



LAW amusements



Law Hodgepodge

Many years ago, when the death penalty by hanging was still in vogue, a doctor was giving evidence before a judge who had already heard contrary evidence from other doctors. The judge asked the doctor if he was sure of his testimony in light of the evidence from the other doctors.

"I am quite certain, my lord," said the doctor.
 "Doctors sometimes make mistakes," said the judge.
 "Lawyers do too, my lord," came the retort from the witness.
 "Ahh, but doctors' mistakes are buried," answered the judge.
 "That is true, my lord, but lawyers' mistakes frequently swing!"

An American judge gave a horse thief a stiff and long prison term; ten years of hard labour.

"Have you got anything to say before you are removed," asked the judge.

"Nothin', judge, 'cept that yer pretty darn liberal with other people's time!"

One judge became frustrated with a lawyer's arguments and he pointed to one of his ears and then to the other and said: "what you are saying is just going in one ear and out the other."

"My lord," replied the lawyer, "I do not doubt it. What is there to prevent it?"

"Your lordship," pleaded a witness. "You may or may not believe me but I have told the truth. I have been wedded to truth since infancy."

"Yes," replied the judge, "But how long have you been a widower?"

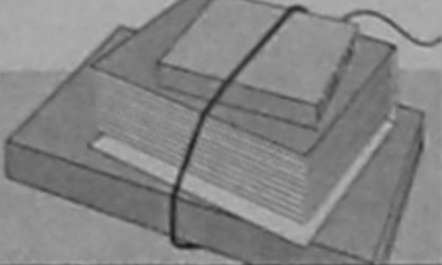
The French Emperor Napoleon commissioned the Napoleonic legal code of which he was proud.

"My code is the sheet anchor which will save France," he claimed. "And it will entitle me to the benedictions of posterity."

But Napoleon did not really like lawyers. He once said, "the practice of the law is too severe an ordeal for poor human nature. The man who habituates himself to the distortion of the truth, and to exultation at the success of injustice will, at last, hardly know right from wrong."

Source: www.duhaime.org

LAW lexicon



- Recuse** - The process by which a judge is disqualified from hearing a case, on his or her own motion or upon the objection of either party.
- Re-direct examination** - opportunity to present rebuttal evidence after one's evidence has been subjected to cross-examination.
- Redress** - To set right; to remedy; to compensate; to remove the causes of grievance.
- Referee** - A person to whom the court refers a pending case to take testimony, hear the parties, and report back to the court. A referee is an officer with judicial powers who serves as an arm of the court.
- Rehearing** - Another hearing of a civil or criminal case by the same court in which the case was originally heard.
- Registered mark** - Trademark with the words "Registered in the U.S. Patent and Trademark Office" or the letter "R" enclosed within a circle.
- Rejoinder** - Opportunity for the side that opened the case to offer limited response to evidence presented during the rebuttal by the opposing side. (See rebut.)

Source: Jurist International

LAW FOR everyday life

Laws relating to mutiny

IN the context of criminal law, mutiny refers to an insurrection of soldiers or crewmembers against the authority of their commanders. The offence is similar to a revolt or an incitement to revolt against established authority, punishable by both state and federal laws. It may also be defined as a conspiracy among members of a group of similarly situated individuals (typically members of the military; or the crew of any ship, even if they are civilians) to openly oppose, change or overthrow an existing authority. The term is commonly used for a rebellion among members of the military against their superior officer(s).

The following are legislations, which set the parameters of mutiny and illustrate the law regarding the issue in the Bangladesh.

The Penal Code, 1860
 Chapter I
Certain laws not to be affected by this Act
 5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Republic, or of any special or local law.

Chapter VII
 Offences relating to the army, navy and air force

Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty

131. Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of Bangladesh, or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with imprisonment for life, or with imprisonment for either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation - In this section the words "officer", "soldier", "sailor" and "airman" include any person subject to the Army Act, 1952 or the Navy Ordinance, 1961 or the Air Force Act, 1953, as the case may be.

Abetment of mutiny, if mutiny is committed in consequence thereof

132. Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of Bangladesh, shall, if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment for life, or imprisonment for either description for a term which may extend to ten years, and shall also be liable to fine.

Chapter XXII
 Of criminal intimidation, insult prejudicial act and annoyance

Statements conducing to public mischief

505. Whoever makes, publishes or circulates any statement, rumour or report,



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lates any statement, rumour or report,

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of Bangladesh to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the state or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community; or

(d) with intent to create or promote, or which is likely to create or promote, feelings of enmity, hatred or ill-will between different communities, classes or sections of people.)

Exception - It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.

The Criminal Law Amendment Act, 1938

Dissuasion from enlistment and instigation to mutiny or insubordination after enlistment

2. Whoever -

(a) with intent to affect adversely the recruitment of persons to serve in the Military, Naval or Air Forces of Bangladesh, wilfully dissuades or attempts to dissuade the public or any person from entering any such Forces, or

(b) without dissuading or attempting to dissuade any person from entering such Forces, instigates the public or any person to do, after entering any such Force, anything which is an offence punishable as mutiny or insubordination 2[31 of the Army Act, 1952, or sections 36, 40 and 41 of the Navy Ordinance, 1961, or sections 37 and 42 of the Air Force Act, 1953], as the case may be,

shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

No person shall be prosecuted for any offence under this Act except with the previous sanction of the Government.

Exception 1 - The provisions of clause (a) of this section do not extend to comments on or criticism of the policy of Government in connection with the Military, Naval or Air Forces, made in good faith without any intention of dissuading from enlistment.

Exception 2 - The provisions of clause (a) of this section do not extend to the case in which advice is given in good faith for the benefit of the individual to whom it is given, or for the benefit of any member of his family or of any of his dependants.

(... to be continued)

Source: Ministry of Law, Justice and Parliamentary Affairs Compiled by Lawdesk

LAW week



100 JS reserved seats pledged for women

Prime Minister Sheikh Hasina yesterday said the number of reserved seats for women in parliament would be 100 from 45 at present, with provision of direct voting. She also declared that the government will repeal all the existing laws that discriminate against women. The prime minister announced her government's major plans while addressing the inaugural ceremony of the International Women's Day at Osmani Memorial Hall in the capital. "We will reintroduce the National Women Development Policy adopted during the last Awami League government's tenure. We gave nomination to maximum number of women for contesting the December 29 polls," Hasina said. "A maximum number of women have also been inducted in the cabinet. We believe in political empowerment of women to ensure their social dignity and contribution to economical activities," the premier told her audience. In line with the constitution, the government is committed to establishing women's rights and stopping violence against them, she said. -The Daily Star, March 09, 2009.

Desperate bid for judicial power

Executive magistrates, cadres of the admin service, are pressing hard for getting back the power to take cognisance of offences for trial. They lost the authority in separation of the judiciary from the executive in 2007. Leaders of Bangladesh Administrative Service Association are lobbying government policymakers to meet the demand, said sources.

They are trying to convince the high-ups that the executive magistrates should be able to take judicial note of some offences to 'keep the administration active and promote good governance'. If the magistrates from admin are authorised to take cognisance of offences, the judicial magistrates will complete the rest of the trial proceedings. The cognisance signifies acceptance of an offence to be sent for trial. Bangladesh Judicial Service Association says returning the authority to executive magistrates would undermine the spirit of an independent judiciary. Administrative service leaders have already met members of the parliamentary standing committee on law, justice and parliamentary affairs, and requested them to reinstate the executive magistrates' cognisance power.

The standing committee, assigned to scrutinise the bill to introduce laws on separation of the judiciary, will hear both sides at a meeting today, said Abdul Matin Khasru, a member of the committee and former law minister. -The Daily Star, March 09, 2009.

Sentenced in absentia

At least 15 people including some high-profile politicians, who have been sentenced to imprisonment in absentia in different criminal cases, are now in the country, but not on bail or in jail. Attorney General Mahbubey Alam has termed their legal status as a "peculiar situation", while some other legal experts said the convicts now seem to be above the law and it is not a good sign for the society. They said the convicts will remain in this situation until a special bench of the High Court (HC) constituted by the chief justice delivers the final decision on their bail petitions. A division bench of the HC on February 23 delivered split orders on whether these people can directly come to the HC for bail without surrendering to the trial courts. Following the dissenting orders, the bail petitions have been sent to the chief justice for constituting a special bench of the HC for the final decision, sources said, adding that the chief justice has not constituted the special bench yet. -The Daily Star, March 10, 2009.

40 BDR men found directly involved

Investigators have found direct involvement of 40 members of Bangladesh Rifles (BDR) so far in the bloody massacre and looting inside the Pilkhana BDR Headquarters during the February 25-26 mutiny. The Rapid Action Battalion (Rab) yesterday handed over 12 out of those 40 border guards to Lalbagh Police Station in connection with the mutiny case filed with the police station, said a top law-enforcing official involved in the investigation of the case wishing anonymity. Meanwhile, Pesh Imam of BDR central mosque Mohammad Siddiqur Rahman, a witness to the carnage in Pilkhana, died at the Dhaka Medical College Hospital (DMCH) yesterday afternoon after he fell sick during interrogation. Those who were found embroiled in the massacre are BDR Subedar Gofran Mallik, Havildar Rezaul Karim, Lance Nayek Gausu Azam, Lance Nayek Yusuf Ali, Sepoys Joyanta Kumar Sarkar, Zamir Ali, Abdul Latif, Sohrab Hossain, Ismail Hossain, Shariful Islam, Rafiqul Islam and Masudur Rahman. The top law-enforcing official said they had recovered firearms and grenades looted from the BDR headquarters from the village homes of Rafiqul, Shariful and Yusuf. -The Daily Star, March 12, 2009.

HC issues suo moto

The High Court (HC) yesterday issued a suo moto rule on the government to explain by March 19 why the ordinance regarding separation of judiciary was not ratified in parliament on time. Questioning the legality of judicial magistracy, the HC asked the law secretary and the Supreme Court registrar to explain under which legal authority judicial magistrates are functioning after February 24, the day the Criminal Procedure Code (CrPC) (amendment) Ordinance expired. The HC bench of justices ABM Khairul Haque and Md Abdul Hye issued the rule following a writ petition filed by Naboti Ranjan Chakma. The immediate past caretaker government promulgated two ordinances in April 2007 amending the code of criminal procedure to separate the judiciary from the executive. In the rule, the HC said the CrPC (amendment) Ordinance 2007 was not passed in parliament in 30 days after it was placed in the House. The ordinance expired on February 24, according to section 93 of the constitution which says any ordinance will cease to have effect if not passed in the parliament in 30 days after the session begins.

During hearing of the writ petition, the HC bench sought opinions from advocate Mahmudul Islam and Dr M Zahir, who were members of the government-formed special committee on the ordinances. They told the court that they suggested passage of the ordinance in parliament. -The Daily Star, March 12, 2009.

HUMAN RIGHTS monitor

Women and violence

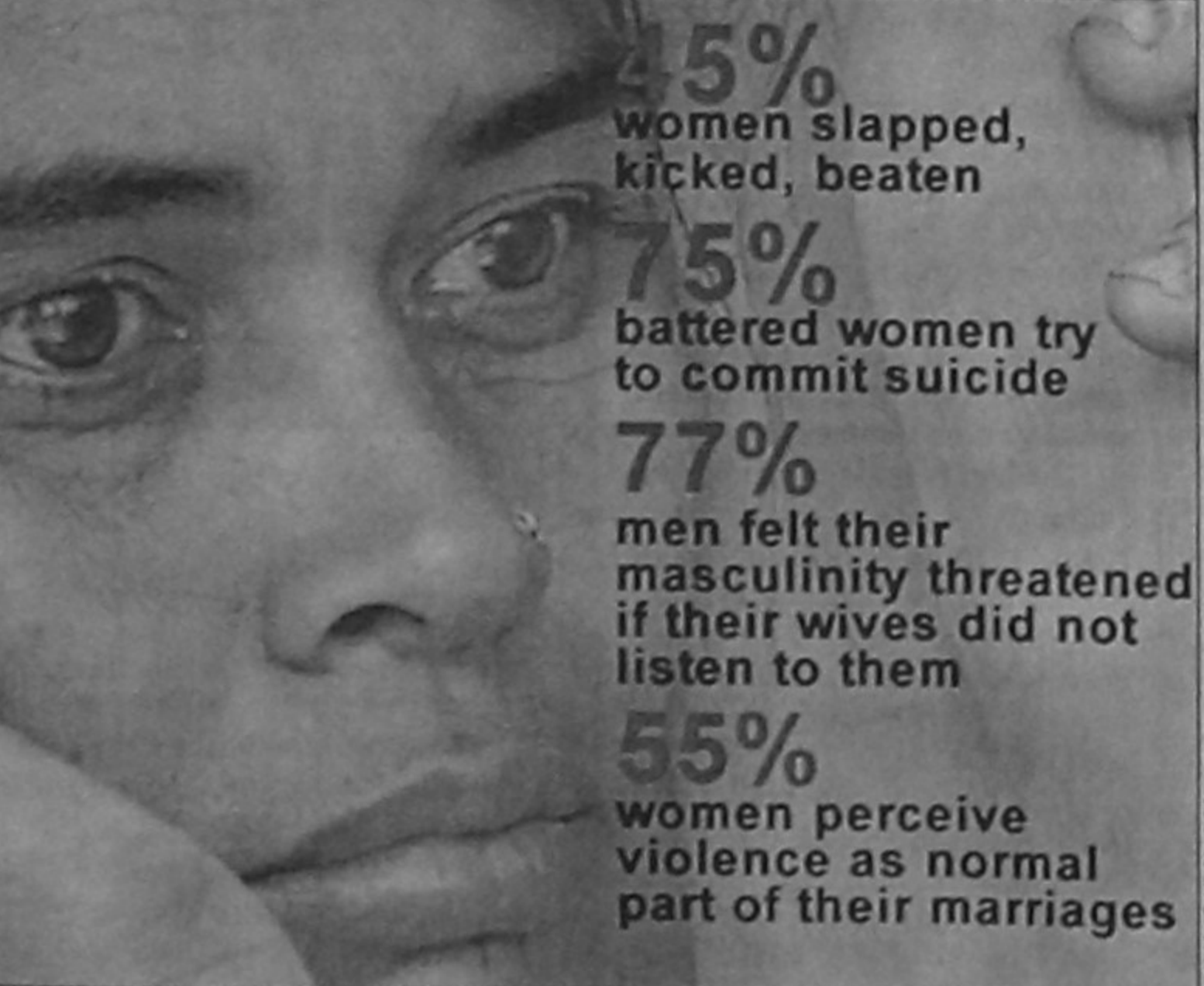
VIOLENCE affects the lives of millions of women worldwide, in all socio-economic and educational classes. It cuts across cultural and religious barriers, impeding the right of women to participate fully in society. Violence against women takes a dismaying variety of forms, from domestic abuse and rape to child marriages and female circumcision. All are violations of the most fundamental human rights.

stances, be considered genocide. Some females fall prey to violence before they are born, when expectant parents abort their unborn daughters, hoping for sons instead. In other societies, girls are subjected to such traditional practices as circumcision, which leave them maimed and traumatized. In others, they are compelled to marry at an early age, before they are physically, mentally or emotionally mature.

crime -- and could, under certain circumstances, be considered genocide. More women today were suffering directly from the effects of war and conflict than ever before in history. There is a deplorable trend towards the organized humiliation of women, including the crime of mass rape. International legal action ought to be pressed against those who perpetrate organized violence against women in time of conflict."

only takes place: Physical, sexual and psychological violence that occurs in the family, including battering; sexual abuse of female children in the household; dowry-related violence; marital rape; female genital mutilation and other traditional practices harmful to women; non-spousal violence; and violence related to exploitation; Physical, sexual and psychological violence that occurs within the general community, including rape; sexual abuse; sexual harassment and intimidation at work, in educational institutions and elsewhere; trafficking in women; and forced prostitution;

system and Member States should work towards the elimination of violence against women in public and private life; of all forms of sexual harassment, exploitation and trafficking in women; of gender bias in the administration of justice; and of any conflicts arising between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.



Three areas of concern where women are particularly vulnerable: in the family (including domestic violence, traditional practices, infanticide); in the community (including rape, sexual assault, commercialised violence such as trafficking in women, labour exploitation, female migrant workers etc.); and by the State (including violence against women in detention as well as violence against women in situations of armed conflict and against refugee women).

Defining gender-based abuse

The Declaration on the Elimination of Violence against Women is the first international human rights instrument to exclusively and explicitly address the issue of violence against women. It affirms that the phenomenon violates, impairs or nullifies women's human rights and their exercise of fundamental freedoms.

The Declaration provides a definition of gender-based abuse, calling it "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life". The definition is amplified in article 2 of the Declaration, which identifies three areas in which violence com-

monly takes place: Physical, sexual and psychological violence that occurs in the family, including battering; sexual abuse of female children in the household; dowry-related violence; marital rape; female genital mutilation and other traditional practices harmful to women; non-spousal violence; and violence related to exploitation;

Groundwork is laid in Vienna

The importance of the question of violence against women was emphasized over the last decade through the holding of several expert group meetings sponsored by the United Nations to draw attention to the extent and severity of the problem. In September 1992, the United Nations Commission on the Status of Women established a special Working Group and gave it a mandate to draw up a draft declaration on violence against women.

The following year, the United Nations Commission for Human Rights, in resolution 1993/46 of 3 March, condemned all forms of violence and violations of human rights directed specifically against women. The World Conference on Human Rights, held in Vienna in June 1993, laid extensive groundwork for eliminating violence against women. In the Vienna Declaration and Programme of Action, Governments declared that the United Nations

The document also declared that "violations of the human rights of women in situations of armed conflicts are violations of the fundamental principles of international human rights and humanitarian law", and that all violations of this kind -- including murder, systematic rape, sexual slavery and forced pregnancy -- "require a particularly effective response".

Criminalise violence against women

States should ensure that national legislation, once adopted, does not go unenforced. State responsibility is clearly underlined in article 4 of the Declaration on the Elimination of Violence against Women, which stipulates that "States should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons".

Any approach designed to combat violence must be twofold, addressing the root causes of the problem and treating its manifestations. Society at large, including judges and police officers, must be educated to change the social attitudes and beliefs that encourage male violence.

Violence against women is a universal problem that must be universally condemned. The problem continues to grow. Violence against women constitutes a violation of basic human rights and is an obstacle to the achievement of the objectives of equality, development and peace.

Incest, rape and domestic violence
 Rape in armed conflict is a war crime -- and could, under certain circum-

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