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LAW IN-DEPTH

Enforcement of port state jurisdiction

MOHAMMAD RUBAIYAT RAHMAN

PORT conceives pivotal role in international maritime commerce. The 1982 UN Convention on the Law of the Sea (UNCLOS) does not provide any definition of port. However, maritime dictionary refers to 'port' as harbour for ships to moor, load or discharge. The movement of seagoing vessels in a port requires care and supervision for safety and efficiency of a port. Therefore, it is a concern of port state to maintain and safeguard port facility.

'Port state jurisdiction' is concerned with a port state's prescriptive jurisdiction over foreign vessels visiting its ports. The jurisdiction encompasses inspection of safety standard of foreign ships; to regulate handling of dangerous goods and to conduct investigation in maritime accident or casualty. In latter days, there is global trend in expansion of port state authorities.

As port state and maritime nation, Bangladesh has responsibility and obligation to enforce jurisdiction to safeguard marine resources. Geographical location of Bangladesh in the Bay of Bengal realm indicates its dependence on sea for both prosperity and security issues. There are mainly two seaports in Bangladesh: Chittagong and Mongla. The Chittagong sea port is the principal seaport of Bangladesh. In present time, the Chittagong port is located by the Karnaphuli river, an estuary located in Patenga. More than 90 percent of the country's export-import is conducted by the Chittagong port. In the preceding year 2015, the Chittagong port has accomplished two million TEU (i.e. Twenty-foot Equivalent Unit) container handling. The Mongla port is situated in the south-western part of Bangladesh. The port is located by the confluence of the Pussur river and the Mongla river.

The Port Act, 1908 and the Port Rules, 1966 are the primary legislation in Bangladesh as to exercise of port state jurisdiction. The Port Act of 1908 refers directives to ship owners and port authorities and enumerates the authority of government regarding port functions. The Ports Act, 1908 consists 69 sections and a schedule. The chapters of the Act encompass issues relating to government's rule making power; powers and duties of port officials; safety of shipping and conservation of ports; port revenues; fines and penalty; navigation signal. Section 3(4) of the Ports Act, 1908 of Bangladesh defines 'port' as any part of a river or channel. Section 6 deals as to power to make port rules. The Protection of Ports Act, 1948 provides measures for protection of ports. The act mainly eyes on rules and regulations for entry into the port.

The Bangladesh Merchant Shipping Ordinance, 1983 deals with issues relating to merchant shipping and the exercise of port state jurisdictions on foreign flagged vessels. As per wordings of section 411 any foreign flagged vessels are not allowed to engage in coasting trade of Bangladesh. Section 489 mentions that where any offence is committed on board of a foreign ship, on the coast of or into any bay, channel, lake, river, or other navigable water of Bangladesh, the Court of Magistrate would have the jurisdiction to take cognizance of the alleged offence and to try the case. According to Section 490 of the Ordinance, if any foreign ship occasions any damage to government property or to any citizen of Bangladesh, the Supreme Court of Bangladesh may detain any ship to satisfy the damage.

In comparison with international legal regime, the legal framework of Bangladesh falls short of proper exercise of port state prescriptive and enforcement jurisdiction. The Bangladesh Merchant Shipping Ordinance, 1983 as to merchant shipping has abseiled into an ineffective law. In preceding three decades, the merchant shipping ordinance has not been amended in compliance with international norms and rules.

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The port adjacent maritime zones of Bangladesh are rigging with vessel source pollution. Among various reasons behind such pollution, foreign flagged vessels entering into the port of Chittagong, play significant role. Shipping activities and operations in port area often lead to certain negative environmental impacts. Such activities include vessel oil spill; ballast water discharge, air and water pollution; anti-fouling pollution; vessel scrapping and waste disposal at sea. Other than maritime pollution, the sea is also facing challenges from climate change and illegal fishing.

Considering the scrutiny, for effective maritime port administration and proper exercise of port state jurisdiction, Bangladesh needs a comprehensive maritime policy. The present legal framework of Bangladesh falls short of effective implementing port state jurisdiction on foreign flagged vessels. There is no ambiguity in conceding that inconsistencies exist between the applicable national and international legal framework. This deficit urges that Bangladesh requires robust national legislation in order to discharge the obligation of port state jurisdiction under international law. After the maritime boundary dispute settlements with India and Myanmar, Bangladesh has garnered the legitimate right and jurisdiction of significant amount of maritime territory in the realm of the Bay of Bengal. Hence, it is high time for Bangladesh to realise the implementation of more structured and systematic exercise of port state jurisdiction.

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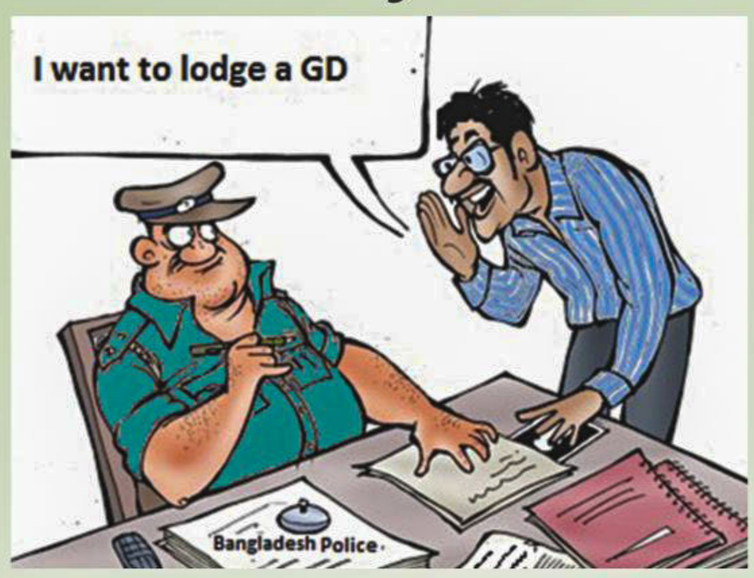
FOR YOUR INFORMATION

Reason to file a GD



MASHROOF HOSSAIN

VISITING a Police station is probably one of the most uncomfortable tasks for anyone in Bangladesh, thanks to the age-old colonial traditions running within the force. Considering the present law and order situation, if citizens are well-informed about the law, the chance of them being harassed by authoritative bodies significantly decreases. This article is an effort to inform you about one of the most common interactions people undergo with the police: filing a General Diary (GD).

The legal base of GD can be found in Section 44 of the Police Act 1861; Sections 154,155 in Criminal Procedure Code (CrPC) and Regulation 377 of the Police Regulations, Bengal (PRB). However, I will be discussing here everything you need to know in layman's terms.

General Diary, as the name suggests, is a diary which records everything that happens in a Police station. It is more like a mirror of that Police station- by going through it, a supervising officer gets a clear picture of what is happening within the station's jurisdiction.

Now the million-dollar question: How is GD related to you?

Well, in many ways-say you lose your certificates/passport/necessary papers, somebody threatens you with physical harm, your mobile phone/bag/valuables are lost, anyone you know is missing for unusually long period, somebody passes sexually explicit comments towards you, or you are harassed in social media - then all these can be informed to Police through GD. Not only that, if you see anything unusual in your area and feel that this might be important for people's safety, you can go and file a GD in the nearest Police station.

For your convenience, let me briefly describe a few common scenarios where filing a GD can help.

a) If you lose your mobile phone and file a GD, it will save you from criminal charges if the stolen phone is used for any wrong doing.

b) If somebody opens a fake account in facebook by your name attempting to tarnish your reputation, GD will be a legal document which you can use in your defence.

c) If you lose your passport or academic certificates, filing GD is part of the process to issue a new one.

d) If somebody threatens you with physical harm, you can inform this to the Police by filing a GD. Your protection then will be the responsibility of the Police. You can always keep in touch with the officer assigned.

e) If you see any suspicious activity by anyone in your area, filing a GD will help police to take necessary actions. You don't have any risk of your identity being compromised.

The process of filing a GD is rather straightforward: you just need to know which police station the place of occurrence falls. For example, if you lose your mobile phone in Dhanmondi, go to Dhanmondi Police station and look for the duty officer. Some very important points in this regard are:

i) You can write the GD yourself by addressing to the Officer in Charge (OC) and describing the incident in details. If you do not know how to do it, duty officer is legally bound to help you.

ii) If the duty officer refuses to take the GD without justified explanation, you can directly write to the Deputy Commissioner/Superintendent of that area.

iii) Filing a GD is an absolutely free of cost service, anyone asking for money is committing a crime. If an officer asks for money/bribe-immediately complain to the OC or Assistant Commissioner/ASP of that area.

So, now that you know all you need to file a GD, if the situation arises ever, do not hesitate anymore-go ahead and file the GD as it is your lawful right!

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LAW VISION

Bringing terrorism under the ICC Jurisdiction

MAZHARUL ISLAM

INTERNATIONAL terrorism has appeared to be a reality of life. In numerous regions of the world, it is a fact of daily life, while in others it is a theme of an agenda. The international community, has taken a wide range of measures to restrain terrorism. However, the International Criminal Court (ICC) is still not being used for this cause; even it does not embrace terrorism within its jurisdiction. The ICC does not have authority over acts of terrorism as a discrete offence. The difficulty to the insertion of terrorism in the Rome Statute was the lack of a comprehensive and unanimously accepted definition. Thus, it may hurt the legitimacy and reliability of the ICC as an impartial judicial establishment.

In 1994 the United Nations General Assembly recognised that the terrorism was 'criminal and unjustifiable'. The Convention for the Suppression of the Financing of Terrorism was signed in 1999, provide the first common definition of terrorism. Article 2 (1) (b) refers to "terrorism" as an act intended to cause death or serious bodily injury to a civilian, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act. However, United Nations Security Council resolution (UNSC) 1368 (2001) categorised terrorism as a threat to international peace and security. Thus, UNSC in its resolution 1624 (2005) calls upon every state to adopt such measures in accordance with their obligations under international law to (a) prohibit by law encouragement to carry out a terrorist act; (b) prevent such conduct; (c) refuse safe haven for that very purpose. The majority states have their personal, domestic definitions; the UNSC has adopted resolutions to explain terrorism but do not present an obvious meaning of it. The ICC jurisdiction simply over natural persons, hence any claims against states in the respect of terrorism cannot be brought before the ICC. One more part of the clash, as it touches the sensitive issue of right to self-determination.

There are few ways to embrace terrorism as part of the ICC jurisdiction. The first method to include terrorism as a part of fifth crime under Article 5 of the ICC statute. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) the crime of genocide; (b) crimes against humanity; (c) war crimes; (d) the crime of aggression. Scholar Aviv Cohen, in his research work titled 'Prosecuting Terrorists at the International Criminal Court' has given a model for additional article in the Rome Statute, it could potentially be:

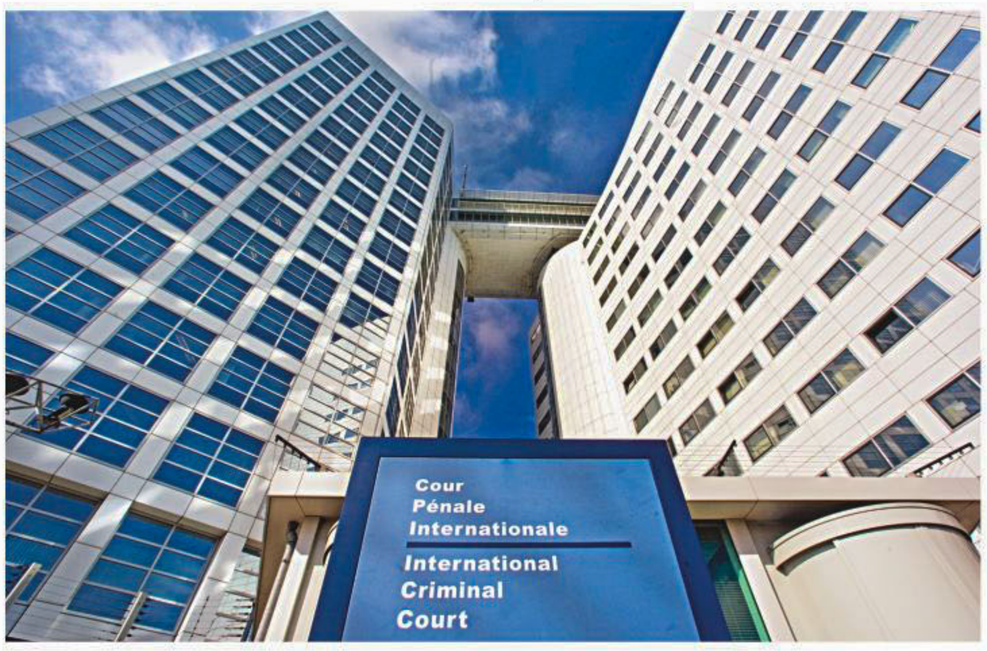
Crime of Terrorism - 1. The Court shall have jurisdiction over acts of terrorism.

2. For the purpose of this Statute, "terrorism" includes, but is not limited to:

(a) An offence according to [specified international counterterrorism conventions]

(b.) An act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.

The second mode to comprise terrorism as an element of the ICC jurisdiction by interpreting the language of existing crimes. It does not need changes to the Rome Statute. It is all about the matter of treaty interpretation. The primary rule of treaty interpretation is Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT) of 1969, which is generally considered as reflecting customary international law. Thus, the judges of the ICC may invoke the provision of the VCLT to take on terrorism as a component of its jurisdiction. The process to incorporate terrorism as a crime in the Rome Statute is very complex. It will require two thirds of the States Parties to approve the amendment. Therefore, a state party will have to put forward an agenda on the table for that very intention. At present there is no such complex procedural complication to stop terrorism from being part of the ICC jurisdiction.



The Article 25 of the Rome Statute, recognised that the jurisdiction of the ICC can exercise not only over the chief perpetrator of the crime but also over a wide range of his accomplices. Thus, the perpetrator himself apparently cannot stand for trial, but the persons who aided and abetted, incited, or otherwise facilitated they could be held responsible. Furthermore, the ICC jurisdiction over terrorism might reinforce domestic counterterrorism measures or it would be an obvious gesture to the international community, particularly for those who aided, abetted, provoked, or facilitated terrorism. The path is unlocked for counting terrorism as a crime in the Rome Statute and by this a further tier may be invoked to the international battle against terrorism.

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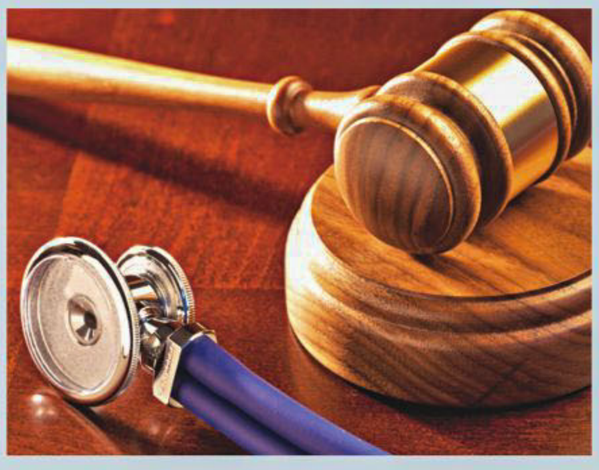
RIGHTS CORNER

Duty of care and medical negligence



SHAHNEWAJ

NEGLIGENCE means and includes careless state of mind which may amount to reckless or indifference, careless conduct without reference to any duty to take care and breach of legal duty to take care. Negligence amounts to tort: (a) when there is a legal duty to exercise due care; (b) breach of the duty; and (c) available consequential damages. Tortious liability of medical negligence is proved if all components of the three-part test of the preceding sentence are established on the balance of probabilities. Law imposes a duty on everyone to conform to a certain standard of conduct for protection of others. Specially, medical professionals are expected to work out and provide practical degree of skill and knowledge and also apply reasonable degree of care in treating patients. This is because; medical professionals are duty bound to protect life. Generally, the obligation of a medical practitioner emerges from the fact that he does something to a human being which is likely to cause physical harm unless it is done with proper care and skill.

The careless conduct of a medical professional may cause physical harm or financial loss to the patient. The extent of imposing liability for damage is of particular importance to the medical profession, because the law of tort provides compensation for injuries to person or property and for financial loss flowing from such damage. Any mature person of sound mind is entitled to claim for compensation provided he suffers damage due to medical negligence. This claim for personal injury may be made by any minor or person of unsound mind through next friend by invoking the provisions of Order 32 of the Code of Civil Procedure, 1908.

The proof of negligence remains the lynch pin to recover compensation. To succeed in an action for negligence against a doctor the plaintiff must prove (i) that the defendant was under a duty to take reasonable care towards the plaintiff to avoid the damage complained of or not to cause damage to the plaintiff by failure to take reasonable care; (ii) that there was a breach of that duty on the part of the defendant; and (iii) that breach of duty was the real cause of damage complained of and such damage was reasonable foreseeable.

The compensation paid for personal injuries is neither punishment nor reward. The principle on which damages for negligence are assessed is that they are to be considered as compensation for an injury sustained and not as punishment for a wrong inflicted. The determination of the amount of compensation is basically a net balance of the loss and gain to survivors or the dependants. The actual financial loss of each individual entitled to take legal action can only be determined by balancing, on the one hand, the loss to him of the future financial benefit, and, on the other, any pecuniary advantage which from whatever source comes to him by reason of the death.

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