



## LAW amusements



## Surreal law facts

The truth is always stranger than fiction.

## A whole code of law in rhyme

Joseph Henri Flacon Rochelle was born in Paris on October 8, 1781 and died on May 27, 1834. The son of a lawyer, he, too, was a lawyer but also a playwright.

He grew up under the auspices of a new Civil Code in France (1804) and when he found it to be too dry and, well, boring, he rewrote the whole thing... in rhyming verse!

The Code civil des Français mis en vers avec le texte en regard was published in 1805 and Mr. Flacon Rochelle signed it "J.H.E.R.". Still, today, the book is listed for sale at Amazon.fr.

## Murderer dying in style

Horne's Ride William Andrew Horne was a rich but very unpopular resident of Nottingham, England, circa 1729. He had a long rap sheet but managed to avoid long jail terms or the hangman's noose until he was 74 years old. In 1724, while he was but a young man, he and his brother had Charles killed their infant niece but the brother kept William's secret even though William let his brother live in poverty.

But eventually, Charles' secret was let out. William Horne was arrested, tried, convicted of murder, and sentenced on August 10, 1759 to be hung on his 74th birthday, December 11, 1759.

But this much-hated man was nonetheless granted a last request. He asked for, and was granted the right to ride his own carriage, driven by his own coachmen, to the gallows on a night so windy that contemporary records say that as he sat in the back seat of his coach, his long hair flapped in the wind well on his way to the gallows.

## Married and crazy

In his 1693 book, A Description of the Western Islands of Scotland, travel author Martin Martin tells of a groom's very strange, and very dangerous condition precedent for marriage, on the Island of St. Kilda, Scotland:

"In the face of the rock, south from the town, is the famous stone, known by the name of the mistress-stone. It resembles a door exactly; and is in the very front of this rock, which is (150 feet; 50 metres) perpendicular in height, the figure of it being discernible about the distance of a mile; upon the lintel of this door, every bachelor-wooer is by an ancient custom obliged in honour to give a specimen of his affection for the love of his mistress, and it is thus; he is to stand on his left foot, having the one half of his sole over the rock, and then he draws the right foot further out to the left, and in this posture bowing, he puts both his fists further out to the right foot; and then after he has performed this, he has acquired no small reputation, being always after it accounted worthy of the finest mistress in the world."

Source: www.duhaime.org.

## LAW lexicon



**Support trust** - A trust that instructs the trustee to spend only as much income and principal (the assets held in the trust) as needed for the beneficiary's support.

**Suppress** - To forbid the use of evidence at a trial because it is improper or was improperly obtained.

**Surety Bond** - A bond purchased at the expense of the estate to insure the executor's proper performance. Also referred to as "fidelity bond."

**Suspension** - A temporary loss of the right to practice law by an attorney.

**Sustain** - A court ruling upholding an objection or a motion.

**Tangible Personal Property Memorandum (TPPM)** - A legal document that is referred to in a will and used to guide the distribution of tangible personal property.

Source: Jurist International.

## Star LAW book review



## Regulations for the discharge of Judicial Duty

Title: Bangladesh Judicial Service (Laws, Rules, Orders, SROs and Circulars)

Author: Barrister Md. Abdul Halim

First Copyright date: April 2009

Price: Tk. 400.00 only

ISBN: 984-300-001859-7

ONE of the earliest laws, dating back to the 19th century, which ensured greater protection of Magistrates and others acting judicially is the Judicial Officers' Protection Act, 1850. It stated that no Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in discharge of his judicial duty, whether or not within the limits of his jurisdiction as long as at the time he believed himself to be in good faith and have jurisdiction to do or order the act complained of. To seize such privilege requires great knowledge. Barrister Md. Abdul Halim's book on Bangladesh Judicial Service provides an initial stepping stone for those newly appointed to carry out the judicial duty.

The author has ventured to publish this book as a ready reference for necessary laws, rules, SROs and circulars which will assist candidates in preparation of their departmental examination and also their day-to-day administration. A special feature of this book is that it is in line with the new syllabus and the needs and demands of newly appointed judges.

The laws of Bangladesh are largely in harmony with the English legal system although since 1947, the legal development and the laws of Bangladesh have drifted far from the West due to difference in socio-cultural values and religious norms. In November 2007, Bangladesh successfully separated the Judiciary from the Executive. The caretaker government headed by Dr. Fakhruddin Ahmed amended the Criminal Procedure Code, 1898 and the lower judiciary was separated from the executive organs of the state.

The book provides the basic laws with regard to the separation of judiciary and newly constituted Judicial Service Commission. These include:

- Bangladesh Judicial Service Commission Rules, 2007;
- Bangladesh Judicial Service (Constitution of Service, Appointment to the Service, Suspension, Dismissal and Removal) Rules, 2007;
- Bangladesh Judicial Service Commission (Posting, Promotion, Grant of Leave, Control, Discipline and other Conditions of Service) Rules, 2007;
- Bangladesh Service (Pay Commission) Rules, 2007;
- Code of Criminal Procedure, 1898 (Amendment) Ordinance, 2007.

By virtue of sub-rule (4) of Rule 6 of Bangladesh Judicial Service (Constitution of Service, Appointment to the Service, Suspension, Dismissal and Removal) Rules, 2007, the competent authority i.e. the Ministry of Law authorised by the President promulgated the Probationer Assistance Judges Training and Departmental Examination Order, 2008 by SRO No. 75-Ain 2008. This service of training and probation matters were regulated by *Munsiffs Training and Probation Rules, 1979*. The Order of 2008 has prescribed new syllabus for departmental examination in its Schedule. No ready reference is available in the market to cater the need of newly recruited assistance judges while preparing for their departmental examination.

In his Preface, the author defines the judicial service by resourcefully quoting the landmark judgement of *Masdar Hossain* case in 1999 by Appellate Division of the Supreme Court. It states that 'the judicial service is a service of the Republic within the meaning of Article 152(1) of the Constitution, but it is

## BANGLADESH JUDICIAL SERVICE

(Laws, Rules, Orders, SROs and Circulars)

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BARRISTER-AT-LAW

CCB FOUNDATION : LIGHTING THE DARK

functionally and structurally distinct and separate service from the civil and administrative services of the Republic with which the judicial service cannot be placed on par on any account and that it cannot be amalgamated, abolished, replaced, mixed up and tied together with the civil executive and administrative services.' [(21 BLD (AD) 126, 52 DLR (AD) 82 (paragraph 76)]

Divided in five chapters, first two chapters of this book deal with mostly laws, rules and SROs contained in the 4th paper for Departmental Examination. To be more specific, Chapter I provides the Departmental Examination Syllabus and Past Papers of the years 1998 to 2007. Chapter II provides laws on 4th paper.

Chapter III contains some relevant laws, which include Commission of Inquiry Act, 1956, Contempt of Courts Act, 1926, Judicial Officers' Protection Act, 1850, Public Servants (Dismissal on Conviction) Ordinance, 1985 and the 2008 Act concerning judicial magistrates.

Chapter IV contains circulars issued by the Supreme Court and Chapter V contains rules with regard to official communications along with some model official letters and communications. The sources and authenticity of information are cited in the relevant Chapter.

This book will surely interest newly appointed judges and will be of great help for its accuracy, objectivity, importance, thoroughness, and usefulness to its intended audience. The new syllabus has brought out a requirement for a new reference book for candidates of the departmental examination. This book precisely and very conveniently caters to the need of newly recruited Assistant Judges or Judicial Magistrates while preparing for their departmental examination as a ready reference book.

Samaha M Karim, Law Desk.

## LAW week



## Govt moves to rev up tardy administration

The government has planned to cut a number of meetings at the Bangladesh Secretariat and declare closed to visitors for two days instead of present one day to speed up administrative functioning, highly placed sources said. The government is considering the options, as no sign of dynamism in the administration is to be found even after six months in power, sources at the secretariat said. - *The Daily Star*, July 23, 2009.

## Court orders probe into looting

The Chief Metropolitan Magistrate Court has ordered enquiry into the case filed in connection with the looting at firms owned by former caretaker government adviser Geetara Safiya Choudhury and her husband former lawmaker Nazim Kamran Choudhury. Abu Rushd Tarek, director of the companies who filed the case, told The Daily Star that the court asked the officer-in-charge of Gulshan Police Station to submit the enquiry report by August 8. - *The Daily Star*, July 23, 2009.

## Passport cheats caught

Detective Branch of Police arrested seven cheats of a gang at a recruiting agency in the city's Banani and seized around 1,400 fake passports and various fake seals and writing pads from their possession. Additional Commissioner Mollah Nazrul Islam of DB told The Daily Star that the cheats had been taking thousands of taka from innocent people who want to go abroad to work through the recruiting agency Kishwa Enterprise. They seized various kinds of seals and writing pads which the criminals used for forging documents to collect money from people. - *The Daily Star*, July 23, 2009.

## Act fast to stop stone extraction

The High Court (HC) directed the government to immediately stop the use of excavator machines in stone-quarries at three rivers in Sylhet to protect the natural eco-system of the rivers, and lives, property and livelihoods of the people living near the rivers. The three rivers Plain, Dwaki and Dhala flow through Goain Ghat and Companiganj upazilas of the district. The HC issued a rule upon the government to explain within four weeks why it (government) should not be directed to protect the rivers from mechanised excavation. - *The Daily Star*, July 21, 2009.

## Hills vanishing in Cox's Bazar

Open spaces in the hotel motel zone of Cox's Bazar beach are being filled with earth from hills, violating the government's order. Sources said workers are carrying earth by digging into hills in broad daylight to fill in the open spaces in absence of an effective monitoring system of the local administration. Hill cutting, one of the key factors responsible for harming the environment and biodiversity of the hilly areas, is prohibited by law. - *The Daily Star*, July 20, 2009.

## Ball back to EC

Speaker Abdul Hamid has finally placed the onus back on the Election Commission to strip BNP lawmaker Salauddin Quader Chowdhury of his parliament membership for violating electoral laws. In a letter dated July 16, the Parliament Secretariat told the EC that scrapping Salauddin's parliament membership on grounds of being disqualified for continuing as an MP does not fall under the jurisdiction of the speaker, officials concerned said. Salauddin concealed educational information in the affidavit he had submitted to the EC at the time of seeking candidacy in the December 29 parliamentary polls, which should disqualify him as a lawmaker. - *The Daily Star*, July 20, 2009.

## Huji managed even a charity licence

Banned Islamist outfit Harkat-ul-Jihad-al Islami set up a charity called Faruqi Welfare Foundation last year to use it as a cover for receiving funds from abroad. The foundation however could not be in operation as it came under intelligence watch a few days after obtaining the certificate from the Registrar of Joint Stock Companies and Firms (RJSC) on June 29 that year. Intelligence officials say the militants founded the charity to secure funds through a way around tight measures against terror financing in the post-9/11 years. - *The Daily Star*, July 19, 2009.

## Malaysia continues its freeze on Bangladesh workers

Malaysia decided to continue the freeze on hiring workers from Bangladesh although it allowed electronics and textile sectors again to recruit foreign workers, reported Malaysian newspaper The Star Online. Earlier, a temporary ban was imposed on these two sectors in recruiting foreign workers. The decision taken at a meeting of the Malaysian cabinet committee on foreign and illegal workers yesterday comes as a blow to the 55,000 Bangladeshi workers whose visas were cancelled by Malaysia early this year on grounds of global economic recession. - *The Daily Star*, July 18, 2009.

## Time extension without any ordinance will be illegal

Any extension for submission of amended party charters to the Election Commission will be illegal if given without an ordinance proclaimed to that effect, Deputy Leader of Parliament Syeda Sajeda Chowdhury observed. "Only the president can promulgate an ordinance to extend the time limit," she added. Sajeda, also presidium member of ruling Awami League, was talking to reporters after a discussion organised by Bangladesh Jatiya Samik Jote at the city's Institute of Engineers. - *The Daily Star*, July 18, 2009.

## Burma trial reaches final stage

The trial of Burmese opposition leader Aung San Suu Kyi is reaching its final stage with the court hearing closing statements from lawyers. Ms Suu Kyi is being tried on charges of violating the terms of her house arrest in May, after a US man evaded guards and swam to her lakeside home.

If convicted she faces up to five years in jail. The trial has been widely condemned as a ploy to keep the Nobel Peace laureate in custody until after elections. This trial, which had been expected to wrap up in days when it started, has now dragged on for more than two months.

In its final summing up in court, the prosecution is expected to restate its argument that she must be held responsible for the midnight swim to her home by an American well-wisher in early May. Her lawyers will argue that the law she has been charged under is part of a constitution abolished 25 years ago, and that in any case she cannot be responsible for the incident as she was living under tightly-guarded house arrest at the time. - *BBC News*

## 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

## RIGHTS corner

## Indigenous Peoples' Rights - Solidarity across borders

AMNESTY International went to a public hearing of the Inter-American Court of Human Rights in La Paz, Bolivia with 400 people from a range of human rights, campesino and Indigenous organizations and social movements.

They went to hear the Paraguayan state held to account for progress it has made in safeguarding the survival of the Sawhoyamaya Indigenous community. Amnesty International has been campaigning with this community since 2008.

The Sawhoyamaya community began the struggle to recover its traditional lands 18 years ago, in 1991. The community numbers between 400 and 500 people and has been forced to live on a narrow strip of land alongside a main highway while awaiting the resolution of their land claim.

In 2006, the Inter-American Court reached its verdict on the case, setting an important international precedent for the protection of Indigenous Peoples' rights. It found that the rights of the Sawhoyamaya including the right to life had been violated. The Court gave the Paraguayan state a period of three years to return the ancestral lands to the Sawhoyamaya Indigenous People. It also ordered the state to undertake a series of measures to ensure their survival in the interim.

It is both the failure of the Paraguayan state to take any serious steps to return these lands by the 19 May 2009 deadline, as well as its failure to provide adequate basic services that led the Inter-American Court to call the state to account for its actions in a second follow-up hearing.

The formality of the hearing with five Court judges and 14 representatives of the Paraguayan state present did not diminish the expectant atmosphere in the room. Representing the Sawhoyamaya was Carlos Marecos, a leader from the community, and



Oscar Ayala, their lawyer and the director of Paraguayan NGO Tierraviva.

Carlos Marecos told the judges "on the issue of our land, there has been no solution as yet... we reject outright [any proposal of] alternative lands, because these lands are non-negotiable".

Indigenous Peoples across the Americas have long experienced marginalization and discrimination. Amnesty International has denounced the persistent and entrenched cycle of deprivation and social exclusion faced by Indigenous Peoples. Faced with a legacy of appalling human rights violations, Indigenous Peoples throughout the Americas have mobilized to make themselves heard.

Here in Bolivia, Indigenous rights have been given new prominence in a new national Constitution, approved after a sustained

period of consultation of its Indigenous and non-Indigenous Peoples. Today, many of these same Bolivian Indigenous groups have joined the Sawhoyamaya in demanding respect for their land rights and cultural identity. Javier Lara from the Consejo Nacional de Marcas y Ayllus del Qollasuyo (CONAMAQ) said "By not defending [their rights], the Paraguayan state is defending existing structures to continue dominating and ignoring our Paraguayan Indigenous brothers".

The reality of the precarious situation faced by the community was also brought home today when the community's lawyer, Oscar Ayala, reminded those present that between December 2008 and January 2009 six members of the community died from preventable diseases, four of them under the age of two. The

Vice-President of the Inter-American Court, Diego García-Sayán said that "fundamentally, the judgement has not yet been complied with". The judges also called upon the state to set up clear communication channels with the Sawhoyamaya community.

As Bolivian groups have shown their solidarity with the Sawhoyamaya, so the Sawhoyamaya express their solidarity with their neighbours, the Yakye Axa. This community, which is also living in precarious conditions, were also forced to take their case to the Inter-American system and, in 2005, the Court ruled that the Paraguayan state should return their ancestral lands.

The Yakye Axa are currently in mourning after the recent death of their former leader, Don Tomás Galeano, an important community figure who could remember the time when he had lived on their lands, and led the Yakye Axa's attempts to return to them in 1996. The fact that he did not live to see his dream realised the return of the ancestral lands to the Yakye Axa meant that had to be buried by the side of the highway, instead of being buried alongside his ancestors on their land.

While some limited steps have been taken by Paraguay to comply with the Sawhoyamaya and Yakye Axa judgements, no tangible outcome has been reached in relation to the fundamental issue of their land. Continued failure to address their demands will put the very survival of both the Sawhoyamaya and the Yakye Axa on the line.

Amnesty International hopes that this hearing marks a turning point in the government's attitude to taking necessary, urgent action on the case, and will continue to campaign with the Sawhoyamaya and Yakye Axa until it does so, drawing attention to the international solidarity with their legitimate cause.

Source: LiveWire/Amnesty International Blog.

