

## CRIME &amp; Punishment

## The offence of 'Wrongful Confinement' and 'Wrongful Restrain'



The illegal confinement of one individual against his or her will by another individual in such a manner that violates the confined individual's right to be free from restraint of movement can be defined as wrongful confinement.

Section 340 of the Penal Code 1860 discusses the offence of wrongful confinement which states that if a person wrongfully restrains somebody in such manner because of which confined person is prevented from proceeding beyond certain limits, then it will amount to wrongful confinement. As for example: 'A' places men with firearms at the outlets of a building, and tells 'Z' that they will fire at 'Z' if 'Z' attempts to leave the building. A wrongfully confines 'Z'.

Wrongful restraint means to voluntarily obstruct any person to prevent that person from any particular proceedings in which confined person has right to proceed. Provided that, if any person obstructs any private way over land or water in good faith believing to have rights on that is not an offence. Section 339 of the Penal Code 1860 defines this offence and lays down the exception too.

## PUNISHMENT

Punishment for wrongful restraint has been provided in the Penal Code under section 341, whereby a person who wrongfully restrains any other person shall be punished with simple imprisonment for a term which may extend to one month or fine which may extend to five hundred taka or both. The punishment for wrongful confinement has been dealt with in section 342 of the Penal Code, which states that a person who confines another person wrongfully shall be punished with imprisonment of either description for a term which may extend to one year or fine which may extend to one thousand taka or with both.

If any person wrongfully confines any other person for three or more days he shall be punished with imprisonment of either description for a term which may extend to two years or fine or both according to section 343 of the Penal Code.

If confinement extends to ten or more days then the offender shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable for fine.

Law Desk

## LAW amusements

## California (US) Laws

## It is illegal to jump into a passing car

Citation: 10.64.010 Boarding or alighting from vehicles in motion  
No person shall board or alight from any vehicle while such vehicle is in motion.

Public restrooms must be supplied with toilet paper  
Citation: 8.48.010 Washrooms Public washrooms

Every person maintaining any toilet, washroom or bath or shower room for the use of employees or the public shall at all time keep the floors, walls, ceilings, lavatory, urinals and toilet bowl free from any accumulation of dirt, filth or corrosion. All lavatories shall be supplied with soap and individual towels with a receptacle for their disposal. All toilet rooms shall be provided with toilet paper.

## It is illegal for a trumpet player to play his instrument with the intention of luring someone to a store

Citation: 9.04.020 Musical Instruments Use in Attracting Customers for Sales

It is declared to be a nuisance and it is unlawful for any person vending, advertising or soliciting the sale of, or assisting in vending, advertising or soliciting the sale of any kind of notions, merchandise or medicines in the City to use a musical instrument or device, or to sing or call out or to make any noise to attract persons for the purpose of vending, advertising or soliciting the sale of notions, medicines or merchandise.

## Drinking intoxicating cement is prohibited

Citation: 9.04.050 Inhaling or Drinking Certain Substances

No person shall inhale, breathe, or drink any intoxicating glue, adhesive, cement, mud, clay, or any other similar material for the purpose of becoming intoxicated, elated, dazed, paralysed, irrational, or for the purpose of changing, distorting or disturbing the eyesight, thinking process, balance or coordination of such person. Any such condition so induced, for the purposes of this Chapter, is deemed to be an intoxicated condition. This section does not pertain to any person who inhales, breathes or drinks such material or substance pursuant to instruction or prescription of any duly licensed doctor, physician, surgeon, dentist or podiatrist authorized to so prescribe.

## Crushing rocks in the city limits is forbidden

Citation: 9.44.010 Operation of Machinery Unlawful

It is declared to be a nuisance and it is unlawful for any person to operate any rock or stone crusher or rock or stone crushing machinery within the City.

## It is illegal to possess, own or raise roosters - this is considered disturbing the peace

Explanation: Over the years, roosters became a greater nuisance than most residents could tolerate. Thus, the roosters have been labelled as disturbances of the peace.

## Toads may not be licked

Explanation: The toad that is referenced in this law secretes a poison that some people were licking to produce an effect like heroin to become "high".

## Zoot suits are prohibited

Explanation: This law dates back to the 30's and 40's, especially during WWII. Back then good fabric was scarce thanks to the war effort, and zoot suits, with their immense use of unnecessary fabric, were seen as unpatriotic. The suit was primarily worn by Hispanics, known as Pachucos (hence the swing song "Hey Pachuco") and white boys thought that being unpatriotic served as a good enough reason to beat up a few Mexicans. Thus the song "Zoot Suit Riot." The City of LA, in an attempt to quell the rioting, banned zoot suits.

Source: www.crazy-laws.com

## REVIEWING the views

## IMMIGRATION LAW AND ACCOUNTABILITY MECHANISM

## What should you know before going to the UK

OLI MD. ABDULLAH CHOWDHURY

UNLIKE in many other developed countries, UK immigration system attempts to ensure transparency and certain degree of accountability. If an Entry Clearance Officer (ECO) refuses application for entry clearance in UK, s/he must provide a written refusal notice explaining reasons behind. There are full rights of appeal for a number of categories. If you appeal against the decision, the decision is reviewed by ECM (Entry Clearance Manager). Even if ECM finds the decision lawful and reasonable, the case will be referred to Asylum and Immigration Tribunal (AIT).

Accountability is the salient feature of quality governance and right of appeal ensures accountability of decision-making. If the reason for refusal is discriminatory or not in accordance with British Immigration Law, applicant can appeal against the decision and the appeal will be heard in AIT (<http://www.ait.gov.uk>). UK Immigration Law is compatible with European Convention on Human Rights too.

However, all the visitors in UK do not have a full right of appeal. A family visitor intending to visit close relatives in UK has a right to appeal against the decision of refusal of application for entry clearance. If business visitors or tourists have relatives in UK, they might claim the right of appeal as well. In order to attract full rights of appeal, they must provide details of relatives staying in UK while completing the application form authentically. An application is assessed against section 41 of the Immigration Rules.

UK Border Agency (<http://www.ukba.homeoffice.gov.uk>) provides information about visa. Website of the agency has all the details about requirements and information regarding visas and immigration in UK.

Moreover, it has been stated in Section 42 of Immigration Rules, "A person seeking leave to enter the United Kingdom as a visitor may be admitted for a period not exceeding six months, subject to a condition prohibiting employment, provided the Immigration Officer is satisfied that each of the requirements of paragraph 41 is met". Therefore, ECO must be satisfied that a person seeking leave to enter the UK as a visitor meets all of the requirements of Section 41 of the Immigration Rules.

Furthermore, the burden of proof is on the applicant applying for entry as visitor. There are eight sub-sections of the Section 41 of the Immigration Rules. An applicant needs to provide documentary evidence in order to prove that s/he meets all the requirements.

Interestingly, ECO must be satisfied that the visitor has an intention to return to his own country. "The requirements to be met by a person seeking leave to

enter the United Kingdom as a visitor are that he intends to leave the United Kingdom at the end of the period of visit as stated by him". It is not always very easy to prove intention and many visitors often fail to provide evidences in support of their intention to return back to their countries. If ECO is not satisfied about the intention of visitor to return to the native country, s/he will refuse the application for entry clearance as visitor and some other categories of application.

It is easy for a married person to prove intention to return than an unmarried person. If a visitor has wife and children in the country, s/he could establish his intention to return from UK in an easier way because s/he can establish significant ties in the country of residence. Although there is a common notion that aged and married persons get visit visa in UK easily, there is no such provision in immigration law. Law does not discriminate against younger people.

At the same time, visitors in UK are allowed neither to take paid employment nor engage in producing goods or services. ECO therefore, wants evidence of business and employment of persons interested in the visit. It helps to determine applicant's business and social ties in the country of residence.

However, applicants intending to visit UK must be able to meet the cost of return and onward journey and also be able to maintain and accommodate themselves in UK without recourse to public funds. Applicants must submit evidence in this regard. A sponsor solely or jointly with applicant might provide evidence of support in this regard. Sponsors from UK might undertake this responsibility and appellant could be granted entry clearance as visitor if sponsor has the means.

Large deposit without source might lead to refusal of entry clearance and it is safe to explain the source of money if there is a large deposit not commensurate with the bank account history. If there is a large inconsistent deposit (not consistent with the income) in the sponsor's account, it might jeopardise the case of applicant intending to visit UK.

Public funds have strong linkage with the immigration matter in UK. Sponsors receiving money from public funds are unlikely to support visit of other people. Public funds include a range of benefits that are given to people on a low income, as well as housing support. Those ranges from income-based Job Seekers Allowance (JSA) to Income Support.

Again, students though need to satisfy a number of requirements already mentioned; there are other requirements for students to meet. Appearing in International English Language Testing System (IELTS) is not a specific requirement of immigration rule for obtaining leave as student. Still, ECO must be satisfied that student intending to study in UK has the intention and ability to follow the proposed course.

In order to obtain visa as student, there must be adequate fund available in the account of either student or sponsor. "The requirements to be met by a person seeking leave to enter the United Kingdom as a student are that he is able to meet the costs of his course and accommodation and any dependents without taking employment or engaging in business or having recourse to public funds" - as said in 57(viii) of immigration rules.

However, British Home Office has published proposals for much tighter rules for foreign students - and the universities and colleges hosting them - under the student tier of its new Points Based System. When the new system is in place, students on courses for longer than 12 months will have to show they have sufficient funds to pay their first year of fees, plus £9,600 to cover their first year in the UK. Students wishing to bring their dependents with them will need to show they have a further £535 per month for each person they bring. Previously, there had not been any specific requirements other than satisfying ECO about funding.

To apply under points-based system and be accepted into the highly skilled worker category, a person must pass a points-based assessment. Applicant must score: • 75 points for your attributes (age, qualifications, previous earnings, and experience in the United Kingdom); and • 10 points for English language; and

• 10 points for available maintenance (funds).

Rights of people intending to settle in UK as spouse are secured under European Convention on Human Rights (ECHR). While determining about settlement visa, ECO must take these rights into consideration. It has been stated in Article 8(1) of ECHR: "Everyone has the right to respect for his private and family life, his home and his correspondence." It has been further elaborated in Article 8 (2), "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is



necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

To recapitulate, immigration laws of UK are changing and practitioners must have updated information. However, UK Border Agency updates their website on a regular basis and changes appear in the website as soon as that take place. With the beginning of 2009, there will be a major shift as tighter rules have been proposed.

Reference: [www.matrixlaw.co.uk](http://www.matrixlaw.co.uk)

[ukinbangladesh.fco.gov.uk/en](mailto:ukinbangladesh.fco.gov.uk/en)  
[www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)

The writer is a law graduate and received training on Immigration Law in London, UK.

## LAW week

## EC unaware of its inherent power

The Election Commission (EC) seems unaware of its inherent power to cancel election results on grounds of gross irregularities in the polls. According to a landmark verdict of the Supreme Court (SC), the EC has this inherent power. In a few other judgments, the apex court also explained the EC's inherent power to ensure free and fair elections.

But Chief Election Commissioner (CEC) ATM Shamsul Huda on Monday said the commission does not have the jurisdiction to do that. Election Commissioner Muhammed Sohul Hussain echoed him and said it is the election tribunals that would decide post-election disputes. Interestingly, erstwhile CEC Justice MA Aziz also came up with the same view in April 2006 when he said the EC is bound to publish official gazettes of poll results sent by returning officers. Justice Aziz termed this task of publishing election results a routine work of the commission which he compared to a postbox.

But the Appellate Division of the SC explained the inherent powers of the EC regarding cancellation of election results in the Noor Hossain vs Nazrul Islam case in 2000. - *The Daily Star, October 8, 2008*

## Deal signed to skip double taxation

Bangladesh and Myanmar signed an agreement to avoid double taxation, a barrier to boosting trade between the two neighbouring countries.

Chief Adviser (CA) Fakhruddin Ahmed and Myanmar's Vice-senior General Maung Aye signed the deal on the first day of bilateral talks between the two nations. Aye, Myanmar junta's second-in-command, who arrived in Dhaka on a three-day visit is leading a 55-member delegation that includes seven key ministers and business leaders.

Important issues including direct road link between the two countries, demarcation of maritime boundary, rice import from Myanmar and repatriation of Rohingya refugees were discussed during the inaugural talks at the CA's office. About 21,000 Rohingya refugees have taken shelter in various areas in Cox's Bazar and Chittagong. The repatriation process remains stalled since 2005. - *The Daily Star, October 8, 2008*

## 30 HC benches reconstituted

Thirty benches of the High Court Division of the Supreme Court were reconstituted.

This was done at the order of Chief Justice (CJ) MM Ruhul Amin. Activities of the benches will start on October 12. According to the SC rules, the CJ holds the authority to change authorisation of any bench or reconstitute any bench. If he wants, he can do it anytime. But the CJ usually changes the authorisation of any bench or reconstitutes the benches at the end of the annual vacation. The court reopened on Sunday. - *The Daily Star, October 8, 2008*

## Amendment to RPO okayed to ease party registration

The Council of Advisers finally approved a second amendment to the revised Representation of People Order (RPO) to facilitate the political parties' registration with the Election Commission by submitting their provisional party constitution for time constraints.

As per the latest changes in the politico-electoral rules, the political parties who will get registered with the Election Commission through submitting the provisional constitution will have to submit their ratified constitution to the EC within six months of the first sitting of the ninth parliament.

Chaired by Chief Adviser Fakhruddin Ahmed, a meeting of the Council of Advisers approved the Representation of People Order (Second Amendment) 2008, taking into account the fact that "many political parties will not be able to amend their constitutions and submit those to the Election Commission during registration" as the last date for registration is October 15. - *The Daily Star, October 7, 2008*

## Revised RPO won't be scrapped

Chief Election Commissioner (CEC) ATM Shamsul Huda ruled out any possibility of scrapping the revised Representation of the People Order (RPO) that made registration with the Election Commission (EC) mandatory for political parties.

"Nothing will be left if the revised RPO is cancelled. If it is to be scrapped, why have we spent so much time on it," the CEC said at a press briefing at the EC Secretariat conference room referring to the BNP-led four party alliance's demand for repealing the revised RPO.

As part of electoral reforms, some new provisions were inserted in the RPO in August. The EC had been working on it since February last year. As per the provisions laid down in the revised RPO, political parties willing to contest the parliamentary polls must get registered with the EC. They must apply to the EC by October 15 for registration to be qualified for contesting the parliamentary polls slated for December 18. - *The Daily Star, October 7, 2008*

## Jail term sought for ballot paper misuse

Possessing ballot papers and ballot paper books and exhibition of those during and after the upcoming parliamentary election will be a punishable offence.

The Election Commission (EC) sent a new proposal to the law ministry on Thursday for approval of this provision in a bid to foil any attempt to make the parliamentary poll controversial by misusing ballot papers. It also sent to the ministry the proposals to ease political parties' registration procedure.

For violation of the newly proposed provision, an individual might be punished with rigorous imprisonment for a term of three to 10 years and also fine, sources in the EC Secretariat said. Senior officials in the commission said it means that if any person steals a ballot paper out of the polling station instead of dropping it into the ballot box, they cannot exhibit it before people to question the election process. - *The Daily Star, October 6, 2008*

## SC without adequate number of judges for 4 months

The Appellate and High Court (HC) divisions of Supreme Court (SC) have been without adequate judges as two judge's posts at Appellate Division have remained vacant since July 2 and no new judge was appointed to the HC in more than four years.

Sources said at least seven HC Division judges would retire next year while five Appellate Division judges would retire by 2010 with the chief justice retiring next year.

The shortage has resulted in increasing number of cases pending with both the divisions, causing suffering to litigants. At present, the Appellate Division has five judges against seven posts following retirement of two judges.

The HC, on the other hand, now has 61 judges. The number had risen to 72 after 19 additional judges were appointed to the HC on August 23, 2004, but 11 of them have since either retired or been promoted to the Appellate Division. - *The Daily Star, September 30, 2008*

## Dear reader,

You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955; fax 8125155; email: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net

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## LAW campaign

## Necessity of Ombudsman to reduce corruption

DELARA HOSSAIN

HUMAN beings cannot live alone; they have to live with others by in family, society, and state. For better discipline States or societies require law. As a developing country the socio-economic condition of Bangladesh is not well off and corruption largely accounts for that. Bangladesh even topped the corruption list prepared by Transparency International for quite a while. It

is only because bureaucratic corruption and abuse of power. Currently Government has taken the initiatives to reduce the corruption. Their foremost target is to diminish corruption in all levels, root to top. Undoubtedly this initiative is praiseworthy. This should sustain for longer period with the help of law and right institutional arrangement, otherwise the entire situation may turn into reverse position.

Even independent judiciary is not enough to prevent and rem-

edy corruption because of the complex judicial system. An effective system requires different institutional framework that will facilitate the citizens' power, especially enable them to file complaint against the bureaucratic abuse or corruption by state functionaries. All over the world this type of problem is usually resolved by establishing the office of Ombudsman. Dr. I. P. Massey termed Ombudsman as a watchdog of the administration. History says that Sweden is the first country to establish the office of Ombudsman in the year 1908, but in the parliamentary form of government New Zealand is the first country in establishing the office of Ombudsman. In 1962 the post of Ombudsman was introduced in New Zealand.

The basic idea of this body is to control and prevent the abuse of the public office or administrative authority. Ombudsman redresses individual grievance, which arises from the abuses of administrative functions. Article 77 of the Constitution of Bangladesh states that parliament may establish the office of ombudsman by enacting law. In fact a law was passed entitled the

Ombudsman Act, 1980 but unfortunately it has not yet been made effective, allegedly because of the fear that the proposed office would have the power to take action against any public officer. Generally the main functions of ombudsman are to investigate into complaints received from individuals and submit its report to the concerned authority. If left dissatisfied with the remedial measures by that authority, Ombudsman makes another special report to the President. Ombudsman is proved effective at large because it has the right to access almost every government department. The procedural part of Ombudsman's function regarding investigation is not much time-consuming. In absence of any fee or lawyer involvement, taking recourse to Ombudsman's office is a cost-free affair. But it is to be borne in mind that the function of Ombudsman is not a replacement of rather complementary to regular court system.

Giving effect to the law of 1980 would potentially reduce corruption and will also take away some pressure from the judicial system.

## The Role of the Ombudsman

Facilitator of informal conflict resolution

• providing advice, suasion, mediation, follow-up with actions, referral, etc.

Agent for change (systemic issues)

• making recommendations for change on policies and procedures

UN CRG