



FOR YOUR information

LAW campaign

Defend Against Domestic Violence
Let the Family be a Safe and Peaceful Environment

International Day of the World's Indigenous People



In 1994, the General Assembly decided that the international day of the world's indigenous people shall be observed on 9 August every year during the international decade of the world's indigenous people (Resolution 49/214 of 23 December). The date marks the day of the first meeting, in 1982, of the UN working group on indigenous populations of the sub-commission on the promotion and protection of human rights.

The UN General Assembly had proclaimed 1993 the international year of the world's indigenous people, and the same year, the Assembly proclaimed the international decade of the world's indigenous people, starting on 10 December 1994 (Resolution 48/163). The goal of the first decade was to strengthen international cooperation for solving problems faced by indigenous people in such areas as human rights, the environment, development, education and health.

In 2004, the UN General Assembly proclaimed a second international decade of the world's indigenous peoples through Resolution 59/174. The goal of the second decade is to further the "strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as culture, education, health, human rights, the environment, and social and economic development, by means of action-oriented programs and specific projects, increase technical assistance, and relevant standard-setting activities.

Source: UNOHCHR



COURT corridor

GREASY CAUSE LIST: Waiting game for your case to be taken up

BARRISTER MOKSADUL ISLAM

Many of us should remember the sum describing a monkey climbing an oily bamboo. It climbs three feet up but slips one foot down. For many it was not an easy sum. Our Cause List in the Supreme Court is like that oily bamboo - you simply cannot predict where your case will be in the next day's Cause List. Well, what is a Cause List? A cause list is a booklet published every day where you find the cases which are likely to be heard by different courts on a particular day. It has different sections. Usually it starts with a section called 'as to be mentioned'. Other common sections are application as motion (new application), for order, for judgement, for hearing, for framing of issues and other various and numerous sections. Some of the sections may also have branches as well, for example, applications under different sections of a particular area of law. Certainty to a junior lawyer it is a very complicated booklet.

A case is popularly called "item". Practicing lawyers spend hours to browse through the Cause List every morning. Sometimes you have to watch an item for months until it is taken up by the Court or gets lost. It gets lost for various reasons e.g. usually when there is a reconstitution of the Bench. It is even more frustrating when an item gets lost due to reconstitution of the Bench as you do not know when and where it may reappear again in the Cause List. An item can be brought at top by adopting unfair means e.g. by paying speed money and it's a known practice in courts. An Advocate may also mention before the Court praying to hear his item quickly explaining its urgency. In a motion day other items may not be considered by the Court depending on the number of motions. Hundreds of things happen in this Cause List. Clients get frustrated and one or the other always complains that his lawyer is not looking after his case professionally. However, most of the times these allegations are not fair on the conducting lawyer. We need to study and upgrade our listing arrangements in the Cause List. Unless we do so our cases will remain in the Cause List for ages and a lawyer will be waiting for his item to be taken up by the Hon'ble Court for days.

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Proposed domestic violence act

An overview

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THE Bangladesh Law Commission's has already taken an initiative in drafting a Bill on domestic violence. Ain o Salish Kendra (ASK), as a legal aid and human rights organisation, We very much well welcomes such an come this initiative. Domestic violence is one of the most widespread but least recognised human rights abuses in the world, of course, including Bangladesh.

The study by (BNWLA) shows (which study?) that in the year 2002 alone, 144 women were reported murdered by their husbands, 25 by their in-laws, and 112 women had committed suicide due to family conflict.

In recent years, organisations such as ASK have taken steps to generate support and dialogue on such legislation. The Law Commission of Bangladesh responded to the effort by sending out a set of questions to various women's rights organisations in 2004, asking them to set out the rationale for a law on domestic violence. The Law Commission has pursued the matter further by developing a draft Bill on Domestic Violence.

Comparative

In its introduction to the draft Domestic Violence Bill, the Law Commission has specifically discussed the domestic violence laws in New Zealand and Malaysia. We are of the view that the draft Bill would benefit from comparative analysis of DV laws in South Africa and India, which, like Bangladesh, grapple with poverty, extreme inequality and deeply entrenched biases against women.

Definitions of domestic violence

Malaysia: The Malaysian Act does not have as comprehensive definition of domestic violence as Bangladesh draft Bill; it excludes non-physical abuse from the definition of DV, and includes sexual violence in a restrictive manner (S.2(d) DVA 1994).

India: The Protection of Women from Domestic Violence Act (PWDVA) includes physical, sexual, economic and emotional abuse within the ambit of domestic violence (S.3of IndianDVAct2005).

South Africa: The Domestic Violence Act 1998 includes physical, sexual, emotional, psychological, and economic abuse under the definition of domestic violence, as well as harassment, stalking, damage to property (s.1(viii)).

Bangladesh: In the proposed Domestic Violence Act of Bangladesh, domestic violence includes any act of physical abuse, sexual abuse and psychological abuse by any member against any other member of the family (S.3)

Protected persons under the Act

Malaysia: The Malaysian DV Act is gender-neutral. It does not have a shared household requirement, which makes it more expansive than the Bangladesh draft Bill. The Malaysian act does not include domestic servants as members of a household.

India: Unlike the Bangladesh draft Bill, the PWDVA only provides protection to women and children. Respondents under this Act can include abusive men and their relatives (s.2). Domestic servants are not included as members of the household. Like the Bangladesh draft Bill, the PWDVA

requires that the abuser and the victim share a household (s.2 (5))

South Africa: The South African DVA 1998 covers a wide variety of domestic relationships. Those who fall within its ambit include: spouses, former spouses, unmarried partners, former unmarried partners, parents of a child, family members, fiancées, former fiancées, those who are or were romantically, sexually, or intimately involved for any duration of time (including perceived involvement) and persons who do and recently did share a residence. Thus, the DVA is gender neutral and has no requirement of shared residence.

Bangladesh: Protected person means an applicant for whose protection a Protection Order (PO) is made. Like Malaysian DV Act, the Bangladesh Act is gender-neutral. ASK considers the gender neutrality of this draft Bill as an important and positive aspect.

Duty holders under the Act (Protection Officer/Enforcement Officer) and their functions

Malaysia: The enforcement officers has been made the is the duty holder. The Malaysian Act defines the role of enforcement officer in very similar terms of the Bangladesh draft Bill (s.2), to include police and welfare officers. Importantly, the Malaysian Act gives Enforcement Officers additional powers of arrest and removing the perpetrator of domestic violence from the shared residence (s.19).

India: The PWDVA lays out the general duties of protection officers, service providers and magistrates (s.5). In addition to their general duties, magistrates are specifically obligated to frame charges under any relevant criminal provisions against the abuser when the abuser is in court for the breach of a protection order (s.31)

South Africa: An important innovation of the DVA is that a police officer must assist the complainant to obtain suitable medical treatment and shelter. In addition, an officer must inform the complainant of her right to apply for a protection order and to lay criminal charges. They are also obliged to arrest an abuser who breaches a protection order.

Bangladesh: Here the duty holder is an enforcement officer who is a Police officer or a Social Welfare officer (S.2 (e)). Duties of an Enforcement Officer are to assist a victim, provide or arrange transportation, explain victim's right etc. (S.20).

Remedies available under the Act

Malaysia: The Malaysian Act allows a victim to seek an Interim Order (IO) while investigation into her case is pending (s.12). It allows a victim to seek a protection order during any criminal proceedings under the Penal (s.13). There is no maximum duration for a protection order under the Malaysian law (s.5).

India: The PWDVA provides for three different types of orders, the first focusing on protection of the victim from abusive behaviour (protection order), the second focusing on secure shelter for the victim (residence orders), and the third, as its name suggests, focusing on adequate compensation for the victim. A complainant under the Act can seek multiple forms of relief, including protection and residence orders and compensation orders (s.12). There is no maximum duration for an interim order.

South Africa: There are two types of remedies 1st one is Interim Protection Order (IPO) and the 2nd is Protection Order. The Act makes it obligatory for the court to issue an ex parte IPO against the respon-

dent where the court is satisfied (s.5 (2)). The DVA 1998 provides that after a hearing, a court must issue a protection order (s.6 (4)).

Bangladesh: The court may, during the pendency of investigation relating to an offence of domestic violence, issue an interim protection order (S.4). The court may, after hearing the parties, issue a protection order for a period of not exceeding 12 months (S.6). Where a victim of domestic violence suffers personal injury or damage to property or financial loss or trauma or psychological damage as a result of domestic violence, the court may pass an order of compensation against the offender (S.10).

Power of arrest

Malaysia: A crucial difference between the Malaysian Act and the Bangladesh draft Bill is that the Malaysian Act allows for the inclusion, within the protection order, of powers of arrest without a warrant (s.7). If a police officer (not restricted to enforcement officers) has reasonable cause to believe that the accused has breached a protection order, he may arrest the accused (s.7(2)).

South Africa: The DVA 1998 provides for more robust powers of arrest than the legislation examined earlier. It provides that whenever a court issues a warrant the court must make an order (a) authorising the issue of a warrant for the arrest of the respondent; and (b) suspending the execution of the arrest warrant subject to compliance with the protection order (s.8(1)).

Protection of victim's privacy

South Africa: The DVA 1998 incorporates a number of measures to ensure the privacy of the victim, which might provide a valuable safeguard to victims fleeing from violent abusers. The court can:

- 1. Omit the address of the complainant from the protection order (s.7(5))
- 2. Issue directions prohibiting the disclosure of the complainant's address (s.7(5))
- 3. Order in camera proceedings (s.11(1))
- 4. Prohibit publication of information that might reveal the identity of any party to the proceedings (s.11 (2))
- 5. Prohibit the presence of any person from the proceedings where this is required in the interests of justice (s.11(1)).

Penalty for breach of protection order

Malaysia: Another crucial difference between the Malaysian Act and the Bangladesh draft Bill is that the Malaysian Act provides for stronger penalties for contravention of a protection order (S.8). If a protection order is breached without physical violence, the offender is liable to imprisonment up to 6 months and/or a fine. If a protection order is breached with physical violence, the imprisonment is up to 12 months and/or a fine. If the offender commits a violent breach of a protection order for a 2nd time, the imprisonment is up to 2 years and/or a fine.

India: Breach of an order or an interim order is an offence under the PWDVA and is punishable by imprisonment up to one year and/or a fine of up to Rs. 20,000 (S.32). The Act specifically directs magistrates to frame appropriate charges against the abuser for specific crimes under the Indian Penal Code (s.30).

South Africa: The DVA 1998 does not create a new offence of domestic violence. Like the Malaysian and Indian legislation discussed earlier, it criminalises the breach



of a protection order which is punishable with imprisonment up to 5 years and/or a fine (s.17).

Bangladesh: Breach of a protection order has been made is punishable with imprisonment and/or fine.

Specific recommendations on a comprehensive DV strategy include the following:

ASK believes that The legislation is necessary, but not sufficient, to fight the epidemic of domestic violence. The law is a powerful but limited tool. Thus ASK proposes So we have some specific steps to be taken in tandem with the legislative efforts, in the form of the following recommendations-

- 1. Collect and disseminate comprehensive national statistics on domestic violence detailing with the nature and degree of violence.
- 2. Launch awareness campaigns informing the public about domestic violence.
- 3. Establish a clear and deliberate domestic violence policy within the justice system (police, local councils, and courts).
- 4. Establish clear and explicit guidelines for police intervention in cases of domestic violence.
- 5. Develop standardised protocols and provide training for medical personnel on the management of domestic violence

victims.

- 1. Expand the number and quality of shelter homes for abused women and their dependents.
- 2. Expand interventions, which provide a combination of medical and health services, police protection and security, legal help, counseling and shelter.
- 3. Provide support to NGOs that work on domestic violence.
- 4. Provide legal representation for victims of domestic violence.
- 5. Enact and enforce laws and regulations prohibiting discrimination against women.
- 6. Amend or repeal laws that violate women's rights in marriage specially rape within marriage.
- 7. Support micro-credit, skills building, training, and employment programmes for women.

The author is working with Ain o Salish Kendra.

LAW week

Prison years lost in coordination maze

Although the Code of Criminal Procedure (CrPC) was amended three years ago to provide for deducting from the prison sentence the period spent behind bars before the judgment, many convicts have yet to gain from it for lack of coordination between the authorities concerned. The home ministry itself took 32 months to inform the prisons directorate about the amendment. The prisons headquarters officially received the notification in February and informed authorities of the country's 66 prisons of it the following month. Many prisoners have to serve more time than the period of their sentences, as there is barely any communication between the jail authorities, courts and prisoners' counsels. Due to lack of coordination, officials of different jails now depend on the inmates to know for how many days they have been to prison. Section 35A of the CrPC too would provide for deducting from a convict's sentence the time he/she has spent in jail before the judgment. But it would not apply to the ones convicted of an offence punishable only by death. Besides, the deduction then depended solely on the will of the court, as it was not obligatory for the courts to exercise this power. By introducing the amendment to the CrPC in July 2003, the government made it a compulsory provision for the judges to follow. --The Daily Star, August 6.

HC Issues Rule Why should Rab, cops not protect arrested persons

The High Court (HC) issued a rule nisi on the government, police and Rab to explain why they should not be directed to ensure protection of the people arrested or detained in custody as per the law. An HC division bench passed the order following a writ petition filed by Human Rights and Peace for Bangladesh (HRPB) challenging the failure of the Rapid Action Battalion (Rab) to protect the lives of the arrestees or detainees in its custody. The respondents, who have been asked to reply within three weeks, are home secretary, inspector general of police, and director general of Rab, directors of Rab-1, Rab-2, Rab-3, Rab-4 and Rab-10. HRPB Chairman Syed Arif Niazi, advocates Asaduzzaman Siddique, Aklas Uddin Bhuiyan and Mujibur Rahman filed the petition on behalf of the human rights organisation.

The petition said that "surprisingly from the very first day, the activities of Rab were neither within the limits of the constitution nor within the bounds of any law of the land." They submitted a list of the people killed in the name of crossfire in 2005. The list was drawn up from the newspaper reports. --The Daily Star, August 7.

Attack on Lebanon PM to send letter to UN soon

Prime Minister Khaleda Zia is sending letters to the five permanent members of the UN Security Council with a call for immediate and unconditional ceasefire in Lebanon. Foreign Minister M Morshed Khan announced this at a press conference, saying the draft of the letter is at the final stage and it would be sent in two or three days. Morshed said the United Nations should act immediately to stop Israeli aggression in Lebanon to uphold public confidence in the world body. He said Bangladesh still believes that UN is the only place where all could put their hands together to find solution to problems. Describing the Israeli attacks on innocent Lebanese as a heinous act, Morshed said, "It is not acceptable to us that the whole world will remain as spectator when thousands of innocent men, women and children are being killed in Lebanon." The foreign minister refuted the Israeli action on the pretext that Hezbollah guerrillas abducted two Israeli soldiers. "This is a pre-planned attack by Israel which was waiting for an opportune moment," he said. --UNB, Dhaka, August 7.

Updated Voter List EC to ask for exemption from PPR to complete printing by Oct

The Election Commission (EC) Secretariat decided to request the cabinet purchase committee to exempt it from the public procurement regulations (PPR) 2003 to enable it to complete printing of the updated voter list by October. It took the decision at an inter-ministerial meeting that discussed possible complexities arising out of compliance with the PPR. Sources said the EC Secretariat is going to make such a request mainly due to time constraint caused by the loss of over six months in preparing a controversial fresh voter list. Now, it is not possible to complete printing of the updated

voter list this year if the PPR is to be complied with while the parliamentary election is scheduled to be held by January next year, the sources pointed out. "We will request the cabinet purchase committee to exempt us from the provisions of the PPR so that we can give work orders for printing the updated voter list soon after completing the ongoing task of updating the list," EC Secretary Abdur Rashid Sarkar told The Daily Star. The PPR makes it mandatory to follow the process prescribed in it for giving any work order involving Tk 1 crore or more. Sources at the EC Secretariat said it will have to spend over Tk 15 crore to complete printing of the updated voter list. --The Daily Star, August 8.

3rd Karnaphuli Bridge HC rejects writ petition seeking stay order

The High Court (HC) summarily rejected a writ petition seeking a stay order on the construction of a pillar-based third bridge over the Karnaphuli River. Supreme Court lawyer barrister Intiaz Uddin Ahmed Asif filed the public interest litigation writ petition in an HC division bench on July 23. The petitioner however said he will appeal to the Appellate Division of the Supreme Court against the HC rejection order. The HC on July 24 ordered the government to suspend for seven days all activities on the pillar-based Third Karnaphuli Bridge as the government sought time to respond to the writ petition. The court also ordered the communications ministry to build a suspension bridge as per the recommendations by the Buet experts. The petitioner said if the bridge is constructed with 'faulty design' ignoring the experts' recommendations, it would cause excess sedimentation in the Karnaphuli River resulting in loss of navigability in the Chittagong Port channel. Dr M Zahir and advocate Asaduzzaman moved the case on behalf of the petitioner. Attorney General AJ Mohammad took part in the hearing for the state side. --The Daily Star, August 8.

