



LAW amusements



Law Hodgepodge

Over a century ago, a British judge was late for court so he hailed a cab and told the driver to take him to the Royal Courts of Justice. "Where are they," asked the driver. "You mean to say that you don't know where the law courts are?" asked the judge incredulously. "Oh! The law courts," replied the driver. "But you said the courts of justice."

Frank Kingdon-Ward was one of the first Europeans to explore Tibet. Of his visit in 1926, he writes in Explorers All: "We saw here nothing of the Oriental cruelty of which one hears so much in the West. We did see one criminal, a thief who was condemned to wear leg-irons for life, and passed on from (village to village) as a horrible warning. He was clanking cheerfully about his work when we saw him."

The word Devil's Advocate actually comes from Canon Law. In the Vatican, when arguments are being presented to have a person declared a saint, the Church appoints an official to find flaws in this evidence. This official is called the "Devil's Advocate" and has come to mean a person who espouses a cause just for the sake of argument.

A judge was riding horses one day with a young lawyer. They came to a stretch of open country and noticed a hangman's noose hanging from a tree. The judge turned to his companion and jokingly said: "Parsons, if that gallows had its due, where do you suppose you would be?" "Riding alone," came the quick reply.

In an action being argued before a judge, a lawyer addressed the jury for a very long time. At one point, the judge could not help himself but to remark: "Sir, you've said that before." "Have I, my Lord?" replied the lawyer. "I'm very sorry. I quite forgot." "That's ok," replied the judge. "I forgive you as it was a very long time ago."

Source: www.duhaime.org.

LAWS FOR everyday life

Specific legal relieves under law

IN medieval England courts of law got stuck with only one kind of civil remedy -- money damages. Understandably, this was not enough to satisfy all the aggrieved people that looked for case-specific remedies. Say for example: you've managed a deal to buy the 'Mona Lisa'. At the time of delivery its current owner refuses to respect the deal. Without any shadow of doubt, no amount of money will compensate your feeling of deprivation until you get the masterpiece itself. But the English courts of medieval period were left handicapped by the strict technicalities of procedural law which were quite hard to break free from and knew nothing but awarding compensation in the form of money.

At this point in legal history emerged the 'courts of equity' as contrasted to 'courts of law'. Equipped with required flexibility and authority these courts started giving an array of remedies like 'specific performance of agreements', 'injunctions', 'declarations' etc.

In the subcontinent, no such parallel equity court structure developed. Instead, the Specific Relief Act 1877 was enacted that empowered regular courts to award equitable relieves. Following are some provisions of this Act:

OF THE SPECIFIC PERFORMANCE OF CONTRACTS (CHAPTER II)

(a) Contracts which may be specifically enforced

Cases in which specific performance enforceable Section 12. Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced-

(a) when the act agreed to be done is in the performance, wholly or partly, of a trust;

(b) when there exists no standard for ascertaining the actual damage caused by non-performance of the act agreed to be done;

Illustrations

A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare china vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

(c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or

Illustrations

A contracts with B to sell him a house for taka 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase money.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a share-holder, which cannot otherwise be procured.

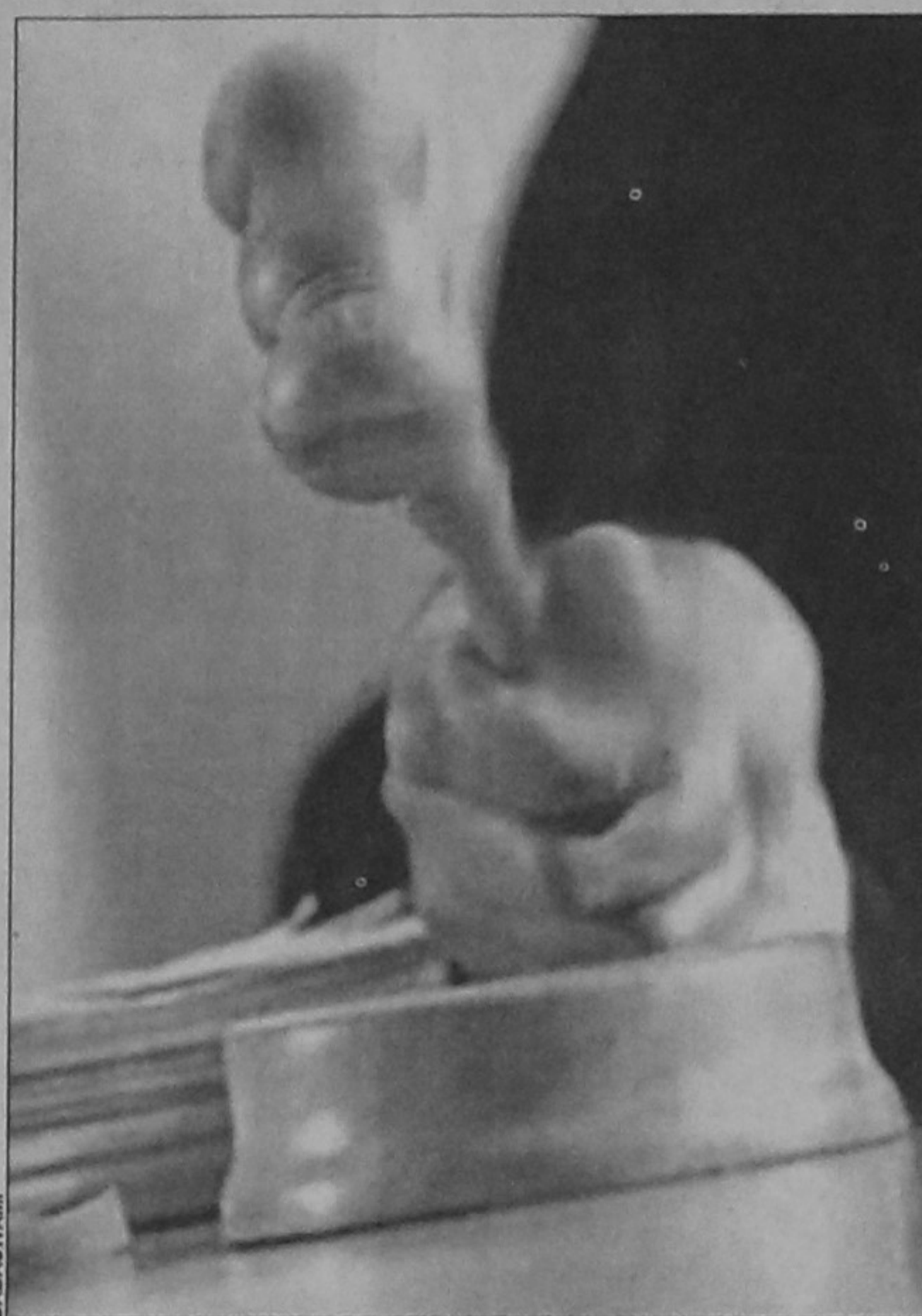
A contracts with B to paint a picture for B, who agrees to pay therefor taka 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the taka 1,000.

(d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

OF DECLARATORY DECREES (CHAPTER VI)

Discretion of Court as to declaration of status or right Bar to such declaration

Section 42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any



BABASWAMI

person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation - A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations

(a) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(f) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(g) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(h) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C, B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children, may, in B's lifetime, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

-Law Desk.

LAW week



Kibria killing case: Punishment to killers demanded

Speakers at a rally in the city demanded speedy trial of Shah AMS Kibria murder case and exemplary punishment to his killers.

They said the killing case of Kibria, former finance minister and UN under-secretary general, remains pending for the last four years at different stages.

Bangabandhu Smriti Chorch Kendra organised the programme at the National Press Club to mark the 4th death anniversary of the minister with its President Shah Abdul Musabbir in the chair. - The Daily Star 27 February 2009.

Contempt rule on barrister Rafique

The High Court (HC) on 25 February 2009 issued a rule on barrister Rafique-Ul-Huq to show cause within three weeks why punitive action should not be taken against him on charge of contempt of court for using 'abusive' and 'objectionable' language about a judge of the court.

Responding to a contempt petition jointly filed by two SC lawyers, an HC bench also directed Rafique, one of the senior most lawyers of the Supreme Court (SC), to appear in person before it at 10:30am on March 22 in connection with this petition.

The HC bench comprised of Justice Syed AB Mahmudul Huq and Justice Moyeenul Islam Chowdhury. Petitioners' counsel Ramzan Ali Sikder told newsmen that Rafique had abruptly stood up and shouted abusive and objectionable languages at Justice Moyeenul Islam Chowdhury during the delivery of a dissenting judgement on February 23. - The Daily Star 26 February 2009.

New bill on RTI tabled in JS

The government has placed a bill in parliament seeking to enact a law to ensure people's empowerment by allowing them to have access to their right to information. The bill was tabled when the much talked about Right to Information Ordinance 2008 ceased to be in force.

The bill titled 'Right to Information (RTI) Act 2009' will have a retrospective effect from October 20, 2008, the day the immediate past caretaker government promulgated the right to information Ordinance.

Information Minister Abul Kalam Azad placed the bill in supplementary orders of the day and sent it to the parliamentary standing committee on information ministry to report back to the House on scrutiny within 10 days.

All sorts of registered organisations will now come under the law and be bound to provide citizens with information on matters of public interest once the RTI is passed. - The Daily Star 26 February 2009.

Army-BDR's poll day power cut

Parliament passed a bill scrapping the authority of the military and Bangladesh Rifles (BDR) personnel to arrest anyone without warrant for violation of electoral laws on the polling day.

The bill ratifies the three Ordinances promulgated by the immediate past caretaker government amending Representation of the People Order (RPO) before the ninth parliamentary polls last year.

It also does away with the 'no-vote' option introduced in 2008 as part of electoral reforms.

It however includes a new provision to provide for postal ballot for Bangladeshis living abroad and officials on election duty.

This apart, the provisions incorporated in the RPO through the Ordinances remain intact. - The Daily Star 25 February 2009.

Leave local govt alone

Newly elected upazila chairmen and vice-chairmen on 23 February 2009 asked the government to make laws in line with Local Government (Upazila Parishad) Ordinance 2008 for better functioning of the local bodies.

They also blasted the plans to have lawmakers as advisers to the upazila councils, and said the parishads would weaken if compelled to follow 'dictates from the MPs'.

If the government lets the Ordinance promulgated by the immediate past caretaker government lose effect, and revives Upazila Parishad Act 1998 with a few amendments, it would serve a severe blow to the nation's aspiration for a strong local government system, they noted. - The Daily Star 24 February 2009.

HUMAN RIGHTS advocacy

What is the human right to freedom from poverty?

Poverty is a human rights violation. Every woman, man, youth and child has the human right to a standard of living adequate for health and well-being, to food, clothing, housing, medical care and social services. These fundamental human rights are defined in the Universal Declaration of Human Rights, CEDAW, the International Covenants and other widely adhered to international human rights treaties and Declarations -- powerful tools that can empower efforts for social and economic justice worldwide.

The human rights at issue

The human right to live in dignity, free from want, is itself a fundamental right, and is also essential to the realisation of all other human rights -- rights that are universal, indivisible, interconnected and interdependent. The right to be free from poverty includes:

- The human right to an adequate standard of living.
- The human right to work and receive wages that contribute to an adequate standard of living.



- The human right to a healthy and safe environment.
 - The human right to live in adequate housing.
 - The human right to be free from hunger.
 - The human right to safe drinking water.
 - The human right to primary health care and medical attention in case of illness.
 - The human right to access to basic social services.
 - The human right to education.
 - The human right to be free of gender or racial discrimination.
 - The human right to participate in shaping decisions that affect oneself and one's community.
- The human right for children to develop in an environment appropriate for their physical, mental, spiritual, moral and social development.

Source: PDHRE, The People's Movement for Human Rights Learning.

LAW lexicon

Putative - Alleged; supposed; reputed.

Quantum meruit - Expression means "as much as he deserves," and describes the extent of liability on a contract implied by law.

Quid pro quo - What for what; something for something; giving one valuable thing for another.

Quash - To vacate or void a summons, subpoena, etc.

Quasi-contract - An obligation created by the law in the absence of an agreement or contract; not based upon the intentions or expressions of the parties.

Quasi-criminal action A classification of actions such as violation of a city ordinance that is not also violation of a criminal statute, which are wrongs against the public punishable through fines but are not usually indictable offences.

Quiet title action - A court proceeding to remove a cloud on the title to real property.

Quitclaim deed - A deed without warranty of title which passes whatever title the grantor has to another.

Source: Jurist International.

HUMAN RIGHTS monitor

Make human rights a regional concern

SOUTHEAST Asian leaders at the 14th Association of Southeast Asian Nations (ASEAN) summit meeting should address the dire human rights situation in Burma, improve treatment of refugees and asylum seekers, and strengthen protection for migrants, Human Rights Watch said in a letter today to the ASEAN secretary-general, Surin Pitsuwan. Human Rights Watch urged that these issues be a priority for the new ASEAN human rights body, which is to be discussed at the meeting taking place from February 27 to March 1 in Hua Hin, Thailand.

Human Rights Watch said that the recent forced return at sea of boats containing ethnic Rohingya refugees from Burma, leading to hundreds of deaths, was proof of the need for regional solutions to Southeast Asia's human rights problems. The global economic downturn and the resulting impact on migrants' rights also highlights how gaps in current labor and policy frameworks across the region also have left millions of workers at high risk of mistreatment, Human Rights Watch said.

"The tragedy surrounding the Rohingyas' perilous exodus reveals glaring failures of ASEAN in dealing with Burma," said Elaine Pearson, deputy Asia director at Human Rights Watch. "ASEAN's continuing failure to hold the Burmese military government accountable for abuses and ASEAN's unwillingness to provide refuge for those fleeing oppression in Burma are two sides of the same coin."

Burma's military government continues to deny its citizens basic freedoms, including freedom of expression, association, and assembly. It regularly imprisons political activists and human rights defenders - the number of political prisoners nearly doubled following the September 2007 crackdown, to more than 2,150. The Burmese military continues to violate the rights of civilians in ethnic conflict areas by committing extrajudicial killings, forced labor, and land confiscation without due process, both as part of military offensives and in preparation for mega-infrastructure projects of foreign companies.

Human Rights Watch said that ASEAN's human rights body should independently investigate and report on human rights condi-

tions in member countries, and that Burma should be a priority.

The summit meeting is likely to discuss what measures may be taken, in cooperation with the United Nations refugee agency, to protect the Rohingya in countries where they land after fleeing Burma. But a significant step to ensure binding commitment of the entire region would be for all ASEAN member states to ratify the 1951 Refugee Convention and its 1967 Protocol without delay.

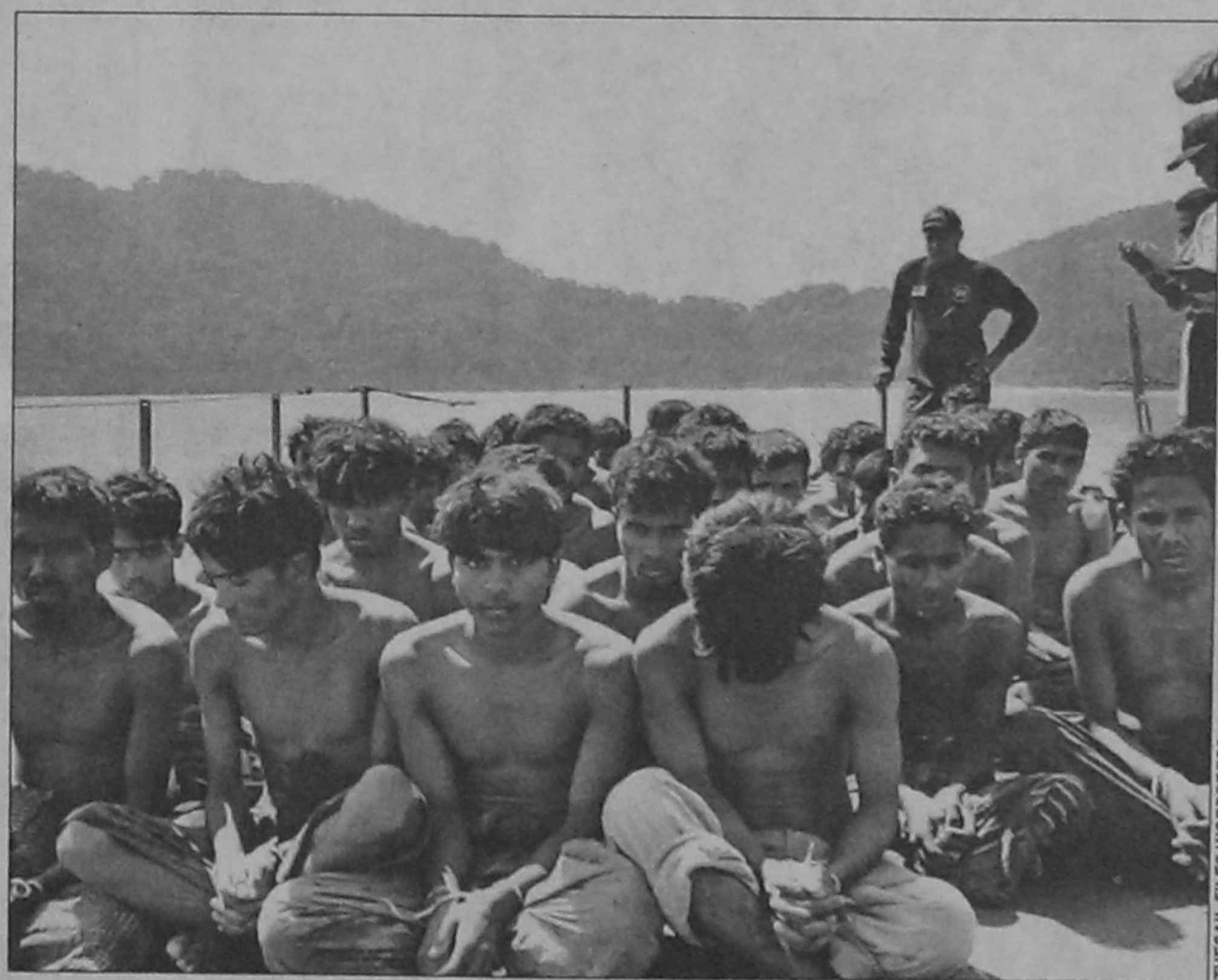
"The plight of the Rohingya, exacerbated by Thailand's actions in pushing them back out to sea, should be a wake-up call for ASEAN to change its approach in dealing with refugees and migrants," said Pearson. "ASEAN countries can no longer look the other way and close the door to those in need of protection."

Millions of men and women from Southeast Asia work as migrants in both Asia and the Middle East, typically in domestic work, construction, manufacturing and agriculture. Trafficking within, and emanating from, Southeast Asia remains a serious problem, and harsh immigration enforcement measures have fueled additional abuses in countries such as Malaysia and Thailand.

"Many migrants are deceived about their working conditions, cheated out of their wages, abused by their employers, and deported without access to redress," said Pearson. "The economic downturn places migrants at heightened risk - desperation and gaps in legal protections provide a recipe for exploitation."

In many cases, bilateral cooperation between ASEAN countries has failed to establish adequate protection for vulnerable migrant populations. Regional cooperation and leadership from ASEAN can help to ensure minimum standards across the region that will avoid an unhealthy race to the bottom, as countries compete for jobs in a volatile economic climate. Furthermore, ASEAN can play an important role in fighting human trafficking.

Both Malaysia and Thailand have failed to investigate allegations of collusion between government officials and trafficking gangs on the Malay-Thai border. In 2008, Burmese migrants told Human Rights Watch of being



THE SAILEE WORDPRESS

sold to criminal gangs, who charged those with money to smuggle them back into Malaysia and trafficked those who could not pay.

While ASEAN has recently declared its intention to address some of these issues through its Declaration on the Protection and Promotion of the Rights of Migrant Workers, its Declaration on Trafficking in Persons, Particularly Women and Children, and the Bali Process, concrete improvements have yet to be seen. In the letter, Human Rights Watch urges ASEAN member states to end restrictions on migrant workers' freedom of movement and freedom of association, to ensure that migrants have access to justice and support services, and to institute screening procedures to identify and assist victims of traf-

ficking and abused migrant workers, among other measures.

"Concrete measures to promote and protect the rights of refugees and migrants will make it possible for ASEAN to evolve from a talk shop and become an action-oriented organization, responding to what really matters to people in Southeast Asia," said Pearson.

Source: Human Rights Watch.

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