



LAW campaign



Star LAW analysis

INTERNATIONAL MIGRANTS DAY 2006
Protecting their rights

18 DECEMBER is International Migrants Day. On 4 December 2000, the General Assembly, taking into account the large and increasing number of migrants in the world, proclaimed 18 December International Migrants Day (resolution 55/93). On that day, in 1990, the Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (resolution 45/158).

Member States, intergovernmental and non-governmental organizations are invited to observe International Migrants Day through the dissemination of information on the human rights and fundamental freedoms of migrants, and through the sharing of experiences and the design of actions to ensure their protection.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (the Migrant Workers Convention) came into force on 1 July 2003. It is the seventh international human rights treaty. The current number of states that have ratified the Convention stands at 34.

The every-day reality for many migrants around the globe remains a



bleak one. Vilified by politicians and the popular media, often subject to discrimination and human rights violations, many migrants continue to live their lives at the margins of societies unwilling or unable to accept or integrate them fully. In this context, the civil society and concerned people reiterates its call to all states to ratify the Migrant Workers Convention.

It has been recognized that migration has always been integral to the human condition; individuals and societies have moved in search of social, economic or cultural opportunity, or to escape the ravages of conflict and persecution. In the 21st century, this movement of people across and within state borders continues. There is no doubt that the need exists to bring an analytical spotlight to bear on the phenomenon of migration.

Compiled by Law Desk

Executing Family Court's decree

ZAHIDUL ISLAM

THE disrepute of the Family Court Ordinance 1985 that it does not provide adequate provisions for effective execution of its decree for money has been wiped up in 1989 by substitution of subsection 3 of section 16 by which Family Courts have been invested with the powers of a Magistrate, first class, for the enforcement of the decree passed by it; the earlier provision being that the money decreed by the Family Courts was to be recovered as a public demand at the discretions of the District Judge. Nonetheless, the execution process is still under the shade of confusions and misunderstandings. Still today some lawyers and judges seem confused as to the determination of executing court, which indicates that there is procedural non-specification. In the first part of this two part write-up I shall discuss the confusion regarding determination of executing court.

Section 16 of the Family Court Ordinance provides for the enforcement of decrees. Sub-section 3 of the section states:

(3) Where the decree relates to the payment of money and the decretal amount is not paid within the time specified by the court, the decree shall, on the prayer of the decree-holder to be made within a period of one year from the expiry of the time so specified, be executed-

(a) as a decree for money of a Civil Court under the Code, or

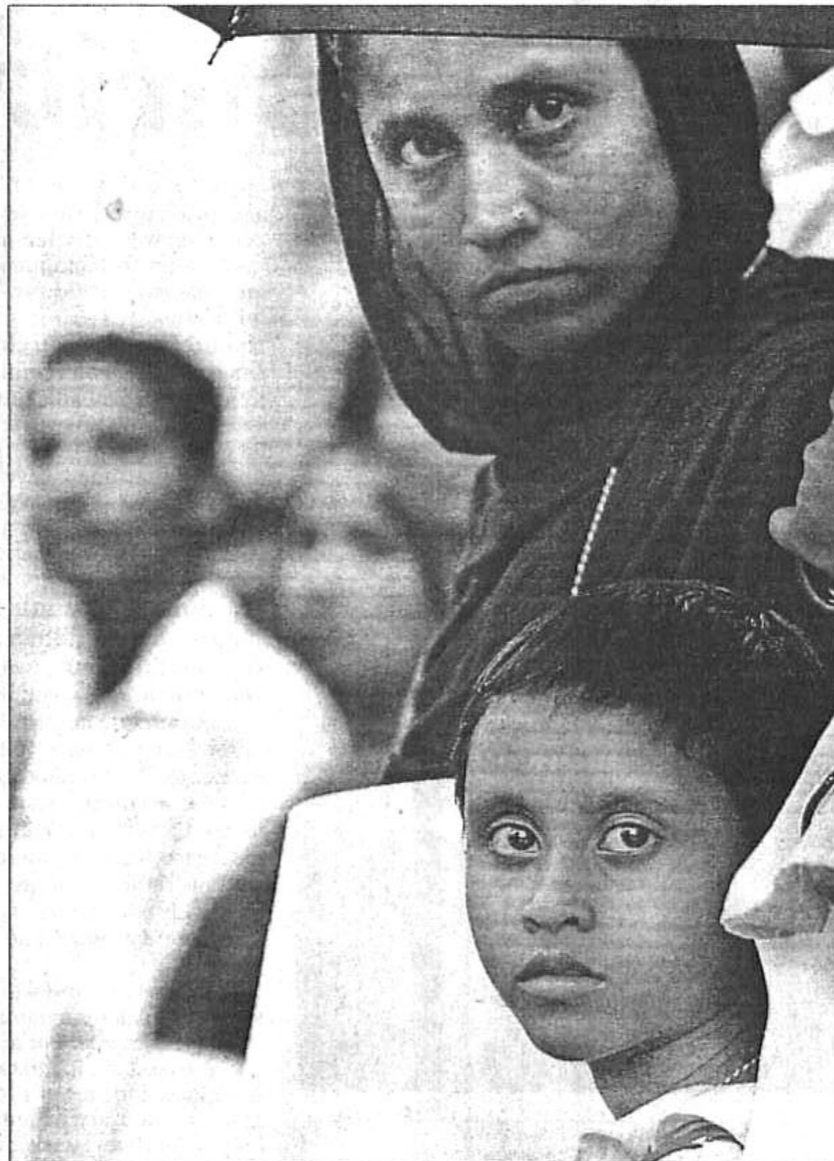
(b) as an order for payment of fine made by a Magistrate under the Code of Criminal Procedure, 1898 (Act V of 1898)

and on such execution the decretal amount recovered shall be paid to the decree-holder.

Again subsections 3(A) and 3(B) provide that:

3(A) For the purpose of execution of a decree under subsection 3(A), the Court shall be deemed to be a Civil Court and shall have all the powers of such court under the Code.

3(B) For the purpose of execution of a decree under subsection 3(B), the Judge of the Family Court shall be deemed to be a Magistrate, first class, and shall have all the powers of such Magistrate under the Code of Criminal Procedure, 1898 (Act V of 1898),



and he may issue a warrant for levying the decretal amount due in the manner provided in that Code for levying fines, and may sentence the judgment debtor, for the whole or any part of the decretal amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to three months or until payment if sooner made.

Thus, from Subsection 3 of Section 16, it is clear that a decree may be executed in two ways, i.e., (a) as a decree for money of a Civil Court under the Code of Civil Procedure, or (b) as an order for payment of fine made by a Magistrate under the Code of Criminal Procedure, 1898. But it is unclear here that who is to decide in which way the decree for money to be executed. Is

it the executing court or the decree holder or judgment debtor? Again, as an executing court for execution of the decree for money which court, civil or criminal, should be prioritised?

The legal provision regarding this is absent in the Ordinance. And I have not got any satisfactory answer to this through my discussions with the practicing lawyers. However, the High Court Division judgment in *Md. Ali Hossain & Others Vs State*, 5 (2000) MLR (HCD) 301 has helped me to see the issue from a different angle. In the said case, it was held that:

Fine imposed upon an accused in a criminal proceeding is of the nature of a financial punishment as distinguished from physical punishment and it must be paid by him under all normal circumstances. Only when the assets of the accused cannot cover the amount the fine imposed upon him and there is no way out for realisation of the fine the accused shall have to undergo imprisonment of either description for a period fixed by the Court for default in payment of fine.

Though it was a decision in a criminal proceeding, we can use the essence of the judgment to come to a decision as to determination of court for execution of family court decree for money. Usually Family Courts award decree for money in the suits for dower and maintenance. Dower (mahr) is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage. On the other hand 'maintenance' includes food; clothing, and lodging. After divorce wife is entitled to maintenance up to iddat period; which may extend to three months. And for maintenance of children, the word of maintenance, along with food, clothing and lodging as per definition, includes other necessary expenses for mental and physical well being of a minor, according to his status in society. Educational expenses may also be included in the definition of maintenance.

So, decree for money is, in some cases, to enforce the rights of a wife or to meet the basic necessity of a child. And it is distinguished from fine imposed upon an accused-convict in a criminal proceeding, which is of the nature of a financial punish-

ment. Fine is a charge upon the assets of the convict as a public dues. But decretal money of Family Courts is not public dues; rather it is rightful gain of a decree holder.

So, while acting on executing a decree for money, the executing court should keep in mind the purpose of family court's decree for money. Hence, realisation of the decretal money should be the first priority, and imprisonment should be the last option. Only when the assets of the judgment debtor cannot cover the decretal amount, and when there is no way out for realisation of the same, the judgment debtor shall have to undergo imprisonment for the term fixed by the court for default in payment of decretal money. There should not be any option left to the judgment holder to plead that he will undergo further imprisonment for a fixed term in lieu of payment of the decretal amount of money. If the judgment debtor is allowed to avoid payment of the decretal money by exercising his option by undergoing imprisonment for default in payment of the same, the very purpose of passing the decree will be frustrated.

For the above reasons, when a decree of money is put before family court for execution, the Family Court should proceed firstly as a Civil Court under the Code of Civil Procedure. And if the decree is not satisfied through civil process, only then a Family Court should act as a Magistrate Court under Code of Criminal Procedure, and sentence the judgment debtor to imprisonment. However, if a Family Court for the purpose of executing a decree for money initially begins working as a Magistrate Court, it must start its proceedings by issuing warrant for levy of fine (as the decretal amount is treated as fine for execution in magistrate court) under the provision of section 286 of the Code of Criminal Procedure. And if decretal amount is not recovered in this way, only then the Magistrate Court may sentence the judgment debtor to imprisonment.

(... to be continued)

The next part of the article will be published in the next issue.

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HUMAN RIGHTS monitor



The state of the world's children 2007
Empowering women to help children

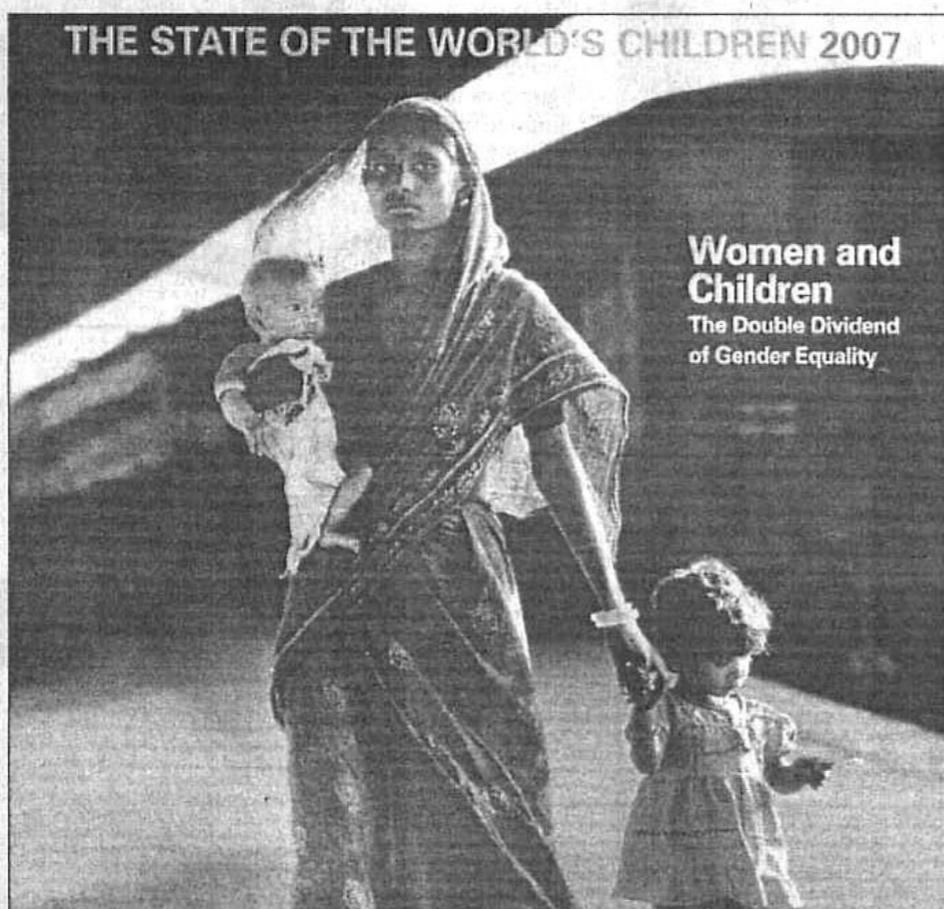
ELIMINATING gender discrimination and empowering women will have a profound and positive impact on the survival and well being of children, according to a new UNICEF report issued on the organisation's 60th anniversary. The Bangladesh national launch of the report was held at a city hotel on December 18. The report titled "Women and children: Double dividend of gender equality" was presented by Ms. Zafrin Chowdhury, senior communication officer of Unicef Bangladesh. According to the report, women's influence in key decisions improves the lives of women and has a positive effect on child well-being and development.

Two girl named Shumi Akhter and Amena Begum from the UNICEF-supported Abhijan or "Adolescent empowerment project" recounted their life experience of having access to basic education, life skills and livelihood skills. The adolescent girls from Gazipur and Tangail, like many others throughout the country, received assistance in taking up independent vocations. The girls said that this has not only helped us to have an income and independence, but also to be held with respect in families as well as society. They also added that which in turn helped them to have a say in when they want to get married. The girls said they nurture the dream for a life that was unthinkable for their mothers and grandmothers. Although in spite of their gains, both girls seek a more accepting social attitude towards their independence and their work. "It is still difficult to enjoy freedom as young women", said both.

On the occasion a child journalist of Dhaka zone named Aslamul Huq Tanim and Asma Nargis Annie, sub-editor of the Shishu Prokash, Children's express a publication of child journalists were presented. The project titled "Strengthening children's participation in media" another UNICEF supported project working in collaboration with Mass line media center which is being implemented in total 64 districts of the country and from each districts total 10 child journalists prepared report on different kinds of child rights violations and irregularities of Govt. bodies or authorities on regular basis.

The "State of the world's children 2007" presents seven key interventions and a roadmap to enhance gender equality. They are Education, Financing, Legislation, Legislative quotas, Women empowering women, Engaging men and boys, Improved research and data etc.

Commenting on the report, Prof Ferdous Azim of Brac University lauded the holistic approach of the report and urged the people to put pressure on the government to implement international conventions to establish women's



rights and ensure gender equality. She also added "The report recommends greater influence for women in all aspects of women's participation such as having greater voices in politics, which is key factor in achieving women's empowerment." Doly Akhter, a adolescent hygiene promoter and peer leader from the UNICEF-supported water and sanitation project, shared her experience at the launching ceremony.

Appreciating the present ratio of gender parity in primary education, Unicef Representative Louis George Arsenault said discrimination against women in the household and in politics has a direct and positive effect on children. In his concluding observations he thanked partners for lending their strength and support to the work of UNICEF did together with them. "Not only are women's empowerment and the well being of children closely connected, they are mutually reinforcing", he

opined in his speech. The program ended up with a question and answer session with the media where Doly Akhter, adolescent community hygiene worker from UNICEF supported water and environmental sanitation project answered the queries. Ms. Doly has just returned from addressing the UN General Assembly and speaking at the global launch of the report in New York. The benefits of gender equality go beyond their direct impact on children. The report shows how promoting gender equality and empowering women- Millennium development goal number-3, will propel all of the other goals, from reducing poverty and hunger to saving children's lives, improving maternal health, ensuring universal education, combating HIV/AIDS, malaria and other diseases, and ensuring environmental sustainability.

Source: UNICEF, Bangladesh.

LAW week



Guantanamo returnee put on remand

Police took Mobarak, who was detained at Guantanamo Bay for five years for his suspected al-Qaeda connection, on a three-day remand to learn if he has any militancy links in the land. Airport police showed him arrested under Section 54 of the Criminal Procedure Code and placed him before the court of Chief Metropolitan Magistrate with the remand prayer. A special US Air Force plane on Sunday flew Mobarak Hossain, 30, son of Abul Hashem of Brahmanbaria in Bangladesh and handed him over to the Zia International Airport Immigration. Mobarak went to Pakistan for studies in 1998 and taught in a madrasa in Karachi after completion of two-year study. In 2001, Pakistan intelligence arrested him and suspecting his link with al-Qaeda, handed over to the US authorities who later took him to the Guantanamo Bay prison. Mobarak need to be quizzed to learn his 'true' objective for going to Pakistan, if he was a member of any banned organisation in the country and if he had any criminal records, said Sub-Inspector Masud of Airport police in the remand prayer. Police also revealed that Mobarak went to Kabul in Afghanistan to visit his friend Rafiq, whom he met while teaching at a Karachi madrasa. Then he went to Jalalabad in Afghanistan from where Pakistan intelligence arrested him and kept detained for 32 weeks. The Pakistan authorities later handed him over to the US authorities, who interrogated him at different camps in Pakistan and lastly sent to the Guantanamo Bay prison. -The Daily Star, December 20.

Army captain killed in CHT ambush

Armed members of United Peoples Democratic Front (UPDF), an anti-peace accord group, ambushed an army team at Maichchhari in Rangamati killing the team's commander Captain Nurul Azam Gazi. Sources said the ambush ensued a half-hour-long firefight between the armed members of a pro-peace accord group and the UPDF around 4:30pm. No casualties were reported in that battle. Following the firefight, Captain Gazi, also the camp commander of Chilachhari army camp, led a team of army personnel towards the spot of the firefight. As they reached Maichchhari area, members of UPDF ambushed them. Gazi was critically injured in the incident receiving two bullets in his head. He was flown to Chittagong Combined Military Hospital where on-duty doctors declare him dead. However, quoting Inter Services Public Relations (ISPR), the news agency UNB reported that the captain was caught in a crossfire during a triangular firefight between the anti and pro-peace accord groups and another army patrol team when he led his forces into the battle. Army sources said army personnel from the brigade headquarters and neighbouring camps conducted raids at the surrounding areas to capture the culprits. They, however, failed to capture anyone. The captain was later flown to Bakerganj in Barisal where he was laid to rest near his village home. -The Daily Star, December 20.

No polls under present timetable

The grand electoral alliance led by Awami League (AL) announced that they will boycott and resist any election under the current poll schedule since in their view prerequisites for a free and fair election have not been fulfilled. In defence of the stance, AL President Sheikh Hasina at a grand rally in the capital said the atmosphere for a fair election has yet to come to existence, an acceptable voter list has not been prepared, controversial men are still dominating the Election Commission (EC), the administration is still politicised, and the caretaker government has failed to perform neutrally. "We want a free and fair election. The people will not allow holding of an election designed in line with a blueprint provided by BNP-Jamaat-led alliance...any attempt to hold a unilateral election will be resisted," said Hasina, the top-most leader of AL-led 14-party coalition, adding, "We want a response within 24 hours whether an atmosphere conducive to holding a free and fair election will be created." As part of resisting an election under the current schedule, Hasina's grand alliance also announced a countrywide dawn to dusk hartal scheduled for December 21, the last date for filing nomination papers for the ninth parliamentary election, to be held on January 22 according to the current poll schedule. Top leaders of the allies of 14-party coalition -- JP Chairman HM Ershad and LDP President Prof AQM Badruddoza Chowdhury -- also addressed the rally and announced that they will also boycott and resist any election under the current schedule. -The Daily Star, December 20.

SC stays collection of candidates' personal key information

The Supreme Court (SC) stayed the High Court (HC) verdict ordering the Election Commission (EC) to collect and make public some vital information including income and wealth statements of the candidates for general elections. The top court order came just over two days before the deadline for filing nominations for the upcoming election. The HC verdict that had been greeted with popular acclamation has become invalid for now following a controversial move by barrister Azmalul Hossain. Barrister Omar Sadat assisted Azmalul in moving for Abu Safa who had filed an appeal this year against the HC order. The SC stay shall be in effect till disposal of the appeal. Former law minister Moudud Ahmed, also a prospective BNP candidate for Noakhali-5 constituency, was present during the hearing at the one-member vacation bench of Justice Joyrul Abedin of the Appellate Division. Disposing of a writ petition filed by three lawyers, the HC on May 24, 2005 ordered the EC to gather personal details like academic qualification, profession, source of income, criminal records and some other information about the aspirants to parliament and publish those to help voters choose their representatives properly. The ruling had been welcomed by the cross-section of people including the EC as it required the commission to bring out the specifics like a candidate's criminal records, involvement in corruption and owning black money and so on, if they had any. Surprisingly, the apex court gave its decision without hearing any submission from the three petitioners. -The Daily Star, December 20.

Banks asked to identify loan defaulters to bar them from polls

The central bank and the finance ministry have asked all banks to identify the loan defaulters and furnish the election officials with relevant information on them so that they could be barred from the upcoming election. According to the current election schedule, the deadline for submission of nomination papers ends at 5:00pm December 21. After that, the election officials will start scrutinising the papers. The circular instructed the banks to keep open during that time the departments that maintain and store information on the loan defaulters. The banks also have been requested to preserve and update the information and readily pass on those to deputy commissioners (DC) who act as the returning officers (RO). The Finance Division has also sent a circular to all banks through the BB, asking them to find out the defaulters who might be nominated and send all relevant information on them to the ROs. The banks failing to provide information on the delinquent borrowers will be held responsible, the finance division circular states. Those who have failed to keep up the instalments on rescheduled loans and those who have taken out house building loans are also to be considered defaulters. All branch managers have been ordered to be with the ROs during scrutiny of the nomination papers with all pertinent papers at their disposal. Banking sources said in the 2001 election, some 300 candidates' nominations were cancelled because of similar steps taken by the central bank. -The Daily Star, December 20.

Boat purchase case

Ershad gets permission to appeal

Jatiya Party (JP) Chairman and former military ruler HM Ershad, a convict in the Japanese boat purchase scam case, secured permission from the Supreme Court to swear affidavit for filing an application for leave to appeal to overturn the High Court verdict. Justice M Joyrul Abedin of the Appellate Division's vacation bench issued the order following a prayer moved by Barrister Azmalul Hossain QC, the counsel for Ershad. Dismissing the appeal, a single bench of the High Court on December 14 jailed Ershad for two years in the Japanese boat purchase scam case. The High Court also commuted by a year the sentence term handed down by the trial court a decade ago. -Unb, Dhaka, December 20.

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