

LAW campaign

Fight violence against women

DENOUNCING violence against women as "one of the most heinous, systematic and prevalent human rights abuses in the world," United Nations Secretary-General Ban Ki-moon has vowed to lead a campaign against the scourge. In a message marking the International Day for the Elimination of Violence against Women, commemorated on 25 November, Mr. Ban hailed progress in addressing the issue, but said there is "so much left to do to tear down the veil of tolerance which still sometimes surrounds it."

He pledged to spearhead a system-wide campaign through 2015 for the elimination of violence against women focused on global advocacy, UN leadership by example, and strengthened partnerships at the national and regional levels to support the work of Governments, civil society, the private sector and others.

"I have proposed that the General Assembly devote an agenda item

Human Rights Louise Arbour, in her statement on the occasion of the Day, spotlighted the problem of immunity for violent crimes against women. "Every day, in all corners of the world, countless women and girls are killed, mutilated, beaten, raped, sold into sexual slavery or tortured. Most of the survivors of this violence have little hope of seeing their tormentors pay for their crimes. And so the violence goes on," she said.

"Impunity" is built on a foundation of discrimination and inequality, Ms. Arbour said. States have largely accepted the international human rights framework in place to prevent, condemn and punish discrimination against women, but she stressed that inequalities remain. She emphasized that a sustained effort to end violence against women requires a commitment to ensure equality with respect to economic and social rights. "This contributes not only to the equitable allocation of

genital mutilation, the execution and murder of women, marital rape and other forms of violence," said the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak.

They note that the application of international instruments and the development of strategies to condemn and punish torture "have been slow to take into account gender-based aspects of torture, such as sexual violence, and have treated severe pain or suffering inflicted on women in the private sphere as a 'domestic affair'."

The experts appeal to the international community, to States and civil society to make full use of all existing instruments and mechanisms designed to combat violence against women. Commemoration of the Day

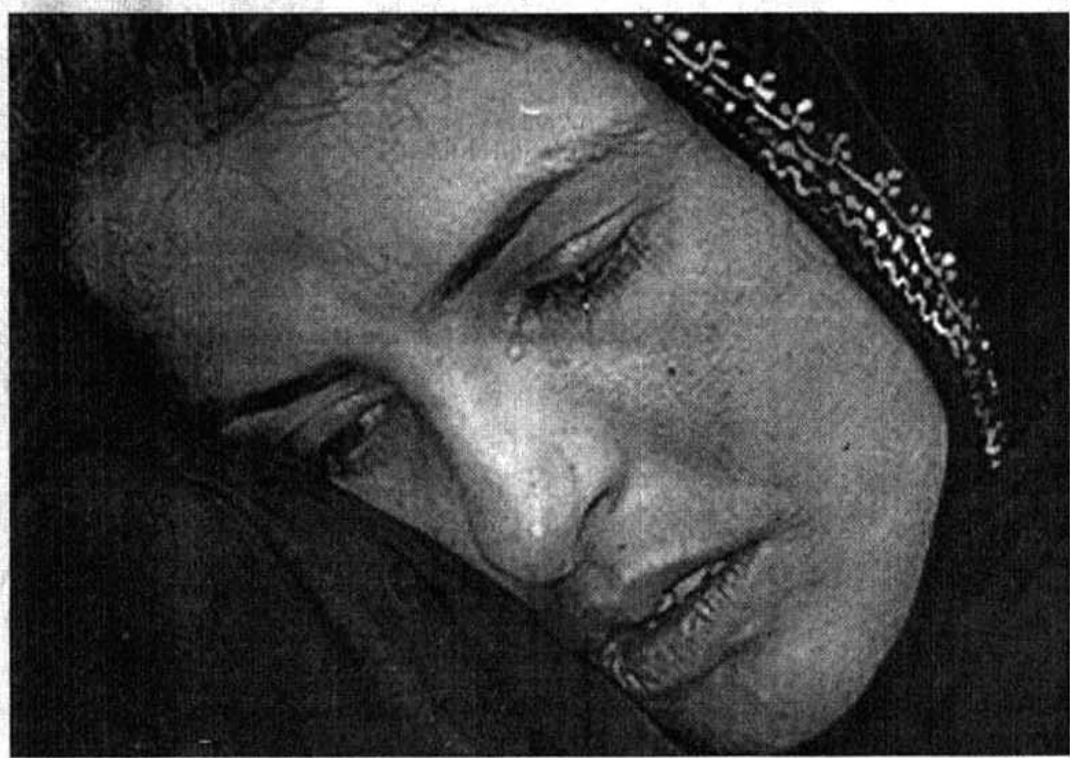


PHOTO: KIDVIA

every year to considering the question of violence against women. And I have called on the Security Council to establish a mechanism dedicated to monitoring violence against women and girls, within the framework of resolution 1325 on women, peace and security," Mr. Ban said. He also repeats his longstanding support for a proposal to replace several current UN structures with one "dynamic" entity able to call on all of the UN system's resources in the work to empower women and realize gender equality worldwide.

UN High Commissioner for public goods and services but also leads to improved law enforcement by facilitating accountability for violence against women."

Both Ms. Arbour and Mr. Ban said the issue must be addressed not only in commemoration of the International Day but every day. Also marking the Day, two independent UN human rights experts issued a statement pointing out that despite progress, many countries fail to recognize some forms of violence against women as crimes.

"Cultural or religious paradigms are still invoked to condone female

kicks off ?? days of activism," an initiative from 25 November through 10 December, which is International Human Rights Day. In Sierra Leone, the UN is working with local non-governmental organizations (NGOs) on a number of activities, including awareness raising workshops on the three Gender Acts recently adopted by the House of Parliament the Domestic Violence Act; the Devolution of Estates Act; the Registration of Customary Marriage and Divorce Act.

Source: UN News Centre.

HUMAN RIGHTS monitor

Separation of Judiciary and state of Juvenile Justice: A case in Sylhet

OLI MD. ABDULLAH CHOWDHURY

JUDICIARY has been finally separated from executive at the beginning of November 2007 and expectation of people is mounting day by day. Ensuring justice for vulnerable people, particularly women and children would be a priority task for independent judiciary. Although the task is challenging, but it is morning that shows the day. In order to achieve a good result, there must be a good start.

Juvenile justice system is one of the areas where lots of work need to be done. Although there are actors playing different roles, judicial magistrates have a significant role in the administration of juvenile justice. Before the separation of the judiciary, magistrates were largely blamed for the maladministration of juvenile justice. Juvenile offenders though were brought before the court of magistrate, few of them had specialisation on juvenile justice. Age determination is a crucial step in the administration of juvenile justice, nonetheless.

Recently, a case was filed against a juvenile under Kotowali Model Thana of Sylhet Metropolitan Police under section 326/307/379 of Penal Code. Even though the juvenile was only 13 years old, police described the offender to be of 19 years in the FIR. Interestingly, his parents are married for 16 years and they accused police for misleading administration of justice.

The child was taken to custody on October 31, 2007. However, it took more than two weeks for the child to come out on bail. On the contrary to the spirit of UN Convention on the Rights of the Child (UNCRC), the child was handcuffed with an adult while appearing in the court of Chief Judicial Magistrate (CJM) in Sylhet.

Although Bangladesh is one of the earliest signatories to UNCRC, there are plenty of occurrences related to maladministration of juvenile justice. "State Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming of a constructive role in society" - stated in Article 40 of UNCRC. In reality, rights of the children who came in conflict with law were violated in a number of ways.

However, Children Act 1974 was enacted well before UNCRC came into force. Under Children Act 1974, children in conflict with law have a number of alternatives other than imprisonment. Before the separation of judiciary, magistrates though administered juvenile court, had little specialisation on Children Act.

As observed in "Tracing the Missing Cord: A Study on the Children Act, 1974", Professor Mizanur Rahman notes, "It is badly felt that there exists a huge gap between administration of justice and law enforcing agent. Police officials through their corrupt practices are frequently violating the basic rights of the juvenile offenders and remain untouched". He further comments, "We don't know any single instance where a single investigation officer has been punished for this carelessness. Most of the police officers do not have knowledge about the Children Act". (Page 45).

The child also became the victim of carelessness of police officer. Although juveniles are to be kept separated

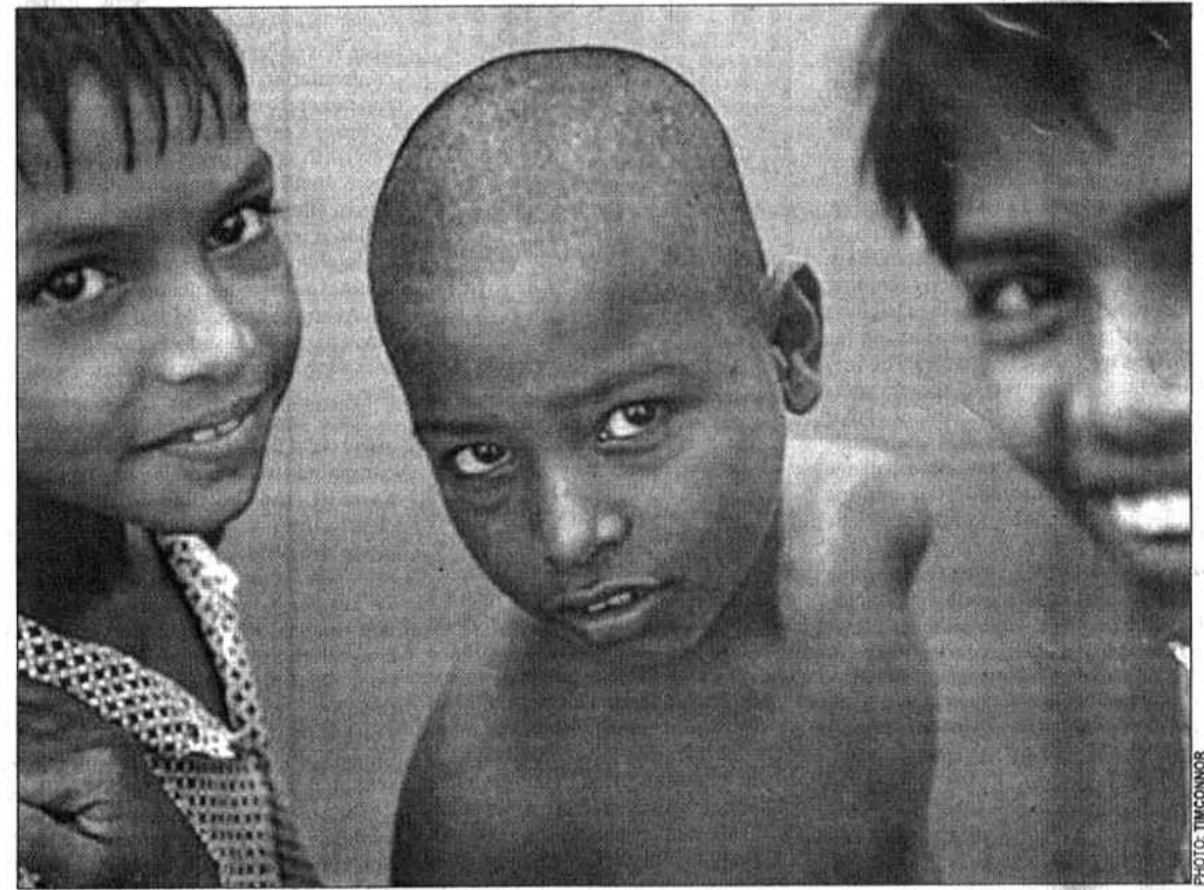


PHOTO: TIMCORNOR

from adult in prison, laws are not practiced authentically. As mentioned in the aforesaid study, there are lots of instances where Investigation Officers have charged children of three or four.

However, High Court issued a *Suo Moto* (Suo Moto Order No. 248 of 2003) regarding children in conflict with law.

(1) Trial, if any, of all juvenile accused to be completed with utmost expedition by the juvenile courts and the concerned law enforcing agencies, Prosecuting agencies and legal aid committees be directed to take immediate steps in the matter.

(2) Taking into consideration the provisions of Section 82 and 83 of the Penal Code, it is directed that the government do consider making prayers to the courts concerned for discharging the juvenile accused in appropriate cases. Order of discharge may also be sought for pursuant section 53 of the Children Act 1974.

(3) The government also do consider withdrawal of Juvenile accused from prosecution under Section 494 of the Code of Criminal Procedure in appropriate cases specially from the cases charged under ordinary penal laws.

(4) The local legal aid committees formed by the government be instructed to move the courts for bail of the juvenile accused.

(5) Juvenile accused in jail must be kept apart from other prisoners.

(6) Non-official jail visitors should include human rights activists specially the representatives of children organisations of the country.

(7) Juvenile accused are to be transferred to correction homes and other approved homes with utmost expedition.

As a result, there had been significant progress in the field of juvenile justice as judiciary provided valuable directions. Actually, Mr. M. Idrisur Rahman, a learned Advocate, drew the attention of the court to the news published in "Daily Prothom Alo" dated 4 January that "400 children were in Dhaka Central Jail." Based on reports after enquiries conducted by Human Rights Organization "Odhikar" and Save the Children UK, the aforesaid news was published in the press. Then, the landmark *Suo Moto* came. On the basis of the direction provided in *Suo Moto*, human rights organisations advocated successfully to change policy and practices in the favour of children on a number of occasions. And things have changed now. Judiciary has been separated from executive since November 2007.

To recap all, most of the magistrates did not have specific legal educational background to administer juvenile justice until November this year. They had, naturally, deficiency of basic knowledge about the jurisprudence and law of juvenile justice. This is why they were often hesitant to apply their judicial mind while disposing cases of juvenile offenders. Since the separation of judiciary, expectation is naturally soaring high as judicial magistrates are mostly from specific legal educational background.

Oli Md. Abdullah Chowdhury is a law-graduate and currently working for FIVDB.

LAW watch

AIDS programmes should focus on human rights

TWENTY-Five international AIDS organisations are calling for a shift in the global response to the pandemic by putting human rights at the centre of their efforts. In a joint declaration they said the groups most in need of HIV prevention and treatment programmes, including access to anti-retroviral drugs, continue to face discrimination and abuse worldwide, often being denied access to life-saving programmes.

The document, titled 'Human Rights and HIV/AIDS: Now More Than Ever', and sponsored by the Open Society Initiative, focuses on populations most vulnerable to HIV: women and girls, young people, intravenous drug users, sex workers, gay and bisexual men and prisoners. In a press statement accompanying the launch, the groups say the declaration comes at a time when HIV-prevention and care programmes are under threat.

They said earlier this year, the World Health Organisation and UNAIDS released guidelines recommending that, in certain circumstances, people should be tested for HIV unless they specifically decline the test. "Many experts," according to the press statement, "worry that making HIV testing more routine without scaling up human rights protections could result in coercive, mass testing programmes."

The Director of the AIDS and Rights Alliance for Southern Africa (Araasa), Michaela Clayton, said human rights must take centre stage otherwise national, regional and global responses to AIDS will not succeed. "This is widely recognised, yet few governments have ensured human rights protections for people living with or vulnerable to HIV," she added.

The AIDS organisations say in Africa the lack of legal protection for women, who make up the majority of infections on the continent worst affected by HIV, best illustrates the

need to combine public health with human rights approaches. The group called on governments and international donors to take concrete measures to place human rights at the centre of their AIDS programmes. "People should not be punished for holding their governments accountable to their HIV/AIDS and human rights commitments," said Wan Yanhai, a Chinese activist who has been jailed many times. "Human rights activists simply want to help their governments win the war against AIDS."

The theme for World AIDS Day 2007 and 2008 is "leadership". This theme will continue to be promoted with the campaigning slogan, "Stop AIDS. Keep the Promise." Since the beginning of the epidemic, experience has clearly demonstrated that significant advances in the response to HIV have been achieved when there is strong and committed leadership. Leaders are distinguished by their action, innovation and vision; their personal example and engagement of others; and their perseverance in the face of obstacles and challenges. However, leaders are often not those in the highest offices. Leadership must be demonstrated at every level to get ahead of the disease - in families, in communities, in countries and internationally. Much of the best leadership on AIDS has been demonstrated within civil society organisations challenging the status quo. Making leadership the theme of the next two World AIDS Days will help encourage leadership on AIDS within all levels and sectors of society. We hope it will inspire and foster champions within a range of different groups and networks at local and international levels.

Leadership as a theme follows and builds on the 2006 theme of accountability. In 2006 a number of milestones were reached where accountability was particularly crucial. It was the year of the United Nations High Level Meeting on AIDS,

which reviewed the progress on the 2001 Declaration of Commitment on HIV/AIDS, an important blueprint for reaching the Millennium Development Goals on AIDS. 2006 marked the fifth year anniversary of the African Abuja Declaration. 2006 was also the year in which national targets were set, or should have been set, by governments for achieving Universal Access to Treatment, Prevention, Support and Care by 2010. In addition, at 2006's



International AIDS Conference, "accountability" was the buzzword throughout the global forum, reflecting the conference's theme, "Time to Deliver."

The overall purpose of the World AIDS Campaign from 2005 to 2010 is to ensure that leaders and decision makers deliver on their promises on AIDS, including the provision of Universal Access to Treatment, Care, Support and Prevention services by 2010. Within that five-year mission, annual campaigning themes are selected which are timely, relevant and adaptable to a number of differ-

ent regions and issues. The theme for World AIDS Day has been determined by the World AIDS Campaign since 1997. Since that time, the campaign has developed into its current form, governed by a committee of global constituency-based AIDS networks. The Global Steering Committee of the World AIDS Campaign selected the theme of leadership during their fifth steering committee meeting held in Geneva on 8th and 9th of February 2007.



This Global Steering Committee is comprised of the Global Network of People Living with HIV/AIDS, the International Community of Women Living with HIV/AIDS, the Youth Coalition, the Global Unions Programme on HIV/AIDS, the International Council of AIDS Service Organisations, the Ecumenical Advocacy Alliance, and the International Women's AIDS Caucus. UNAIDS and the Global Fund to Fight AIDS, TB and Malaria are non-voting members.

Compiled by: Law Desk.

LAW week

HC Rule on Govt

Why Judicial Service Rules should not be declared illegal

The High Court issued a rule upon the government to explain why the Bangladesh Judicial Service Rules allowing deputation of judicial officers to executive branches should not be declared to have been made "without lawful authority". It also asked the government to show cause why the rules governing the terms and conditions and postings and promotions of members of the judicial service "should not be declared unlawful". A division bench comprising Justice Shah Abu Nayeem Mominur Rahman and Justice Zubayer Rahman Chowdhury issued the rule, following a public-interest litigation writ petition filed by Quazi Abdul Hannan, chief reporter of the daily Shamok. "The rule is made returnable in four weeks," says the court order. Ministries of Law, Justice and Parliamentary Affairs and the Ministry of Establishment have been made respondents in the case. The petitioner challenged the legality of the government action as he contended that it "violated" the 1999 landmark judgment in the Masdar Hossain case on judiciary separation and the constitution. It amounts to "undermining the independence of the judiciary," he said. Barrister M Amir-Ul Islam appeared for the petitioner. -- Unb, Dhaka December 4.

Army suggests changes in draft electoral rules

The army has suggested some amendments to the draft rules on electoral roll, prepared by the Election Commission (EC) and sent to the army authorities seeking their opinion on those. Reviewing the draft, the army gave suggestions on nine sections and sub-sections of the rules for the EC's consideration, sources at the EC Secretariat said. Most of the suggestions are technical that specified the procedure to ensure preparing the voter list properly. The EC is now finalising the draft rules, to be formulated in the next two weeks giving legal coverage to the procedure being followed in preparing the voter list with photographs, and national identity cards. "We have sought opinion of the army on the draft rules since the disciplined force is helping preparation of voter list," Election Commissioner Muhammad Sohul Hussain said in reply to a question. The Electoral Roll Ordinance 2007 promulgated on August 9 empowered the EC to formulate rules on electoral roll. Earlier, the power to formulate such rules lay with the government. The EC started the field level task for making voter list with photographs in August, and moved to formulate the draft rules in October. -- The Daily Star, December 4.

No scope for Rohingyas to become voters: Says CEC

Chief Election Commissioner (CEC) ATM Shamsul Huda has said there is no scope for inclusion of Rohingyas in the voter list. "Only the country's real citizens who live in particular addresses will be made voters and provided with voter ID cards," the CEC told a view-exchange meeting. The circle chief of the area, government officials, public representatives, the district election officer, enumerators, supervisors and local elite attended the meeting at Bandarban Tribal Cultural Institution. Election Commissioner Brig General (ret'd) M Shakhawat Hossain, 69 Infantry Brigade Commander Brig General ATM Ziaul Hasan, Bandarban Hill District Council Chairman Prof Tanzama Lusak, Sadar Zone Commander Lt Col Mohammad Ali Sohel and the police superintendent were present as special guests. Deputy Commissioner M Abdul Majid Shah Akhand presided over the meeting. The army officers apprised the meeting of the progress of preparing the voter list with photographs. They said 98 percent work of preparing the voter list with photographs has already been completed in the district and the rest will be finished by December 9. -- Unb, Bandarban, December 4.

Sheikh Selim retracts judicial statement

Detained Awami League (AL) leader Sheikh Fazlul Karim Selim in a retraction petition told a Dhaka court yesterday that intolerable physical and mental torture, and threat to kill him in 'crossfire' forced him to give a judicial statement in connection with the Tk 2.99 crore extortion case. Selim submitted the petition to the Metropolitan Sessions Judge's Court, set up

under special arrangements at MP Hostel on the Jatiya Sangsad Bhaban premises, when he was taken there along with former prime minister Sheikh Hasina. In his petition, the former minister told Judge Mohammad Azizul Haque that the confessional statement was taken following his confinement to an unknown place for a long period, and physical and mental torture in phases. Defence lawyers said Selim's repeated requests to jail authorities earlier to have the confessional statement withdrawn or to take him to court were ignored. The AL leader in his petition said the joint forces arrested him on the night of May 21 without any warrant, and took him away after a four-hour search in his residence. -- The Daily Star, December 4.

Hasina appears in court, hearing stalled until Dec 9

Former premier Sheikh Hasina was produced before a Dhaka court on extortion charges yesterday when the detained Awami League (AL) chief had the first opportunity to claim her innocence, four and a half months into the arrest. The Dhaka Metropolitan Sessions Judge's Court, however, adjourned till December 9 the hearing on charge framing against Hasina and two other accused in a Tk 2.99 crore extortion case as the defence counsel prayed for time to examine necessary case documents. Meanwhile, the Supreme Court (SC) yesterday stayed a High Court (HC) order that had declared illegal the notice issued by Anti-corruption Commission (ACC) to Hasina, asking her to submit her wealth statement. The defence sought time to examine and check the supplementary charge sheet submitted in connection with the case on Sunday, the copies of which the defence lawyers had not received before the hearing. Hasina will also file a writ petition with the HC on Sunday challenging the legality of convening a court under special arrangement to try her, which her lawyers said is not necessary considering the allegations against their client. AL leader Sheikh Fazlul Karim Selim also submitted a retraction petition to the court yesterday to withdraw the confessional statement he had given to the joint forces during an interrogation earlier. Selim in a written statement said he was forced to give the statement under physical and mental torture in phases. The Daily Star, December 4.

Four RU teachers jailed for violating EPR, two acquitted

A Rajshahi court gave two-year jail terms to four Rajshahi University teachers for their role in on-campus student protests in August which violated the Emergency Power Rules (EPR) and acquitted two others on all charges. Additional Chief Metropolitan Magistrate Ruhul Amin pronounced the verdict and fined each of the convicts Tk one thousand, defaulting on which they will carry one month in jail. The convicted academics are Moloy Bhoomik, Dulal Chandra Biswas, Sayed Selim Reza Newton and Abdullah Al Mamun. Dr M Saidur Rahman Khan, former vice chancellor of the university, and Dr M Abdus Sobhan, syndicate member and convener of Progressive Teachers' Society, were cleared of the charges. The six teachers were present at the time of sentencing. Former officer-in-charge (OC) at Motihar Police Station, Khondoker Ferdous Ahmed, filed the case against Dr M Saidur Rahman Khan, Dr M Abdus Sobhan and Moloy Bhoomik on August 26 on charge of instigating violence on the campus on August 22. Dulal Chandra Biswas, Sayed Selim Reza Newton and Abdullah Al Mamun were later included in the September 1 charge sheet. -- The Daily Star, December 5.

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; email dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net