

FACT file

Top transplant surgeons involved in organ trafficking

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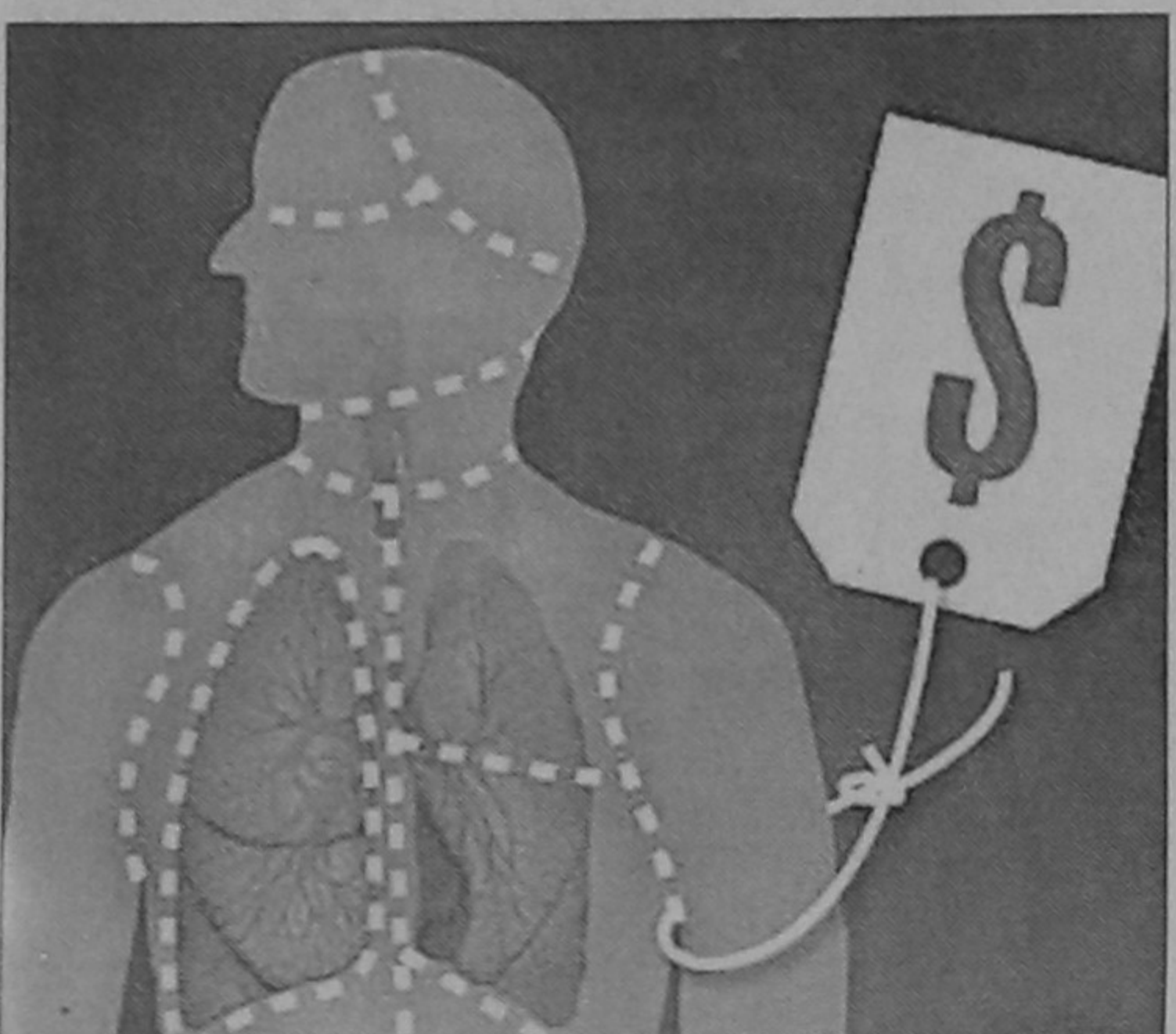
Top transplant surgeons are collaborating with criminal organ trafficking networks to target the desperate, an expert said recently. "It involves people from the highest level of their profession," said Nancy Scheper-Hughes, founding director of Organs Watch, an academic research project at the University of California, Berkeley. Some surgeons are "willing to collaborate with the lowest levels of society with criminal networks, brokers and with kidney hunters, who are the absolutely necessary factor," she said.

Scheper-Hughes, a professor who is also the director of the university's medical anthropology program, made her remarks at the Vienna Forum to Fight Human Trafficking. Organs Watch has a presence in 10 countries with anthropologists, human rights activists and doctors who volunteer, some of them anonymously, she said.

Illegal organ transplants made headlines recently when a man in India was accused of being the leader of a syndicate that is alleged to have illegally removed hundreds of kidneys, sometimes from poor laborers held at gunpoint. Indian police have said he headed an illegal organ transplant ring based in the upscale New Delhi suburb of Gurgaon. Authorities believe his group sold up to 500 kidneys to clients who traveled to India from around the world in the past nine years.

"We don't really know how many people are trafficked for organs," Scheper-Hughes said, adding that a conservative estimate for the number of trafficked kidneys was 15,000 each year. Scheper-Hughes said there were "strong cases" documenting coercion in Eastern Europe, Turkey, Israel, India and the United States. "Most victims of kidney trafficking are coerced by need, not by physical force," she said, giving an example from Brazil where people were competing to be chosen, stuffing US\$10 bills into the pocket of a so-called broker. "It's driven by desperation," she said.

Trafficking doesn't have to be transnational and can also be found within countries, Scheper-Hughes said. A December 2007 World Health Organization bulletin included a paper that noted that the shortage of an indigenous supply of organs has led to the development of the interna-



tional organ trade. "Despite growing awareness of the issue, the reality of the international organ trade is not well understood due to a paucity of data and also a lack of effort to integrate the available information," said the paper, written by Yosuke Shimazono. The Vienna Forum, which wraps up Friday, is being convened by the United Nations Global Initiative to Fight Human Trafficking.

The article was the abstract of a report published in International Herald Tribune, <http://www.ihf.com> on February 14, 2008.

VACANCY ANNOUNCEMENT

Want to be a part of law desk team?

Law Desk—specialised section of The Daily Star committed towards a people-friendly legal system in Bangladesh—is looking for proactive young lawyers/researchers/law students/ with strong English writing and editing skill who will be interested to contribute full time/part time to the 'Law and Our Rights' section. If you are interested, please send your resume along with a 200 words write-up on 'what do you think of the present human rights situation in Bangladesh' to Law Desk, The Daily Star, 19 Karwanbazar, Dhaka 1215 on or before March 10, 2008. You may also email us to: dsawdesk@yahoo.co.uk.

LAW lexicon

Bail - Money or other security (such as a bail bond) provided to the court to temporarily allow a person's release from jail and assure their appearance in court. "Bail" and "Bond" are often used interchangeably. (Applies mainly to state courts.)

Bail bond - An obligation signed by the accused to secure his or her presence at the trial. This obligation means that the accused may lose money by not properly appearing for the trial. Often referred to simply as "bond."

Bailiff - An officer of the court responsible for keeping order and maintaining appropriate courtroom decorum and has custody of the jury.

Bankruptcy - Refers to statutes and judicial proceedings involving persons or businesses that cannot pay their debts and seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may be released from or "discharged" from their debts, perhaps by paying a portion of each debt. Bankruptcy judges preside over these proceedings. The person with the debts is called the debtor and the people or companies to whom the debtor owes money are called creditors.

Bankruptcy Judge - The judge who determines whether a debtor is entitled to a discharge in bankruptcy.

Bankruptcy law - The area of federal law dealing with the handling of bankrupt persons or businesses.

Bar - 1. Historically, the partition separating the general public from the space occupied by the judges, lawyers, and other participants in a trial. 2. More commonly, the term means the who body of lawyers.

Bar examination - A state examination taken by prospective lawyers in order to be admitted and licensed to practice law.

Battery - A beating, or wrongful physical violence. The actual threat to use force is an "assault;" the use of it is a battery, which usually includes an assault.

Source: Jurist International.

Star LAW analysis

Implementation of social and economic rights

KAZI ATAUL-AL-OSMAN

THE United Nations has adopted two separate Covenants namely, International Covenant on Civil and Political Rights (Hereinafter ICCPR) and International Covenant on Economic, Social and Cultural Rights (Hereinafter ICESCR) in order to transform both of these rights into legally binding obligations. Most of the signatory nations of the United Nations implement these rights on the basis of hierarchy. The legality and enforceability of social rights in a court of law are supported by some legal scholars, judges, lawmakers and interest groups so as to ensure a fair distribution of goods such as housing, health care, education and social security to those within the domain of their jurisdiction. However, for others social rights are merely goal based and the protection and preservation of these rights in an egalitarian society are considered to fall exclusively within the realm of popularly elected representatives. Nonetheless, with the gradual development of international human rights the last mentioned view was always contested both theoretically as well as practically and has come under serious judicial scrutiny.

Criticisms

The social rights are often considered as statement of aspirations, goals or mere 'manifesto' claims. It is argued that if we consider them as 'rights' it will undermine the enjoyment of individual freedom, distort the functioning of free markets by justifying large-scale state intervention in the economy and thus, downgrade the importance of civil and political rights. The theoretical predicaments of social rights can best be evident from the New Right theorists where they have objected to welfare provision. According to the New Right theorists, welfare provision makes people less prudent in their decision about families, strike action, education, while encouraging them to run irresponsible risks. Further, the ramification of such welfare provisions undermines market discipline and other forms of regulation in the society.

Most of the states find it difficult to provide a minimal economic security for masses because of the lack of resources, so it hardly makes sense to consider these rights as a matter of universal human rights. The ICESCR as an international instrument for the protection and promotion of social rights does not possess a strong implementation mechanism unlike ICCPR. The distinctive formula of the ICESCR that states should 'take steps' towards the 'progressive achievement' of rights according to available resources makes the implementation process of these rights more complex and difficult. Furthermore, the implied classification of hierarchy of values between the rights

enumerated in the ICESCR with that of ICCPR make them less effective. In addition, the political conflicts between the communist states and the western states during the World War II that developed as "North-South Dimension" made the institutional implementation of social rights more precarious and susceptible.

Last but not the least, most of the states maintain a divisional hierarchy between these two sets of rights as they consider social rights as the second generation rights while, giving civil and political more importance as the first generation rights. There is a view (Cranston's) that civil and political rights are the fundamental demands of justice, whereas social rights are only desirable facilities.

Justifiability

The universality and expediency of social rights are not mere rhetoric. If the indispensable rights for subsistence, basic health care and basic education are not protected, people mired in severe poverty will frequently placed as marginal be marginal. In such case, it will make the exercise of other rights vulnerable. The availability of these imperative rights protects various other rights such as, civil and political. For example it is obvious that, in a society where there is no sufficient access to educational opportunities, it will affect individual ability to participate actively in the political affair. Furthermore, where large number of a nation's population suffer from starvation, unemployment, housing and health care problems, promoting and securing various other fundamental rights that fall under the civil and political rights will never be done properly.

So both the social rights as well as civil and political rights are correlative to each other's vigorous implementation. Both these two sets of rights should be intrinsically interdependent in ensuring that they are fully respected. Moreover, governments of different states have a fundamental legal duty to proceed with the implementation of all these rights which are aimed at protecting the most fundamental dimensions of human life and the human person.

The legitimacy of social rights can be evident from the proponents of 'social democracy' which differs from 'classical liberalism' as applied in the Canadian judicial mechanism. Social democracy entails a duty upon the state as not only having a legitimate role, but also the best anticipation for attaining progressive social transformation. Social democracy does not valorise civil society for its own sake, but also mulls over scrutinising social and economic disparities where necessary. So in order to secure social rights, material inequalities should be removed as a prerequisite of political freedom. So to emphasise social rights as universal and inalienable with those of civil and political rights firstly, the rights enumerated in a constitution have to

be redefined. Secondly, unless we make social rights justiciable, it would be difficult for any society to orient adjudication to more egalitarian ends.

Legal implementation

The acquaintances between rights and needs are not merely instrumental, rather they are constitutive too. It is a fact that civil and political rights are meaningless if people are unable to meet their basic needs for subsistence. Adjudication of social rights is more complex as it requires the judges to decide whether a right-bearer has been illegitimately denied resources he is entitled to. With the gradual development of international human rights norms various states have significantly adopted number of judicial measures for the implementation of the social rights. While emphasising the importance of social rights under the provisions of South African constitution, it was strongly observed "A constitution containing only civil and political rights projects an image of truncated humanity. Symbolically, but still brutally it excludes those segments of society for whom autonomy means little without the necessities of life". The constitutional adjudication is an important instrument for the implementation of various rights incorporated in the constitutional text. The South African constitution protects a number of social rights and empowers the courts to determine whether the state is meeting its obligation with respect to such rights. Further, the Constitutional Court has adopted a 'reasonable approach' so as to protect social rights.

While measuring the standard of 'reasonable approach', in Government of the Republic of South Africa v. Grootboom (2000 (11) BCLR 1169 at 20) the Court stated "... reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or public money could have been better spent ... It is necessary to recognise that a wide range of possible measures could be adopted by the State to meet its obligations. Many of these would meet the requirement of reasonableness. Once it is shown that the measures do so, this requirement is met". Though such approach has been criticised by the legal scholars on various occasions, it is considered to be an appropriate model to balance the protection of rights with respect for democratic priority setting.

Though one cannot declare such approach as a perfect method but still according to Dennis Davis "... where the Court has employed administrative law principles to deal with socio-economic rights, its judgement has been based on a deep-seated concern about the limited role of judiciary and the dangers of polycentricity. The tests of reasonableness, sometimes employed interchangeably with rationality, have enabled the Court to strike an uneasy balance between the



existence of a right and its limited input on the nature and extent of policy".

In the United Kingdom social and economic goods such as housing and health are not protected as rights under the constitutional scheme yet, entitlements to social welfare benefits are protected in ordinary legislation and decisions made in terms of such legislation are judicially reviewable. At the beginning the Court took a narrow approach while explaining the term of reasonableness which can be evident from R. v. Cambridge DHA Ex. p. B [(No. 1) [1995] 1 W.L.R. 898]. But in the later cases decisions regarding allocation of resources and medical priorities were "rationally based upon a proper consideration of the facts". Such decision was apparent in the Court of Appeal's approach in North-West Lancashire Health Authority v. A, D and G (Available from the www.pfc.org.uk) where 'reasonableness' took a wider shape. In R. v. Secretary of State for Social Security Ex p. Joint Council for the Welfare of Immigrants [(1997) 1 WLR 275] the Court of Appeal took a far reaching stand than the Lancashire decision. In this case Simon Brown L.J. used both a principle of proportionality and the language of minimum obligation as here the basic human rights were involved.

In R. (on the application of Razgar) v. Secretary of State for the Home Department [(2004) UKHL 2; (2004) 2 A.C. 368] a significant point was observed by Lord Bingham. He was of the view that proportionality is always a balancing exercise between individual rights and the interest of the community. He further observed that a lawful policy would only give rise to a lack of proportionality between means and end in rare cases and that proportionality as an inquiry always pits the individual's rights against societal or community interests.

From the above discussion along with the help of the judicial case laws, there is no doubt that the judiciary plays a key role in enforcing and implementing social rights in an egalitarian society. So in order to emphasise better promotion and protection of human rights we must get rid of stereo-type camouflage that is, to implement rights on the basis of equilibrium rather than hierarchy. Meaning thereby, to secure a minimum level of welfare or minimum threshold as a universal entitlement, below which individuals will not be allowed to fall, as contended by Jeremy Waldron.

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LAW week

EC decides to bar war criminals from polls

The Election Commission (EC) seeks to bar war criminals permanently from contesting parliamentary elections. In response to demands from most political parties, the EC has incorporated provisions in this regard in the proposed electoral laws for parliament.

Earlier, it had proposed inclusion of similar provisions in the existing electoral laws for city corporations and municipalities, barring war criminals from elections to those local government bodies. Once the proposals are finalised following the second round of electoral reform talks with political parties scheduled to begin on February 24, the EC will send those to the government to make them laws.

Chief Election Commissioner (CEC) ATM Shamsul Huda yesterday said, "We also want to prevent war criminals from contesting elections. But we can't do so unless they are convicted by courts." But the caretaker government is yet to take any initiative for trial of war criminals despite growing demands for this. The proposed laws will have no effectiveness if they are not tried, sources pointed out.

According to the EC's proposal, a person cannot contest parliamentary elections if he or she is convicted by a national or international court for war crimes.

Participating in the first round of electoral reform talks with the EC in between September to November last year, most of political parties had demanded barring war criminals from parliamentary polls.

Chief Adviser Fakhruddin Ahmed had also said it would be unwarranted if war criminals contest the elections. The EC has now prepared a comprehensive report incorporating the political parties' views on its proposed reforms in electoral laws and sent the report to 15 political parties on Tuesday with the invitations for second round of talks.

Meanwhile, the EC has not yet given any decision on the demands for not registering Jamaat-e-Islami and other anti-liberation forces as parliamentary political party. The issue will be discussed at the second round of talks. Sources noted that the EC is facing difficulties finalising its proposals since it could not yet hold first round of talks with BNP due to its leadership disputes. And it has excluded the party from the second round of talks. -The Daily Star, February 21, 2008.

Four cops suspended for graft in Barisal

Higher authorities suspended four police officials of Barisal range on different corruption charges. The suspended police officials are Shakiluzaman, assistant superintendent of police (ASP) of Jhalakati Sadar circle, Safizul Islam, ASP of Kalapara circle in Patuakhali, Rezaul Huq, district inspector (DI) of Barisal, and KM Anwar Amir, a sub inspector and second officer of Patuakhali Sadar Police Station.

Barisal Superintendent of Police Towfiq Mahub Chowdhury has got a show cause notice for negligence of duty. ASP Shakiluzaman, ASP Safizul Islam and DI Rezaul Huq were accused of misvaluation of answer papers and other irregularities in exchange of bribes in departmental examination for promotion from nayek and habildar to assistant sub inspector and from assistant sub inspector to sub inspector, police department sources said. The examinations were held at Barisal Police Lines on October last year. -The Daily Star, February 21, 2008.

EC to allow parties to spend more on polls

The Election Commission (EC) has decided to raise the ceiling of polls expenditures of political parties contesting parliamentary election with

stringent conditions attached to ensure financial transparency of the parties. A registered political party, if it fields over 200 candidates, can spend Tk 3 crore for election purposes. If the number of candidates is in between 100 to 200, it can spend Tk 2 crore and Tk 1 crore if the number of candidates is below 100, says the EC's revised proposals regarding polls expenditures.

But expenditures of candidates fielded by a party will be added with that of the party for election purposes from the date of announcement of election schedule to polling day.

The existing ceiling of a party's polls expenditures is Tk 1.50 crore, Tk 1 crore and Tk 75 lakh respectively. But the provisions made in 2001 were not enforced in the eighth parliamentary election in 2001. So, none of the political parties which contested that election submitted their expenditure reports to the EC, and it took no action against them.

The EC yesterday started sending its modified proposals concerning polls expenditures to political parties with the invitations to them for second round of electoral reform talks from February 24, sources in the EC Secretariat said. The proposals say the funds of a political party contesting parliamentary election shall be deposited and maintained in any scheduled bank. Any such party will have to submit its report on election expenditures to the EC within 90 days after the election. The report must show the opening and closing balance of the bank account and the amount of money the party received as donations within the time frame. -The Daily Star, February 20, 2008.

Workers at risk of losing legal status

Majority of around three lakh Bangladeshis now working in Malaysia are being exploited by their employers and under imminent risk of losing their legal work status due to flawed and illegal recruitment process, said experts.

Unpaid, underpaid, abused and cheated, around 500 such workers already returned home from the Southeast Asian country and thousands more are likely to follow unless the Bangladesh government takes a proactive effort soon to iron out the issues with its Malaysian counterpart in the greater interest of the country, added the experts.

The experts cautioned that if the Malaysian employers continue the practice of exploitation and abuse, a large number of Bangladeshi workers might resort to leaving their legal jobs and seeking jobs elsewhere in the country, leading to crackdown and deportation by the Malaysian authorities. Since the workers are being scapegoated for the flawed recruitment mechanism -- set by the two countries -- that leaves room for malpractice and abuse, both the governments of the two countries need to remedy the situation urgently, they advised. Mohammad Harun-Al-Rashid, a Bangladeshi labour rights activist working with Tenaganita, a migrants rights organisation in Malaysia, said many workers turn illegal in Malaysia as the recruiters do not complete the workers' medical tests that are required for obtaining work permits. Besides, many underpaid workers who possess work permits cannot afford to renew their permits upon the expiration of the permits in one year and thus "thousands will be irregular as per the immigration act of Malaysia," he added. -The Daily Star, February 20, 2008.

Hasina case verdict

The Supreme Court yesterday adjourned till February 25 the hearing on the government's leave to appeal against the High Court judgment that

quashed the Tk 2.99 crore extortion case filed against former premier Sheikh Hasina. Following a time prayer submitted by Hasina's counsel, the Supreme Court bench headed by Chief Justice Mohammad Ruhul Amin rescheduled the hearing. The government yesterday morning filed the leave to appeal against the High Court's landmark judgment delivered on February 6 that also declared bringing of the case under Emergency Power Rules illegal.

Within an hour of delivery of the High Court verdict, the government filed a provisional leave petition with the Supreme Court seeking a stay order. After a hearing on February 12, the apex court did not stay the High Court judgment and asked the government to file a petition seeking permission to appeal against the High Court judgment by February 19.

During the hearing on the matter yesterday morning, one of Hasina's counsels barrister Shafique Ahmed prayed to adjourn the hearing till February 24 as the senior counsel for Hasina is abroad. Meanwhile, the state counsel Attorney General Fida M Kamal told court that he would be pre-occupied on February 24 with some personal issues. Following their submission, the court scheduled February 25 for hearing on government's leave application. -The Daily Star, February 20, 2008.

Parties must have one-third women in top posts by 2020

The Election Commission (EC) has set 2020 as the deadline for political parties to have women in at least one-third of the party committee posts at all levels. Many political parties during their September-November talks with the commission last year strongly objected to the EC proposal for making this provision effective from this year.

While reviewing the opinions of the political parties last week, the EC decided to relax the provision by inserting the 12-year timeframe for empowering women politically.

The EC, however, rejected a few parties' objections and decided to retain its proposal for banning political parties from having front organisations comprising students, teachers and workers. The commission also held on to its proposal to impose a ban on political parties to have overseas units, commission sources said. According to the EC proposal, a political party intending to be registered with it will have to declare in their constitution that they will not have front organisations of students, teachers and workers, and overseas units. Most political parties that participated in the first round electoral reforms talks with the EC opposed the commission's proposals on women's representation and banning front organisations and overseas units. The commission has been long criticising the "negative" activities of the front organisations' and overseas units of the political parties, sources said. -The Daily Star, February 18, 2008.

Corresponding with the Law Desk

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