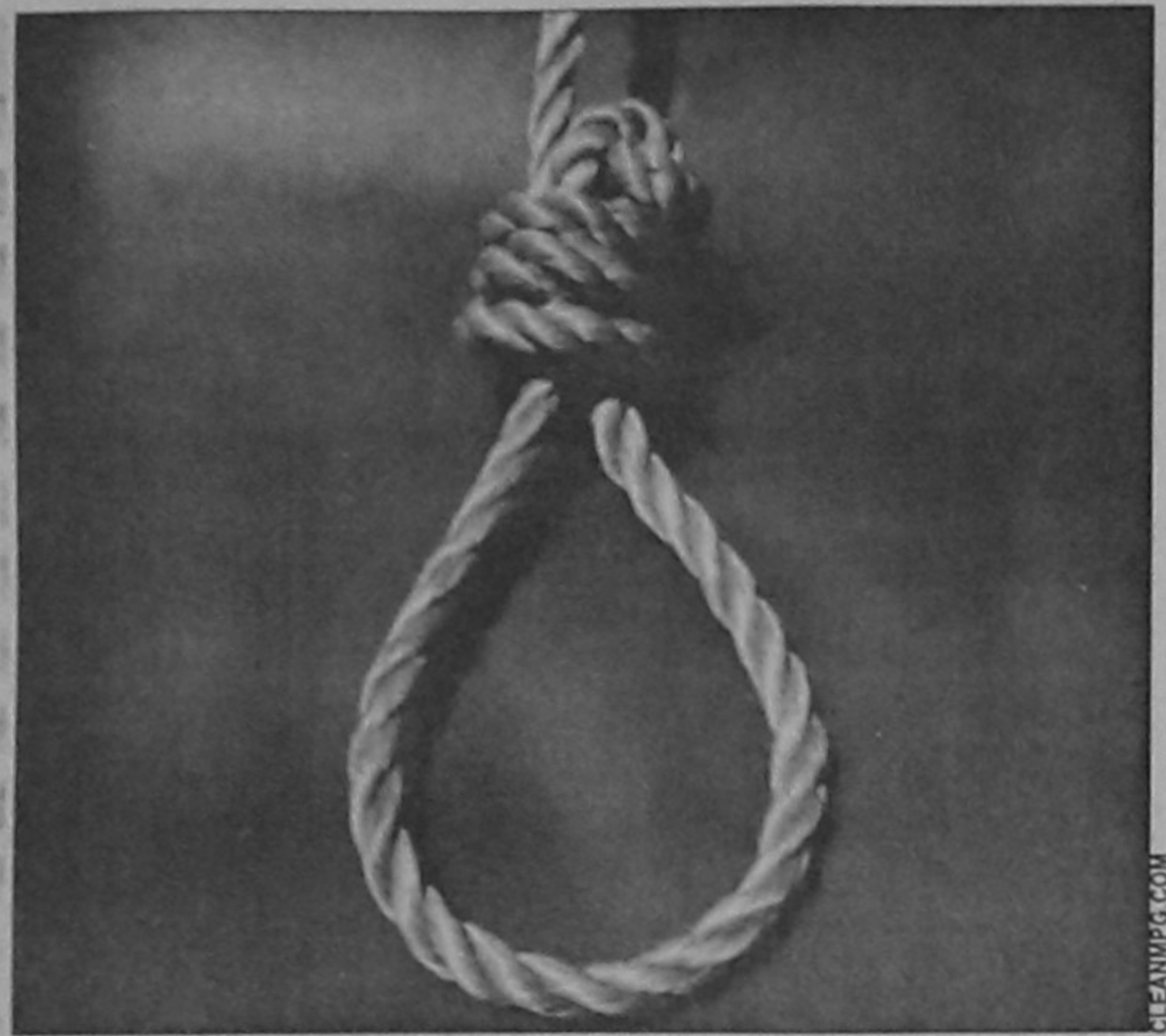


CRIME *punishment*

Attempt to commit suicide

The word suicide means killing one self. A person may commit suicide for many reasons as a result of this there is nothing specific about the main reason of suicide. Usually socio-economic factors account for most incidents of suicide. Such factors include poverty, depression, shame, guilt, etc. According to one UN survey, people commit suicide every 40 second around the globe.

Historically, suicide has been treated as a criminal behaviour though a person who successfully commits suicide goes beyond law forever. But once unsuccessful, the person attempting suicide can be got hold of punishment and hence attempting suicide is always punishable under law. Interesting enough that suicide has never been treated as a criminal matter in the



United States.

Under the Penal Code attempt to suicide and abetment of suicide is an offence. Section 309 of the Penal Code deals with this. It states that whoever attempts to commit suicide and does not act towards the commission of such offence shall be punished with simple imprisonment for a term which may extend to one year, or with fine or both.

Section 305 of the Penal Code states about abetment of suicide of child or insane person. If any person under 18 years of age, any insane person, or any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide, shall be punished with death penalty or imprisonment for a term not exceeding ten years and also shall be liable for fine.

-Law Desk.

LAW *amusements*

Intriguing Laws...

Sweden

A prince or princess who marries without the consent of the government, that person forfeits the right of succession for his/her children and all other descendants.

While prostitution is legal, it is illegal to use the services of a prostitute.

You may only own half a meter down in the ground of any land you own.

It is illegal to repaint a house without a painting license and the government's permission.

If you release pigs into a acornwood (or a beechnutwood) mutually owned by you and at least one more, and exceeded your quota of allowed pigs, you will have to pay a fine for each pig to the other owners and to restore any damages caused by the extra pigs.

South Korea

Traffic police are required to report all bribes that they receive from motorists.

Singapore

Bungee jumping is illegal.

Singapore was once filled with restrictions such as this, but the country is gradually lifting these laws to encourage tourism.

The sale of gum was prohibited after a prolific amount of chewed gum had been stuck in the subway stations and cars. While the sale of gum is prohibited, it is not illegal to chew it, but if one sticks the gum anywhere else besides the trash can, he or she faces huge fines.

Failure to flush a public toilet after use may result in very hefty fines.

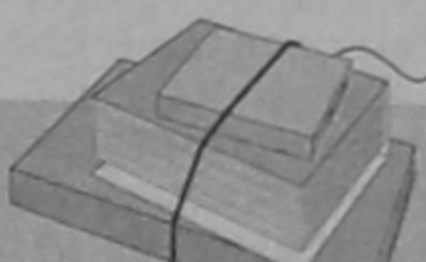
It is considered an offence to enter the country with cigarettes.

It is illegal to come within 50 meters of a pedestrian crossing marker on any street.

If you are convicted of littering three times, you will have to clean the streets on Sundays with a bib on saying, "I am a litterer."

It is illegal to pee in an elevator.

Source: www.geocities.com

LAW *lexicon*

Mistrial - An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again from the selection of the jury.

Mitigating circumstances - Those which do not constitute a justification or excuse for an offence but which may be considered as reasons for reducing the degree of blame.

Mittimus - The name of an order in writing, issuing from a court and directing the sheriff or other officer to convey a person to a prison, asylum, or reformatory, and directing the jailer or other appropriate official to receive and safely keep the person until his or her fate shall be determined by due course of law.

Mitigation - A reduction, abatement, or diminution of a penalty or punishment imposed by law.

Moot - A moot case or a moot point is one not subject to a judicial determination because it involves an abstract question or a pretended controversy that has not yet actually arisen or has already passed. Mootness usually refers to a court's refusal to consider a case because the issue involved has been resolved prior to the court's decision, leaving nothing that would be affected by the court's decision.

Motion - An application made to a court or judge which requests a ruling or order in favour of the applicant.

Motion in Limine - A motion made by counsel requesting that information which might be prejudicial not be allowed to be heard in a case.

Murder - The unlawful killing of a human being with deliberate intent to kill. (1) murder in the first degree is characterized by premeditation; (2) murder in the second degree is characterized by a sudden and instantaneous intent to kill or to cause injury without caring whether the injury kills or not.

Mutual assent - A meeting of the minds; agreement.

Source: Jurist International.

REVIEWING *the views*

Can one be tried for the same offence twice?

SAMAH M KARIM

THE rule against 'double jeopardy' states that no one shall be tried or punished twice for the same offence. This 800-year-old law, described by many as an anachronism, protects citizens from oppression by ensuring that the State cannot keep prosecuting a citizen until he is finally convicted. Once an accused has been acquitted of a crime, the rule provides the accused protection from further prosecution on the same allegation, despite the strength of incriminating evidence that may subsequently come to light.

The constitutional law of Bangladesh

The Constitutional Law of Bangladesh incorporates this rule against 'double jeopardy' in Article 35(2), stating in clear terms, 'No person shall be prosecuted and punished for the same offence more than once.' The rule is also strongly established in Section 403 of the Code of Criminal Procedure.

When does Article 35 (2) apply?

Since the rule has been incorporated in the third part of the Constitution, it has become a fundamental right. The special position of this Article in our constitutional scheme is apparent as, unlike many others, this fundamental right is not made subject to 'reasonable restrictions', 'law', 'public interest' etc. Article 35(2) only applies when both the proceedings are criminal proceedings and the prosecutions are for the same offence.

In order to determine the application of Article 35 (2) three factors require consideration -

(i) whether the accused was prosecuted and punished in a previous proceeding.

(ii) whether the subsequent proceeding is a fresh proceeding or a continuation of a prior proceeding and

(iii) whether the previous charge was substantially the same as the present one.

Previous proceeding

According to the case of *Muhammadullah v. Sessions Judge*, 52 DLR 374, for the application of Article 35 (2) there must have been a previous proceeding before a judicial tribunal of competent jurisdiction in which the accused was prosecuted. For jurisdiction of court the previous proceeding must not be a void proceeding (*Bajinath v. Bhopal*, AIR 1957 SC 494) and it must be a criminal proceeding (*Narayanlal v.*

Mistry, AIR 1961 SC 29).

As established in the case of *Assistant Collector v. Melwani*, AIR 1970 SC 962, in the previous criminal proceedings the accused must have been convicted or acquitted and the conviction or acquittal must be in force at the time of the following proceeding. Where the previous proceeding was dismissed for default of the complainant Article 35 (2) will not apply.

Subsequent proceeding

Article 35 (2) will provide protection only when the subsequent proceeding is a fresh proceeding where the accused is being prosecuted for the same offence. If it is merely a continuation of the previous proceeding, by way of an appeal or retrial, Article 35 (2) will not be applicable (*Ludwig v. Massachusetts*, 427 US 618).

Whether it's the same offence

In the leading case of *H.M. Ershad v. State*, 45 DLR 533, it had been established that Article 35(2) will only apply when the subsequent proceeding is for the same offence for which the accused was once been tried and punished. In circumstances when two offences rise from the same facts and the allegations in the complaints are also the same, the previous conviction will not prevent the subsequent prosecution, as long as it is for a separate and distinct offence (*Bhagwan Swarup v. Maharashtra*, AIR 1965 SC 682).

As set in the case of *Brown v. Ohio*, 432 US 161, the rule of double jeopardy prohibits trial of a person for a greater offence after he has been convicted of a lesser-included offence. Where there is a continuing offence, as the continuance of the offence comprises a fresh offence day after day, the protection of Article 35(2) will not operate (*Ranendranath v. India*, AIR 1965 Cal 434 (Para 8)).

Problems with the law of double jeopardy

It is accepted that the current principles governing Double Jeopardy are problematic and a matter of concern. The reasons include the following:

(a) According to the principles of double jeopardy, it seems that the law provides a convicted person extensive rights to challenge his or her conviction (and sentence) on the basis that some type of error was made at the trial but no converse right is given to the prosecution to challenge an acquittal which appears to be the result of exactly the same type of error. These errors may be for example, an erroneous judicial direction, wrongful exclu-

sion of evidence, fresh and compelling evidence etc.

(b) Due to progression in science and frequent use of greatly superior scientific methodologies such as DNA profiling (and other modern forensic sciences), this 800 year old law is outdated and, at times a barrier to greater justice.

(c) It is extremely unfair to the victims of crimes (if still alive) and their loved ones, when the accused, in certain cases, maybe due to lack of evidence, are able to walk freely amongst us with legal immunity, being safe guarded by the principles of double jeopardy.

(d) The respect for the law and confidence in the legal system can fall when circumstances allow those suspected of criminal behaviour to eventually dodge liabilities for their crimes due to the rule of double jeopardy - commonly called 'legal technicalities'.

Reforms

In investigating the feasibility of

The table below briefly describes the reforms relating to post acquittal appeals introduced in several countries in various ways.

COUNTRY	REFORM	NEW LAW	TYPE OF LAW
England and Wales	Section 54 of the Criminal Procedure and Investigations Act 1996	It allows retrials where an administration of justice offence had occurred which would have led to a false acquittal.	The 2003 Act was introduced retrospectively.
	The Criminal Justice Act (2003)	It authorises new trials where new and compelling evidence came to light and only relates to crimes punishable with a life sentence.	
New South Wales	Division 4 of the Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2006 No 69	It relates to crimes carrying a 15-year or larger sentence but only where there is fresh and compelling evidence or an administration of justice offence has occurred. An error of law by the court such as an incorrect summing up and directions to the jury cannot be grounds for a new trial.	The reforms were introduced retrospectively.
Queensland	In 2007 Double Jeopardy reforms were introduced.	The laws relate to only crimes punishable by a 25 years or more imprisonment.	The reforms were prospective.
South Australia	The Criminal Law Consolidation (Double Jeopardy) Amendment Act 2008	It is applicable for crimes ranging from trafficking in a commercial quantity of controlled drugs and aggravated robbery to more serious crimes such as manslaughter and murder. Retrials will be allowed where there has been a conviction for an administration of justice offence relating to the original trial or where there is fresh and compelling evidence.	The law has been introduced retrospectively.
New Zealand	The Criminal Procedure Bill 2008	The law authorises retrials where there is new and compelling evidence or an administration of justice offence. However here the minimum relevant sentence is 14 years and the administration of justice offence is only held to be relevant if perpetrated by the accused.	The law is introduced for prospective operation.

national legislation to erode the principle against double jeopardy, various countries have instituted differing ways to contest the law that has well and truly passed its use-by

guilty-verdicts can be wrong, but wrong-not-guilty-verdicts cannot be wrong.

The writer is working with Lawdesk.

LAW *letter*

CHEATED MIGRANT WORKERS

Is there any one who can hear their voice?

Abdaka Al Sun Bakar (22) of Kenya and Abdul Aziz of Ghana boarded on MV Rahmanur Rahim which was carrying Bangladeshi flag. They ship was carrying Sugar from Ghana to Bangladesh via Brazil. Just before the ship took off the anchor, crews discover 8 of the voyagers and disembarked immediately.

But the above two hide themselves into a tiny compartment just near the Propeller blade! After 12 hard days without food or water, they came out for lives. All the Bangladeshi crews were kind enough to save their life. The ship reached Bangladesh port after 24 days more. The two young who were forced to take the decision of migrating- were handed over to the police. The small news was published in a Bangla Daily on 21 October 2008. Dear all, It would be nice if anyone or any organisation do come forward to hear their voice with the aim of providing them with a small dream in their home country.

Zakir Md. Hossain
Krisoker Saar (Farmers' Voice).

LAW *event*

First national commercial moot court session

CORPORATE law practices have recently assumed front burner dimensions in Bangladesh. Because of increased public ownership of companies as well as increase in the judicial activism as demonstrated by the recent decisions in various spheres, the corporate law is becoming more and more challenging in the legal arena. This Moot competition was responsive to this emerging challenge in order to create a better understanding and awareness about corporate law among the future young lawyers.

The Dhaka University Moot Court Society (DUMCS) with the sponsorship of AB Bank Limited arranged the two-day long 'AB Bank

First National Commercial Law Moot Court Competition' where the participants argued on a fictitious problem on corporate matters. It was the first time, when with the sponsorship of a prominent banking authority, this kind of moot court took place in Bangladesh. On September 18 the event was formally inaugurated at the Faculty of Law, University of Dhaka by the Dean of the Faculty, Prof. Dr. Borhan Uddin Khan. Mr. Niaz Habib, Deputy Managing Director, AB Bank Limited was also present on the occasion. They expressed their views about holding this kind of event for the first time in this country. Different public and private universities attended the competi-

tion among which the teams of South-East University and the University of Dhaka made their way to the final round. University of Dhaka won the competition while South-East University became the Runner-up.

The Final Round of the competition was presided over by Justice M A Wahhab Miah, while Justice A F M Abdur Rahman and Justice Miftah Uddin Chowdhury were the other two members of the bench. The formal closing ceremony of the two-day long competition was graced by the presence of Prof. Dr. S. M. A. Faiz, Vice Chancellor of University of Dhaka and Mr. Niaz Habib, Deputy Managing Director of AB BANK. Dr. Borhan Uddin Khan, Dean, Faculty

of Law and the President of DUMCS chaired the ceremony. Honourable Vice Chancellor congratulated the winning and Runner-up teams and expressed his kind support and encouragement for any such future moot competitions to be organized by the DUMCS. Mr. Niaz Habib expressed his contentment about the whole process of the exciting moot court competition; he also stated that AB Bank Limited is always with the scholars of the country to support them and it will try to give all its efforts to arrange such competitions in future on corporate matters in collaboration with DUMCS.

-Law Desk.

LAW *week*

Myanmar suspends exploration in Bay

Myanmar ships suspended oil and gas exploration activities inside Bangladesh maritime territory awaiting the outcome of a dialogue between Dhaka's special envoy and the Yangon authorities.

Bangladesh Navy has strengthened its position around the three Myanmar warships and four exploration vessels in the Bay-- 55 km south-west at 227 degrees from St Martin's Island. "The Navy has mobilised six ships, including a frigate and two missile launchers, at the spot. It is getting ready to face any situation using whatever resources in its possession," said a defence source. "Navy officers and staffs have been put on high alert. They are virtually spending sleepless night." - *The Daily Star*, November 06, 2008.

12VIP prisoners faking sickness in hospital

The jail authorities have requested Bangabandhu Sheikh Mujib Medical University (BSMMU) to send back 12 high-profile prisoners for overstay in its hospital with fake sickness.

Meanwhile, the jail authorities say they would go for punitive measures against former BNP lawmaker Mossadeq Ali Falu for cheating with them and the court by submitting a fake medical certificate. Jail sources say the division status of Falu might be cancelled and he be barred from meeting relatives for a certain period.

At present, 20 detained bigwigs are receiving 'treatment' at BSMMU alone. Around 100 high-profile corruption-suspects had treatment at the hospital. - *The Daily Star*, November 05, 2008.

ACC catches whole land office staff with bribes

They ride on the gravy train. For them, money comes in from both ends. It comes from the government, and it comes from those whose service they are meant to be at.

These are about the staff of Chikandondi land office in Hathazari upazila of Chittagong. An Anti-Corruption Commission (ACC) team went there to probe a complaint against an official. But they found, to their surprise, all employees down to the rank of peon busy making quick bucks.

The anti-graft men found bundles of wads in everyone's pocket. Money was on floors, tables, and in a broken safe. Those detained in the drive said they give a slice of the bribes to the assistant commissioner (land) of Hathazari upazila. Last month, they sent him Tk 24,000 through his assistant. Despite repeated attempts, The Daily Star could not reach the ACC land for comments. The seven-member team led by Assistant Director Ali Akbar seized over Tk 1.55 lakh that was taken in bribes yesterday alone. - *The Daily Star*, November 04, 2008.

Myanmar defies warnings

The government decided to send the foreign secretary to Myanmar as Myanmar continues to ignore Bangladesh's warnings against trespassing.

Hydrocarbon exploration vessels and two warships of Myanmar, which intruded into Bangladesh's territorial waters Saturday, are yet to be withdrawn. Foreign Adviser Iftekhar Ahmed Chowdhury summoned Myanmar Ambassador to Dhaka U Phae Thann Oo at the foreign ministry and conveyed the government's decision.

The foreign ministry also called the South Korean ambassador to Dhaka and asked him to withdraw the company working for Myanmar. The South Korean ships are now 50 nautical miles southwest of the St Martin's Island. Three Bangladesh Navy ships are confronting six ships sent by Myanmar, which deployed around 50 people for oil and gas exploration there. - *The Daily Star*, November 04, 2008.

Help try war criminals

The War Crimes Facts Finding Committee (WCFFC) in a letter to the United Nations (UN) Secretary-General Ban Ki-moon sought UN support for establishing an International Tribunal to try the war criminals of 1971.

Meanwhile, the Sector Commanders Forum (SCF) urged the government to formally seek UN assistance for trying the war criminals. WCFFC Convener Dr MA Hasan told The Daily Star that the UN secretary general has received the letter sent to him through UN Resident Coordinator Renata Lok Dessalieu. Quoting Renata, Dr Hasan said they are following up the issue. - *The Daily Star*, November 03, 2008.

HC dismisses petitions against re-demarcation

The High Court (HC) declared valid the Election Commission (EC)'s re-demarcation of the parliamentary constituencies. The bench, comprised of Justice Mir Hasmat Ali and Justice Shamim Hasnain, also vacated an earlier stay on operation of the EC's gazette notification of the delimitation.

Later the same day an appeal was filed with the Supreme Court (SC) for a stay on the HC rulings that came in response to five writ petitions challenging the legality of the EC's gazette notification. Former BNP state minister MA Mannan, one of the writ petitioners, filed the appeal. His counsel Nasiruddin Ahmed Asim told reporters that they informed the EC of the appeal through a fax at 5:06pm. The commission should not announce the election schedule until its hearing that may be held Monday, he added. Earlier in the day, the commission withdrew its petition with the apex court for vacating the HC stay on its notification of the delimitation. - *The Daily Star*, November 03, 2008.

Jamaat skips EC's war crime hearing

Jamaat opted to stay absent from a hearing in the Election Commission (EC) Secretariat, where a host of organisations and individuals submitted depositions and other documents proving the Islamist party's history of war crimes including genocide and rape.

The hearing was called by the EC after eleven organisations including many comprising families and friends of martyred freedom fighters and intellectuals, and veteran freedom fighters including sector commanders had earlier submitted official objections to Jamaat's possible registration as a parliamentary party. Jamaat's Legal Affairs Secretary Iqbal Uddin Sarkar however submitted an application to the EC seeking a five-day deferment of the hearing prior to the beginning of it at 11:30am.

In the application the Islamist party, that had recently brought some changes to its constitution to get registered as a legitimate parliamentary political party, said, "For the sake of maintaining a pre-election congenial atmosphere we are not attending the hearing," and demanded immediate registration with the EC. - *The Daily Star*, November 02, 2008.

Falu's Fake Certificates

The Supreme Court (SC) yesterday summoned 11 doctors and the registrar of Bangabandhu Sheikh Mujib Medical University (BSMMU) for signing a "false" medical certificate for detained former BNP lawmaker Mossadeq Ali Falu that earned him bail from the High Court (HC).

The Anti-Corruption Commission (ACC) has meanwhile made a move to appeal to the SC to vacate the bail and stay orders in four cases secured by Falu by submitting the "false medical report" - *The Daily Star*, November 02, 2008/Falu's Fake Certificates

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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: Lawdesk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; email: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net