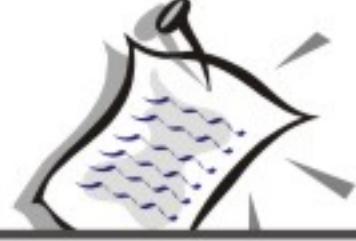


## FOR YOUR INFORMATION



Half of the Bangladeshis never heard of 'human rights'

# Access to Justice

WITH the celebration of International Human Rights Day in our recent memory, it is alarming that perhaps half the population of Bangladesh has never heard of the term 'human rights'. This worrying statistic is suggested by the results of a recent nationwide survey of human rights awareness. Conducted on behalf of the National Human Rights Commission of Bangladesh (NHRC), the survey sought to establish a baseline level of public perceptions, attitudes and understanding of human rights.

The low level of human rights awareness is of concern for access to justice in this country, as people cannot claim their rights, or even identify when a right has been violated, if they are not first aware of the rights to which they are entitled.

Table 1: Quality of service provided by the formal justice system over the past 5 years

Quality of service	Police	Subordinate Courts	High Court	Govt. Legal Aid Scheme
Number of Respondents	3632	3632	3632	3632
Improved	33.7%	29.0%	19.1%	21.9%
Stayed the same	15.0%	9.5%	4.1%	5.1%
Got worse	28.7%	17.3%	7.6%	7.5%
Don't know	22.5%	43.8%	68.0%	54.6%
Haven't heard of this institution / body	0.1%	0.4%	1.2%	10.9%

Of further concern, over half the people surveyed were either unaware or did not believe that human rights are legally protected and enforceable. Of those who were aware, only 6.1% knew they were protected by the Constitution.

When asked what they would do if the Government violated their rights, over 80% of respondents said they would take some form of individual or collective action,

such as protesting. However, only 1.1% said they would report it to police, and even less would report it to a lawyer or the NHRC. These responses indicate a lack of awareness of human rights as legally enforceable, of the institutions that are able to deal with violations, and, possibly, a lack of trust or confidence in existing institutions.

Thus, a key step towards realising the NHRC's long-term goal of a countrywide human rights culture is improved awareness of legal means to claim rights and access justice. If one cannot seek redress for rights violations, then their protection is not real, and if there are no consequences, there is little encouragement against committing rights violations.

Bangladesh has two systems of justice, one formal and one informal. It may come as little surprise that people, especially in rural areas, are far more likely to use the informal system. However, the great value and a key objective of the NHRC survey is in illuminating where people go, and why, to seek justice for human rights violations, and their opinions of the services available.

Respondents were asked to provide their opinion about the quality, over the past five years, of the services that make up the formal justice sector, whether or not they had used them. Interestingly, given the negative press the police regularly receive, 33.7% of people believed the police service has improved, compared to 28.7% who believed it has gotten worse.

The majority of respondents could not provide an opinion about the High Court or the Government legal aid scheme, and over 40% could not answer about the subordinate courts, indicating most have very little direct experience with these services. In fact, 10.9% had not heard about the provision of legal aid through the National Legal Aid and Services Organisation (NLASO), reinforcing both a greater reliance upon informal justice, and a lack of awareness of access to justice to which all are entitled.

When asked why people do not use the formal justice

system, the greatest reason by far, given by 73.8% of respondents, was the cost involved. Other reasons given for not accessing the formal justice system were perceived corruption, harassment by lawyers, complicated process and because the formal court system can be intimidating.

Vulnerable groups, such as women and minority groups, were least able to provide an opinion on formal justice services. Women who had been victims of violence reported difficulty in having their cases accepted by police, as well as harassment and being implicated in a false case. Survey respondents identified problems for women who pursue formal justice, including lack of support, often from family, and an environment that is not gender-sensitive.

Further, the NHRC reported that 90% of suspects brought to trial are not convicted. This low conviction rate leads to a denial of justice for many victims of crime, especially women and other marginalised groups.

As with the formal justice sector services, survey respondents were asked to rate the quality of services provided by the institutions and organisations of the informal justice sector over the past five years, whether or not they had used them.

Almost all respondents, 99.9%, had heard of traditional Shalish (mediation), the principal method of informal justice, and 53.3% believed their services have improved, significantly more than the 22.1% who believed they have declined. Only 11.7% could not answer, compared to the far greater numbers who could not answer about the formal judicial system.

Men are more likely to believe Shalish has improved than women, possibly indicating a lack of change within traditional Shalish in giving women a voice. Similarly, with Arbitration Councils men were much more likely to report an improvement, at 60.2%, than women, at 47.7%.

Just over 16% of respondents had not heard of NGO-led Shalish or NGO legal aid, and over 60% could not provide an opinion on either, indicating missed oppor-

tunities to access justice services. NGO legal aid was, however, viewed to be the least likely to be affected by corruption of all surveyed organisations, institutions

Table 2: Quality of service provided by the informal justice system over the past 5 years

Quality of service	Traditional Shalish	NGO led Shalish	Arbitration Council	Legal Aid NGOs
Number of Respondents	3632	3632	3632	3632
Improved	53.3%	19.1%	53.9%	16.3%
Stayed the same	12.7%	1.1%	9.6%	0.9%
Got worse	22.1%	2.3%	15.0%	1.6%
Don't know	11.7%	61.0%	21.1%	64.9%
Haven't heard of this institution / body	0.1%	16.5%	0.4%	16.4%

and bodies.

Corruption was the leading reason perceived by respondents for poor quality of service in every justice service. The authors of the survey report recommended following an initiative from Nepal, and painting the amounts to be paid for all court services on the walls. Such transparency would help assure people that they are not being unfairly charged.

Further recommendations from the report authors include:

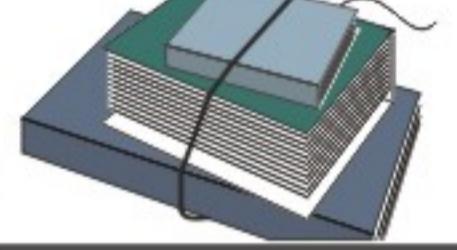
• Human rights education should be incorporated into the school curriculum to raise general awareness and effect generational change.

• More information on the institutions that exist to deal with human rights violations must be provided to encourage people to use them.

• To ensure greater sensitivity and awareness within the justice systems, education on human rights in general, and women's rights and the rights of other vulnerable groups in particular, should be provided for role-players in both justice systems.

*This is the abridged version of the nationwide survey of human rights awareness report.*

Source: National Human Rights Commission.



## LAW LEXICON

**Permanent injunction** - A court order requiring that some action be taken, or that some party refrain from taking action. It differs from forms of temporary relief, such as a temporary restraining order or preliminary injunction.

\*\*\*

**Per se doctrine** - Under this doctrine an activity such as price fixing can be declared as a violation of the anti-trust laws without necessity of a court inquiring into the reasonableness of the activity.

\*\*\*

**Personal property** - Anything a person owns other than real estate.

\*\*\*

**Personal recognizance** - In criminal proceedings, the pretrial release of a defendant without bail upon his or her promise to return to court.

\*\*\*

**Personal representative** - The person who administers an estate. If named in a will, that person's title is an executor. If there is no valid will, that person's title is an administrator.

\*\*\*

**Person in need of supervision** - Juvenile found to have committed a "status offense" rather than a crime that would provide a basis for a finding of delinquency.

\*\*\*

**Petit jury** - The ordinary jury of twelve (or fewer) persons for the trial of a civil or criminal case. So called to distinguish it from the grand jury.

\*\*\*

**Petitioner** - The person filing an action in a court of original jurisdiction. Also, the person who appeals the judgment of a lower court.

\*\*\*

**Plaintiff** - A person who brings an action; the party who complains or sues in a civil action.

\*\*\*

**Plea** - The first pleading by a criminal defendant, the defendant's declaration in open court that he or she is guilty or not guilty. The defendant's answer to the charges made in the indictment or information.

\*\*\*

**Plea bargaining** - Process where the accused and the prosecutor in a criminal case work out a satisfactory disposition of the case, usually by the accused agreeing to plead guilty to a lesser offense. Such bargains are not binding on the court. Also referred to as plea negotiation.

\*\*\*

**Pleadings** - The written statements of fact and law filed by the parties to a lawsuit.

\*\*\*

Source: Jurist International.

## 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 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel:



## 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

To record his own bought properties Mr. Alamin gave documents to his friend Mr. Wahid. Mr. Wahid put his name in some parts of deed without the knowledge of Mr. Alamin. The matter remained unresolved and in the meantime both of them died. The son's of Mr. Alamin (there were seven sons) challenged the validity of the document made by Mr. Wahid and prayed to annul the document on the ground of falsity. They got the verdict in their favour and regained the properties. This time they made a document in the name of another reliable person Anis. The eldest son of Mr. Alamin made a deed in his own name from that Anis with the promise that he will divide the properties in free of cost among his younger brothers. In contradiction to his promise, the elder brother records the entire properties in his name leaving his brothers in the dark. He is now refusing any other's share in the property. He is fraudulently representing that he had bought the entire property at Tk. 25, 00,000 from Mr. Anis. In the meantime Mr. Anis died.

I want to know from the learned Advocate that what avenues are open to other brothers now? How can it be resolved? Please provide me a solution

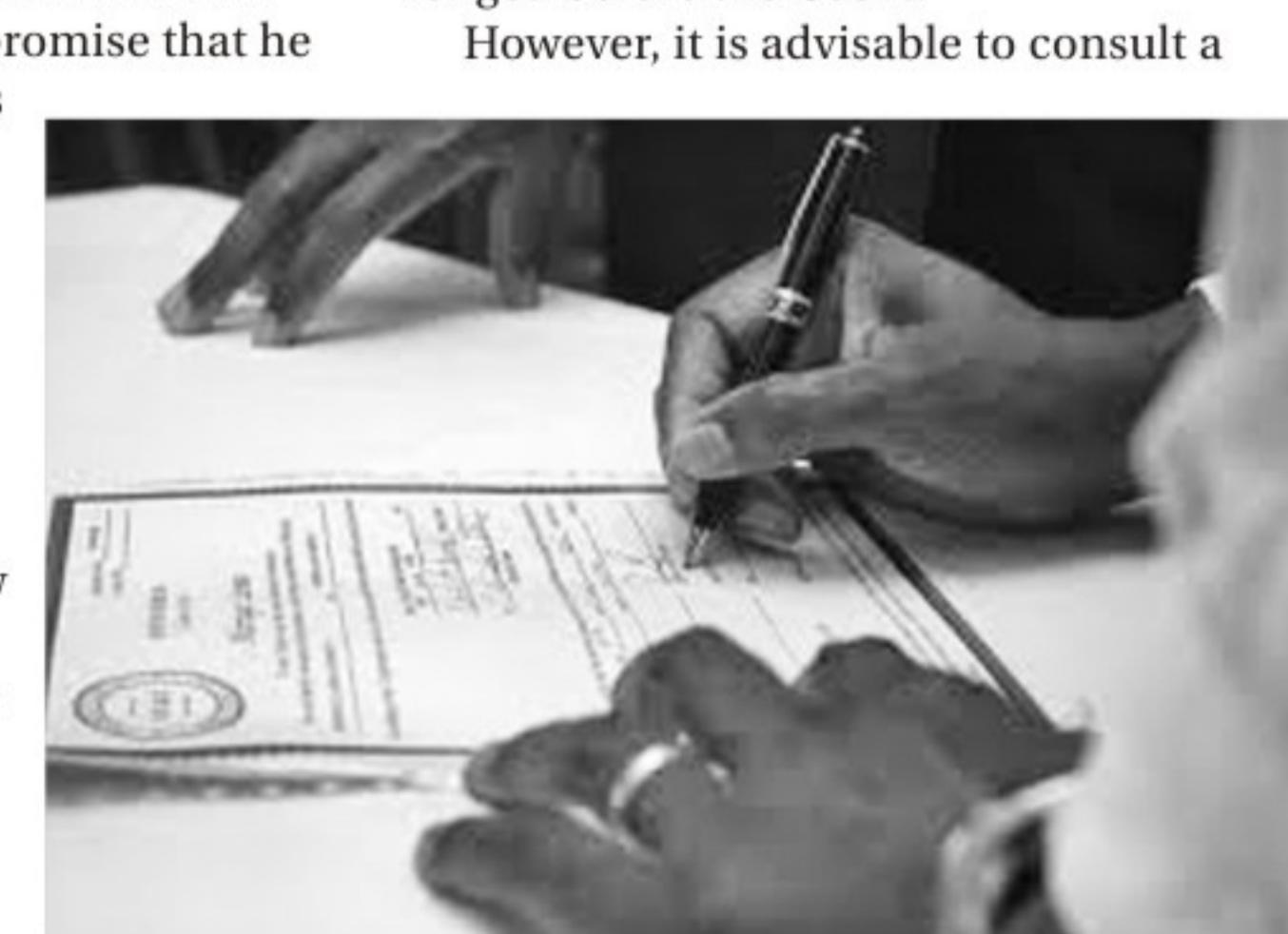
### Anonymous

### Response

I would like to thank you very much for your queries. From the given facts it is appearing that the queries are related to property matters involving Instruments (i.e. deeds) and also the inheritance of the same. As far as the making of the deed in favour of the eldest son is concerned,

it is possible to challenge the validity of the aforesaid instrument by way of filing a suit for cancellation of instrument. In addition, recourse is available to the other brothers for going to the court in order to have a declaration as to the title in their favour. In addition, as far as Muslim law of inheritance is concerned, it may be possible to file a partition suit in the Court in order to ensure equal distribution of the property. Concerning the issue of fraudulent representation involving TK 25 lacs, the other brothers should ask for the documents from the elder brother. In case there is any such document, the validity may also be challenged before the Court.

However, it is advisable to consult a



lawyer with all the relevant documents as scrutiny of those documents may give rise to forums for more cause of actions to arise. But I always advise to settle disputes (particularly related to properties) amicably as litigation is always burdensome for the parties and involves wastage of valuable time and money. Therefore, the other brothers should negotiate and try their best to achieve a peaceful end to the problem.

I hope the aforesaid opinion will help you to take a step forward in bringing an end to the problem.

For detailed query contact:

omar@legalcounselbd.com.



## LAW WEEK

### Appointment of 61 administrators challenged

A writ petition was filed with the High Court on December 18 challenging the appointment of district council administrators in 61 districts. Supreme Court lawyer Redwan Ahmed Runjib and Jaber Islam, a lecturer of London School of Legal Studies, filed the petition as public interest litigation. The petitioners said local government institution of the country cannot be run by any unelected representative as per article 59 of the constitution. As per the provision of the article, the local government institution will be run by the elected representatives, they said. - *The Daily Star online edition December 18 2011.*

### War crimes charges pressed against Quader Molla

The prosecution on December 18 submitted formal war crimes charges against Jamaat-e-Islami leader Abdul Quader Molla to the International Crimes Tribunal. The three-member tribunal fixed December 28 for taking the charges into cognisance against Jamaat leaders Motiur Rahman Nizami, Ali Ahsan Mohammad Mojaheed, Muhammad Kamaruzzaman and Quader Molla. On December 12, the tribunal fixed December 18 for taking the charges into cognisance against Nizami, Mojaheed and Kamaruzzaman. - *The Daily Star online edition December 18 2011.*

### HC verdict ignored

Illegal housing projects are being displayed and sold in the ongoing Rehab fair in the capital flouting the High Court verdict that ordered the government to stop sale and advertisement of unapproved projects. Abdul Mannan Khan, state minister for housing and public works, accompanied by housing and public works Secretary Khondaker Showkat Hossain inaugurated the fair. The HC in a judgement on December 7 banned publishing advertisement of any unauthorised housing project in print and electronic media and ordered the government to take stern actions against publicity, earth filling and any activity of such projects. The judgement, along with some earlier HC directions, is binding on Rehab, the housing ministry, Rajuk, land ministry and the Department of Environment. Bangladesh Environmental Lawyers Association (Bela), Ain O Salish Kendra, Bangladesh Poribesh Andolon, Institute of Architects Bangladesh, and Paribesh Banchao Andolan filed a writ petition last year against unauthorised housing projects. - *The Daily Star December 16 2011.*

### Nizami's petition rejected

The High Court on December 15 rejected a petition filed by Jamaat-e-Islami Ameer Motiur Rahman Nizami for scrapping the proceedings of a case against him filed under the arms act in connection with the 10-truck arms haul in Chittagong. The court rejected his petition considering that it was not placed before the HC. The HC bench of Justice Syed Muhammad Dastagir Husain and Justice Gobinda Chandra Tagore passed the order after hearing arguments from the counsel of Nizami and the deputy attorney general. The same bench also dropped from its hearing list another petition submitted by Nizami for scrapping the proceedings of yet another case against him filed on charge of smuggling firearms following the 10-truck arms incident. On April 2, 2004, police seized 10 trucks of weapons and ammunition from the Chittagong Urea Fertiliser Ltd jetty. Two cases were filed the next day with Karnaphuli Police Station -- one for smuggling firearms and the other under the arms act. - *The Daily Star December 16 2011.*

### Court to order in Pilkhana carnage case

Metropolitan Sessions Judge's court, trying the 850 accused of the Pilkhana carnage case, on December 15 said it would pass an order