



LAW amusements



Interesting laws...

- Japan**
There is no age of consent.
- Italy**
It is illegal to practice the profession of charlatry.

A man may be arrested for wearing a skirt.

Striking someone with a fist is considered a felony.
- Australia**
A life sentence is 25 years.

Children may not purchase cigarettes, but they may smoke them.

You may never leave your car keys in an unattended vehicle.

It is illegal to roam the streets wearing black clothes, felt shoes and black shoe polish on your face as these items are the tools of a cat burglars.

It is illegal to walk on the right hand side of a footpath.

Under Australian Communications Authority (ACA) regulations, a modem can't pick up on the first ring.

Taxi cabs are required to carry a bale of hay in the trunk.

Bars are required to stable, water and feed the horses of their patrons.

The legal age for straight sex is 16, unless the person is in the care/custody of the older person, in which case it is 18.

Only licensed electricians may change a light bulb.

It is illegal to wear hot pink pants after midday Sunday.

You must have a neck to knee swimsuit in order to swim at Brighton Beach.

Until the Port Arthur Killings it was legal to own an AK-47 but not legal to be gay.

Lawmakers are proposing a new law that will not allow anyone to come closer than 100 meters from a dead whale's carcass.

Source: www.geocities.com

LAW letter

Intellectual property and people's right to know

MOHAMMAD MONIRUL AZAM

THE Government of Bangladesh has initiated a project on the intellectual property (IP) system in Bangladesh with the financial and technical assistance of the European Commission (EC) and the World Intellectual Property Organisation (WIPO) which was launched on November 2, 2008. Being a researcher I tried to collect information about this project from the online version of our local newspapers and concerned institutions' websites. Unfortunately I failed to find out any such report. On several occasions, I tried to communicate with our Ministry and respective bodies on IP and International trade issues, but most of the times I found they very reluctant to reply to a University teacher or an ordinary citizen of the country. Around the world, there is a good understanding and interaction between Governments and Research institutions. In Bangladesh, it is completely absent and sometimes the so called high ups in our government simply ignore the need of the researcher's and citizen's right to know. However, I take this opportunity to write about the project so as to inform our readers and to make a few comments on its prospects and challenges. I do hope that Government will publish the complete terms of reference of this project for ensuring the citizen's right to know and may welcome public opinion on this project.

Objectives of this project

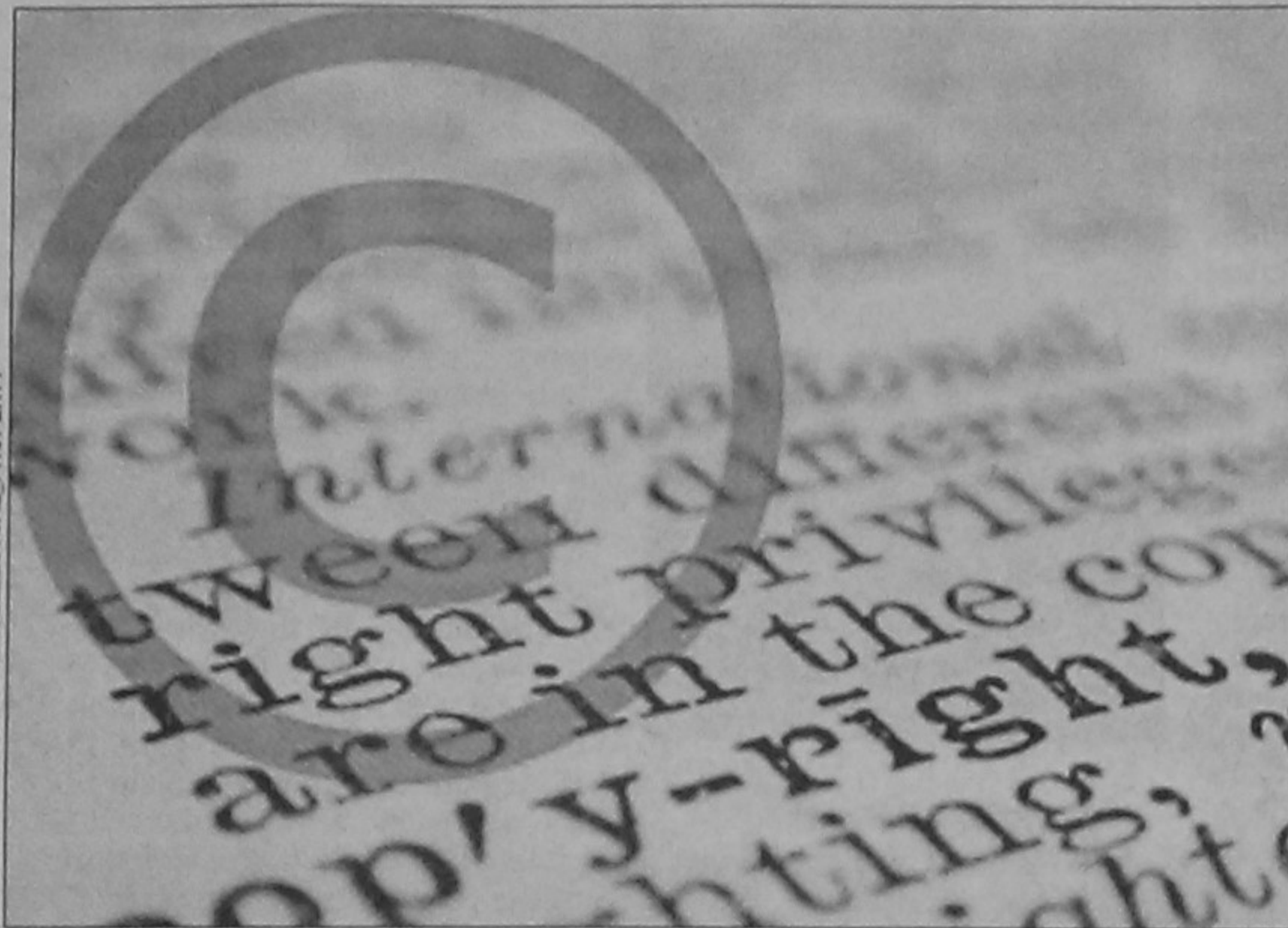
This project is initiated with the following objectives:

- i) to modernise the intellectual property (IP) system in Bangladesh
- ii) to help the country maximise the benefits of IP protection
- iii) to undertake capacity-building measures to promote effective management of the intellectual property system, and its strategic use in supporting wealth creation and social and cultural development.

International obligations and national development goals

It is also worth noting that this project will identify the challenges faced by Bangladesh in meeting its international obligations. It will also support the evolution of the national IP system in line with the country's development objectives. In this regard, I would like to know from our policy makers and draw the attention of stakeholders as to how far our government evaluated its position vis-à-vis our international obligations under the different IP agreements and how we can preserve our national interest. Blind adherence to the textual obligations and reports or advice of global bodies and transnational corporations shall spell disaster for our country.

Therefore, who will identify our national challenges and developmental goals in the context of the IP system, is very crucial. There must be participation of stakeholders rather than participation of some NGOs having no expertise or knowledge of IP. In this context, while identifying our international obligations



and development goals, Government must consider the following issues:

- i) Transparent dialogues with the stakeholders (both IP users and creators).
- ii) Objectivity in the evaluation of International agreements.
- iii) Promotion of local experts rather than simply relying on foreign experts or consultants.
- iv) Proper utilisation of the flexibilities in the international agreements. In this context, we may learn from the experience of Brazil and South Africa.
- v) Preparing a priority list of local IP creators and users.
- vi) Development of a database of IP creators in Bangladesh.
- vii) Evaluation of the probable positive and negative consequences of the particular fields of IP.
- viii) Proper utilisation of both technical and financial resources.
- ix) Prevention of corruption and ensuring transparency at every level of project implementation.
- x) Integration of all the research institutes in Bangladesh. For this, there may be a research network that may be shared with all the institutions. This would be a good move for future sharing of information, collaboration and transfer of technology between different institutions in Bangladesh.
- xi) Making a country study on the probable IP development goals for Bangladesh. In this context, we may take a look into how India and Singapore utilised the IP for development.
- xii) Considering the probable conflicts (if any) between public interest and IP, public health and IP, environmental protection and IP etc. Then we have to craft possible means to balance the same.

Implementation of the project and IP as a tool

This project is to be implemented under two main clusters of activities:

- I) The first cluster aims to support in modernising our IP legislation and in strengthening IP administration systems for improved service delivery, which is to be achieved by streamlining, simplifying, and where appropriate, automating administrative functions in IP offices.
- II) The second cluster aims at maximising

the use of IP as a tool for economic, social and cultural development (as given in the report). It is quite fascinating that this cluster includes a public outreach programme to promote IP awareness in key sectors including Universities, R&D institutions, small and medium-sized enterprises, creative industries and the business community. It is also expected to promote IP teaching and education through fellowships, course development and linkages with WIPO's distance learning programs. But how the awareness and promotion of IP teaching and research activities are to be carried out is not clarified in the report. But if this task is entrusted exclusively to the intellectual property offices and the concerned Ministry, the full potential of IP may not be realised. Therefore, if we really like to utilise the IP as a tool for development, we have to develop a policy with proper interaction and role play of the Government bodies, relevant stakeholders and the Universities and research institutions in Bangladesh.

Future prospects

If we can define properly our obligations in line with our national interest and development goals, then the IP system may operate efficiently and effectively, and thereby would be able to promote a culture of innovation and creativity. Protection of IP may foster a favourable environment to attract foreign investment and to facilitate technology transfer, and thereby, contribute to the achievement of the overall economic and developmental goals of the country. But if not directed in line with national interest and developmental goals it may have adverse impacts as well. Thus I do hope that the Government of Bangladesh will carefully evaluate our national interest, developmental goals and proper utilisation of flexibilities and spaces available under the international IP agreements in general and TRIPS agreement in particular. Only then the present project on IP with the assistance of EC and WIPO will be beneficial for us.

The author is Assistant Professor, Department of Law, University of Chittagong and Researcher on Intellectual Property.

RIGHTS corner



Human rights defenders remain under threat

Human rights defenders continue to face serious threats in countries across the OSCE region, concludes a report published today by the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

"Some of the report's findings are alarming. The threats human rights defenders still face in many OSCE countries are unacceptable in a democratic society," said Ambassador Janez Lenarcic, ODIHR's Director.

"On the other hand, we also see a number of positive steps taken by governments to recognise and support the work of human rights defenders, and to ensure their protection from threats and attacks. This, too, is highlighted in the report."

The report, which was presented at an OSCE event marking the 60th anniversary of the Universal Declaration of Human Rights, says that at least three defenders were killed between April 2007 and April 2008, the period covered by the report.

A number of human rights activists were ill-treated in custody, attacked, and injured. Many received death threats or were otherwise harassed and intimidated. Family members of human rights defenders were also targeted. In several cases, defenders were arbitrarily detained, arrested, and fined. The premises of several human rights organizations were subject to raids and attacks. Peaceful assemblies were dispersed violently or not sufficiently protected.

"By highlighting these trends, we want to inspire action to counteract them," said Lenarcic. "It is, first and foremost, the responsibility of governments to uphold their OSCE commitments and ensure that human rights defenders can freely and without fear do their work which is essential for turning abstract human rights principles into concrete practice."

The reports stresses that some OSCE participating States provide physical protection for defenders who are at risk of physical harm, and actively prosecute those using violence against defenders.

It highlights cases of authorities publicly speaking out in favour of defenders. In most OSCE countries, the authorities only need to be notified of planned assemblies, and no formal authorization is required. Other positive examples include states granting travel visas for defenders to pursue their activities, and issuing emergency visas or residence permits to defenders in trouble.

Source: OSCE.

GOOD NEWS

Brazil's SC upholds rights of indigenous peoples

A vote in Brazil's Supreme Court on Wednesday upheld the rights of Indigenous Peoples in the reservation of Raposa Serra do Sol on the frontier between Brazil and Guyana/Venezuela. The vote is seen as a victory for all Indigenous Peoples across Brazil.

The Supreme Court's vote is a milestone in the thirty-year battle of the Makuxi, Wapixana, Ingarikó, Taurepang and Patamona indigenous peoples for the recognition of their constitutional right to their ancestral lands.

Raposa Serra do Sol is a 1.7 million hectare reservation and is home to 20,000 people, the majority of them Makuxi. The reservation was decreed by President Lula in April 2005, ending a thirty-year struggle for the recognition of the lands.

During that period, at least twenty Indigenous people were killed, hundreds more beaten and their homes and livestock destroyed by local landowners, settlers and members of the military police.

The state government continues to oppose the process of demarcation, supporting illegal settlements in the area and rice farmers who, despite an earlier offer of compensation to leave the area, have illegally maintained their operations on reservation land. Army officials have also criticised the existence of the reservation on the grounds that is a threat to national sovereignty.

In April, the Supreme Court suspended a federal police operation to evict the rice farmers pending a ruling on an appeal against the ratification process brought by the state government and two deputies. In August, the Supreme Court hearing was adjourned after one of the judges requested time for further consideration.

Eight out of eleven Supreme Court judges voted to maintain the original



demarcation of the Raposa Serra do Sol reservation as a single, continuous area, after state politicians and local farmers challenged the constitutionality of the reservation. However, the final ruling has been delayed until next year, after one of the remaining judges requested more time for consideration.

While the majority vote has secured the integrity of the reservation, Amnesty International expressed concerns over the delay in delivering a final ruling. The delay means that an eviction order against large-scale rice farmers, who are illegally operating on the reservation, will be suspended for a further period.

These rice growers have attacked and intimidated the Indigenous Peoples including the violent attacks in May 2008 where masked men injured 10 people with petrol bombs and guns. More recently, there have been further reports

of petrol bomb attacks, as well as men on motorcycles riding close to the reservation and firing shots into the air.

"It is essential that all these incidents are thoroughly investigated and Indigenous Peoples are provided full protection, while awaiting the Supreme Court's final decision," said Patrick Wilcken, campaigner on the Brazil team at Amnesty International.

Amnesty International also called on the Brazilian government to use this victory to complete the long overdue process of ratification of other outstanding lands, such as those of the Guarani in Mato Grosso do Sul.

"This will be the only way to ensure an end to the violence and social deprivation Indigenous Peoples continue to suffer," said Patrick Wilcken.

Source: Amnesty International.

LAW week



Emergency out, rights in

The nation has its fundamental rights reinstated after around two years as an ordinance promulgated by the president Monday ends the state of emergency.

Another ordinance decreed the same day repeals the Emergency Powers Ordinance 2007 and Emergency Powers Rules 2007. The laws were proclaimed to enforce the state of emergency declared on January 11 last year amid political turmoil over the ninth parliamentary polls then scheduled for January 22.

The revoking ordinance carries some saving clauses meant to be helpful to the anti-graft measures taken under the emergency rules. With the departure of emergency rule, articles 36, 37, 38, 39, 40 and 42 of the constitution get back into operation. They concern the freedom of movement, assembly, association, thought and conscience, speech, profession or occupation, and rights to property. Political parties and candidates will carry out electioneering for the December 29 general election without having to face any restrictions. -The Daily Star, December 17, 2008.

War crime bill in first JS session

Every citizen has the ultimate weapon of vote to fight out war criminals and they must use it to prove Bangladesh a country of freedom fighters, said sector commanders and freedom fighters at a Victory Day programme.

Urging people to vote freedom fighters in the upcoming polls, speakers also said freedom fighters have been "exploited" by political parties since independence. "A bill must be brought at the first session of the next parliament to try war criminals," Sector Commander Maj Gen (ret'd) KM Shafiqullah also urging people to bring freedom fighters in the parliament.

"The ultimate weapon to fight war criminals is in the hand of every citizen who has the power to vote. Every citizen has become a fighter with that weapon. And they must learn everything about war criminals and make sure they don't have access to our sacred parliament," said Sector Commander Lt Col (ret'd) Abu Osman Chowdhury.

The nation celebrated 37 years of liberation, saluting the valiant sons and daughters of the soil who made the supreme sacrifice in the Liberation War in 1971 for an independent and modern democratic state. -The Daily Star, December 17, 2008.

Faulty Saving Clause

Flawed saving clauses in the newly promulgated ordinance that repeals the emergency power ordinance and rules, make uncertain the fate of ongoing anti-graft activities initiated under the state of emergency, according to legal experts.

A saving clause is a provision in a statute or contract which makes sure if any clause is determined to be unenforceable, the remainder of the statute or contract will remain intact and enforceable. The saving clauses in the new ordinance allow incomplete activities like investigations, inquiries, and trials, which were initiated under the now repealed emergency powers rules (EPR), to be completed under ordinary laws of the land.

But legal experts argue, all of the incomplete tasks are supposed to be allowed to be completed under EPR even after its repeal by the new ordinance. -The Daily Star, December 17, 2008.

Charters of contrast pledged

The Daily Star analysed some selected components of the election manifestos of both Awami League (AL) and BNP. These important socio-political issues are the parties' commitments about anti-corruption drive, the judiciary, human rights, minority nationalities and religions, and fighting crime, terrorism, and religious fundamentalism.

While both parties generally agree on uprooting corruption from the society, upholding an independent judiciary and human rights, protecting the rights of the minority nationalities and religions, eradication of crime, and fighting religious extremism a wide difference in expressions emerge through a closer look.

The BNP's manifesto remains general about all the issues, sometimes even self-contradictory and univertive. In contrast, the AL manifesto attempts to be stronger and more specific on the issues especially in emphasising secularism, and in fighting religious extremism and corruption. -The Daily Star, December 16, 2008.

Azam seeks to drop case against Hasina

Businessman Azam J Chowdhury will discontinue the extortion case he filed against Awami League (AL) President Sheikh Hasina and her cousin Sheikh Fazlul Karim Selim about one and a half years back.

He already submitted an application to the home ministry, seeking an executive order for withdrawal of the case through the court concerned. Speaking at a press briefing at his Gulshan office at around 11:00am, he said, "The case against Sheikh Hasina and Sheikh Selim was filed due to some misunderstanding in the adverse circumstances prevailing at that time."

Azam, managing director of East Coast Trading Ltd, termed the filing of the case an undesirable experience for him. Replying to a query, he said, "I'm withdrawing the charges as a matter of principle, and out of respect for democracy and fundamental rights. I hope this would put an end to all misunderstanding." -The Daily Star, December 15, 2008.

Advisers okay emergency withdrawal

The Council of Advisers of the caretaker government approved the Emergency Powers Repeal Ordinance 2008 to lift the state of emergency declared on January 11, 2007 in the wake of political turmoil.

In pursuance of a prior government declaration, the annulment of the emergency ordinance will be effective from December 17, in the run-up to the December 29 national elections. A meeting of the council of advisers with Chief Adviser Fakhruddin Ahmed in the chair also approved a proposal for complete withdrawal of the state of emergency.

The meeting gave final approval to another major legal instrument - the Judicial Service Secretariat Ordinance 2008 - for establishing an independent secretariat for carrying out secretarial activities of the judicial service.

After the meeting, CA's Press Secretary Syed Fahim Munaim told newsmen that the council also approved the Chartered Secretaries (Amendment) Ordinance 2008. The meeting also gave final approval to Bangladesh Telecommunications (Amendment) Ordinance 2008. -The Daily Star, December 15, 2008.

EC bends laws to clear nomination of BNP's Enamul

The Election Commission (EC) has cleared the candidature of BNP nominee Dr Enamul Haque in Rajshahi-1 constituency ignoring the electoral laws that clearly disqualified him from contesting the upcoming parliamentary election.

Enamul, also former inspector general of police, was appointed a member of Bangladesh Law Commission in November 2004 on a three-year contract that expired on November 28 last year. As per the new electoral laws, Enamul, who was entitled to salary, allowances and other facilities of a High Court judge during his service in the law commission, will not be eligible to contest the parliamentary election before November 28, 2010.

Article 12 (1) (h) of the Representation of People Order (RPO) says a person shall be disqualified from contesting election or being a member of parliament if he or she has been appointed on contract to the service of the Republic or of any statutory public authority or of the defence service unless a period of three years elapses since the expiry or termination of such contract. -The Daily Star, December 14, 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: LawDesk, The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; e-mail: dsllawdesk@yahoo.co.uk, lawdesk@thedailystar.net