

LEGAL MAXIM



Facultas probationum non est angustanda - The right of offering proof is not to be narrowed.

Falsa demonstratio non nocet - A false description does not vitiate.

Fatetur facinus qui iudicium fugit - He who flees judgment confesses his guilt.

Felix qui potuit rerum cognoscere causas - Happy is he who has been able to understand the causes of things.

Felonia implicatur in qualibet proditiōne - Felony is implied in every treason.

Festinatio iustitiae est noverca infortunii - The hurrying of justice is the stepmother of misfortune.

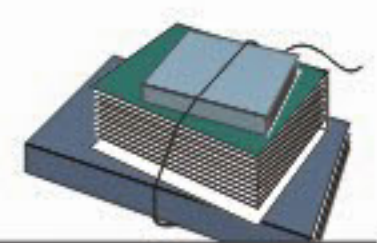
Fictio credit veritati; fictio juris non est, ubi veritas - Fiction yields to truth. Where truth is, fiction of law does not exist.

Fides servanda est - Good faith is to be preserved.

Filiatio non potest probari - Filiation cannot be proved.

Source: Inrebus.com.

LAW LEXICON



Ex parte - On behalf of only one party, without notice to any other party. For example, a request for a search warrant is an ex parte proceeding, since the person subject to the search is not notified of the proceeding and is not present at the hearing.

Expert testimony - Testimony given in relation to some scientific, technical or professional matter by experts, i.e., person qualified to speak authoritatively by reason of their special training, skill or familiarity with the subject.

Ex post facto - After the fact, ordinarily used in reference to constitutional prohibition on ex post facto laws. For example, a person cannot be punished for conduct committed before a criminal law was enacted.

Expungement - The process by which the record of criminal conviction is destroyed or sealed.

Extradition - The surrender of an accused criminal by one state to the jurisdiction of another.

Extraordinary writ - A writ, often issued by an appellate court, making available remedies not regularly within the powers of lower courts. They include writs of habeas corpus, mandamus, prohibition and quo warranto.

Fair market value - The value for which a reasonable seller would sell an item of property and for which a reasonable buyer would buy it.

False arrest - Any unlawful physical restraint of another's personal liberty, whether or not carried out by a peace officer.

False pretenses - Representation of some fact or circumstance which is not true and is calculated to mislead, whereby a person obtains another's money or goods.

Source: Jurist International.



YOUR ADVOCATE

This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Query

Dear Sir, I had a long 5 years relationship with a boy and it was a very intimate one. Then after all the ups and downs of the last 5 years we both mutually decided to separate. Now he is giving me threat that he will disclose all the close moments (photos and video shoots) of us into internet and will inform all the relatives including the probable bride groom's family of mine in future. Under his threat as he said that he will not spare me, my family is afraid and could not proceed further with any of my marriage proposals. Furthermore, he is not ready to marry me and don't even want to do so. He said that if I involve his parents by informing them about all these he will make the situation worst. Now my question is would we (me and my family) file a General Diary (GD) to local thana or what do u suggest?

Helpless,
Dhanmondi, Dhaka

Response

Dear reader, thank you for your query. I do feel really sad to know about the unwanted sufferings that you are currently going through. It appears that your ex-boyfriend is intimidating you by way of threat of publishing your intimate photographs and videos on the web. He is also threatening you to disclose the same to your relatives including your prospective groom's family. I must admit that it is not really a very straightforward matter for me to address, as the theoretical solution is not the same to that in practice. From a legal point of view, you certainly have legal remedies. Firstly, as per your query you may seek assistance from the law enforcing agencies, like police and also from Rapid Action Battalion (RAB) by way of filing General Diary (GD) to the police and then further complain to the RAB. We would love to believe

that the personnel from the law enforcing agencies will act fairly and professionally to help you out of the misery (and will not put you into further nuisance!) as this type of incidents are taking place more frequently in our society now a days. Furthermore, to think in a more realistic way, you should immediately sit with him along with a mediator, who may be one of your close and common friends. You should ask him not to make public the photographs and videos. Using a common buddy is always a good way of dealing with such situations. It may not be always possible to sit with him but you should give para-



mount effort to make it happen as such sittings are very much useful for bringing an amicable solution. If this does not work, you should notify your parents to handle the matter. Remember that your parents are always your best friends and they are there to rescue you from the distress. They may be able to talk to the boy and even to his parents. In this type of situation, discussions involving the parents may be the most effective way as they are experienced and possess

required maturity. He may then realize the gravity of his activities and may decide to act rationally.

If your boyfriend acts in the way you have described, he is likely to violate many provisions of the Penal Code of Bangladesh meaning that he has committed and is likely to further commit some crimes. Consequently, you will be able to file a criminal case against him and compel him to face the trial at court. If your allegations are proved, he is likely to face punishments that include imprisonment.

However, though you have every right to file a case, it may not always be the best solution! I understand that in our social circumstances, filing the case or even sometime involving the police may put you into further social trouble. The option of going to the court is always open, but I always prefer this only as the last resort.

Though it is now too late for you, but I must say that prevention is better than cure. So, we should not have done anything that could possibly put your reputation into serious jeopardy. Taking very intimate photos and shooting intimate videos with your boy-friend was certainly not the best thing that you could do. We have recently witnessed many such occurrences where such videos have been made public through internet and other modes of communication to the greatest misery of the other party involved. I have on previous occasions as well replied to similar problems raised in the Your Advocate column. This means that such problems are becoming acute. In the course of this writing, I particularly warn the teenagers and their parents to be alert of what they are doing. I hope that my guidance will help you to tackle this problem.

For detailed query contact:
omar@legalcounselbd.com



LAW WEEK

HC asks for list of river polluters, encroachers

The High Court yesterday directed the authorities to prepare a list of polluters and encroachers of river Mayur in Khulna, and to place it to this court within four months. Deputy Commissioner of Khulna and director of department of environment of the district have to submit the list of polluters and encroachers of the river to the HC. After hearing a writ petition, an HC bench also issued a rule upon the government authorities to explain within four weeks why it should not be directed to take punitive action against the polluters and encroachers of river Mayur. The bench of Justice Mohammad Momtazuddin Ahmed and Justice Gobinda Chandra Tagore came up with the rule and order in response to a writ petition filed by Bangladesh Environmental Lawyers Association. The organisation filed the petition as public interest litigation on February 13 seeking necessary directives on the authorities to save the river Mayur from pollution and encroachment. -The daily star 16 February 2011.

No to domestic help under-12

Declaring all forms of violence, torture and repression on domestic helps illegal, the High Court yesterday ordered the government to ensure that no child aged below 12 is employed as domestic worker. In its judgement on a writ petition, the HC also directed the government to incorporate a provision in the labour law, recognising domestic helps aged between 12 and 18 years as child workers. The existing labour law does not recognise domestic helps as workers. The HC judgement contained a set of other directives to the government that include taking immediate steps to ensure security and a congenial working environment for all domestic helps, education of those aged 12 to 18 in the light of the policy for compulsory education, court sources said. An HC bench comprised of Justice M Imman Ali and Justice Sheikh Hassan Arif came up with the judgement after hearing the writ petition filed by Bangladesh National Women Lawyers Association as public interest litigation. -The daily star 16 February 2011.

SC appoints 10 experts as amici curiae

The Supreme Court yesterday appointed 10 senior lawyers as amici curiae (friends of court) for their expert opinion on a long pending appeal against a High Court verdict that in 2001 declared fatwa (religious edict) illegal. They are TH Khan, Rafique-ul Huq, Mahmudul Islam, M Zahir, Rokanuddin Mahmud, AF Hasan Arif, MI Farooqui, ABM Nurul Islam, Rabia Bhuiyan and Tania Amir. A three-member bench of the Appellate Division headed by Chief Justice ABM Khairul Haque adjourned the hearing of the appeal for two weeks. The HC on January 1, 2001 declared the punishments imposed in the name of fatwa illegal. The verdict came following a hearing on a suo moto rule issued earlier by the court after a newspaper report of Hilla marriage (marriage with a third person). Mufti Mohammad Toyeeb and Abul Kalam Azad the same year filed the appeal with the SC against the HC verdict. Bangladesh Mahila Parishad and Ain O Salish Kendra, two human rights organisations, became a party to the case and argued before the HC against fatwa. -The daily star 15 February 2011.

HC declares Gour Gopal's post illegal

The High Court yesterday declared illegal Justice Gour Gopal Saha's holding the post of Administrative Appellate Tribunal chairman. An HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Sheikh Md Zakir Hossain came up with the verdict following a writ petition that challenged the legality of Gour Gopal Saha's occupying the post. Tapash Kumar Pal, a lawyer, filed the petition stating that the defendant was simultaneously holding offices of president of Ramakrishna Moth and Ramakrishna Mission, and vice-chairman of Bangladesh Hindu Kalyan Trust. The terms of his appointment to the Administrative Appellate Tribunal forbid him to engage in any other organisations, the petition states. The HC on December 7 last year issued a rule upon the government and Gour Gopal to explain under what authority he was holding the post. After the hearing on the rule, the HC bench yesterday delivered the verdict. -The daily star 15 February 2011.

HC scraps proceedings

The High Court (HC) yesterday quashed the proceedings against Prime Minister's Energy Adviser Tawfiq-e-Elahi Chowdhury in the barge-mounted power plant corruption case. The Anti-Corruption Commission (ACC) filed the case with Tejgaon Police Station on September 2, 2007 accusing Prime Minister Sheikh Hasina, Tawfiq-e-Elahi Chowdhury and five others on charge of committing corruption in setting up the power plant in Khulna. An HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Sheikh Md Zakir Hossain passed the verdict following a writ petition filed by Tawfiq challenging the proceedings of the case against him. -The daily

LAW EVENT



Urge for a migration policy

MD. GOLAM SARWAR

PRESENTERS, discussants, designated guests and participants at a workshop recommended for making a comprehensive national migration policy to protect the rights of the migrants. National Human Rights Commission organized a consultative workshop on the role of National human Rights Commission in protecting the rights of migrant workers on 11th February 2011.

Dr. Dipu Moni, Honble Minister for Foreign Affairs, was the chief guest at the workshop, while Stefan Priesner, Resident Representative of UNDP Bangladesh was the guest of honour. Two distinguished speakers: Muhammad Sha'ani

Abdullah, Member, Human Rights Commission of Malaysia and Ms. Farkhanda Aurangzeb, Ministry of Human Rights in Pakistan made presentations from their country perspective. The workshop was presided over by Professor Dr. Mizanur Rahman, Chairman, NHRC. In the inaugural session there was an overview of the programme made by Kazi Reazul Hoque, Member, National Human Rights Commission of Bangladesh. He informed that the consultation process with different stakeholders is a part of the strategic planning initiated by the NHRC for next five years. "We are getting huge remittance through migrant

workers so their contribution should be utilized for the socio-economic development of the country. At present one of the major concerns that we are loosing our market in different countries particularly in the Middle East" Mr. Haque reiterated. He urges for a comprehensive national policy to protect the rights of the migrant workers and in order to further this goal he suggested to establish a strong coordinating body at the national level.

In his statement Sha'ani Abdullah said that there should be a bilateral educational programme which will make the workers more skilled and knowledgeable about their rights and as such parties involved in sending and receiving the workers would not be able to take advantage and to deceive them. He said that Malaysian government would work together with Bangladesh to protect the migrant workers.

Fakhanad Aurangzeb in his statement said that for the revival of human dignity, we need to struggle together for that irrespective of whatever capacity we have.

Stefan Priesner remarked that NHRC has a role to educate human rights regarding the migration management but NHRC alone cannot implement it, government should be cordial and cooperative with the issues. UNDP is fully committed to fulfill the mandate, he added. The chief guest of the work-

shop Dr. Dipu Moni in her speech said that the issue of migrant worker is very important, but one very unfortunate thing is that our migrant workers are unskilled, unqualified and exploitation is over there. Due to huge cost they often cannot realize their rights rather than their investment. The government has already taken few steps regarding the issues like issuing machine readable passport, making anti-trafficking law. In all sectors one country

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cannot go for working within the boundary, regional and international cooperation is needed to ensure development. On part of this government is likely to discuss more on migration issues in Colombo process which will be held on April this year, he added. The Minister also added that the labour market is not unlimited, the receiving countries have their own

concerns, yet the government of Bangladesh is committed to ensure and hold the labour market of Bangladesh

NHRC Chairmen Dr. Mizanur Rahman urged the labour attaché of the High commissions to show more humanistic approach towards the migrant workers. Dr. Rahman informed that NHRC of Bangladesh is in touch with the Qatar NHRC and this will create a standard to protect the rights of the migrant workers. Training on rights of migration would be launched among the employees who are involved in the migration process, he argued.

In this workshop, the Foreign Minister informed that, government is going to launch a migrant welfare bank and assured all sorts of co-operation to NHRC in their endeavor to protect migrants worker's rights as well as to ensure justice.

After inaugural session there was a roundtable discussion where representatives from NGO's participated. Amongst other issues, importance of ratification of migration convention and adoption of a national migration policy was stressed.

As the mission of NHRC is to ensure the rule of law, social justice, freedom and human dignity through promoting and protecting human rights, a comprehensive national migration policy is essential to protect the rights of the migrants, the participants opined.

The writer is working with Law Desk, The Daily Star.

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: Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; email: dslawdesk@yahoo.co.uk,