



LAW event



AIDS 2010: Rights Here, Right Now

THE largest global AIDS conference, which takes place in Vienna 18 to 23 July, emphasises the central importance of protecting and promoting human rights as a prerequisite to a successful response to HIV.

Under the theme "Rights Here, Right Now", the biannual conference "AIDS 2010" also stresses that concrete human rights measures are needed to protect those most vulnerable to and affected by HIV such as women and girls, people who use drugs, migrants, prisoners and sex workers.

"The lack of respect for human rights, including stigma and discrimination, is fueling the epidemic. It is perhaps the greatest



barrier to developing an appropriate global response to HIV," said High Commissioner for Human Rights Navi Pillay in a video to be screened at the conference.

For example, more than 50 countries worldwide continue to have laws prohibiting the cross-border movement of people living with HIV. Experts say that such laws are discriminatory, contrary to sound public health principles, and are preventing an appropriate global response in the fight against the spread of the virus.

The United Nations Human Rights office (OHCHR) is calling for the repeal of national legislation which imposes blanket restrictions on the entry, stay and residence of people based on their HIV status alone.

"HIV knows no borders. It is therefore important to ensure that international migrants have the same rights as everyone else. A person's HIV status alone should not be seen as a reason for refusing to employ him or her," Pillay said.

UNAIDS Executive Director Michèle Sidibé supported the message. "And for me it's time to call all the countries to remove travel restrictions."

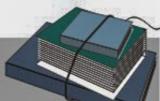
"One of the major challenges with HIV response in the world today is stigma, discrimination and criminalisation. In a nutshell, it's... about human rights the basic human rights of people," he said.

The AIDS conference, which attracts 25,000 participants worldwide, also features a Human Rights Networking Zone where individuals and organizations can involve visitors to campaign against HIV-related human-rights violations. The Zone is showing a video produced by OHCHR about the deportation of a migrant worker after he was tested HIV positive.

Combating HIV/AIDS is one of the Millennium Development Goals (MDGs). OHCHR stresses that pursuing development hand-in-hand with human rights gives countries a better chance of achieving the MDGs by 2015.

Source: United Nations Human Rights office.

LAW lexicon



Court of original jurisdiction - A court where a matter is initiated and heard in the first instance; a trial court.

Court of record - A court in which the proceedings are recorded, transcribed, and maintained as permanent records.

Court reporter - A person who transcribes by shorthand or stenographically takes down testimony during court proceedings, a deposition, or other trial-related proceeding.

Court rules - Regulations governing practice and procedure in the various courts.

Creditor - A person to whom a debt is owed by another.

Crime - An act in violation of the penal laws of a state or the United States. A positive or negative act in violation of penal law.

Criminal justice system - The network of courts and tribunals which deal with criminal law and its enforcement.

Criminal insanity - Lack of mental capacity to do or abstain from doing a particular act; inability to distinguish right from wrong.

Criminal summons - An order commanding an accused to appear in court.

Cross-claim - A pleading which asserts a claim arising out of the same subject action as the original complaint against a co-party, i.e., one co-defendant cross claims against another co-defendant for contribution for any damages assessed against him.

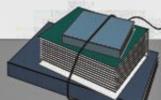
Cross-examination - The questioning of a witness produced by the other side.

Cumulative sentences - Sentences for two or more crimes to run consecutively, rather than concurrently.

Custody - Detaining of a person by lawful process or authority to assure his or her appearance to any hearing; the jailing or imprisonment of a person convicted of a crime.

Source: Jurist International.

Star LAW book review

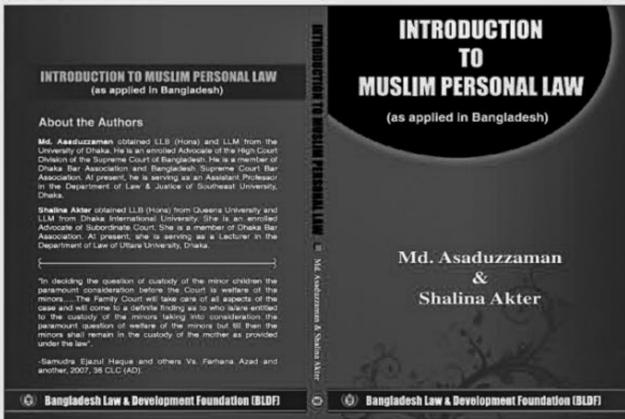


Book Review: Introduction to Muslim Personal Law (as applied in Bangladesh)

Orientation of Muslim Personal Law

EMDADUL HAQUE

BEING the learners of law whether it is personal law or other laws we often are to depend on Western and Indian law books. It is not because we are absolutely in dearth of resources persons to write books but due to lack of their interest to invest their valuable and profitable time of advocacy or consultancy. Many law books are treated as the Bible of some subjects. Of course, I am not dead against the western and Indian books but a bit cautious regarding conflicts of personal laws. For example if we try to follow any book on Hindu law of India we will be in struggle as our Hindu personal law is yet to be updated like India. Also language barrier is one of the major impediments for learners to understand foreign books. Considering these issues the recent published book on "Introduction to Muslim Personal Law" written by Md. Asaduzzaman and Shalina Akter is a simplified version basically designed for law students to orientate and understand them the basic notions of Muslim personal laws in Bangladesh. This book seems to be a developing literature in such field. In this book the statutory rationality of application of the Muslim personal law in Bangladesh, and other issues like sources of Muslim personal



law, marriage, dower, divorce, maintenance, dissolution of marriage, guardianship and custody of minor, restitution of conjugal rights, Family Court, gift (hiba), will (wasiyat), waqf, pre-emption (shufa) have discussed in a very easy fashion along with few relevant and recent case references. The authors have also focused on the issue of Muslim personal law and uniform family code spotlighting on the Law Commission Report of our country published in 2005.

But it seems that the inheritance chapter of the book could have been more detailed and exhaustive. Both authors are young academician with talents and rosy possibilities. The book is a pious effort to introduce the Islamic jurisprudence in a very lucid manner. People having interest in muslim law would find it useful as a ready reference.

Emdadul Haque is Lecturer, Dept. of Law and Justice, Southeast University.

RIGHTS monitor



Criminalised sex workers at high risk of HIV in Asia



THE criminalisation of sex workers, drug users, and men who have sex with men were highlighted as major sources of concern in the fight against HIV in Asia, at the world AIDS conference in Vienna on Wednesday, July 21, 2010.

Twenty-five countries in the Asia-Pacific region still impose the death penalty for offences related to the possession and abuse of drugs, creating a huge stigma that means abusers often avoid treatment for fear of imprisonment, said

Anand Grover, a lawyer and special rapporteur for the UN Human Rights Council.

Injected drug use is acknowledged as one of the main causes of the spread of AIDS worldwide, alongside sexual transmission.

In some countries, "drug users still have to go to jail before they actually can access harm reduction services", said Rachel Ong, of the Asia Pacific Network of People Living with HIV (APN+).

Meanwhile, over 15 countries penalise

consensual same-sex behaviour, pushing potential HIV patients further underground, according to Anand.

This trend of criminalisation is not customary for the region but rather an "alien British colonial legacy and we have to get rid of it", he said provocatively.

In parts of India, small tablets of opium are traditional gifts, he noted, adding that in earlier times, "sex workers... were revered, they were given a high status".

The current trend needs to be reversed and these groups decriminalised, Anand urged.

Ong meanwhile criticised that Asian governments lacked visibility in the fight against HIV/AIDS, compared to the richer nations, which donate much of the aid to fighting the disease.

"The donors' block usually makes most of the decisions and it's very difficult for the implementing countries, or countries in 'the global south' as they call it, to actually voice their opinions."

However, several Asian nations, such as Taiwan, Japan, South Korea and Singapore -- which still has the death penalty for drug-related offences and where homosexuality is illegal -- are no longer developing countries and should make a bigger contribution to human rights, she said.

Source: UN Wire

LAW news



Argentina legalizes same-sex marriage

AMNESTY International has welcomed Argentina's landmark decision on July 15, 2010 to become the first country in Latin America to legalise same-sex marriage.

Argentina's senate passed the law - which will also pave the way for same-sex couples to be able to adopt - by 33 votes to 27 with three abstentions, at the end of a 14-hour debate.

The legislation had already been approved by Argentina's Chamber of Deputies in May. It now awaits enactment by President Cristina Kirchner.

"This is a landmark step in the rights of lesbian, gay, bisexual and transgender (LGBT) people in Argentina to equality," said Louise Finer of Amnesty International.

"Now it's up to the rest of the countries in Latin America to follow suit."

Earlier in the week, Catholic officials across Argentina, where more than 90 per cent of the population are members of the church, read a message from Buenos Aires Archbishop Jorge Bergoglio opposing the bill.

The approval of the law has come as a result of sustained campaigning by the LGBT movement in Argentina since 2005.

Same-sex marriage is legal in Mexico City, while same-sex civil unions are legal in Mexico, Uruguay and some states in Brazil.

Last December, a same-sex couple succeeded in exchanging wedding vows in the province of Tierra del Fuego in southern Argentina.

Alex Freyre and Jose Maria Di Bello got married after a judge prevented the ceremony from taking place in the Buenos Aires.



There have now been nine same sex marriages carried out in Argentina. Each case has depended on individual interpretations of the existing law being carried out by judges and provincial authorities.

"The modification of Argentina's Civil Code to allow same-sex marriage is one of many steps that need to be taken to put an end to discrimination on the grounds of sexual orientation in the country."

Source: Amnesty International.

LAW week



15-member JS body formed without BNP

The House formed a special committee devoid of representation from the main opposition BNP, to chalk out a constitutional amendment proposal. The 15-member committee, headed by Deputy Leader of the House Syeda Sajeda Chowdhury, consists of only Awami League-led ruling alliance lawmakers, as BNP declined to nominate a representative following an invitation from the ruling party. No position was kept reserved for an opposition representative either. Prime Minister Sheikh Hasina, who is also the Leader of the House, brought a motion for the committee's formation under section 266 of the rules of procedure of Jatiya Sangsad, and made a brief statement. She said the amendment to the constitution is "necessary for upholding democracy, and for blocking the way for usurpation of state power through imposition of martial laws in future". -The Daily Star, July 22, 2010.

The depth of 5th amendment

Changes made to the constitution in around four years after the August 15, 1975 changeover altered the fundamental principles of state policy, destroyed the secular character of the constitution and allowed politics based on religion. Besides, the changes replaced Bangalee nationalism with Bangladeshi nationalism, and provided political right to anti-liberation forces including Jamaat-e-Islami and war criminals that resulted in an alarming growth of political parties and organisations based on religion. All those amendments, modifications, substitutions, omissions and additions to the constitution were indiscriminately made during the martial law rule that began immediately after the assassination of Bangabandhu Sheikh Mujibur Rahman. -The Daily Star, July 22, 2010.

CIC suggests amending RTI Act for transparency

Chief Information Commissioner (CIC) Muhammad Zamir called for amending the Right to Information Act, 2009 to ensure transparency in all the corporate bodies and financial institutions. "Most of the corporate companies and giant financial institutions in the country remain out of the jurisdiction of the act. But people have the right to know about their activities and financial dealings. So the act should be reviewed to bring those under the act," said Zamir. His observations came while speaking as the chief guest at the launching session of the website www.blast.org.bd. It aims to provide information on different legal procedures. Bangladesh Legal Aid and Services Trust (BLAST), a human rights organisation, hosted the programme at the Jatiya Press Club. -The Daily Star, July 21, 2010.

Special JS body to be formed

Parliament will constitute a 19-member all-party committee for bringing major changes to the constitution. The committee will have a post vacant for the main opposition BNP, which has yet to nominate an MP for the committee. Treasury bench Chief Whip Abdus Shahid confirmed that the special JS body would be formed. Earlier, he sent a letter to the opposition leader, requesting her to nominate a lawmaker for the committee. In a late development, BNP replied to the ruling AL's letter. It however did not give name of its representative in the proposed parliamentary panel. -The Daily Star, July 21, 2010.

HC warns against custodial deaths

The High Court issued a stern warning to the government that it must take legal action against policemen involved in custodial deaths after investigating the cases with non-police personnel. This court will deal with everyone involved in custodial deaths with an iron fist without mercy and compassion, said an HC bench, adding that police must forget the idea that they are immune to prosecution. Those days are over and the police must realise this reality, it commented in the presence of a number of police personnel who appeared before the bench in connection with three incidents of death in police custody. The HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Md Zakir

Hossain came up with the observations during the hearing of a writ petition earlier filed by Human Rights and Peace for Bangladesh and Bangladesh Human Rights Foundation. -The Daily Star, July 20, 2010.

No bar to sending cases filed for crimes in '71

Reviewing cases filed against Jamaat-e-Islami leaders with different police stations in connection with crimes in 1971, the home ministry found no legal bar to sending the cases to the International Crimes Tribunal for trial. However, the investigation officers of the cases would decide whether to have the trials at the tribunal. Once the IOs appeal to the tribunal to take the cases, the tribunal can decide, said home ministry sources. The observation came at an inter-ministerial meeting at the home ministry with Home Minister Sahara Khatun in the chair. The emergency meeting was called to review the cases filed against the Jamaat leaders and to discuss how those cases could be transferred to the International Crimes Tribunal. -The Daily Star, July 20, 2010.

Tribunal targets fair trial

The war crimes tribunal has announced the rules of procedure for probe, prosecution and trial. Published in a gazette on July 15, the rules say the trial will start once formal charges are placed before the tribunal. The prosecution will prepare charges on the basis of reports by the investigation agency, and submit those to the tribunal in the form of petitions. Shahinur Rahman, registrar of the tribunal, presented the gazette at a press briefing at his office. He said the tribunal can amend or modify the rules if necessary for fair trial of those accused of genocide, crimes against humanity and war crimes in

1971. The rules shall be considered to have taken effect from March 25, the day the government formed the tribunal, prosecution panel and investigation agency for war crimes trial. The three-member tribunal, instituted under International Crimes (Tribunals) Act 1973, can try a person in his presence or absence. -The Daily Star, July 19, 2010.

No scope to challenge cases on dispute facts

A copy of a recent Supreme Court judgment reveals that no-one could challenge in the High Court any case filed by the Anti-Corruption Commission on disputed facts that earlier led 540 graft cases to be stayed by the HC. The apex court made the observations in a verdict given on April 4 upholding an HC verdict declaring legal the way ACC filed a case against Awami League lawmaker Habibur Rahman Mollah. The full text of the verdict was released on April 13. The Daily Star has recently obtained a copy of the judgment where some clear observations were made regarding disposal of ACC cases in the trial courts and HC role in staying cases on trial. -The Daily Star, July 19, 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: LawDesk, The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; email: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net