

## LAWS FOR everyday life

## Right to enjoy the natural advantages by landowners

The real owner of an immovable property enjoys some rights relating to the property like free access to air, water source etc. The Easements Act, 1882 deals with these rights. Some are stated below:

- The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force
- The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons
- The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibrations caused by any other person.
- The right of every owner of land to so much light and air as pass vertically thereto.
- The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person.

**Explanation:** Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the "subjacent and adjacent soil" mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

- The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.



- The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.
- The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limit without material alteration in quantity or temperature.
- The right of every owner of upper land that water naturally rising in, or falling, of such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.
- The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land and for the purposes of any manufactory situate thereon: Provided that he does not thereby cause material injury to other like owners.

**Explanation:** A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only and in a natural and known course.

Source: The Easements Act, 1882.

## LAW lexicon

**Miranda warning** - Requirement that police tell a suspect in their custody of his or her constitutional rights before they question him or her. So named as a result of the *Miranda v. Arizona* ruling by the United States Supreme Court.

**Misdemeanor** - A criminal offense lesser than a felony and generally punishable by fine or by imprisonment other than in a penitentiary.

**Misfeasance** - Improper performance of an act which a person might lawfully do.

**Mistrial** - An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again from the selection of the jury.

**Mitigating circumstances** - Those which do not constitute a justification or excuse for an offense but which may be considered as reasons for reducing the degree of blame.

**Mittimus** - The name of an order in writing, issuing from a court and directing the sheriff or other officer to convey a person to a prison, asylum, or reformatory, and directing the jailer or other appropriate official to receive and safely keep the person until his or her fate shall be determined by due course of law.

**Mitigation** - A reduction, abatement, or diminution of a penalty or punishment imposed by law.

**Moot** - A moot case or a moot point is one not subject to a judicial determination because it involves an abstract question or a pretended controversy that has not yet actually arisen or has already passed. Mootness usually refers to a court's refusal to consider a case because the issue involved has been resolved prior to the court's decision, leaving nothing that would be affected by the court's decision.

Source: Jurist International.

## LAW event

## Combined effort is must to stop human trafficking

**T**HE Regional Workshop and Conference on Rights-based approach in anti-trafficking actions, organised by Terre des Hommes Federation and co-funded by European Commission, was held at Brac-Inn centre on 25th -26th November. The Regional Workshop and Conference has been organised within the framework of the Terre des Hommes Consortium project 'Developing a Rights-based approach in anti-trafficking interventions in South Asia', implemented in Bangladesh, India and Nepal.

Goal of the Regional Event was to share experiences and to formulate a common core of recommendations for future actions to combat human trafficking in South Asia.

The Inaugural session of the Conference was opened by Mr. Massimo Lanciotti, Tdh-Italy, Asia Program Manager and addressed, among others, by Milko Van Gool, Head of Cooperation, European Commission, Mr. N.B.K. Tripura, ndc, Additional IG, Bangladesh Police and NDP, Police Reform Programme and Mr. Wali-ur-Rahman, Former Secretary, MoHA.

Mr. Van Gool, referring human trafficking as a trans-national crime against humanity, urges upon a global solution for this global problem. He added that the European Union in these last years has multiplied its efforts to fight against it.

In his speech Mr. Tripura has advocated to strengthen the co-operation with the Police Department on victim support issues and informed that Bangladesh Police has a Human Trafficking Unit, which is pioneer in South-Asia.

Mr. Abdul Karim, Secretary, Ministry of Home Affairs, has attended as chief guest in the morning session and has emphasized the importance of coordination and cooperation among Government, NGOs and International Organisations to combat human trafficking.

Ms. Patrizia Gattoni, Regional Project Manager, Tdh-Italy, together with the coordinators of Tdh-Foundations in the three countries, presented the main recommendations to fight human trafficking coming out from the workshop. Among others: the importance of a single and comprehensive law on human trafficking formulated through a consultation process; the need of developing a complete and active Anti-trafficking System with units at all



administrative levels including representatives of law enforcement agencies also in UP Anti-trafficking Units; the necessity to provide local administrations with an adequate budget for anti-trafficking actions; the importance of rethinking the awareness raising campaigns on anti-trafficking, considering different targeted groups and utilizing innovative channels and means; the urge to enhance networking and Go-NGo cooperation valorizing and disseminating good practices.

Beside the Tdhs members of the consortium - including Tdh Italy, Germany, Switzerland, Lausanne and Netherlands - international and national NGOs committed to the cause of curbing human trafficking, have been actively involved in this regional event from its conception and participated to preliminary meetings aiming at building a common base for facilitating the discussion during the workshop. Representatives from International NGOs like Concern Universal, Save the children Sweden-Denmark, Save the children UK, Stop the Traffik and The Daywalka Foundation co-facilitated the group discussions. Moreover, officials from the Ministry of Social Welfare of Bangladesh and representatives of Bangladesh Police have also participated to the discussion groups, thus enriching the discussion's agenda.

Representatives of international organizations, such as: Mr. Abdul Jalil, Additional Deputy Inspector general from Police Reform Program of UNDP, Ms. Shabnaaz Zahereen, Child Protection Officer of UNICEF, Mr. Uttam Kumar Das, National Program Officer of IOM, and Ms. Aya Matsura Program Officer of ILO have also contributed by commenting the formulated recommendations at the workshop.

At the conference, Professors and Experts from Bangladesh, India and Nepal have pointed out poor governance and gender discrimination as pushing factors for trafficking.

In the Closing session, Special Guest Ms. Padma Mathema, Office of National Human Rights Rapporteur in Nepal gave valuable suggestions stemming from the experience in combating trafficking in Nepal and Mr. Dewan Zakir Hussain, Secretary, Ministry of Social Welfare, participating as Chief Guest, urged upon the need of working together for the rehabilitation and reintegration of survivors of trafficking.

The two day long Workshop and Conference brought together participants and panelists from Government bodies, Police Officials, academicians, International Organisations, NGOs, involved in anti-trafficking initiatives in Bangladesh, India and Nepal.

## HUMAN RIGHTS advocacy

## Protect domestic workers from violence

Many nations have failed to stem mental, physical, sexual abuse

**M**ANY migrant and domestic workers still face abuse and exploitation in Middle Eastern and Asian countries because governments have failed to adopt measures needed to protect them, Human Rights Watch said today ahead of the International Day for the Elimination of Violence against Women on November 25.

Few domestic workers have access to the justice system in the countries where they work, and even those who are able to make complaints of physical or sexual violence rarely receive redress, Human Rights Watch said.

"There are countless cases of employers threatening, humiliating, beating, raping, and sometimes killing domestic workers," said Nisha Varia, deputy director of the women's rights division of Human Rights Watch. "Governments need to punish abusive employers through the justice system, and prevent violence by reforming labor and immigration policies that leave these workers at their employers' mercy."

Millions of women from countries including Indonesia, Sri Lanka, the Philippines, and Nepal are domestic workers in Saudi Arabia, Kuwait, the United Arab Emirates, Lebanon, Singapore, Malaysia, and other countries throughout the Middle East and Asia. Most countries exclude domestic workers from protection under their labor laws, leaving domestic workers little remedy against exploitative work conditions.

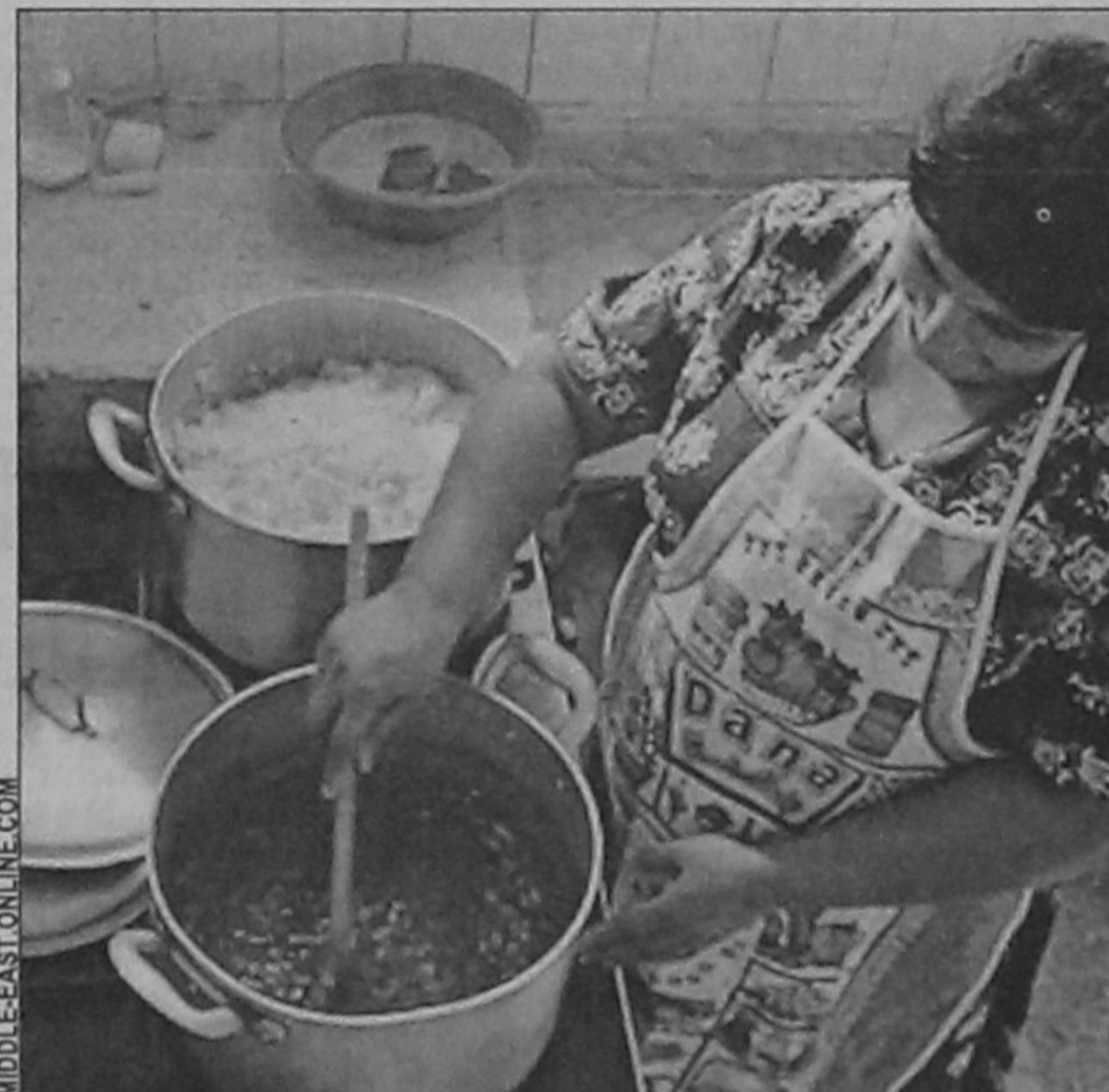
Domestic workers are also at heightened risk of abuse because of restrictive immigration-sponsorship policies that link their visas to their employers. Employers control a worker's immigration status and ability to change jobs, and sometimes whether the worker can return home. Many employers exploit this power to confine domestic workers to the house, withhold pay, and commit other abuses.

Authorities receive thousands of complaints of labor exploitation or abuse each year. While most involve unpaid wages, food deprivation, and long working hours with no rest, a significant number allege verbal, physical, and sexual abuse. But many cases are never officially reported, due to domestic workers' confinement in private homes, lack of information about their rights, and employers' ability to deport them before they can seek help.

Some law enforcement authorities have begun to prosecute and punish abusive employers, although to varying degrees. In 2008 in Singapore, several employers have been convicted of beating domestic workers, receiving sentences ranging from three weeks to 16 years in prison. In mid-November, a man was sentenced in Malaysia to 32 years in prison for raping a domestic worker, and his wife received six years for abetting the crime.

But criminal justice systems often continue to expose abused domestic workers to further victimization and give them no - or only severely delayed - redress.

In May 2008, a Riyadh court dropped charges against a Saudi employer who abused Nour Miyati, an Indonesian domestic worker, ignoring both the employer's confession and compelling physical evidence. Nour Miyati suffered daily beatings and was abused so badly that her toes and fingers were amputated after developing gangrene. During the three years of legal proceedings, she remained stuck in an overcrowded embassy shelter unable to work or return to her family in Indonesia. At one point, she also was sentenced 79 lashes for changing her testimony, though the sentence was later reversed.



On November 27, 2008, a Malaysian judge is to announce the verdict in the four-year case against Yim Pek Ha, the employer of an Indonesian domestic worker, Nirmala Bonat. In 2004, images of Bonat's badly burned and injured body shocked Malaysians. Bonat also had to stay in an overcrowded embassy shelter for years without being allowed to work and had to defend herself from charges of inflicting the abuse herself.

"2008 marked a year of missed opportunities," Varia said. "While most governments have started to think about some level of reform, many of these discussions have stalled. Providing comprehensive support services to victims of violence, prosecuting abusers, and providing civil remedies are reforms that just can't wait."

Human Rights Watch recommends that, in order to curtail all forms of violence against migrant domestic workers, governments should:

• Abolish or reform immigration-sponsorship policies so that domestic workers' visas are no longer tied to their employers;

• Develop protocols and train law enforcement officials on how to respond to domestic workers' complaints appropriately, and how to investigate and collect evidence in such cases;

• Prosecute perpetrators of psychological, physical, and sexual violence;

• Expedite criminal cases involving migrant domestic workers, who must often wait for a resolution for several months or years while confined in a shelter, and ensure they have legal permission to work during the interim period;

• Create and widely disseminate contacts for confidential, fully staffed and toll-free hotlines to receive reports of abuses against domestic workers;

• Create comprehensive referral and support services, including health care, counseling, shelter, consular services, and legal aid.

Source: Human Rights Watch.

## LAW week

## Tk 26cr gobbled up by CBA men in BTTB

Bangladesh Telecommunications Company Ltd (BTCL), former BTTB, stopped production in its workshop eight years' back but the authorities' failure to formally announce closure of the workshop has caused a loss of about Tk 26 crore to the state over these years. A special investigation team of the Anti-Corruption Commission (ACC) revealed that the money was misappropriated in the name of repair and maintenance of the workshop and conveyance expenses of officials since fiscal 2000-2001.

Of the Tk 26 crore, about Tk 9 crore was shown as repair and maintenance expenditure and around Tk 17 crore as conveyance expenses. Statistics showed that in the last eight years, Tk 46.88 crore was spent on purchase and distribution of materials worth about Tk 9 crore, the probe report said.

The workshop under the Telegraph Store and Workshop Directorate of the then BTTB, situated at Tejgaon in the capital, went out of production as telecommunication technology gradually developed into wireless system. -The Daily Star, November 25, 2008.

## Suspending rights thru' emergency challenged

The High Court (HC) issued a rule upon the government to explain why the provisions of the constitution empowering the president to suspend the fundamental rights of the people during the state emergency should not be declared void.

Upon a writ petition, the HC bench comprising Justice Syed Mahmud Hossain and Justice Quamrul Islam Siddiqui also asked the government to explain why the president's proclamation of emergency, suspending the fundamental rights on January 11, 2007, should not be declared unconstitutional. The law secretary, president's secretary and home secretary have been made respondents and asked to reply within four weeks. -The Daily Star, November 25, 2008.

## 3-tier security mulled for polls

Troops and other law enforcement agencies will be deployed to build up a three-tier security system during the parliamentary and upazila elections, now slated for December 29 and January 22. The caretaker government also hopes that the country's law and order will not deteriorate even if the state of emergency is lifted. "We hope that the situation will stay normal after lifting of the emergency," Home Adviser MA Matin told reporters after a meeting on law and order at the Secretariat. He, however, said the government would decide when to lift the emergency. He did not also say whether the emergency would be lifted totally or partially. Matin said the army, navy, Bangladesh Rifles (BDR) and other law enforcement agencies would be deployed a few days ahead of the polls as per the desire of the Election Commission. -The Daily Star, November 24, 2008.

## Khaleda's trial adjourned

A special court adjourned the trial proceedings of the Barapukuria coalmine draft case against BNP Chairperson Khaleda Zia and 15 others till November 30 this year. Judge Amar Kumar Roy of the Special Court-2 fixed the date as the lawyers of former ministers MK Anwar and M Shamsul Islam, submitted lawyers' certificates and informed the court that the High Court (HC) had stayed the proceedings of the case against Anwar and Shamsul Islam for two months. Receiving the certificates, the court asked the lawyers to submit the certified copies of the stay orders. Earlier, the HC stayed case proceedings of most of the accused including former premier Khaleda Zia and former ministers M Saifur Rahman, Matiur Rahman Nizami, Ali Ahsan Mohammad Mojaheed, Khandaker Mosharraf Hossain and Altaf Hossain Choudhury. -The Daily Star, November 24, 2008.

## TIB for EC power to cancel poll candidature

Transparency International Bangladesh (TIB) thinks that Section 91(e) of the Representation of the People Order (RPO) 2008 empowering the Election Commission (EC) to take measures against the candidates for violating the code of conduct should not be cancelled. A TIB statement signed by its senior advocacy officer Mohammad Imam Uddin yesterday said that if Section 91(e) of the amended RPO is cancelled, there will not be any official procedure to make the candidates comply with the code of conduct. It will also obstruct the way of empowerment of the Election Commission. "This rule of the RPO is very important in ensuring the compliance of other rules of the RPO including the rule against violation of electoral expenditures by the candidates. This rule is also inevitable in order to establish sound politics so that the corrupt, owners of black money and terrorists cannot win the election," the statement said. -The Daily Star, November 23, 2008.

## Somali pirates vow to resist any assault on super-tanker

Somali pirates holding an oil-laden Saudi super-tanker will fight back should any military intervention to free the ship be attempted, a member of the pirate group told AFP. "I hope the owner of the tanker is wise enough and won't allow any military option because that would be disastrous for everybody. We are here to defend the tanker if attacked," Abdiyare Moalim said. Speaking from the coastal village and pirate stronghold of Harardhere, off which the *Sirius Star* is anchored, he said he was one of the pirates on shore tasked with organising militias protecting the area. Negotiations continue with the owners of the super-tanker, who on Thursday were given 10 days to pay a ransom of 25 million dollars (20 million euros). -The Daily Star, November 23, 2008.

## Govt gave in to pressure from fundamentalists

Women's rights activist Ayesha Khanam criticised the government for giving in to pressure from fundamentalists on the Women's Development Policy 2008. "It's a setback for the government. They couldn't muster the courage to say no to a small group of people who violated the emergency rules," she told The Daily Star in an interview. "It's a double standard; it's contrary to the government's past promises." She said the fundamentalists took to the streets protesting equal rights for women and their access to resources though, interestingly, the two issues were not even included in the policy. Ayesha hoped that political parties will field more women candidates in the next general election. Women's organisations have already given a list of about 60 non-partisan women to the Awami League (AL) to consider them for the AL-led alliance ticket, she said. They would hand in a similar list to the BNP-led combine, she said adding that the recommended women can contribute a lot to the society, she said. Ayesha said the women's organisations had demanded 100 parliamentary seats reserved for women, to be elected through direct election. -The Daily Star, November 22, 2008.

**Dear reader,**  
You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: LawDesk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; email: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net