



LAW amusements



Eccentric English Laws

All of these extracts have been taken directly from the old, dusty English Statute collection.

Swansong
The British royals have long sought to retain a monopoly on swans, considering them to be so beautiful that they should belong only to the aristocracy.

And so in 1482, Edwards IV approved AN ACT FOR SWANS, which set out that only the king or wealthy landowners could own swans with ownership confirmed by carving a family emblem on the bird's upper beak. The legislation held that any swan held by a commoner, could be seized by a member of the aristocracy "whereof the King shall have one have, and he that shall seize, the other half".

A bureaucracy and a court were set up to enforce the law and regulate disputes over swan ownership.

Even as of 2008, England continues to maintain an albeit now largely ceremonial position, that of "Master of the Swans". The appointee proudly adds the words "Master of the Swans" to his title whenever he makes his public appearances on the polo grounds of England. Here's the text of the 1482 law:

"Where as well our said Sovereign Lord the King, as other Lords, Knights, Esquires and other noble men of this noble realm of England, have been heretofore greatly stored of ... swans in divers parts of this Realm... Until of late, ... divers keepers of swans ... have stolen cygnets and put upon them their own mark by which unlawful means the substance of the swans be in the hands and possession of yeomen and husbandmen and other persons of little reputation.

"Wherefore it is ordained, established and enacted by our said Sovereign Lord the King ... that no person, of what estate, degree or condition he be ... shall have or possess any such (swans) of his own or any other to this use shall have or possess any such (swans) of the estate of freehold to the yearly value of five marks above all yearly charges. And if it happens any person or persons not having any possession of lands ... to the said yearly value, ... to have or possess any such (swans) ... and it shall be lawful to any of the King's subjects, having lands ... to the said value, to seize the said swans as forfeit; whereof the King shall have one half and he that shall seize, the other half."

Source: www.duhaime.org

COURT corridor

Compensation for false cases

AMIT KUMAR DEY

Mr. Kapil Krishna Goldar was the Tashilder of Vesta Property Cell Madaripur. He lodged a complaint case in the Court of the Learned Magistrate, Madaripur in 2000 against accused Farida Begum and others. The allegation was that the landed property is vested property & the accused persons in connivance with each other created forged deed of purchase in their favour with an aim to grab the said property.

The Learned Magistrate took cognizance of the offence against the accused persons including the husband of accused Farida Begum, Abdul Majid Miah and issued process by way of warrant, pursuant to which Farida Begum and others voluntarily surrendered before the Court of the Learned Magistrate.

They were taken into custody. Thereafter, husband of accused Farida Begum, Abdul Majid Miah, as an accused died at Dhaka perhaps being psychologically suppressed. The Learned Magistrate on humanitarian ground released Farida Begum on bail. Challenging the entire proceedings the other co-accused of this case preferred a revisional application to the High Court Division on the ground that they had lawfully acquired the disputed property. The High Court Division discovered that criminal proceedings initiated by Kapil Krishna Goldar against Farida and others was not tenable under the provisions of law.

But what is done cannot be undone!

Such erroneous proceeding initiated against the accused caused humanitarian disaster to Farida since she was languishing in the custody, her husband died at Dhaka.

We cannot be oblivious to the fact of this kind of humanitarian disaster caused to persons like the Farida simply by reason of erroneous proceeding. When such false cases emanate from public officers at their whim and caprice causing irreparable damage to the citizen becomes more pathetic.

Learned Magistrates perhaps here have a role to play. More than 70% criminal cases of our country are being filed just to harass innocent poor people. Though if a false complaint is made against any person, the aggrieved person can institute criminal proceeding u/s 211 of the Penal Code. This is punishable up to 7 years imprisonment, or with fine or with both. But in our social circumstances a victim never dare to file a case against his



giant opposition. In such situation the concerned Court can suo motu take actions according to section 250 of the Code of Criminal Procedure.

What says Section 250 of Cr.P.C.?

Against an allegation when the Magistrate is of opinion that the accusation is false and either frivolous or vexatious, he may give order of discharge or acquittal. The complainant may be asked to show cause why he should not pay compensation to such accused or to each or any of such accused. On satisfaction the magistrate can direct to pay compensation. Failure to pay compensation may also entail imprisonment.

Rationale of the section

The rationality of such compensatory provision is well perceived. The objectives are two fold; firstly to award by a summary order some compensation to the person against whom a frivolous or vexatious accusation is brought, leaving it to him to obtain further redress against the complainant, if he seeks it by a regular civil suit or criminal prosecution, and secondly, to deter persons from making vexatious and frivolous complaints. An order under S. 250 can be made, only when the Magistrate's order acquitting the accused shows that, in his opinion, the prosecution was clearly false and vexatious or frivolous. The term "frivolous" indicates that the accusation is of a trivial nature is 'trifling', 'silly' or without due foundation. The term vexation implies that the accusation is one that ought not to have been made is intended to harass or annoy the accused.

Who can be ordered to pay compensation?

The section applies to all persons who make complaints. Even the state or a municipal committee may be ordered to pay compensation under this section. A police officer making a report in a non-cognizable case is not exempt from liability under the section. The reason for exempting police officers from the operation of S. 250 in cognizable cases is that it is their duty to report cognizable offences to higher police officers and Magistrates and they should not be hampered in the performance of that duty by the fear of an action being taken against them under that section. It has been judicially settled that when a responsible officer in the honest discharge of his duties communicates to the proper authority the commission of an offence within his jurisdiction on the faith of the information given to him by his subordinates, it should not be presumed that he has acted falsely and vexatiously in the sense of S. 250 of Cr.P.C. or otherwise than in perfect good faith.

Our expectation

If our learned Courts carefully & regularly take initiative according to section 250 of the Code of Criminal Procedure, though initially various problems may arise like multiplicity of cases but ultimately filing of false cases will be discouraged, mounting pile of cases will be decreased, victims will get compensation at least for their financial losses.

Amit Kumar Dey is Judicial Magistrate, Barguna.

HUMAN RIGHTS advocacy



Global plan of action against human trafficking

AMBASSADOR ALYKSAANDR SYCHOV

THE issue of human trafficking has been gaining increased prominence as is evidenced by the United Nations General Assembly thematic debate on the issue that was held on 13 May 2009. This event prominently featured the idea of a global plan (strategy) of action against human trafficking. So, what is this idea about?

A global strategy against human trafficking was first envisaged in the context of the Global Programme against Human Trafficking that was launched by the United Nations Office on Drugs and Crime (UNODC) in 1999. However, while the Programme has been underway with success, its "strategy" component has never materialised.

The idea was again brought to life in 2006 by UN General Assembly resolution titled "Improving the coordination of efforts against trafficking in persons". The resolution advised UN Member States to consider the advisability of a global strategy against human trafficking.

Belarus has been an ardent advocate of this initiative. It believes that there are three basic reasons behind the need for a global action plan. They may be identified as of structural, normative, and organisational nature. There is currently a tendency in the world to tackle the problems that "do not recognise borders" in a comprehensive manner. It is surely the right approach. Since all those problems are multifaceted and interlinked with numerous other challenges, there is no way to deal with them with success other than to cover all their "angles" from the top down.

For example, this is the way how the problem of terrorism has been addressed. The UN General Assembly drafted a global strategy against terrorism in September 2006, which provides an overarching framework for the implementation of more than a dozen major conventions in this area.

Human trafficking structurally lags behind. There are some international and regional tools on human trafficking developed by UNODC, International Organisation for Migration, Organisation for Security and Co-operation in Europe, and others. However, each document is mainly covering some specific aspect of human trafficking or a specific region rather than the issue as a whole.

The recent discussion in the UN revealed that some states view the Human Trafficking Protocol that organised the 2000 UN Convention against Transnational Organized Crime as a global comprehensive document. Yet many others disagree. The Protocol was drafted within UNODC the agency that, in accordance with its mandate, puts a high premium on "law and order". Therefore, it should not be a surprise that the Protocol, drafted by national crime experts within a "crime"-driven entity, is mainly about "law and order".

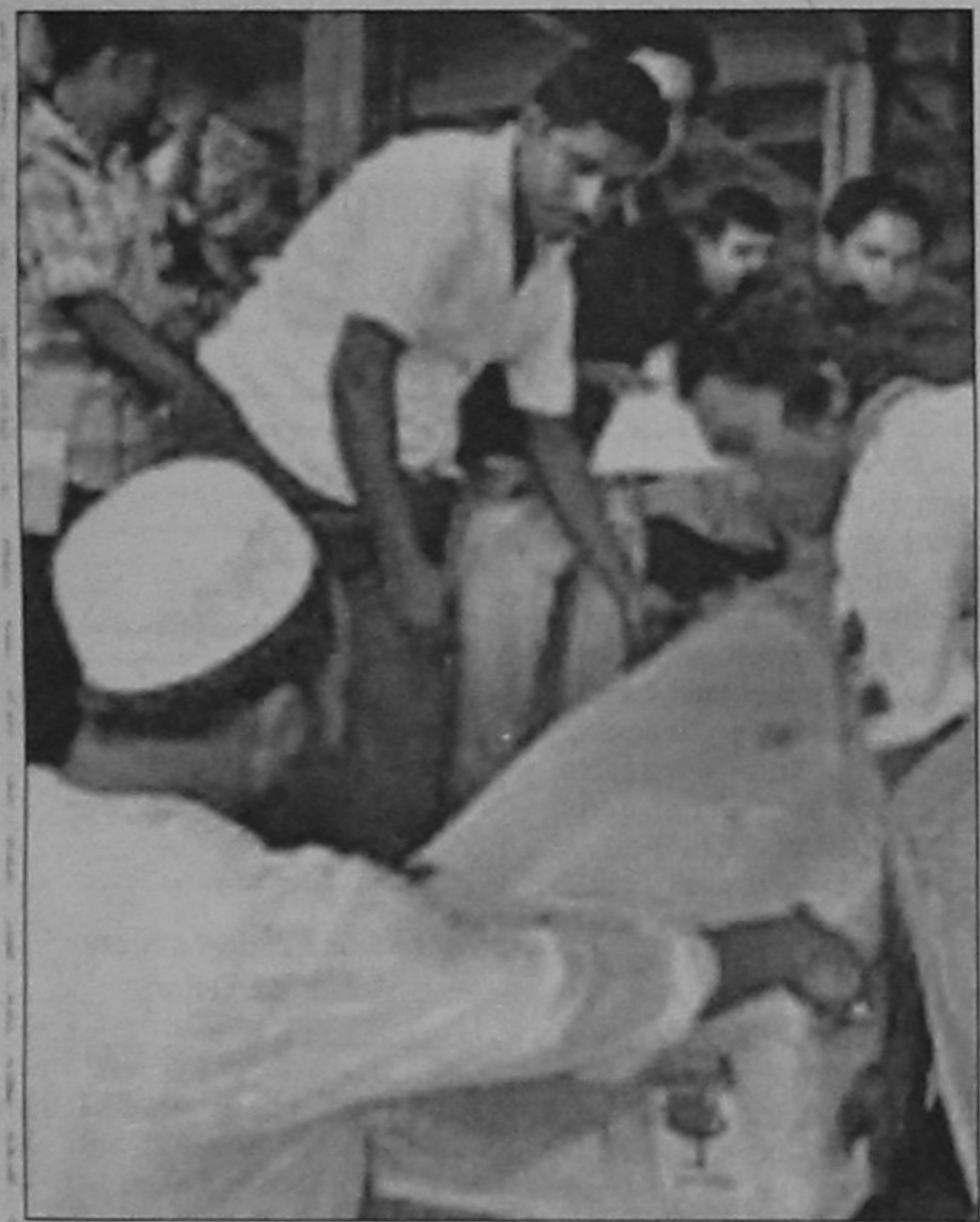
In other words, we have a global anti-trafficking structure that is "dispersed". It seems only logical in this context to impart to this structure a higher degree of coherence and uniformity. That is where a global plan of action should come in. It should be drafted by the United Nations General Assembly as the only

RIGHTS monitor



'Unnatural deaths' of migrant workers

Bangladeshi workers have been dying while working in different countries across the world. In the last four months, a total of 904 deceased migrant workers were returned home from different countries. Of them, 32 were women workers. The



deceased workers' families alleged that most of the workers died due to illness resulting from torture, though the death certificates showed them as having had 'heart attacks'. Workers of this country go abroad through brokers and recruiting agencies many of which do not have proper licenses. Given this fact, a large number of workers fall victim to cheating by the recruiting agencies, and cannot seek legal redress for fear of being victimised by the police.

Odhikar believes that the remittance sent by migrant workers is one of the prime sources of national income, and plays a significant role in enhancing the economy and GDP of the country as well as family stability. Unfortunately, their labour and working conditions were hardly ever appreciated during any regime.

Odhikar urges the government to form a special cell immediately in Bangladesh missions abroad where there is a Bangladeshi labour market. This should be monitored by the Ministry of Foreign Affairs. Odhikar believes that it is the moral responsibility of the government to monitor recruiting agencies, taking action against unscrupulous and unlicensed recruiting agencies and to arrange compensation for victims of torture and the families of deceased migrant workers.

Source: Human rights monitoring report-May-2009, Odhikar.

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LAW week

HRSS in December

Human Rights Summer School (HRSS) this year would be held tentatively in mid-December. HRSS is a two-week long residential training course on human rights jurisprudence and advocacy organized by Empowerment through Law of the Common People (ELCOP). Senior law students from the different public & private universities of the country form the corpus of participants. However, HRSS has been attended by students from countries like India, Nepal, Pakistan, and Iran in the past couple of years. The resource persons are drawn from the academicians, lawyers, Judges, NGO & human rights activists from home and abroad. In the past eminent educators from India, Nepal, the USA, Australia, South Africa and Bangladesh participated as resource persons. This year HRSS would celebrate its 10th Anniversary. Alumnnus of the past Summer Schools are asked to give their present details to ELCOP Office or mail to elcop71@gmail.com. The main theme of this year's summer school is "Post-Justice Conflict, Peace and Human Rights". The theme and other facets of the 10th Summer School were fixed in a meeting held at ELCOP office on 27 May 2009. Law teachers from different public and private universities were present in the meeting. Dr. Mizanur Rahman, Director HRSS and Professor of Law, Dhaka University reveals details of 10th HRSS while Dr. Shah Alam, Professor of Law, Chittagong University presided over the meeting. -LawDesk.

HC seeks river report

The High Court (HC) asked the authorities to place before it statements on the steps already taken and to be taken to prevent encroachment, earth-filling and construction of illegal structures on the rivers surrounding the capital. A division bench of the HC directed the directors general (DGs) of the Department of Environment (DoE) and Directorate of Land and Records (DLR), and chairman of Bangladesh Inland Water Transport Authority (BIWTA) to be present in the court for placing such statements on the rivers Buriganga, Turag, Balu and Shitalakhya. -The Daily Star, June 04, 2009.

Pintu caught from court

Nasiruddin Ahmed Pintu was arrested on the High Court compound in connection with the February 25-26 carnage at the Pikhana BDR headquarters. Pintu, a former BNP lawmaker, is the first prominent political figure to have been arrested after the sensational incident. His name has first officially surfaced when the report of the national committee for investigating the bloody mutiny at Pikhana categorically said he helped mutineers flee by arranging engine-run boats to cross the Buriganga at Keraniganj ferry ghat. -The Daily Star, June 03, 2009.

Lawmakers pledge to save rivers

Speaker and members of parliament (MPs) made strong commitments to take every measure necessary to stop illegal grabbing and pollution of the rivers flowing through the country including those around the capital. They said the rivers are the lifelines of the country's economy, agriculture and livelihoods and any delay or negligence to save them would have disastrous consequences like shortage of both drinking and farm water and subsidence of soil in the city. The pledges came at the inaugural function of a programme titled "To the Prime Minister: Save rivers, save Dhaka", a joint initiative of The Daily

Star and Channel i held at the South Plaza of the National Parliament. -The Daily Star, June 02, 2009.

Sedition case called into question

Document shows BDR jawans of Bolipara Camp of 10 Rifle Battalion in Bandarban took up arms after their commanding officer on February 26 order them in writing to do so. However, a sedition case was later filed against 235 jawans of the camp for looting firearms from the arsenal. The order issued at 10:00am on February 26 reads, "Considering overall situation, I, the signatory, am issuing an order to the members of Bolipara Camp of 10 Rifle Battalion headquarters to take personal and heavy arms and ammunition from the arsenal..." The Daily Star has a copy of the order signed by the then commanding officer of the battalion Lt Col Abdullah Ali Jayeed. -The Daily Star, June 02, 2009.

Grabbers flex court muscles

Although the High Court has recently directed the government to evict encroachers from four rivers around the capital, 147 grabbers had earlier managed status quo from the court through legal loopholes and turned everything in their favour. Legal experts say the court order went in favour of the grabbers incidentally as they never mentioned they were filing petitions regarding riverbank and often produced fake documents to mislead the court. Bangladesh Inland Water Transport Authority (BIWTA) or the district administration could not take legal action against the encroachers following the status quo. -The Daily Star, May 31, 2009.

Trio to be asked to repay Tk 1.36cr

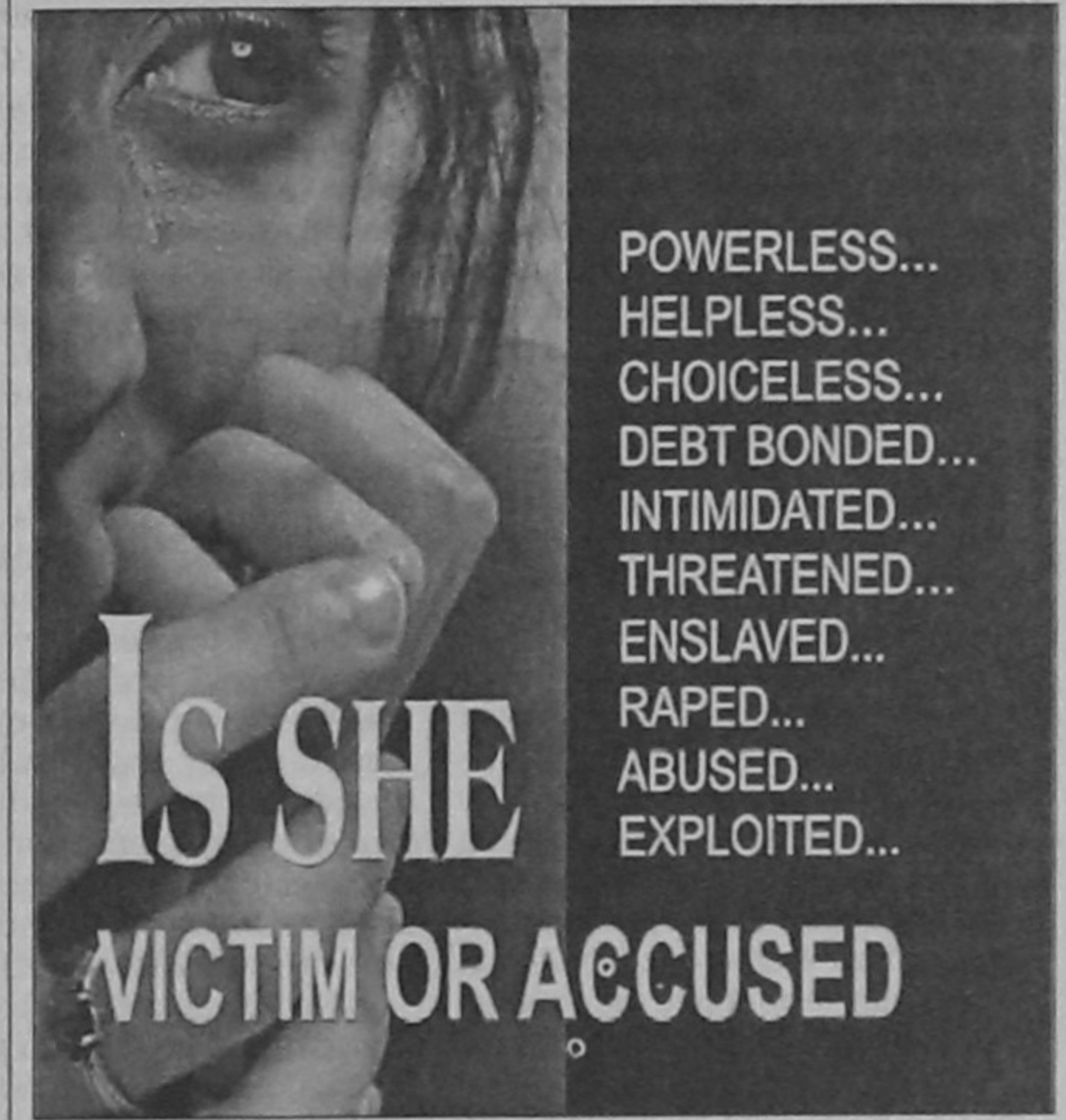
A parliamentary sub-committee finalised a set of recommendations including one for recovering Tk 1.36 crore "taken illegally" as fuel allowance by former speaker Jamiruddin Sircar, his deputy Akhtar Hamid Siddiqui and former chief whip Khandaker Delwar Hossain. Formed to look into alleged corruption in procurement and arboriculture in the parliament secretariat in the last seven years, it will submit a report to the legislature's all-party probe body. Earlier, the sub-committee found that Sircar received around Tk 60 lakh, Akhtar Hamid Tk 36.63 lakh and Delwar Tk 40 lakh beyond their entitlement to fuel allowance. -The Daily Star, May 31, 2009.

River authorities guilty too

Bangladesh Inland Water Transport Authority (BIWTA), the organisation responsible to protect the rivers from encroachers, has set up structures on the filled-up land and rented out those, apparently encouraging these greedy people to violate the laws. In a recent visit to Sadarghat, it was seen encroachment on the Buriganga continues on both sides of the BIWTA office. The Buckland embankment constructed along the riverbank in Sadarghat has now become a narrow lane. Every day the embankment faces huge traffic congestion as the BIWTA authorities have built several markets on it in two rows. -The Daily Star, May 30, 2009.

Killing in 'crossfire' causing concern

Despite repeated protests at home and abroad, extra-judicial killings by the law enforcers continue unabated, causing concern among the people. Apart from constituting human rights violation, killings in the name of 'crossfire' or 'encounter' raise questions over the law enforcers' training and skills in handling firearms. Sources said around 800 people were killed in 'crossfire' or 'encounter' across the country since 2004. Of them, 570 were killed by the Rapid Action Battalion (Rab) and the rest by the police. Some 70 people were shot during 'gunfight' with police and Rab in last one month. -The Daily Star, May 30, 2009.



POWERLESS...
HELPLESS...
CHOICELESS...
DEBT BONDED...
INTIMIDATED...
THREATENED...
ENSLAVED...
RAPED...
ABUSED...
EXPLOITED...

universal institution in terms of its membership and issues on its agenda. As far as normative content is concerned a comprehensive document here would be one that puts an equal emphasis on each of the three traditional Ps prevention, prosecution and protection.

A casual look at legal instruments drafted by specialised agencies would reveal that all of them have, in fact, addressed the three Ps. But a thorough analysis of these tools shows that neither treats each of the three aspects equitably.

There is good reason to believe that legal documents elaborated under the auspices of specialised agencies, were imbued with a preference for advancing a specific aspect that falls under the mandate of an agency in question. Thus, each tool, in essence, became "specialised".

So it turned out that normatively the world is primarily equipped to deal with the consequences of human trafficking (prosecution and protection), rather than with its causes (prevention). The underlying factors of human trafficking, such as economic globalisation and social construction of this phenomenon, which consistently trigger ever increasing flows of migrants have not been adequately addressed so far.

If history is any guide, we should know that "reduced" policies, in whatever global or national area, always fail. Therefore, a global plan of action is a proper place to address human trafficking in a comprehensive normative manner. Besides, drafting it within the universal (UN General Assembly) rather than a specialised body would ensure that specific "specialised" biases do not prevail.

The last, but by no means the least, rationale behind the need for a global plan of action has to do with how global anti-human trafficking work is organised in terms of factors.

Today, there are no visible players in the area of human trafficking that were not so visible on the global scene even a decade ago states, international organisations, civil society, private sector, celebrities. Where do they all fit in? Do they work in a most efficient way as to bring to the common effort the highest added-value? We do not know. All existing international treaties, conventions and other instruments in the area of human trafficking aim to harmonise appropriate national legislations. These tools do not prescribe precise roles for the increasing number of non-state actors. As a result, numerous NGOs, though committed to fighting human trafficking in principle, in practice may pursue policies that cancel each other out because they may hold to opposite views on some aspects of this issue.

That is why there is an urgent need for a global framework that would ensure effective co-operation, coordination, and pursuit of agreed-upon policies among various stakeholders and multiple anti-human trafficking initiatives.

Mr. Alyksandr Sychov, Permanent Representative of Belarus to international organisations in Vienna.

-Compiled by Law Desk.