

HUMAN RIGHTS monitor

World Day against Child labour

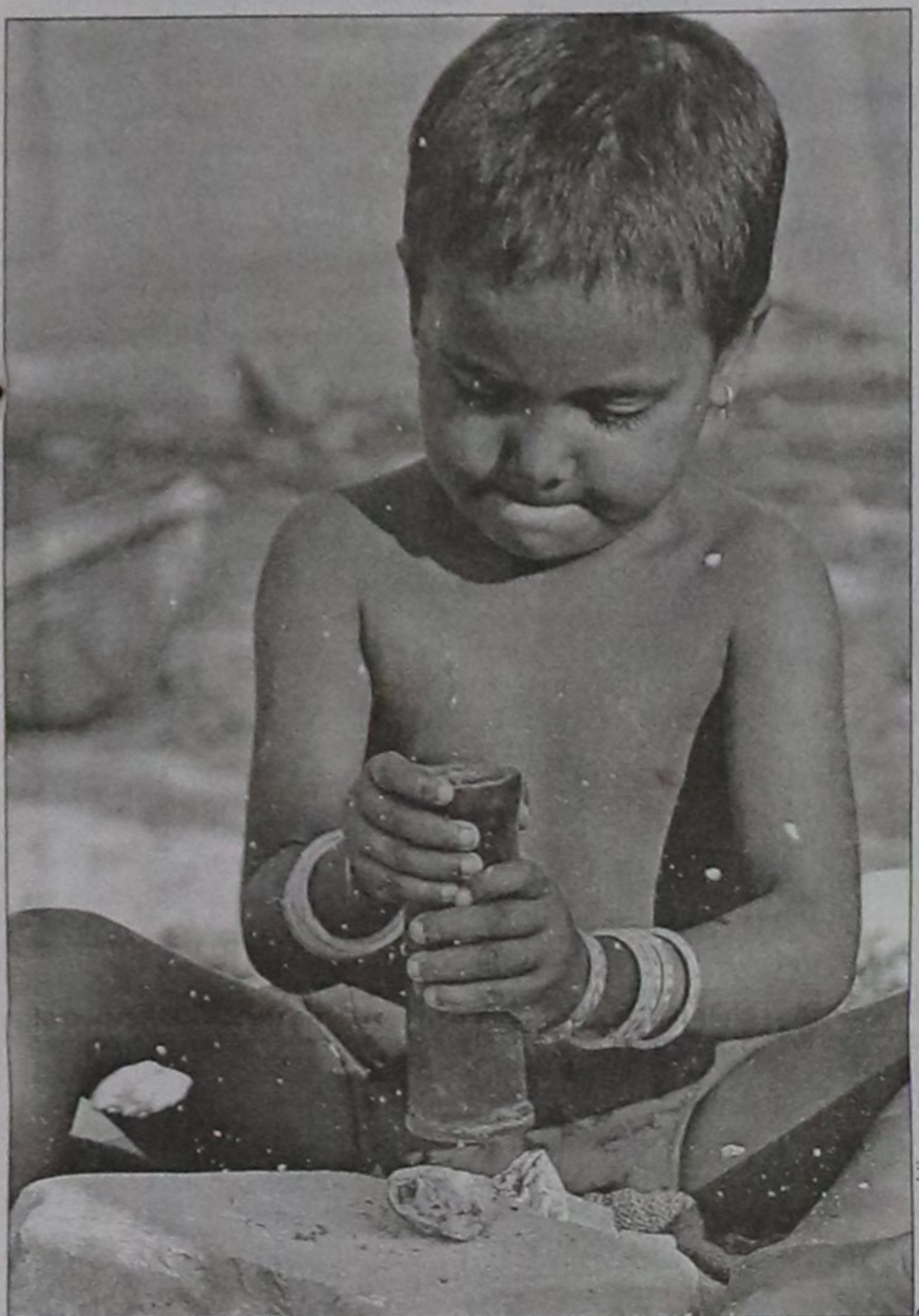
Citing data indicating that many of the estimated 75 million children lacking primary schooling start working at an early age, the International Labour Office (ILO) said observing World Day Against Child Labour (June 12, 2008) that education was critical to breaking the cycle of child labour and poverty as well as eradicating child labour in its worst forms by 2016.

ILO Director-General Juan Somavia said "We must work for every child's right to education so no child has to work for survival. The goal is quality education for children and decent work for adults". Hundreds of events will be organized in some 60 countries around the world to mark the World Day which each year focuses attention on child labour worldwide.

The ILO's International Programme on the Elimination of Child Labour (IPEC) published a new technical report on child labour and education based on surveys of child labour in 34 countries from all regions of the world. At the same time, as part of a new year-long campaign on "Gender equality at the heart of decent work", the ILO Bureau for Gender Equality also highlighted combating child labour through education with the slogan "Formula for progress: Educate both girls and boys".

The report cites UNESCO statistics showing that some 75 million children of primary school age were out of school in 2006, a reduction from 103 million in 1999. The report also acknowledges that the number of children involved in economic activities has been falling. In 2004 it was estimated there were some 20 million fewer economically active children aged 5-14 than there had been four years earlier. However there remained 191 million children aged 5-14 engaged in some kind of economic activity. Of this number 165 million were involved in child labour. By examining how child labour affects main schooling indicators, the new ILO findings also strengthen the case for tackling child labour as a means of achieving education targets set in the UN Millennium Development Goals.

There is a significant correlation between the levels of children's economic activity and primary school repetition rates. Grade repetition often



leads to children dropping out of school. Rural working children and girls tend to be among the most disadvantaged. Girls often carry a double burden of work inside and outside the home, putting their schooling at risk. IPEC also said that at the level of secondary school, average attendance is just 46 per cent for boys and 43 per cent for girls, and in sub-Saharan Africa only one child in five attends secondary school.

"On this World Day Against Child Labour the focus is on: Education - the right response to child labour", Mr. Somavia said. "For too many children, particularly children of poor families across the world, the right to education remains an abstract concept, far from the reality of daily life. More than 70 million primary school aged children are not enrolled in school. Many of these and other out of school children start working at an early age, often well below the minimum age of employment. And when a family has to make a choice between sending either a boy or girl to school, it is often the girl who loses out."

Mr. Somavia called for an "educational dimension" in the struggle against child labour, saying "let us pledge to work together for education for all children at least to the minimum age of employment, education policies that reach out to child labourers and other excluded groups, properly resourced quality education and skills training and education for all children, and decent work for adults. I urge you to lend your voice and action to the worldwide movement against child labour."

As part of its efforts to strengthen action to tackle child labour by boosting access to education, the ILO is coordinating the work of an inter-agency partnership, the Global Task Force on Child Labour and Education for All, which brings together UN agencies, teachers, and civil society representatives, to strengthen measures to help child labourers.

The ILO's International Programme on the Elimination of Child Labour (IPEC) has activities in almost 90 countries worldwide. It works at the policy level, supporting development of legislative and policy frameworks to tackle child labour, as well as through programmes aimed at preventing and withdrawing children from child labour, and has developed a Global Action Plan to eliminate its worst forms including hazardous work, commercial sexual exploitation, trafficking and all forms of slavery by 2016.

Source: International Labour Organization (ILO)

LAW lexicon

Equity, courts of - Courts which administer a legal remedy according to the system of equity, as distinguished from courts of common law.

Escheat - The process by which a deceased person's property goes to the state if no heir can be found.

Escrow - Money or a written instrument such as a deed that, by agreement between two parties, is held by a neutral third party (held in escrow) until all conditions of the agreement are met.

Estate tax - Generally, a tax on the privilege of transferring property to others after a person's death. In addition to federal estate taxes, many states have their own estate taxes.

Estoppels - An impediment that prevents a person from asserting or doing something contrary to his own previous assertion or act.

Et al - An abbreviation of the Latin *et alii*, meaning "and others," ordinarily used in lieu of listing all names of persons involved in a proceeding.

Et seq - An abbreviation for the Latin *et sequentes*, meaning "and the following," ordinarily used in referring to a section of statutes.

Ethics - Of or relating to moral action and conduct; professionally right; conforming to professional standards.

Evidence - Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.

Source: Jurist International

LAW reform

Application of international human rights norms by domestic courts

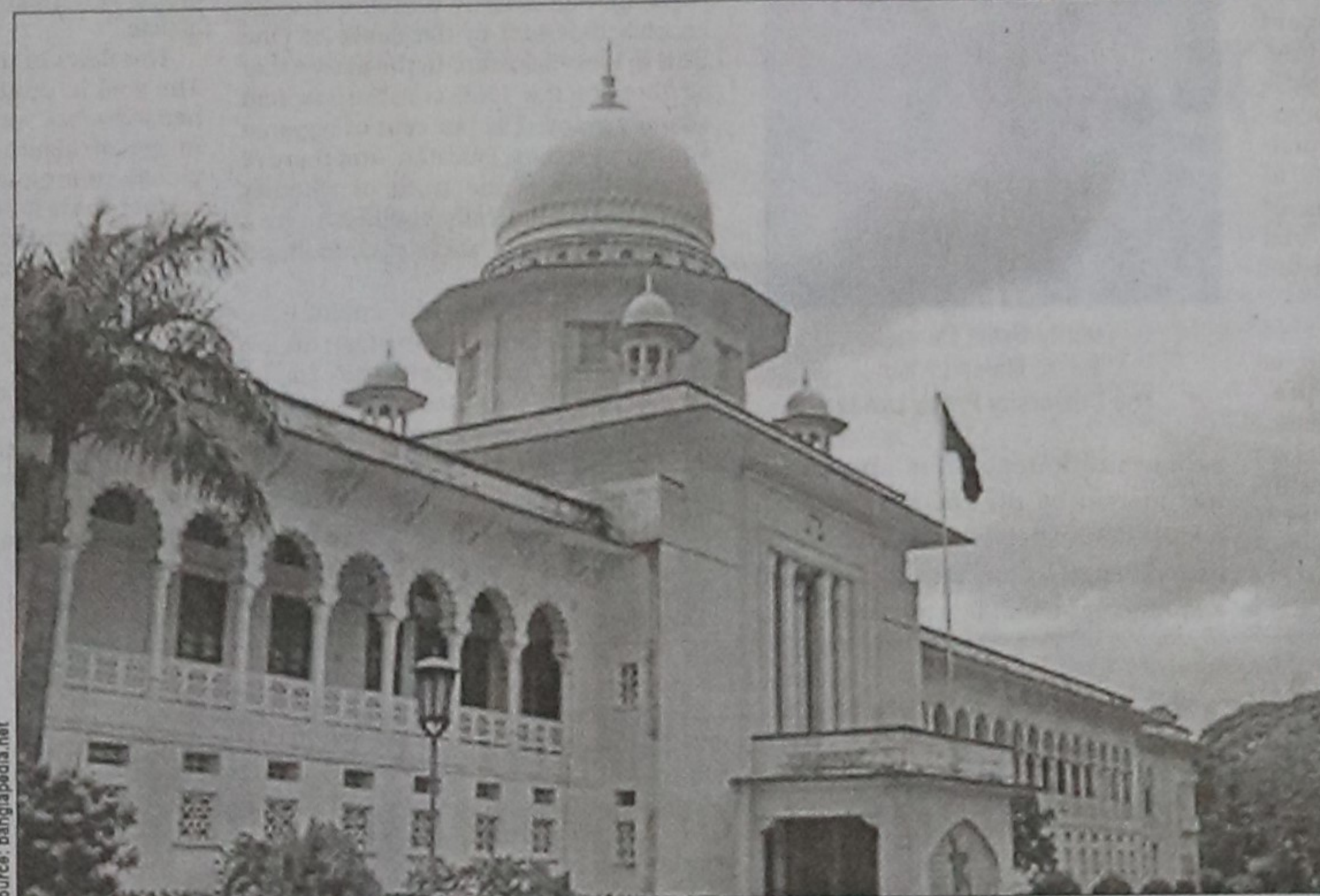
SAMAH M KARIM

THE judiciary of Bangladesh is devoted to the common law system. They have a tendency to follow a conservative judicial practice of non-application of the international law. In many cases the judiciary has referred to international law, both customary and treaty, but failed to base their decisions on the same as seen in the case of Hussain Mohammad Ershad v. Bangladesh and Others 21 (2001) BLD (AD), p.69.

Bangladesh as a member of the common law community is no different from other common law countries where incorporation of the international law into the domestic law and application of international instruments are becoming increasingly frequent.

In Professor Nurul Islam v. Government of Bangladesh 52 (2000) DLR (HCD) 413 the High Court Division clarified interpretation of constitutionally guaranteed right to life and heavily relied on the resolution of World Health Organization (WHO) on the issue of health hazards of the consumption of tobacco. The Government was reminded by the High Court of its constitutional obligations under Article 25 to respect principles and norms of international law contained in the United Nations Charter and in the instruments of its allied organizations such as the WHO.

Further non-implementation of the International human rights law can be observed in two women's rights related cases, namely *Dalia Parveen v. Bangladesh Biman Corporation* 48 (1996) DLR (HCD) 132 and *Shamima Sultana Seema v. Government of Bangladesh* 57 (2005) DLR (HCD) 201. The High Court Division, upholding women's rights, based its decision solely on the Constitution, although they had a great opportunity to rely on the Convention on Elimination of All forms of Discrimination against Women (CEDAW) as the Convention was already ratified by Bangladesh.



Had the international women's human rights instruments been used by the judiciary, the constitutional provisions of non-discrimination of women could have been further developed and ensure decisions made more effective.

Unimplemented international conventions could be taken into account by our judiciary upon ratification. Even if there is no legislative approval or ratification by parliament, there appears to be no legal barrier in considering application of international law in domestic sphere. If there is no domestic law contradicting any particular norm of international law, direct application of that norm is rather logical. In the absence or ambiguity of relevant domestic law, these can be a very significant source of law. An easier proposition would be the legislative approval of treaties or parliamentary involvement in treaty ratification which would

make international law part of domestic law. This way it can be applied directly within jurisdiction.

In the case *Tayazuddin v. the State*, 21 BLD (HCD) 2001, 503 the court interpreted Article 3 of the Universal Declaration of Human Rights (UDHR) in conjunction with the fundamental rights guaranteed under the constitution of Bangladesh i.e. right to life and liberty. By referring to the UDHR, in this case, the court has taken rather an activist position to invoke universal human rights norms. The court sets an important precedent in protection of victims' rights in the domestic courts by relying its decision on universal human rights norms. The court took the interpretation of the provisions on fundamental human rights under the constitution in line with the UDHR norms. By such activities of incorporation and statutory interpretation, the courts can protect rights of

victims under different international instruments. This kind of use of international human rights standards in domestic courts can enhance fairness and credibility of administration of justice in Bangladesh. Human rights have emerged to be one of the core fundamental rights since it gives positive rights to citizens of a state as individuals. Individual rights have to be attended as they provide concrete human rights such as right to freedom from torture and inhuman treatment, right to liberty, right to freedom of movement, freedom of speech and more. Most importantly it provides the right to life.

In order to access more details regarding this topic, please refer to "Enforcement of International Human Rights Law by Domestic Courts" by Dr. M. Shah Alam.

Samaha M Karim is a student of LLB under University of London.

HUMAN RIGHTS analysis

Human trafficking is not solely a problem of law enforcement

United Nations General Assembly urges stronger action against human trafficking

At any given time, millions of people are probably suffering from the exploitation of modern-day slavery. No country is immune from human trafficking, a crime that shames us all. UNODC reports that victims from 127 countries undergo exploitation in 135 nations. And human trafficking is big business. The United Nations and other experts estimate the total market value of illicit human trafficking at \$32 billion.

This global challenge cannot be dealt with successfully by any government alone. On 3 June, the United Nations General Assembly, representing all 192 UN Member States, held a thematic debate to consider the most effective ways to combat human trafficking.

The Organization's "global parliament" urged States to make good on their promises. General Assembly President Srikanth Kumar asked: "Why with all these laws and international agreements in place, why is the problem getting worse? I would argue that our increasing interdependence has provided new avenues for criminal networks to operate on a global scale".

UNODC is custodian of the key global instrument to fight this crime - the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which came into force in 2003. UNODC Executive Director Antonio Maria Costa encouraged all States to come on board. "Political will is growing,

as evidenced by the increasing number of countries that have ratified the UN Protocol against Trafficking in Persons (currently 119) - although that means that there are still more than 70 countries that have not signed up. Now is the time," Mr. Costa said.

The thematic debate focused on the three "Ps" of the Protocol: prevention, protection and prosecution. It built on the momentum generated by the first-ever global forum held in Vienna in February 2008 by the UN Global Initiative to Fight Human Trafficking (UN.GIFT) and UNODC. That forum brought together 1,200 government and civil society representatives, as well as celebrities, philanthropists, the media, parlia-

mentarians, business leaders and faith-based organizations from 116 countries to launch an unprecedented global effort.

The Global Initiative was established in recognition of the fact that human trafficking takes many forms and that coordinated action is required from all sectors of society. UNODC manages UN.GIFT in cooperation with the International Labour Organization; the International Organization for Migration (IOM); the United Nations Children's Fund (UNICEF); United Nations High Commissioner for Human Rights (UNHCHR) and the Organization for Security and Cooperation in Europe (OSCE).

Mr. Costa said awareness of human trafficking was growing, thanks to the Global Initiative. But he acknowledged the dearth of information about the extent of the problem. "We still do not have an accurate picture of the true extent of this crime: about trafficking routes, trafficker profiles, as well as vulnerable groups and regions. To overcome this information deficit, we are undertaking a data collection exercise that will provide a global overview of the human trafficking situation based on official information and data". He asked States for their help in this process.

Keynote speaker, US actress and philanthropist Ashley Judd, said that during her travels she had also met countless children born in brothels and watched them hide under the very beds where their mothers were subjected to the most degrading life. "Children are the collateral damage of human trafficking," she said.

Kyung-wha Kang, Deputy High Commissioner for Human Rights stressed that human rights are at the centre of anti-trafficking work. "We must not be so callous and short-sighted as to think that trafficking can be dealt with solely as a problem of law enforcement or organized crime," Ms. Kang said.

Source: United Nations Global Initiative to Fight Human Trafficking.

LAW week

Manju jailed for 7yrs in bribery case

A special court sentenced Jatiya Party (JP-Manju) Chairman Anwar Hossain Manju to seven years' rigorous imprisonment (RI) in a bribery case. Besides, another special court gave Rajib Siraj Opu, son of former BNP lawmaker Shahjahan Siraj, five years' RI in a graft case the same day.

Judge Khandaker Kamal Uz-Zaman of the Special Court-9 on the Jatiya Sangsad Bhaban premises also handed down two years' simple imprisonment to Manju's wife Tasmina Hossain and his cousin Mahmood Hossain for aiding and abetting Manju in taking the bribe. The court also fined the JP leader Tk 75 lakh. Also a former communications minister, Manju will have to serve one more year behind bars if he fails to pay the fine. Tasmina and Mahmood were also fined Tk 5 lakh each, in default of which they would have to spend six months more in prison. As all the three are absconding and were tried in absentia, their sentences will come into effect the day of their arrest or surrender. - *The Daily Star*, June 11, 2008

ACC permitted to quiz Khaleda, Koko for graft

A Dhaka court gave the Anti-Corruption Commission (ACC) permission to interrogate BNP Chairperson Khaleda Zia at her sub-jail gate in connection with misappropriation of funds from the Zia Orphanage Trust.

Meantime, the same court allowed the commission to grill her youngest son Arifat Rahman Koko at jail gate in a corruption case filed for amassing illegal assets and concealing information on his wealth to the watchdog.

Additional Chief Metropolitan Magistrate Golam Rabbani passed the order for quizzing Khaleda after ACC Assistant Director Nur Ahammed, also the investigation officer (IO), petitioned to that end. The IO in his petition said Khaleda needs to be grilled at jail gate as there are specific allegations of misappropriation of funds from the orphanage trust against her. - *The Daily Star*, June 11, 2008

Truth commission office set up

The government has set up the office of the much-talked-about Truth and Accountability Commission and started appointment of the necessary staff so that the commission may start functioning immediately after its formation.

The commission is going to publish notifications in different newspapers and other mass media to inform all about its objective and jurisdiction and the people's right to make voluntary disclosure before it.

With the aim to curb corruption and reduce the massive load of corruption cases through quick adjudication within 30 days of filing, it will function for five months from the day of formation. It however will have some more days to carry on the unfinished tasks. - *The Daily Star*, June 11, 2008

EC to seek lifting or relaxing emergency

The Election Commission (EC) plans to meet the chief adviser in a couple of days to ask again to create an environment conducive to beginning local government elections from July, either by lifting or relaxing the state of emergency in the areas concerned.

The EC is preparing to hold polls to four city corporations and nine municipalities by announcing schedules next week and wants the government decision before the announcement of the schedule, whether the state of emergency would be lifted or relaxed for the polls, sources in the EC said.

According to the EC's plans, polls to some other municipalities will be held between August and September and then it will begin holding the long overdue elections to upazila parishads. - *The Daily Star*, June 11, 2008

Niko Graft Case - Charge-framing hearing to resume June 16

A special court deferred charge-framing hearing in Niko graft case against Awami League President Sheikh Hasina and eight other people till June 16.

Judge Amar Kumar Roy of Special Judge's Court-2 at Jatiya Sangsad Bhaban complex set the date following time prayer from the defence.

Hasina was not brought to the court as the judge exempted her from appearing in person during court proceedings on health grounds.

The charge sheet also mentioned that the work was given to Niko without floating any tenders, allowing it to extract 1,794 billion cubic feet (bcf) of gas from an estimated reserve of 2,834 bcf, causing the country a loss of Tk 13,630.50 crore. - *The Daily Star*, June 11, 2008

Tk 1,219cr recovered from anti-graft drive

The government has recovered Tk 1,219 crore ill-gotten money from its anti-corruption drive, which has been deposited to the national exchequer, Finance Adviser Mirza Azizul Islam said in his budget speech.

Besides, the Money Laundering Prevention Ordinance, 2008 has been promulgated to prevent transfer of illegal money while Anti-Terrorism Ordinance, 2008 has also gotten the government nod. These initiatives will contribute towards facilitating international co-operation in recovering money siphoned off to foreign countries, the finance adviser observed. - *The Daily Star*, June 10, 2008

Economy tuned to social charity

More than a budget document that addresses three key areas for any economy inflation, growth and employment the finance adviser unveiled a plan that smacks of social charity.

It is a short-term full-hearted programme to cast the social safety net wide, which was necessary for the present day crisis. In non-development expenditure, the adviser plans Tk 16,932 crore for social safety net, Tk 13,648 crore for subsidies and Tk 10,253 crore for salaries of teachers and doctors. But in doing so he misses many other exigencies and leaves unexplained areas like how to feed the furnace of such a high spending budget. Even why and how this social safety net amount will be spent is not clear although he has mentioned many new programmes. The largest outlay, as it seems, is Tk 2,000 crore for a new programme called 100 Days' Employment Generation.

In the end, the crucial issue that would determine the success of this 'social charter' is the capability of the revenue departments to generate money. - *The Daily Star*, June 10, 2008

Govt asked to explain some provisions

The High Court (HC) issued a rule upon the government to explain why some provisions of the Contempt of Court Ordinance 2008, including the rules of complaining against a judge and criticising judgments, should not be declared beyond the powers of the constitution and void.

After hearing a writ petition, the HC bench of Justice Syed Mahmud Hossain and Justice Farid Ahmed issued the rule, asking secretaries to the president and the Ministry of Law, Justice and Parliamentary Affairs to reply within two weeks.

The petitioners stated that sections have curtailed the powers of the Supreme Court under Article 108 of the constitution to give orders for investigation and punishment for contempt of court and as such those provisions violate the constitution and the principles of separation of the judiciary and its independence--some of the basic features of the constitution. - *The Daily Star*, June 09, 2008

No one is held without specific charges: IGP

Police are not arresting anyone without specific allegation during the ongoing special drive across the country, Inspector General of Police (IGP) Nur Mohammad said.

"Police are only arresting the ones who are accused in cases or have arrest warrants against them," said the police chief at the launching ceremony of official website of Chittagong range of police.

He brushed aside allegations that the special drive is politically motivated, targeting political activists and violating human rights of the innocent through harassing them. Terming the special drive a part of their routine work, the IGP said recent rise in incidents of murder and robbery prompted the police to launch the drive. - *The Daily Star*, June 08, 2008

Dear reader,
We would like to address daily life problems and the solutions to them. Please write to us if you have any queries, comments or ideas regarding problems you would like to be informed about in Law & our rights.

- Law Desk

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