

Star LAW analysis

Law of Inheritance and women's rights

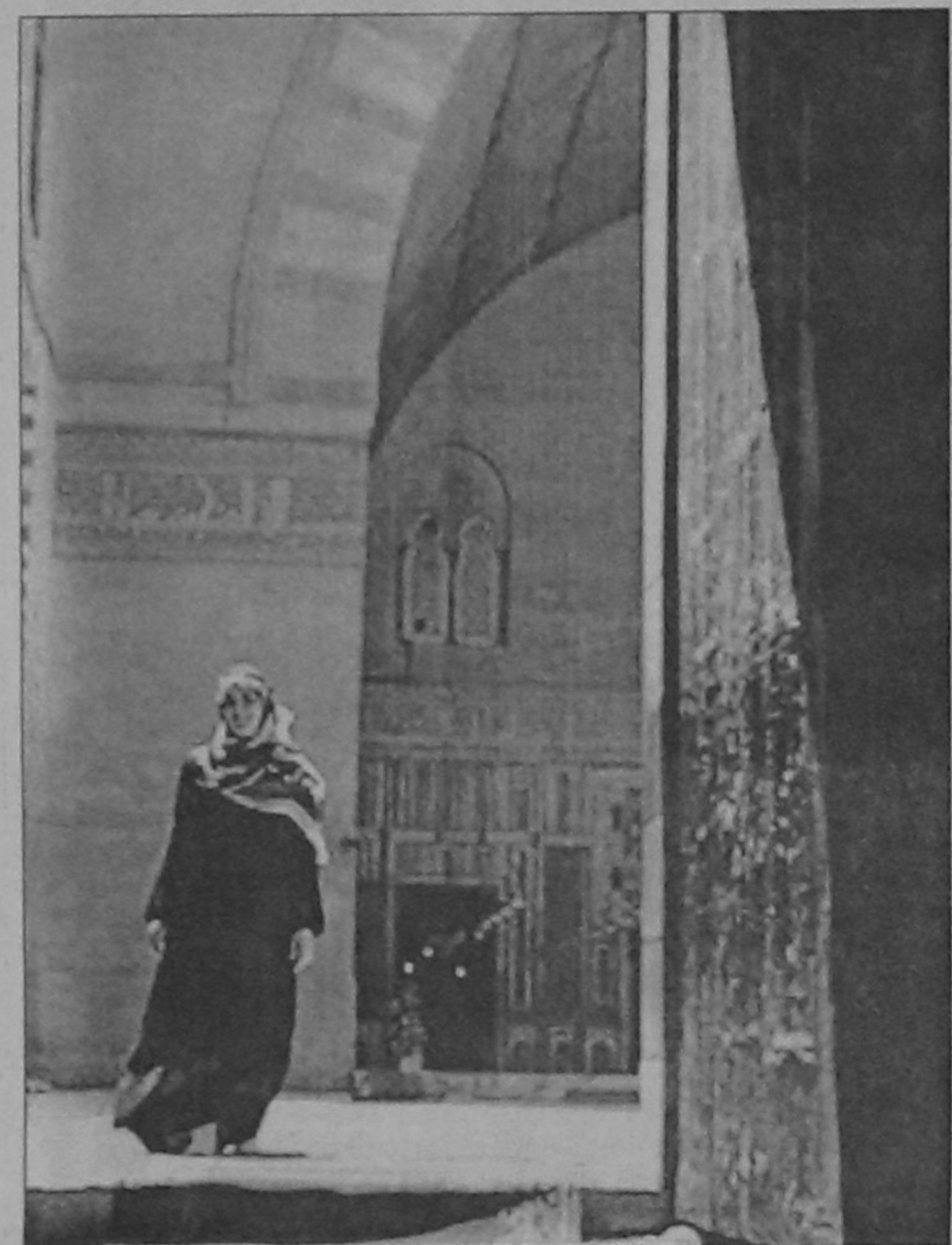
MUFASSIL M M ISLAM

PEOPLE have been vying for wealth in order to ensure a secure future for themselves and their future generations from time immemorial. Even animals often save their food for the rainy days and polar bears plan well ahead of the scarcity season so that they don't starve. The more we become aware of the material world, the more we become aware of the rule of the game of survival. Our greatest treasure is our children through whom we survive even after our death. We want to secure our children against the harsh realities

even Communism had their views tested and engraved in government regulations. The earliest effort to make changes to the Hindu Mitakshara law of inheritance was made by Hindu Law (Removal of Disabilities) of Inheritance Act 1920. It was an effort to ensure non-discrimination on account of disabilities. There have been several amendments since then in India with regard to the law of inheritance which primarily targeted the Hindu community leaving the minorities with their own laws and we in Pakistan and Bangladesh have seen major amendments to the Islamic per-

just share (4:7, 11, 12, 176). It is true that women (daughters, sisters and mothers) don't inherit anything if a man (son) is present as per Bible. There were historical neglects towards women with regard to their birth rights. In early Palestine the situation was different, especially following the British Mandate inheritance regulations of 1923, which stipulated that females and males had equal inheritance rights. But the Jewish community had tremendous difficulty in accepting this Act and women had to struggle to get their rights, rather than Muslims who had accepted the Act as they were easily able to follow their Islamic faith as to inheritance through other options of hiba or gift to their sons to the amount which will meet the Quranic criteria of giving double to the sons. This is an example which we can easily follow as there is nothing to stop anyone from gifting anything to anyone. (<http://muse.jhu.edu>)

When people think of communism or more correctly theoretical communism (which more correctly goes under the name Marxism), they often think of abolition of all private property, which (even on a logical basis) would rule out all forms of inheritance (as there is nothing to inherit). This position of total abolition mainly comes from the Communist Manifesto. We may note the following: "Abolition of all rights of Inheritance" written in late 1847, published February 1848; Communist Manifesto. "Limitation of private property through progressive taxation, heavy inheritance taxes, abolition of inheritance through collateral lines (brothers, nephews, etc.), forced loans, etc." written between October and November 1847; The Principle of Communism: "The right of Inheritance to be curtailed," written between March 21 and 24, 1848; Demands of the Communist Party in Germany: "Extension of the Inheritance duties already existing in many states..." August 2 and 3, 1869.

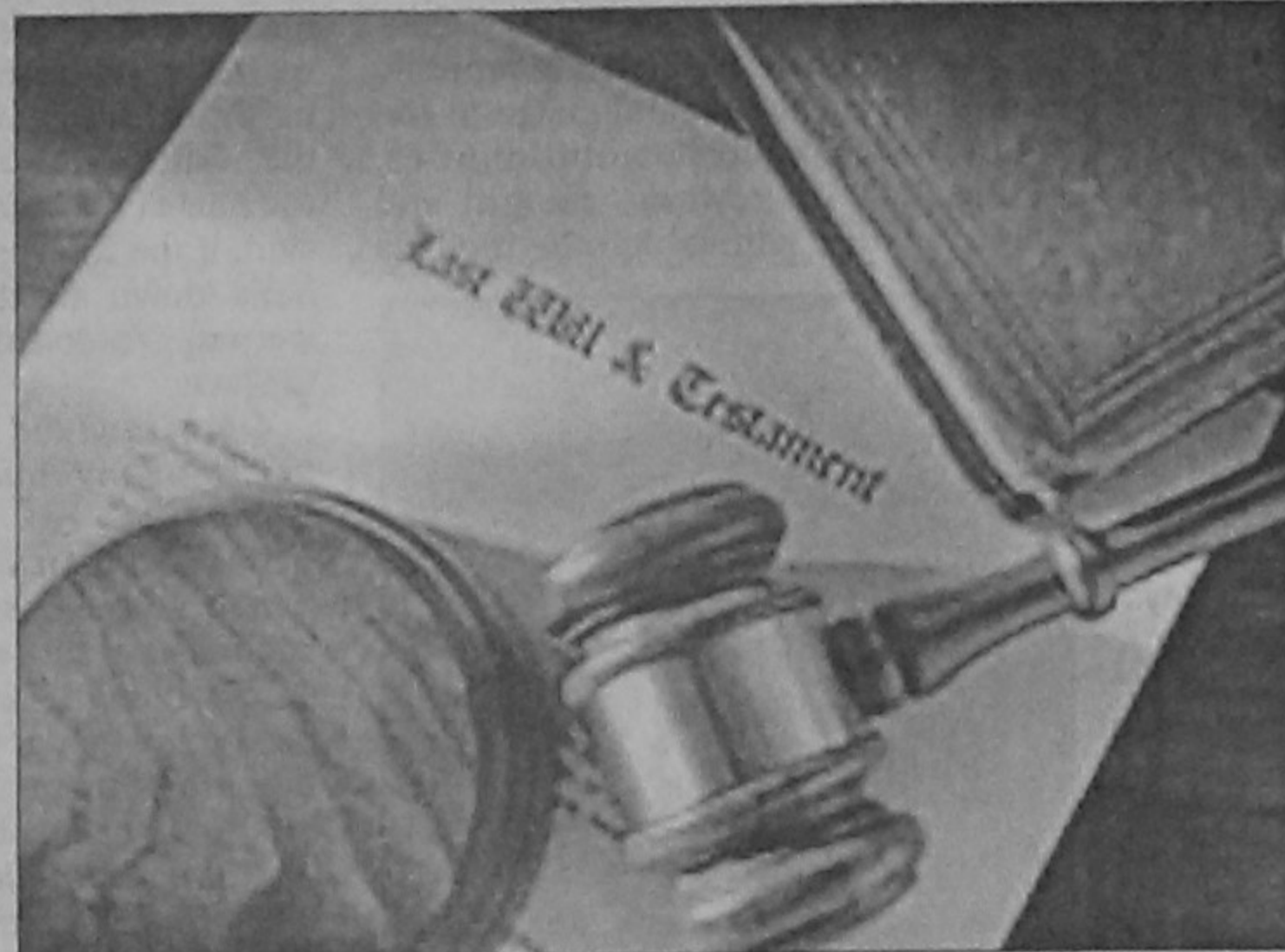


of life and from the sufferings that we have had to go through in our lives. We build houses to secure their safe-keeping and optimum growth of their potentiality psychologically, physically and financially.

Religion has played significant role in determining how we would live our life and guide our children in the right path and our governments always have had a say in this very personal life affair as this very personal issue has a lot to do with our national economy. Christianity, Islam, Hinduism and

sonal laws in force through Muslim Marriage Dissolution Act 1939 and the Family Law Ordinance 1961.

In Bible, according to Numbers 27:1-11, widows and sisters don't inherit at all. Daughters can inherit only if their deceased father had no sons. Otherwise the sons receive the entire inheritance. Among the pagan Arabs before Islam, inheritance rights were confined exclusively to the male relatives. The Quran abolished all these unjust customs and gave all the female relatives their



Nobel Peace Prize laureate, is the popular supporter of the women's movement has unsettled the regime in Tehran. They see the feminists as calling into question the Iranian constitution, which is based on Shariah law and effectively treats women as second-class citizens. (<http://www.spiegel.de/international/world/>). But Ebadi is of the opinion that the correct interpretation of the Quran would allow equal rights to women in inheritance.

Our constitution upholds gender equality as well as Islam. To ensure complete success of law, we need to ensure complete preconditions. For example, if our government is unable to confirm jobs and other basic democratic and Islamic lawful means of survival, we are unable to enforce the laws as the conditions which prompted say, a thief to steal were partially the state's failures to ensure him basic opportunities of life to which he was entitled to. There are several justifications for and against the equal rights for women to inheritance and we require much wider an arena to discuss them but I will go for a terse discussion.

In Islam, women are considered men's responsibility as to their protection, cherishing and complete potential growth. This is confirmed in Quran when in Surah 2:228 which is sometimes misquoted saying men are one degree above women in respect. The correct word is Responsibility and Not Respect (Dr. Zakir Naik). In Islam, men have to ensure that women are respected financially at least as per the family of her father, otherwise it is a debt. It is also strict in confirming that even if a man is unable to earn owing to whatever material reasons (e.g., health conditions), and his wife becomes the bread-earner, the

money she would spend to ensure the upbringing of the children would be a loan to him. In Islam, a woman can spend the whole amount of wealth that she might have inherited from her parents in whatever way she liked (even if she wished to spend it at her husband's time of basic needs) but the man has obligations on his inheritance to take care of his family under any circumstances.

Women in Islam receive wealth from various sources and Mohorana (which has to be according to her demands) can easily be at times much more in quantity than she would have ever inherited from her parents. In fact in Islam, a woman's wealth is not a means of survival rather an affluence for which she must be honoured with. This direction in holy Quran is not because men are stronger physically, rather Islam believes in their two separate roles, men for practical financial resource to take care of the family, when women are there to ensure the parental and other management in the households primarily. Women are naturally more apt than men in child-caring but that does not mean women cannot work outside. In poor countries where a woman often falls victim to her husband's unlawful demands to get properties from her parents, she may become more victimised to demands to 'help' the husband with her inheritance. This may bring fruits to city based women but may bring sorrow and short lived marriages (as husband may divorce the wife after he had his hands on her wealth). DF Mulla, Fatwa Alomgiri and Hamilton's Hedaya are important sources of further research in this field.

On the other hand, women in poor countries like Bangladesh, have serious cases of deprivation of parental inheritance by their

male siblings. A more legal pressure to recognise women as to their rights and a more efficient and apparent just distribution of wealth may assist a woman's family in breaking the poverty barrier rather than making her luckier even though her own husband may be the brother of another deprived woman. A more confirmed financial source may make her socially stronger as in innumerable cases women are deprived of their maintenance and mohorana with a simple apology from her husband. Stricter laws and practical and diligent implementations of laws may save her from atrocities. We need to study the socio-scientific aspects of a future by taking the countries with such laws into consideration and the implications thereupon.

The social aspects of similar laws is widely questionable in many of those countries. These laws have in many cases excused men from financial obligations to support the children and men's sense of responsibility are dying even though there are strict Child Support laws. Men often justify their very minimum child support after divorce or separation with an accountant's justification of their huge justifiable other expenses.

We must remember that although owing to our social stigma we neglect women and our gender ratio for male is much higher, male and female survival rate and life span are not equal if nourished equally. It is an accepted fact of medical science that women have an average five years more life span than men and are more resistant to bacterial attacks than men. But Islam does not discriminate male and female as they considered each other's garments and Islam throws away the logic of male superiority as they have a heavier brain.

Considering my above discussion it is obvious that the two sides of the coin have their respective strong arguments and it is the duty of the experts, philosophers and other dignitaries to put them forward to the public and no group should be violent against the rights of the opponent and open to their logics as only that would pave the way for the public to make up their democratic minds.

Above all, the journalists and people in the media have a huge role to offer equal opportunities to people of opposing views and ensure that in that process we do take care not to allow any future confusion as to the neutrality of the Judge.

The writer is Human Rights Advocate, President and CEO, Law Offices of Islam and Associates.

GOOD NEWS

Bangladeshi wins AGFUND award

This year Mr. Biony Krishna Mallick, ED Rights Jessoro wins the prestigious Arab Gulf Programme for United Nations Development Organisations (AGFUND) award (Third category) for his initiative and efforts to implement the project "Community mobilisation to combat trafficking (CMCT)", in Bangladesh. This prize is allocated for projects founded, sponsored or implemented by individuals in the field of "Individual-led initiatives for combating human trafficking in the poor communities".

In a ceremony April 21, 2008, Prince Turkey Bin Talal on behalf of President of AGFUND was present as Chief Guest and given the prize among the winners. Mrs. Mercedes Menafré de batly, Former First Lady of Uruguay, Mr. Victoria Piccato, Foreign Secretary of Argentina, Diplomates and journalists were also present the occasion.

AGFUND International Prize is an annual prize awarded by the Arab Gulf Programme for United Nations Development Organisations (AGFUND), having as its president HRH Prince Talal Bin Abdul Aziz Al Saud, to honor the pioneering development projects in the developing countries. The Prize is consisted of a financial reward of US\$ 300,000 (three hundred thousand dollars) in addition to trophies and certificates of recognition. It aims at encouraging continuity in implementing pioneering development projects and stimulating the efforts of those who are capable of contributing to developmental and humanitarian action in the developing countries. This reflects the keenness and continued endeavors of AGFUND to support the efforts targeting the alleviation of human suffering and pain.

In 1992 Mr. Biony Krishna Mallick and a number of dedicated human rights activists have founded Rights Jessoro (RJ) as a national human rights organization to prevent human rights violations and ensure protection against exploitation and social injustice. Rights Jessoro is mainly operating



in eight south-western districts of Bangladesh. In order to implement its activities, especially the women and child trafficking and rights based initiatives, Rights Jessoro maintains liaison and working relation with a number of different networks and forums.

Since 2005, RJ has been implementing Community Mobilization to Combat Trafficking (CMCT) a project aiming at community mobilization and social awareness building activities in collaboration with ten local partner NGOs based in Satkhira, Jessoro and Jhenaidah districts.

The involvement of community people in anti-trafficking activities is the main innovativeness of the project because most of the community people were not aware and mobilized before the project commencement. Based on its belief that human trafficking is a great threat to the development and that traffickers are a strong syndicate, RJ has been able to strengthen capacity on anti-trafficking issue through direct involvement of Community People and formation of Counter Trafficking Women Forum (CTWF) and Anti Trafficking Network to empower women at grassroots level and raising their awareness against human trafficking through their direct involvement in the organization and conducting of all anti-trafficking activities.

Law Desk

LAW lexicon

Comparative fault - A rule in admiralty law where each vessel involved in a collision is required to pay a share of the total damages in proportion to its percentage of fault.

Comparative negligence - The rule under which negligence is measured by percentage, and damages are diminished in proportion to the amount of negligence attributable to the person seeking recovery.

Competency - A witness's ability to observe, recall and recount under other what happened. Criminal defendants must also be competent to stand trial; they must understand the nature of the proceedings and have the ability to assist their lawyers.

Complainant - The party who complains or sues; one who applies to the court for legal redress.

Complaint - 1. The legal document that usually begins a civil lawsuit. It states the facts and identifies the action the court is asked to take. 2. Formal written charge that a person has committed a criminal offense.

Cancellation - A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps lower tensions, improve communications, and explore possible solutions. Conciliation is similar to mediation, but is may be less formal.

Concurrent jurisdiction - The jurisdiction of two or more courts, each authorized to deal with the same subject matter.

Concurrent sentences - Sentences for more than one crime that are to be served at the same time, rather than one after the other.

Condemnation - The legal process by which the government takes private land for public use, paying the owners a fair price.

Conditional release - A release from custody which imposes regulations on the activities and associations of the defendant. If a defendant fails to meet the conditions, the release is revoked.

Conformed copy - An exact copy of a document on which has been written things that could not or were not copied, i.e., a written signature is replaced on the conformed copy with a notation that it was signed by the parties.

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

LAW event

Remitters' rights stressed

Speakers at a consultation demanded that remittance transfer mechanisms be made more transparent and accountable. They urged the money transfer agencies to lower the fees and establish fair exchange rates. Calls were made for these agencies to reinvest in migrant communities and undertake socially responsible investment. These observations were made in a national consultation on Remittances and Corporate Social Responsibility of Money Transfer Institutions held on Tuesday, 15 April 2008 at the Dhaka Reporters' Unity jointly organised by WARBE Development Foundation and the Refugee and Migrant Movements Research Unit (RMMRU). Quoting World Bank figures the keynote

260 flow to the developing countries. She said that the governments, along with businesses and international financial institutions view migrants as newest market to tap into. She regretted that despite such positive contribution migrants' rights are often overlooked. In this context she urged the governments and the money transfer industry not to overlook their responsibilities towards remitters and demanded that they undertake programmes to improve their services to migrants and reinvest in migrant communities from whom they profit.

Dr QK Ahmad, President of Bangladesh Economic Association, underscored the fact that migrant workers are often

companies and banks that benefit from transfer of remittances should invest in skill development of migrants, support research initiatives on labour migration and provide loan to migrants so that they do not have to sell property to finance migration.

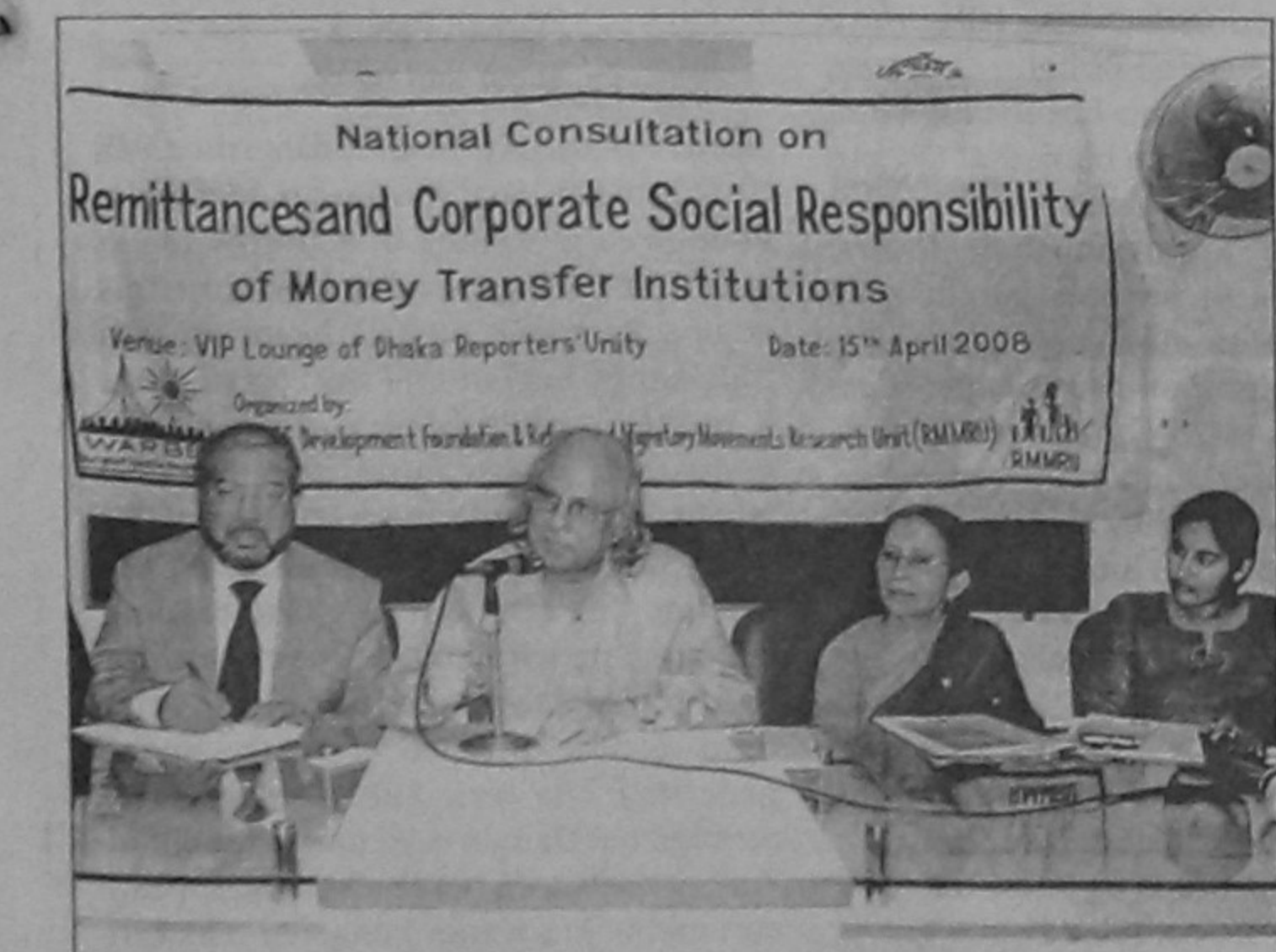
Anisur Rahman Khan, Secretary General of WARBE Development Foundation, in his address asked the money transfer institutions to undertake welfare activities for the migrant communities.

Mohammad Abdul Mannan of Islami Bank stated that specialised investment products should be developed targeting the migrant workers and members of their families. He said banks should be allowed to post more representatives in labour receiving countries.

Farida Akhter of UBINIG highlighted that re-integration programmes may be financed by companies that profit from money transfer business.

In his address as the chair of the session Dr CR Abrar observed that migrants often have to pay hefty sums as fees for remitting money. He called upon the money transfer companies to initiate and support projects that directly benefit migrants and members of their families. He urged the government to frame a consumer protection law for remittance transfer that would ensure that remitter is adequately informed about the fees, the exchange rate and transfer time involved.

Among others, Nazrul Islam of Agrani Bank, AKM Mosharraf Hossain of Bangladesh Krishi Bank and Ashit Das of Ain O Shalish Kendra participated in the session that was attended by representatives of UNIFEM, IOM, ACILS and BRAC.



speaker Debayani Kar of Migrant Forum in Asia and Transnational Institute for Grassroots Research and Action informed that migrants send back home more than US\$ 300 billion annually, of which US\$

socially excluded. He urged for an attitudinal change in all sectors to recognise the positive contribution of migrants. Explaining the concept of corporate social responsibility Dr Ahmad stated that private

LAW week

Separating EC Secretariat From PMO

The Public Service Commission (PSC) thinks the government did not follow the constitutional provisions in freeing the Election Commission (EC) Secretariat from control of the Prime Minister's Office (PMO). Despite constitutional obligations, the military-backed caretaker administration did not consult the PSC before promulgating the ordinance making the EC Secretariat independent of the PMO last month, sources in the EC and PSC said. Aware of the move towards an independent secretariat for the polls commission, the PSC in December last year had asked the government to have its PSC's opinion before promulgating an ordinance to that effect. In a letter to the cabinet division on December 6 last year, it sought to remind the government of constitutional provisions that say the PSC will be consulted in making laws that might affect the terms and conditions of a service. -The Daily Star, April 25, 2008.

HC has no jurisdiction to grant bail in EPR cases

The High Court (HC) has no jurisdiction to grant bail in criminal cases under the Emergency Power Rules (EPR) 2007. The Supreme Court (SC) made it clear in its judgment yesterday allowing government appeal against an HC verdict which said it has jurisdiction to dispose of bail petitions in such cases. The seven-member full bench of Appellate Division of the SC headed by Chief Justice Mohammad Ruhul Amin delivered the judgment. The chief justice pronounced the verdict only saying 'appeal allowed'.

Meanwhile, people eagerly awaited the SC judgment for long to know the fate of detainees including high-profile persons in different criminal cases under the EPR. The HC gave its verdict on April 22 last year following a petition by an oil trader of Khulna, Majuddin Sikder, seeking bail in a case filed under the EPR. An HC bench comprising Justice Nazrul Islam Chowdhury and Justice SM Emdadul Huq gave the verdict, saying the HC has jurisdiction to dispose of petitions by any persons seeking bail in criminal cases filed under the EPR. The government filed an appeal with the SC challenging the HC verdict. Hearing on the appeal ended on April 15. -The Daily Star, April 24, 2008.

Shajahan Siraj gets 13 years for illegal wealth

A special court yesterday sentenced BNP leader and former minister Shajahan Siraj to 13 years' imprison-

ment for amassing assets illegally and concealing wealth information from Anti-Corruption Commission (ACC). It also fined him Tk 10 lakh. In the event of a default in payment, he will have to serve another year in jail. His wife Rabeya Siraj was sentenced to three years' imprisonment and fined Tk 5 lakh for aiding and abetting him in the offence. For failing to pay the sum she will have to be in jail for six more months. -The Daily Star, April 23, 2008.

Women, HR bodies demand scrapping of review body

Samajik Protirodh Committee, a platform of 40 women and women rights organisations, yesterday submitted a five-point memorandum to the chief adviser demanding immediate dissolution of the review committee of the Women Development Policy and scrapping of the committee's recommendations. Asking the government to take steps to stop political activities at religious establishments, the Samajik Protirodh Committee asked the government to announce programmes to implement the policy, a realistic step towards constitutional provisions for equal rights to men and women. Demanding the government make a pledge before the nation to establish equal rights as mentioned in the constitution, the committee urged the caretaker government to clarify its position regarding the Women Development Policy by issuing a press note.

"How could the group run criminal activities from a place of worship," the memo said, adding, "This is not only the issue of women movement, it is deeply linked to the future of Bangladesh's democracy and stability." -The Daily Star, April 22, 2008.

8-yr-old sued, sent to jail for drug trade

An eight-year-old girl was sent to the Khulna District Jail yesterday after being sued for carrying twenty bottles of phensidyl. The arrestee was identified as Arifa, daughter of Rajabuddin of Lobatkati village in Satkhira, and a student of class three.

Police held Arifa and drug peddler Ripon on Sunday while they were on their way to the Jaikhan ferryghat by rickshaw with twenty bottles of Phensidyl brought from Bhomra border of Satkhira. The law enforcers seized the bottles from Arifa who strapped those to her legs and waist. During questioning at Khulna Police Station, she told the police that she had earlier carried phensidyl to Khulna from Satkhira by bus thrice in the last two months. -The Daily Star, April 22, 2008.