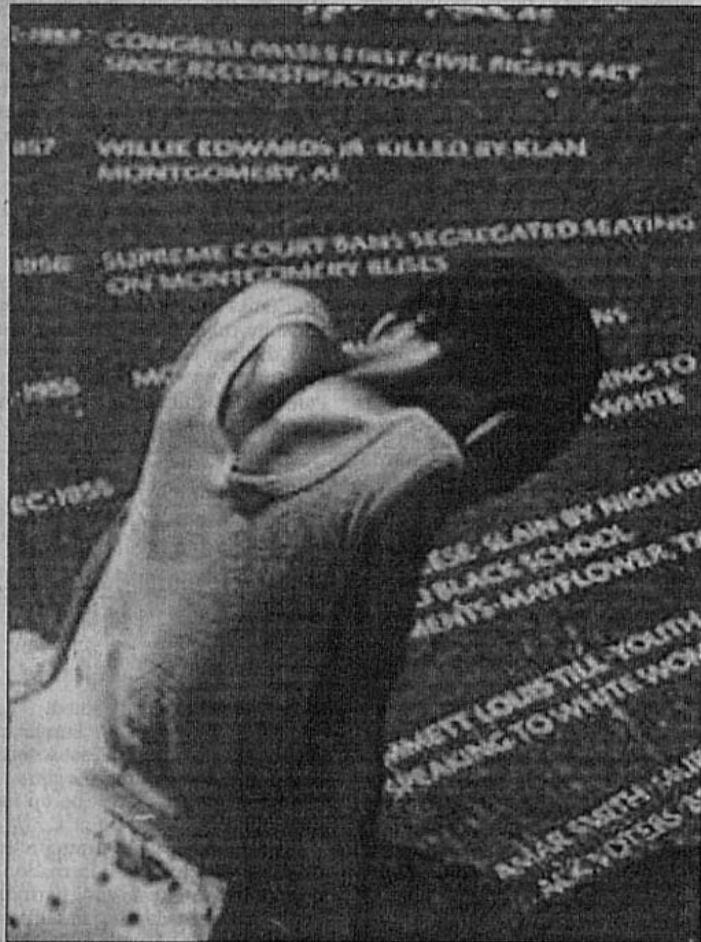




HUMAN RIGHTS advocacy

2004: International year to commemorate the struggle against slavery



The slave trade is probably the human tragedy that affected the greatest number of people for the longest period of time in history.

Today, it persists under new forms of massive violations of the human rights proclaimed in the Universal Declaration of Human Rights of the United Nations in 1948.

The proclamation by the United Nations General Assembly of the year 2004 as international year to commemorate the struggle against slavery and its abolition marks, on the one hand, the bicentenary of the proclamation of the first black state, Haiti.

The aims of the commemoration are to: Sensitize the member states of the organization to the consequences of slavery and its abolition throughout the African diaspora, and take cognizance of the struggle for the liberation of the peoples concerned;

Commemorate the bicentenary of the Haitian revolution which led to the establishment of the first black republic in the western hemisphere, and, by extension, to the liberation of the peoples of the Caribbean and Latin America from slavery;

Mobilize the international community, the academic world and civil society towards helping to promote a culture of peace in redressing the aftermath of this tragedy, in order to prevent new forms of slavery.

UNESCO's action in 2004 will hinge on a number of priority thrusts adopting an inter-sectoral, multidisciplinary and inter-institutional approach pinpointing in particular the "Slave Route" project with the following principal axes: historic truth, memory, intercultural dialogue, development and peace.

Source: UNESCO website.

LAW news

Blueprint for UN reform unveiled

The United Nations unveiled a sweeping proposal to overhaul the organisation, including the Security Council, in what would be the most comprehensive UN reform since its founding in 1945.

After bitter divisions over the war in Iraq, UN Secretary General Kofi Annan ordered a high-level panel last year to come up with the blueprint and help the United Nations adapt to the global realities of the 21st century.

"What is needed is a comprehensive system of collective security, one that tackles both old and new threats, and addresses the security concerns of all states - rich and poor, weak and strong," Annan said in his preface to the report.

He said the proposals, which must be approved by member nations, set out a broad framework for collective security and indeed gives a broader meaning to that concept appropriate for the new millennium.

The report also takes implicit aim at the United States over the Iraq war, which was strongly opposed by Annan and many Security Council member states.

"There is little evident international acceptance of the idea of security being best preserved by a balance of power or by any single - even benignly motivated - superpower," the panel said.

The United States did not have the Security Council's backing when it launched the invasion that brought down Saddam Hussein, and Annan has called the war illegal. Revamping the Security Council, the top UN decision-making body, is likely to be the most contentious issue, and the panel came up with two competing proposals for expanding the council's membership to 24 seats.

The other would create a third tier of council member nations, which would be given four-year, non-permanent seats that could be renewed. Two-thirds of the 191 UN member nations would have to approve any change to the council membership, which would then take effect if none of the permanent members uses its veto power to block the move.

John Danforth, the US ambassador to the United Nations, said Washington would consider council reform in the light of a crucial question: "Would it make the Security Council more effective or less effective than it is now?"

The UN panel was headed by former Thai prime minister Anand Panyarachun. Among the other members are Brent Scowcroft, a former US national security advisor, and former Chinese foreign minister Qian Qichen.

Source: AFP.

Star LAW analysis

Relationship between municipal and international laws

BARRISTER HARUN UR RASHID

THE relation between domestic and international laws has engaged attention of jurists from early days when international law has come into play. Domestic laws are those that are enacted by national Parliaments and the domestic judiciary enforces them.

Two Schools of thought Since the sources of the two bodies of law are different, there are two schools of thought. One is Monistic doctrine and the other is known as Dualist doctrine. Monism affirms that both principles of law-domestic and international-constitute a single body of rules.

The above two views do not present the whole picture of relation between the two laws. A host of international law such as in areas of human rights, environment, illegal drug trafficking and prevention of organized crime cannot be implemented unless domestic laws exist to enforce on the offender.

State practice The relationship between the two bodies of laws can best be understood by examination of state practice. This means that how states enforce both the laws and in what way states accord priority to one set of laws over the other.

Let us take a few countries to analyse their state practice, such as the US, Britain, India and Bangladesh.

USA

In the US, the Courts considered international law a part of the law of the land. In 1796 the US Supreme Court invoked international law to decide an appeal for debt relief in the case of Ware vs Hylton.

The Anglo-American Treaty of 1783 provided the principle of reciprocity whereby neither party would interfere with the collection of debts and therefore the indebtedness of an American citizen to a British creditor could be enforced. Justice Wilson described the Treaty as a "supreme law which overrides state laws (domestic laws) on the subject."

Britain

A large part of British laws are customary laws. This means laws have come down from generation to generation on common consent by citizens. No Parliament as such has enacted such laws. Since customary law is based on the principle of common consent, Blackstone in 1765 asserted that the international law was to be a part of the law of the land.

Difference between the US and Britain

Put simply, American Courts liberally draw upon international customary law in domestic cases, while British Courts apply domestic laws first; even they depart from international law. In other words, it appears that American Courts have a more liberal approach towards international law than that of British Courts.

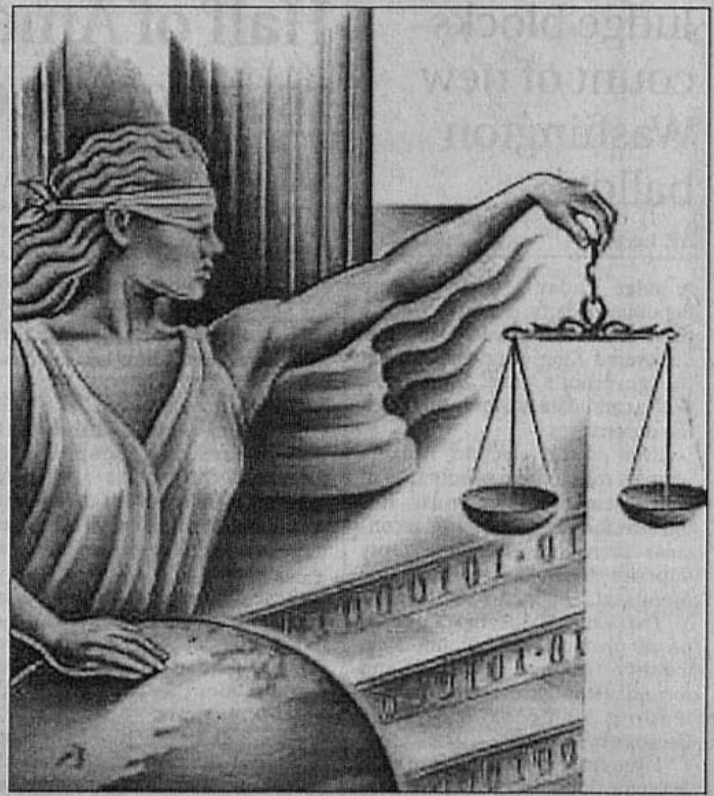
Bangladesh & India

In Bangladesh it appears that Courts are inclined to follow both US and British practice depending on situations and circumstances. It is well established that provisions of a treaty do not automatically apply in the country unless enabling domestic laws are passed.

The above principle has its foundation in the doctrine of separation of powers, enshrined in the Bangladesh Constitution. It sets out the powers of parliament, the Executive and the Judiciary. The powers are not unlimited. Legislation can be attacked in the Courts as beyond the power of the Constitution.

Although the Executive is empowered to sign a Treaty or a Convention, it cannot be implemented unless domestic laws are enacted to enforce the provisions of the Treaty or Conventions. Therefore Parliament has a final say as to whether the treaty or Convention is to be implemented in the country.

However there is one exception, customary international laws do not require legislation because Bangladesh, a member of the international community, must enforce customary international laws that have been developed with the common consent of nations. For example, diplomatic immunities and privileges



are accorded to diplomats, stationed in Bangladesh, long before the 1961 Vienna Convention on Diplomatic Relations came into force. The immunities and privileges to diplomatic personnel are part of customary international law.

The same principles apply to India as well. This means that domestic laws prevail over international laws, unless they are customary international laws. In 1948, in the case of Granaphone Company Ltd. Vs Pandey, the Supreme Court observed in obiter dicta that domestic laws would prevail over international law, except in the case of customary international law.

Concluding remarks

The above discussion demonstrates the close relationship between domestic and international laws. In an inter-connected world, one set of laws cannot fully satisfy the obligations of a state. International law will have to be enforced on domestic situations by states when they are relevant through domestic laws and in case of customary international laws, it is a part of the requirement of each state to implement them as one of the obligations for a responsible member of international community.

The author is former Bangladesh Ambassador to the UN, Geneva.

LAW week

Judicial Independence

SC asks for names behind the distortion of draft rules

Lawyer for the government officials facing contempt charges for distorting the Supreme Court (SC) orders concerning the independence of the judiciary told the court.

The resolution had suggested changes in the Supreme Court's proposed new draft rules regarding the service of judicial officers, which the court had considered necessary to ensure independence of the judiciary. It was this resolution that had been the subject of the contempt proceedings against the government officials.

Advocate TH Khan, the counsel for the seven officials, told the court that immediately after it had rebuked the officials, seven of the nine officials from the establishment and finance ministries held a meeting and decided that their resolution of November 1 stood cancelled. He also told the court that the rules, without the contentious resolution, had now been sent to the Prime Minister's Office (PMO) for the president's approval.

The court however was not satisfied and asked the bureaucrats to inform it of the names of those responsible for ordering that such a resolution should be passed on November 1 in the first place. The full court of the Appellate Division of the Supreme Court headed by Chief Justice Syed JR Mudassar Husain directed TH Khan to submit the names through an affidavit. The nine government officials appeared in person at court and sought an unconditional apology. The Daily Star, December 13.

Govt orders why law on women's JS seats not illegal

The High Court (HC) asked the government to explain in two weeks why the law providing for election to women's reserved seats in parliament should not be declared unconstitutional. Issuing the rule upon a writ petition filed by 13 women leaders challenging the process of distribution of 45 reserved seats for women among the parties in parliament, the court kept 'stand over' the plea for stay of operation of the law passed by parliament last month. Moving the petition, Dr M Zahir pointed to the provision of the law that says none could contest without being a member of political party or alliance. This negates the constitution that guarantees any eligible voter could contest elections.

It is prejudicial for women community, which has been fighting for direct election to the reserved seats. Advocate Sigma Huda, one of the petitioners, pressed for stay of operation of the law. UNB, December 15.

Ashraf Huda new IGP and IGP Shahudul removed

The government appointed Dhaka Metropolitan Police (DMP) Commissioner Ashraf Huda as the new inspector general of police (IGP). Ashraf replaced Shahudul Haque, whom the government had removed from service with effect from December 7, the day he was convicted for contempt of court by the Supreme Court. Ashraf had been appointed on contract, which will expire in April next year.

BSS quoting an establishment ministry notification said the president has exempted Shahudul Haque from the purview of Section 3 of Public Servants (Dismissal on Conviction) Ordinance, 1985. The High Court convicted Shahudul following a suo moto (contempt) rule on January 27, this year, which was later upheld by the Appellate Division of the Supreme Court on December 7.

The government removed Inspector General of Police (IGP) Shahudul Haque from office after his conviction for contempt of court.

Shahudul, who flew in Dhaka from France after a weeklong overseas trip, was told at Zia International Airport not to go to his office, sources said. No

flag car went to receive him at the airport and he was provided with no protocol. A police car drove him to his government house at Minto Road. Officials at the home ministry said Shahudul was handed a law ministry notification that said he stood dismissed from the day of his conviction. He later tried to meet State Minister for Home Lutfozzaman Babar, but was refused a meeting, the sources added. Prothom Alo, December 16.

Rab to get devices to tap telephones

The government is buying the Rapid Action Battalion (Rab) cellular and land phone interceptors to enable the elite anticrime force to listen in on telephone conversations in a blatant violation of the existing law. Highly placed sources said as part of a plan to upgrade the force.

The mobile phone interceptor, which will be installed at the Rab Headquarters, can store as many as 1,000 target-based phone numbers and is capable of recording conversations of 120 cellular phones at a time. Sources said two leading intelligence agencies in Bangladesh have long been covertly using such interceptors. Britain also amended the relevant law after the 9/11. "We are unable to track criminals before and after any violence because of a lack of such equipment," said another high official of the home ministry. The device will also be capable of intercepting calls from abroad. The Daily Star, December 16.

ACC staff selection gets delayed over legal tangle

Unfinished legal formalities are delaying staff selection for the Anti-Corruption Commission (ACC). At the end of the last week, it was found that the two committees formed to screen employees of the now-defunct Bureau of Anti-Corruption (Bac) are not legally mandated to select staff members for the ACC, sources said.

The ACC had hurriedly formed the committees without looking into the legal aspects, the sources added. The committees were to submit reports to the commission by December 12, but they failed to do so because of the legal barriers.

Referring to the Anti-Corruption Commission Act, an official said the ACC will have to formulate a rule under which these committees will screen the Bac employees. The rule will need the president's approval for enforcement. The Daily Star, December 16.

Unabated deer poaching in the Sundarbans

Deer poaching in Sundarbans, the world's largest mangrove forest, is going on unabated, violating law. A large number of spotted deer were killed in the last two months, sources said. On December 11, a team of officials from Kobadak Forest Station recovered a slaughtered deer from a boat in Palkati area of the forest. On December 10, local people caught two alleged deer poachers - Samir Gazi and Shahbaz - from Parshemari ferry terminal area in Shyamnagar along with three slaughtered deer. They were handed over to Forest Officer.

Local people later alleged that the forest officials released the poachers along with their prey after taking bribe. The incident created resentment in the area. The Daily Star, December 16.

Daughters to get equal property rights in India

India's cabinet has approved proposed legislation to give daughters the same rights as sons to inherit ancestral property. The legislation, long sought by women's rights groups, would amend the 1956 Hindu Succession Act. It must be approved by parliament before it becomes law. At present daughters and sons have equal rights in the case of property bought by their father but not in the case of property inherited by their father. The cabinet gave its nod to the legislation on December 15. AFP/News Delhi, December 17.

READER'S queries

Your Advocate

Q: May I ask you the question that whether parents have any legal right to forcefully decide over the marriage of their adult son or daughter?

What legal action could be taken to prevent parents from arranging the marriage of their daughter without her consent? Is there any law in our country concerning this?

I'll be obliged if you let me know. If you think this as a question worthy to answer, I believe many people will be glad to know the answer.

Sincerely,

-Kanta

On E-mail

Your Advocate: Your thought seems to have taken a new dimension and bears a testimony of rebelliousness against our long standing social values. In the advanced societies of the West individualism has reached such a stage that the parents and teachers are even taken to account for a bit of excess in controlling their children or in birching a bit for their good. Therefore, children and youths in those societies enjoy much greater personal freedom in all respects. In our society, by contrast, parental and social control is much stricter, some times unnecessarily cruel and egotistically oppressive. The questions of egoism and cruelty apart, so far as the question of controlling children are concerned, I must confess I am still confused as to which one is better - the western permissiveness or our possessiveness. It is no denying that the two social contexts are different. So it is difficult to come a conclusion straightway. My mind still dwells on the idea that middle course is possibly the best.

The spontaneous words came in because, after all, we are after laws and actions against the excesses of our parents, admittedly our best well-wishers on earth. You cannot deny that their concern about you, even if irrational, is not obsessively directed to your good. In that sense the dilemma of father-daughter feud on marriage does hardly conform the purpose of legal actions since the parties don't have conflicting interest or any guilty mind. Legal answer of your question is not far to seek. The answers of your plain questions are: no one can interfere with, encroach upon, derogate from or infringe the lawful rights of any other in any manner whatsoever save strictly in accordance with law. You as an adult (supposedly 18 or above) are absolutely competent to contract marriage for yourself to the exclusion or disregard of anyone else's opinion, choice or pressure. Your choice is unfettered. The fact that the persons standing on your way happen to be your parents doesn't make any difference.

Parenthood by itself does not confer upon individuals any special legal rights whatsoever to interfere with the personal choice of their sons or daughters, far less, applying force in making decisions or arranging marriage against their consent. Yes, there is law to prevent them from making or attempting to make encroachment upon your exclusive rights. Law is blind and doesn't know who are parents and who are not. Forget for the moment that they are your parents you get the law. The prevailing law which are applicable to others are equally applicable to your parents. Technically the relationship of the parties is of no consequence in the present circumstances. There is no nor is there any necessity of law as against the parents only so far as the present issue is concerned. The prevailing laws are enough to prevent anyone from interfering with the lawful rights of others irrespective of inter-relationship between the parties.

Above everything one should keep in mind law is like a bamboo-stick, though equally menacing to all, is not kept for using against one's own family or friends for any difference of choice or opinion with them. It has definitive purposes. Parents may legitimately cherish dream of their own to be materialized through their children. If it is impossible to go by their choice you need not conceive of legal action rather it would be most advisable for you as their child to devise things in a way so as to hurt them the least.

Your Advocate M. Moazzam Husain is a lawyer of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

LAW campaign

HIV/AIDS & Human Rights



"The goal of realizing human rights is fundamental to the global fight against AIDS. And in a world facing a terrible epidemic - one that has already spread further, faster and to more devastating effect than any other in human history - winning the fight against AIDS is a precondition for achieving rights worth enjoying."

-Dr Peter Piot, UNAIDS Executive Director

Several years of experience in addressing the HIV/AIDS epidemic have confirmed that the promotion and protection of human rights constitute an essential component in preventing transmission of HIV, reducing vulnerability to infection and the impact of HIV/AIDS.

However, in practice:

- Fundamental human rights of people living with HIV/AIDS, such as the right to non-discrimination, equal protection and equality before the law, privacy, liberty of movement, work, equal access to education, housing, health care, social security, assistance and welfare, are often violated based on their known or presumed HIV/AIDS status.
- Lack of respect for human rights continues to increase vulnerability to HIV infection of individuals and the whole society. Individuals or groups who suffer discrimination and lack of human rights protection are both more vulnerable to becoming infected and less able to cope with the burdens of HIV/AIDS. Refugees, migrants, prisoners, men who have sex with men, sex workers and injecting drug users may be more vulnerable to contracting HIV because they often are unable to realize their civil, political, economic, social and cultural rights. Further, gender inequalities spur on the spread of the epidemic and its disproportionate impact on women.
- The response to the HIV epidemic is hindered due to lack of enjoyment of freedoms of speech and association; the right to information and education by infected and affected groups, and the civil society at large.

Respect, protection and fulfilment of human rights is central to the AIDS agenda, and equally, HIV/AIDS needs to be at the centre of the global human rights agenda.

Source: UNAIDS website.

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, fax 8125155; e-mail <dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net