



FOR YOUR information

Oaths, affidavit and motion: Everyday affairs in the court

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As junior lawyers we have to face precarious problems in the corridors of the courts with regard to the procedures of oaths, affidavit, motion etc in our day to day court works. So is the plight of our litigants; little they know about these but they have to face these very often. If you want to file an application or motion or a case in the High Court Division, or in lower court, in general you must go for affidavit first. And the affidavit is done on oath or affirmation. What are all these about? Law on oaths and affirmations are regulated by the Oaths Act, 1969. Section 4 of the Oaths Act 1969 makes it mandatory that oaths or affirmation shall be made by all witnesses or persons who may lawfully be examined, or given, or be required to give, evidence by or before any court. Section 5 of the Oaths Act 1969 specifies that a witness may, instead of making an oath, make an affirmation. The question is- what is the difference between oath and affirmation?

Oath

Oath is swearing by the name of God. Oath has more religious persuasion. On the other hand, affirmation is non-religious and secular in nature. Many people have objections in swearing oath and as a result the provision of affirmation instead of oath has been incorporated in accordance with the recommendation of the Indian Law Commission in the Oaths Act, 1969. Because of affirmation there has now been uniformity in the form to be adopted in the matter of any oath, affirmation, affidavit etc. in the courts throughout the country.

Oath: "I do swear in the name of God that what I shall state shall be the truth, the whole truth and nothing but the truth."

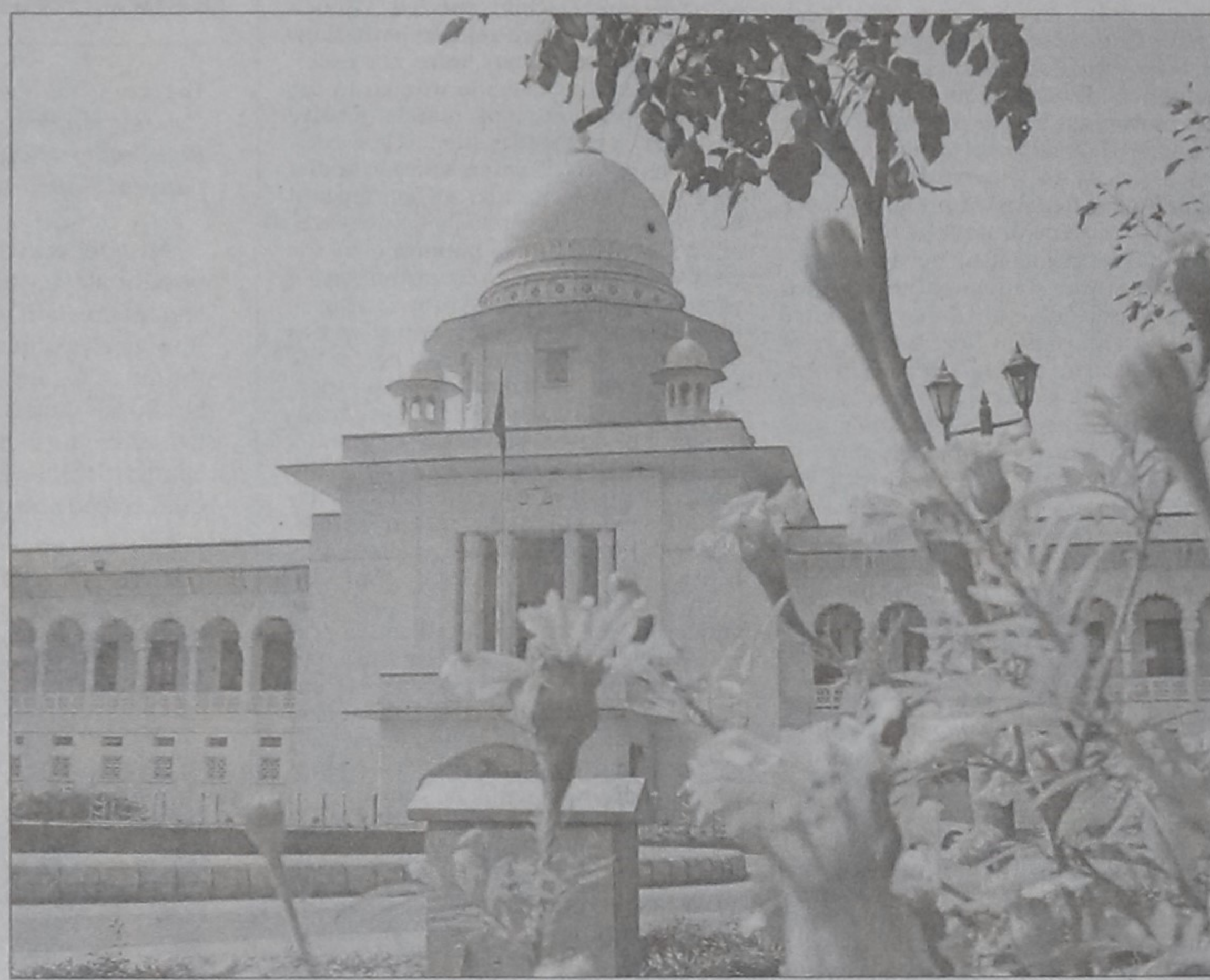
Affirmation: "I do solemnly affirm that what I shall state shall be the truth, the whole truth and nothing but the truth."

Affidavits

An affidavit is a statement in writing, made on oath or affirmation. In other words, affidavit is a written statement sworn before a person having authority to administer an oath.

An affidavit must be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted.

The difference between a 'solemn affirmation' and



'affidavit' is that the applicant is to solemnly affirm that the statement made in petition are true to his own knowledge whereas in the case of an affidavit, it may be sworn by any person acquainted with the facts of the case.

An affidavit is different from deposition, in that the former is always made ex parte and without cross-examination, while the latter is evidence given on oath in the witness-box and is subject to cross-examination of the deponent.

Laws of oaths and affirmations according to CrPC Courts and persons before whom affidavits may be sworn for the purpose of High Court Division (sec. 539); Affidavits and affirmations to be used before High Court Division or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the State or any Commissioner or other person appointed by such Court for that purpose, or any

judge, or any Commissioner for taking affidavits in any Court of Record in Bangladesh.

In practice, the High Court Division has appointed an officer called Commissioner of Affidavit to whom all affidavits are sworn.

Courts and persons before whom affidavits may be sworn for the purpose of court other than High Court Division (sec. 539A): An affidavit to be used before any Court other than High Court Division under may be sworn or affirmed in the manner prescribed in section 539, or before any Magistrate.

In practice, the Serestader of every subordinate court has been given power to sworn affidavit or affirmation.

For any affidavit required in Magistrates courts it is the Magistrate himself of the court who administers oath or affirmation for the purpose of affidavit.

Nature of Affidavit: Section 539A describes the following nature of affidavits with regard to matters in

the CrPC:

(i) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(ii) The Court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended.

Effect of Affidavit: The administration of oath or affirmation is an essential requirement of an affidavit. If an oath or affirmation is administered, there follows several legal consequences of which the most important is the obligation of the deponent to speak the truth. If this obligation is broken and the deponent makes in the affidavit a statement which is false and which is known to be false, he becomes punishable under the provisions of the Penal Code relating to perjury.

Motion

Motion is the generic name given to any proposal submitted to House of Parliament for normal decision. In legal field very generally motion means an application to a court or a judge for an order directing something to be done in the applicant's favour. This is, however, true for both motion application and non-motion applications. Actually, motion is a technical term in court practice and procedure. It is not an easy task to differentiate between motion applications and non-motion applications. Most of the matters in the High Court Division are filed on motion. For convenience of understanding petitions or applications in the High Court Divisions may be of two types: motion matters and non-motion matters. Motion matters are heard on a specific day called "motion day". Normally the opening day of the week is fixed for motion matters. Civil and criminal appeals are always non-motion applications. In case of motion application affidavit or affirmation is a normal rule whereas in case on non-motion applications affidavit or affirmation may not be required. Secondly, in case of motion a notice of motion must be served to either Attorney-General or to the opposite parties' advocates (More you will learn about this procedure while you will be practising in the Supreme Court). See section 419 of CrPC for application of appeal. It does not say any requirement of motion or affidavit or affirmation. On the other hand, look at section 526 for transfer of a case. This section makes it mandatory that every application for transfer of cases must be made on motion.

The author is an advocate, Supreme Court of Bangladesh.

LAW lexicon

Arrest - To take into custody by legal authority.

Assault - Threat to inflict injury with an apparent ability to do so. Also, any intentional display of force that would give the victim reason to fear or expect immediate bodily harm.

Assignment - The transfer to another person of any property, real or personal.

Assumption of risk - A doctrine under which a person may not recover for an injury received when he has voluntarily exposed himself to a known danger.

At issue - The time in a lawsuit when the complaining party has stated their claim and the other side has responded with a denial and the matter is ready to be tried.

Attachment - Taking a person's property to satisfy a court-ordered debt.

Attempt - An endeavor or effort to do an act or accomplish a crime, carries beyond preparation, but lacking execution.

Attorney-at-law - An advocate, counsel, or official agent employed in preparing, managing, and trying cases in the courts.

Attorney-in-fact - A private person (who is not necessarily a lawyer) authorized by another to act in his or her place, either for some particular purpose, as to do a specific act, or for the transaction of business in general, not of legal character. This authority is conferred by an instrument in writing, called a "letter of attorney," or more commonly "power of attorney."

Attorney of record - The principal attorney in a lawsuit, who signs all formal documents relating to the suit.

Source: Jurist International.

FACT file

What are the rights to development for indigenous peoples?

NATIONAL development processes have often failed to include the free and meaningful participation of indigenous peoples. As a result, national development objectives and policies, as conceived by national-level officials and processes, have not always been consistent with the views, wishes and interests of indigenous peoples affected by them. Some have had a serious negative impact on indigenous communities, including displacement, loss of livelihood, destruction of local environments, damage to sacred

of development. While not opposed to development projects that affect them, indigenous peoples have consistently insisted that they be empowered to affect decisions that have an impact on their communities and rights. Recognition of and respect for land and resources are fundamental to many indigenous belief systems. Experience has shown that conflicts arise when development projects take place without an understanding of, or respect for, indigenous peoples'

rights over their lands and development projects that affect them. Article 30 of the draft United Nations Declaration on the rights of indigenous peoples states that indigenous peoples have the right "to determine and develop priorities and strategies for their development or use of their lands, territories or other resources". Chapter 26 of Agenda 21 of the United Nations Conference on Environment and Development calls upon intergovernmental organizations to establish a process that empowers indigenous people and their communities

resource management and development that may affect them. Rights-based development processes will give due attention to the need to avoid paternalistic or externally conceived responses. They will recognise the need to ensure the full, free, active and meaningful participation of indigenous peoples in the planning, implementation and evaluation of development policies, projects and decisions, and will recognise the potential value of indigenous contributions to such processes. They will also respect indigenous peoples' rights over their land and resources, and will obtain the prior informed consent of indigenous peoples for projects on their lands. Finally, due regard will be given to the need to ensure that indigenous peoples enjoy equitable benefits from economic activities affecting them.



sites and, from the perspective of indigenous peoples, an intrusive, unsustainable and unplanned influx of outsiders into traditional territories. Indigenous peoples are thus often wary of programmes offered in the name

strong spiritual attachment to and traditional association with their lands and territories. Emerging international and State standards and practices are increasingly recognizing that indigenous peoples should have

through, inter alia, recognition of their lands, support for alternative environmentally sound means of production and arrangements to strengthen indigenous participation in the national formulation of policies, laws and programmes relating to

Office of the United Nations High Commissioner for Human Rights.

LAW week

Hasina not produced before court

The special court dealing with the Tk 3 crore graft case against Sheikh Hasina and other accused yesterday deferred again the hearing on framing charge until February 19 as Hasina was not produced before the court because of illness. Hasina's counsel filed a petition yesterday, seeking bail. The prosecution and the defence completed their arguments on the petition and the court decided to deliver its order on the next day of hearing. Firoz Alam, judge of the special court-1 set up in the MP Hostel on the National Parliament Complex, adjourned the proceedings until 2:30pm of February 19.

The court sat at 10:30am after the jail authority informed the court that the physical condition of the former premier minister and Awami League president was not good and her blood pressure was fluctuating, so she cannot attend the court. - *The Daily Star, February 14, 2008.*

'Protect culture of CHT ethnic people'

Speakers in a workshop yesterday made 17-point suggestions to the government to protect culture and heritages of 11 ethnic communities in Chittagong Hill Tracts (CHT).

They suggested establishment of a tribal cultural institute, appointment of indigenous language teacher in every primary school in CHT and broadcasting programmes on indigenous culture and heritage. Their suggestions also include one more chapter based on indigenous culture in text books at primary and junior levels, introducing teachers' training on indigenous languages at Rangamati PTL, and setting up a museum to protect culture and heritages of 11 ethnic communities in CHT. They emphasised primary education in students' mother languages. The suggestions came from a month-long research on the lifestyle including food habits, sports, marriage system, cultivation, dresses, traditional function and residence of three indigenous communities -- Chakma, Marma and Tripura. Local NGOs Rurua Lummiya Thethong, Khagrapur Mohila Kalyan Samity, Trinamul Unnayan Sangstha and Zabarang Kalyan Samity helped to conduct the research. - *The Daily Star, February 14, 2008.*

Chittagong cops confess to robbery

An assistant commissioner of Chittagong Metropolitan Police (CMP) and his two subordinates, who are on a two-day police remand for robbery, confessed to the crime yesterday. Assistant Commissioner Abu Saleh Mohammad Mofazzal Haque of CMP Panchlaish Zone, his bodyguard constable Ehsanul Islam and driver constable Abdur Rauf were arrested on Monday on charge of robbery at a businessman's house in the city's Amirbar area early Sunday. Sources said a five-member team headed by Deputy Police Commissioner (headquarters) Manzur Morshed Khan interrogated the accused at Kotwall Police Station Monday night. Mofazzal admitted during the grilling that two sources gave him information about robbing businessman Faruq Ahmed Chowdhury's residence.

He said his driver also spied on the house twice early in the day. The interrogation team will further quiz the disgraced cops before the two-day remand expires this afternoon, sources said. CMP Commissioner M Akbar Ali said there was not much to interrogate since the accused have already confessed everything, adding that their confessional statements were enough to earn them exemplary punishment. - *The Daily Star, February 13, 2008.*

Barring war criminals from polls may remain key issue

Demands for barring war criminals from contesting in elections and for disqualifying anti-liberation forces including Jamaat-e-Islami from getting registered as parliamentary parties with the Election Commission (EC) are likely to feature dominantly in the upcoming second round of electoral reform talks between the commission and political parties. In the wake of recent boost in the demands' popularity, the EC is now considering inclusion of a permanent ban on war criminals from contesting in parliamentary elections in the proposed electoral law, sources in the EC said.

The commission already included provisions in the proposed law for local government polls disqualifying war criminals from contesting in elections to city corporations and municipalities. Similar provisions will also be incorporated in laws for elections to union and upazila parishads, the sources added. "A person will be permanently disqualified from contesting in parliamentary elections if he or she is convicted by a national or international tribunal of war crimes," an EC source said referring to the commission's latest plan for electoral laws. But the EC is still searching for ways to deal with another very popular demand for disqualifying anti-liberation forces from getting registered with the commission as parliamentary parties, as the demand is most likely to be raised again by political parties during the second round of talks set to begin next week, the sources said. The EC however might insert a condition in the proposed rules for registering parliamentary parties, saying any party with any war criminal in any of its posts will be disqualified from being registered with the commission, hinted an EC source. - *The Daily Star, February 12, 2008.*

Charges framed against Huda, Sigma

A Dhaka court yesterday framed charges against detained former communications minister barrister Nazmul Huda and his wife advocate Sigma Huda in an extortion case filed by a former BNP lawmaker in July last year. Huda and Sigma, who were present in the court yesterday, pleaded not guilty and demanded fair justice before the court after Judge Mohammad Shafiqul Alam of the Special Tribunal-12 read out the charges to them.

Former BNP lawmaker GM Siraj filed the extortion case against Huda and his wife with Dhanmondi police on July 27 last year. According to the case statement, the complainant GM Siraj, owner of Cab Express Ltd, said that BNP leader Nazmul Huda and his wife demanded two Maruti cars from him for the use of the weekly Khaborer Antorale in February 2003. - *The Daily Star, February 11, 2008.*

Corresponding with the Law Desk

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