

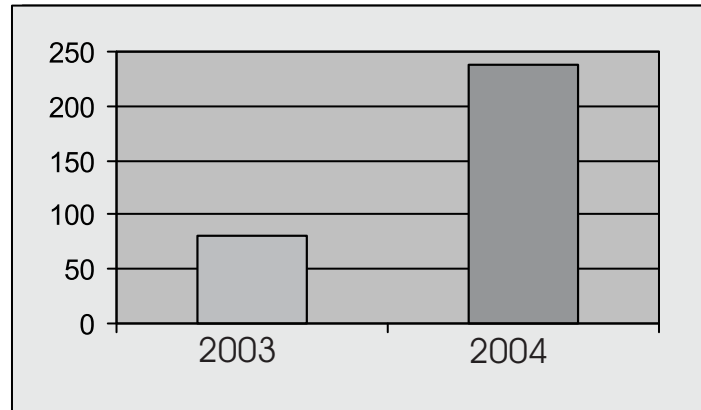


## LAW news



### BANGLADESH

## Death by law enforcing agencies



## 238 killed in hands of law enforcers last year

According to the annual report of Odhikar 238 people were killed at the hands of law enforcers last year and of them, 147 alone were killed in 'crossfire' involving various law enforcing agencies including Rab.

Odhikar, a human rights watch, in its report also said 522 people were killed in political violence last year while in the previous year (2003) the number was 436.

The Odhikar report, prepared on the basis of reports published in leading national dailies, observed that the higher number of political killings as well as killings in 'crossfire' last year accounted for the 'much-worsened human rights conditions in the country'.

According to the report, 62 people were killed in 'crossfire' with Rapid Action Battalion while 76 in 'crossfire' with police and seven with anti-crime outfits Cheetah and Cobra.

Police and members of Bangladesh Rifles (BDR) arrested as many as 8,500 people in between April 18 and 30 in the run-up to the 'April 30 deadline' given by the main opposition Awami League (AL) to oust the government. Of the arrestees, 2000 were released after quizzing while the rest were sent to jail through courts.

The report also said that police arrested 5748 people across the country during September 23-29, ahead of the October 3 mass rally by AL.

Last year saw five journalists killed and 111 injured in the line of duty. Besides, 292 newsmen received threats from different quarters, the Odhikar report mentioned adding that in the same period 866 women and children were raped and of them, 116 were killed following rape.

January 01, The Daily Star.

## RIGHTS column



## Half the world's workers earn below US\$2 a day

ILO says new policies for promoting productivity growth and decent jobs could improve outlook for working poor. Half the world's workers - some 1.4 billion people - are trapped in grinding poverty unable to earn enough to lift themselves and their families above the US\$2 a day poverty line, but this figure could be reduced if policies zero in on improving labour productivity and creating jobs, says a new study by the International Labour Office (ILO).

The ILO World Employment Report 2004-2005 states that focusing economic policies on creating decent and productive employment opportunities is vital for reducing global poverty as called for in the Millennium Development Goals (MDGs).

"Women and men all over the world expect to get a fair chance at a decent job," said ILO Director-General Juan Somavia. "Generating more and better jobs must become the central plank of the global drive to reduce poverty."

The report also says that the 185.9 million people in the world who were unemployed in 2003 represent the "tip of the iceberg" of the decent work deficit, since more than seven times that number of people are employed but still live in poverty.

According to the report, some 2.8 billion people were employed globally in 2003, more than ever before. However, of these, nearly 1.4 billion - the highest number ever - are living on less than the equivalent of US\$2 a day and some 550 million are living on under the US\$1 a day poverty line.

But the news is not all bad. The report shows that the actual percentage of working persons living under both the US\$2 a day and US\$1 poverty lines is lower today than in 1990, while projected global growth rates may halve US\$1 working poverty in some areas of the world by the year 2015.

"The key to reducing the number of working poor is creating decent and productive employment opportunities and promoting a fairer globalization as strategies for poverty reduction," says Mr. Somavia. "It is not only the absence of work that is the source of poverty, but the less productive nature of that work. Productivity growth, after all, is the engine of the economic growth that enables working men and women to earn enough to lift themselves out of poverty."

Source: International Labour Organisation.



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## RIGHTS corner



## The rights of the citizens residing abroad

MD Zahidul Islam

Eventually Bangladeshi truck driver Abul Kashem has been freed by Islamic Army of Iraq (IAI). Faruque and his Sri Lankan colleague were picked up en route to a US base 60 km off the Iraqi capital Baghdad on October 28, 2004 while they were transporting supplies to the base for a private Kuwait transport company. Qatar-based private TV Channel Al-Zazeera aired the news of theirs being hostage by the IAI the next day. The Government then started its diplomacy, which was proved successful with the result.

Such a hostage taking is not novel in the anarchic world today. Rather, it has become a pretty regular event nowadays. After the invasion and occupation of Iraq by USA such incidents are being recurring in Iraq and subjects of different nations are falling into the pray of such ill practice. In all these incidents of hostage taking the governments of the victims have taken radical measures to release their citizens. Earlier we have experienced that Jimmy Carter govt of USA at the beginning of 1980s undertook all possible measures including even stern military operation to rescue its citizens made hostage in Iran. Another recent example may be the attack in May 2004 on Mr. Anwar Chowdhury, the British envoy in Bangladesh, at the Shrine of Hazrat Shahjalal (R) where the British Govt took prompt action to unmask the real culprits even by sending their own detective hands.

Thus it seems a common practice that when a citizen of a country faces any trouble, his/her govt takes all out measures to make him/her trouble-free or to mitigate the trouble. But is this a generosity of the governments to take such action on behalf of their citizens? The answer seems simple. No, it's not a generosity; rather it is at the core of the govt's duties 'to stand by its citizens in times of need in weal and woe'. However, in this write-up we will investigate the answer of the question in Bangladeshi legal point of view.

Usually, the constitution of a state enumerates the duties and responsibilities of a state to its citizens and vice versa. Our constitution is not an exception. In fact, the preamble of our constitution very lucidly expresses that '... it shall be a fundamental aim of the State to realise through the democratic process a socialist society, free from exploitation, a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens'.

Not only that our constitution pledges that it will realise fundamental human rights, among others, in the society but also that it specifies some fundamental rights to be guaranteed by the state through state mechanisms. It is, however, unclear from the construction of language of abovementioned part of the preamble what to do in respect of violation of fundamental rights of a citizen who is residing in a foreign society in a foreign country although the constitution promises that fundamental rights will be secured for all citizens.

However, our constitution under article 27 proudly declares - 'all citizens are equal before law and are entitled to equal protection of law'. Accordingly it seems that the expression 'all citizens' does not provide any exceptions, and every citizen, whether he resides in the country or abroad, is entitled to have his fundamental human rights protected by the state.

Fortunately, this is not a question absolutely



untouched or undecided. In fact, in the leading case Bangladesh Vs Ghulam Azam 46 DLR (AD) 192, this matter of rights and citizenship is hugely discussed. It is held that a citizen is not required to be rooted to the place of his permanent residence in the country for keeping his citizenship intact, and mere staying abroad does not discontinue citizenship. Besides, a person's residence during course of his employment or for the pursuit of his studies or for other good reasons in a country, which was at war with, or engaged in military operation against Bangladesh, or from which he is prevented to return in Bangladesh, does not preclude him from the citizenship, and consequently from citizen's rights.

In this respect the decision in Abdul Gafur Vs Secretary, Ministry of Foreign Affairs, Govt. of Bangladesh 17 (1997) BLD (HCD) 560 seems a pathfinder. It is held that when a citizen of Bangladesh is found to be in distress in a foreign country for no fault of his/her own or due to circumstances beyond his/her control, a duty is cast upon the Government to come to his/her rescue for mitigating the plight.

It appears pertinent here to mention the facts of the case briefly. Petitioner's daughter Hasina Begum aged 15 years was lost from her village Arichpur, Tongi in March 1992 and could not be found in spite of best effort by the petitioner. However, in November 1996 he came to know that his daughter is in MMM House in Lilua under police station Bali of district Howra in India. The petitioner then wrote a letter to Chairman, Human Rights Bureau, Dhaka to bring back his daughter. Further, Bangladesh Jatiyo Mahila Aynjibi Samity somehow managed to meet with Hasina. Then the Samity informed the Additional Secretary Ministry of Foreign Affairs through letters about the victim girl, whom Child Traffickers had taken out Bangladesh on false pretext and perpetuated heinous crime upon her, and requested her repatriation. In the meantime the victim sent a letter to get her back from the said home where she is passing her days in great distress. Later on, The Jatiyo Mahila Aynjibi Samity got accurate information through 'Sanlap', a women's right centre in India. But the govt. did not take any step for repatriation of the victim. Hence the petitioner filed this writ petition for speedy and efficacious relief.

The petitioner argued that the victim is a citizen of Bangladesh having been abducted from Bangladesh and taken to Calcutta and now detained in custody is legally entitled to get protection of law under article 31 of the Constitution through the High Commissioner of Bangladesh in India to provide her legal support. Besides, the victim girl being a citizen of Bangladesh is entitled to be looked after by the government through its appropriate authority India, as article 31 makes an obligation on the part of the government to give protection to its citizens in any part of the world, but she has been denied her right article 27 to get equal protection of law by the govt in spite of their knowledge.

Not surprisingly, govt. fails to refute the arguments. The Supreme Court, accepting the arguments, observes that the govt did not take any step in the matter through state agency, which proves unequal treatment towards its citizen. The principle of fairness in government acting requires that Government functionaries must act according to law and must perform their duties on good faith, public accountability and acceptance. In the instant case, the respondents have flouted the legitimate expectation that the govt would take up the matter in state level in order to bring back the victim, a citizen of the country who is languishing in foreign territory for no fault of her own for more than 5 years. The Respondent ought to have taken steps long ago and kept the petitioner informed about its result. Consequently, Supreme Court directs government to initiate action in the matter through state level for repatriation of the victim.

Thus, it becomes clear that constitution does not draw any distinction between citizens living in the country and those residing abroad. It is expected that whenever a citizen in a foreign territory falls in any trouble, which violates his fundamental right or rights, the govt will take necessary measure with its own accords. But if the govt fails or neglects to do the same, the victim can take resort of the Supreme Court under article 102 of the constitution, which is also a fundamental right given by article 44 of the same.

The author is a legal researcher, is currently working for ERGO (Legal Counsels), Dhaka.

## LAW event



## Consultation for a National Law on Refugee

UDATTA BIKASH

The country should adopt national legislation for the protection of asylum seekers and refugees. This will enable to handle the problem in more humane and effective ways and enhance country's image in terms of implementation of obligations promised through signing and ratification of different human rights instruments.

Lawmakers, experts and activists reached to such a consensus in a consultation on "The Need of National Law on Refugees" on 20 December 2004 in the city. This was organised jointly by Dhaka University-based Refugee and Migratory Movements Research Unit (RMMRU), human rights organisation, Odhikar and country Office of the United Nations High Commissioner for Refugees (UNHCR). The consultation was accompanied by launching of the Bengali translated book entitled "Refugee Protection: A Guide to International Refugee Law" by the Minister for Law, Justice and Parliamentary Affairs, Barrister Moudud Ahmed. It is translated and published by RMMRU with support from UNHCR.

The speakers also underscored the need for a "regional approach" to addressing the refugee problem in South Asia, home to one-fifth of the world's population.

The Minister for Law, Justice and Parliamentary Affairs, Barrister Moudud Ahmed told at the inaugural session of the programme that "political decision" was inevitable for making such a national legislation.

The minister feared that the process of framing such a national legislation might be caught in bureaucratic tangle as there was no specific ministry to look into the issue of protection of refugees at the moment as per the Rules of Business of the government.

Barrister Moudud mentioned that the Rules of Business did not mention anything regarding 'refugee' and specify the ministry or department. He urged the activists of refugee rights to find out which ministry should deal with in framing this law according to the Rules of Business.

"The Ministry of Home Affairs may be the right one to take the initiative in adopting such legislation," he said. The Ministry of Law and Ministry of Foreign Affairs may be consulted in the process, he observed.

The lawmakers Mr. Jahir Uddin Swapan from BNP and Col (retd) Faruq Khan and Dr. Abdur Razzaque of Awami League; Mr. Christopher Beng Cha Lee, Representative of the United Nations High Commissioner for Refugees (UNHCR) in Bangladesh; the First Secretary of the European Commission Ms. Anne Marshall; former Foreign Secretary Mr. Tabarak Hussain and Director of Odhikar Masood Alam Ragib Ahsan, among others, spoke on the consultation. Professor C R Abrar, Executive Director of RMMRU presented the key note paper. Attorney General Mr. A F Hassan Ariff moderated the meeting.

Dr. Abrar, also a Professor at the Department of International Relations at the University of Dhaka in his presentation narrated chronological history of refugee influx in the sub-continent starting from 1947. He underscored the need of policy advocacy for adoption of national legislation on refugees. He referring to observations by international communities termed performance of the Bangladesh government in relation to talking refugee problems as 'satisfactory and respectful to international principles'. Immediately he expressed his frustration: "While we are handling refugee problems as per international human rights standards so what is the problem to accede to the Convention or adoption of national law in this regard." Other countries except Bangladesh in the region did not sign CTBT. Why would we not take

credit also in this regard through adoption of law on refugees? He recommended for formation of a formal expert group by the government.

The UNHCR Representative, Mr. Christopher Beng Cha Lee assured all necessary and technical support from his agency in relation to acceding to the Convention and adoption of a national law. He said that UNHCR is not only look after the protection of the refugees, but also promote Refugee Law.

Col (retd) Faruq Khan observed that one should look into the issue of asylum seekers and refugees on humanitarian ground. He commented that the Model National Law on Refugees endorsed in a consultation in Dhaka in 1997 could be a good basis for adoption of the law in Bangladesh. "If such a law comes to the Parliament I would motivate my colleagues to support this," he assured.

Dr. Abdur Razzaque opined that accession to the refugee convention and adoption of a national law would upgrade country's image. However, he underscored an early solution of the Rohingya refugee issue.



Though official figure stated that there are about 20,000 refugees in two camps in Cox's Bazar as the remaining caseload of 250,000 who took refuge in 1991-92. However, reportedly about 500,000 Rohingyas are illegally staying outside the camps.

The BNP lawmaker, Mr. Swapan suggested the organisations working for the interests of refugees to submit a proposal to the relevant ministry to initiate the process of formulating the national law on refugee. He also underscored the need for a regional approach to addressing the refugee law.

Human rights activist, Mr. K A Huq expressed his concern over the incident of 18 and 19 November 2004 in which reportedly three refugees were killed in gun battle between police and refugees at Kutupalong refugee camp in Cox's Bazar. He criticised the role of a section of national media to publish 'partial and biased reportings' of the events. He urged human rights organisations to look into the matter. The government should allow human rights organisations to have an independent report of the incident, some participants opined to the writer during breaks. However, the government has reportedly rejected a request of the Amnesty International to investigate the incident.

The author is a researcher and human rights activist.

## LAW opinion



### BLOOD TRANSFUSION SYSTEM

## Safe Blood Transfusion Law 2002

SHADEKA JAHAN

'Safe blood starts with me' and 'To give safe blood is a privilege. To receive safe blood is a right' - by enchanting the slogans WHO emphasises the importance of safe blood transfusion as a basic human rights as it deals with the basic right to life. These slogans reflect that safe blood transfusion is an important public health issue.

Blood transfusion is the most efficient mode of transfusion of infectious agents such as HIV/AIDS, Hepatitis B, Hepatitis C, Syphilis, Malaria etc. So safe blood transfusion is an important public health issue and a safe and effective blood transfusion service is the essential component to the provision of adequate health service in every country.

The transfusion of safe blood should be beneficial for the recipient which might not cause any harm to them and the safety of blood is depend on the recruitment of safe donors, screening the blood of the donors and appropriate clinical use of blood.

Now come to the point of blood transfusion system in Bangladesh. In our country there are four types of blood donors:

- 1) Professional blood donors,
- 2) Family or replacement donors,
- 3) Voluntary blood donors and
- 4) Convicted blood donors.

Among those donors the voluntary blood donors are the safest and Professional blood donors are the high risk blood donors. And collection of blood from convicted blood donors is now discouraged. But it is shown that almost 70% blood was collected from professional blood donors and thus the infectious diseases are increased among the innocent people.

In Bangladesh there are 97 blood centres under Government authority excluding commercial blood banks. There are almost over 100 private blood banks only in Dhaka city and most of them do not have permission of the Government. These blood banks going around the hospitals and clinics and give unsafe blood to the people. In our country 'Safe Blood Transfusion Program' is adopted which is funded by UNDP. And in 2002 'Safe Blood Transfusion Law' is also adopted. This Law contains the provision of licensing authority (who will give those banks license) and even the provision of punishment for unauthorised use of blood is also enacted. So proper implementation by effective monitoring of that law will definitely improve the blood transfusion system in Bangladesh. The whole world is now relying on safe blood and so we need to be more careful about this. Hence a mass awareness over the issues is very essential.

The author is an advocate and Assistant Researcher, BLAST.



## LAW network



## Free legal aid & consultancy

### LAW DESK

A group of concerned citizens including lawyers, academicians, researchers and development practitioners have united under an umbrella of "Society of Justice" to contribute in some way towards achieving social justice, as espoused in the founding principles of the nation. On their continuous effort a non profit organisation has born recently with the mission of providing a lot of supports to the marginalised sections of our society.

"To work for an equitable and just society where people shall have the opportunity to realise their human rights as guaranteed by the Constitution of Bangladesh.... to access their rights and privileges in the society" - with this statement 'Society of Justice' offers following services:

### Free legal aid and court advocacy

An experienced team of law practitioner will assist in the development and service delivery of *pro bono* legal advisory services to the community. Its legal assistance will include mediation services for family, labour and environmental issues also.

### Consultancy

It provides specialised consultancy for the legal as well as all development issues.

### Capacity Building

For capacity building and to boost up awareness in legal issues it will arrange training courses, workshops, seminars. Research and publications

It intends to undertake research studies on law, socio-economic issues and especially on human rights, gender and environmental issues.

"Society of justice" is counselled by Dr. Mizanur Rahman, Advocate Humana Pathan, Dr. Faustina Pereira, Dr. AKM Saifullah, Barrister Sadia Arman, Ayesha Khatoon and others.

In the inaugural program a theme paper was presented to clarify the aims and objectives of "Society of justice". They dream for the following:

- = Let us establish dignity of our fellow countrymen. Let's go to them as close as possible and say that it is their rights. That is the bargaining situation and NOT sitting in the queue.
- = Let's revitalise the institutions of the poor and seek their role and representations locally and nationally. We must fight against comfort-seekers, who hold these positions and remained divided and isolated.
- = Let's start simple, promise all children should start alike, from equal conditions wherever they are. This is the only chance.

Lunched on December 10/2004 with the mission of serving people "Society of Justice" has a long way to go. We hope it will contribute and extend their hand for the marginalised people.