



HUMAN RIGHTS *advocacy*



Star LAW *analysis*



Living in the Shadows  
The human rights of migrants



**M**IGRANT workers are also human beings. Why don't they pay for my work? I cannot go home because I don't have money. I have chosen to kill myself as there is no other way." —this word found on a note left by Jeong Yu-hong, a 34-year-old migrant worker from China, living in South Korea.

The promise of a better standard of living for their families pushes many people into irregular migration, if legal avenues are not available to them. Every year thousands die while trying to reach other countries.

Many of those who arrive in a new country face further abuse and exploitation at the hands of traffickers, unscrupulous employers and state officials. Migrants who lack official status and the protection of the law are often denied the right to education, health and housing and are condemned to live and work in appalling and degrading conditions.

Women constitute almost fifty per cent of migrant workers, and are particularly vulnerable to exploitation, including sexual violence. Children, too, face particular hardships and are at risk of exploitation due to their young age, immaturity and, in some

cases, lack of parental support.

Migrants are often described, by some politicians and the media, as criminals, economic burdens, security threats and even a risk to public health. The reality is, however, that many economies have come to rely on migrants who are prepared to work in degrading and dangerous jobs with little security and low wages.

This unrecognized, unappreciated, and undervalued workforce now drives a significant part of the global economy. A migrant worker is increasingly being viewed as a commodity or a unit of labour, a "temporary service provider" who can be shuttled around the world at will. This attitude lacks any recognition of a migrant worker's human rights.

Migrants' rights are human rights; and governments, communities, employers and individuals need to do more to uphold and protect them.

The Amnesty International (AI) Primer on the human rights of migrants presents an overview of the issues, and outlines how government policies and practices should protect migrant workers' human rights at all stages in the cycle of migration

across the world.

It highlights some of the human rights violations that many migrants face, and sets out an agenda for campaigning for migrants' rights, including calling on States to ratify and implement the Migrant Workers Convention. It also celebrates migrant workers' contributions to both the host country and to their families in their countries of origin.

Dispelling fear and countering misinformation are a vital part of promoting migrants' rights. At the heart of AI's proposed agenda for campaigning for migrants' rights is a call to treat all migrants with full respect for their human rights and human dignity.

"This silent human rights crisis shames our world...Migrants are part of the solution, not part of the problem. They should not be made the scapegoats for a vast array of social ills." —Kofi Annan, UN Secretary General in an address to the European Parliament, 29 January 2004.

Source: Amnesty International.

Executing Family Court's decree

ZAHIDUL ISLAM

**I**N the first part of this write-up, the focus was on the confusion as to determination of executing court. It was discussed that for executing the money decree of the Family Courts, the executing court should begin working as a civil court so that the decreed money can be realised; and when the assets of the judgment debtor cannot cover the decretal amount, only then the executing court may sentence the judgment-debtor to imprisonment.

However, our present focus is on another important aspect relating to execution of family courts' money decree. Some lawyers and judges think that though the present law keeps provision for sentencing judgment-debtor to imprisonment for a maximum term of three months for unpaid decretal amount, this provision does not serve the purpose of a decree, as many judgment-debtors prefer to suffer this three months civil imprisonment than to pay decreed money. This in other way expresses that (1) judgment debtor can choose whether to pay the decree-money or to suffer imprisonment; and (2) that the penalty for non-payment of decreed money is civil imprisonment for maximum three months.

No doubt, there is a gross misunderstanding in this respect that will be removed just now. Subsection (5) of section 16 provides that the court may, if it so deems fit, direct that any money to be paid under a decree passed by it be paid in such instalments as it deems fit. And subsection 3B provides that:

For the purpose of execution of a decree under subsection 3(B), the Judge of the Family Court shall be deemed to be, Magistrate first class,....., 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.

From the underlined part of the above provisions it is clear that court may sentence judgment debtor for whole or any part of the decretal amount. Thus when a judgment debtor has not paid the total of 5,000 taka decretal money, he may be sentenced up to three months imprisonment, again when judgment debtor has paid 4,000 taka out of 5,000 taka decretal money, the court may award sentence of three months for this 1,000 unpaid decretal amount.

For the cases of decretal money to be paid in instalments, the legal position was clarified in the case of Maksud Akhter vs Md Serajul Islam 51 (199) DLR (HCD) 554. The fact of the case, if brief, was that Maksud Akhter was married to Md Serajul Islam and thereafter they were divorced. Subsequent thereto, Maksud Akhter filed a suit for realisation of dower money and maintenance. The suit was ultimately decreed and the decree-holder, Maksud Akhter, put the decree into execution. On the



prayer of the judgment debtor 40 instalments were granted by the court, each instalment being taka 13,875.02 only to be paid by the month. The first instalment was not paid. Consequently the judgment holder filed an application for executing the first instalment and sending the judgment debtor to suffer imprisonment for three months. The judgment debtor suffered the imprisonment but did not pay the amount of the first instalment. The judgment debtor did not also pay any instalment which was subsequently due. Then the decree-holder filed another application to direct the judgment debtor to suffer civil imprisonment for further three months for the failure to pay the instalment of August, 1998. The application was rejected as the court understood that as the judgment-debtor once has suffered imprisonment for three months, he shall not have to suffer imprisonment any more and he shall have not to pay the decretal money at all.

Against this judgment and order, the decree-holder filed a petition for revision in the High Court Division. The learned judge of the High Court Division held that:

A fresh and separate cause of action will arise for failure to pay money of each and every instalment for the

purpose of sending the judgment-debtor to imprisonment for his failure to pay the money under each instalment.

Against this High Court Division decision the judgment debtor appealed in the Appellate Division of the Supreme Court, which also confirmed the decision. The Appellate Division comprising of four judges, observed that suffering imprisonment of three months was an execution for one instalment only in respect of Taka 13,000.00 and odd whereas the total decree was for Taka three lac and odd to be paid in 40 instalments. As a matter of fact, the execution was for one instalment, and there is no legal bar to proceeding with the execution under section 16(3) of the Family Court Ordinance for the unpaid amount.

So, the math is simple in that if a judgment-debtor is allowed to pay decretal money in instalments, he will be liable to suffer imprisonment for up to three months for failure to pay each and every instalment.

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LAW *event*

'Legal reform on domestic violence'

SHAILA SHAHID

Domestic violence in Bangladesh is largely considered as private matter. The life of most of the women in Bangladesh continues to be dominated by a patriarchal social system. Women are customarily treated as inferior members of the society. As a result, Bangladeshi women subjected to domestic violence are in a very vulnerable position and seeking justice also can often lead to further abuse to them. In this phenomena speakers at a workshop underscored the need for formulating a specific law on domestic violence. "There is no specific law on domestic violence in the country, while India has already enacted a law on it," participants agreed. The national consultation workshop on 'Legal reform on domestic violence' was organised by Action Network to Combat Violence Against Women (ANCVAW) at the Spectra Convention Centre in the city.

The speakers said women are repressed in their families in various ways. "But most of the victims do not know that it is a criminal offence," they added. ANCVAW Chairperson Syed Nurul Alam said in his welcome speech, "We should create awareness among people about domestic violence so that an effective law can be formulated." The commission should examine the draft elaborately and accept opinions from all stakeholders before its enactment, he added. Susan De Ward, Chief of Party, AED/BHRAP also addressed the workshop. She said that urgent action is necessary to combat against domestic violence. Referring the Draft Bill on Domestic Violence she opined that although the Draft DV Bill is an important step towards the legal recognition of domestic violence in Bangladesh but legal reform is not the only issue to overcome. A massive awareness is necessary as domestic violence is underpinning in the social system.

Advocate Fawzia Karim Firoz, immediate past president of BNWLA and Barrister Sara Hossain presented two keynote papers at the workshop. Advocate Firoz presented different existing legal remedies of domestic violence. She said that domestic violence is one of the most widespread and least recognized human rights abuses in the world and Bangladesh is no exception in this. The Penal Code of Bangladesh contains provisions that protect women from various forms of violence,

deal the matter regarding domestic violence other than the Family Court established under section 4 of Family Court Ordinance 1985 which has given the authority to try the domestic violence matter in the proposed Bill.

Barrister Sara reviewed the whole draft Bill and in her view, although some loopholes exist in the proposed Bill but a holistic approach has been taken to address domestic violence in the draft law. Referring Section (2) of the draft Bill that this law shall

domestic violence. The first session titled "The jurisdiction of the proposed Domestic Violence Act" was chaired by Dr. Nusrat Ameen, Assistant Professor, Law Department, Dhaka University. The second session was on the remedies available under the proposed Bill and the third was other remedies of domestic violence.

The final recommendations of the national consultation was presented by Dr. Faustina Pereira from ASK. She also



although it does not specifically define 'sexual assault'. Also family matters are not covered by Penal Code. She said in her speech that access to justice is very much important for any rural women to seek justice or getting remedy. Hence in this context BNWLA proposed the Arbitration Council under Family Court Ordinance 1961, The Village Court under Village Court Ordinance 1985 and The Conciliation of Disputes (Municipal Areas) Ordinance 1979 can be considered.

extend to whole Bangladesh, she raised question whether Chittagong Hill Tracts will be under the purview of its jurisdiction as Family Court Ordinance 1985 is not applicable to CHT. Hence, it is important that this kind of barrier should be removed to ensure justice, she opined.

The consultation was divided into three simultaneous workshops from where participants came out with a set of recommendations to bring changes in the proposed draft Bill on

discussed about different future steps that need to be taken to combat domestic violence further. Ms. Nasreen Begum, Joint Secretary, Ministry of Law, Justice chaired the concluding session of the workshop and Parliamentary Affairs, while Md. Imam Hasnat, Executive Director of Manabik Shahjijo Shangstha gave his vote of thanks to all for participating in the national consultation.

LawDesk.

LAW *week*

13 jail officers harassed for steps against controversial acts

The prisons authorities are reportedly harassing 13 jail officials who took legal steps against some of the authorities' controversial steps. The authorities have initiated departmental proceedings and are lobbying with the home ministry for punishment of a senior jail superintendent. Moreover, departmental proceedings are underway against a jail superintendent basing on a letter from an anonymous sender that does not contain any specific allegation. They have also been learnt to be lobbying again with the home ministry for sending 11 officials into forced retirement on the ground of corruption and irregularities after failing to do so during the immediate past government's regime, home ministry sources said. The harassment began after 44 officials led by Senior Superintendent Sheikh Abdul Amik filed a writ petition challenging prison officers and staff recruitment rules, 2006 and the court issued a rule on September 6 why it should not be declared unconstitutional. Amik, the then head of Kashipur jail, started to receive 'illegitimate' verbal orders from top prison officials and was demoted to superintendent as he was transferred to Sunamganj jail on October 9. But the High Court stayed the transfer order on October 19 and passed a rule on the jail authorities. Branding Amik as the 'most corrupt', the prisons authorities submitted application to the home ministry in the last week of November asking the authorities to take punitive action against him. The ministry, however, is yet to start a probe. -The Daily Star, December 24.

Accord with Khelafat sparks widespread condemnation

The accord between Awami League (AL) and Khelafat Majlish sent shockwaves throughout the country as widespread condemnation of the agreement poured in. The AL and Khelafat Majlish signed an agreement where AL pledged that they would allow alets (experts on Islamic law) to issue fatwa (religious decree), if the AL-led grand alliance was voted to power. Earlier, the Supreme Court banned the issuing of fatwa but the Appellate Division has placed a stay order on that rule. Different political, social, cultural, human rights and business organisations condemned the five-point pact where the AL also pledged to pass blasphemy law. Leaders of these organisations said the AL has tarnished the image of the nation as fatwa and blasphemy law violate the spirit of the Liberation War and human rights. They said the AL had upheld the spirit of the Liberation War and secularism but now the party has violated its principles ahead of the upcoming elections. They demanded the immediate cancellation of the agreement in the greater interest of secularism and human rights. Ain o Salish Kendra (ASK), an NGO, in a press release said if laws were passed according to the agreement, it would violate section 39 of the constitution. They said it would tarnish the respect and honour of the courts as giving alets the power to issue fatwa will create another court alongside the existing courts. It would hurt all secular-minded people in the country, the ASK said. -The Daily Star, December 25.

Recovery of Arms  
Joint forces swing into action soon

Joint forces will launch a massive drive to arrest criminals and recover illegal firearms to improve law and order ahead of the January 22 parliamentary elections. Armed forces, Rapid Action Battalion (Rab), police, Bangladesh Rifles (BDR) and Ansar will start the drive in four to five days on the basis of list of criminals prepared by police and the Rab, sources said. For the first time after formation on March 26 in 2004, the elite Rab will be engaged to ensure a peaceful atmosphere for holding a free and fair election alongside the armed forces, police, BDR and Ansar, sources said. The Election Commission (EC) arranges a high level meeting at the EC Secretariat to discuss ways of the special drive and work out a coordinated plan among the law enforcement agencies and the armed forces. Chiefs of the army, navy and air force, top brass of police, Rab, BDR,

Ansar and coastguard and heads of intelligence agencies will participate in the meeting to review the law and order situation ahead of the polls. Seven secretaries including the cabinet and home secretaries will also attend the meeting. The participants will try to find out coordinated plans to keep law and order under control while the EC will give them guidelines with the focus on ensuring security to voters, EC secretariat sources said. -The Daily Star, December 26.

Appeal rejected in SC  
Ershad barred from polls

Jatiya Party (JP) Chairman HM Ershad was declared disqualified from the ballot, forcing Awami League (AL)-led grand electoral alliance to re-think whether it will compete in the upcoming parliamentary election. Returning officers (RO) rejected the five nomination papers Ershad had filed for the constituencies of Dhaka-5, Rangpur-3, Lalmonirhat-3, Sylhet-3 and Habiganj-3, on grounds of the Supreme Court's rejection of his appeal against a High Court verdict that had sentenced him to two years in prison in a graft case popularly known as 'Japanese boat purchase scam'. The RO's rejection of Ershad's nomination papers sparked a violent protest in greater Rangpur where leaders and activists of JP (Ershad) staged protests and called for dawn-to-dusk hartals in different districts. Ershad, who could not contest the 2001 election as he had been convicted in Janata Tower case, can now file an appeal against his latest disqualification with the Election Commission (EC) in three days, on which the commission will have to give a decision before January 3. Sensing the rejection coming his way, Ershad met AL President Sheikh Hasina in her residence and discussed strategies for the next course of action. The grand electoral alliance, which includes AL-led 14-party, JP (Ershad), and Liberal Democratic Party (LDP), yesterday threatened to launch a movement and boycott the election if vested quarters do not refrain from 'conspiring'. -The Daily Star, December 28.

300 hurt in clashes on final day of nomination filing

Around 300 people were injured as supporters of BNP and Awami League (AL) locked in inter-party and intra-party clashes across the country, the last day of nomination paper submission. In the capital, supporters of BNP leader and Dhaka City Corporation Mayor Sadeque Hossain Khoka and supporters of AL candidate for Dhaka-8 constituency Haji Mohammad Selim locked in a clash in front of the returning officer's office at Segunbagicha during filing of their nomination papers. The incident left over 100 injured, 70 of whom received primary treatment in Dhaka Medical College Hospital. Police fired rubber bullets and lobbed dozens of teargas canisters to disperse the troublemakers. During the clash, a number of vehicles including a media-owned car and a motorbike were set on fire. However, both Khoka and Selim filed their nomination papers and the situation became calm after they left the area. Meanwhile, supporters of BNP leader Nabi Ullah barricaded the Dhaka-Chittagong highway at Sanir Akhra in the capital for three hours after Nabi Ullah failed to get the party ticket. In Natore, BNP men attacked an AL procession in the town leaving at least 30 injured. Among them eight received bullet injuries, our Natore correspondent reports. AL leaders Gaffar, Anwar, Karim, Rahim, Arzu, Aman Ali, Saiful Islam and Hazrat Sarder were admitted to Natore Sadar Hospital with bullet injuries. -Prothom Alo, December 27.

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