custom authority), or right now it is in another country. For example in an admiralty matter a ship may be owned by a company which is incorporated in one country, she might be carrying the flag of another country and documents are in another country. Even though the original exist somewhere however it is simply not possible to produce them before the court on time. Sometimes the original simply does not exist as the same was circulated only in photocopies. Here the photocopies are the originals.

However the lawyer must seek permission from the court to swear affidavit with any photocopy of the original. Usually this permission is given by the court even though the court knows very well that the lawyer who is certifying the photocopies as the true copies has not seen the originals.

Different court adopts different approaches before giving the required permission to swear affidavit with the photocopy of the annexure. Initially the court may want to know and even examine the contents of the annexure. Then the court may also want to know where the originals are. Sometimes the court may ask whether the contents of the photocopy are legible; if not the lawyer may be asked to provide the typed copy of them also. Some court may also want to know whether the lawyer has explained in the main application why the original documents were not available. Most acceptable form of explanation is that "the annexure is lying with the respondents and the petitioner verily believes that the photocopy is the true copy of the original". Some courts may not want to give the required permission only in relation to a photocopy when it is the impugned document (impugned document is the document which is under challenge). Permission is easily given if the photocopy is a correspondent and was addressed to the petitioner.

Sometimes permission is given subject to the production of the original at the time of the hearing even though some of the documents cannot be produced before the court for obvious reasons. Being instructed by the Court this permission is written by the Bench Officer (BO). Hence obviously this permission can be purchased from the BO. Sometimes obtaining of this permission could be daunting experience for some lawyers. He would run from one court to another court for this permission. Sometimes although the court gave permission to one lawyer yet it was refused to others. Sometimes one court is giving permission however the other court is refusing to give the same permission. Sometimes the court which always accepted the photocopies suddenly stopped accepting any photocopy. On many occasions the court demands that all photocopies must also be typed even though they are legible. As the court is always right hence I must say everything depends on how a lawyer is playing with his words when he was seeking the required permission.

In a nutshell let us examine the situation. Original is not readily available or does not exist. However for ends of justice the court needs to examine the photocopy. The lawyer may not have seen the original however he must certify it as the true copy of the original. The court and everyone knows that it was not possible for the lawyer to see the original. The courts follow no rule and there is not consistency in giving the permission. Whatever approaches the court takes to gives its permission but the fact remains that the lawyer has not seen the original. Moreover the permission of the court can also be purchased from the BO without the knowledge of the Court. The Court has ample power to examine any document however the question is why do lawyers have to certify a document as the true copy when they actually cannot have seen the original? Is not it a legal lie? Is not it a fake permission? Am I a liar?

This is a fortnightly column and the columnist is an advocate of the Supreme Court, Bangladesh, who can be reached at mail@legals.net.

## LAW update

# General assembly adopts convention on rights of persons with disabilities

THE General Assembly adopted the first new human rights treaty of the twenty-first century on December 13, 2006, marking the culmination of nearly two decades of work on protecting and promoting the rights of persons with disabilities and a major shift in the way the world treats its 650 million disabled people. Adopted alongside an optional protocol, the final version of the historic Convention on Protecting the Rights of Persons with Disabilities. In opening remarks, Sheikh Haya Rashed Al Khalifa (Bahrain), President of the General Assembly, said all Member States had now committed to promoting and protecting the human rights, freedoms and dignity of all persons with disabilities. The Convention was an "opportunity to reaffirm the universal commitment to the rights and dignity of all people without discrimination" that could likewise provide the much-needed impetus for wider cultural changes in the world's perception of disabled people.

### Convention Highlights

Under the Convention, States parties would guarantee that persons with disabilities enjoyed their inherent right to life on an equal basis with others (article 10). They would ensure the equal rights and advancement of women and girls with disabilities (article 6) and protect children with disabilities (article 7). Children with disabilities would have equal rights, would not be separated from their parents against their will, except in their best interests, and would in no case be separated from their parents on the basis of a disability of either the child or the parents (article 23).

States parties would ensure the equal right to own and inherit property, to control financial affairs and to have equal access to bank loans, credit and mortgages (article 12). They would ensure access to justice on an equal basis with others (article 13), make sure that persons with disabilities enjoyed the right to liberty and security, and were not deprived of their liberty, unlawfully or arbitrarily (article 14).

According to the Convention, countries must guarantee freedom from torture, cruel, inhuman or degrading treatment or punishment, and prohibit medical or scientific experiments without the consent of the person concerned (article 15); and protect the physical and mental integrity of persons with disabilities. In case of abuse, States would promote the physical and psychological recovery, rehabilitation and reintegration of the victim and investigate the abuse (article 16).

By other provisions of the treaty, persons with disabilities would not be subjected to arbitrary or illegal interference with their privacy, family, home, correspondence or

communication. The privacy of their personal, health and rehabilitation information was to be protected on an equal basis with others (article 22).

On the fundamental issue of accessibility (article 9), the Convention requires States parties to identify and eliminate obstacles and barriers, and ensure that persons with disabilities could access their environment, transportation, public facilities and services, and information and communications.

Countries were required to promote the right to an adequate standard of living and social protection, including public housing, services and assistance for disability-related needs, and assistance with disability-related expenses in case of poverty (article 28).

Also by the Convention, discrimination relating to marriage, family and personal relations would be eliminated. Persons with disabilities would have equal opportunity to experience parenthood, marry and establish a family, decide on the number and spacing of children, have access to reproductive and family planning education and means, and to enjoy equal rights and responsibilities regarding guardianship, wardship, trusteeship and adoption of children (article 23).

States would ensure equal access to education, vocational training, adult education and life-long learning. Under article 25, persons with disabilities had the right to the highest attainable standard of health without discrimination on the basis of disability. They would receive the same range, quality and standard of free or affordable health services as provided other persons and not be subjected to discrimination in the provision of health insurance.

The 18-article Optional Protocol on Communications allows petitioning by individuals and groups to the Ad Hoc Committee, once all national recourse procedures had been exhausted.

Speaking in explanation of position, on behalf of the Arab Group, Iraq's representative said that his delegation had joined the consensus on the Convention on the basis that, under article 12, on "equal recognition before the law"—by which States parties would recognize that persons with disabilities enjoyed legal capacity on an equal basis with others in all aspects of life - "legal capacity" referred to "the capacity of rights not the capacity to act", in accordance with the national laws and legislations of those States.

Syria's representative said her delegation had joined the consensus on the understanding that none of the Convention's provisions would contradict her country's religion or culture and that its implementation would take culture and



background into account. Syria also understood article 12 to refer to the "capacity to enjoy" rights rather than "capacity to exercise", as determined by the laws of the State.

Also speaking in explanation of position, the representative of the Marshall Islands said he understood that such language as "guarantees the right to life of disabled persons from the moment of conception, throughout their natural lives...until their natural deaths" and references to "sexual and reproductive health services" did not include abortion, or abortion rights, or create any new rights or obligations that contravened national laws.

The Observer for the Holy See said his delegation interpreted all the terms and phrases regarding family planning services, regulation of fertility and marriage in article 23, as it had done in its statements of interpretation at the Cairo and Beijing International Conferences. In addition, it understood access to reproductive health to be a holistic concept that did not consider abortion or access to abortion as a dimension of the terms within the Convention.

Following the Convention's adoption, the Assembly heard statements by the representatives of Egypt, Peru, Iran, Honduras, Nicaragua, Libya, United States,

Republic of Korea, Finland (on behalf of the European Union), Brazil (on behalf of the Southern Common Market, or MERCOSUR), Croatia (on behalf of the Group of Eastern European States), Costa Rica, South Africa, Chile, Uganda, Argentina, Philippines, Indonesia, Ecuador, Israel, Liechtenstein, Colombia, Canada, Japan, Algeria, El Salvador and San Marino.

In an informal segment, a representative of Rehabilitation International said she was pleased the paradigm for those with disabilities had shifted to include women and children, and that legal capacity had been established. Disability was a global phenomenon and it was expected that Governments would swiftly sign and ratify the Convention and its optional protocol in order to encourage the continuation of the partnerships that had resulted in today's success.

A representative of World Network of Users and Survivors of Psychiatry also spoke of the important partnerships that had gone into making the Convention possible and facilitating participation in the process, including by removing physical barriers and installing ramps for physical access.

Source: United Nations.

## LAW week



### Reforms in polls, politics

#### Civil society hands over vision paper to BNP, AL

Two top leaders of main rival political alliances expressed similar views on curbing the influence of black money, terrorism and corruption in the election process to strengthen democracy. The two leaders -- BNP Secretary General Abdul Mannan Bhuiyan and Awami League General Secretary Abdul Jalil also agreed with the set of recommendations of the civil society for bringing reforms in the election and politics and stressed the need for reducing the election expenditure. Speaking at the function of Nagorik Forum, a civil society initiative for accountable development, held at the Bangladesh-China Friendship Conference Centre, the leaders stressed the need for developing institutions for protecting the democracy and parliament from black money holders and terrorists. A set of recommendations prepared through 15 dialogues across the country, a vision paper for Bangladesh in 2021 and a draft of ordinance for bringing necessary amendments to the Representative of People Order (RPO) were formally handed over to the two major political parties -- BNP and Awami League. The civil society recommended bringing massive reforms in the political system, electoral laws, electoral code of conduct and administration. -- *The Daily Star, December 10.*

### CA justifies army deployment in his address to nation

President and Chief Adviser Prof Iajuddin Ahmed assured the nation that the democratic and constitutional process would continue in the country despite the deployment of army. "I would like to firmly assure you that our hard-earned democratic and constitutional process will continue," he said in an address to the nation, the third after he assumed office of the chief advisor to the caretaker government. "I do expect that I'll be able to hand over power to the government to be elected through a fair election in cooperation with the people and all concerned within the stipulated time," he said. The president said there is no alternative to holding the general election to the 9th parliament to uphold the democratic process and the constitution. "The Election Commission has already taken all steps to hold the election in time." Prof Iajuddin called upon the people to cooperate with the Armed Forces in discharging their duties, as the army is the national institution built through the War of Liberation. "They neither belong to any party nor any quarter." He also called upon the officials and employees of the republic to discharge their respective duties neutrally, giving utmost importance to the interests of the country as well as the people. -- *UNB, Dhaka, December 11.*

### Sedition Case

#### Lawyers granted bail as SC resumes work

A High Court (HC) bench granted ad interim anticipatory bail for six months to seven Supreme Court (SC) lawyers including barrister Amir-Ul Islam and barrister Rakanuddin Mahmud in two separate sedition cases on the first day of SC judges resuming work. Another HC bench the same day directed the government not to arrest or harass some 11 lawyer-petitioners for three months without any due legal process. The HC division bench passed the bail order when the seven lawyers surrendered before it with bail prayers. They are Supreme Court Bar Association (SCBA) President barrister Amir-Ul Islam, Bangladesh Bar Council Vice-chairman barrister Rakanuddin Mahmud, former SCBA secretary Enayetur Rahim, advocate Subrata Chowdhury, Awsafur Rahman, Khashruzzaman and Subrata Saha. The bench also issued rule on the government to explain why the petitioners should not be granted regular bail. Barrister Rafique-ul Haq, Dr M Zahir, Mahmudul Islam, barrister Shafiq Ahmed, barrister Azmalul Hossain and Abdul Baset Majumder appeared for the petitioners. Barrister Omar Sadat and SC authorities brought the sedition charges separately against around 200 lawyers for the November 30 vandalism on the Supreme Court premises. -- *The Daily Star, December 11.*

### Distorting history

#### Judicial inquiry ordered against Moudud

A Dhaka court ordered a judicial inquiry after a lawyer filed a criminal case against former law minister barrister Moudud Ahmed for distorting history about the proclamation of independence in 1971. Metropolitan Magistrate Syed Mohammad Mujibul Haq passed the order when advocate ASM Iqbal Hossain, joint convener of Lawyers' Union for Protection of People's Right, filed the case with the Chief Metropolitan Magistrate's (CMM's) Court for the matter. In his complaint, Iqbal mentioned that Moudud, while holding his portfolio, in the preface to the publication of the constitution printed on August 1 this year, said Sheikh Mujibur Rahman, the national leader of the majority party, was arrested from his residence and taken to the then West Pakistan. "The elected political leadership failed to give directions to the people at that critical moment. "In that situation, in response to the indispensable demand of time, the then Major Ziaur Rahman of the Army, made the historic declaration of independence from Kalurghat radio station in Chittagong as leader of the war of resistance." Moudud's statement is contrary to the fact regarding the proclamation of the independence and nothing but a lie, the complainant said. -- *The Daily Star, December 11.*

## RIGHTS investigation



### UN: Human Rights Council resolution a lukewarm response to deepening crisis in Darfur

Amnesty International noted that the Human Rights Council's decision to send a group of 'highly qualified persons' on a fact finding mission to Sudan offers some hope that the Sudanese Government will be held to account for its failure to protect the people of Darfur. However, Amnesty International also condemned the resolution's timidity in failing to recognise the complicity of the Sudanese Government in the serious and systematic human rights violations taking place in Darfur.

"The assessment mission established by the Human Rights Council must put an end to the shameless lies and denial of responsibility of the Government of Sudan for the situation in Darfur. We expect this mission to enable the Human Rights Council to hold the Sudanese Government to account for its abject failure to protect Darfur's 'African' population", said AI.

Source: Amnesty International.

### 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, fax 8125155; email <slawdesk@yahoo.co.uk, lawdesk@thedailystar.net

## LAW event

# Refugee law training in Cox's Bazaar



A two-day training programme on Refugee Law was held at Hotel Silver Shine in Cox's Bazaar from 08 to 09 December 2006. The programme was jointly organized by Cox's Bazaar District Bar Association, Legal Education and Training

Institute (LETI) of Bangladesh Bar Council and United Nations High Commissioner for Refugees (UNHCR). The programme aimed at raising awareness on refugee law and principle of international protection of refugees.

The resource persons and the

participants in the training recommended for a comprehensive policy and legal framework to deal with the asylum and refugee issues in the country. They also urged the Government to accede to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol without further delay. The underscored to ensure humane treatment as per international human rights standard for the recognized refugees who are now staying in the country.

The resource persons were Mr. Mohsen Rashid and Dr. Naim Ahmed, Advocates of the Supreme Court of Bangladesh, Ms. Naïma Haider, Assistant Professor of the Department of Law, University of Dhaka, Dr. Uttam Kumar Das and Mr. Rafiqul Quader of UNHCR Bangladesh. The closing session (on 09 Dec) was addressed among others by the Refugee Relief and Repatriation Commissioner (RRRC) to the Government of Bangladesh (Joint Secretary) Mr. Ahmed Hossain Khan, Deputy Commissioner of Cox's Bazaar Mr.

Aminul Islam, Additional Superintendent of Police Mr. Imam Hossain, UNHCR Head of Sub-Office in Cox's Bazaar Mr. Jim Worrall, Deputy Secretary to the RRRC and Nayapara Camp-in-Charge Md. Siddique, Officer-in-Charge of Tekhnaf Police Station Mr. Kamrul Hasan and Advocate Suvash Chandra Dey. It was presided over by the Secretary of Cox's Bazaar District Bar Association Advocate Abdur Rauf. The programme was inaugurated on 08 December by Bar Association President Advocate Montaz Ahmed.

There were 35 participants who include government officials from refugee camps, police officers, lawyers, journalists and UNHCR staff. They recommended for more training programme in Cox's Bazaar area, especially for the lawyers, border security forces, and government and police officials.

—Law Desk.