

Law and Our Rights

The Suppression of Violence Against Women and Children Bill
A Deadly Cocktail

by Ahmed Ziauddin

The government, in this Bill, should have set up a Criminal Injuries Compensation Fund, to compensate the victims of crime, not the way as has been proposed, where a victim will be compensated by the perpetrator, but, the criminal could very well be poor and not in a position to pay; or, intentionally avoid paying compensation. Instead, the victims should receive automatic compensation from the government fund, regardless of the perpetrators capacity or willingness to pay; and the criminal be fined and compelled to pay the cost and compensation, as determined by the Court, to such Compensation Fund.

**New government-
New Law**

Crimes are and has always been, a political issue, which is reflected in governmental actions. Back in 1980, the BNP government enacted the Dowry Prohibition Act, 1980 making acceptance and giving of dowry illegal. So much noise was made about the enactment that as if the 'curse' of dowry had been eliminated. In reality, the law had no real impact, either in terms of modifying social attitude or reducing violence related to dowry.

While in power, Ershad issued the Cruelty to Women (Deterrent Punishment) Ordinance, 1983 and subsequently, the Cruelty to Women (Deterrent Punishment) (Amendment) Act, 1988 and specified crimes against women like: trafficking, rape, causing death during rape etc. until a new government stepped in.

In 1995, the government of Khaleda Zia re-packaged the laws under the Women and Children Repression (Special Provisions) Act, 1995, which, amongst others, repealed the Cruelty to Women (Deterrent Punishment) Act, 1988, set up Special Tribunals, fixed deadlines for investigations, introduced non granting of bail during investigation, trial in absence, death penalty for rape, death caused by rape, gang rape, death caused by torture for dowry, trafficking in children etc.

The present Bill, Suppression of Violence against Women and Children, which proposes to repeal the Cruelty to Women and Children (Special Provisions) Act, 1995, has been the latest attempt of the Awami League to address the same concerns. However, the government opted for 'new' laws solution for the old problems, without properly establishing efficacy of the earlier laws and certainly without proper examination whether the absence of law, or insufficient punishment, had been at the root cause of endemic violent incidents against women and children.

Two in One: The government in the Bill proposes not only the crimes aimed at women and children but for punishment for 'creating disruption' etc. For example, Section 14 provides punishment to set fire of government property, Section 15 for extortion of money, Section 16 in interfering in tenders; reminiscent to the law, the Suppression of Terrorist Activ-

ties Act, 1992.

The Suppression of Terrorist Activities Act was introduced in November 1992 to remain effective for 2 years. The present Prime Minister, then as opposition leader, mounted an effective campaign from the day of its adoption in Parliament by boycotting the session. She strongly argued, not without substance, that the Act is an oppressive law intended targets being the opposition political activists and that the Act violates Constitutional freedoms.

If Section 2 of the Suppression of Terrorist Activities Act, which defined 'terrorist activity' is looked at, the provisions of the present Bill appears identical. Section 2 listed terrorist activity as one:

(a) by the use of illegal force or creation of terror

(i) to extort or acquire tolls, assistance or money or property in any other form from any person or institution;

(ii) to create an obstruction on the highways, railways, waterways or air routes; or to divert any vehicle against the wishes of its driver;

(b) to intentionally damage any vehicle; (c) to intentionally damage or destroy any moveable or immovable property belonging to the government or any government institution;

(d) to constitute or created by law, or any company, firm or non-government organisation or organisation of any individual; (d) to seize or forcibly take any money, jewellery or valuables or any property or vehicle from any person; (e) to indecently harass any adolescent girl, or minor girl, or adult woman on the streets, in vehicles, in educational institutions or their environs or in any public place; (f) to create fear, terror or discipline or an anarchic situation, by the display of force, whether premeditated or sudden, in any place, residential home, shop, market, road, vehicle or destination; (g) to create obstacles or to prevent the scale, acceptance or submission of commercial tenders or to illegally force the acceptance thereof any person;

The Act provided uniform punishment, minimum being five years of imprisonment or maximum, death sentence, unspecified amount of fine and allowed the Court to order any person convicted of a terrorist offence to pay compensation to their victim (Section 4).

In reality, the law was extensively used against the opposi-

tion activists and human rights organisations joined hands with the opposition to demand its repeal and largely because of intense pressure, the government could not extend the Act's lease of life.

The same fears have been expressed about the inclusion of some terrorist types of offences in the proposed law of the Suppression of Violence against Women and Children. It seems, the government, quite dubiously, intends to sneak-in otherwise controversial crimes, which it opposed earlier, in the guise of a popular measure. This indicates, how, even the government utilises (or exploits) women and children for political purposes. It is easy to start political campaign against a repressive anti-terrorism law than the law to suppress violence against women and children.

Missed opportunity
What the bill should have proposed was a set of comprehensive laws against gender violence in all forms and violence against children. For this purpose, overhauling of definition of a number of crimes were essential, in addition to providing new definitions. The age old definition of rape should have been modified to recognise other forms of violations, invasive or otherwise. The Bill fails to recognise sexual assault, harassment, gratification etc. pervasive in the society.

The Bill should have been a progressive one, which would be hard on criminals by producing results, but at the same time, instituting effective procedures, in pre-trial investigation, prosecution, rules of evidence etc. sensitive to women and children.

For example, the Bill proposes that if a child is born as a result of rape, the person or persons committing the rape shall, according to the amount fixed, and in the manner decided by the Tribunal, provide maintenance allowance for the child to his or her legal guardian and shall continue paying such sums, in case of a son, until he reaches 21 years of age and in case of a daughter, until marriage (Section 9(6)).

The provision of maintenance of child born as a result of rape is commendable, but, the most effective deterrent would be to change the 'law of inheritance' to consider such a child a 'legitimate heir' and entitled to 'inherit' the perpetrators property, provided, the victim woman chooses to continue the pregnancy.

The government, in this Bill, should have set up a Criminal Injuries Compensation Fund, to compensate the victims of crime, not the way as has been proposed, where a victim will be compensated by the perpetrator, but, the criminal could very well be poor and not in a position to pay; or, intentionally avoid paying compensation. Instead, the victims should receive automatic compensation from the government fund, regardless of the perpetrators capacity or willingness to pay; and the criminal be fined and compelled to pay the cost and compensation, as determined by the Court, to such Compensation Fund.

There are also concerns about the fairness of the system proposed in the Bill regarding the rights of the accused. The provisions of bail, the right of cross-examination etc are important foundation of fair trial, which this Bill has ignored.

The test of every legislation is, its effectiveness and how much it establishes or reinforces the principle of rule of law. Judged accordingly, the Suppression of Violence against Women and Children Bill, 1998 will merely camouflage the issues.

The author is a Researcher at Brussels Catholic University

**SHC Awards Compensation for
Wrong Detention**

by I A Rehman

The liability to pay such compensation would devolve jointly and severally upon the state as well as the public officials responsible for illegally depriving a citizen of his liberty. The state/government, however, would be entitled to recover the amount paid/payable to the detainee from such officials for having caused wrongful loss to the government through misuse of powers under the relevant service rules applicable to such official instead of burdening the tax-payer.

IN an extremely significant decision a division bench of the Sindh High Court (J J Rasheed, A Razvi and Sabihuddin Ahmed) held that in a case of unlawful/mala fide detention where the fundamental right of a citizen guaranteed under Articles 9 and 14 of the Constitution was violated, the high court had the power under Article 199 of the Constitution to award monetary compensation to the victim. This would be a more efficacious mode of relief than a mere order of release or a direction for the registration of a criminal case against the delinquent officials.

The facts of the case briefly are as follows:

On October 15, 1997, the judges received telegrams from one Mazharuddin of Hyderabad alleging that on October 13, 1997, at about 11.40 pm ASI Intiaz of Police Station B Lati-fabad and constables Niaz, Musharraf and others, armed with deadly weapons, trespassed into his house without any search warrant. The raiders misbehaved with him, his wife, and daughter and forcibly took away his sons, Manzoor Mansoor and Imran (minor), to the police station.

The petitioner alleged that his efforts to secure his sons' release without paying bribe had failed. He prayed for the production of the detainees and legal action against the police officials concerned. The court converted the telegram into a constitutional petition and ordered the production of the detainee and the relevant record. A criminal miscellaneous application had also been filed in respect of the same retention. It was decided to take up both matters together.

A court official visited the police station and inspected the record. He found the petitioner's son, Manzoor Mansoor, in the lock-up.

When the detainee was produced in the court on October 17, 1997, he claimed that he had been kept in the lock-up since October 13, 1997. The police record was examined in the presence of the SHO. The latter was unable to refer to any entry regarding the arrest/detention of the detainee nor was he able to refer to any basis for a reasonable suspicion to the effect that the detainee was involved in a cognizable offence. The court ordered the detainee's release and issued notice to the additional advocate-general

and the SHO to make their submissions on the following points:

(i) Whether in the circumstances of the case any monetary compensation should be payable by the police officer concerned or the state, or both; and

(ii) Whether a criminal case is to be registered against the SHO.

The SHO denied the petitioner's allegation but the court found that in the absence of any material to even remotely suggest the detainee's involvement in the crime alleged by the SHO there could be no escape from the conclusion that the detainee's arrest was patently without lawful authority. No credit whatsoever could be attached to the SHO's statement. To cover up his illegal action he had made a false statement. Although the court came to the conclusion that it could direct the registration of cases against the SHO and others, it refrained from doing so.

The court examined the question of payment of compensation in detail. It expressed the view that although payment of compensation/costs had been ordered by Pakistan courts in some cases no elaborate discussion had been held on legal principles. It therefore decided to examine in detail the question 'whether monetary compensation could, and if so on what basis, be granted to a victim of unlawful or mala fide detention.'

The court noted that 'apart from a civil action in tort to recover compensation for unlawful detention or malicious prosecution, our legal system has always recognised the concept of instant compensation to the victim without having to resort to separate legal proceedings.' It also noted that the right to recover compensation had been internationally recognised, vide Article 9(5) of the International Covenant on Civil and Political Rights of 1996 — 'Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.'

The court then examined the question whether 'any monetary compensation can be granted under the power available to this court under Sec 491 CrPC or Article 199 of the Constitution.'

After discussing the special nature of its jurisdiction under Article 199, as distinct from the writ jurisdiction of the High Court in England in habeas

corpus matters, the court took note of a number of cases decided by the superior courts of Pakistan, India, Guyana, Trinidad and Tobago, and Sri Lanka, and summarised its conclusions on the legal principles as under:

(i) When a court finds that a person in custody was detained without lawful authority or in an unlawful manner, it could, apart from directing his release, pass any appropriate incidental or consequential order as it may consider proper in the interest of justice under Article 199 of the Constitution.

(ii) That the jurisdiction of this court to grant relief under Article 199 (i) (b) (i) or Article 199 (i) (c) is not hedged by the limitation of English precedents or provisions of sub-constitutional legislation.

(iii) In case such detention prima-facie amounts to a penal offence the court could direct that a case against a person responsible for such unlawful detention may be registered and tried in accordance with the law.

(iv) An order merely directing the release of a person from custody upon finding his detention illegal and condoning the violation of his most cherished fundamental rights of liberty and dignity in defiance of the requirements of law and the Constitution may not be the appropriate relief to which such person may be entitled. Under the wide powers available to this court under Article 199 of the Constitution it would be proper to award monetary recompense to a victim of violation of fundamental rights.

(v) The liability to pay such compensation is in the nature of a public law duty as distinguished from the private law right of a citizen to claim damages in tort and can be enforced in proceedings under Article 199 of the Constitution. The amount of compensation paid or payable under these proceedings, however, will be taken into account by a court subsequently trying a suit for damages.

(vi) That the amount of such compensation would be determined by the court in its discretion keeping in view the principle applied in awarding general damages in case of false imprisonment and exemplary damages in cases of mala fide conduct of a public officer under the law. Special damages sustained by a victim of unlawful imprisonment, however, can

only be proved through ordinary civil suit. In accordance with the decision of this court compensation ought to be substantial and not nominal.

(vii) The liability to pay such compensation would devolve jointly and severally upon the state as well as the public officials responsible for illegally depriving a citizen of his liberty. The state/government, however, would be entitled to recover 'the amount paid/payable to the detainee from such officials for having caused wrongful loss to the government through misuse of powers under the relevant service rules applicable to such official instead of burdening the tax-payer.'

(viii) In addition to the above the petitioner/victim may also be entitled to payment of actual, compensatory or deterrent costs. Apart from actual costs of litigation calculated according to the applicable rules, compensatory costs may be awarded and the official responsible for illegal action may also be personally burdened with the liability to pay exemplary or punitive costs in terms of the law declared by the honourable Supreme Court.

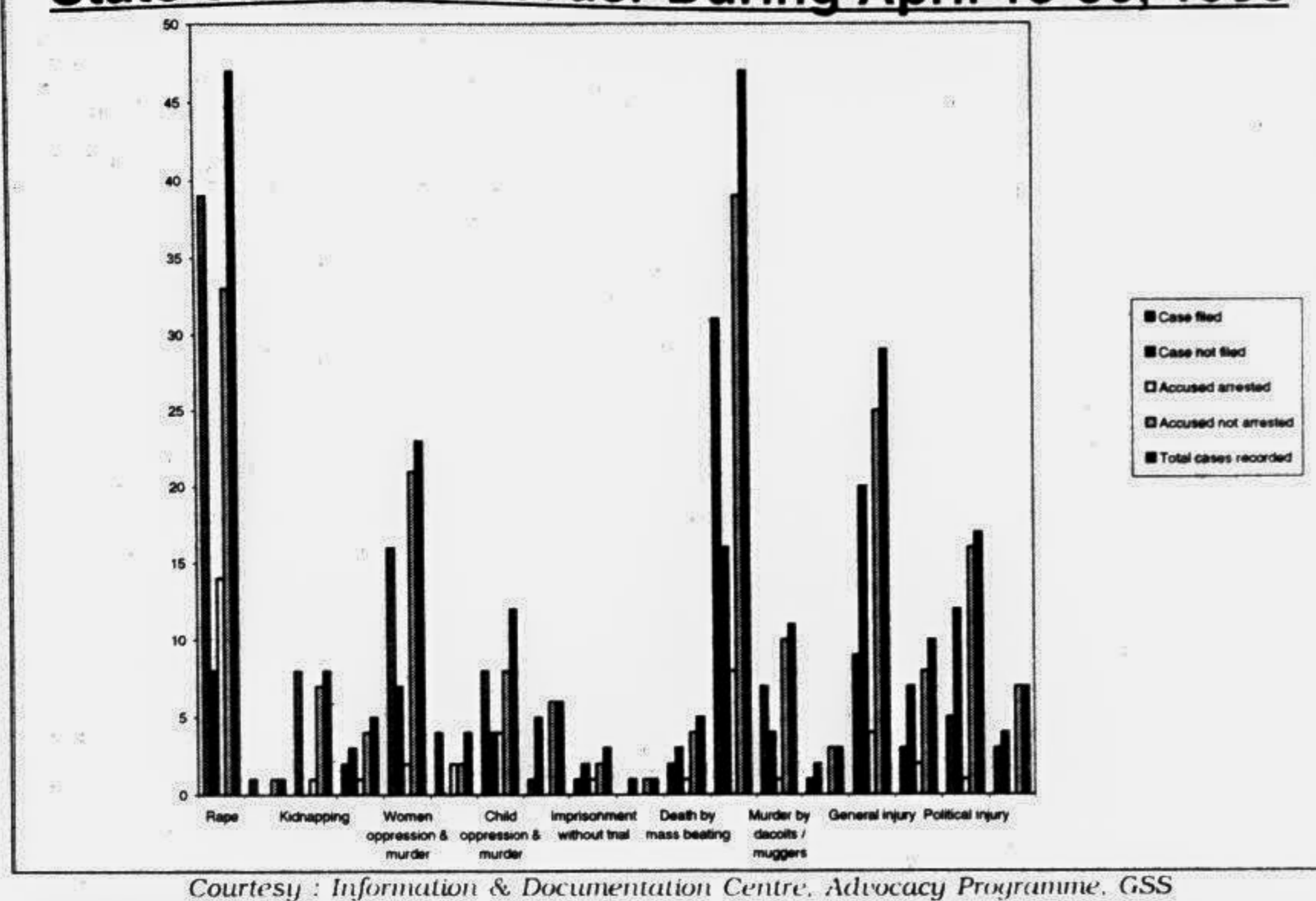
The court therefore ordered that:

(i) An amount of Rs. 15,000 by way of monetary compensation payable to the detainee may be deposited by the Government of Sindh within 15 days from the date of this order (17 February 1998) with the Additional Registrar, at Hyderabad, who may thereafter disburse the same to the detainee after due identification. The provincial government may recover this amount from the SHO, Aijaz Ali Kaimkhan, in accordance with the provisions of the Sindh Police (Efficiency and Discipline) Rules in such instalments as it considers appropriate and apprise the Additional Registrar accordingly.

(ii) SHO Aijaz Ali Kaimkhan is directed to personally bear the costs of Rs 10,000, who will deposit the same with the Additional Registrar, Circuit Bench, Hyderabad, within two months from today and the latter will disburse the same to the detainee.

(iii) The above is without prejudice to such disciplinary or penal action that the government might take against the aforementioned SHO.

Courtesy: H. R. C. P Newsletter April, 98

LAW WATCH**State of Law and Order During April 15-30, 1998**

Courtesy: Information & Documentation Centre, Advocacy Programme, GSS

Lawai's Arrest Warrant Case**LHC Rejects Explanation of EB Official as Improper**

THE Lahore High Court on Friday rejected as being improper Ehtesab Bureau's explanation on the issue of former President of the Muslim Commercial Bank Hussain Lawai's arrest warrants. The Court also issued notices to the Bureau and others in a fresh contempt of court petition filed by Lawai. The Court resumed hearing of contempt of court proceedings against Ehtesab Bureau on a petition filed by Lawai alleging that Ehtesab Bureau issued his international arrest warrants in violation of the Lahore High Court's Orders to the contrary. The Lahore High Court had directed the Ehtesab Bureau not to arrest Lawai's on a writ seeking quashment of criminal case registered against him at Karachi.

The court gave seven more days to Ehtesab Bureau Chief Senator, Saif-ur-Rehman for a written explanation on the issue observing that the explanation by an official of the Bureau was contrary to the Court's orders and could invite contempt of court proceedings. The bench comprised Justice Malik Mohammad Faruqi, Justice Asif Jan and Justice Mian Saeed-ur-Rehman Faruqi.

Expressing dissatisfaction over the explanation the bench observed that the same was apparently not credible having been signed by an officer of the Bureau, Shahid Raja. 'Under what authority the Bureau official sends the explanation', asked the bench.

Pointing out that the explanation was extended in the form of a letter by the official, the Court inquired from the Deputy At-

torney General (DAG) Khawaja Saeed Zafar present in the court room. 'Is this the way to present an explanation in the Court?', The bench said this was a serious matter, which comes within the preview of the contempt of court.

This explanation should have been sent by the Ehtesab Bureau Chief, Senator Saif-ur-Rehman and the conduct of official of the Bureau comes within the preview of contempt of court', observed the bench.

In the written explanation by Ehtesab Bureau official it has been maintained that the Lawai's international arrest warrants were issued before the order of the Lahore High Court restraining his arrest. 'This is a matter between the High Court and the Australian government and Ehtesab Bureau is not linked with the warrants for Lawai's arrest', the explanation maintains, according to the NNI correspondent. The explanation also denied issuance of any arrest warrants on August 22 last year.

You give an impression to the world through press that hurdles are being created in the process of accountability by the High Courts, but when the government itself does nothing what can high court do about it' observed the bench addressing the DAG and Ehtesab Bureau representative during the hearing.

The bench observed that the court could issue summons for Hussain Lawai to appear before it if the government could extend an assurance.

Courtesy: Associated Press of Bangladesh (APB)

Metropolitan

An influential individual took over the entire Road No 14 at Baridhara yesterday to do the catering on a family occasion. — Star photo

**Tk 460 cr infrastructural dev
programme for 3 hill dists taken**

Local Government, Rural Development and Cooperatives (LGRD) Minister Zillur Rahman yesterday urged the engineers to work unitedly with their talent, experience and sincerity for building a hunger and poverty-free Sonar Bangla as dreamt of by father of the nation Bangabandhu Sheikh Mujibur Rahman, reports BSS.

He was speaking as the chief guest at the working session-2 of the 'fifty years of the engineering profession in Bangladesh' organised by the Institution of Engineers, Bangladesh (IEB), Engr Nurul Huda, Vice president IEB, presided over the function.

Zillur Rahman said the Ministry of Local Government has taken up a broad-based infrastructural development programme for the three hill districts at a cost of Taka 460 crore.

There is no alternative to developing the rural infrastructure for upgrading the living standard of the rural people, he said adding, the present gov-

ernment is working with all efforts to construct and maintain roads, culverts and bridges in the rural areas and thus strengthen the rural economic activities.

Four technical papers were presented in the session. Quamrul Islam Siddique, chief engineer of the Local Government Engineering Department

(LGED), presented a paper on 'rural infrastructure development and its management,' while Qadriuzzaman, additional chief engineer (civil) of the directorate of Public Health Engineering, on 'development, problems, prospects and future challenges of portable water supply and sewerage system.'

Weather**Rain, gusty wind likely**

Rain or thundershowers accompanied by temporary gusty or squally wind is likely at many places over Dhaka, Rajshahi and Sylhet divisions and the regions of Jessore, Kustia, Noakhali and Comilla in the next 12 hours till 6 pm today, reports UNB.

According to Met office, weather may remain mainly dry elsewhere over the country, while day temperature is expected to rise slightly.

It also predicted that weather may deteriorate in the next two days.

The country's highest temperature 37.4 degree Celsius was recorded yesterday at Rajshahi and the lowest 21.4 degree at Sylhet.

The sun sets today at 6:32 pm and rises tomorrow at 5:19 am.

**BPHC manual
launched at
regional level**

Minister for Health and Family Welfare Salah Uddin Yusuf officially launched the 'Quality of Care Manual' published by Bangladesh Population and Health Consortium (BPHC) NGO Project recently at a city hotel, says a press release.

As a continuation of the national level launching, BPHC has successfully completed the regional launching of its 'Quality of Care Manual' through four regional workshops at Sylhet, Dhaka, Rangpur and Rajshahi. These workshop were held April 19-20 at Sylhet, April 22-23 at Dhaka, April 27-28 at Rangpur and May 3-4 at Rajshahi. Apart from the launching the agenda of the workshop included GO/NGO collaboration and policy dialogue.

The participants of the workshops included BPHC funded NGOs, health and family planning officers of the thanas where the BPHC NGOs provide services, GOB officials from district level, officials from other NGOs and BPHC officials.

**Sangarakshit
Mohastavir
cremated**

CHITTAGONG, May 9: The mortal remains of Venerable Sangarakshit Mohastavir was cremated yesterday amid the chanting of the sacred verses from the Tripitaka by hundreds of Buddhist monks at Jaldhi Dharma Ratna Buddhist Monastery of Banskhal, reports BSS.

Mohastavir's body had been kept in a coffin since his death on March 19, a day after his birthday.

The cremation ceremony led by Venerable Shilalankar Mahathero, the highest religious leader of the Buddhists of Bangladesh and chief of Bangladesh Sangha Council was attended by hundreds of monks and thousands of Buddhist devotees from far-flung areas of the country.

The mourners carrying the coffin marched towards the crematory and observed one minute's silence.