

## LAW watch

## Justice is badly served when a judge sleeps during a trial

BARRISTER HARUN UR RASHID

A few weeks ago, an unusual case was heard at the Criminal Appellate Court in Australia, known as the "sleeping judge" trial. The lower court trial judge had a physical ailment that caused him to fall asleep for periods of up to 15 minutes during the trial. Because of judge's status, the defence lawyer did not complain when this occurred.

On appeal, the Appellate Court upheld the verdict of the trial court. Part of the reason was that no complaint was made at the hearing and that one of the accused had written to the judge stating that he had a fair trial. One of the judges of the Appellate Court concluded: "I am not, of course, suggesting that a sleeping judge can preside over a trial. I am saying that if a presiding judge sleeps from time to time, appellate intervention is only justified if it can be demonstrated that this resulted in error or deprived the accused of a fair trial in some respect."

The statement of the judge of the Appellate Court raised a controversy among lawyers and ordinary people. Majority of people believe that if a judge sleeps at a trial even for 15 minutes, justice is not served.

## Main issue

The main issue in this case is whether or not a fair trial can be heard if a judge is sleeping at time during the hearing. If a judge sleeps, there is usually a serious interruption in understanding what is being presented to the judge. Furthermore, a sleeping judge does not help the image of the justice system but rather brings it into disrepute.

A judge is required to be conscious at all times during the whole proceedings of the trial. If a judge falls asleep, he/she pays little attention to the evidence presented before the court. This has a direct impact on the fairness of the process. In a criminal trial, a judge is required to instruct the jury members in Australia to listen carefully to all the evidence and especially to his instructions.

How can instructions be followed and any respect be given to the judicial process when the judge himself is not in any kind of the state to listen? If a judge has physical, psychological or any other problems, the view is that the judge should not be on the bench but rather be given a



leave and seek help for the problem.

In the US, under the due process clause of the country's Constitution a fair trial would not have taken place if a judge was sleeping during the trial and a new trial would be ordered. Sleeping judges have been disciplined for their behaviour in the US.

The "sleeping judge" trial highlights the gap between public perception as to what constitutes a fair trial and that of the Appellate Criminal Court. Many legal experts suggest that Australia needs better judicial procedures for disciplining judges who do not perform their judicial duties. And their highest court may revisit the case for miscarriage of justice.

The writer is Former Bangladesh Ambassador to the UN, Geneva.

## LAW campaign

## Call to stand up against poverty and inequality

Stand up and Speak out is a worldwide call to take action against poverty and inequality and for the Millennium Development Goals. During the 24 hour period between Oct. 16th at 9pm GMT and Oct. 17th at 9pm GMT, millions of people around the world literally stand up and speak out to show that they refuse to stay silent or seated in the face of poverty. This year the campaign calls for support to break the world record so that people can break the record of broken promises.

International Day for the Eradication of Poverty and Inequality has been observed in the country as elsewhere across the world with a call 'stand up and speak out against poverty and inequality. Different organisations have drawn up various programmes, including rally, open-air concert and gathering, to highlighting this year's theme 'Stand Up Against Poverty and Inequality. People's Forum on MDGs (PFMD), an alliance of 200 private organisations and trade union centres, holds programmes simultaneously in 30 districts, including Dhaka, to mark the day.

The People's Forum in association with Campaign for Popular Education (Campe) and Global Call to Action Against Poverty (GCAP) organised rally, concert for youth and children's assemblies at educational institutions. Dhaka City Corporation (DCC) also holds a rally on the premises of Nagar Bhaban, which was inaugurated by Mayor Sadeque Hossain Khoka.

"It is very difficult to remove poverty from our densely-populated country because three-fourth people are still now under the poverty line. Concerted efforts are needed for eliminating poverty from our society," he said while addressing the rally.

The People's Forum, a broad-based coalition of civil society groups, along with other partner organisations organised a mass gathering at Rabindra Sarobar Mancha at Dhanmondi.

"These efforts are a part of global mobilisation that aspires to achieve the biggest ever mobilisation against poverty in more than 100 countries showing courage and demand for a more political response to the growing crisis of global poverty," said Forum Convener Rasheda K Chowdhury. The Hunger Project, Karmajibi Nari (KN) and Campaign for Popular Education (CAMPE) also participated at the programme.



## HUMAN RIGHTS monitor

## CHILD RIGHTS IN EDUCATION

## Cruel behaviour leads to school dropout

LAILA NOOR

**S**TUDENTS stop attending a school in Barisal for punishing a female schoolmate by stripping her naked,' reads a headline in a national daily. This news must have caused panic among many guardians of school going children. Undoubtedly, they will be worried sick for the safety of their loving kids.

Punishing children in the name of disciplining is too common in Bangladesh. For instance, Russell, a nine-year-old boy from a remote village in Comilla, is ready to work hard with his father on the field for all day long. But, he would not go to school because he is weak in mathematics. The math teacher beats up students for any mistakes. Russell's mother simply could not manage to persuade her son to go to school. His elder brother Kawsar, 14, does not want to attend school as well for fear of being caned and other forms of punishment at school.

But, Russell's classmate Javed gladly goes to school everyday. Although, he too is weak in mathematics, the teacher would not beat him up because the teacher tutors Javed privately. So, Javed gets the pass mark anyway.

The picture is quite different at a private primary school in the neighbouring village. Zakir Hossain, 8, a boy from a very poor family, happily attends school regularly. He is happy because caning is forbidden at his school. "Ours is a needy family. Despite this, I have to allow my son to attend school because Zakir is ready to starve, but not to miss school. He has a wonderful time at school," says Zakir's mother Sufia Khatun.

Many more children like Russell and Kawsar do not want to go to school for fear of punishment and humiliation. As a result, a significant number of students drop out every year. Many experts identify corporal punishment as one of the main reasons behind the huge dropout.

Hanufa Begum, mother of dropout children Shahida, 13, and Sharmin, resentfully says, "My daughters have to work outside to support the family. Therefore, they are always late to get to school and they have to endure various punishments. The teachers cane them if they don't prepare lessons or if they play with their mates. So, they don't want to go to school."

Commenting on this, Zakir's class

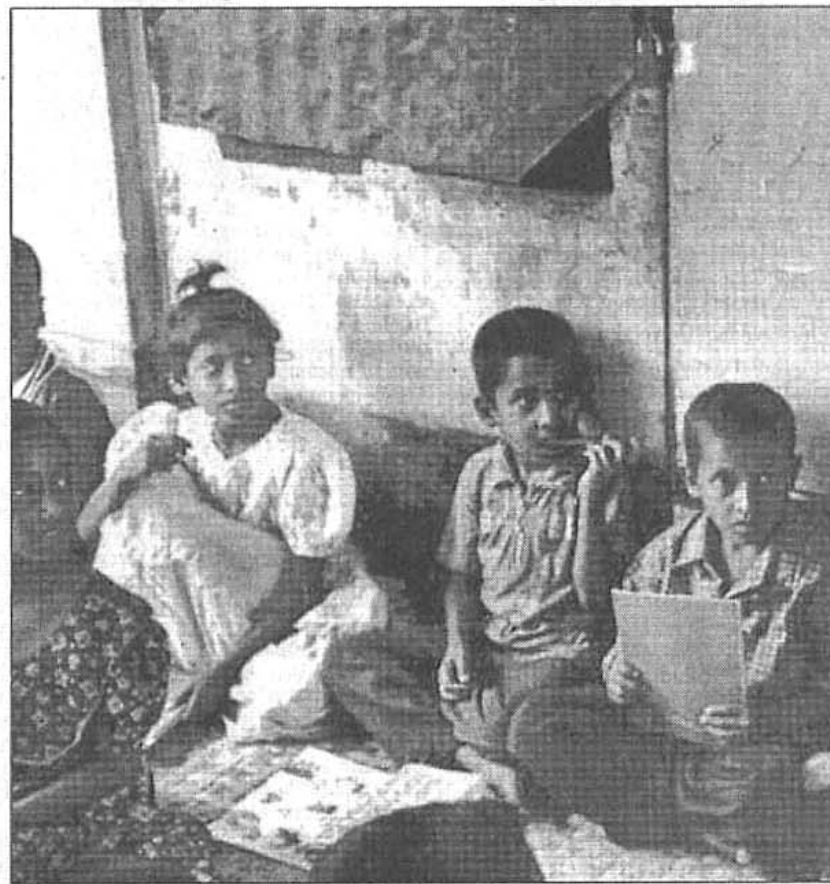
teacher Mansura Akhter says, "The odious act of punishing children has become a common practice in our country. There is hardly any school in villages where you will not find a couple of ill-tempered teachers. These guys beat up children for no valid reason. But, they should accept the fact that kids are naughty." Unfortunately, this sad reality of the student life of children in Bangladesh has been going on for ages although things have changed around the globe. The UN charter on children's right has been formulated for ensuring their rights. And, from September 2, 1991, implementation of this charter has been made compulsory in Bangladesh.

Clause 37 of the charter states that no child will be subjected to torture, punishment and any cruel or inhuman or humiliating behaviour. But, the reality in Bangladesh, a signatory to this charter, is not unknown. Here, children's rights are often violated.

In 2005, Dipu, a student of capital's Nayatola Government Primary School, died due to barbaric torture of a teacher. Azizur Rahman, project director of children protection unit of Unicef, says, "Many of the dropout children don't come to school due to the corporal punishment. It is absolutely improper to punish children. If punished, children feel insecure at schools resulting in huge dropout. Children at schools of remote areas are tortured quite regularly and most of them go unreported. Whenever an incident takes place we talk about it for a few days and then forget. We have to take measures to put an end to this bad practice."

About teacher-student relations in childhood, Amir Hossain Khan, an assistant director of Bangladesh Shishu Academy, says, "Childhood is a very important time. Subject to an enabling environment in childhood, children could be grown up as good citizens in the future. In this regard, teacher-student good relation is very vital indeed. Avoiding both physical and psychological punishments, every teacher should help children fulfill their dreams through love and care. A teacher should express himself in a way so that students consider him safe."

About the adverse impact of punishment, Dr Mohit Kamal, an associate professor of National Mental Health Institute and Hospital, says, "All the children are not



equally good in learning. In this case, a teacher should understand the psychology of a student and help him/her accordingly. The trained teachers know this very well. A teacher should realise that a student can't be made to perform by pressure. Such an environment should be created so that the students learn spontaneously."

He feels, "Home or school wherever it might be, it is not right to punish children. A child will have to be made interested in learning. And, this has to be done by helping him, not by punishing. Disciplining rather causes adverse effects. They get scared and lose interest in learning. An escaping tendency grows in them. So, children should be taught in a friendly fashion." Ibrahim Sobhani, a pioneer of school-based education system, says, "School is the right place of learning. The learners don't want to come to schools if

they are not taught in an enjoyable manner. If the environment is not enjoyable, the creativity of children will not flourish. To ensure an enjoyable learning atmosphere for students, friendly behaviour is a must."

About punishing children, a teacher of a remote village, known for his anger, says, "There're only two teachers in our school. And, two of us have to teach about 350 students. Besides, we've to do the official works. We feel tremendous pressure in doing all these things. Therefore, being annoyed, we punish the children if they do not learn their lessons or make noises. We do know it's not right to cane children. But, we've to do that because of the situation." Most of the teachers do not support corporal punishment. Selina Akhter, the head teacher of Teigaon Farm Government

Primary School, says, "Neither physical nor psychological punishment plays any positive role in a learner's education. The children who receive the love and care of teachers become good citizens in the future."

Ethnic Community Organisation, an NGO in Sylhet, is working to check the dropout of children from primary schools. Its executive director Laxmikanta Singh says, "We simply don't know the statistics as to how many children lose enthusiasm, fail and even drop out due to punishment in the name of disciplining. In addition to the existing one, a separate law should be enacted with provisions for more stringent punishment for those teachers who punish children inhumanly."

Initiatives are underway both at government and private levels to check dropout. The Finance Adviser, in his budget speech (2007-08), said that works were going on in 11,000 education centres to get the dropout students back to schools. He also said 10,000 teachers would be provided training next year in this regard. About punishment at schools, Prof Abdullah Abu Sayeed, the founder of Biswa Sahitya Kendra, says, "Teachers in our country face different types of problem. Their problems need to be resolved. Besides, the processes of making good teachers will have to be applied. We have to keep in mind that torturing children means torturing the future. So, it should be stopped."

Many believe that in order to stop corporal punishment our attitudes towards children need to be changed. Educationists say to stop punishing children first the reasons will have to be detected and efforts to be made to correct those. While recruiting teachers, talent should not be the only criterion for evaluation. Rather, it will have to be seen whether they have the qualities like patience and enthusiasm to be good teachers. Besides, everybody involved in child education should be made aware of the negative aspects of corporal punishment. It is also essential to exercise and apply the laws and conventions relating to child rights. And to do that, along with the government and private initiatives, people from all walks of life will have to be conscious about it.

Source: News Network

## LAW week

## Law soon to protect consumers' rights

The 38th World Standards Day was observed in the country with a call to maintain quality of goods and services at all levels to sustain in open market economy. Every year the day is observed across the world out of necessity to maintain quality and keeping uniformity with the international standards in producing any goods to improve the living quality of people. This year the theme was 'Standards and the citizens: Contributing to society'. President Iajuddin Ahmed and Chief Adviser Fakhruddin Ahmed in separate messages highlighted the importance of the day to protect the citizens' rights to get quality goods and services to meet their basic needs. The president in his message said government efforts as well as massive social campaign are necessary to ensure supply of quality goods in the market. He said there is no alternative to producing quality goods to sustain in the open market economy and competitive world. The chief adviser said the issue of protecting the rights of consumers is very important in the present era of globalisation. Out of that realisation, the government has taken the initiative to frame a law to protect the interests of the consumers, he said. The regional offices of Bangladesh Standards and Testing Institution (BSTI), the national organisation to look after the quality of agricultural and industrial goods and services in the country, organised different programmes to mark the day. -BSS, October 17.

## No desire to become president: Gen Moeen

Army chief General Moeen U Ahmed dismissed speculations about his becoming president, saying that he has no such intentions. "Many questions are lurking in many people's minds, but time will give answers to all those questions... I have no desire to become president," he told reporters at Bangladesh High Commission. General Moeen, who arrived in London en route to the USA, said there is no scope for considering army as a separate entity. The army is part of government. Like general people, the army also wants clean democracy in Bangladesh. He said appointment of consultants is being considered to make the caretaker government more dynamic. Constitutional provisions are being examined in this regard. Narrating the background of declaration of the state of emergency and installation of a new caretaker government, the chief of army staff said the country was heading for a civil war in the wake of violent political activities, absence of law and order and distrust about voter list. General Moeen said priority of the incumbent government is to restore democracy through free and fair elections and transfer of power. -UNB, London, October 17.

## Judiciary separation from November 1

Chief Justice (CJ) Md Ruhul Amin said the separation of judiciary from the executive will be effective from November 1 and this has been possible because of the congenial atmosphere now prevailing in the country. "The Supreme Court continued its efforts to separate the judiciary from the administration, but without such a congenial atmosphere it would not be so easy or even possible to accomplish the task," he said.

The CJ made the remarks while addressing an orientation programme for additional district and sessions judges and joint district and sessions judges, who have been appointed as chief judicial magistrates under the new provision, at Judicial Administration Training Institute. Chaired by Justice Md Hamidul Haque, director general of the institute, the function was also addressed by Law Adviser Mainul Hossain and Justice Md Ruhul Amin of the Appellate Division. Appreciating the role of the present caretaker government in separating the judiciary, the CJ said it would not be possible for the Supreme Court alone to separate the judiciary if all relevant quarters, including the government, did not provide necessary supports in this regard. -BSS, October 18.

## ACC sues 11 Kashba ward commissioners

The Anti-Corruption Commission (ACC) filed cases against 11 commissioners of Kashba pourasabha in Brahmanbaria district for corruption and causing loss of government revenue. Shaheen Ara Mamataz, assistant director of ACC in Brahmanbaria, filed the cases with Kashba Police Station

following investigation of a written complaint filed by Commissioner Tajul Islam seven months ago. The accused are -- Abul Hossain, Md Jasim Uddin, Md Akter Hossain, Md Hirachan Mia, Md Shahidul Islam, Md Farook Ahmed, Nurunnabi Dulal, Nizam Uddin Sarker, Shilyul Akter, Anwara Begum and Ayesha Akter. Kasba police arrested the first five of them. The accused commissioners committed different types of corruption including the leasing of shops at low rates and causing loss of government money, the ACC official said. The name of another accused, pourasava administrator Md Rafiqul Islam, could not be included in the cases as he died on April 17, said an ACC source. -The Daily Star, October 18.

## Gatco Case

## ACC wants ex-officials' addresses for quizzing

The Anti-corruption Commission (ACC) has asked the establishment ministry to provide its investigators with addresses of some retired government officials for questioning in connection with the Gatco graft case. Meanwhile, the ACC investigators probing the Gatco (Global Agro Trade Pvt Co Ltd) scam questioned an official of Chittagong Port Authority (CPA). In Dhaka, its investigators seized various bank documents, records and cheques as evidence of the scam from Sonali Bank's local office located at Motijheel. The corruption watchdog in a letter to the establishment ministry asked it to provide the ACC investigators with addresses of the retired government officials after the investigators were unable to question a number of government officials of the then prime minister's office (PMO) and planning ministry due to unavailability of addresses of the officials.

Former principal secretary to the PMO Kamal Siddiqui, former director of planning ministry Taleb Rahman and a former director general (DG) of the same ministry are included on the list of government officials to be questioned by the ACC. The officials are to be questioned as they were in charge of different government offices concerned when Gatco was awarded the controversial container-handling job in Dhaka and Chittagong. Three senior principal officers of Sonali Bank handed over the bank documents and records to the ACC at its local office located at Sonali Bank head office in Dhaka. -The Daily Star, October 18.

## AL against appointing more advisers

Awami League (AL) said that it would not be right to expand the caretaker government through appointing new advisers or consultants. "We don't want more advisers to be appointed and it would not be right to expand the government's size as there is only a few months left for holding the elections," AL Acting President Zillur Rahman told the reporters at his Gulshan residence in the capital. The reaction came a day after Army chief General Moeen U Ahmed said in London that an expansion of the advisory council is being considered and the government is also thinking of appointing consultants to accelerate the pace of work in the administration. The AL acting chief, however, thanked the army chief on his remark that he does not have any ambition of becoming the country's head of state. Zillur again demanded release of the detained party president Sheikh Hasina, other senior leaders and as well as the leaders of the AL's front organisations. "It is legal to give them bail, but denying bail is a breach of law," the veteran AL leader said. If Sheikh Hasina is given bail, she would not flee the country, Zillur said adding that if she wanted to flee, she would not have returned home from the US. -The Daily Star, October 18.

## Corresponding with the Law Desk

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## LAW news

## Court halts introduction of GM rice in Philippines

A Philippine court has temporarily halted an application to bring genetically modified (GM) rice to the country, pending a study of possible health and environmental effects. A temporary restraining order was issued on 18 September after Greenpeace, together with other nongovernmental organisations, challenged the Philippine government's right to approve Bayer Crop Science's LL62, a herbicide-tolerant type of hybrid rice.

The order prohibits the Department of Agriculture and the Bureau of Plant Industry (BPI) from approving Bayer's application to introduce LL62 for food, animal feed and the manufacture of other products. A statement from the court said the order would "preserve the status quo until the merits of the case can be heard". No date has yet been set for a new hearing. Bayer submitted its application to BPI in August 2006. If eventually approved, it will be the first GM rice in the Philippines.

Environmental group Greenpeace filed its injunction on 23 August this year, citing several concerns over LL62, particularly the absence of public consultations, as required by the Philippine law. The injunction also pushes for a review of the approval process for GM plants in the



country. "It will be a big mistake to allow GM rice to enter our food supply. It has never been proven safe for human consumption and poses grave risks to the environment and to our health," said Daniel Ocampo, Greenpeace Southeast Asia Genetic Engineering Campaigner. Agnes Lintao, policy officer for Southeast Asia Regional Initiatives for Community Empowerment (Searice), another of the petitioners, said approval of LL62 would open the floodgates to further GM rice contamination in the Philippines and that the government should abandon all applications for GM organisms.

Bayer say the LL62 rice variety is safe for human consumption, and produces a protein conferring herbicide tolerance that is commercially available in Canada, the European Union, Japan, Mexico, Russia and the United States. "Bayer Crop Science believes that this rice poses no harm on human health, food or feed. It has also been confirmed in many trials that it did not exhibit weedy characteristics, or negatively affect other organisms," said the company's communications manager, Reynaldo Cutanda.

Source: Science and Development Network