



LAW news



# The fourth annual trafficking in persons report, June, 2004

US Department of State

Bangladesh is a country of origin and transit for women and children trafficked for the purposes of sexual exploitation, involuntary domestic servitude, and debt bondage. An estimated 10-20,000 women and girls are trafficked annually to India, Pakistan, Bahrain, Kuwait, and the United Arab Emirates (U.A.E.). A small number of women and girls are trafficked through Bangladesh from Burma to India. Bangladeshi boys are also trafficked into the U.A.E. and Qatar and forced to work as camel jockeys and beggars. Women and children from rural areas in Bangladesh are trafficked to urban centers for commercial sexual exploitation and domestic work.

The Government of Bangladesh does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so. Bangladesh has moved from Tier 2 to Tier 3 because it failed to make significant efforts to prosecute traffickers and address the complicity of government officials in trafficking. Overall, the government's anti-trafficking efforts stagnated although there was progress in the area of building public awareness and prevention. Public corruption is rampant, although the government did pass legislation in February 2004 to create an Anti-Corruption Commission to investigate and prosecute cases of all types of corruption. Police officials are known to facilitate trafficking of women and children, though none has ever been charged or arrested. Bangladesh should take greater steps to address government corruption and prosecute officials who are involved in trafficking. The Bangladeshi Government works in close cooperation with the various NGOs fighting trafficking.

Although the government faces significant resource constraints, it receives considerable international assistance, some of which could be used to attack corruption in the police and judiciary, and some of which is already being used to provide social services for trafficking victims. The government has failed to make a priority of protecting trafficking victims or prosecuting their exploiters.

## Prosecution

The government's efforts led to 72 arrests of suspected traffickers in 2003an increase from 60 arrests made the previous yearalthough convictions declined from 30 in 2002 to 17 in 2003. The police should take far greater initiative in pursuing trafficking investigations and follow through on a previous commitment to create a specialized anti-trafficking unit. No public officials were prosecuted for trafficking crimes during the reporting period. The August 2003 creation of a "Speedy Trial" anti-trafficking court, which could handle trafficking prosecutions, was a notable achievement, though it has not yet produced a trafficking conviction. The government does not adequately monitor its borders; corruption among border guards is a major obstacle to anti-trafficking progress.

## Protection

The government does not offer shelter to trafficking victims, but refers victims to NGOs such as the Bangladeshi Women Lawyers Association for shelter, medical care, and counseling. The government does not provide witness protection in trafficking prosecutions. Bangladesh provided no training to its overseas diplomats on detecting and caring for victims of trafficking in key destination countries.

## Prevention

During the reporting period, the government showed continued, modest efforts to prevent trafficking in persons. The Ministry of Women and Children's Affairs (MOWCA) in early 2004 led an inter-ministerial effort to raise awareness on trafficking and other forms of violence against women. In 2003, MOWCA established "one-stop" crisis centers in two hospitals for female victims of violence, including trafficking victims, and led month-long "Road Marches" in 2003 and 2004, covering 38 of 64 districts to highlight trafficking problems. In an effort to prevent trafficking, the Ministry of Expatriate Welfare and Overseas Employment issued new regulations in December 2003 governing the recruitment of Bangladeshi women for work as domestic servants in Saudi Arabia.

Source: US Department of State.

LAW week

## AL comeback to JS

The Awami League joins 15 June on the budget session of parliament today and moves to participate in the House activities including nomination of party deputies to parliamentary standing committees in a major shift in the main opposition party's position. The AL at its parliamentary party meeting yesterday also agreed to accept proportionate distribution of women's reserved seats in parliament and contest the upcoming by-election to Gazipur-2 constituency that fell vacant with the killing of AL lawmaker Ahsanullah Master on May 7. - *Daily Star, 15th June*

## Chittagong arms haul, CID presses charges against 39

The Criminal Investigation Department (CID) yesterday pressed charges against 39 people in Chittagong for their alleged roles in the largest ever arms seizure in Bangladesh. 59 workdays into its investigation with key suspects yet to be traced. Among the 39, 21 including prime suspects Hafizur Rahman, Din Mohammad, Sobhan Haji, Abul Kashem Madhu and Haji Yakub are evading capture. The CID submitted the chargesheet after a case was filed under the Arms Act for illegal possession and transportation of the huge consignment of deadly weapons seized at the Chittagong Urea Fertiliser Limited jetty on April 2. Police arrested 18 people, including Marium Begum, a local union parishad member. MA Aziz, Badsha Mia, Sheikh Ahmad, Mojibur Rahman, Akhter Hossain, Jahangir Alam and Jasim, believed to be part of a smuggling syndicate, are also among the arrestees. - *DailyStar, 14 June*

## Stringent acid control law suggested

The National Acid Control Council yesterday suggested formulating strict acid control regulations within two weeks. The ninth council meeting held at home ministry's conference room with State Minister for Home Lutfozzaman Babar in the chair also proposed to motivate young generation about the adverse effects of acid attacks, meeting sources said. - *Daily Star, 14 June*

## Khulna OC faces case for

Star LAW report



NARI-O-SHISHU NIRJATAN DAMAN AIN, 2000

# Powers of the Tribunal regarding false cases

**High Court Division (Criminal Appellate Jurisdiction)**  
**Criminal Appeal No. 3689 of 2001**  
**Md Nurul Huq v The State**  
**Before Mr Justice Sikder Maqbul Huq and Mr Justice Mashuque Hosain Ahmed,**  
**Date of Judgment: April 28, 2003**  
**Result Appeal Allowed**

## Background

This appeal under Section 28 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 is directed against the order dated 17.9.2001 passed in Nari-O-Shishu Nirjatan Aparad Daman Tribunal Case No. 395 of 2001 under Section 17(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, by the learned Nari-O-Shishu Nirjatan Daman Tribunal, Habiganj directing the Magistrate, Cognizance Court No. 2, Habiganj to file a case under Section 17(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 against the informant for initiating a false case against the accused persons of the case.

The appellant namely, Md Nurul Haque lodged a petition of complaint on 17.5.2001 in the Court of Magistrate Habiganj against Muktar Mia and Maksud Mia of his village under Sections 9(4) (Kha)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and the learned Magistrate sent the petition of complaint to the Officer-in-Charge of the concerned Police Station for treating the same as FIR and accordingly Baniachang PS Case No. 20(5) 2001 corresponding to GR No. 266 of 2001 was started and police, on completion of investigation, submitted final report, under Section 173 of the Code of Criminal Procedure stating inter alia that the case was the outcome of misunderstanding between the parties. Anwar Ali, husband of victim Hosnabanu, filed a Naraji petition against the final report which came before the learned Nari-O-Shishu Nirjatan Aparad Daman Bishesh Adalat, Habiganj on 17.9.2001 for hearing. The learned Adalat rejected the Naraji petition as the petitioner was found absent on call and after hearing the public prosecutor accepted the final report, discharged the accused persons and upon submission of the public prosecutor the learned Tribunal also directed the Magistrate, Cognizance Court No. 2, Habiganj to file a case under Section 17(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 against the informant (complainant).

Being aggrieved by the aforesaid order, the informant has preferred the instant appeal. Heard the learned Advocates of both the sides. Perused the record.

## Deliberation

Mr Md Raziur Rahman Chowdhury, the learned Advocate appearing for the appellants, submits that it is nowhere in the police report that the informant filed a false case and the learned Tribunal also did not arrive at any such finding on assigning any reason that the informant initiated a false criminal prosecution against the accused persons. The learned Advocate further submits that Subsection (2) of Section 17 provides that Tribunal can entertain a case under Section 17(1) only when a complaint to the effect is filed by any person but in the instant case, no petition by anybody was filed before the Tribunal for initiation of the criminal proceeding against the informant and in that view of the matter the order of the learned Tribunal directing the Magistrate to file a case against the informant is illegal and without jurisdiction. The learned Advocate further submits that if it is found on a petition made before the Tribunal that the case or the complaint, as the case may be, was filed by any person against any accused with a view to harm him knowing fully well that there was no reason to file the case or make the complaint, in that case person against whom the false case has been filed, may prosecute or bring accusation under Section 17(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 against the informant or the complainant or against the person who got such a case filed by any other person and the Tribunal has no jurisdiction to direct the Magistrate to file a case under the aforesaid section in this manner. The

learned Advocate further submits that in view of the aforesaid facts and circumstances of the case the impugned order passed by the Tribunal is liable to be set aside.

Mr Sk Rezaul Karim, the learned Assistant Attorney General, appearing for the State submits that the appellant has challenged the entire order accepting the final report and directing the Magistrate for filing a case against the informant under Section 17(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and as such the appeal may be dismissed or even may be allowed after necessary modification of the impugned order. The learned Assistant Attorney General, however, does not controvert the submissions made by the learned Advocate appearing for the appellant to the effect that the Tribunal has committed a mistake in directing the Magistrate to file a case against the informant.

It appears from the record that the appellant has challenged only that portion of the order directing the Magistrate to file a case against the informant under Section 17(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and he has not challenged the order accepting final report. Therefore, the submission of the learned Assistant Attorney General in this regard has no merit. It further appears from the record that none has filed any petition for prosecution of the informant for making a false complaint or filing a false case and as such the Tribunal did not act in accordance with law in directing the Magistrate to file a case under Section 17(1) of the aforesaid Ain.

## Result

The Nari-O-Shishu Nirjatan Daman Ain, 2000 does not empower the Tribunal created under section 26 thereof to take cognizance against any person who has filed a false case or a complaint or got such a case or complaint filed by any other person with a view to causing harm to the person against whom such case or complaint filed in the absence of any written complaint made by any person as provided by Sub-section 2 of the said section and the Tribunal has no authority to direct the Magistrate



or any other person to file any such complaint to enable it to take such cognizance.

In view of the aforesaid facts and circumstances of the case, we find nothing to disagree with the learned Advocate for the appellant that the appeal should be dismissed. There is merit in the appeal.

In the result, the appeal is allowed. The impugned order directing the Magistrate, Habiganj to file a case under Section 17(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 against the appellant, being informant of the case, is hereby set aside.

Mr Md. Raziur Rahman Chowdhury, for the appellant. Mr Sk. Rezaul Karim, AAG for the State.



Attorney General Altafur Rahman stood for the state. - *Prothom Alo, 16th June*

## RAB to keep vigil at ZIA Int Airport

The Rapid Action Battalion (RAB) will soon be posted to Zia International Airport to check all kinds of criminal activities. The force will also check trafficking in women and children through the airport, sources in the home affairs ministry said. A high-level meeting on 16 June at the ministry on foreign trips with fake passport and visas made the decision. State Minister for Home Affairs Lutfozzaman Babar chaired the meeting that discussed the overall situation at the airport. - *New Age, 17 June*

## Speedy trial for human trafficking cases

The government is thinking of trying women and children trafficking cases in Speedy Trial Tribunals in order to check human trafficking after being threatened by the United States that sanctions would be imposed.

The national committee on legal aid, in its 11th meeting held on Thursday in the Ministry of Law, Justice and Parliamentary Affairs, decided to strictly monitor human trafficking cases. According to the decision, human trafficking cases will be referred to the national monitoring cell for regular monitoring of the progress of the cases, said sources present in the meeting. - *New Age 18th June.*

## Detective police accused of looting

A Detective Branch Police team allegedly looted the house of a fish farm owner and arrested the housewife at village Jagatpur of Burichang, Comilla, early May 13. Ahidur Rahman, a businessman, levelled the allegation at a news conference at the Crime Reporters' Association of Bangladesh on Friday. He alleged that the team, led by sub-inspector Alamgir Hossain, entered his residence at around 3:00am and confined his wife Nilufa Begum and five children at gunpoint. - *New Age, 19th June.*

READER'S queries



## Your Advocate



**This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.**

**Q:**I have gone through the reply you have given about different aspect of the legal profession which was published in the last Sunday issue of the Daily Star. I am enlightened by your answer. Like the lay questioner to whom you have replied last week I have also many different questions to be asked to a lawyer may be because I have in my mind legal profession as one to be taken up after completion of my education. My maternal grandfather was a lawyer. This family linkage might have played some role in creating interest in my mind. I would be grateful if you kindly reply to the following questions:-

1. People are found to say that lawyers cannot but resort to falsehood for winning their cases. Is it true?
2. We find that lawyers get the criminals released from jail. Is it part of their duty?
3. Is a lawyer duty bound to do all cases that come his way?  
Sardar Lutful Kabir Swapon.  
Court para, Kushtia.

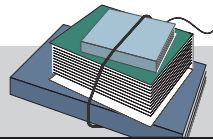
**Your Advocate:**I had, like many others planning a career at the Bar, different disturbing questions in my mind about the legal profession which continued till I entered upon the profession. The questions mainly revolved round moral and ethical aspect of things. Many satires and negative words about the legal profession prevailing in our society sought to saddle my mind as they do in many cases still today. Negative attitude of the relatives, in particular, goes a long way in disquieting an otherwise balanced mind. In my case it was my father who prevailed and disabused me of the prejudices and imbued in me interest in law and legal profession by saying good things about it. I joined the Bar finally without trying for any job and soon found myself proud of my profession. As the days went on my respect to the profession heightened but, sorry to say, high idea about many individual lawyers dwindled. That is a different thing. You must learn to differentiate between individual lawyers and legal profession. If you apply your mind deeply into and can take a comprehensive view of it things should come as much clear as to be enough to repel vogue words and prejudices.

Now let me revert to your questions. As to the first question my reply is profession of law is possibly the single profession where lying is most difficult. Precisely because, there are always two opposing sides of a case. Moreover there is the Judge to scan the matter, whatever is written or submitted by a lawyer is open to challenge by the opponent. Success of the case depends on credible presentation of it. Whole endeavour centres round credibility and credible presentation. If falsehood is detected the case fails. Therefore, you try to realise whether a lawyer can afford to tell a lie at the cost of his case for that matter his professional reputation. The profession of law is a part and parcel of the justice delivery system where whole business is to ascertain the truth or falsehood of things. Therefore, the professional lawyers must sail close to the truth to avoid defeat.

Your second question is natural and very likely to spring in the mind of the lay people. If I reply to the question in one word the answer would be a simple 'No'. But this will not address your scepticism in full. Few words need be spent for effective treatment. First thing that you will have to understand is- it is no part of the duty of a lawyer to defend a criminal if you call him a 'criminal'. Law does not recognise a person as a criminal unless found guilty by a competent court. Therefore, question of defence comes in. Any person's right to be defended by a lawyer of his choice is guaranteed by the Constitution. In the circumstances when a lawyer appears to defend a person he or she as a lawyer does not look at things as if he or she is defending a criminal. The main concern of a lawyer is to assist the court in finding out the truth by interpretation of law and analysis of facts. This is an objective endeavour free from personal bias or prejudices. So lawyers do a kind of soldiering in defending the rights of their clients. Moreover, lawyers may not be satisfied with the verdict of the court, say, finding someone guilty and can fight through as long as the forums are exhausted. You have possibly got the answer.

The third and the last question is intricate. I think he is not. It is a profession as distinguished from a trade. Ethical aspect of the profession must prevail. There are circumstances where lawyer may not, in fact, do not take cases. If the lawyer somehow become personally biased or interested in any side he should refuse to accept brief of the other side. If he is convinced that his client is the person who is responsible for the heinous crime and develop hatred he should refuse brief because he may not be able to provide him an effective defence available in law. After all a lawyer is human and therefore has human limitations. He should not take each and every case that comes up. Say for instance a lawyer should not take a brief from his father's alleged killer simply because he cannot do justice to the client.

LAW lexicon



## Share

A portion of a company bought by a transfer of cash in exchange for a certificate, the certificate constituting proof of share ownership. Persons owning shares in a company are called "shareholders". There are two basic kinds of shares: common and preferred. A shareholder is not liable for the debts or other obligations of the company except to the extent of any commitment made to buy shares. The two other benefits of shares include a right to participate in profits (through dividends) and the right to share the residue of assets of the company, once liabilities have been paid off, if it is ever dissolved.

## Shareholder agreement

A contract between the shareholders of the company and the company itself, in which certain things, usually the purview of the board of directors, are detailed. For example, a shareholder might be allowed to manage the company, instead of a board of directors. The shareholder agreement will also, typically, control inflows to the company (purchase of shares), how profits are to be distributed, dispute resolution and what to do if a shareholder dies.

## Corresponding with the Law Desk

Please send your mails, queries, and opinions to: **LAW**  
*The Daily Star*, **D e s k**,  
19 Karwan Bazar, Dhaka-1215; tele-