

LAW *amusements*

Interesting laws...

Law Bloopers

Most lawyers are human and humans make mistakes. Then there are the other type of law error; the kind which results in real loss to a client. Good lawyers can have their confidence fatally wounded by a single typo as can the lives of a client who suffers the consequences of that error. And then there are those who simply should not be practicing law.

In 2006, Rebecca Simpson's defence attorney, Ray Bass, neglected to tell his client of a 5-year jail term plea bargain offered by the prosecution. Simpson put her defence to a Connecticut jury during a two-week trial. The jury found her guilty and gave her a 25-year sentence. When the judge later found out about Bass' omission, he dismissed the verdict and ordered a new trial. The prosecutor renewed the offer and Simpson promptly accepted it. It's hard to know who gets the "screw-up" award here: the prosecutor for offering a 5-year deal when the evidence sufficed to convict, or Bass.

Simpson is not one to elicit sympathy: the crime she fussed-up to hiring a killer to murder her lover's wife.

Fred and Evelyn Lettice relied on their solicitor to verify title of land they purchased near Camden, Australia in 1982.

That solicitor failed to notice that the Lettices did not have access over a right-of-way to most of their 25-acre property. In 1994, the Lettices sued the lawyer and took independent action to force access to their partly landlocked property.

But the time clock of litigation, called limitations had caught up to the Lettices and their first round victory turned into a second round defeat before the Australian Court of Appeal in a judgment characterized by a member of Parliament as:

"... the errors of an incompetent solicitor are cured after six years, as if by magic, provided that those errors are discoverable by a competent solicitor".

Salt in the wound: the law society's insurer sought aggressively to recover the original judgment monies from the Lettices.

In most common law jurisdictions, it is Will Law 101 that if a spouse of a beneficiary witnesses a will, the spouse loses her gift but the will is valid.

It was only a matter of time before a Mrs Hill, an Australian solicitor, entered the practice of law, wrote up a will for a testatrix giving a house to the testatrix' neighbour and friend, a Mrs. Rona Van Erp.

The lawyer then asked Rona's husband to act as a witness to the will!

When the testatrix died, Rona was dismayed to see that her gift failed.

Solicitor Hill fought the negligence claim brought against her saying she had no duty to Rona; just to the testatrix. But the Court held her to damages equivalent to the value of the real property lost to Rona by Mrs Hill's error.

In 1994, Michael Cahill told his solicitor that he wanted to make sure his estate went only to his wife and not to his son, Michael Cahill Jr.

The solicitor, Mr. O'Hara concocted a joint tenancy transfer scheme to avoid probate taxes, a not-uncommon estate manoeuvre. But O'Hara got the legal descriptions messed up and neglected to include all the land owned by the testator. When Mr. Cahill died, the discrepancy was discovered and Junior was pleasantly surprised to find that he inherited some of his father's land through the Irish interstate laws... until the Irish High Court jumped in and bailed O'Hara by finding that a constructive trust existed saying:

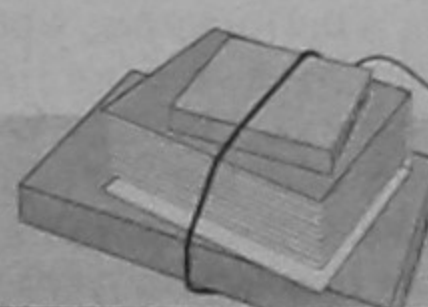
"(Mr. Cahill) changed his mind regarding the disposition of his estate after death and that he took ... steps to give effect to his revised intention.... It follows that ... justice and good conscience requires that (Michael Jr.) should not be allowed to inherit the testator's property ... and that his interest in remainder under the will should be deemed to be a constructive trust in favour of (Mrs. Cahill)".

The Chief Justice of the richest nation in the world fuddled his way through the oath of office of the incoming President of the United States on January 20, 2009. The poor confused judge couldn't muster "I will faithfully execute the office".

Instead, he administered the oath using the words "I will execute the office ... faithfully...."

Fearing the angst of constitutional law experts, the two quickly and more privately re-did the oath of the President the next day January 21, 2009.

Source: www.duhaime.org

LAW *lexicon*

Prosecutor - A trial lawyer representing the government in a criminal case and the interests of the state in civil matters. In criminal cases, the prosecutor has the responsibility of deciding who and when to prosecute.

Proximate cause - The last negligent act which contributes to an injury. A person generally is liable only if an injury was proximately caused by his or her action or by his or her failure to act when he or she had a duty to act.

Proxy - The instrument authorizing one person to represent, act, and vote for another at a shareholders' meeting of a corporation.

Public law - That law such as traffic ordinances or zoning ordinances which applies to the public.

Public defender - Government lawyer who provides free legal defense services to a poor person accused of a crime.

Public Service Commission - Also, Public Utilities Commission. A state agency which regulates utilities.

Punitive damages - Money award given to punish the defendant or wrongdoer.

Purchase agreement or purchase offer - Also, sales agreement and earnest money contract. Agreement between buyer and seller of property which sets forth in general the price and terms of a proposed sale.

Source: Jurist International

LAW *letter*

STOP TRAFFICKING

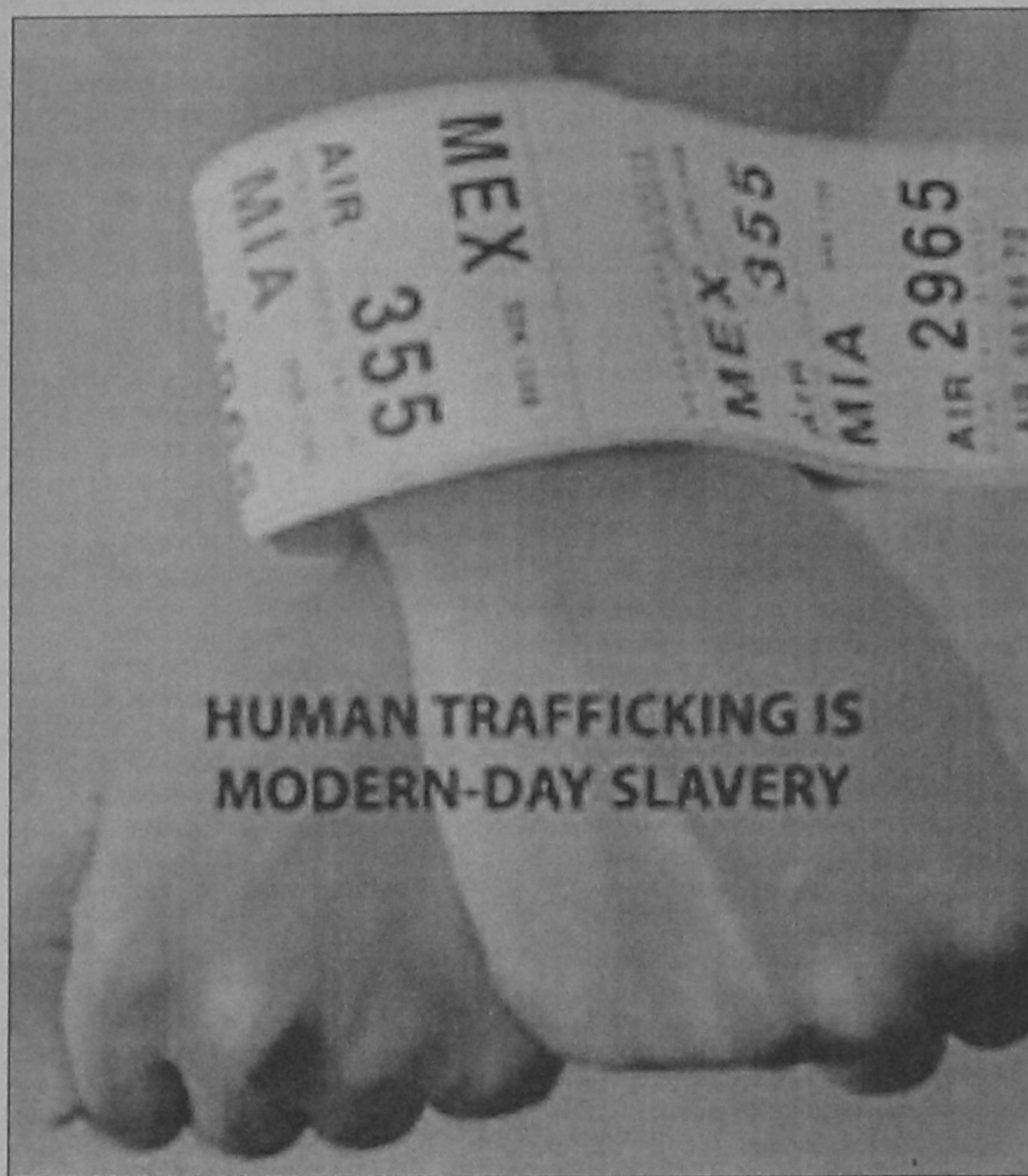
"People shouldn't be bought and sold"

Human trafficking is the recruitment, transportation, harboring, or receipt of people for the purposes of slavery, forced labor (including bonded labor or debt bondage), and servitude. The total annual revenue for trafficking in persons is estimated to be between \$5 billion and \$9 billion. The Council of Europe states that people trafficking has reached epidemic proportions over the past decade, with a global annual market of about \$42.5 billion. Trafficking victims typically are recruited using coercion, deception, fraud, the abuse of power, or outright abduction. Threats, violence, and economic leverage such as debt bondage can often make victim consent to exploitation.

Transcending national boundaries and involving organised crime syndicates, trafficking in human beings is posing a challenge to law enforcement agencies across the world. According to estimates by the United States Government, trafficking, involving one million people, is going on across international borders every year.

In Bangladesh the issue is alarming. The new government should take immediate action in protecting the survivors of human trafficking. This can be done in the following ways:

- Raising awareness amongst potential victims in particular areas where human traffickers are active.
- Raising awareness amongst police, social welfare workers and immigration officers.



signs of a human trafficking victim.

Mohammad Shahidul Islam, Tourism Worker.

HUMAN RIGHTS *monitor*

Concerns over Rohingya and Bangladeshi "boat people"

About 100 civil society organisations have signed the "Statement on the Treatment of Rohingya and Bangladeshi 'Boat People' in Asia", issued on 7 February 2009. Expressing their concerns about the treatment of Rohingyas from Burma and migrants from Bangladesh, they called upon the governments of Burma, Thailand, Indonesia, India, Bangladesh and beyond to secure their status and protect their rights. An abstract of the statement, originally written by members of the Asia Pacific Refugee Rights Network (APRRN), is provided below.

"We ... are extremely concerned about the treatment of over a thousand Rohingyas from Burma and migrants from Bangladesh who have been forcibly expelled and abandoned in international waters by the Thai security forces since December 2008.

Over the past few weeks, several boats have been rescued off the coasts of

Indonesia and the Andaman Islands of India. Survivors tell of having been detained in Thailand, beaten, and towed out to sea on boats without engines or sufficient food and water. Several hundred remain missing and are feared dead.

We are also concerned about the fate, including possible refoulement, of the Rohingyas who remain in detention in Thailand, Indonesia and India. If Rohingyas are returned to Burma they could face widespread human rights violations, including forced labour, forced eviction, land confiscation and severe restrictions on freedom of movement. Refoulement of such individuals is prohibited under customary international law.

Background

Over the past two years, the number of people leaving Bangladesh and Burma by boat for Southeast Asia has grown. They

have fled in search of protection, safety and/or work. Most are Rohingyas, a Muslim minority from western Burma.

The Rohingyas have been rendered stateless in Burma and have experienced systematic discrimination, exclusion, and human rights violations in Burma for decades, prompting hundreds of thousands to seek refuge in neighbouring countries, most notably Bangladesh, Malaysia and Thailand. Most are without legal status and are vulnerable to arrest, imprisonment, detention and deportation.

Aside from the Rohingyas, millions of ethnic minorities and political activists have fled Burma, fearing persecution, violence and human rights abuses.

Specific concerns

We are concerned by the following reports about the Rohingyas:

- The ill-treatment and failure to provide adequate assistance to hundreds who were arrested and detained in Thailand. Since December 2008, those captured at sea by the Thai Navy were directly transferred to the custody of the Thai Army at Koh Sai Daeng. Despite their weak condition, they were not provided with adequate food, were forced to sleep outside under armed guard, and were subject to ill-treatment such as kicking and beatings with a stick. They were then forced to board boats that were not seaworthy, were given inadequate provisions, and then towed out to sea and abandoned.
- Those who initially refused to board the vessel were threatened at gunpoint. Four men were thrown overboard with their hands tied.
- Hundreds, perhaps thousands, remain missing, including children.
- Thailand and Indonesia have announced their intention to deport the Rohingyas in their custody.

We recognise that:

- The Indonesian and Indian governments have conducted rescue at sea operations, providing relief and medical attention to rescued Rohingyas and Bangladeshis.
- On 26 January 2009, the Thai government transferred 78 new arrivals to Police and Immigration authorities rather than the Army.
- The Thai government has indicated that it will postpone the deportation of the 78 Rohingyas arrivals until further investigation of their injuries. The Thai Government has also called for a regional solution to the plight of Rohingyas.

Source: Asian Forum for Human Rights and Development (FORUM-ASIA).

LAW *week*

Anti-terror, RPO Ordinances get cabinet nod

The special cabinet gave final approval to the Anti-Terrorism Ordinance 2008 on 19 February 2009 with provisions for death sentence as maximum penalty or life imprisonment for offences like financing and patronising terrorist activities and murder.

The Ordinance, promulgated by the immediate-past caretaker government, empowers Bangladesh Bank to freeze account of a suspected terrorist and give directives to the banks concerned to take measures against monetary transactions for financing terrorist activities. - *The Daily Star*, 20 February, 2009.

12pc Social Safety Net benefit lost on bribe, flaws

An estimated 11-12 percent fund of the Social Safety Net (SSN) programme is drained out due to various flaws, said a study report of Food and Agriculture Organisation (FAO).

One percent of the benefit is leaked out as bribe, seven percent lost for mal-targeting and three to four percent for receiving less than prescribed amounts.

'Social connection' with local representatives and bribe appeared to be the most important criteria to get benefit of the SSN, making frustrated its main objective to reduce poverty through direct transfer of resources to the poor. - *The Daily Star*, 19 February, 2009.

Local MPs to be made advisers

The government has decided to make the local lawmakers adviser to the Upazila Parishad, a move vehemently opposed by newly elected representatives of the parishad.

It also decided not to approve Local Government Commission Ordinance, 2008, even though experts believe the local government will face a set back if the commission is dissolved. - *The Daily Star*, 19 February, 2009.

Local govt to stay fettered in politics

The efforts to free the local government bodies from political control might go in vain as provisions in the Ordinances concerned requiring the public representatives-elect to resign from their party positions before taking oath are likely to be dropped.

The immediate past caretaker government had three Ordinances proclaimed to define formation and functions of city corporations, municipalities and upazila parishads, repealing the local government laws in force then.

Like the other Ordinances, the three were placed before the House on January 25. They must be ratified within constitution-stipulated 30 days since their placement, or else they will cease to be effective on February 24.

The special committee of the Jatiya Sangsad on Sunday selected two of the three Ordinances -- Local Government (city corporation) and Local Government (municipality) Ordinances -- for ratification. But it did not recommend the other -- Local Government (upazila parishad) Ordinance -- for ratification. - *The Daily Star*, 18 February, 2009.

Time not right to try war criminals!

Visiting Pakistan President's special envoy Zia Ispahani on 16 February 2009 said his country has apologised for the atrocities during the Bangladesh Liberation War.

"Former President Gen Pervez Musharraf apologised when he visited Bangladesh. Our former prime minister also did the same thing," he said without elaborating.

Ispahani, a former ambassador of Pakistan, was talking to reporters after holding a meeting with Foreign Minister Dr Dipu Moni at her office. He said it is not the right time to initiate trial of the 1971 war criminals involving the Pakistani Army, as there are many other issues of cooperation between the two countries. - *The Daily Star*, 17 February, 2009.

54 Ordinances to be made law

The special committee of parliament on 15 February 2009 made its final recommendation for ratifying 54 Ordinances out of 122 promulgated just before and during the immediate past caretaker government.

After an exhaustive meeting in Jatiya Sangsad Bhaban, the committee came up with the final list.

The much talked about Right to Information Ordinance, Human Rights Commission Ordinance, and Consumers Rights Protection Ordinance are on the final list.

The committee decided not to recommend for ratification 68 Ordinances, meaning over a half of the Ordinances will cease to have any effect after 30 days since their introduction to the parliament on January 25.

Among the 122 Ordinances, 119 were promulgated during the immediate past caretaker government and three during the last four-party government. - *The Daily Star*, 16 February, 2009.

Women's Reserved Seats in JS: Direct election next time

The government will amend the constitution to stage direct election to reserved seats for women in the House from the next parliamentary polls, IGRD and Cooperatives Minister Syed Ashrafur Islam said.

"We shall amend the constitution to allow women to come to the House through direct election from the next parliamentary polls," said Ashrafur, also the Awami League (AL) spokesperson, after inaugurating the distribution of party nomination forms for reserved seats for women in parliament.

A total of 188 party nomination aspirants collected forms on the first day from the AL chief's political office in the capital's Dhanmondi. Some of them also submitted the forms.

Ashrafur said the issue of staging direct election to reserved seats for women in parliament is there in the party's election manifesto. The manifesto also said the number of reserved seats for women in parliament will be increased to 33 percent from 15. - *The Daily Star*, 15 February, 2009.

Attorney office won't get right to recruit

The Awami League-led alliance government will not ratify the Attorney Service Ordinance 2008 promulgated by the immediate past caretaker government.

The new Government Attorney Department was set up under the Ordinance which allows it to recruit government attorneys for lower courts.

The caretaker government also had decided to recruit 976 attorneys for lower courts through the Government Attorney Department, sources in the department said.

Some legal experts also hailed the Ordinance saying that appointments of government law officers would be transparent and impartial through the department.

Law, Justice and Parliamentary Affairs Minister Shafique Ahmed recently told *The Daily Star* that the Attorney Service Ordinance 2008 is in contradiction to the Bangladesh Bar Council Order, since the Ordinance allows lawyers to become government attorneys without bar council issued enrolment certificates. - *The Daily Star*, 15 February, 2009.

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The small, dilapidated boat that brought more than 100 Rohingya refugees across the Andaman Sea.