



FOR YOUR information

Suits can be resolved at the pre-trial stage

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Many suits can be disposed of at the pre-trial stage. Disposal of suits at the pre-trial stage can render great relief to the courts as well as to the parties. It can reduce the number of suits, save time and expenditure.

Courts are overburdened with backlog of cases. Disposal of suits are very lengthy and expensive. Thus, a number of suits if disposed of at the pre-trial stage can render great help to the procedure.

Pre-trial stage starts from the institutions of suits. It includes institution of suits, framing of suits, summons, pleading, appearance of parties and discovery and inspection. Discovery and inspection are provided in order-11 of the Civil Procedure Code.

"Discovery" means to compel the opposite party to disclose what he has in his possession or power. It is clear by what has been stated above that after settlement of issues, a party to a suit may require information from his adversary as to facts or as to documents in possession or power of such party, relevant to the issue of the suit.

Where information as to fact is required, the party is allowed to put a series of questions to the adversary. These questions are called interrogatories. The judge will go through the proposed questions and if he considers them proper, he will compel the other side to answer them on oath before trial. This is called the discovery of facts.

On the other hand, if information as to documents is required, the party may apply for an order compelling the other party to make a list of the relevant documents in his possession or power, and in certain circum-



stances, for permission to inspect and take copies of those documents. This is known as Discovery of documents.

So, through the process of interrogatories which is discovery of fact and through the discovery and inspection of documents before trial, both the parties can narrow down their cause of action and issue for trial. This process can be utilised further, so as to resolve the dispute even before the trial.

Through the discovery of facts and of the documents both the parties and the judge can come to know exactly the issues of trial. Hence, the suit can be disposed of even before the trial by coming of both the parties into compromise. Thereafter, the judge can pass a compromise decree accordingly.

The writer is advocate of Bangladesh Supreme Court.

LAW lexicon

Consecutive sentences - Successive sentences, one beginning at the expiration of another, imposed against a person convicted of two or more violations.

Consent - Agreement; voluntary acceptance of the wish of another.

Conservatorship - Legal right given to a person to manage the property and financial affairs of a person deemed incapable of doing that for himself or herself.

Consideration - The price bargained for and paid for a promise, goods, or real estate.

Conspiracy - A combination of two or more persons formed for the purpose of committing by joint collaboration some unlawful act.

Constitution - The fundamental law of a nation or state which establishes the character and basic principles of the government.

Constitutional law - Law set forth in the Constitution of the United States and the state constitutions.

Consumer bankruptcy - A proceeding under the Bankruptcy Code filed by an individual (or husband and wife) who is not in business.

Contempt of court - Willful disobedience of a judge's command or of an official court order.

Continuance - Postponement of a legal proceeding to a later date.

Source: Jurist International.

FACT file

Pressure on to elect strong and effective Human Rights Council

The UN General Assembly will elect, in direct and individual elections and by secret ballot, 15 new members of the Human Rights Council on 21 May 2008. The Council is the principal human rights political body of the United Nations. All members of the United Nations have a duty to ensure that the Human Rights Council is a strong and effective body for the protection and promotion of all human rights in all countries. To achieve this, it is crucial that all states elected to the Council demonstrate commitment to the highest human rights standards.

Governments must put human rights at the heart of their decisions and vote only for those countries that are truly committed to promoting and protecting human rights. Nearly 20 countries have, so far, declared their candidature to the Council and, in line with current practice, all candidate countries should now submit voluntary human rights pledges.

Amnesty International does not campaign for or against individual countries, but makes information available to Member States to help inform their voting in these elections. This information includes human rights profiles of candidate countries and an overview of their election pledges for purposes of comparison.

Governments are acting on our behalf in these elections and should be aware that the world is watching these elections in the hope that truly human rights committed members are elected to serve on the Council. You can help keep the pressure up by calling on your government's representatives to the United Nations to vote to ensure a strong Human Rights Council.

Source: Amnesty International.

Star LAW analysis

In search of a just domestic child labour law

MD. ALAMGIR

THE term "child labour" is not new in any society of the world. Domestic child labour is also a very dangerous sector in all kinds of child labour. But society in general often overlooks the sector of domestic child workers. The practice of employing children in domestic work is still deeply rooted and common in Bangladesh. Some started to work as young as 9 years old. They are not even covered by laws. Many call it "a difficult sector to work with," but the bottom line is, even in our work for social justice, we have discriminated against our domestic helpers.

Though the Constitution of Bangladesh has drawn a special attention towards ensuring the rights of women and children but the existence of different forms of Child Labour is still an issue of concern. Domestic Child Labour is one of them. Government has already made different child labour related laws for formal sector but it is a matter of great sorrow that there is no govt. policy/law for the domestic child labour. In every case these children rights are not protected and their rights here are also far away from the international standard.

Working away from their home, the children remain separated from their family for extended periods of time. They are prohibited from communicating with their families. The child is thus under the complete control of his/her employer, who does not necessarily serve the child's best interests. The child's freedom of movement is also limited. Isolated from family and peers, the children rarely leave employers even when they suffer abuse.

Reason for raising the issue

Domestic service is a special section of the child labour sector where the whole society is involved. It is the largest and most open, yet invisible, form of informal child labour. Child domestic work differs in the sense that the employer does not get any direct financial benefit from the child's labour, unlike children working in shops or industries where longer hours bring more profit for the employer. Hence the phenomenon of child domesticity is dominated by a type of mutual dependency where economic exploitation is not the key motivation.

The most frequently cited reason for children entering domestic service is poverty. But the word 'poverty' itself does not adequately describe the situation. If employers are not prepared to exploit the poverty of children (and their families), there would be no child labour. Children are employed because they are easier to exploit. Children can be paid less and the parents of child labourers often being unemployed or underemployed, they (child labourers) are desperate to secure employment and income. Because children are more malleable; they will do what they are told without questioning authority. Because children are more powerless, they are less likely to organize against oppression and can be physically abused without apprehending any strike back.

Rationality for adopting new law

Most of the informal child workers are deprived of their basic rights. Very often their rights are disregarded by their employers. They cannot claim minimum standard wages, weekly holiday or other prescribed holidays and other rights as the



PHOTO: SYED ZAKIR HOSSAIN

formal workers are entitled. To. Though their contribution in the field of socio-economic development is no way negligible, but their socio-economic condition is marginal. Without upholding their status, the over all development is not possible. So far our greater interest is concerned they should not be ignored. It needs to enact laws in favour of domestic child labour to uphold their status. Against the said backdrop in Bangladesh the new law on child labour calls for greater importance to ensure their rights and provide them legal protection at all levels of their domestic work.

Other steps need

It is realized that necessary research work and database should be developed for monitoring the actual picture of domestic violence against children in Bangladesh;

- Physical and psychological punishment both at home, workplace and academic institutions should be abolished like in western countries. Necessary laws and policies should be adopted in this regard;
- Parents, care givers and other duty bearers should be sensitized and made aware about the negative consequences of physical and psychological punishment on children's normal growth and development so that the stakeholders feel discouraged to do any harm to their children;
- Parents, teachers and care givers need to be trained on alternative measure of disciplining and good parenting;
- Children in all status should be organized so that they can raise their voices for addressing any forms of violence and abuse at their home and community;
- Necessary Code of Conduct for Employers of child domestic workers should be developed so that employers feel obliged to abide by those and thus contribute positively in reducing domestic violence against children;
- Social and cultural norms should be well taken care of in child rights related programming so that children are considered as 'being' and 'rights holders' instead of merely a 'property' of adults and guardians;

- Media and law enforcing agencies should be properly sensitised so that cases on violence against children are well-reflected and taken care of with due respect to child-victims;
- A telephone hotline facility should be established for receiving complaints regarding the cases of child abuse and violence and making effective follow-up.

[Source: Domestic violence against children, State of Child Rights in Bangladesh 2006 (page-37) published by Bangladesh Shishu Adhikar Forum]

Conclusion

The state must consider the core causes of domestic child labour, the elemental causes for which many of our children are sacrificing their childhood, education and congenial amusements. The very initial but significant cause is, of course, that they are financially handicapped. We believe, whatever plans can be adopted and implemented by the state, unless and until this fundamental obstruction is removed, it will not lead to any substantial change. It can be argued that this proposition needs an overall improvement of the country's economic condition. May be this is our ultimate aspiration. But for immediate and substantial achievements, the state has some other gates open to serve the same purpose. And in this regard the state should make a policy/law at least to trim down their sufferings.

Certainly, the ultimate target for the state is the elimination of child labour which requires consideration of many other inter dependent and integrated factors. And, since that long march has to be started from now, the state must make policies germane with its final target. Thereby, the country needs to maintain comprehensive and integrated domestic child labour policy. In some cases, it should go for completely different but analytically constructive and practically applicable approaches for immediate achievement of many of its ardent needs regarding complete elimination of domestic child labour.

The writer is a Research & Advocacy Officer, Bangladesh Shishu Adhikar Forum.

RIGHTS monitor

Thousands lost in Kashmir mass graves

Hundreds of unidentified graves believed to contain victims of unlawful killings, enforced disappearances, torture and other abuses - have been found in Indian-administered Jammu and Kashmir. Amnesty International has urged the Indian government to launch urgent investigations into the mass graves, which are thought to contain the remains of victims of human rights abuses in the context of the armed conflict that has raged in the region since 1989.

The findings appear in the report Facts under Ground, issued on 29 March by the Srinagar-based Association of the Parents of Disappeared Persons (APDP). The report details the existence of multiple graves which, because of their proximity to Pakistan controlled-areas, are in areas not accessible without the specific permission of the security forces. Since 2006, the graves of at least 940 people are reported to have been discovered in 18 villages in Uri district alone.

The Indian army has claimed that those found buried were armed rebels and "foreign militants" killed lawfully in armed encounters with military forces. However, the report recounts testimonies from local villagers saying that most buried were local residents hailing from the state.

The report alleges that more than 8,000 persons have gone missing in Jammu and Kashmir since 1989. The Indian authorities put the figure at less than 4,000, claiming that most of these went to Pakistan to join armed opposition groups. In 2006, a state police report confirmed the deaths in custody of 331 persons, and also 111 enforced disappearances following detention since 1989.

Unlawful killings, enforced disappearances and torture are violations of both international human rights law and international humanitarian law, set out in treaties to which India is a state party. They also constitute international crimes.

Amnesty International has called on the Indian government to unequivocally condemn enforced disappearances in Jammu and Kashmir and ensure that prompt, thorough, independent and impartial investigations into all sites of mass graves in the region are immediately carried out by forensic experts in line with the relevant UN Model Protocol.

All past and current allegations of enforced disappearances must be investigated and, where there is sufficient evidence, anyone suspected of responsibility for such crimes must be prosecuted in fair trial proceedings, with all victims granted full reparations.

Source: Amnesty International.



PHOTO: BBC

LAW week

HC seeks to know when EC holds polls

The High Court (HC) yesterday asked the Election Commission (EC) to inform the court through affidavit when it would complete preparation of the voter list and hold the next parliamentary election. The directive came during the hearing on a rule of a writ petition filed by barrister Masood R Sobhan on January 27 saying the commission has no authority to delay the general election beyond the stipulated 90 days. Following the writ petition, an HC bench comprising Justice Shah Abu Nayeem Mominur Rahman and Justice Shahidul Islam issued the rule on the EC to explain why it shall not be directed to hold the general election within 90 days. The HC had also asked the commission to explain why its failure to hold the election within 90 days since dissolution of parliament in October 2006 shall not be declared unlawful. The EC, the EC secretary, the chief adviser and the law ministry represented by the law secretary were made the respondents. The court adjourned the hearing until May 7. - The Daily Star, May 01, 2008.

133 constituency boundaries changed, Dhaka gets 20 seats

The Election Commission (EC) yesterday unveiled a draft list of parliamentary seats with their boundaries redrawn district-wise. Of the 300 constituencies, 133 have seen changes in boundaries and the rest remained intact. Chief Election Commissioner (CEC) ATM Shamsul Huda presented the list of redefined electoral districts at a press conference at the EC Secretariat's conference room. According to the catalogue, seats representing 17 districts in parliament have either increased or decreased. After massive delineation of boundaries, seven new seats have been added to Dhaka district. Metropolitan areas with high density of population won all the seven additions. The number of constituencies in the capital now stands at 15, up from eight, while that in Dhaka district at 20, rising from 13. - The Daily Star, April 30, 2008.

HC halts Supreme Judicial Commission function

The High Court (HC) yesterday stayed for three months functions of the Supreme Judicial Commission constituted recently by an ordinance to ensure transparency and impartiality in the appointment of Supreme Court (SC) judges. The order came on a writ petition filed the same day by an SC lawyer challenging the constitutionality of the ordinance titled "Supreme Judicial Commission Ordinance 2008".

An HC division bench comprising Justice Syed Mahmud Hossain and Justice Farid Ahmed also issued a rule on the government and SC registrar to explain within three weeks why the ordinance shall not be declared unconstitutional.

President Iajuddin Ahmed promulgated the law in March as part of the government measures to do away with room for politicisation in the appointment of judges to the HC and Appellate Divisions of the SC. The ordinance prescribes setting up a nine-member commission that headed by chief justice will recommend names for appointment as additional judges to the HC. The petitioner observed that composition of the commission is unconstitutional as six of the members come from the executive and legislature. Besides, he contended, five are below the rank and status of SC judges. - The Daily Star, April 29, 2008.

LAW event

Workshop on Mooting: Human trafficking issue

Moot court is an activity peculiar to law schools in which participants attend in simulated court proceedings, starting with the drafting of briefs and participating in oral arguments before a bench of Judges. In moot court, the preparation and delivery of argumentation provides students with the opportunity to think critically, develop their academic research skills, improve their communication abilities, solve problems creatively,

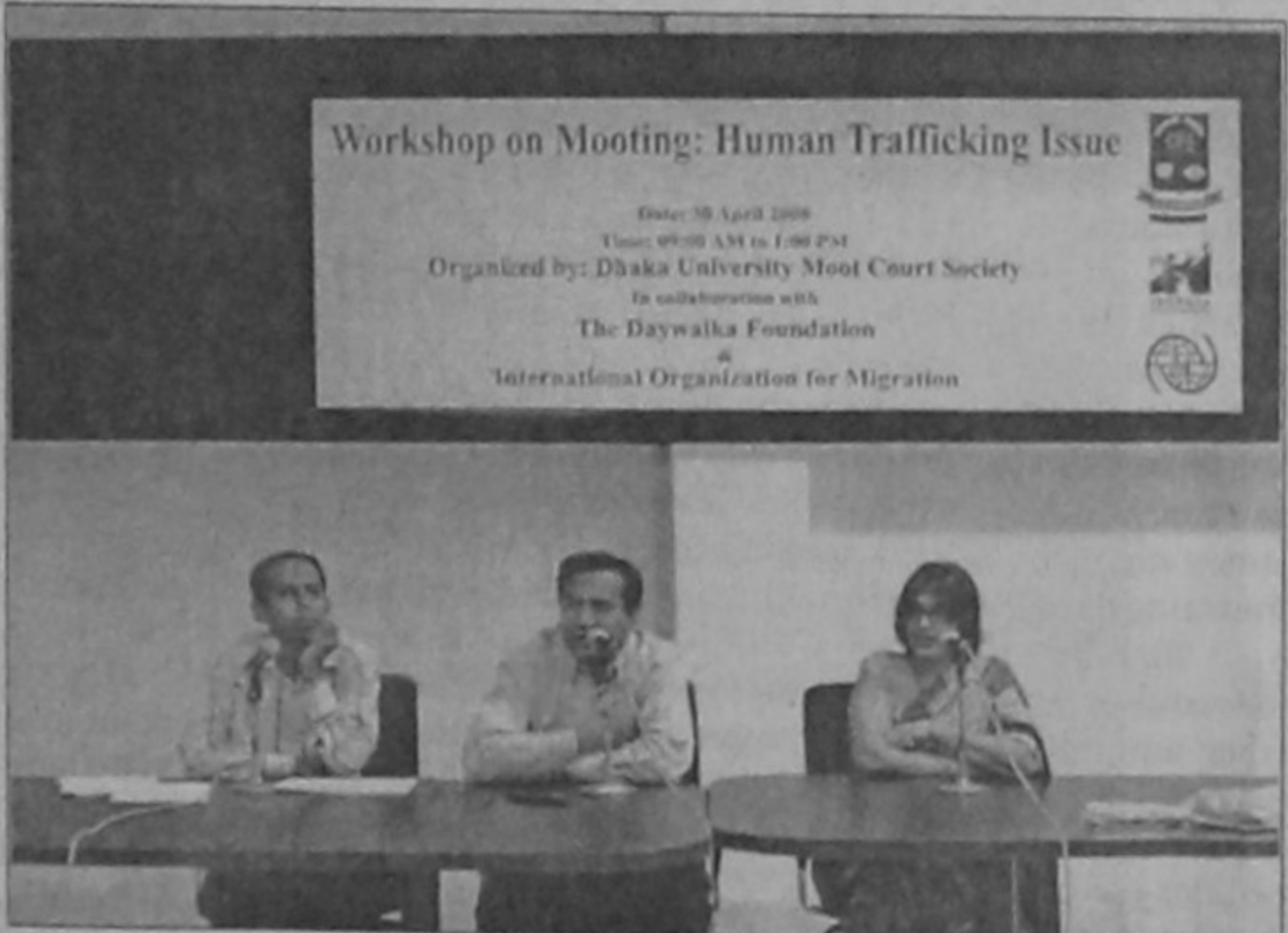
experience. Since then, DUMCS has been going on encouraging students to take part in moots in order to have a taste of practice in court procedure and also develop certain skills that every law student should possess. In this consecutive process, the DUMCS organized a workshop on Mooting based on Human Trafficking issue in collaboration with the Daywalka Foundation (TDF) & International

workshop.

The Daywalka Foundation (TDF) is a US based International Human Rights Organization working on human Trafficking and other human rights related issues. TDF established a Women and Children Security Resource Center (WCSRC) - a neutral space where women and children, NGOs, legal community and others can share their resources. As part of its program in Bangladesh in workshop was organized that included a demo moot competition where the case was based on human trafficking issue. In workshop was inaugurated by Professor Dr. Taslima Monsoor, Chairman, Department of Law, University of Dhaka. Ms. Rosy Hossain, Regional Director, South Asia, TDF and Professor Dr. Sumaiya Khair, Department of Law, Dhaka University gave their valuable observations. Respected teachers of the Department of Law, Dhaka University were also present on the occasion.

After the tea break, a moot competition on a human trafficking case took place before a bench of three Judges. Both the team of the trial consisted of two counsels and one researcher who are the students of the Department of Law, University of Dhaka; where the judges were the respected teachers of the same Department. After the exciting Mock Trial, from Ms. Rosy Hossain, Regional Director of TDF delivered a power point presentation on "The Concepts of Law of Trafficking in Persons, its Causes, Consequences and Challenges."

Then the next part of the workshop was an interactive session on "Effective Mooting Techniques"



and increase their self-confidence. Keeping that in mind, Dhaka University Moot Court Society was established last year to create a platform for exposure enabling students to evaluate and strengthen their skills developed through mooting, in particular, a separate orientation and initiation program for novices, meaning those students with no mooting Organization for Migration (IOM); at the Nabab Nawab Ali Chowdhury Senate Bhaban, Dhaka University on April 30, 2008. Selected student representatives from the six Departments of Law of the University of Dhaka; Eastern University; Southeast University; Prime University, Stamford University and Northern University participated in the

Corresponding with the Law Desk

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