

DHAKA SATURDAY DECEMBER 26, 2009

The Baily Star

AWSCAPE

Protecting copyrights in Bangladesh

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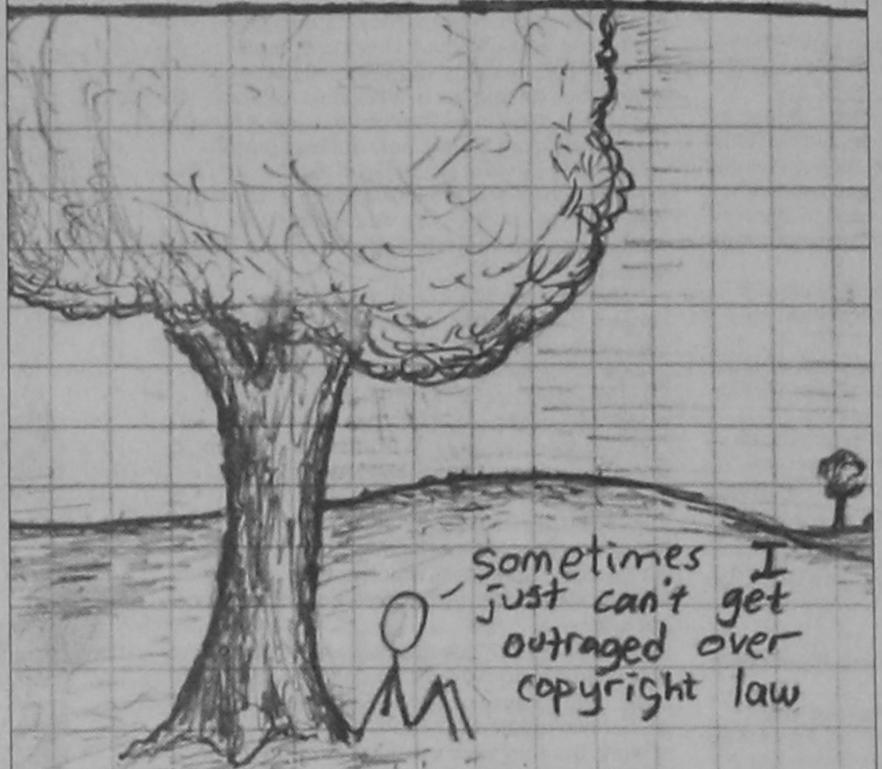
NE day when I was reading a there. But if the matter was brought nallaws are available. before the Court and made proved, that for justice.

protection on certain types of intellec- oldest conventions on copyright protectual works created by anyone. The area of tion but it has been revised several times copyright is the protection of literary and and the latest version was adopted in artistic works. These include writings, music, works of fine arts such as paintings and sculptures, and technology based works such as computer programs

tection under copyrights. Many writers can write stories based on the similar plots but as soon as the thought is weekly magazine, my eyes were expressed in a material form, it acquires wedged on an interesting box the protection of copyright. Most of the report. A college going student was countries around the globe recognize making an accusation against a well- copyrights protection by joining several known television and commercial ad conventions and through signing treadirector for pinching his tune and using ties and also provide copyright protecit in the commercials that the director tion by their national laws. In addition to had made. I presume such allegation that, in many places violation of such made by that fellow had no further protection is treated as a serious offence improvements and the gossip clogged and remedies under both civil and crimi-

Looking back at the history and develwould have established a perfect exam- opment, the oldest international conple of infringement of copyright protec- vention governing copyrights was the tion, which is a concerned area of Berne Convention (1886) where a forma-Intellectual Property Rights. tive definition of rights relating copy-Nevertheless, such kinds of allegations right protection was introduced. Article are not very rare in recent times around 2 of the said convention provides, "The the world. And in many cases such mat- expression 'literary and artistic works' ters reach at a more serious level and the shall include every production in the parties end up knocking doors of courts literary, scientific and artistic domain, whatever may be the mode or form of its The term 'copyright' itself is a form of expression". Though it is one of the Paris in 1971 and it was further amended

Another agreement on Trade Related Aspects of Intellectual Property Rights and electronic databases. The purpose (TRIPS) emerged from the Uruguay of copyright protection is to promote Round of trade negotiations and is composers, authors, designers or any administered by the World Trade other creative individuals by rewarding Organization. The TRIPS agreement them an exclusive right over their cre- along with other things contains a referations. But it protects only the expres- ence to the substantive provisions of sions of thoughts not the ideas. For Berne Convention. In order to comply example a published story based on love with the TRIPS agreement, countries and romance between a man and have to comply with the provisions of woman despite their family restrictions Bern Convention, after which there are a and other obstacles is protected. But number of additional norms of protecsuch idea or plot will not enjoy the pro- tion that are introduced by TRIPS agree-



and new forms of exploitation.

Following the footsteps of many other countries, Bangladesh became a member to the Bern Convention and a member and a signatory to the TRIPS agreement. These steps were taken to ensure and protect the rights nationally and internationally concerning copyrights along with other areas of Intellectual Property Law. And the Act protecting copyrights, The Copyright Act, 2000 (Act No.28 of 2000) came into force in the same year. Enactment of this legislation positively unlocked a new horizon to the field of artistic and

ment regarding new types of creation literary works. Section 14 describes the areas that are covered by this Act relating to dramatic, literary, musical works, computer programs, artistic works, cinematograph films and sound recordings. Right of reproduction, translation, broadcasting and performances are also concerned areas of copyright. The Government of Bangladesh had established a copyright office at Agargaon, Sher-e-Bangla Nogor under Ministry of Cultural Affairs. The office is placed under the direct control of a Registrar mon in our present scenario. And the who is appointed by the Government along with Deputy Registrars to serve all the necessary acts for registration of tion houses or companies who are The writer is a right activist and law analyst.

copyrights and other copyright con- rolling the business obtaining rights in cerned issues.

the creator of the creation holds the ownership of his work unless the author them financially. in such manner made it where a propriproprietor. Once copyright acquired, it continues for 60 years from the year of death of the copyright holder and for photography it remains for the same period of time but starts from the date of publication. The Act was introduced not only to ensure the rights of the author or creator of intellectual works but surely it is also a great source of contribution towards economic development in the related

fields. Therefore, to ensure such rights, infringements of the provisions of the Act are considered as infringements in both civil and criminal laws and remedies are obtainable. A simple example of infringement of copyright protection is to produce copies of a work without the proper authorization of the author. Section 76 of the Act provides remedies of civil nature such as injunction or damages and on the other hand, section 82 to section 93 provides remedies in offences that are treated as criminal nature, which includes imprisonments, fines and power to seize infringed copies.

In the present context of Bangladesh, though sufficient laws are provided but violation of the provisions provided by The Copyright Act 2000 are very comsufferers do not include only the authors or creators but also the produc-

various manners. As, in most cases, the According to The Copyright Act 2000, protection of copyrights are reserved by them and such infringements damage

Even the general people are victims etor of a newspaper or magazine of loosing their part of rights by paying employed him or he had gone under a the same amount for illegally copied contract with a production house where items where they could purchase the all the rights will be reserved by that original item with more or less the same price. Availability of pirated CD's, VCD's and DVD's on a large scale of renowned singers, Bangladeshi films and unauthorized photocopies of books are probably the most alarming situation that we are facing at the moment. It is not hard to find pirated CD's or photocopied books anywhere in the country. This invites a loss of interest among the copyright holders and not only that; the Government surely looses a handsome amount on collection of revenues.

Though a few attempts are made by the law enforcement agencies but these initiatives do not stop committing such offences by a group of people. The Audio and Video Production companies along with the Publishers of Books are raising their voices everyday but the concerned authority pay attention to least of them. Looking at the international standings of copyright protection, many countries consider collection of their revenues through literary, artistic or musical works as a significant source.

Bangladesh has a long heritage of being culturally developed and is full of creative minds. But if, adequate shields are not offered to prevent such infringements on their deserved protection, this may lead to a devastating discouragement to this day by day flourishing industry.

Separation of judiciary: The journey continues

M. JASHIM ALI CHOWDHURY

N Bangladesh Masder Hossain episode of the till-birth struggle I for separation of judiciary is over, theoretically at least. And I see a sort of complacency in all fronts with the fact that by now we've got a Judicial Service Commission which so far have done excellent in injecting a herd of promising young minds in the Judiciary. The overall performance of these fresh bloods has created a good reason to be hopeful. The rate of disposal, efficiency and

Additional Secretary and Joint Secretary of the Cabinet Division and Joint Secretary of the Ministry of Law was held on January 6, 1997. The meeting recommended for creation of a separate Legislative Drafting Wing in the Ministry of Law to enhance the quality of legal drafting. The meeting observed that an officer of the Legislative Drafting Wing, if found to be otherwise qualified, may be eligible for the appointment in the post of Secretary of the

Ministry of Law. This, however, was not included

taken for a post it cannot be revoked. Mr Habibul Awal exercised the option, left the judicial service, got early promotion, gained seniority over his contemporary colleagues and enjoyed an uninterrupted stay in Dhaka. Ultimately by way of promotion he reached the position of Additional Secretary of Legislative Drafting Wing.

> 1979 reserved 50% of the posts of enhanced to 75% in 1983. In 1989 was repealed. The 75% rule how-

Later on the President in consultation with the Supreme Court promulgated a Policy (Nitimala) in 2001 providing guidelines for and eligibility of officers from the Judicial Service to be appointed as Joint Secretary or Additional Secretary or Secretary-in-charge or Secretary, Rule 3 of that Nitimala again confirmed the 75% rule. It provided that the appointment to these posts shall made from the officers belonging to the 'Judicial Wing' of the Ministry.

Thereafter on 11/6/2002 another Government promulgating Rules for Promotion of the Deputy rule. Rules of 2002, however, did not expressly mention that should be from the Judicial Wing.

In 2007 Dr. Shahdin Malik moved the High Court Division challenging the 75% rule on the basis of a doctrinaire view of separation of power [12

the officers belonging to the independent judicial service must not serve the Executive in the Ministry in any form whatsoever. This, to him, will be tempering with the spirit of Separation of power, Masdser Hossain verdict as well as the Constitution. So any Nitimala or Bidhimala permitting the deputation should be considered void after the separation of Judiciary in 2007.

Interesting to note that this was a challenge to the Nithimala 2001 which the Government depended with full force and success [Para 73 12 MLR (HC) 368]. Justice A B M Khairul Huq unequivocally confirmed that still the Nitimala 2001 has the 'force of law' specially when the Judicial Service (Posting, Promotion, Leave, Control, Discipline and other terms of services) Rules 2006 and its amended version of 2007 have kept the scope of deputation alive. The Appellate

Division also has confirmed this. Md. Ashraf Ali Khan Lodi was a District and Sessions Judge of Chittagong. He was appointed as Bangabandhu once asked the Joint Secretary on deputation to the Judicial Wing of the Ministry of Law in consultation with the Supreme Court in 2002. By June 2007, he was about to retire from the Secretary of the Ministry. Now the Caretaker government appointed Mr. Habibul Awal, Additional Secretary of the Drafting Wing, as the Secretary-in-Charge. Mr. Aftab Uddin, an Advocate of the Supreme Court challenged the appointment being contrary to all the rules and policies of appointment to that post. What the government did was rather thundering.

The Nitimala 2001 was repealed during the hearing of the Rule before the court of Justice Shah Abu Nayeem Mominur Rahman. Now the Government claims that the

Constitution and against the judg-[13 MLR (HC) 105, Para 15]. The Court declared the appointment void which is ultimately upheld by the Appellate Division.

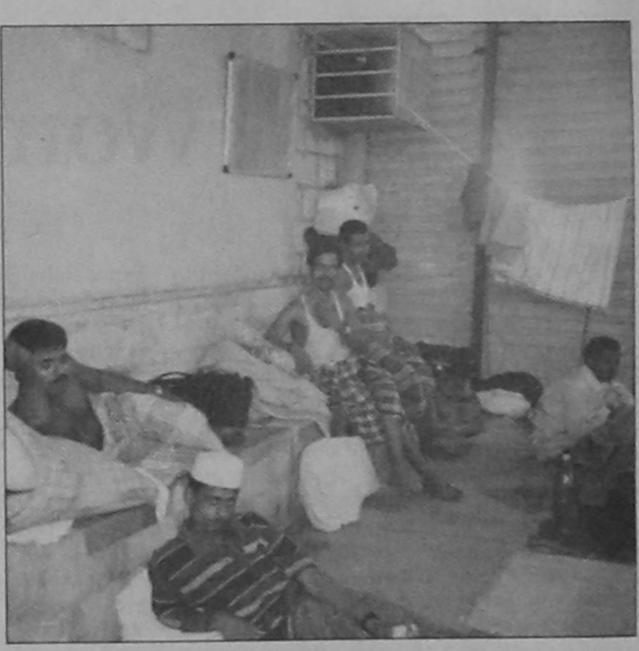
You shall see some pious arguments against Judges holding executive posts like Secretary of the Ministry of Law especially when the Judiciary is 'separate'. What is overlooked in those arguments is that the lower judiciary is still a ward in the hands of the Ministry of Law, the 'appropriate authority' now-a-days. A Secretary of the Ministry has the Damocles' Sword which affords enough both in terms of will and power to dictate over the judges and the judiciary. The Supreme Court is given a consultative status at best. You can easily contemplate the fate of a 'consultation' outcome, while the Executive can lavishly afford flouting a judgment of the Highest Court.

At this stage of the write-up Bangabandhu knocks at the door of our memory. While propagating the historic Six-point in 1966, Pakistani junta: 'Does it not put you to shame that every bit of reasonable demand of East Pakistan has got to be secured from you at tremendous cost and after bitter struggle as if snatched from unwilling foreign rulers as reluctant concessions?

The separation of judiciary, if you call it a separation at all, has become a 'reluctant concession' on the part of the 'unwilling' executive, which we attained after a 'bitter struggle' Probably we need to pay a 'tremendous cost' to purchase true judicial independence. Bangabandhu is fortune bound to remain at the heart of every just struggle for freedom.

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Migrant's tale



Dev's story, Malaysia

Dev left his family and home in Nepal when he was 19 and made the journey to Malaysia to work as a cleaner. He is one of over three million migrant workers in Malaysia. He told Amnesty

International: "I left because of fighting in Nepal. The country had lots of problems between the communists and the army. Young men were being taken by communists to join the fighting. They kill you if you refuse. I was very scared so I applied for a visa for

Malaysia. I contacted an agent and came to Malaysia on a cleaner's visa. I paid the agent 80,000 Nepali rupees (US\$ 1000) to bring me here. I had to borrow money and I was supposed to pay back

1000 rupees per month with 320 rupees interest. The agent told me that I would work as a cleaner when I arrived in Malaysia but I never got any work from the agent. When I arrived at the airport in Kuala Lumpur I waited for four hours. The agent finally came and picked me up with other

people from Nepal who were coming as cleaners. He took us to a flat where we waited for three months without any work. The agent never gave us any money so we had to go outside and meet Nepali people and explain what had happened and ask for food and money. The agent took my passport

and never gave it back." Dev was later able to find work by himself, in a factory and also working for a construction company. His agent did not renew his

visa and refused to return his passport. Dev became an irregular migrant, without legal permission to stay or work in Malaysia. The wages he is paid are very low compared with other workers, but he knows he cannot complain because he does not have a work permit. He does not earn sufficient money to enable him to send funds back to his family in

Nepal. Dev would like to return home to Nepal but is now unable to do so as he does not have a passport and is scared of being caught by the authorities.

Source: Amnesty International Press release.

JUDICIARY The PARLIAMENT makes the law, The PARLIAMENT may not influence the JUDICIARY. The IUDICIARY interprets the law. The JUDICIARY may not influence the Parliament or the Executive quality of judicial activism is rather in the Legislative Drafting Officer

JUDICIAL INDEPENDENCE

may seem to be indifference, if you Parliamentary Affaires) have noticed the 'grudging' acknowledgment of the fait accompli of 'Independent Judiciary' on the part of the executive. What has the the separation a meaningless one?

Ministry of Finance and Law, (Drafting).

excellent. However complacency (Ministry of Law, Justice and Recruitment Rules, 1998 promulgated by the President in exercise of the power granted under Article 133 of the Constitution in consultation Executive not done so far to make with Public Service Commission as is required by Article 140(2). The Just take the example of the rules clearly specified that the high-Secretary of the Ministry of Law, est post in the Wing shall be Justice and Parliamentary Affaires. A Additional Secretary (Drafting) and meeting of the Secretaries of the lowest being the Assistant Secretary

An officer from the Judicial practice of deputation of Judicial Nitimala 2001 is violative of the Service Cadre was given option to Service officers in the Ministry of join the Legislative Drafting wing on Law. In light of the change of plot ment passed in Masder Hossain case condition that once the option is after November 1, 2007, the judges,

The Senior Service Pool Order Deputy Secretary or above in the Ministry of Law for the Judicial Officers, which was subsequently the Senior Service Pool Order, 1979 ever was retained.

notification was issued by the Secretary, Joint Secretary, Additional Secretary and the Secretary of the Government, 2002. Rule 5 of it also confirmed the 75% Secretary of the Ministry of Law

MLR (HC) 3681. He challenged the