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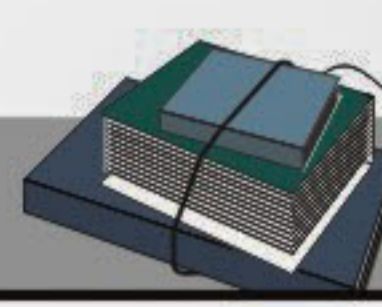


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LAW lexicon



Citators - A set of books which provides the subsequent history of reported decisions through a form of abbreviations or words.

Civil - Relating to private rights and remedies sought by civil actions as contrasted with criminal proceedings.

Civil action - An action brought to enforce or protect private rights.

Civil law - Law based on a series of written codes or laws.

Civil procedure - The rules and process by which a civil case is tried and appealed, including the preparations for trial, the rules of evidence and trial conduct, and the procedure for pursuing appeals.

Claim - A debt owing by a debtor to another person or business. In probate parlance, the term used for debts of the decedent and a procedure that must be followed by a creditor to obtain payment from his estate.

Class action - A lawsuit brought by one or more persons on behalf of a larger group.

Clayton Act - A (US) federal law which is an amendment to the Sherman Act dealing with antitrust regulations and unfair trade practices.

Clear and convincing evidence - Standard of proof commonly used in civil lawsuits and in regulatory agency cases. It governs the amount of proof that must be offered in order for the plaintiff to win the case.

Source: Jurist International.

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
My cousin Suhagh 21 is in affair with a girl, 17. Both have agreed to marry. But as she is below 18, Suhagh apprehends that some legal consequences would follow. There is a possibility that the family of the girl would not accept this union. Some friends are suggesting that Suhagh can marry the girl as she has consent in the matter and the girl's family would not be able to take any action, if she is with Suhagh's side. Though the girl is below 18, as per study record but she is 18 as per the National ID card. What to do?
Confused, Dhaka

Response
I would like to thank you very much for asking me to provide legal Opinion regarding the instant marriage related matter before taking any unwanted decision.

Upon receipt of your query, we have understood that your cousin, Suhagh, who is at his age of 21, is having an affair with a girl of 17. Both of them have agreed to get married to each other. But as she is below 18, Suhagh apprehends that some legal consequences may follow and there is a possibility that the girl's family may not accept the marriage. The girl has consent to the marriage. Though she is below 18 as per her study records, but she is over 18 as per her National ID card.

In the light of the aforesaid facts and circumstances, I would like to elaborate the following legal provisions for your understanding so that you can counsel your cousin in the right way.

Marriage is a Civil Contract and any competent person can enter into such a marriage contract. To be competent for marriage, the person should be of sound mind and must have attained the age of majority. According to the Child Marriage Restraint Act, 1929 a person is a child, if he is below the age of 21 years, in case of male and in case of female a person will be treated as a child below the age of 18 years. So, to be competent to enter into a marriage the male must be at the minimum age of 21 years and the female must be at the minimum age of 18 years.

Suhagh is certainly competent to get married. But, from the facts it is clear that the girl's actual age below 18, though she is above 18 as per her National ID card. National ID card is an impor-

tant identification document for a resident of Bangladesh. It has special value in the eye of law. But, as the girl is below 18 as per her educational certificate and it is also clear from your statement that her actual age is below 18, the parents of the girl may challenge the correctness of the age mentioned in the National ID card.

If the parents of girl are able to prove that the girl is below 18, even after that the marriage will not become invalid. In that case the girl will be able to exercise the right of "Option of Puberty" after attaining the age of majority. Which is 18 years option of puberty is a right given to the minor to repudiate the marriage after attaining the age of majority where the marriage was not done by her parents. In case where the girl has any sexual intercourse with her husband she will not be able to exercise the right of "Option of Puberty" even after attaining the age of majority.

After the marriage with a minor girl, the marriage will not be invalid but the husband shall be punished. According to section 4 of the Child Marriage Restraint Act, 1929 if a male of above 21 years of age marries a girl, who is below 18 years of age, then the male, shall be punished with one years' imprisonment or with fine of TK. 1000 or with both. It is possible that the girl's parents may get an injunction from the court to restrain the marriage, if they are already aware of such arrangement. It is also possible the parents of girl may bring a case against Suhagh for kidnaping and abduction of their daughter. If they bring the case under the Nari O Shishu Nirjatan Daman Ain, 2000 then under section 7 of this Act, it is mentioned that if any person kidnaps or abducts any child or woman then he shall be punished with life imprisonment or rigorous imprisonment up to 14 years' and he shall also be fined. The parents may also bring a case against Suhagh for rape under the Nari O Shishu Nirjatan Daman Ain, 2000. In such a case, if her parents are able to convince their daughter to agree with their statement then Suhagh will have to go through so much difficulty. According to section 9 of this Act, the punishment is life term rigorous imprisonment and fine.

Though the parents may bring cases against Suhagh under the Nari O Shishu Nirjatan Daman Ain, 2000, there is also a provision under this Act regarding filing false cases, complaint etc. It is clearly mentioned in section 17 of this Act that if anyone knowing that there is no ground for filing a case, files false case or make false complaint, then he shall be punished with seven years rigorous imprisonment and also with fine.

Leaving the pure legal discussion aside, I would like to draw your attention to the fact that even if both are adult, your cousin and his girlfriend both are at the very premature stages of their lives. They think they can take decisions regarding their lives but they don't yet actually know what their best interest is. They are not yet competent enough to face the difficulties of life and take such major decisions solely based on their emotions and ignoring their parents' concerns. Marriage is certainly an important decision of life. They should not take such a decision without consulting their parents at this age. If they really want to marry each other, they should have the strength to wait for some more years. Furthermore, they are strongly advised to complete their educations up to a certain stage so that they can be reasonably established. At that point of their lives, they may be able to take such important decision without consulting the others and may be beyond their parents' consent in the extreme circumstances. So, my strong advice for your cousin is to wait for few more years and try to convince the parents.

I hope that the aforesaid guidelines shall help you to convince your cousin to act in a way, which shall be both lawful and secure the best interests of your cousin and his girlfriend.

For detailed query contact omar@legalcounselbd.com

LAW event

WAR CRIMES MOCK TRIAL

Legal battle of student-counselors

TABASSUM MOKHDUMA

WITH a view to raise awareness among the public about trying the war criminals of 1971 and to show the world that the criminals can be tried under the existing laws of the country, students and teachers of Department of Law, University of Dhaka (DU) organized a "War Crimes Mock Trial" on 25th March 2010 on the eve of the Independence Day that took place at the Teacher Student Centre (TSC) Auditorium of DU. With the participation of law students of different universities of the country, the event drew a remarkable attention from people of different walks of life and was indeed successful to make people feel that this is the time to try the perpetrators and it can be done without any obstacles.

Held under the International Crimes (Tribunals) Act 1973, the trial,

peace and international law during the Liberation War of Bangladesh in 1971.

The accused were tried under the 1973 Act as the tribunal declared the 1973 Act as the tribunal declared the Act ample for trying the perpetrators of 1971, when army from an imaginary country "Moonland" (Pakistan) invaded "Adhikar Bhumi" (Bangladesh). The condemned offenders were Mr. Ali Butchery, the commander-in-chief of Al-Badr, and Mr. Karim, a commander of Razakar.

The three-member tribunal was led by Justice AK Badrul Haque who pronounced the death sentences of Butchery and Karim while Senior Advocate of Bangladesh Supreme Court MK Rahman, and former Dean of the Faculty of Law at DU Professor Dr. M Badruddin were the other two judges.

"No sentence other than death can and should be delivered to them for their crimes like mass killings and indiscriminate destruction," Justice

tion against the accused, the latter came out with evidence that proved that Butchery had committed the offences in a village named Dhalhara (imaginary name), while Karim had aided and abetted Butchery and his accomplices.

The defence however argued that it would not be logical to try the collaborators who had been the "second line perpetrators" while the real invaders who had been the "first line perpetrators" of the crimes were not being tried. The defence also raised questions about the trial's acceptability as it was being held under the International Crimes (Tribunal) Act 1973, but their pleadings were sidelined.

Barrister Amir-Ul Islam, who was appointed as the *amicus curiae*, said a crime is always a crime and it must be tried. Terming other incidents like the killing of Bangabandhu and his family in 1975 and the August 21, 2004 grenade attack on an Awami League rally as different manifestations of genocide, he said war crimes should be tried in order to prevent such crimes.

The lawyers in the trial were students that included Rokeya Chowdhury and Tanjina Sharmin of DU, this writer from University of Chittagong, and Sanjeeb Hossain of Brac University as the prosecution counsels, while researcher was Mahmuda Sajjad of Stamford University. On the other hand, Manzur Rabbi, Rashedul Haque, Syeda Nasrin, and Gazi Sangita Farzana of DU were the defence counsels while researchers were Arpeeta Shams Mizan and Amrin Khan of DU.

Dr Mizanur Rahman, Professor of Law, Dhaka University, Members of Sector Commanders' Forum, freedom fighters, DU Pro-VC Harun-Or-Rashid and some students also spoke at the event. The trial was telecasted live on Desh TV.

Trying the perpetrators of 1971 Liberation War is a demand of time and the organisers believed that this unique initiative on the eve of the Independence Day certainly helped people to believe and hope that war criminals would be tried and justice would be ensured.

The writer is a student of LLM at University of Chittagong and is a Reporter of Star Campus, The Daily Star.

War crimes, impunity and accountability



Professor Philippe Sands QC addresses the audience.

STATE impunity has acted as a major hindrance to establish a just world and ensuring the rule of law while claim to immunity after having committed crimes against humanity is inconsistent with the laws and legal norms, said renowned British Professor Philippe Sands QC during a lecture jointly organized by Department of Law of University of Dhaka (DU) and South Asian Institute of Advanced Legal and Human Rights Studies (SAILS) on "War Crimes, Impunity and Accountability - International Legal Perspectives" at the Supreme Court Bar Association Auditorium (Shaheed Safiur Rahman Auditorium) on March 27, 2010.

While sharing his experiences as a practicing lawyer at various national and international courts and tribunals; Mr. QC, currently a Professor of Law and Director of the Centre of International Courts and Tribunals, University College London and Barrister at Matrix Chamber said that the assault on global norms of human rights did not begin with 9/11, but it had already begun with atrocities carried out in Congo and Uganda in 1998.

Iraq against so-called weapons of mass destruction, he said that the war without the UN sanction could be considered a crime of aggression. He also harshly criticised the UK's coalition with the US in Iraq war.

He further criticised the confinement of suspected terrorists in Guantanamo Bay and said that they have been branded as "unlawful combatant" and deprived of the protection of Geneva Convention of 1949. He also added that torture and abuses carried out by the US army in Iraq and Guantanamo Bay manifest blatant disregard to international law.

Moderated by Dr. Asif Nazrul of Department of Law, DU; the event was attended by Law Commission Member Professor Dr. M Shah Alam; Professor Dr. Mizanur Rahman of Department of Law of DU; Dr. Sumaiya Khair, Chair, Department of Law, DU and Barrister Sara Hossain. Among others, Supreme Court judges, lawyers, academics, researchers and law students also attended the lecture.

Referring to the US-UK war on

Compiled by Law Desk.

LAW week



All 29 accused jailed

A special court of Bangladesh Rifles sentenced all the 29 accused of 25 Rifle Battalion to different terms of rigorous imprisonment for their involvement in February 25-26 BDR mutiny in 2009. BDR Director General Maj Gen Mohammad Mainul Islam delivered the first verdict of BDR mutiny case in Panchagarh. After the arguments from the defendants and prosecutors on Tuesday, the Special Court-2 delivered the judgment. Thirteen jawans were sentenced to seven years' term while one to six years', one to four years', six to three years', two to two years', five to thirteen months' and another to four months'. - *The Daily Star, April 8, 2010.*

Pakistan not interfering

Pakistan High Commissioner in Dhaka Ashraf Qureshi said Pakistan will not interfere in Bangladesh government's move to hold trial of its alleged war criminals since it is an internal affair of this country. That Pakistan is opposing the trial is a "guesswork of the media", he said. "Pakistan believes in sovereignty of Bangladesh and there is no question to interfere by Pakistan in the internal affair of this country," Qureshi told reporters after meeting with Law Minister Shafique Ahmed at his secretariat office. - *The Daily Star, April 7, 2010.*

Cleanup begins, resistance follows

The Dhaka district administration started an eight-month long demolition drive against illegal structures by the river Buriganga at Nawabchar in Kamrangirchar. A total of 28 illegal structures have been knocked down on the first day of the drive. Bangladesh Inland Water Transport Authority (BIWTA) along with police, Rapid Action Battalion (Rab), Fire Service and Power Distribution Company Ltd assisted the district administration to carry out the three-hour drive. Over 70 labourers, BIWTA tugboat Agrani and a bulldozer were used in the drive to reclaim the river area as earmarked by the cadastral survey. - *The Daily Star, April 7, 2010.*

First verdict in BDR mutiny case

A special court of Bangladesh Rifles fixed to deliver the first verdict in any BDR mutiny case, against 29 jawans of the 25 Rifles Battalion in Panchagarh Battalion Headquarters. After completion of arguments from the defendants and prosecutors yesterday, the Special Court-2 is set to give judgment at around 4:00pm on the mutiny charge since the February 25-26 BDR carnage. All the 29 accused placed their written and oral arguments before the three-member jury panel headed by BDR Director General Maj Gen Md Mainul Islam. Prosecutor of the case and commanding officer of 25 Rifles Battalion Lt Col Sarajul Haque and public prosecutors Mosharaf Hossain Kajol and Monjurul Alam also placed counter arguments before the court. - *The Daily Star, April 7, 2010.*

Legality of Ershad regime challenged

The High Court directed the government to explain within four weeks why the seventh amendment to the constitution, which legitimises HM Ershad's takeover and the acts under his military rule, should not be adjudged illegal. The bench of Justice Md Mamtaz Uddin Ahmed and Justice Naima Haider came up with the rule after hearing a writ petition. Siddique Ahmed, who was convicted of murder and sentenced to life in prison by a martial law court in Chittagong in 1986, filed the petition on January 24. The seventh amendment ratified the proclamation of martial law and other regulations, orders and instructions by Ershad between March 24, 1982, and November 10, 1986. - *The Daily Star, April 6, 2010.*

No price approval, yet drug in market

Popular Pharmaceuticals Ltd has marketed a drug without the price approval from the government, which the Directorate General of Drug Administration termed a punishable offence. Popular has manufactured Medroxy, a 5-milligramme drug for treating hormonal disorder, and quoted a price of the drug for approval of the Directorate General of Drug Administration. On March 3, Price Fixation Committee of the drug administration held a meeting in this regard and sent its recommendation to the health ministry. - *The Daily Star, April 6, 2010.*

Speedy Trial Act gets extension

The government decided to extend the term of the Speedy Trial Act by two years for effective and fast dealing with crimes like extortion, tender manipulation, vandalism, mugging, etc. This is the fourth extension from April 10 to April 9, 2012. The third extension by the caretaker government will end on April 9, 2010. The decision came at a regular cabinet meeting at Bangladesh Secretariat with Prime Minister Sheikh Hasina in the chair. The Law and Order Disruption Offence (Speedy Trial) Act was enacted on April 10, 2002 for two years to ensure quick trials of the crimes. - *The Daily Star, April 6, 2010.*

Stalled graft cases to be freed of legal shackle

The Supreme Court cleared the way for trial of a graft case against ruling Awami League lawmaker Habibur Rahman Mollah. In a ruling that has a bearing on several hundred corruption cases, it upheld the High Court verdict that declared legal the way Anti-Corruption Commission filed the case against Mollah. Trial proceedings in the case had been stayed since the AL MP filed a writ petition against the HC verdict delivered around 16 months ago. Referring to the SC ruling, ACC officials said they believe similar fate awaits over 500 more petitions against corruption cases filed by the anti-graft body. - *The Daily Star, April 5, 2010.*

Probe agency gets records

The investigators of war crimes received a list of 1,775 alleged war criminals and accounts of their role during the Liberation War from research-based organisation The War Crimes Facts Finding Committee (WCFFC). The WCFFC voluntarily submitted the list and other documents and evidence to help investigators of the newly formed investigation agency in connection with trial of offenders, who committed genocide, crimes against humanity and peace in 1971. WCFFC chief Dr MA Hasan handed over the list and documents to Abdul Matin, chief investigator of the agency. Hasan told reporters most on the list have died and only 400 or 500 are still alive. - *The Daily Star, April 5, 2010.*

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first of its kind in Bangladesh, saw the presence of valiant freedom fighters, leading intellectuals, prominent jurists and judges, members of different professions as well as teachers and students among others.

Two imaginary war criminals were sentenced to death by this make-believe tribunal in the mock trial for carrying out and aiding and abetting genocide, war crimes and crimes against humanity, crimes against

Haque said. In the case, Butchery was convicted of genocide, crimes against humanity and peace, war crimes, and violation of international law, while Karim was convicted of aiding and abetting genocide and war crimes, and crimes against humanity.

The prosecution argued that the International Crimes (Tribunals) Act 1973 is sufficient to try the war criminals. As the court asked whether the prosecution had any specific allega-