



LAW amusements



First drink while you're having your diaper changed

There is no legal drinking age in these countries; you can enjoy your first drink while you're having your diaper changed: China, Nigeria, Poland, Portugal, Thailand and Vietnam. It's 16 most European countries.

Source: Potsdam University site "Alcohol Problems and Solutions at potsdam.edu/hanson/dj/LegalDrinkingAge.html"

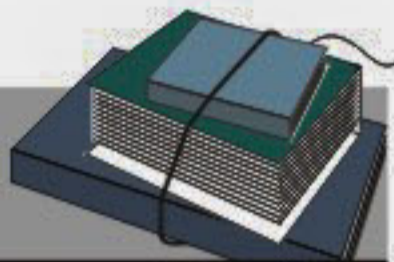
Nigeria: I wouldn't be cheating

There is another very real and terrifying perspective on adultery (called "zina" in Islam Law), pointedly set out in this extract of the Penal Code of the northern Nigerian state of Zamfara, Ch. 8, s. 126 (at zamfaraonline.com/sharia/chapter08.html):

"Whoever, being a man or a woman fully responsible, has sexual intercourse through the genital of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act, is guilty of the offence of zina (and) shall be punished with caning of one hundred lashes if unmarried, and shall also be liable to imprisonment for a term of one year; or if married, with stoning to death."

Source: www.duhaime.org.

LAW lexicon



Antitrust acts - Federal and state statutes to protect trade and commerce from unlawful restraints, price discriminations, price fixing, and monopolies.

Appeal - A proceeding brought to a higher court to review a lower court decision.

Appeal Bond - A guaranty by the appealing party insuring that court costs will be paid.

Appearance - The act of coming into court as a party to a suit either in person or through an attorney.

Appendix - Supplementary materials added to the end of a document.

Appellant - The party appealing a decision or judgment.

Appellate court - A court having jurisdiction to hear appeals and review a trial court's procedure.

Appellee - The party against whom an appeal is taken.

Arbitration - The hearing of a dispute by an impartial third person or persons (chosen by the parties), whose award the parties agree to accept.

Arbitrator - A private, disinterested person chosen by the parties in arbitration to hear evidence concerning the dispute and to make an award based on the evidence.

Source: Jurist International.

LAW event



Bring manpower mediators under formal framework

Speakers at a consultation observed that informal facilitators play a crucial role in the labour recruitment process of Bangladesh. In this context they urged that measures should be taken to bring them under a formal framework. These observations were made at a consultation organised by Refugee and Migratory Movements Research Unit (RMMRU) at the PIB premises in the city on 31 January, 2010. Presenting RMMRU's research findings on the Role of Informal Facilitators in the Labour Recruitment Process, Dr C R Abrar stated that these facilitators commonly known as mediators provide information to aspirant migrants. They also act as intermediaries between the registered recruiting agencies and the aspirant migrants. Due to their limited reach in recruiting migrants, the registered agents depend on the informal facilitators, who in their turn, use their social network at the grassroots to recruit workers. The research was conducted by RMMRU under the auspices of the Development Research Centre on Migration, Globalisation and Poverty.

Speaking as the chief guest of the event Mr. Elias Ahmed, Secretary, Ministry of Expatriate Welfare and Overseas Employment (MEWOE), urged aspirant migrants to be more assertive in their relationship with recruiting agents and informal intermediaries. He stressed that all stakeholders of migration process should strive to make sure that the migrants should be gainfully employed during their stay abroad. He observed before taking migration decision migrants should have at their disposal adequate information about the country of employment, work and living conditions. The Secretary also wondered why Bangladeshi recruiting agencies have to buy visa when their Nepalese and other South Asian counterparts do not have to do so.

Mr. Khorshed Alam Chowdhury, DG, BMET, deplored the fact that existence of tiers of intermediaries and trading of visa by Bangladeshi recruiters are contributing to hiking up of the cost of migration in Bangladesh. Mr. Chowdhury informed that from the 7th of February 2010 the government is introducing SMART card that would contain vital information about migrants and will help curb irregular migration.

Dr. Nurul Islam of BMET emphasised the need for large scale awareness campaign engaging both print and electronic media so that migrants can protect their interests against unscrupulous recruiting agents and subagents. Mr. Abul Kalam, Deputy Secretary, of MEWOE informed that the government in collaboration with civil society organisations is considering revision of rules with regard to recruitment process. The BAIIRA representative, Mr. Shamim Ahmed Chowdhury, urged the aspirant migrants to directly contact the recruiting agencies in their effort to go overseas. He informed that a code of conduct for recruiting agencies is being framed by his organisation.

Informal facilitators present at the consultation regretted that their contributions are not socially recognised and they did not have enough protection when recruiting agents fail to deliver on their promises. They claimed that when migration efforts fail they are the one's who have to face the wrath of migrants and their families and not the recruiting agents. To establish their bona fide the sub-agents demanded identity cards from their respective recruiting agencies.

The consultation was attended by members of international agencies, and a large number of returnee migrants, informal facilitators, chairpersons of union parishes of Tangail and Comilla and NGO activists and researchers.

Compiled by Law Desk.

FOR YOUR information

Private person's power to arrest: When and how?

TANJIB RASHID KHAN

FROM a long time, the common people of our country hold a severe misconception about the power to make an arrest. They think that only the members of the law enforcing agencies such as Police, RAB etc, can make arrest. Such misunderstanding has gradually spread over the time, because most of these people are not aware of those certain situations where the law of Bangladesh empowers a private person to arrest a suspected criminal, even without a warrant. From my viewpoint, our weak legal infrastructure could be partly blamed for this lack of awareness among

warrant, there is a major jurisdictional difference between police/RAB and private person. That is, a police/RAB officer has the power to arrest suspected criminals before, while or after committing the crime, but if we interpret the related laws of our country, we will find that a private person can arrest only while committing the very act of crime. Moreover, the law of our country has restricted a private person's power to arrest by some particular statuses.

The statute named Code of Criminal Procedure, 1898 contains mandatory guidelines to be followed in conducting criminal procedure in our country. This statute empowers a private person to

carriage, ship or boat (Section 12). Nevertheless, the Arms Act, 1878 that was enforced for consolidating the laws relating to arms & ammunition also authorizes a private person to arrest anyone who is found carrying any unlicensed arms & ammunitions (Section 13).

Despite the existence of these provisions in our legal system, most of our citizens are not entirely conscious of it. Moreover the small portion that are conscious, do not even know how to implement. Furthermore ambiguity arises when we find no pre-defined statutory section directing the very procedure of making an arrest by a private person. However as a common law country, the following customary process should be followed in Bangladesh-

The first step of making a citizen's arrest would be to warn the suspect by telling them to stop committing the very act of crime, and also to notify them that they're not allowed to leave until a police officer comes. It must be kept in mind that the private person has no right to question or search the suspect, or to seize any kind of evidence. If the suspect tries to leave, the person should think very carefully before physically restraining the suspect, as by doing so, not only will he put himself in physical danger, but also he could be subject to legal liabilities for use of excessive force. After restraining the suspect, he should call the local police department from his cell-phone, or send someone to call. It is not recommended to transport the suspect to the local authority himself. When the police arrive, the person should let them know his identity, what he saw, and why he held the suspect. He must remember that he will probably need to be in court to provide eyewitness testimony for the crime.

A citizen's arrest is only an emergency measure to stop a suspect until law enforcement officials can take matters into their own hands. But no doubt, if adequate public awareness can be developed, it could certainly become one of the most functional tools to assist our law enforcing agencies to shrink crime through the actual involvement of the citizen.

The writer is an Associate in 'LawDev Associates'.



the general people. The absence of even a single case on this issue over the last 20 years in the record of our Supreme Court supports my aforesaid statement.

Though no existing law has yet defined the phrase- 'Private Person's Arrest', but literally it denotes to an arrest that is made by a person who is not a member of the law-enforcing agency. It is also known as Citizen's Arrest in some common law countries. In Bangladesh, such arrest can be made with or without the issuance of a warrant. Though in case of arrest without

arrest only those suspected criminal who commits an offence, or is a declared offender by the government (Section 59). Then again, we have another statute namely the Explosives Act, 1884, which was enacted with a view to regulating the manufacture, possession, use, sale, transport and importation of Explosives in our country. This statute gives a private person the jurisdiction to arrest a suspect who tends to cause explosion or fire in any explosive manufacturing factory, explosive containing store, railway, port,

RIGHTS corner

Child labour: An obstacle to development

THE UN Special Rapporteur on contemporary forms of slavery, Gulnara Shahinian, said that "the Government of Ecuador has demonstrated a genuine commitment to the elimination of child labour, including its worst forms, domestic servitude, forced labour and debt bondage."

However, at a press conference in Quito at the end of her assessment visit to the country, the UN expert stressed that "despite the progress made, the extent of child labour remains alarming and domestic servitude and debt bondage are challenges still to be overcome."

"Child labour in all its forms is an obstacle to the development of Ecuador where a high percentage of the population are children," stressed the human rights expert. However, she congratulated the new administration "on the strong political will shown and comprehensive, holistic approach adopted to address the worst forms of child labour and other contemporary forms of slavery."

"I am very encouraged by a number of exemplary initiatives instigated by the Government of Ecuador, UN agencies, the private sector, non-governmental organisations and other stakeholders to eradicate the worst forms of child labour and to address the situation of child-workers," said Ms. Shahinian, "but deeply regret that those programmes have yet to achieve universal coverage and be accessible to all."

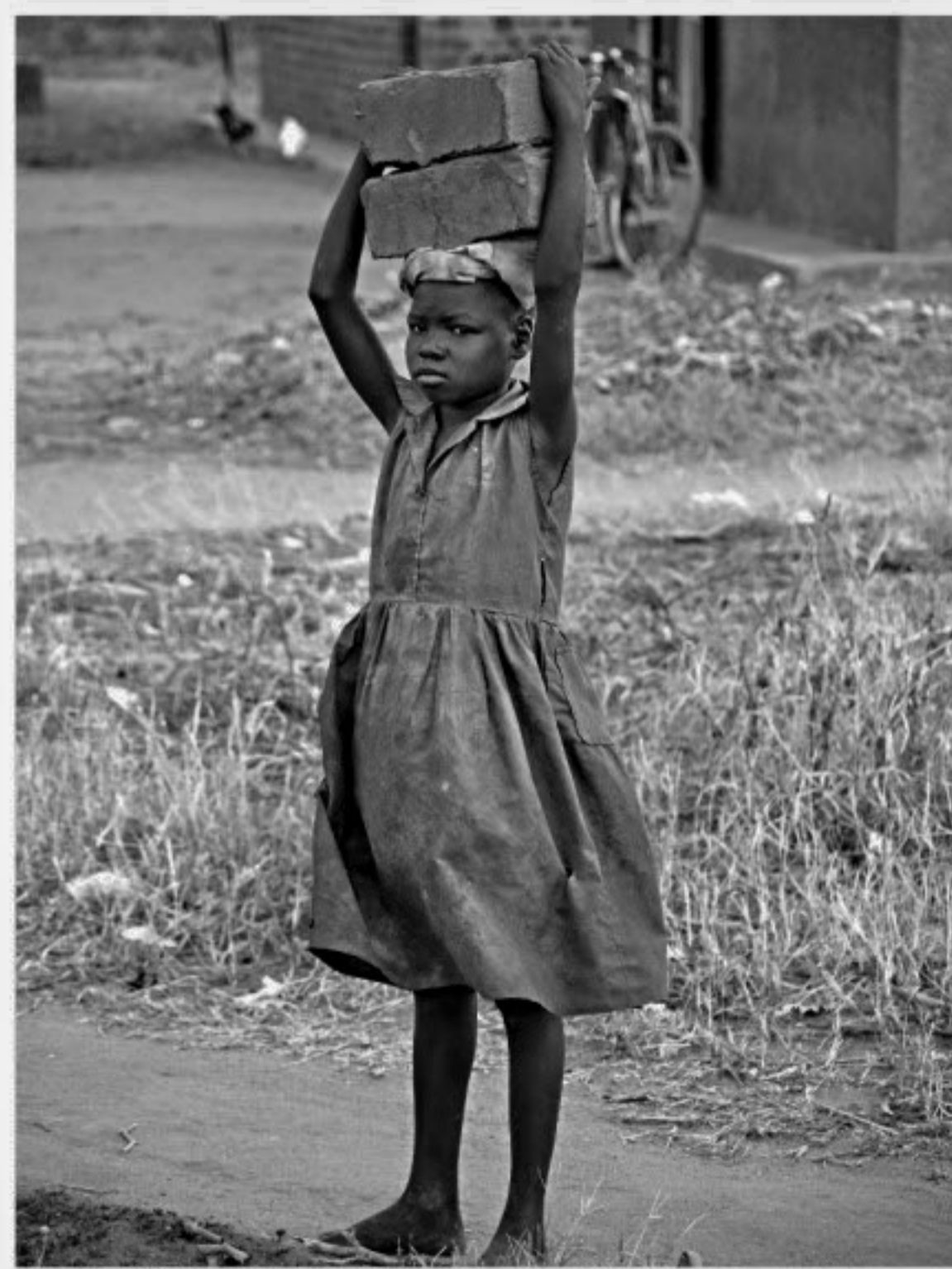
The UN independent expert on slavery also assessed during her mission instances of labour exploitation, inhuman and degrading treatment as well as discrimination. These situations, which exacerbate labour and other forms of exploitation, which amount to contemporary forms of slavery, are encountered particularly by the large refugee and asylum-seeking community of Colombian nationals as well as sectors of the Ecuadorian population, including afro-ecuadorians, montubios and indigenous peoples.

"I am very concerned about the dire conditions of refugees and asylum-seekers and wish to stress that the Government is responsible for their protection and the restoration of their rights," said Ms. Shahinian. "Urgent measures are required to protect and restore the rights of these people and to create an environment conducive to the elimination of labour exploitation and slavery in these areas."

On the situation of refugees and asylum-seekers, the expert noted: "During my visit to provinces outside Pichincha, I observed that international standards for the protection of these groups are not sufficiently implemented, despite the Government's liberal immigration policy."

"It is only by investing adequately in all children, regardless of ethnic or national origin, immigration or other status, that Ecuador will ensure sustainable development and prosperity for the decades ahead," stressed Ms. Shahinian. "I strongly encourage the Government to mainstream gender, intercultural and plurinational perspectives into all programmes, plans and policies so that they achieve social inclusion and, therefore, coverage for all children and their families."

The UN expert concluded a visit to Ecuador, conducted



from 25 January to 1 February 2010, at the invitation of the Government, where she met with Government officials, NGOs, UN agencies present in Ecuador, academics and grass roots leaders from different sectors of the population including refugees, asylum-seekers, migrants, indigenous peoples, afro-ecuadorians and campesinos. She also met with domestic and sex workers, children, and workers in different industries, including the informal economy, gold mining, banana, oil palm and flower plantations.

Ms. Shahinian visited Quito, as well as Machala in the province of El Oro, Esmeraldas, and San Lorenzo in the province of Esmeraldas, and Lita and Ibarra in the province of Imbabura.

The Special Rapporteur will submit a report on her visit to Ecuador to a forthcoming session of the Human Rights Council.

Ms. Gulnara Shahinian was appointed as the first Special Rapporteur on contemporary forms of slavery, its causes and consequences in May 2008. She is a lawyer with extensive experience as an expert consultant for various UN, EU, Council of Europe, OSCE and government bodies on children's rights, gender, migration and human trafficking. Ms Shahinian is also a former trustee of the UN Voluntary Trust Fund on Contemporary forms of Slavery.

Source: Office of the High Commissioner for Human Rights.

LAW week



HC rejects writ against Rajuk's demolition order

The High Court summarily rejected a writ petition challenging a Rajuk notice that asked Jamuna Future Park Shopping Complex authorities to demolish the unauthorised top four floors of the 10-storey building. The High Court (HC) bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Borhan Uddin passed the order on the ground that the writ petition is not maintainable since there are some disputed questions of fact in the application, which cannot be resolved in the writ jurisdiction. - *The Daily Star, February 4, 2010.*

Constitution to get back on '72 track

The Supreme Court dismissed two petitions contesting the High Court verdict that declared the constitution's fifth amendment illegal. In so doing, it upheld the historic HC judgment delivered around four and a half years back. Chief Justice Md Tafazzul Islam pronounced the one-sentence ruling. In a courtroom filled to the brim, he read, "The petitions are dismissed with modification and observations." On August 29, 2005, the bench of Justice ABM Khairul Haque and Justice ATM Fazle Kabir delivered the landmark HC judgment. - *The Daily Star, February 3, 2010.*

Govt happy

The law minister and the attorney general have said the original spirit of the Liberation War and the four principles of the 1972 Constitution have been restored following order on the Fifth Amendment by the Supreme Court. "Democracy", "socialism", "secularism" and "nationalism" were the four principles of the state as per the 1972 Constitution. The petitioners' counsels advocate TH Khan and Barrister Moudud Ahmed have meanwhile said the SC has "accorred and considered" their arguments and submissions, as the apex court has rejected their petitions with some modifications and observations. They claim the SC did not fully uphold the High Court verdict. - *The Daily Star, February 3, 2010.*

Constitution lost basic character

The fifth amendment ratified all actions including those that destroyed the basic character of the country's constitution and made it subordinate to martial law proclamations, orders and regulations made during around four years after August 15, 1975. Amendments, additions, modifications, substitutions and omissions were indiscriminately made to the constitution during the martial law regime that began immediately after the brutal assassination of Bangabandhu Sheikh Mujibur Rahman on that day. - *The Daily Star, February 3, 2010.*

The fifth amendment

Parliament had hurriedly passed the Constitution (Fifth Amendment) Act, 1979, ratifying and confirming all martial law proclamations, regulations and orders, and other laws made between August 15, 1975 and April 9, 1979. Constituted through the general election of 1979, the first session of the then new parliament was convened on April 1, 1979. The parliament dominated by then newly-created BNP, led by military ruler Ziaur Rahman, who first assumed the office of chief martial law administrator and later the office of the president, passed the amendment act on April 6, 1979, declaring that all actions to have been made legally. - *The Daily Star, February 3, 2010.*

Govt now shifts focus to war crimes trial

Having completed the execution of five killers of Bangabandhu, the government is now making preparations to start the process for the long awaited trial of the war criminals of 1971. The government is planning to start formal investigation against war criminals early March. The tribunal and other relevant offices for the trial will be completed within this month. Sources said the government is collecting documents and evidence of the offences committed during the nine-month Liberation War of the republic in 1971. - *The Daily Star, February 2, 2010.*

HC rule on govt to keep 30pc quota

The High Court issued a rule upon the government to explain within three weeks why it should not be directed to preserve 30 percent quota in the posts of health assistants for the children of freedom fighters. The HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Borhan Uddin issued the rule upon a writ petition filed by Tyebur Rahman, a freedom fighter. Tyebur filed the petition seeking a direction from the HC upon the government to preserve the quota. - *The Daily Star, February 2, 2010.*

JS body sends back CrPC bill to ministry

The parliamentary standing committee on law ministry has sent the Criminal Procedure Code (amendment) Bill 2010 back to the ministry for further clarification with a view to preventing harassment of journalists. The JS body at a meeting also asked the ministry to cancel warrant orders in defamation cases against journalists and publishers. However, Suranjit Sengupta, chairman of the committee, said that what the general mass would do if journalists and writers harass them. - *The Daily Star, February 2, 2010.*

Murder convict becomes lawyer!

Rapid Action Battalion arrested a fugitive sentenced in 1997 to life imprisonment in a murder case who has been practising as a lawyer at Dhaka Judge's Court for the last 14 years. The Rab-4 arrested Mohammad Sirajul Islam alias Siraj Matbar on the court premises. In Rab custody Siraj said he fled to the capital from his Charchakandi village of Palong upazila in Shariatpur district soon after the killing took place on March 27, 1990 in the village. - *The Daily Star, February 1, 2010.*

Pilkhana to hold 10 trials in February

Departmental trial of the accused mutineers of Bangladesh Rifles is expected to start at 10 separate points of the Pilkhana headquarters in less than a month. The authorities have already started readying the 10 points at five battalions and five units inside the HQ by February 25, say insiders. The ten points where the trial will be held are Rifles headquarters battalion and BDR 24, 36, 13, and 44 battalions, Dhaka sector headquarters, BDR hospital, Rifle Security Unit (RSU), Signal Sector and Rifles Sports Board. - *The Daily Star, January 31, 2010.*

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: Law Desk, The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; email: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net