



LAW campaign

International Day for the Abolition of Slavery 02 Dec 2006

The word 'slavery' today covers a variety of human rights violations. In addition to traditional slavery and the slave trade, these abuses include the sale of children, child prostitution, child pornography, the exploitation of child labour, the sexual mutilation of female children, the use of children in armed conflicts, debt bondage, the traffic in persons and in the sale of human organs, the exploitation of prostitution, and certain practices under apartheid and colonial régimes.

-- Fact Sheet No. 14, Contemporary Forms of Slavery, Office of UN High Commissioner for Human Rights



More than fifty years ago, the Universal Declaration of Human Rights stated in its Article 4 that "no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms". Despite the many efforts made to abolish all forms of slavery, it is not dead. It exists, and is even on the rise in some parts of the world. This is an affront to every free man and woman, indeed to all of humanity. New forms of slavery, such as sexual exploitation of children, child labour, bonded labour, serfdom, migrant labour, domestic labour, forced labour, slavery for ritual or religious purposes and trafficking pose a great challenge to all of us.

The international community has drafted treaties on slavery but many States have yet to ratify and implement the different treaties and to identify what needs to be done to eliminate slavery in all parts of the world. Surely, the time has come to unite all States behind the principle of ending slavery, so that we can end it in practice. Furthermore, there is an urgent demand for laws and action to ensure that new forms of exploitation and oppression do not take the form of slavery, and that those responsible for slavery-like practices are identified and stopped.

Source: UNHCHR.

COURT corridor

Delay in the lower judiciary vis-à-vis stay by HC Who to blame?

BARRISTER MOKSADUL ISLAM

At times the Supreme Court (SC) has no other option but to stay an order of the lower judiciary as an interim measure before the matter is heard at length in presence of both the sides. Usually it will be a temporary order and apparently for a limited period. However before the expiry date all such temporary orders of stay can be extended very easily. As a result these temporary orders may last even for decades. On many occasions it is stayed till deposit of the Rule. Whatever may be the case it actually is a permanent stay order and that continues till the matter is heard completely.

One of the main causes of delay in the justice delivery system is the proceedings of the original jurisdiction i.e. lower judiciary are being stayed by the higher judiciary for long time. On many occasions it may have been done on flimsy grounds or may be even though actually (or legally) there was no ground at all. Should we say it was granted by the court very summarily or obtained by the learned Advocate on flimsy grounds or even by misleading the court? For the purpose of this write up 'granted' would also mean 'obtained' and both the words would be used interchangeably.

On many occasions an order of stay serves the purpose of the party in whose favour it has been granted even though it apparently was a temporary order. Sometimes an order of stay may also give him complete benefit of the case.

Usually the order of stay should correspond to the Rule. Some variation, depending on the nature of the dispute, may be allowed. However on some occasions the prayer for an order of stay is framed in such a manner that it virtually stays the entire proceeding of the lower court ignoring the Rule. Let us see how an order of stay granted by or obtained from the High Court (HC) is obstructing justice in thousands of cases in the lower judiciary by examining a true story. A lady was unlawfully evicted



from her house and she sought protection of law in the lower judiciary. She won both in the Courts of Senior Assistant Judge and District Judge of the lower judiciary. Subsequently she also won her case in the High Court Division and also in the Appellate Division [12 BLT (AD)]. Appellate Division observed that "on perusal of the materials on record it is seen that the Courts of facts in the background of the materials on the record were satisfied that defendants dispossessed the plaintiffs from the land ... taking advantage of the order of stay that was passed by the High Court Division In that state of the matter we are of the view High Court Division has committed no error in refusing to interfere with the order of learned District Judge passed in the Miscellaneous Appeal affirming the order of the learned Assistant Judge allowing the prayer for mandatory injunction and thereupon making direction to the defendants to vacate the land of 'Kha' schedule and to restore possession thereof to the plaintiffs". Accordingly eviction order was

given in favour of her. However in the execution stage various unreasonable applications were filed in the lower judiciary by the other side and all of them were eventually refused or dismissed. Now she is about 80 and was longing to enter into that house after more than a decade since she was evicted. However surprisingly on the 31st August 2006 an order staying the entire proceeding of the main suit has been granted by or obtained from the HC. Excuse me but how (it was obtained)? Excuse me but why (it was granted)? The lady wanted to know. Was the order of stay obtained or granted? May be it was both.

It was obtained by the learned Advocate as he misled the court by not informing that the matter has already been disposed of by the Appellate Division and by drafting a vague application and also by framing the prayer deceitfully. May be it was granted by the HC hastily as upon a reasonable reading of only couple of initial paragraphs of the application it would reveal that there are gaps in between lines and paragraphs of the said application. It

also refers a case called Miscellaneous Judicial Case. However what is a Miscellaneous Judicial Case? Apparently the Rule was issued or obtained regarding that Miscellaneous Judicial Case then why an order of stay of the entire proceedings? Was there any prima-facie arguable case for staying the entire proceedings of the lower judiciary after 15 years?

The lady has signed different kinds of powers at different stages of this case during the last 15 years. Recently when she was asked to sign another power again for the HC she could not remember whether she signed the earlier powers in Bangla or in English. She also could not remember the surname she used (as she uses both Khatun and Begum) in signing those powers. She also was not sure whether she used her title in those powers. Her hand was trembling because of her age. She barely managed to scribble her signature in the power and she does not think it would match with her earlier signatures. She was sorry and asked forgiveness for that. Now the question is will she be able to enter her house before she dies? Who should be blamed for this delay? The learned advocate who obtained the order of stay by misleading the court? Could we also dare to blame the court for granting the order of stay? I guess not. There must be a good ground with sufficient evidence before an order of stay is granted.

No proceedings of the lower judiciary should be stayed in hurried manner. Otherwise someone may interpret that our higher court is mainly responsible for delaying thousands of cases in the lower judiciary. We must also formulate a way of disposing an application for staying proceedings of the lower judiciary within a reasonable time. It must be a mandatory requirement. If it is not disposed of within such specified time all such stay order should stand vacated automatically.

This is a fortnightly column and the columnist is an advocate of the Supreme Court, Bangladesh, who can be reached at mail@legalsteps.net

RIGHTS monitor

The state of children in Bihari camp.

A few people can imagine what life is like living in a Bihari camp particularly for children. The living conditions of the Bihari camp dwellers of Bangladesh are an embarrassment to the country's social environment. It indicates that the Bihari children are leading an extremely substandard life where adequate food consumption, medical expenditure and schooling are beyond their reach. The condition as prevalent in the camp has led to a high rate of infectious diseases, which is likely to aggravate creating environmental hazards.

The Biharis live in 70 camp-like settlements throughout the country. Living conditions are miserable due to high population density, aging accommodations, poor sanitation and hygiene, lack of education and healthcare facilities, and limited access to livelihoods, with most employable individuals consigned to day labor, barbering, or rickshaw pulling. In a country where the average life expectancy is 60, the average life span for Biharis who reside in the camps is said to be only 35-40 years.

Bihari children exist at the fringes of society, with their most fundamental human rights denied. Lack of access to education is one of the primary problems and a rights violation that destines many to a lifetime of poverty. Investigation suggests that only the more affluent can afford to send their children to primary school and some to private schools. Private secondary school is available only to a few. Estimates of Bihari children's enrollment in



school ranged from 12 to 20 percent.

Due to illiteracy and ignorance, early marriages are rampant here. Residents complain of poor hygiene which triggers the outbreak of waterborne diseases like diarrhea, dysentery and tuberculosis.

In a Bihari camp in Rangpur, many children study late at a madrasa. Religious education is often their only access to learning to read and write. The children usually go to school in shifts and some students are left to study in the evening, leaving them to learn in an environment with either sporadic or no electricity. Some 300,000 Pakistanis, locally referred to as Biharis, living in 66 makeshift slums in Bangladesh for over three decades, are struggling to establish their rights as Bangladesh citizens. Born and bred in the slums which are now their home, ten of this tribe gained voting after the High Court declared them citizens of Bangladesh by birth. Unfortunately three-decades later, Bangladesh remains an alien nation for many of them, still striving to overcome cultural barriers, like language, to gain acceptance.

While there is widespread agreement about the hardships that Biharis face, there is far less consensus about how to resolve the issue. The concerned authority should come forward to resolve this protracted human rights and humanitarian issue.

Source: A group of child journalists from Shishu Prakash, Rangpur.

HUMAN RIGHTS advocacy



INTERNATIONAL DAY OF DISABLED PERSONS 03 December 2006

Declaration on the Rights of Disabled Persons

Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975

The General Assembly of United Nations proclaims this Declaration on the Rights of Disabled Persons and calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights:

- The term "disabled person" means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.
- Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.
- Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.
- Disabled persons have the same civil and political rights as other human beings; paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons applies to any possible limitation or suppression of those rights for mentally disabled persons.
- Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.
- Disabled persons have the right

to medical, psychological and functional treatment, including prosthetic and orthotic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration.

condition or by the improvement which he or she may derive therefrom. If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age.

- Disabled persons shall be protected against all exploitation, all regulations and all



- Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.
- Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.
- Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. No disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her

- treatment of a discriminatory, abusive or degrading nature.
- Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.
- Organizations of disabled persons may be usefully consulted in all matters regarding the rights of disabled persons.
- Disabled persons, their families and communities shall be fully informed, by all appropriate means, of the rights contained in this Declaration.

Compiled by Law Desk.

LAW week

EC rushes to set poll day Jan 21

In a surreptitious and hasty move threatening to pitch the country into further political turmoil, the Election Commission (EC) announced the schedule for the next parliamentary election, setting January 21 as the polling day. The EC Secretariat issued a gazette notification to that effect, urging the electors to choose a member from each of the 300 constituencies to constitute the ninth parliament. The announcement from the EC now headed by controversial acting Chief Election Commissioner (CEC) Justice Mahfuzur Rahman followed a consultation with President/Chief Adviser Iajuddin Ahmed. Most of the advisers to the caretaker government have expressed surprise over the announcement and said they were not informed about it. The Awami League (AL) led 14-party combine, Jatiya Party (Ershad), Liberal Democratic Party (LDP) and some other parties that have been calling for reconstitution of the EC and opposing unveiling of the polling schedule before correction of the voter list have outright rejected the timetable. They have also declared that they will resist any attempt to hold election as per this schedule. However, the BNP-led four-party alliance that has lately been pressing the caretaker government for an immediate announcement of the schedule welcomed the decision. According to the official polls plan, December 10 is the last date for filing candidature while December 11 is the date for scrutiny of the candidatures by the ROs. Withdrawal of candidature will close on December 19. -- The Daily Star, November 28.

Man with political goal made one of 2 Ecs

The president appointed two new election commissioners -- one of them aspired to be a candidate of the four-party alliance from Habiganj-2 (Ajmiriganj-Baniachang) constituency while the other has no illustrious background. New Election Commissioner Modabbir Hossain Chowdhury is a former inspector general of police (IGP) and secretary and was an aspirant BNP candidate. The other new Election Commissioner Saiful Alam served in the lower judiciary as a judge for a long time and later served as a director general in the Anti-Corruption Commission. Following the two new election commissioners' appointment by President Iajuddin Ahmed, the chief justice administered their oath at the Supreme Court. With their inclusion, the number of election commissioners has now increased to six -- the highest ever number of election commissioners in the country. The two new commissioners went to the Election Commission (EC) office in the evening and exchanged views with the acting chief election commissioner (CEC) and other officials of the EC. Requesting anonymity, a former additional inspector general (IG) of police told The Daily Star that during the caretaker government's tenure in 2001, Modabbir, who served as the additional IG (Administration), had asked several subordinate police officers to "work for BNP and Jamaat" in the 2001 elections. -- The Daily Star, November 28.

Body to probe civil servants' secret meet

A three-member probe body was formed to investigate the meeting between former energy adviser Mahmudur

Rahman and serving bureaucrats, as well as bureaucrats' involvement in the 1996 'Janatar Mancha' and another meeting between a political party and bureaucrats in 2001. The council of advisers, who set up the probe committee, has also directed the committee to list the name of all bureaucrats who have frequented the BNP chairperson's office, Hawa Bhaban and the Awami League president's residence, Sudha Sadan, and other political party offices. The committee headed by Agriculture Secretary M Abdul Aziz also have Secretary to the Youth and Sport Ministry M Aminul Islam Bhuiyan and Additional Secretary to the Law Ministry Kazi Habibul Awal as members. The committee will submit their findings by December 3, an Establishment Ministry press release said. The probe committee has been directed to identify the serving bureaucrats who frequent political offices and their specific wrongdoings. The probe committee has been directed to identify the bureaucrats who were present at the meeting held at Artisan Ceramics office with Mahmudur Rahman and probe their wrongdoings. The committee will also investigate bureaucrats who participated in the 2001 meeting between bureaucrats and the members of a certain political party held at Panda Garden restaurant. -- Prothom Alo, November 28.

Judiciary Separation Govt given 6 weeks more

The Supreme Court (SC) yesterday gave the government another six weeks' time to separate the judiciary from the executive. The SC passed the order asking 13 government officials including four top secretaries who face contempt of court charges, to comply with the court's 12-point directive on separation of the judiciary within six weeks. In December 1999, the SC ordered the government to execute the directives for separation of the judiciary in the much-talked-about Masder Hossain case. Since then, the successive governments of Awami League and BNP-led four-party alliance have been seeking repeated time extension for doing it. The nine mid-level officials are facing contempt charges for distorting the Supreme Court directives on separation of the judiciary, while four secretaries, including the ex-principal secretary to the prime minister, Kamal Uddin Siddiqui, for impeding the process of judiciary separation. Adjourning the hearing until the latest deadline, the apex court asked the nine officials, who regularly appear in person during hearing since December 2004, to appear on January 10, 2007 and report the progress made regarding the implementation of its directives by then. Barrister M Amir-Ul Islam, assisted by Barrister Moniruzzaman Asad and Barrister Shamsul Hasan, appeared as counsel for the Masder Hossain case while Barrister Rafique-ul Huq, TH Khan and Barrister Abdur Razzak appeared for the officials. Attorney General AJ Mohammad Ali stood for the government. -- UNB, Dhaka, November 28.

UN concerned about free, fair polls in Bangladesh

UN secretary general's special envoy Craig Jenness has said the United Nations is concerned about free, fair and transparent general elections in Bangladesh and urged political leadership to resolve differences in the elec-

toral process through dialogue. "We're concerned about free, fair and transparent elections in Bangladesh and UN is ready to support the holding of free and fair elections," he told reporters after a meeting with Foreign Secretary Hemayetuddin at the foreign ministry. Explaining the purpose of his visit to Dhaka, Jenness said Secretary General Kofi Annan has sent him to offer UN support to free and fair elections here and also express concern about some violent incidents that no one desires. The visiting envoy said he would like to encourage the leaders of political parties to resolve their differences in the political process through dialogue. The UN envoy called on President/Chief Adviser Iajuddin Ahmed at Bangabhaban. The president told the envoy that all steps have been taken to hold free, fair, neutral and peaceful parliamentary elections and urged the United Nations to send observers to Bangladesh. Listing the measures taken to remove hurdles to the polls, the president told the envoy that the chief election commissioner had gone on leave and two new election commissioners had been appointed to satisfy political parties' demands to create a congenial atmosphere for free and fair polls. He also told the envoy that the EC had announced the election schedule. -- UNB, Dhaka, November 30.

3 Writ Petitions with SC CJ's unprecedented stay order

In an unprecedented move, the chief justice stayed the proceedings of writ petitions challenging the legality of the president's taking over as chief adviser and his "unilateral" decisions, just minutes before a High Court bench was supposed to issue a ruling on them. Shocked by the order, lawyers and those who were present in the courtroom burst into anger and vandalised different sections of the Supreme Court (SC) and set fire to the vehicle of former state minister for law Shahjahan Omar. Hearing the matter for two days, the High Court (HC) bench decided to pass a ruling. But as the court sat, Attorney General AJ Mohammad Ali handed the stay order to the HC bench at 2:15pm. The bench read out that Chief Justice Syed JR Mudassar Husain has stayed further proceedings of the writ petitions and left the courtroom. Legal experts said no incident ever took place in the history of the HC in which the chief justice issued a stay order before the bench even admitted a petition. The chief justice can only stay a case after the HC bench issues any ruling, they said. Even if a stay order is to be issued, it was to come from the chamber judge, not the chief justice, explained constitution expert Dr Kamal Hossain. Accusing the chief justice of violating his oath and the constitution, the leaders of Supreme Court Bar Association (SCBA) announced an indefinite agitation programme to force removal of the chief justice and attorney general. -- The Daily Star, December 1.

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