



LAW amusements



Some absurd things ever said in court
The following questions were actually posed by real-life lawyers and are taken from official court records.

Now, in all fairness to the poor lawyers immortalised below as unintelligent, readers should be aware that recorders operate at all times in courts of law, so that the slightest inadvertence is on record for posterity.

* Do you have any children or anything of that kind?

* I show you Exhibit 3 and ask you if you recognize that picture. That's me.
Were you present when that picture was taken?
* Were you present in court this morning when you were sworn in?

* Now, Mrs. Johnson, how was your first marriage terminated? By death.
And by whose death was it terminated?

* Do you know how far pregnant you are now?
I'll be three months on November 8.
Apparently, then, the date of conception was August 8?
Yes.
What were you doing at that time?

* Mrs. Jones, do you believe you are emotionally stable? I used to be.
How many times have you committed suicide?

* So you were gone until you returned?

* She had three children, right?
Yes.
How many were boys?
None.
Were there girls?

* You don't know what it was, and you didn't know what it looked like, but can you describe it?

You say that the stairs went down to the basement?
Yes.
And these stairs, did they go up also?

Have you lived in this town all your life?
Not yet.

All you responses must be oral, ok? What school did you go to?
Oral.

Source: www.duhaime.org.

YOUR Advocate

This week your advocate is Barrister Omar Khan Joy of the Supreme Court of Bangladesh and Head of 'The Legal Counsel'. His professional interests include commercial law, corporate law, family law, land law, constitutional law, banking law, arbitration and intellectual property laws. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Reader's query
I discovered that someone is operating another Facebook account using my name and profession and giving out my phone number to people I do not know. This fake account is hampering my reputation. It is vital to keep a clean image, especially in the kind of profession I have chosen to work in. I keep getting absurd telephone calls from people. It is causing me a lot of distress. Is there any legal step that I can take against this person? Please advise.
Regards,
Shanto, Banani

Response
Thanks for your query. Facebook has now proved to be a very useful social communication tool helping the people to get in touch with lots of their friends and relatives and to make new friends at the same time. Unfortunately, however, at the backdrop it has been misused by many to the utmost discomfort of others by causing disruption to their personal lives and privacy. So, the problem raised by you is problem contemporary in nature and has now become a very common trouble for many.

While opening an account in the facebook, everyone agree to the terms and conditions of the facebook. These terms and conditions are the governing regulation of using the account and regulate the relationship between the facebook authority and its users. As per the said terms and conditions, facebook will not take the liability or responsibility for a situation where anyone opens a fake account in facebook. Facebook may, however, terminate that alleged fake account as they do not permit anyone to open an account for someone else. Hence, you can report against that person to facebook administration. Whether or not facebook administrator will terminate the fake account is a matter of their discretion. In case where a person posts content that is hateful, threatening, pornographic or where the account is used by someone to do anything unlawful, misleading or malicious or where the account is opened by using fake personal information, facebook administration is generally inclined to block such account. However, whether or not someone has opened an account with false personal information is a matter of fact and may always be controversial once someone else will allege that his personal information has been used by others. In such a case, unless the matter is visibly obvious, the alleged false account may not be terminated. As a matter of fact, even if the account is

facebook

Facebook helps you connect and share with the people in your life.



terminated the wrongdoer can very easily open another fake account using your personal details. According to facebook, they try to keep facebook bug-free and safe. But anyone using facebook uses the same on his own risk. They do not give any guarantee that facebook will be safe or secure. They are not responsible for the actions, content, information or data of third parties and the person using facebook have to release them, their directors, officers, employees, and agents from any claims and damages, known and unknown, arising out of or in anyway connected with any claim that is against any third parties. Having said the same, it is sad but true that except for lodging as complain in the form of reporting to the facebook administrator, you are left with very little practical solution to the problem. This should be mentioned that you certainly do not have any valid claim against the facebook authority for this unwanted occurrence.

Further or alternatively, you may decide to lodge a General Diary (GD) before the police station stating the scenario. Lodging a GD may not help you to get a relief. This will, however, be admitted as evidence, in case if any subsequent action is lodged against you by someone alleging that you have committed crimes using the said fake facebook account.

Honestly speaking, the laws as well as the investigation procedure in Bangladesh relating to the cyber crimes are still in a very primary stage and are yet to be developed. Nevertheless, under the recent enactment, namely, the Information and Communication

Technology (ICT) Act - 2006 (as amended in 2009) contains some provisions relating to cyber crimes. It is notable that as per section 4 of the ICT Act even if someone commits a crime under the Act in any place outside Bangladesh, it shall be treated in the same way as if the offence has been committed in Bangladesh. It is likely that the fake account-holder will be liable under the ICT Act for the commission of an offence and if proved and convicted, may be liable for imprisonment not exceeding the term of 10 (ten) years and financial penalty not exceeding 1 (one) crore Taka. As per the ICT Act, the government was supposed to establish a Cyber Tribunal to try the cases for violation of the provisions contained in the ICT Act. Regrettably, such specialized Cyber Tribunal has not yet been established. Consequently, such matter shall now be tried by the Court of Session Judge till the establishment of Cyber Tribunal. Furthermore, creation of fake account may also be punishable under the Penal Code for cheating by personating, defamation and/or forgery. In any case the ingredients of the offences have to be proved before securing any conviction. Depending on the activities performed by the fake account holder, any of the above criminal provision may be attracted.

I hope that the above shall help you to fix your next course of action. As a first step, you should report the account to the facebook administrator and may decide to lodge a GD before the police station.

For detailed query contact omar@legalcounselbd.com

LAW week



Justice kept in wait, still

Family members of the victims of February 25-26 BDR carnage want justice since it is the only thing at present that can console their broken souls. The BDR started the trials of its jawans involved in the carnage under its own law on charge of mutiny at the Pikhana headquarters, but the most sought-after trial for the killings has not started, as the Criminal Investigation Department is yet to complete its investigation. One year has passed since the heinous massacre of 74 persons including 57 top and mid-ranking army officers. The horrifying memory of the incident is still fresh in the mind of the nation. - *The Daily Star, February 25, 2010.*

EC wants legal binding to go

The Election Commission has asked the LGRD ministry to amend the municipality act, scrapping the provision for re-demarcation of municipality wards maintaining no more than 10 percent population disparity among them, before their upcoming elections. The commission earlier did not notice the provision in the Local Government (Municipality) Act 2009 and therefore could not assess the consequence of its application. - *The Daily Star, February 25, 2010.*

Parliamentary caucus for ethnic rights

A parliamentary caucus on indigenous affairs was formed with 17 parliamentarians to protect the rights of indigenous people. Prof Mesbah Kamal, member of the technical assistance committee of the caucus, expressed concern over the unabated tension at Baghaichhari in Rangamati. Caucus members said the government should arrest the perpetrators and award them exemplary punishment. - *The Daily Star, February 25, 2010.*

HC rejects City Group's petition

The High Court summarily rejected a writ petition challenging a government notice that asked the authorities of the City Group of Industries to remove their structures, including three jetties, from the river Shitalakkhya. Following the HC order, now there remains no bar in demolishing jetties and structures set up by City Group of Industries on the bank of the river Shitalakkhya at Rugganj. The HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Borhan Uddin passed the order saying the deputy commissioner of Narayanganj served the notice to City Group of Industries to remove their structures from Shitalakkhya following an earlier HC verdict regarding environment protection. - *The Daily Star, February 24, 2010.*

Toxic free certificate made a must

The ministry of environment and forest has decided to make submission of the 'toxic free certificate' compulsory for both importers and exporters in a bid to stop import of toxic scrap ships. The environment ministry in a letter requested the ministry of commerce to take necessary action in this regard in line with a decision taken. A senior official of the ministry said both the importers and exporters would be held responsible for entering any polluted ship in the country's territory once the rule comes into effect. - *The Daily Star, February 24, 2010.*

Around 800 to be charged with BDR carnage

Criminal Investigation Department is all set to submit a charge sheet in the BDR carnage case, accusing around 800 border guards of murder, looting, arson and hiding bodies in mass graves. Investigators are now busy re-examining their findings, relevant documents and evidence on February 25-26 blood-bath that left 74 people including 57 army officers killed at the BDR Pikhana headquarters last year. They are looking to press charges by Thursday, the first anniversary of the killings, said a CID official who would not go on record talking about internal matters. - *The Daily Star, February 23, 2010.*

Ethnic people rally for justice

Tension ran high in Rangamati and Khagrachhari as indigenous people and Bangalee settlers brought out processions and held rallies yesterday blaming each other for Saturday's violence that claimed two lives at a Rangamati village. Around 7,000 indigenous people, led by Parbatya Chattagram Jana Sanghati Samity (PCJSS) leaders, marched in procession to the Rangamati deputy commissioner's office and submitted a memorandum to the premier through the DC demanding parliamentary enquiry into the incidents. - *The Daily Star, February 23, 2010.*

Hills remain tense

Anger continued to brew in the remote Baghaihat area over Saturday's killing of indigenous people and arson attacks on their houses, with the indigenous people holding the army responsible for the incidents. The dislodged indigenous people also blamed Baghaichhari Upazila Nirbahi Officer SM Humayun Kabir for the incidents and attacked him yesterday when he was returning from the spot along with the state minister for CHT affairs. - *The Daily Star, February 22, 2010.*

BDR won't get magistracy power

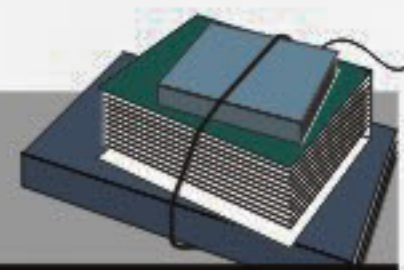
The government last month rejected Bangladesh Rifles' proposal for new laws delegating magistracy to the border guards to conduct mobile courts and hold trial of cross-border offenders and hand out punishment. Home ministry sources say giving such power to BDR will create legal complications, which the government wants to avoid. The BDR is now preparing another draft of proposals. The draft also proposed recruiting retired army soldiers in the force. The BDR headquarters framed the first draft law late last year and sent it to the home ministry early in January for approval. An inter-ministerial committee formed last year was supposed to scrutinise the draft and give primary green signal. - *The Daily Star, February 22, 2010.*

50 skipped court thru' HC bail, stay

At least 50 high profile fugitive corruption convicts in some 50 criminal cases, including Awami League leader HBM Iqbal, have obtained bail or stay order, or both, on their conviction without surrendering to the court. The Appellate Division in a recent verdict cautioned a few High Court judges for granting bail to HBM Iqbal and staying the order of his conviction in a corruption case in which he all through remained a fugitive. In the January 18 verdict on a writ petition filed by the Anti-Corruption Commission, the apex court also cancelled the HC bail order and asked Iqbal to appear before the trial court by February 28. - *The Daily Star, February 22, 2010.*

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

LAW lexicon



Assault - Threat to inflict injury with an apparent ability to do so. Also, any intentional display of force that would give the victim reason to fear or expect immediate bodily harm.

Assignment - The transfer to another person of any property, real or personal.

Assumption of risk - A doctrine under which a person may not recover for an injury received when he has voluntarily exposed himself to a known danger.

At issue - The time in a lawsuit when the complaining party has stated their claim and the other side has responded with a denial and the matter is ready to be tried.

Attachment - Taking a person's property to satisfy a court-ordered debt.

Attempt - An endeavour or effort to do an act or accomplish a crime, carries beyond preparation, but lacking execution.

Source: Jurist International.

RIGHTS corner

Indonesia: Freedom of religion at stake

U.S. President Barack Obama is scheduled to visit Indonesia, the place of his childhood, in March. It is important that the President does not waste this opportunity and uses his good relations with Indonesian President Susilo Bambang Yudhoyono to raise the issue of religious tolerance in Indonesia. Late last year Obama stated that "Indonesia is important... as one of the world's largest democracies, as one of the world's largest Islamic nations... it has enormous influence and really is... a potential model for the kind of development strategies, democracy strategies, as well as interfaith strategies that are going to be so important moving forward."

While his statement is no doubt true in some respects, the essence of Obama's remark is at odds with the current situation in Indonesia. In recent years the United Nations has expressed disquiet at religious discrimination and intolerance in the country. There is continuing concern at the distinctions made in legal documents between the six recognized religions of Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism, and the adverse impact on the freedom of thought, conscience and religion of people belonging to minorities, ethnic groups and indigenous peoples in Indonesia.

In 2007 the U.N. Committee on the Elimination of Racial Discrimination noted with concern that mixed-faith couples in which the man and woman hold different recognized

beliefs faced difficulties in officially registering their marriages and that their children were not provided with birth certificates, as they were not the products of "lawful" marriage. Paradoxically, people that change their religion in order to marry their partner can face stigmatisation.

Furthermore, there is no provision for individuals with no religious belief to enter into a civil marriage contract, and no legal documentation for those without such a belief. This results in people keeping their atheist beliefs secret and when the time comes to marry, they make the choice of either marrying in a religious ceremony that is devoid of meaning for them, or not marrying at all, which can leave their family and offspring without legal protection. Moreover, under Indonesian Law No. 23 of 2006 on Civic Administration, individuals are required to record their faith on legal documents such as identity cards and birth certificates. Atheists who ascribe to no religion or those who wish to leave the column blank or to register under one of the "non-recognized" religions face discrimination and harassment - including refusal of employment. Forcing an Indonesian to adopt a religion as part of her identity grossly undermines his right to freedom of thought and religion under article 18 of the International Covenant on Civil and Political Rights.

Concern has been expressed in Indonesia and internationally about religious minorities such as the Ahmadiya -- followers of a disputed branch of Islam -- being targeted by fundamentalists that have branded them members of heretical cults. The Asian Human Rights Commission and other human rights organizations have highlighted violent attacks

and intimidation against the Ahmadiya people and other religious groups, and their places of religious worship. But so far there has been no concerted effort to protect the rights of these groups.

To the contrary, religious intolerance and discrimination is effectively condoned under Law No.1/1965 on the Prevention of Religious Abuse and Blasphemy, which amends the Indonesian Penal Code (Article 156 (a)) to allow the state to prosecute people deemed to commit blasphemous acts which "principally have the character of being at enmity with, abusing or staining a religion adhered to in Indonesia". The maximum penalty is five years imprisonment. To combat this law and the issues of state-authorized religious intolerance within it, human rights groups have gone to the Constitutional Court to seek a judicial review of the law, in the hope that it will be struck down as incompatible with human rights and freedom of religion.

However, state officials have reacted against the review. They claim that if the court were to uphold freedom of religion and expression, as guaranteed in international and domestic law, as well as in the principles of Pancasila, the official philosophical foundation of the Indonesian state, it would create "unlimited religious freedom." They fear this could lead to social upheaval, with people worshipping in ways not authorized by the state. Such intolerance is clearly a breach of the Indonesian Constitution under Articles 28 and 29.

The state, by only recognising six religions and enforcing a blasphemy law which alienates and criminalises those that hold beliefs outside of

those six, is in effect, giving Indonesians a choice between one of six religions. The right to choose between one religion or another is a false choice and only creates the illusion of freedom.

Both President Obama and President Yudhoyono should understand very well that tolerance and acceptance of varying beliefs, including atheist belief, are vital for a peaceful, democratic society. Practices and laws requiring people to adopt a faith that they do not actually hold is not in accordance with the principles of tolerance, equal rights and non-discrimination, which are the cornerstones of democracy and human rights. Any blasphemy law should be struck down as unconstitutional. The religions that Indonesia's blasphemy law seeks to protect can withstand criticism and do not need the full force of the criminal law to ensure adherence. No state should interfere in the practice of religion or belief other than to protect the rights of individuals to freedom of expression, assembly and thought including the right to be free from religious thought.

In a diverse democratic society that prides itself on being multicultural, multi-religious and multi-racial, the Indonesian government should welcome this judicial review and enforce laws to prohibit discrimination based on faith. In a democratic Indonesia, which seeks to adhere to the rule of law and the supreme law of its Constitution, the state should seek to protect the rights of religious minorities from the tyranny of those that wish to foster intolerance and discrimination.

Source: Asian Human Rights Commission Press release.

