



LAW NEWS

Landmark treaty on enforced disappearance entered into force

A landmark treaty to deter enforced disappearances entered into force on December 23, 2010 with United Nations experts tasked with assisting families determine the fate or whereabouts of the disappeared urging States to ensure the eradication of the crime by bringing those responsible to justice.

The International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted by the General Assembly in 2006, took effect 30 days after Iraq became the 20th State to ratify it.

"The entry into force of the Convention is a new and important step in the right direction. But it is not enough," said members of the UN Working Group on Enforced or Involuntary Disappearances in a statement.

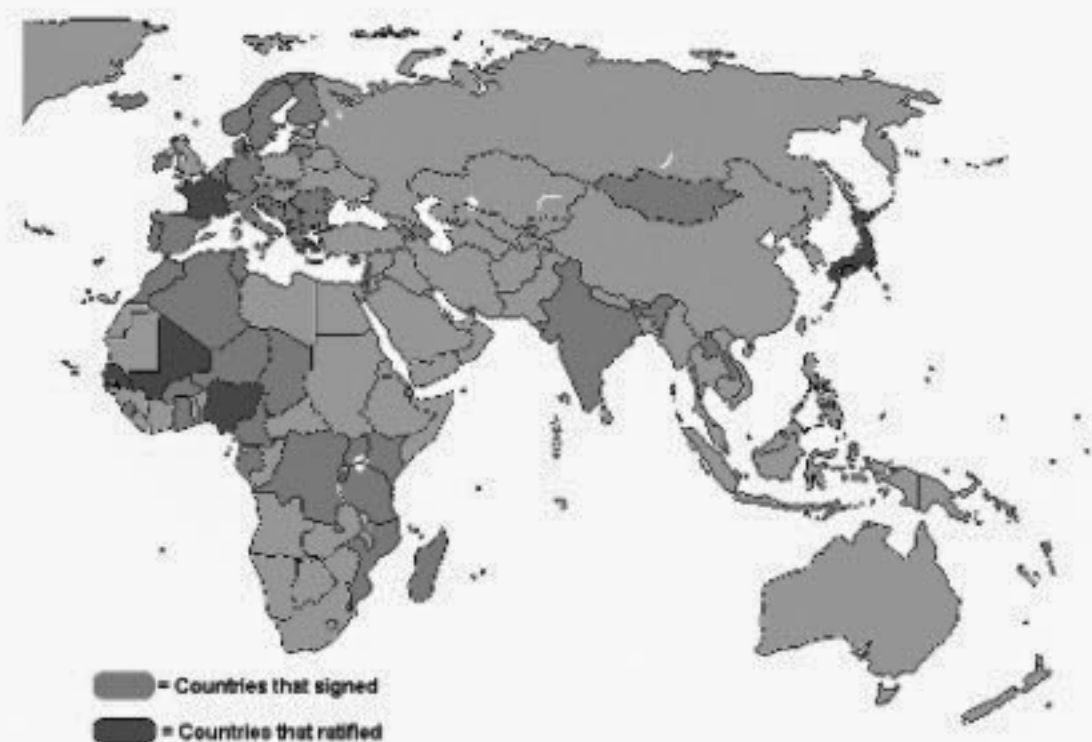
"On this important occasion we urge States to make all possible efforts to prevent and eradicate the heinous practice of enforced disappearance and to bring to justice all those believed to be responsible for the crime; refrain from any act of intimidation or reprisals against those persons who contribute to the eradication of the practice; and take effective measures to realize the rights to truth, justice and reparation," the independent experts said. Enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State.

"The Convention breaks new ground in the fight against the scourge of enforced disappearances," the Working Group said. "It includes for the first time in a treaty the right of any person not to be subjected to enforced disappearance."

"The Convention recognises the right of all the persons affected by enforced disappearance to know the truth about the circumstances of this crime, the progress and results of the investigation and the fate of the disappeared person," members of the Group said.

States that ratify the Convention commit themselves to conduct investigations to locate the disappeared person, to prosecute those responsible and to ensure reparations for survivors and their families.

"This is a momentous step, a day that has been looked forward to by many in all parts of the world, including families of those who have disappeared," the independent experts said. They, however, condemned the fact that enforced disappearances continue to occur all over the world. "As recent as our last session, the Working Group



examined newly-submitted cases of enforced disappearances and information on previously accepted cases from more than 40 countries from all the regions of the world. We still see secret detention facilities, kidnappings and abductions by States agents against political dissenters and persons accused of terrorism, harassment against relatives of people disappeared, and widespread impunity," they said.

Members of the Working Group congratulated the 21 States that have ratified the Convention and reiterated their call for all Governments to ratify the treaty as soon as possible. States should also accept the competence of the Committee on Enforced Disappearances to receive and consider individual and inter-State communications of the Convention, when ratifying it.

Source: UN News Service.

LAW LEXICON

Habeas corpus - The name of a writ having for its object to bring a person before a court.

Harmless error - An error committed during a trial that was corrected or was not serious enough to affect the outcome of a trial and therefore was not sufficiently harmful (prejudicial) to be reversed on appeal.

Headnote - A brief summary of a legal rule or significant facts in a case, which along with other headnotes, precedes the printed opinion in reports.

Hearing - A formal proceeding (generally less formal than a trial) with definite issues of law or of fact to be heard. Hearings are used extensively by legislative and administrative agencies.

Source: Jurist International.

LAW BOOK REVIEW

A compilation taking us back to the original spirit

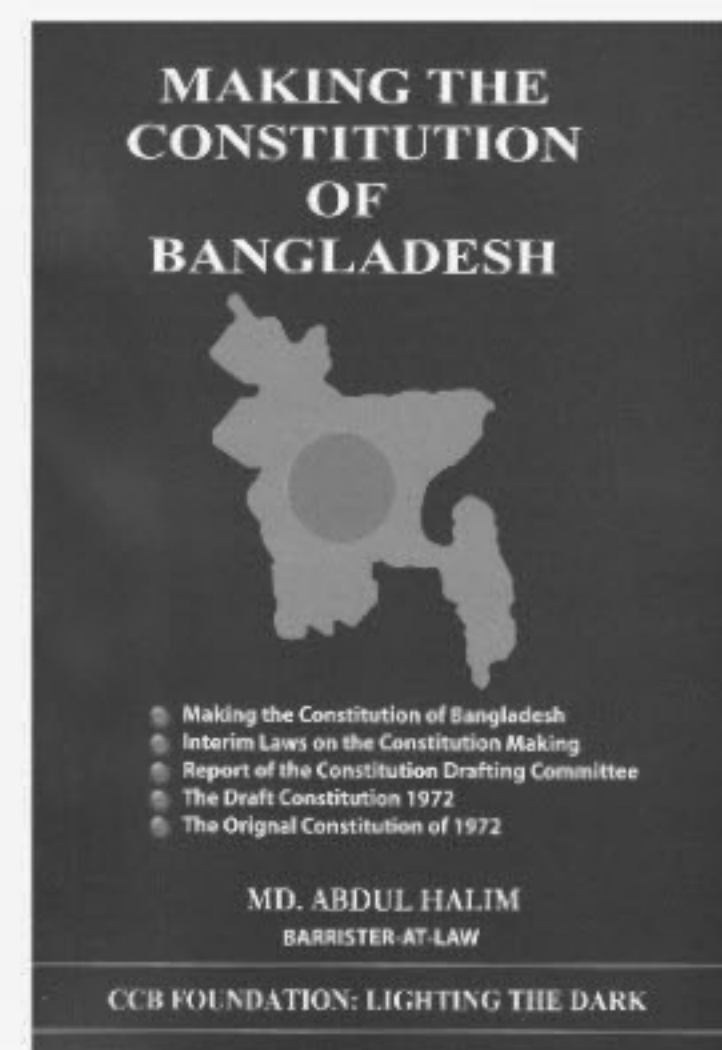
M. JASHIM ALI CHOWDHURY

BARRISTER Halim is a popular writer of law books with around 30 publications to his credit. As an author he came to light through his first scholarly endeavor *Constitution, Constitutional Law and Politics: Bangladesh Perspective* which enjoyed a sort of monopoly in the study of Constitutional Law of Bangladesh over the last decade. Since then he is writing relentlessly on various issues. The present one under review, *Making the Constitution of Bangladesh*, is the latest of his efforts.

Divided into five chapters, Chapter 1 (pp 9-38) of the compilation contains a short commentary on the history of constitution making which is an abridged reproduction of some of his

thoughts we already read in *Constitution, Constitutional Law and Politics: Bangladesh Perspective*. The extracts from Abul Fazl Huq's *Constitution Making in Bangladesh* published in the *Pacific Affairs Journal* (Vol 46, No 1, Spring, 1973) of University of British Columbia, available in JSTOR's online catalogue will throw light on the constitution making from an altogether different point of view. A short note on the Declaration of Independence (p. 11) reflects his own assessment of the issue.

Chapter 2 (pp 39-58) reproduces some pre-constitutional instruments like the Proclamation of Independence, Laws Continuance Enforcement Order, the Provisional Constitution of 1972 etc. Chapter 3 (pp 59-86) accommodates the report of the Constitution Drafting Committee to the Constituent Assembly.



Making the Constitution of Bangladesh
Barrister Md. Abdul Halim
Publisher: CCB Foundation, Dhaka
Price Shown: Tk. 250/-

This document has special significance to the new generation readers of the constitutional history. Chapter 4 (pp 87-200) reprints the Draft Constitution proposed by the drafting committee to the Assembly and lastly Chapter 5 (pp 201-304) reprints the original constitution of 1972.

I may not agree with some of the 'weaknesses and drawbacks' in the constitution making that the author finds, yet I acknowledge the greater purpose the compilation would serve specially to the post-liberation generation in taking them back to the root of the original spirit enlightening our nationhood. This handy compilation would serve the purpose of researchers working on our constitutional history.

The reviewer is Lecturer, Department of Law, University of Chittagong.

LAW EVENT

Reforms of legal education underscored



THERE is an urgent need to reform legal education in Bangladesh and standardise it up to the global demand. A standard legal education could contribute to an effective legal and judicial system in a country.

The legal education needs to be linked with human security. We should also focus on how we could make the legal and judicial system pro-people through intervention in related education. A sound legal system could contribute in building confidence in the society.

This has been viewed and recommended at a workshop on *Teaching Law* organised by the South Asian Institute of Advanced Legal and Human Rights Studies (SAILS) at its conference room in the city on Monday, 20 December, 2010.

The workshop urged to make legal education practical incorporating clinical legal education (CLE) among others. It also urged for active initiative of Bar Council to standardize the legal education and profession in the country.

Dr. Kamal Hossain, eminent jurist and Chairperson of SAILS, while speaking at the workshop, underscored the need for a model institution for legal education in the country.

"We need to initiate such a legal and human rights education, which will be producing socially-responsive lawyers and judges," Dr. Hossain said.

He observed that legal professionals could be agents of change for a society and nation. He urged for active role of the National Human Rights Commission to protect and promote rights of the vulnerable and marginalised groups of the society like the garments workers and slum dwellers. Urging upon government's initiatives, Dr. Hossain questioned: "Why people would live at slums after 40 years of independence?"

Referring to rehabilitation of city's slum dwellers, Dr. Hossain regretted that even after having directives from the higher judiciary people are deprived of their rights. He urged law teachers to make their students more sensitized and skilled enough to take up human rights works and judicial activism.

Professor Dr. Mizanur Rahman, Chairman of National Human Rights Commission (NHRC); Professor M. Shah Alam, Chairman of Law Commission; Professor Zakir Hossain, Dean, Faculty of Law, University of Chittagong and Member Judicial Service Commission; Professor Dr. Yubaraj Sangroula, Executive Director of Kathmandu School of Law (KSL); Dr. Naim Ahmed, Advocate, Supreme Court of Bangladesh, and Dr. Uttam Kumar Das, Deputy Director of SAILS conducted different sessions. Dr. Sharif Bhuiyan, Member, Governing Council of SAILS gave vote of thanks.

Professor Shah Alam, Chairman of the Law Commission recommended for a Legal Education Council in the country to look after the existing legal education and find a way for its reform. In this regard, he also mentioned about the study undertaken and submitted by the Law Commission to the Ministry of Law, Justice and Parliamentary Affairs 15 years back.

Professor Dr. Mizanur Rahman, Chairman of NHRC said that human beings must be at the centre point of any legal education. He recommended for such a legal education which would produce pro-people lawyers and judges.

Professor Dr. Yubaraj Sangroula, Executive Director of KSL urged young legal academics to take teaching as a mission. He observed that each and every one could be an agent of change.

Professor Zakir Hossain, Dean, Faculty of Law, University of Chittagong and Member, Judicial Service Commission appreciated SAILS for organizing such workshop, first of its kind in the country. He hoped that this initiative could contribute to introduce a socially-responsive legal education in the country. The workshop was attended by 26 teachers from law schools at Dhaka and Chittagong.

SAILS would organise two regional seminars on 'Ethics in Legal Profession' and 'Legal Education in South Asia' on 15 and 16 January, 2011 respectively in Dhaka.

Source: South Asian Institute of Advanced Legal and Human Rights Studies (SAILS).

LAW WEEK

Democracy dealt havoc

The High Court came down heavily on martial law and both military regimes in the country in its judgment on the Seventh Amendment and said all military rulers and their accomplices must be punished. "Not only General Ershad but all his accomplices as well as such perpetrators of 1975 martial law, who may still be alive, must face the wrath of ultimate justice," said the HC in its historic judgment. The court judgment said: "Two military regimes, the first being with effect from 15th August, 1975, and the second one being between 24th March 1982, and 10th November 1986, put the country miles backward. Both the martial laws devastated the democratic fabric, as well as the patriotic aspiration of the country." - *The Daily Star, December 30, 2010.*

Textile mill sealed, fined Tk 2.24cr

The Department of Environment (DoE) sealed Experience Textiles Ltd, a Pakistani venture for fabric dyeing at Bhaluka in Mymensingh, and fined it Tk 2.24 crore for polluting over 232 acres of agricultural land. This is the highest amount of fine ever imposed by the DoE. Officials involved in the DoE drive that detected such a massive pollution said the factory authorities kept their effluent treatment plant (ETP) shut, and were discharging liquid toxic pollutants through a pipeline in Kachhara and Sadhuya beels (wetlands) and agricultural lands around. They wanted to hide their misdeed by covering with large polythene sheets the spot where the pollutants are discharged from the pipeline, said Mohammad Munir Chowdhury, DoE director of enforcement and monitoring. - *The Daily Star, December 30, 2010.*

Sircar, Delwar sued

The Anti-Corruption Commission filed five cases against three senior BNP leaders and a former accounts chief of the parliament secretariat. Of the four accused, former speaker Jamiruddin Sircar is implicated in all five cases, filed for misappropriation of public funds and property during the BNP-led four-party alliance rule, said police and ACC officials. Former chief whip and BNP Secretary General Khondaker Delwar Hossain stands accused in three cases, former deputy speaker Akhtar Hamid Siddiqui in one and parliament secretariat's former chief accounts officer (CAO) Ashrafur Islam in two cases. - *The Daily Star, December 29,*

SC asks for documents from TIB

The Supreme Court (SC) asked the Transparency International Bangladesh (TIB) to submit relevant documents and its household survey report that said most service seekers fell victim to corruption at the judiciary. The TIB said it would submit the survey report and a detailed explanation of the survey methodology before the SC. "Yes, we have received the letter this afternoon. We would send our report along with a detailed description of the methodology we've applied during the survey to the Supreme Court tomorrow morning," Dr Iftekaruzzaman, TIB executive director, told *The Daily Star*. Badrul Alam Bhuiyan, deputy registrar at the SC, signed the letter. - *The Daily Star, December 29, 2010.*

Discord over CHT land intensifies

Chittagong Hill Tracts Land Dispute Resolution Committee's hearings, that were supposed to be inaugurated yesterday, are now in a limbo amid protests from indigenous communities and the government's stalling over making its position clear. The indigenous communities are demanding that CHT Land Commission law be amended, as the current law gives the commission chairman absolute power to decide ownership of disputed lands. They are also demanding resignation of current Chairman Khademul Islam Chowdhury. Meanwhile, the government is not making its position clear. - *The Daily Star, December 28, 2010.*

Law being used to serve petty interest

Rule of law in the country is at stake now as people are worried they won't get justice from the existing system, said speakers at a roundtable. The speakers also stressed the need for a mass movement saying rule of law won't be established until transparency and accountability are ensured in every sector. They criticised law-makers, law-enforcement agencies and the judiciary for violating laws and said law is now being used in the interest of politics and certain individuals. Shushashoner Janney Nagorik (Shujan), a platform of civil society members, organised the roundtable titled "Current state of rule of law in Bangladesh" at the Jatiya Press Club in the capital. Shujan President Prof Muzaffer Ahmad said people expected a democratic environment after the national

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