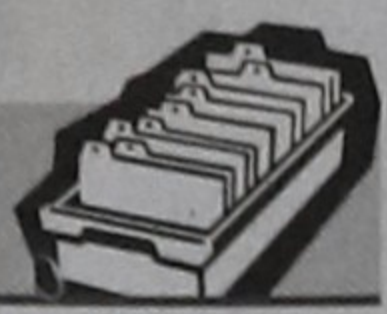




## FACT file



## US: Special prosecutor appointed to examine CIA interrogations

THE United Nations High Commissioner for Human Rights, Navi Pillay, has welcomed the decision by the United States Attorney-General to appoint a special prosecutor to look into whether Central Intelligence Agency (CIA) officers and contractors broke US laws while conducting interrogations outside the US, including at Guantanamo Bay.

"I warmly welcome this responsible decision by the US Government to open a preliminary investigation," Ms. Pillay said. "I hope there is a swift examination of the various allegations of abuse made by former and current detainees in Guantanamo and other US-run prisons, and if they are verified, that the next steps will involve accountability for anyone who has violated the law."

I warmly welcome this responsible decision by the US Government to open a preliminary investigation

Ms. Pillay said her concern all along "has been that there should not be impunity for torture or any other unlawful treatment of detainees, whether it is in the United States or anywhere else in the world. While we now have some idea of what occurred in Guantanamo, and to a lesser extent places like Abu Ghraib prison in Iraq and Bagram airbase in Afghanistan, we still need more transparency about secret places of detention, and what went on in them."

Ms. Pillay said that the use of secret places of detention must



be curbed, and called for the release of the names of detainees currently held in these detention centres. "Secrecy has been a major part of the problem with this type of detention regime," she said. "When guards and interrogators think they are safe from outside scrutiny, and legal safeguards are circumvented, laws become all too easy to ignore."

The High Commissioner also praised the decision to release Mohammed Jawad, an Afghan who was taken prisoner in 2002 when he may only have been 12 years old. Most of the charges against him were ruled inadmissible in 2008, and last month a US District Court ordered his release from Guantanamo.

"I am delighted to hear that on Monday Mohammed Jawad was allowed to return to his family in Afghanistan," Ms. Pillay said. "It has taken an extraordinarily long time, but the US justice system once it was able to operate properly in his case has, I believe, finally delivered justice."

However, she added that "in Jawad's case and those of other people held in detention for unacceptably long periods, without any charges being proven, or who were tortured or otherwise treated unlawfully, compensation and other remedies are essential. Some people have lost seven years of their lives, and may have been severely psychologically, physically or financially scarred by their experience, simply because they were in the wrong place at the wrong time."

Ms. Pillay reiterated her support for US President Barack Obama's commitment to close the Guantanamo camp by 2010 and asked him to urgently review the status of detainees at the Bagram facility in Afghanistan.

Source: UN News Centre.

## LAW amusements



### Surreal law facts

The truth is always stranger than fiction.

#### Gross travesty of military "justice"

Tenotaller John Wilson enlisted in the British Army and was sent to India to quell native uprisings in 1815. He served in the 84th regiment of the British Army (Yorkshire and Lancaster).

In an extraordinary example of the harshness of military law, he was court martialled for his refusal to consume the daily ration of a glass of rum to each soldier.

In fact, in one of the most egregious legal decisions of all time, military law or otherwise, he was found guilty of failure to obey orders and shot! He is buried in Agram Cemetery, Bangalore, India.

#### A tree for a life

Modern justice seems so well organised and rule based that you just don't get the judgments of yesterday. Take Queen Elizabeth (1533-1603), for example. She was stuck with meting out punishment to John Copleston, a rich nobleman from Warleigh.

One fine day in 1580, at Tamerton-Foliot, England, Copleston murdered his own grandson in full view of all his townsfolk then just exiting from Sunday church services. The grandson had angered Copleston and had made the mistake of showing up at church. Copleston followed him outside and threw his dagger at his back.

The knife hit the grandson square in the back and killed him. Normally, such a crime would merit capital punishment but if nothing else, Elizabeth was, well, royal. It did not hurt that Copleston that he quickly and discreetly gifted to the Queen thirteen manors in Cornwall.

Oh well, figured the Queen, maybe he wasn't that bad after all.

She added one unusual punishment for which Copleston would be pardoned for his crime. He was to plant an oak tree on the scene of the crime.

The murder tree, which became known as Copleston Oak, adorned Tamerton-Foliot for two hundred years.

Source: www.duhaime.org.

## LAWS FOR everyday life



## Making a false document is an offence

ADVOCATE JAHANGIR ALAM SARKER SAGAR

IN generally the word 'forgery' means copying something illegally, that means the act of making or producing an illegal copy of something so that it looks genuine, usually for financial gain. It also includes an illegal copy of something such as a document or painting that has been made to look genuine. In Bangladesh criminal law, forgery is a fraudulent altering of a written document or seal, with the intent of injuring the interests of another person or of fraudulently obtaining governmental revenue. Forgeries must be executed with such skill or in such circumstances as to be mistaken for a genuine document by the average person. They do not necessarily try to imitate the handwriting of another or the form of the simulated document.

If the intention was to deceive, and the circumstances were such as to render deception possible, then the crime has been committed; consequently, forgery applies to signing the name of a person who cannot write. The offence is not limited to the fabrication of writing, but includes the fabrication of printed or engraved instruments, such as railroad and airplane tickets, corporation stock certificates, and bonds. Moreover, the false document must have an apparent legal efficacy. The following are some provision of Penal Code, 1860 which governs forgery offence in Bangladesh. Sections 463 o 477(A) deals with forgery.

### Elements of forgery

The word forgery is used as a general term under the section 463. In any case under section 463, to establish forgery the prosecution must prove not only that the document is a false document under section 464 of the Penal Code but also that it was forced by accused with one of the intent mentioned in section 463 of the Penal Code. If we analysis the provisions of the Section 463 of the Penal Code, 1860, which defines forgery, would explore those two essential elements of the offence of forgery. Such as

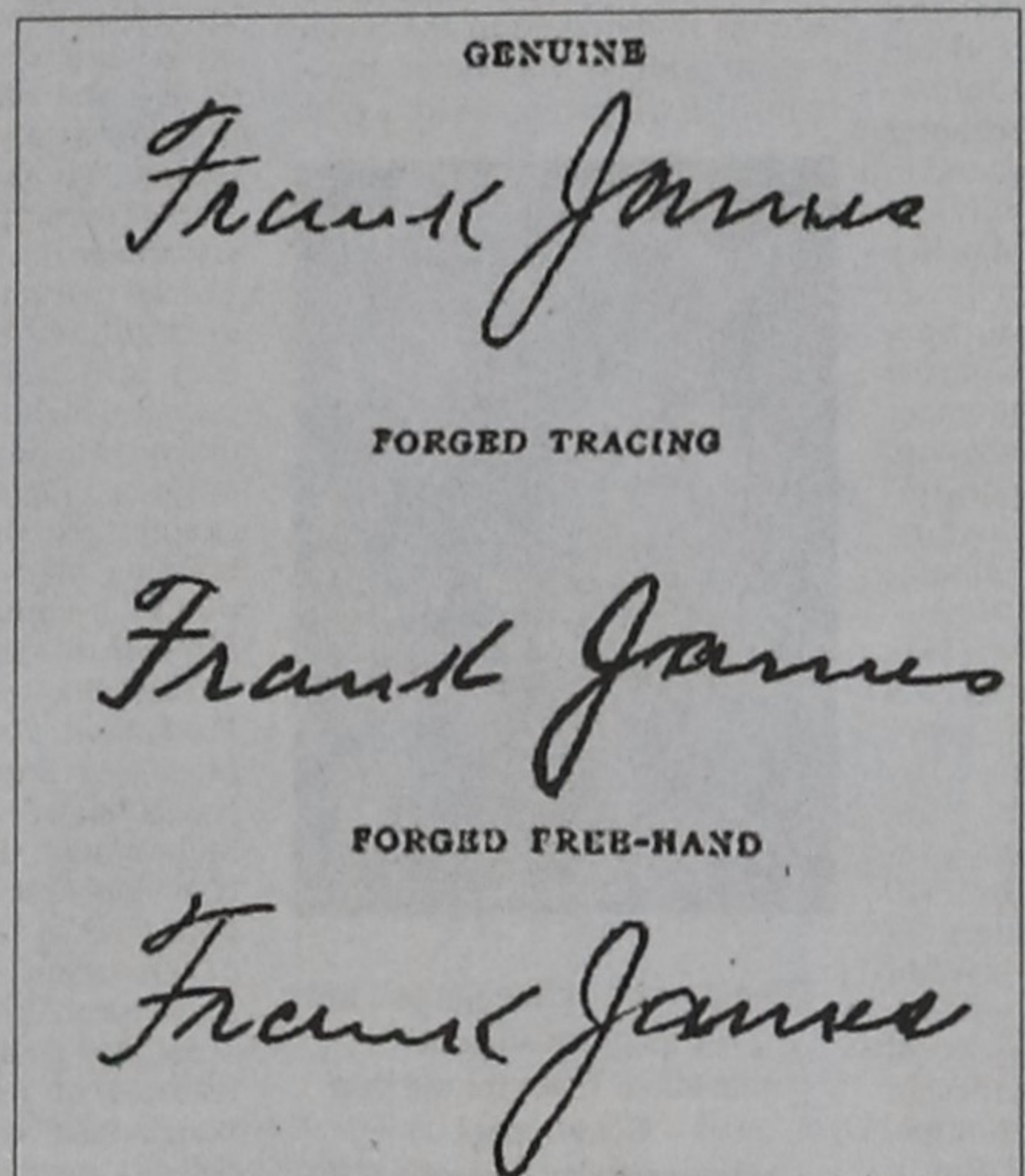
1. The making of a false document;
2. Doing it with a fraudulent intention to cause damage or injury to any person, to support a false claim or title or to cause a person to part with the property covered by the false documents.

### Application of Section 463 and a land mark case

In the case of *Jahangir Hossain v. the State* it is mentioned that whether the claim to be admitted to the first year class of MBBS course on the basis of false mark sheet is a 'claim' within the meaning of the section 463 whether expression 'Claim' occurring in section 463 is limited to claim to property. Elements of wrongful gain and wrongful loss were present in the above case. Mark sheets submitted by the appellant were forged ones. Where there is an intention to deceive and by means of the deceit to obtain an advantage there is a fraud and if a document is fabricated with such intent, it is forgery (40 DLR 545; 7 BLD, 1987, p.366- 367; 8 BCR 209).

The claim of being admitted into first year class of MBBS course on the basis of false mark sheet is a claim within the meaning of the section 463 of the Penal Code. Here accused Jahangir Hossain by presenting false mark sheets not only intended to obtain an advantage of admission and there by to deprive other students of the benefit of admission. Therefore, the mark-sheet submitted by the appellant Jahangir Hossain was a forged one. The claim being admitted into first year class of MBBS course on the basis of false mark sheet is a claim within the meaning of section 463 of the Penal Code. The document was also made fraudulently as having been made with the intention that appellant Jahangir Hossain should by use of it deceive a college authority.

A person is said to make a false document, first- who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be



believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or the nature of the alteration?

### When signature of own name may amount to forgery

Section 464 of the Penal Code, 1860 deals with when signature of own name amount to forgery. Such as-

Explanation 1- A man's signature of his own name may amount to forgery.

Explanation 2- The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both (Section 465).

From the above discussion, now it is very much clear and at least that is what I think, 'forgery' and 'making a false document' is a punishable offence under the Penal Code, 1860. Here it is mentioned that making false document is to be understood in its literal sense. It has been special connotation in the code. The contours of the said expression are delineated in section 464 of the Penal Code.

Advocate Jahangir Alam Sarker Sagar is Lawyer & Human Rights Activist.

## LAW event

## Empowering the women human rights defenders

HUMAN rights defenders are, basically involved in uncovering violations and subjecting them to public scrutiny; form pressure groups to demand accountability; and empower individuals and communities to claim their basic entitlements as human beings. This is also the mandate of Odhikar, an organisation that has trained and enhanced the activities of more than 200 human rights defenders across the country. Keeping the mission of the organisation in mind, Odhikar, with support from the Canadian International Development Agency, embarked on a project entitled 'Empowerment of Women Human Rights Defenders' with a view to educating community/grassroots-level women human rights defenders regarding fact-finding and documentation on human rights violations; and to create a network among the families of women victims of violence and women human rights defenders.

Dipu Moni Human and Mahbubey Alam attended the regional conference titled 'Empowerment of Women Human Rights Defenders', organised by Odhikar at the BRAC Centre Inn on 8-9 August 2009, with participants from South and South East Asia including Saumya Uma, executive director of Women's Research and Action Group, India, Kirity Roy of Banglar Manabdhikar Suraksha Mancha, Kolkata, Amrita Sharma of Peace Initiative Network Nepal, Abdul Baseer Naweed, senior researcher, South Asia desk, Asian Human Rights Commission, Hong Kong among others.

Kirity Roy termed the killing of innocent Bangladeshis by the Indian border guards 'nothing but murders' and said that such killings should be stopped immediately. The border guard officials of Bangladesh and India should immediately find out a mechanism to stop such



indiscriminate killing by the Indian Border Security Force.

Human rights defenders' network of South Asia on Aug 9, 2009 decided to mobilise a campaign in the region against framing anti-terror law that grossly violates human rights. The South Asian Network against Torture and Impunity also agreed to raise their voice for framing law against criminalisation of torture. They also demanded compilation of national security laws of the region to bring about uniformity.

The meeting of SANTI was held at the office of Odhikar on Aug 9, 2009 and presided over by eminent columnist Farhad Mazhar. The network of human rights defenders of the region discussed about their plan of action for the next two years as well enhance their capacity through effective communications.

Odhikar believes a human rights move-

ment from the grassroots should be strengthened in order to protect and promote human rights. From this point of view Odhikar felt the necessity to develop a group of women human rights defenders who would reach out to victimised women, listen to their sufferings and problems, report, monitor and take necessary action and work as a pressure group to seek redress. Women human rights defenders can play a vital role to stop violence and injustice against women by building up a victims' network engaged in advocacy and act as a pressure group and become involved in awareness raising activities. Furthermore, it will also be easier for women to share their experiences of abuse and violence with other women, rather than with male human rights defenders.

-Law Desk.

## LAW week



### 105 more cases to be dropped

The government decided to withdraw 105 more 'politically motivated' cases filed during the last BNP-Jamaat alliance government and the subsequent caretaker regime. The cases to be dropped include a case against BNP leader Moudud Ahmed in connection with possession of alcoholic beverages. Dropping of the case against Moudud will be the first instance of withdrawing a 'politically motivated' case against any opposition leader, by the Awami League-led coalition government. -The Daily Star, Aug 27, 2009.

### No problem in trial under military law

Two amici curiae--Barrister Rafique-Ul Huq and Advocate Khandaker Mahbubuddin Ahmed--told the Supreme Court that the BDR personnel accused of various offences during the February 25-26 BDR mutiny can be tried under military law. The BDR mutineers could be tried under the Army Act 1952 through issuing separate notifications regarding the trial, they told the Supreme Court just a day after another amicus curiae (friend of court) opposed the idea. -The Daily Star, Aug 27, 2009.

### Lawsuit blocks new NBR hiring

A parliamentary committee expressed disappointment over appointments of 400 inspectors to the National Board of Revenue (NBR), who do not even have the required minimum qualification for the job. The parliamentary watchdog body also asked ministries concerned to resolve a pending legal issue that has been keeping NBR from recruiting new inspectors. Elaborating on the matter, chairman of the committee AHM Mostafa Kamal said some former NBR inspectors had filed cases with the High Court about 20 years ago, protesting their firings from the job. The court subsequently directed NBR to refrain from appointing new inspectors till the matter is resolved. -The Daily Star, Aug 26, 2009.

### Military law not applicable for BDR trial

The offences committed in the BDR mutiny cannot be tried under the military law since the BDR is not a disciplined force like the army, advocate TH Khan told the Supreme Court. The Army Act 1952 is applicable only to army personnel and the BDR personnel accused of various offences committed during the February 25-26 bloody mutiny cannot be tried under the act, he said. Placing his submission as an amicus curiae (friend of court) before the 11-member full court of the Appellate Division, TH Khan suggested amending the BDR laws in parliament for trying the offenders. -The Daily Star, Aug 26, 2009.

### Primary education up to class VIII, secondary XII

The National Education Policy Formulation Committee will submit the much-awaited National Education Policy to the government on September 2 with the recommendations of extending the primary education level up to class VIII and secondary level up to class XII. The committee has already consulted with over 50 organisations, institutions and stakeholders concerned and now it is finalising the policy, said Dr Quazi Kholiquzzaman Ahmad, co-chair of the committee. "The policy is now at the final stage and we will submit it to the education minister on September 2," he told The Daily Star. -The Daily Star, Aug 26, 2009.

### Prisoners of forest

No government has ever complied with the forest laws to recognise the land rights of the indigenous Garo or Mandi and Koch people, traditional inhabitants of the Madhupur Sal Forest, but rather used the forestland for non-forestry purposes. Around 25,000 indigenous people of 8,630 families now live in 63 villages in and around Madhupur in coherence with the forest and its ecology. The Garo and Koch people were once the mainstream community here. But the Bangla-speaking people are dominating day by day as the Department of Forest introduced settlers to implement its controversial projects. -The Daily Star, Aug 25, 2009.

### PM asks to stop illegal parking

Prime Minister Sheikh Hasina asked the authorities to ensure vehicles are not parked haphazardly in the capital where illegal parking contributes to huge traffic snarl-ups every day. Presiding over a cabinet meeting, she also directed them to draft a parking policy immediately. The instructions come at a time when the city traffic continues to be at its worst despite measures against illegal parking and unfit vehicles. -The Daily Star, Aug 25, 2009.

### Khaleda allowed to stay for 4 more months

The High Court (HC) extended for four months its earlier order staying the government's third notice that asked BNP Chairperson Khaleda Zia to vacate her cantonment house by June 30. The HC bench comprising Justice Syed Refaat Ahmed and Justice Moyeenul Islam Chowdhury passed the order following an extension prayer submitted by Khaleda's lawyer barrister Mahbub Uddin Khokon. The prayer was allowed as the government has not submitted its reply to a HC rule issued on May 27 asking the government to explain within three weeks why this notice should not be declared illegal. -The Daily Star, Aug 24, 2009.

### Call for fresh probe into DU violence 2007

Teachers and students of Dhaka University (DU) observed University Black Day on the campus with demands for a fresh investigation into the August 20-22 campus unrest in 2007. In protest at the atrocities committed on teachers and students by law enforcement agencies, DU teachers and students attended classes sporting black badges. They also held several meetings and a procession. -The Daily Star, Aug 24, 2009.

### Essentials' prices spiralling up

Commerce Minister Faruk Khan said mobile courts would soon start vigilance to prevent businessmen from selling daily necessities at higher prices than the price mentioned on the hanging price list. City corporations and the district administrations are also ordered to monitor the market, the minister said emerging from a discussion meeting held at the National Museum. But he stressed that the government does not want to control the market with the help of Rab, police or any other law enforcing agencies. -The Daily Star, Aug 23, 2009.

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