



LAW FOR everyday life

LAW week

Law on Foreign Donations

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THE law governing the operation of non-governmental organizations which carry out "voluntary activities" in Bangladesh with the use of "foreign donations" is contained in the Foreign Donation (Voluntary Activity) Regulation Ordinance, 1978 ('the 1978 Ordinance') and the Foreign Contribution (Regulation) Ordinance, 1982 ('the 1982 Ordinance').

Section 4 of the 1982 Ordinance provides as follows:

"4. Receipt of foreign contribution without permission prohibited. -- (1) No citizen of, or organisation in, Bangladesh shall receive any foreign contribution without the prior permission of the Government.

(2) No Government, organisation or citizen of a foreign state shall make any donation, grant or assistance, whether in cash or in kind, including a ticket for journey abroad, to any citizen of, or organisation in, Bangladesh without the prior permission of the Government.

(3) Nothing in this section shall apply to an organisation established by or under any law or the authority of the Government."

Under the 1978 Ordinance, no person or organization (whether incorporated or not) may "receive or operate, except with prior permission of the Government, any foreign donation for the purpose of undertaking or carrying on any voluntary activity". The term "foreign donation" and "voluntary activity" are defined in section 2(a) and 2(d) of the 1978 Ordinance respectively, which provide as follows:



The term "foreign donations" is defined in section 2(a) of the 1978 Ordinance, which provides as follows:

"(a) 'foreign donation' means a donation, contribution or grant of any kind made for any voluntary activity in Bangladesh by any foreign government or organization or a citizen of a foreign state and includes, except in the case of a donation made for such charity as the Government may specify any donation made for any voluntary activity in Bangladesh by a Bangladeshi citizen living or working abroad;"

"(d) 'voluntary activity' means an activity undertaken or carried

on partially or entirely with external assistance by any person or organisation of his or its own free will to render agricultural, relief, missionary, educational, cultural, vocational, social welfare and developmental services and shall include any such activity as the Government may, from time to time, specify to be a voluntary activity."

Where the activities carried out by an organisation falls within the aforementioned definition- i.e., is "voluntary", and where the donations are from outside Bangladesh, such an organisation would require registration with and prior permission from the NGO Affairs Bureau

to receive such funds.

An applicant for NGOAB registration is not required to be an incorporated entity. The 1978 Ordinance, section 2(b) defines "organisation" as follows:

"2.(b) "organisation" means a church or a body of persons, called by whatever name, whether incorporated or not, established by persons for the purpose of undertaking or carrying on any voluntary activity in Bangladesh;" (emphasis added)

In practice, however, the applicants are usually a) international not for profit organisations b) companies limited by guarantee under the Companies Act 1994 c) societies registered under the Societies Act 1860 d) Trusts registered under the Trusts Act or e) voluntary social welfare agencies, registered with the Department of Social Services under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961.

Section 3 of the Foreign Donations (Voluntary Activities) Regulation Rules, 1978 ("the 1978 Rules") provides as follows:

"3. Application for registration (1) Any person or organization receiving or operating any foreign donation for the purpose of undertaking or carrying on any voluntary activity shall apply to the Director General for a registration in Form FD-1."

Any organization which wishes to obtain registration with the NGO Affairs Bureau under the 1978 Ordinance is required to submit an application in a prescribed form (Form 'FD-1') to the NGO Affairs Bureau, under the Prime Minister's Office, together with supporting documents to the Director General, NGO Affairs Bureau. The supporting documents/ the necessary papers for Foreign NGO registration under the 1978 Ordinance are as follows:

1. FD-1 Form (Signed by the Chief Executive in Bangladesh)- 9 copies
 2. Certificate of Incorporation in the country of origin- 3 copies
 3. Constitution- 4 copies
 4. Activities Report- 5 copies
 5. Plan of Operation (Work procedure, Orgnaogram)- 4 copies
 6. Letter of appointment of the Country Representative- 4 copies
 7. Decision of the Committee/Board to open office in Bangladesh- 4 copies
 8. Copy of Treasury Challan in support of depositing USD 1500 or Equivalent Tk amount in the Code 1-0323-000-1836- 3 copies (with original copy)
 9. Deed of agreement with the landlord in support of opening the office in Bangladesh- 3 copies
 10. List of Executive Committee (foreign)- 4 copies
 11. List of Executive Committee (local, if any)- 4 copies
 12. Local constitution (if any)- 4 copies
 13. Letter of Intent- 3 copies
- All documents from abroad should be notarized attested by peace of justice.
- A fee of US\$ 1500 has to be deposited along with the application.
- It is also pertinent to note that in order to apply for registration, the applicant must have a bank account in Bangladesh.
- On a sidenote, an application usually takes a minimum of three to four months to process, and is subject to the satisfaction of the NGOAB and the receipt of prior clearance from several security agencies (including the Special Branch of Police, and the National Security Intelligence (NSI)).

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RIGHTS corner



Does diplomatic immunity breach a victim's human rights?

If an abused domestic worker's former employer had raised this doctrine as a defence, she could not have sought

GLENDON SALTER

THE abuse that migrant domestic workers suffer at the hands of their employers in Britain has received a great deal of publicity recently, and with good reason. The pain, shame and poor conditions that many such workers endure are often handled in secrecy, behind the closed doors of private residences around the country. However, the spotlight has yet to shine on the issues facing domestic workers employed by representatives of states. Diplomats and consular officials also employ migrant domestic workers in the UK and examples sadly exist of these staff being abused.

My personal experience of this problem arose when my firm was approached by the charity Kalayaan to represent Alia (not her real name), a young woman who had been trafficked to the UK to work for a diplomat. Alia was hired by the diplomat in her home country to look after the diplomat's son, and to assist occasionally with household chores, but the reality once she arrived in the UK was very different.

Alia suffered more than five months of sustained physical and psychological abuse at the hands of her employers, including verbal taunting and sexual assault. She was required to work for 19 hours a day, seven days a week, without rest breaks or holidays. She was not permitted to leave her employer's house unaccompanied and did not receive a salary throughout the period of her employment.

After Alia fled from her employer she had no one to whom she could turn for assistance, until she came into contact with Kalayaan. I submitted a claim in the employment tribunal on her behalf for various breaches of employment law, including sexual harassment, breaches of the working time regulations and failure to pay the national minimum wage. Given her former employer's status as a diplomat, the doctrine of diplomatic immunity would have been available to him as a defence.

This doctrine, from the 1961 Vienna convention, provides that diplomats, their families and staff attached to embassies are granted immunity from criminal and civil actions in the receiving state. Such immunity can be waived by the home state of the diplomatic mission, but this is entirely at the discretion of that state and leaves the receiving state with little power to take action against the individuals concerned, other than deportation.

Had Alia's former employer raised this doctrine as a defence and immunity not been waived, this could have precluded Alia from continuing with her claim. However, the employer submitted no defence and she was able to continue with it.

Diplomatic immunity can prevent victims of crimes and civil wrongs from successfully seeking reparation for the abuse that they have suffered. FCO statistics revealed that in 2007, 78 alleged criminal offences were committed by diplomats, ranging from actual bodily harm to speeding. Yet there appears to be nothing that victims can do to enforce their legal rights where diplomatic immunity is raised as a defence, short of hoping that the home state will waive immunity.

This presents a problem for the government to consider: how is the use of diplomatic immunity to avoid legal proceedings compatible with the European convention on human rights? In the context of domestic workers, article 3 (prohibition on torture, inhuman or degrading treatment or punishment), article 4 (prohibition on slavery, servitude and forced labour), article 6 (right to receive a fair trial, including the right to a public hearing before an independent and impartial tribunal within a reasonable time) and article 13 (right for an effective remedy before national authorities for violations of rights under the ECHR) may be relevant.

The abuse that Alia suffered, and the circumstances in which she was forced to live, arguably breached the convention. The government needs to consider carefully the application of diplomatic immunity in cases where there has been a potential breach of human rights.

The writer is an employment solicitor at Hogan Lovells.

RIGHTS monitor



Bringing education to the Bihari minority

HELPING the over 200,000-strong Bihari minority in Bangladesh learn how to read and write is key to their full integration, say activists.

"I wanted to go to school but my father faced great financial difficulty. I can count and I can get by, but I would like to study," a Bihari youth, Bablu Mehtub, 19, told IRIN.

According to Refugee and Migratory Movements (RMM), a University of Dhaka affiliated research group, 94 percent of today's Bihari community are illiterate.

The once stateless, Urdu-speaking minority who only recently gained citizenship, were shut out of state schools for decades.

"These communities are highly scarred having spent generations in the camp[s]... Though government schools have started enrolling Bihari children in the past 8-10 years, so much more needs to be done," C.R. Abrar, the group's coordinator, told IRIN.

In 1971 Biharis - named after their Indian region of origin - found themselves in a diplomatic dilemma: Linguistically tied to Urdu-speaking Pakistan, they were living in Bengali-speaking Bangladesh when the latter won independence from what today is Pakistan.

Viewed as collaborators of then West Pakistan, the Bangladesh state effectively denied them access to public education until 2000, and citizenship until 2008.

Promises of repatriation stalled, applications were refused and statelessness ensued. Almost 40 years and two court rulings later, and despite the reaffirmation of their Bangladeshi citizenship, more than 100,000 still reside in ghettos created in the 1970's, while a greater number battle for national entitlements, according to RMM.

Menial labour

Over half of all Biharis in Bangladesh are under 25, so the struggle for education resonates with them.

"Without doubt literacy remains the biggest barrier to our assimilation," said Ahmed Ilias, executive director of Al-Falah, Bangladesh, the only registered NGO working with the Bihari community.

While some have managed to finish higher education - fewer than two dozen, according to Abrar - most face a life of menial labour.

A lawyer and president of an association of young Urdu speakers, 29-year-old Khalid Hossain, told IRIN he was also denied entrance to state primary and secondary schools for living in a Bihari camp.

After winning a scholarship to attend a private school, Hossain said his address at Geneva camp, one of the largest communities of Biharis in the capital, Dhaka, prevented him renting accommodation outside the camp. "It's really



important that the camp identity be removed. Why can't we be given a normal address?"

After being denied state education for so long, it is difficult for Urdu speakers to compete for admission to schools, given the dominance of Bengali, he added. "We need a quota for education, like other minorities."

Government efforts

Efforts to address this problem are being made, according to the government.

The director-general of the government's bureau of non-formal education, Reazul Kader, said the government had already set up 12 learning centres with 20 NGOs since 2006 in Geneva camp, the largest Bihari site, and would expand courses in 2011 to reach all school-aged youths in the camp as part of a drive to achieve 100 percent literacy nationwide by 2014.

However, Bangladesh, a flood-prone poor country of more than

150 million, has a host of other problems to contend with, including 37 million illiterate people. The national literacy rate is 53 percent, according to UN Development Programme.

Call for help

But the state alone cannot afford to finance these and other citizen services, according to Abrar from the University of Dhaka. "Bangladesh should take due credit for solving a protracted stateless situa-

E-stalkers on the prowl

While conventional stalking has received much attention lately, harassment through mobile phones and the internet has grown to be a silent epidemic in the last few years. The Daily Star has recently interviewed 30 women at random about the issue, and found every one of them has been harassed electronically by ex-boyfriends or strangers. "It is sexual harassment of the new millennium," said Sultana Kamal, rights activist and former adviser to the caretaker government. "And almost all the victims are women." - *The Daily Star, September 2, 2010.*

Man dies in custody

A man died in police custody in Goshairhat upazila of Shariatpur district August 31 evening. The deceased was identified as Mokhesur Rahman, 40, of Mashurganga village of the upazila. Though the law enforcers described his death as an act of suicide, family members and locals denounced the police claim terming it false. Locals brought out a procession carrying the body yesterday afternoon demanding a fair probe. Mokhesur's wife Morsheda Begum alleged that her husband died of police torture. - *The Daily Star, September 2, 2010.*

PM again warns BCL wrongdoers

Prime Minister Sheikh Hasina once again said her government is preparing a list of errant activists of Bangladesh Chhatra League to bring them to book. On July 16, Sheikh Hasina issued Chhatra League activists the same warning at an Awami League Central Working Committee meeting. The premier was yesterday speaking at a discussion organised by BCL at the capital's Bangabandhu International Conference Centre marking the August 15. "We are collecting information and preparing a list of Chhatra Shibir and Chhatra Dal activists who infiltrated into BCL and are committing violence in public universities and colleges," said Sheikh Hasina, also the ruling Awami League president. - *The Daily Star, September 1, 2010.*

Ship-breaking yard fined for pollution

The Department of Environment (DoE) fined a ship-breaking yard at Madambibir Hat under Sitakunda upazila of the port city Tk 15 lakh for ignoring workers' safety and polluting environment. A team led by DoE Director (Enforcement) Munir Chowdhury fined Messrs Rahim Steel Co under Bangladesh Environment Conservation Act, 1995. Sources said six workers were killed and 11 others injured in a fire that broke out while cutting an oil tanker at the ship-breaking yard on December 26 last year. The DoE in its investigation into Rahim Steel Co found that there were not sufficient safety measures for the workers, said Munir. - *The Daily Star, September 1, 2010.*

Witness the weakness

Zafrun Nahar had spent five years trying to have her son's killers punished. But no witness showed up to testify at the trial for fear of reprisals. Frustrated that all her hard work brought nothing, she now sees no point in trying. "I have waited enough...seen enough. But no more do I wait for justice," says a battle-weary Zafrun, 61. Her elder son Himel, 25, was shot dead on Salimullah Road in the capital's Mohammadpur area in February 1997. In the murder trial, 34 dates had been set for testimony of the prosecution witnesses. But no-one dared to appear in the court in the face of intimidation by the accused and their associates. - *The Daily Star, August 31, 2010.*

No conviction in 90pc cases

Police fail to get convictions in a mind-boggling 90 percent cases, the Human Rights Commission chief revealed. HRC Chairman Prof Mizanur Rahman also said police exercise excess power, abuse laws and make indiscriminate arrests but they ultimately fail to prove charges they bring against the arrestees. Mizanur said this at a discussion that followed the launching ceremony of the book "101 Question and Answers About the Police". Bangladesh Legal Aid Services Trust (BLAST), Nagorik Uddyog and Commonwealth Human Rights Initiative arranged the programme at Cirdap auditorium in the capital. - *The Daily Star, August 31, 2010.*

44 workers stranded in Sharjah for 5 months

At least 44 Bangladeshi workers have been languishing in the United Arab Emirates for the last five months after they sued their employers for not paying wages for nearly a year. The workers living in two camps in Sharjah can neither find new jobs nor have enough money to return home. They filed two cases against their employers in March but are yet to get verdict from the court. Rawshan, one of the workers, said their employers had not provided them with any food, water or electricity since they filed the cases. "We are surviving with the help of some local organisations," he said from a camp for 29 Bangladeshis and an Indian worker. - *The Daily Star, August 30, 2010.*

Ctg ship-breaker fined for ignoring workers' safety

The Department of Environment (DoE) fined a ship-breaking yard at Sonaichhari under Sitakunda upazila Tk 7 lakh for ignoring workers' safety and environmental pollution. A team led by DoE Director (Enforcement) Munir Chowdhury fined Messrs Sultana Ship-Breaking. This is the first time a ship-breaking yard was penalised. Munir said one worker was killed and four others were injured in a fire on July 12 while cutting an oil tanker of a ship at the ship-breaking yard. According to the certificate of the explosives department, the ship was not free from petroleum substances, which was risky for workers, he said. "The yard pollutes air of the area through burning oily substances". - *The Daily Star, August 30, 2010.*

Let Sangsad rule

The parliament has largely lost its power and pre-eminence due to some changes brought to the constitution by the 4th, 5th, 12th and 13th amendments. Although the original constitution of 1972 ensured the parliament's supremacy over the executive and judicial branches of the state, the amendments brought by both military rulers and elected governments, not only eroded parliament's power, it made the House subservient to the chief executive in some cases. The House was originally structured to serve as the core of the parliamentary system of government. - *The Daily Star, August 29, 2010.*

Trafficker, 8 Rohingyas arrested

Detective Branch (DB) of Police arrested a trafficker along with eight Rohingya refugees with seven forged Bangladeshi passports yesterday during a raid on a hotel in the city's Segunbagicha area. The arrestees are Rehana Akhter, 18, Abdul Kader, 32, Mohammad Alam, 40, Mohammad Rafique, 20, Abdul Malek, 30, Mohammad Shafique, 21, Jannat Ullah, 18, Jane Alam, 23 and trafficker Mohammad Yasin, 25. During interrogation by the police, they confessed that they had gathered at the hotel to go abroad using Bangladeshi passports which they had obtained through forgery. - *The Daily Star, August 29, 2010.*

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