



LAW amusements



Outrageous Lawsuits

Attorney Initiative

Ron Goldman was on his way home from his restaurant job on June 12, 1994, when he stopped at the home of Nicole Simpson to return a pair of glasses she had left there.

Attorney Nick O'Malley has recently filed a worker's compensation claim on behalf of the O. J. Simpson murder victim, using an obscure legal principle that allows private citizens to take legal action on behalf of the state.

Because Goldman had no fund for injured workers; O'Malley could keep up to 15 percent of the money.

Goldman's father dismissed the claim as a "scam," while the family's attorney, called it "one of the most despicable things I've seen." (Source: CNN News)

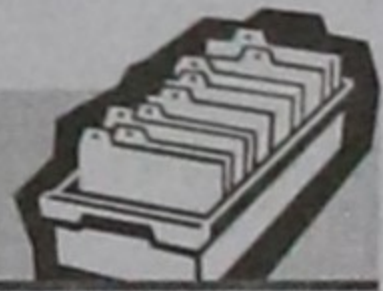
Top 10 List

In August of 1995, Florida's then-Attorney General Bob Butterworth released a "Top 10" list of his Department of Corrections inmate litigation:

- Prisoner claims discrimination because he was not given a Department of Corrections raincoat like other inmates.
- Prisoner sues to be served fresh rather than reconstituted milk.
- Prisoner sues for right to conduct martial arts sparring and full-contact fighting as part of his religion.
- Prisoner sues over being served three cheese sandwiches a day for one week while in disciplinary confinement.
- Prisoner sues because he was required to eat off of a paper plate.
- Prisoner who has filed more than 140 actions in state and federal court sues over finding gristle in his turkey leg.
- Prisoner sues to be served fruit juice at meals and three pan-cakes instead of two.
- Prisoner who murdered five people sues after lightning knocks out the prison's TV satellite dish and he must watch network programs which he says contain violence, profanity and other objectionable material.
- Prisoner sues to be given Reeboks, Adidas, Pony or Avia brand high tops rather than inferior brand sneakers issued by prison.
- Prisoner who lost a lawsuit claiming his rights as a Muslim were violated because the prison put "essence of swine" in his food announces his conversion to Satanism and sues for tarot cards and doves' blood.

Source: www.duhaime.org.

FACT file



Migrants detained without reason

THE Asian Human Rights Commission (AHRC) on 8 May had issued a statement exposing the controversial steps taken by the Rajasthan state government in the excuse of ensuring security in the state. The statement also highlights the misuse of Section 109 of the Criminal Procedure Code, 1973 by the law enforcement agencies, including the judges and lawyers.

This provision of law is misused by the authorities, particularly the police and the Executive Magistrates, to lock up the poor migrants who come to the cities in India seeking employment and to escape from poverty, starvation and caste and religion based discrimination in rural India. Unfortunately for many, what awaits them in the city is the brute misuse of law and procedures by the authorities, with which they imprison individuals without any due process of law and with impunity.

The practice in Rajasthan, as highlighted in the AHRC statement, is not unique for that state. Innocent persons, imprisoned for having committed no offense at all, are found in prisons throughout the country. Many of them first enter the detention centres at a relatively young age, for having committed no offense other than coming to the city and finding a job that would not provide them a decent place to sleep during the night.

Inside the detention centres, the detainees are inhumanly treated, threatened and humiliated that prepares many of them to begin a career of crime. Inside the prisons in states like Kerala, these detainees are the candidates who are later recruited to commit crimes for political parties. Once indoctrinated and offered the possibility of release and thus freedom, they are sent



out of custody to commit murders and other crimes for political parties. The Kanoor Central Prison in Kerala alone houses more than 100 such detainees.

The best time in the lives of these young men is thus spent twiddling their thumbs or being bullied by other inmates convicted for serious crimes, who are actually ruling the roost. It is an irony of reality that the Warders depend on these convicted inmates for enforcing discipline and to maintain the 'law and order' in the barracks and on the campus.

Even if they write a post-card gifted by some voluntary agency, they are not sure whether it would be posted. This has nothing to do with censoring of correspondence of the inmates. No one really has time for the inmates. The easiest thing for the prison officials is to just shove the post-cards into the garbage. Of the two Warders, who are supposed to assist the Jailor, one is rarely seen on the campus, the other busies himself attending to the paper work.

There is no law in India that allows the police or a Magistrate to detain persons arbitrarily.

None of them are provided any legal representation. In fact not many in the city are aware that innocent persons are detained in the Borstal. Alam and his friends in the Borstal are aware that even if they are sent out, the society will not accept them as ordinary innocent individuals who have been sent to jail for no purpose. Due to this stigma, the possibilities of Alam and his friends being any further employed in the city are also remote. It must not be a matter of surprise, if some among the 31 innocent inmates at the Borstal, upon release, resort to making a living by committing crimes.

It is just not a mere irony that a correction system, intended to reduce crime in the society, in fact due to its misuse, creates criminals. The state as well as the central administration cannot absolve themselves from the responsibility in this process of absolute miscarriage of justice. The practice of arbitrarily detaining innocent persons is a violation of the domestic laws in the country, particularly the Constitution and India's commitment to international human rights norms, specifically to those India has affirmed allegiance to and are contained in the International Covenant on Civil and Political Rights.

Source: The Asian Human Rights Commission (AHRC).

LAWS FOR everyday life

What is extortion?

MOST states define extortion as the gaining of property or money by almost any kind of force, or threat of violence, property damage, harm to reputation, or unfavourable government action. This is a felony. While usually viewed as a form of theft/larceny, extortion differs from robbery in that the threat in question does not pose an imminent physical danger to the victim. A direct threat to harm an individual is treated as the crime of robbery. Blackmail is a form of extortion when the threat to make embarrassing or damaging information public. The following are national legislations that define and provide the provisions of penalty once charged with committing extortion.

THE PENAL CODE, 1860

Chapter XVII - Of offences against property

383. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to give donation or subscription of any kind or to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Example

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement unless Z will sign and deliver to A a promissory note binding Z to pay certain money to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B and bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

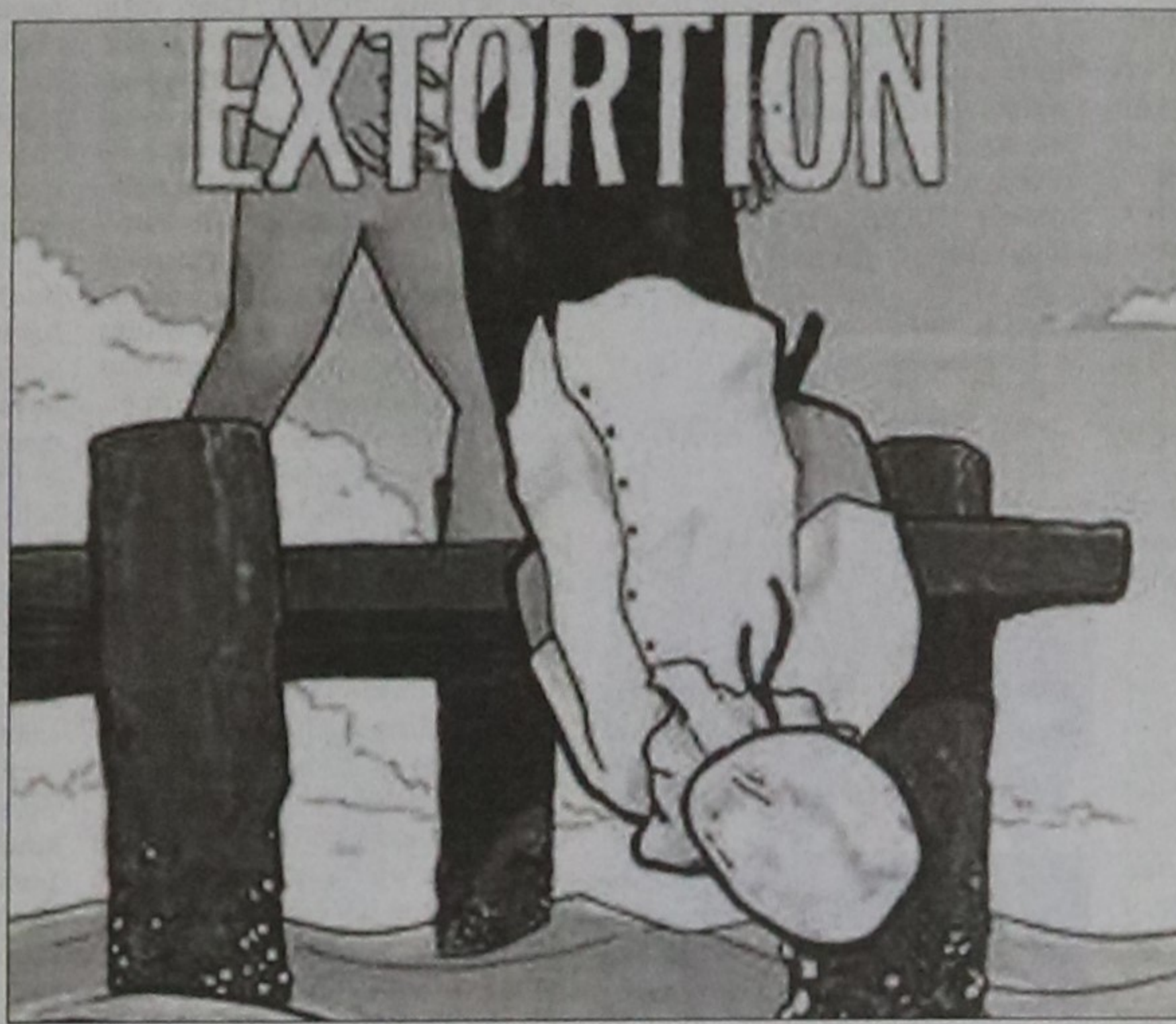
(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

Putting person in fear of injury in order to commit extortion

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to fourteen years and shall not be less than five years, or with fine, or with both.

Putting person in fear of death or of grievous hurt, in order to commit extortion

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment for life and shall not be less than seven years, and shall also be liable to fine.



Putting person in fear of accusation of offence in order to commit extortion

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with imprisonment for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life.

When extortion is robbery

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation - The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Example (a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high road, shows a pistol, and demands Z's purse, Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z deliver his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying - "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand taka". This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

- Compiled by Law Desk.

LAW letter

Legal education for pro-poor lawyering

The legal education in Bangladesh is still lying in the traditional footing given its curricula, teaching methods, orientation to research and students' exposure etc. Legal research and publications both in academic and non-academic levels are also in a pity condition. There is no institute devoted to specialized law course and research aiming to higher degrees and quality publications. Also, studying a complete human rights programme which is considered as a complementary part of legal education are yet to be rolled out.

Few of the training institutes or centers whatever are there lack standard setting and sustainability in terms of their goals, objectives, area of works and activities apart from having lack of permanent faculties and researchers, research programmes and publications of a standard level. We are yet to have an institute in the area of law and human rights with an international reputation which even people in Nepal (i.e. Katmandu Law School) already have. An ADB-sponsored study depicts the gloomy picture of the legal education here as well.

There are mainly three (except distance/correspondence course of few foreign universities) flows of legal education. There are four-year LL.B (Honours) and Master programme at four public and a dozen private universities. Private law colleges under the National University offer a two-year LL.B. (Pass) programme. Private Universities also add this LL.B. (Pass) course in their run.

However, there are lot of criticism in terms of the standard and quality of degrees in the field of law offered by the private universities (except a very few). It also goes for law colleges. There is no effective monitoring and quality assurance mechanism or activities either from the University Grants Commission or from the Bangladesh Bar Council.

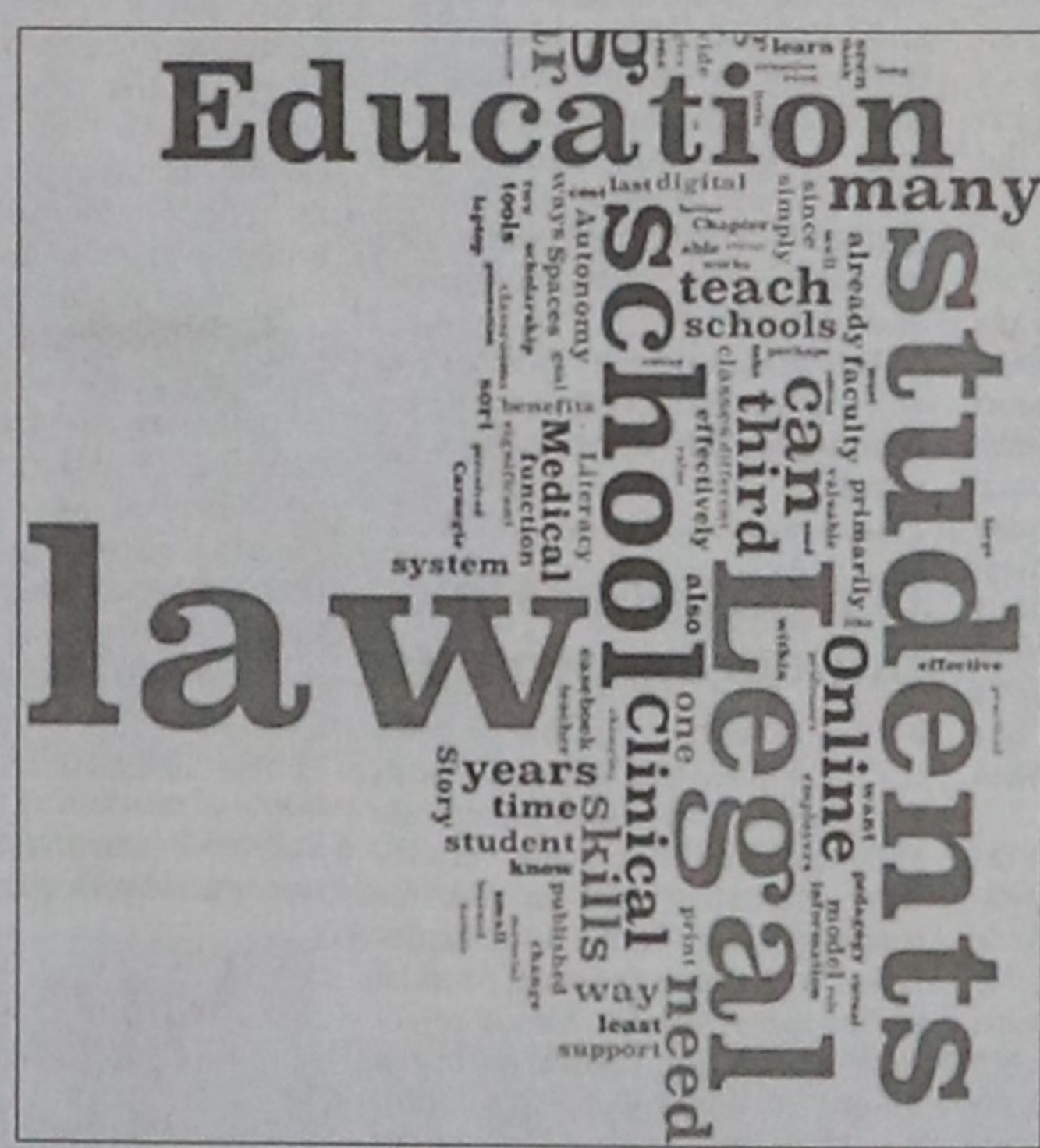
The Government and its relevant machineries are apparently reluctant in this regard. We are yet to have any public law colleges in the country which could set a trend for quality legal education. Unfortunately, the "renewed legal academics" few of those are here and the "famed legal practitioners" hardly have time and come forward to initiate a trend setting institute for legal education and research here. (Recently, we have heard about an initiative regarding South Asian Institute of Advanced Legal and Human Rights Studies-SAIALS under the leadership of Dr. Kamal Hosain in Bangladesh).

We have also not come to know about any serious effort undertaken so far by Bangladesh Bar Council (which is a statutory body to oversee quality of legal education and set out standard for legal profession among others). Few of the private universities who have set a trend for standard of quality education in other disciplines like business management or computer sciences but did not venture for introducing programmes on law or human rights.

Given ours if we look in the Indian context, it (India) is far ahead in legal and human rights education and research. It has now dozens of national law universities or schools of international repute at places like Bangalore, New Delhi, Kolkata, Bhopal, Gujrat, Hyderabad, Jodhpur, and Pune.

India has started its trend setting move for modern legal education and research through establishment of the National Law School of India University (NLSIU) sponsored by the Bar Council of India back in 1988. NLSIU aims to provide high-quality legal education. For this it has forged unique partnership with the Bar, the Bench and the Academia. Right from its inception, leading lawyers, academicians and judges have associated with NLSIU in different ways.

The five-year B.A., LL.B. (Hons.) programme offered by the



NLSIU integrates legal studies with that of four social science subjects. It includes History, Political Science, Economics and Sociology.

The West Bengal National University of Juridical Sciences (WBNUJS) established in 1999 is another landmark in Indian legal education and research. The WBNUJS aims to: (i) Advance and disseminate learning and knowledge of law and legal processes and their role in national development, (ii) Promote legal knowledge and to make law and the legal process efficient instruments of social development, (iii) Develop in the student and research scholar a sense of responsibility to serve society in the field of law by developing skills with regard to advocacy, legal service, legislation, law reforms and the like, and (iv) Promote inter-disciplinary study of law in relation to management, technology, international cooperation and development.

The WBNUJS is running through different schools like Criminal Justice and Administration, Economic and Business Laws, Legal Practice and Development, Private Laws and Comparative Jurisprudence, Public Law and Governance, Social Sciences, and Technology, Law and Development. As envisioned by Dr. Mizanur Rahman, Professor of Law at the University of Dhaka there is a dire need for pro-poor lawyering and justice system in Bangladesh. For this a overhauling is due in the legal education system (legal system as well).

If we want to have the rule of law in the country, it is the desired expectation anyway, there is no other alternative but to expand opportunities for quality legal education as argued by one of our renowned lawyer-cum-academician some time back. Quality law and human rights education could contribute to promotion and protection of human rights, rule of law, democracy and development. And it's high time to initiate this.

Uttam Kumar Das

PhD, legal researcher and practitioner.

LAW week



Probe body summons Sircar, Akhtar, Delwar

The all-party parliamentary body probing alleged graft in parliament secretariat yesterday summoned former speaker Jamiruddin Sircar, his deputy Akhtar Hamid Siddiqui and former chief whip Khandaker Delwar Hossain to appear before it on June 10.

Before hearing the three, the committee will meet on May 31 to discuss the findings of the three sub-committees formed to investigate the allegations of anomalies and corruption during the seven years' tenure of Sircar. At a meeting yesterday, the probe committee accepted reports of two sub-committees. Of the two reports, both submitted on May 5, one recommends taking stern legal measures against the three for drawing over Tk 35 lakh as medical expenses violating laws. - *The Daily Star*, May 15, 2009.

Army investigation restricted, many finds inconclusive

Mainly the pent-up grievances among the BDR rank and file over many issues, including Operation Dal Bhat, inside the BDR led to the Pikhana carnage, according to sources.

The carnage at BDR headquarters on February 25-26 left 74 people dead including 57 army officers. Sources involved in the army investigation said there were no conclusive findings of external parties plotting the carnage.

Analysing the incident it was perceived that some external parties might have used the soldiers' grievances to serve their own interest. The 20-member army probe committee headed by Lt Gen Jahangir Alam Chowdhury submitted the report to army chief General Moeen U Ahmed Monday.

The reports suggested that a more powerful probe body be formed to investigate the incident and the culprits be tried under army rules.

It said only 30-35 BDR jawans and clerks started the killings. Sources said since the probe was only a departmental investigation, its terms of reference were not like those of other probe bodies'. Due to this, the committee was unable to collect information and follow clues that might reveal involvement of civilians and political leaders in the carnage or verify information.

Sources said the committee could not record statements of civilians particularly politicians even though some names had come up during investigation. It refrained from looking for details about some unanswered issues though it had some information and clues in this regard. The committee, however, gave its views and ideas on these unsolved issues in brief. - *The Daily Star*, May 15, 2009.

HC lays down guidelines on sexual harassment

The High Court (HC) yesterday issued a set of guidelines defining sexual misdemeanours to prevent any kind of physical, mental or sexual harassment of women, girls and children at their workplaces, educational institutions and other public places including roads across the country. - *The Daily Star*, May 15, 2009.

War crime case against Ghulam Azam, others withdrawn

The civil suit seeking a court order declaring Jamaat-e-Islami's iconic leader Ghulam Azam and 35 others war criminals was withdrawn yesterday by the plaintiffs.

In defence of the withdrawal of the suit, Dhaka District Chief Government Pleader (GP) Fakir Delwar Hossain said the civil court dealing with the suit has no jurisdiction to mete out exemplary punishments to the defendants, even if they were proven guilty.

"The court could have only declared them war criminals on the basis of documents submitted by the plaintiffs," said Delwar, who on government directives pursued the private litigants to withdraw the case. The petition submitted by the plaintiffs to the court seeking withdrawal of the case, said the government already initiated steps to try war criminals under the International Crimes (Tribunal) Act 1973 by setting up special tribunals, and the plaintiffs considered the government efforts reasonable.

According to the international crimes act, upon conviction of a war criminal, the tribunal is supposed to sentence the convicted to any punishment proportionate to the gravity of the crime as appears to the tribunal to be just and proper, including death. - *The Daily Star*, May 14, 2009.

Quick disposal of acid attack cases planned

Monitoring cells would be formed at district levels for quick disposal of acid-violence cases, said Home Minister Sahara Khatun yesterday. "Normally the acid-violence cases take time delaying acid-victims justice."

A national monitoring cell has already been formed in this regard headed by a joint secretary of the home ministry and such cells would be formed at district levels as well," she said at the first international conference of Acid Survivors Foundation (ASF) yesterday afternoon.

Talking about the work of ASF for acid-victims, the minister said the government would offer them all kinds of possible support to help acid-crime survivors. She said Bangladesh could be an example for the world by reducing acid violence. She urged all to be united against the brutal crime. - *The Daily Star*, May 13, 2009.

Third HC bench embarrassed

Yet another High Court (HC) bench yesterday felt embarrassed to hear BNP Chairperson Khaleda Zia's writ petition challenging the legality of the government decision to cancel allotment of her cantonment residence. - *The Daily Star*, 11 May, 2009.

Shake-up in police

35 high officials transferred

In a latest reshuffle in the police administration, a total of 35 high police officials including two additional deputy inspector generals were transferred.

Of the transferred officers, 33 are superintendents of police (SP), Kamrul Hasan, public relations officer of Bangladesh police, told *The Daily Star* yesterday. - *The Daily Star*, 11 May, 2009.

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