



LAW update



Landmark LGBT rights decision

Indian High Court relies on declaration of principles on equality

The Delhi High Court, in its landmark decision decriminalising homosexuality, relied on concepts developed in the Declaration of Principles on Equality, launched by the Equal Rights Trust (ERT) in 2008. In its judgment, the court described the Declaration as representing 'current international understanding of Principles on Equality', and cited in full the Declaration's definitions of the "right to equality", "equal treatment" and "discrimination", in ruling that Section 377 of the Indian Penal Code was unconstitutional.

This case concerned a writ petition (a public interest action taken before the court) brought by an Indian NGO, NAZ Foundation, working with HIV/AIDS sufferers which argued



that section 377 of the Indian Penal Code was unconstitutional. Section 377 entitled "Of Unnatural Offences" has effectively been interpreted as criminalising consensual sexual acts between persons of the same sex.

Responding to the Court's decision, ERT Executive Director Dimitrina Petrova said: "This is a great day for LGBT rights in India and across the world; it's a great day also for all those who value the fundamental notion of equality." The Court, by relying upon the Declaration of Principles on Equality, has underlined the value which these legal principles can have for anyone challenging discrimination. "I am convinced that this judgment will resonate across other jurisdictions where forms of discrimination are still enshrined in national law. "I also hope that members of the judiciary in other countries will find the Declaration of Principles on Equality useful in interpreting the fundamental right to equality and the concept of discrimination."

Reflecting on the case, Anand Grover, Director of the Lawyers Collective HIV/AIDS in India, and Senior Advocate for NAZ, said: "A new era has dawned in India. As the judgment underscores it is dignity and inclusion that we have captured. The judgment is a lesson for other sectors; it will have repercussions in all parts of the world."

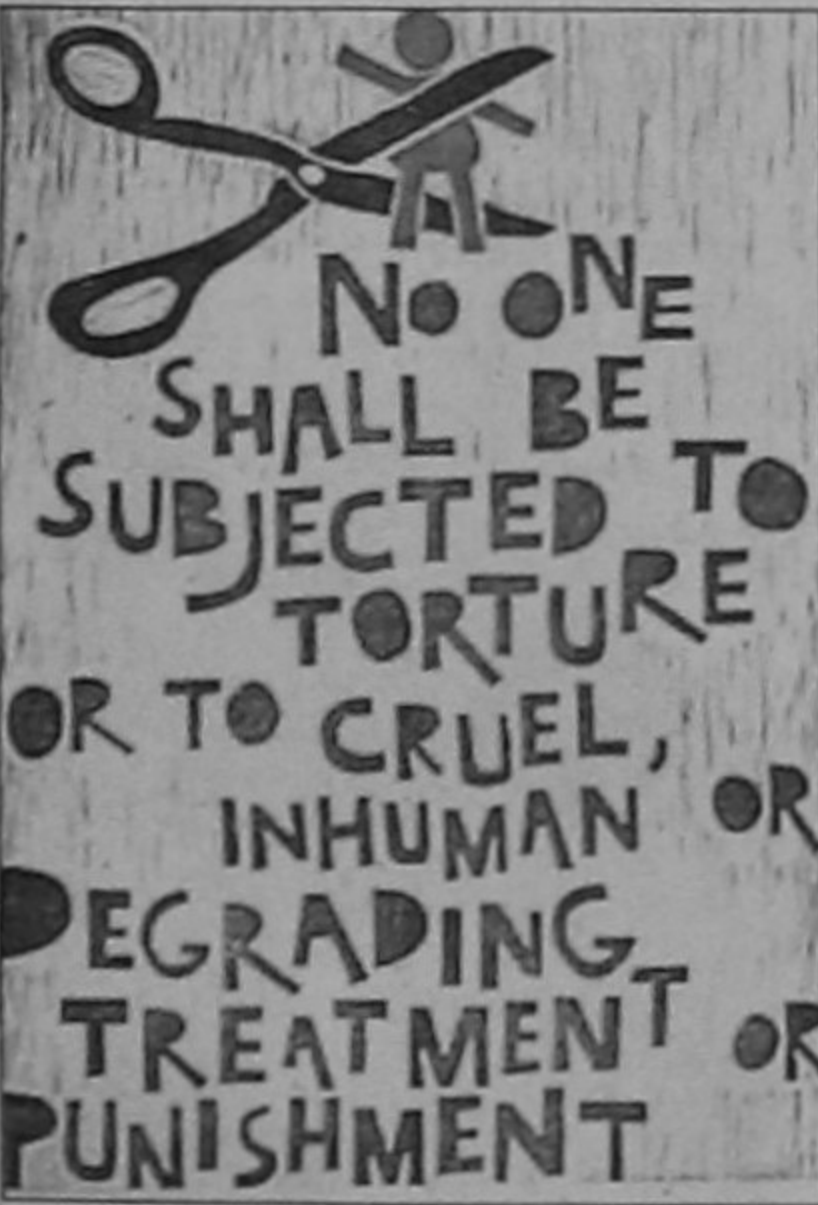
Source: Equal Rights Trust.

LAW event



Stop torture

June the 26th is declared as the UN International Day in Support of Victims of Torture. In light of this, Odhikar, as part of its UN-OPCAT activities, took up a three-day programme from 25 to 27th June 2009. On the 25th and 26th June, memorandums were handed over to the Deputy Commissioners and Superintendents of Police, rallies and meetings were organised at the district level in the Odhikar's programme areas of Satkhira, Jessore, Kushtia, Sirajganj, Rajshahi, Dinajpur, Tangail, Munshiganj and Sylhet. On 27th June as the grand finale Odhikar organised an unprecedented event 'Tribunal against Torture' in order to increase public and media awareness about the rapidly degrading situation in Bangladesh with regard to torture. The tribunal was followed by a discussion meeting, attended by among others, current and former Members of Parliament, journalists, lawyers, academics, politicians from the governing party and the Opposition, etc.



The Tribunal against Torture was the first of its kind ever to be held in Bangladesh. Five courageous victims of torture and the wife of a deceased victim, made their statements to a packed auditorium of approximately 120 persons. Two 'experts', supported them on law points and discussed the various provisions of the law under which the victims could seek justice and the perpetrators be punished.

The jury of the Tribunal against torture opined that any form of torture is a blatant violation of human rights as torture degrades human dignity in the end. Torture cannot be accepted in any civilised society. Torture also obviously violates the Constitution of Bangladesh -- the supreme law of the country and is contrary to the values behind our war of liberation. It is to be remembered that the establishment of human dignity was one of the goals of our war of liberation. This is why there should not be any scope for torture in the executive or judicial mechanism of Bangladesh. Some of the victims of torture have given the testimonies to torture on them before the tribunal. Those who were responsible for the incidents of torture must be brought to justice and given exemplary punishment. The sooner the State can try the perpetrators, the better.

The Tribunal was highly appreciated by all present, who were both shocked and moved by the testimonials. The victims thanked Odhikar for allowing them to unburden themselves and said they felt lighter by talking about their ordeal. The Tribunal helped in raising awareness that the Government must do something to criminalise torture and punish the perpetrators.

Compiled by Law Desk.

LAWS FOR everyday life



How to transfer your immovable property?

SYED GOUSEZZAMAN HAIDERI ALI

THERE are various ways by which an immovable properties including land can be transferred. Immovable property can be transferred from living person to living person or from dead person to living person. In transfer from living person to living person, such as in sale, exchange and gift, diverse legal effects ensue. In transfer from dead person to living person, there are testamentary succession and intestate succession. These are governed by different laws at different circumstances. Some are regulated by Transfer of Property Act 1882; others are regulated by Succession Act 1925, Muslim Law and Hindu Law.

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Sale

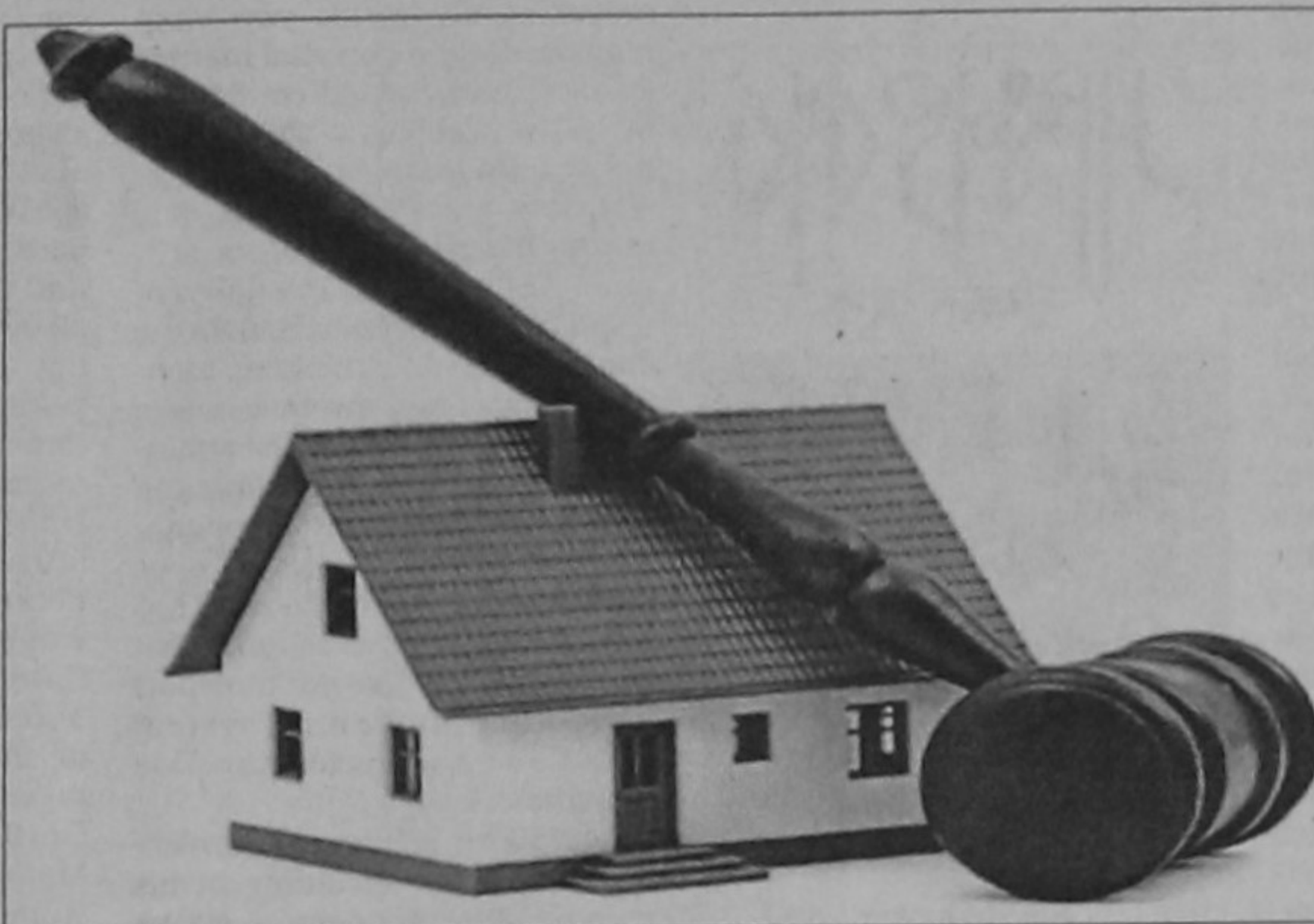
Section 54 of the Transfer of Property Act, 1882 (hereinafter called TP Act) deals with sale of immovable property. Sale is transfer of ownership in exchange for a price paid in terms of money. According to registration law sale of immovable property must be effected by a registered document irrespective of its value. The contract of sale itself also must be registered. The presentation for registration should be made within three months from the date of execution of the sale deed. Registration can be made going to sub-registry office situated at every upazilla.

Exchange

Exchange is defined in section 118 of TP Act 1882. When two persons mutually transfer the ownership of one thing for the ownership of another, either thing or both things being money only, the transaction is called exchange. A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale. A partition is not an exchange, because, the parties are not in exclusive possession of the properties which they inter-change.

Gift

According to section 122 of TP Act 1882 gift is the transfer of movable or immov-



able property made voluntarily and without consideration, by one person called the donor, to another person called the donee, and accepted by or on behalf of the donee. Such acceptance must be made during the life time of the donor and while he is still capable of giving. Section 123 of TP Act 1882 provides that transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. But according to Muslim Law oral gift is completely valid. Declaration by the donor and acceptance by the donee can be made orally. From 2005, declaration of heba (gift) under shariah law also must be registered. Amendment to registration law in section 17 of the Registration Act has overridden the Muslim law of heba. In Muslim Law, essentials of gift are (1) offer by donor (2) acceptance by donee and (3) delivery of possession.

In Hindu Law the essential elements of gift are substantially same as that of Muslim law. In Hindu Law writing down and registration of the deed of gift is not necessary. It can be made orally. But presently, gift of immovable property under Hindu Law follows section 123 of TP Act 1882 and essentialities of the delivery of possession for the validity of gift has been abrogated. A gift of immovable property under section 123 of TP Act 1882 must be effected by a registered instrument signed by the donor and attested at least by two witnesses.

Transfer of immovable property from original owner to apartment builder

Recently, a new kind of transfer of immovable property has taken place i.e. from original owner to apartment builder. After the completion of the building upon the land, owner and the builder divide the number of apartments as per their agreement. Normally, owner of the land gets

40% or 50% and the builder gets 60% or 50%. Another legal provision is that when any person purchases one apartment he gets fractional ownership of the land proportionate to the size of the land divided by number of flats. If there is a 5 kathas of land with 20 flats, in that situation if a person purchases one flat, then his proportion of ownership in the land will be 5/20 kathas = ¼ kathas of land.

Lease

Section 105 of TP Act 1882 defines a lease of immovable property. Lease is transfer of right to enjoy such property, made for a certain time or in perpetuity, in consideration of a price paid or promised. In lease in addition to the price paid as consideration at the time of contract, some amount is also paid periodically in terms of money, a share of crops, services or any other thing of value to the transferor by the transferee. In lease, the transferor is called the lessor, the transferee is called the lessee, the price is called the premium and the money, share, services or any other thing to be so rendered periodically is called the rent.

Mortgage

Section 58 of TP Act 1882 states that mortgage is transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced by way of loan or the performance of an engagement which may give rise to pecuniary liability. The transferor is called a mortgagor, the transferee is called a mortgagee, the principal money and interest of which payment is secured for the time being are called the mortgage-money and the instrument by which the transfer is effected is called a mortgage-deed.

(to be continued)

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RIGHTS corner



Promotion of women's rights

"Make equal rights a daily reality for all women" - High Commissioner for Human Rights

WE strive to ensure the implementation of appropriate laws to make equal rights a daily reality in the lives of all women, said High Commissioner for Human Rights Navi Pillay in a landmark lecture on the promotion of women's rights in the next decade.

"Equality before the law loses its meaning when laws are not given full effect." Pillay underlined the importance of implementation when delivering an annual Dullah Omar Lecture at the University of the Western Cape, South Africa, on 1 July.

The High Commissioner spoke of her "deep admiration and fond memories" of the late Dullah Omar, whose "leadership and commitment to democracy and human rights have greatly helped to sustain and realise the dreams of generations of South Africans."

Entitled "Women's Rights in Human Rights Systems: Past, Present and Future", Pillay's lecture focused on the ongoing efforts to ensure gender equality at the international, regional, and national levels, and the challenges ahead.

International human rights treaties prohibit discrimination on the basis of sex and include guarantees to ensure that women and men enjoy their civil, cultural, economic, political and social rights on a basis of equality.

"Despite this prescription, global and national realities indicate that there is a wide gulf between international legal obligations and their implementation," she said.

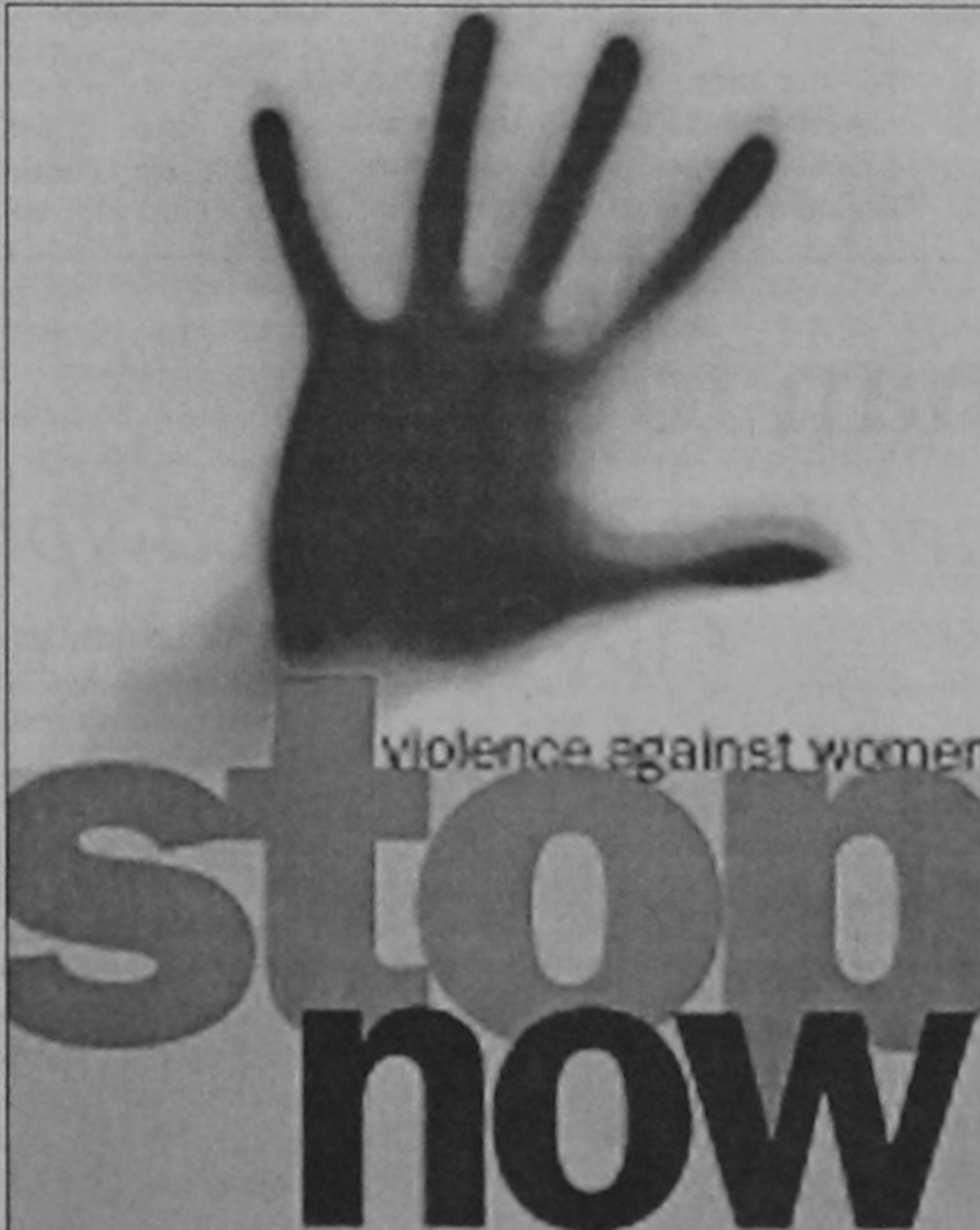
Pillay also shared her experience as a committed and long-time advocate for women's rights in South Africa and beyond. She was the only female judge presiding over the groundbreaking case "Akayesu" at the International Criminal Tribunal of Rwanda, which for the first time established that rape during armed conflict is a war crime, a crime against humanity, and may constitute an element of genocide.

"I have learned that equality and non-discrimination on the basis of sex are not only goals in their own right, but they are essential for the achievement of all human rights for all, the realization of sustainable human development, as well as the development of all societies.

"I have also learned that change comes not merely through individual endeavour, but through working collectively to achieve concrete progress," she said.

The High Commissioner also underscored that "protecting women's rights in law and policies is particularly crucial when the economic going gets rough, as is the case now."

Last month, the International Labour Organisation warned that the global financial crisis could add an increasing number of girls to the more than 100 million who are already involved



in child labour.

"Addressing the needs and critical vulnerabilities of women and girls caught in this recession is thus imperative," she added.

Pillay concluded by pointing out that "for all our woes, there are, of course, highly visible benchmarks of progress", with women as heads of government, in parliament, leading the highest courts, and at the helm of businesses.

She urged governments and international organisations to meet the expectations of girls and women and help them fulfil their goals.

"Empowering women and girls and creating an environment that is conducive to the realisation of their full potential is a responsibility and a priority of the tallest order now and in the next decade," she said.

Source: United Nations Office for the High Commissioner for Human Rights.

LAW week



Over 50 canals near death

Although over 50 affluent canals once used to flow through the capital and added to its lifeline, most of the water channels have been fully or partially choked, while the rest are under serious threat thanks to unabated encroachment. The Dhaka Water Supply and Sewerage Authority (Wasa) had earlier taken initiatives in line with a decision of the last caretaker government to recover 26 out of 43 canals from encroachers. However, the initiatives have so far yielded very little success. - *The Daily Star*, July 09, 2009.

Preserve war memorials, historic sites

The High Court in a judgment directed the government to identify and preserve all the important historic places related to the republic's Liberation War. The court asked it to set up memorial monuments at the historic places at Suhrawardy Udyan in the capital maintaining international standard so that people from home and abroad can pay homage to martyred freedom fighters. - *The Daily Star*, July 09, 2009.

Demarcate 43 Dhaka canals

A parliamentary committee asked the land ministry to demarcate 43 canals in the capital city to recover them from grabbers who built various establishments on the canals. The parliamentary standing committee on the land ministry also asked the ministry to file cases under the land law against the encroachers who occupied lands and built various structures on the bank of the rivers showing false documents. - *The Daily Star*, July 09, 2009.

JS swipes at TIB

Transparency International Bangladesh (TIB) came under fire in the House for its report titled 'Parliament Watch 2009' that says Tk 5.41 crore got wasted due to quorum crisis in the inaugural session of the ninth parliament. Taking the floor on a point of order, Chief Whip Abdus Shahid blasted TIB for giving 'false information' on quorum crisis. Treasury bench lawmakers supported his views thumping desks. - *The Daily Star*, July 08, 2009.

Govt's Tipaimukh handling slated

Environmentalists and academics called for a greater movement at national and international levels to resist what they said 'India's conspiracy' to construct Tipaimukh dam without sharing information with Bangladesh. They also slammed the government's role in dealing with India about water issues. India has neither ensured water flow in the Ganges as per the Ganges Treaty nor shared information about Tipaimukh Dam, which is sheer violation of the treaty, they said. - *The Daily Star*, July 08, 2009.

Cabinet okays law changes

The cabinet in principle approved a proposal to amend the International Crimes (Tribunal) Act 1973 to ensure fairness and neutrality in holding trial of war criminals. The draft copy of the amendment will be placed in parliament within one or two days for its passage, said Law Minister Shafique Ahmed while talking to reporters at his secretariat office. Meanwhile, the cabinet meeting also endorsed the draft of the Mobile Court Bill 2009 aiming at empowering the executive magistrates again to run mobile courts for holding summary trial of some specific offences. - *The Daily Star*, July 07, 2009.

Draft law on protection of Bangabandhu family okayed

The cabinet approved a draft law to ensure security of the family members of Bangabandhu Sheikh Mujibur Rahman with immediate effect. The weekly cabinet meeting, chaired by Prime Minister Sheikh Hasina, gave the approval in principle to the proposed law titled "Father of the Nation's Family Members Security Act 2009." Home Secretary Abdus Sobhan Sikder placed the draft of the law at the meeting, which endorsed it after a brief discussion. - *The Daily Star*, July 07, 2009.

Forest Dept to legally fight tree plunderers

Forest authorities have decided to fight a legal battle against the plunderers of 15,000 Keura and Bain trees on a vast 40-acre forest belt near Sonaichhari coast in Sitakunda two days after razing of the greens. A few influential people in a bid to develop ship-breaking yards hired workers, who felled the trees worth over Tk 1.1 crore with electric saws and machetes. The move by the forest authorities came following press reports and subsequent enquiries by the ministry concerned. - *The Daily Star*, July 06, 2009.

SC lawyer misquotes SC order

Jamaat-e-Islami leader Muhammad Kamaruzzaman served a legal notice to Manzill Murshid, a Supreme Court lawyer, asking him to personally apologise to him for making a statement before the media misquoting a High Court order. The notice asked Manzill to reply within 24 hours after its receipt. Manzill told The Daily Star that he had mistakenly made the statement on the HC order and he has already regretted his mistake through a written statement to the media. - *The Daily Star*, July 06, 2009.

MPs need code of conduct

Transparency International Bangladesh (TIB) came up with a set of recommendations including the ones for formulating a code of conduct for lawmakers and measures to strengthen committee system to make parliament effective. A number of lawmakers and legal experts agreed with the TIB recommendations, saying there is no alternative to empowering the committees to ensure parliamentary supervision on the executive and make the Jatiya Sangsad functional. - *The Daily Star*, July 05, 2009.

MP made prisoner of his party

The amended article 70 of the constitution has kept MPs "prisoners" of their own party since restoration of parliamentary democracy in 1991, preventing them from playing due role in parliament freely. According to the amended provisions, parliament membership will be vacated if a lawmaker present in the House abstains from voting for their party that nominated them in the election, or does not attend any particular sitting of parliament ignoring party direction. - *The Daily Star*, July 05, 2009.

Crime, extortion still rule Karwan Bazar

Karwan Bazar, the largest wholesale kitchen market in the capital, remains a safe haven for extortionists, who operate with impunity thanks to backing from a section of law enforcers. After the triple-murder a week ago, police vigilance there has increased, yet extortion is still rampant. - *The Daily Star*, July 04, 2009.

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