



FOR YOUR information



YOUR Advocate

LAW week



WORLD PRESS FREEDOM DAY 2010

Freedom of information: The right to know

RECALLING Article 19 of the Universal Declaration of Human Rights, which states that the fundamental right of freedom of expression encompasses the freedom to "to seek, receive and impart information and ideas through any media and regardless of frontiers," UNESCO's celebration of World Press Freedom Day 2010 highlighted the importance of freedom of information as an integral part of freedom of expression and its contribution to democratic governance.

UNESCO is the only UN agency with the mandate to promote freedom of expression and its corollary, freedom of the press. The UNESCO Constitution calls on the organization to foster the "free exchange of ideas and knowledge" and the "free flow of ideas by word and image." Freedom of expression and freedom of the press are thus among the guiding principles of UNESCO, and freedom of information may be deemed to be part and parcel of the Organization's core mandate to support them.

Democratic participation depends on people who are well-informed, this being a pre-condition for their effective monitoring and assessment of their leaders' performance, as well as for their meaningful engagement in public debate and decision-making processes that impact their lives. Freedom of information therefore represents an important instrument for the public to hold government and other actors accountable, and contributes to deter secretiveness, corrupt practices and wrongdoing.

Freedom of information may be interpreted narrowly as the right to access information held by public bodies or, more broadly, as including access to and circulation of information held by other actors. It is intrinsically linked to the basic human right of freedom of expression.

The notion of freedom of information was recognised by the United Nations as early as in 1946, and has long been enshrined as part of the basic human right of freedom of expression in major international instruments like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the American Convention on Human Rights. More than two centuries have passed since adoption of the first freedom of information (FOI) law. There has much more recently been an unparalleled increase in the international recognition of freedom of information as a right included under freedom of expression, thoroughly addressed in the revised edition of Toby Mendel's book *Freedom of Information: A Comparative Legal Survey* and in his regionally focused contribution, *The right to information in Latin America: A Comparative Legal Survey*. While in 1990 there were 13 countries with national FOI laws, currently this legislation exists in more than 80, with another 20 to 30 countries actively considering its introduction. The number of national constitutions and High Court rulings guaranteeing freedom of information has also grown. At the global and regional levels, an increasing body of declarations, treaties and jurisprudence has specifically alluded to freedom of information as a fundamental corollary of freedom of expression.

Despite significant progress and emergence of a world community of advocates for freedom of information, there are still many factors constraining advance toward fully achieving its promise to empower individuals and further accountability, transparency and the fight against corruption.

Source: United Nations Educational, Scientific and Cultural Organization (UNESCO)

This week your advocate is Barrister **Omar Khan Joy** of the Supreme Court of Bangladesh and Head of 'The Legal Counsel'. His professional interests include commercial law, corporate law, family law, land law, constitutional law, banking law, arbitration and intellectual property laws. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.



Reader's query

Is it true that a person accused of *Nari Nirjaton* will be arrested immediately? Or is there an investigation process which takes place before the arrest which verifies whether or not the accusations are true? If there is an immediate arrest warrant issued, how does the accused avoid it? What are one's rights on arrest? Eagerly waiting for your response.

Falsely accused

Response

I would like to thank you very much for asking me to advise regarding the *Nari Nirjaton* and arrest related matters. Upon receipt of your query, I would like to elaborate the following legal provisions for your understanding so that you can be sufficiently benefited.

There are different legislations in our country to deal with *Nari Nirjaton* matters. I assume from your query that you have been accused under the Suppression of Women and Children Oppression Act 2000 (*Nari-O-Shishu Nirjaton Daman Ain*). This Act contains stringent provisions for prevention of offences related to oppression on women and children. Trafficking and kidnapping of children and woman, rape, death resulting from rape and dower, sexual harassment etc. are dealt with under this legislation.

Section 19 of this Act renders all the offences punishable under this Act as

'cognisable'. According to Sec.4 (1) (f) of Code of Criminal Procedure (CrPC), a 'cognisable offence' is one for which a police officer may arrest someone without any warrant. Therefore, a person accused under the *Nari-O-Shishu Nirjaton Daman Ain* may be arrested immediately. However, the police will only arrest such a person if, he (the accused) has been concerned in any cognisable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his being so concerned. In most of the cases, therefore, police may arrest the person against whom any complaint has been made for committing any offence under the *Nari-O-Shishu Nirjaton Daman Ain*. It may be prudent to mention that in certain circumstances, a private person may also arrest any person if that private person believes that the other person has committed a non-bailable and cognisable offence (in practice, the serious offences including offences under *Nari-O-Shishu Nirjaton Daman Ain*). But, in such cases the arrestee must be handed over to the police without any unnecessary delay.

The provisions in relation to investigation are contained in the S. 18 of the Act. According to S. 18 (1)(a), investigation into the offences shall have to be concluded within fifteen working days from the date of the arrest of the accused or handing over of the accused to the police

while caught red handed at the time of commissioning of the offence. Alternatively, S. 18(1) (b) provides for the investigation to be completed within sixty working days where the accused is not caught red handed but in consequence of the lodging of First Information Report (FIR) or following order of investigation by the authorized officer or the Tribunal. The time limit may be extended subject to the fulfilment of conditions contained in the subsequent sections. So, from the aforesaid provisions it seems that investigation of any Complaint regarding *Nari Nirjaton* does not depend on arrest of the accused person. Law requires every case to be investigated followed by the Police Report to be submitted to the Court. In the meantime since the offence in question is an arrestable (cognisable) one, the law-enforcing agency is in duty bound to arrest the accused person pending the outcome of the investigation as per Law. After the accused is arrested, he may pray before the Tribunal under sec. 19 to enlarge him on bail. Furthermore, to avoid the arrest, the accused may try to get anticipatory bail from the Hon'ble High Court Division under section 498 of the CrPC.

Since the provisions under the *Nari-O-Shishu Nirjaton Daman Ain* are considerably harsh against the accused, to protect malicious prosecution, section 17 provides for rigorous imprisonment for a term not exceeding seven years and fine in case if someone lodges a false complaint or files a false case with intent to cause harm to other person.

The rights that a person may possess in relation to arrest are contained between sections 46-67 of the CrPC. Some of the important rights may be as follows:

The person arrested to be taken before Magistrate or officer in charge of police station without unnecessary delay. The arrestee cannot be detained for more than twenty-four hours. The police have to follow the rules regarding search of the arrestee and seizure of any material.

I hope that the aforesaid guidelines shall help you to understand your queries regarding the issues of *Nari Nirjaton* and the provisions of arrest related to such offences.

For detailed query contact omar@legalcounselbd.com.



LAWSCAPE

Ensuring health and safety at workplace

MOHAMMAD SHAHIDUL ISLAM

HEALTH and safety at workplace deals with the health, safety and welfare of people in employment. It deals with the protection of lives of all those people, who, in some way, are connected to the work environment. It is also concerned with the welfare of the family members and dependents of the working employees.

People spend a major part of the day at their workplace. It is at work that they exercise their talents and use their expertise for the benefit of their organization. It is at their workplace that they devote their time and effort for the welfare

ing life, even examples of death prevail.

It should not be forgotten that office safety is very essential in today's world. It is very important to be aware of several workplace safety rules and regulations as this could hamper the smooth functioning of office due to legal issues.

The best course of action is to plan ahead for all kinds of workplace emergencies. Fire and electric shock absolutely anything and everything, we can think about seriously. There is no alternative of making a list of all these emergencies. Based on list, we have to make another list of things we need to have at workplace to ensure the safety of employees. And then we need to install these things.

cannot emphasize on this enough. Piles of papers and stacks of files combined with a tangle of wires are a disaster waiting to happen, on several fronts. A clean workspace will also enable you to identify a problem and tackle it faster and more effectively.

- Ensure that all your doors and windows have security locks. If you are an establishment that deals with cash on a daily basis, then you may attract burglars. Install security cameras at doors and exits. This will help you record the images of thieves and such and help the police in locating the culprit.
- Install fire alarms. Practice fire drills with your employees. During the practice sessions, ensure that all the employees follow the rules (such as getting low on the floor, closing doors and windows to contain the fire etc.). Mark the exits with noticeable signs so that employees know where to go to in case such an emergency occurs. Never lock these exits, but be sure to install security cameras on these doors. Also, it might be sensible to install fireproof furniture.
- Ensure that all the workstations, machines etc are installed properly. While installing such electric equipment and appliances, ensure that the wiring and switchboards are earthed properly so as to prevent electric shocks.
- And most of all, insurance is essential. Although it is not an office safety tip, it often helps to have it just in case an emergency occurs.

With these safety measures for the workplace we can be sure to avoid most common accidents and emergencies of electric shocks and fire.

Why is it important to establish safety at workplace? There are many reasons. Firstly, the absence of safety at workplace penalizes the organization, and has to incur costs of employee compensation, medical treatment and social security payments. The employing organizations also have to incur economic losses in the form of compensatory benefits that they have to pay to the employee. Secondly, they lose their goodwill among other employees as well as their customers. Also, it is a moral responsibility of an employer to ensure the safety of his/her employees. When an organization utilizes human beings as an important resource, it is the organization's duty to look after their safety.

What are the factors that need to be considered for health and safety at office? One of the most important factors to be considered while ensuring health at workplace is the need for safety. Once the safety needs of each occupa-

tion are determined, it is necessary to devise effective measures to satisfy the health and safety needs of the employees in that occupation. It is essential for the employing organization to distinguish between a hazard and a risk. A hazard is something that can prove to be harmful if it is not controlled, while a risk refers to the probability of the occurrence of a certain outcome and is often expressed in numerical form.

After the potential risks and hazards are identified, it is important for the employing organization to evaluate the risks and ascertain the required safety measures. In order to calculate the risk, it is necessary to gauge the risk factors and analyse the severity of their adverse effects. These calculations need to be reviewed and revised periodically and changed whenever required.

When evaluating risks, the employing companies need to take into account all the different workplace hazards. Employees may have to face equipment and machinery-related injuries. They may have to suffer from physical injuries resulting from accidents at the workplace. Harmful chemicals, radiation, pollutants and biological agents like the harmful bacteria and viruses pose a threat to the life of the employees. Certain water or air pressure conditions and artificially maintained temperature conditions as well as noise from machines can cause damage to the overall health of the employees. Certain mechanical processes involve danger of causing injury. Besides these tangible risks, there are several important psychological issues to be dealt with. Employees have to undergo work-related stress. Moreover, they might fall prey to bullying, sexual or verbal harassment or even violence. It is very important for the employing organizations to consider these hazards while planning for occupational health and safety measures.

Implementation of the safety measures is the essence of occupational health and safety. There is no point in calculating the risks and documenting the risk factors and hazards, if no safety measures can be put into effect. It is extremely important for the employing organizations to devise practically feasible safety measures and ensure their strict implementation. After all, we are dealing with the safety of human life, which is indeed priceless. The government should enact some proper laws regarding health and safety at workplace and thus monitor the matter whether is incorporated.

The writer is a Hospitality Education and Training Consultant.



of their company. They need to be motivated by providing them with a positive atmosphere and most importantly, they need to feel safe and secure. In Bangladesh generally health and safety at office has never been considered importantly. Every day any way employers from different organizations face the risk of disfig-

It also makes sense to look at the local regulations concerning office safety. These may not be comprehensive, but may provide you with enough guidelines to work on. Other than that, here are a few safety measures for the office or for the workplace:

- Keep your working area neat and clean. One

Cops point at AL men

Law and order has deteriorated largely because of widespread tender manipulation and violence by ruling party activists, senior police officials have alleged. They made the allegation at a quarterly crime conference at the police headquarters in the capital, said sources. The police high-ups said chain of command in the law enforcement agency is at stake as many junior officers tend to defy seniors cashing in on their ties with ruling party leaders and lawmakers. They expressed frustration over frequent political intervention, which is hampering discipline and the sense of pride in the police force. - *The Daily Star, May 6, 2010.*

Appointments shrouded in questions

No disciplined methods were followed to form the bodies to try the war criminals that led to an unexpected reshuffle in the prosecution panel and resignation of chief investigator Abdul Matin within four and 40 days respectively. Prior to formation of the investigation agency and prosecution panel on March 25, a number of influential ministers and policymakers apparently engaged in a competition to include their proposed names. Inclusion of ruling Awami League lawmakers Nurul Islam Sujan and Sanjida Khanam in the announced 12-member prosecution panel first drew flak and the government later dropped their names. The changes came against the backdrop of huge criticism as every section was asking about the method or criteria the government relied on before choosing people for such crucial bodies. - *The Daily Star, May 6, 2010.*

Get cops to stop river pollution

The High Court wants the government to police the banks of the Buriganga to stop disposal of waste into the river. It directed the authorities to deploy police along the riverbanks immediately. It also ordered them to form a committee to monitor the law enforcers' actions with regard to waste-dumping and submit a report within four weeks. Chairman of Bangladesh Inland Water Transport Authority (BIWTA), director general of the Department of Environment (DoE) and deputy commissioner of Dhaka were asked to form the monitoring committee, drawing representatives from the district administration, BIWTA and DoE. In a rule, the court also asked the government to explain within four weeks why it should not be directed to seal all sewers emptying into the Buriganga to stop water pollution. - *The Daily Star, May 5, 2010.*

Go tough on stalkers

Apart from social and political resistance to stalking and sexual harassment, stringent penalties to culprits was voiced at a view-exchange meeting. Attended by senior journalists and cultural activists, the meeting was organised at the secretariat by the Ministry of Education to share views on dealing the rising incidents of stalking. The meeting urged the media, especially electronic, to become more cautious about their programmes, advertisements and cinemas that may encourage stalking. It also suggested projection of more morally motivating programmes in the television, appointment of counsellors in educational institutions, introduction of help line for victims, eviction of shops adjacent to schools and colleges and increasing of co-educational institutions in the country. - *The Daily Star, May 5, 2010.*

No legal bar to free rivers

A Supreme Court (SC) order cleared the way for removing all structures, excluding the government ones set up to serve the public interests, from the rivers around the capital. The rivers are Shitalakkhya, Balu, Turag and Buriganga. Even the jetties and other structures established by some private commercial companies within the rivers' boundaries upon the government permission have to be removed as per the apex court's order. The Appellate Division passed the order after dismissing seven appeals filed by seven commercial companies challenging a High Court (HC) order that directed the government to remove the structures. - *The Daily Star, May 4, 2010.*

It's now time for 'pro-AL' private universities

A parliamentary sub-committee considers recommending relaxation of some clauses of the Private University Bill 2010 to encourage pro-liberation war entrepreneurs to set up private universities. The sub-committee of the parliamentary standing committee on education ministry thinks that most private universities are owned by people loyal to the BNP-Jamaat coalition. Many private universities easily got permission to run their activities. Now pro-liberation people should be given the chance to set up universities to strike a balance. Pro-liberation war forces are in power now and they want like-minded people to set up private universities. Mirza Azam, convener of the sub-committee, told *The Daily Star* after a meeting. - *The Daily Star, May 4, 2010.*

Anti-graft body to lose teeth

The cabinet's approval to amend the anti-corruption law would make the anti-graft body ineffective and further spread out corruption in administration and other public services, observes Transparency International Bangladesh (TIB). "The Anti-Corruption Commission [ACC] will return to the previous position of defunct Bureau of Anti-Corruption with majority cases clogged, if the proposals to amend its laws are incorporated into the ACC Act," said TIB Trustee Board Chairman M Hafizuddin Khan. The amendment proposals include ACC's obligation to take permission from the government prior to initiating a case against any government official and making the anti-graft body accountable to the president. The TIB sees possibility of political influence in this system and suggests that the ACC be made accountable to a special parliamentary committee. - *The Daily Star, May 3, 2010.*

3 more ship breaking yards sued in Ctg

The Department of Environment (DoE) sued three more ship-breaking yards for polluting environment and not responding to its notices of clearance. With this, seven ship-breaking yards have been sued within two weeks. The DoE investigator Saiful Ashrab filed the cases with Sitakunda Police Station and the Environment Court. The yards are Rahman Ship Yard and Mahin Enterprise (Ship-yard) at Modhyam Sonaichhari and Ambia Ship-breakers Private Limited at Madam Bibirhat in Sitakunda upazila. The DoE investigator in the cases alleged that the authorities of the ship-breaking yards didn't respond to the repeated DoE notices that asked them to collect environmental clearance after ensuring protective measures against pollution. - *The Daily Star, May 3, 2010.*

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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