



YOUR Advocate

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

I, being a beneficiary of the valued column "Your Advocate", would first of all like to thank you. Insofar as rights in Islamic inheritance law are concerned, it's reliably learnt that as per recently enforced amendments, sons and daughters are equally distributed on 1:1 basis of both movable and immovable properties, unlike in the original, rights of sons 2:1 for daughters. Your valued comments and elaborations in details of the above will be most welcome.

Sincerely,
Putool

Response

Thank you very much for your query. Yes, we have seen movements and campaigns in recent times for equal rights of son and daughters in inheriting their deceased parents' properties. Few women rights and human rights organizations led such campaigns. There was a discussion at governmental level as well. However, such change has not yet been adopted. As such the current scenario remains as it was before. For your better understanding, I am briefly elaborating the present law.

In Bangladesh the question of inheritance of property of Muslims, Hindus, Christians and Buddhists are governed by personal law. Personal law is that branch of law, which is applicable to the persons of a particular religious community. Therefore, Muslim personal law means that portion of Islamic law that is applicable to the Bangladeshi nationals professing Islam.

Consequently, it is clearly understood that so far as the inheritance of property of a Muslim is concerned, the laws stem from the holy Qur'an will apply for Muslims in Bangladesh. Accordingly, in the presence of son, daughter is regarded as residuary and in the absence of son, daughter is regarded as sharer. Female gets half of the share to their male counterpart. No distinction is made between movable and immovable property in this regard.

The very common objection frequently raised against personal laws including Muslim Personal Law is discrimination between male and female, i.e. gender inequality. In view of the above discrimination, it is demanded by the secular thinkers that Uniform Family Code should be adopted in Bangladesh with a view to eliminate gender inequality and with a view to apply the same law for people of all religions. Though there were some movements towards this direction at one point, it has been understood that there is too remote a possibility that such Uniform Family Code will be adopted in the near future.

For detailed query contact omar@legalcounselbd.com.

GOOD NEWS



Peru revokes law denying justice for victims of past crimes

Amnesty International has welcomed the Peruvian president's decision to revoke a new law which could grant amnesties to military personnel alleged to have committed human rights violations during the country's 1980-2000 internal armed conflict.

President Alan García asked Congress on September 13, 2010 to repeal a presidential decree issued two weeks ago which could have meant that those responsible for human rights violations committed before 2003 would not face trial.

Amnesty International had warned that because of the hundreds of cases of human rights violations still pending from that time, the decree, could have made it impossible to bring successful prosecutions against agents of the state.

"President García's decision to revoke the law is a positive step to ensuring that those victims of crimes against humanity at the hands of the military and police will receive the justice they deserve," said Guadalupe Marengo, Deputy Americas Director at Amnesty International. Thousands were killed, tortured, disappeared and raped at the hands of the military during the conflict in Peru. Hundreds of members of the armed opposition group Sendero Luminoso (Shining Path) are currently imprisoned for the atrocities they committed, however, many of those who committed violations in the name of the state between 1980 and 2000 remain at large.

"It is time for all victims and their relatives to receive justice and reparation for their suffering," concluded Guadalupe Marengo.

Source: Amnesty International.

LAW event

NHRC Chairman receives "Best Law Teacher Award"

RECOGNIZING his immense capacity to promote justice and development through law and legal education, his home country recently appointed him as the Chairman of the National Human Rights Commission (NHRC), a position usually offered only to a Chief Justice of a Nation's Highest Court -- this is a line from the citation read out in honour of Professor Mizanur Rahman, the recently appointed Chairman of the NHRC. Dr. Rahman, also a Law Professor at Dhaka University, was conferred the "Professor N.R. Madhava Menon Best Law Teacher in the SAARC Region Award-2010" given by Indian Supreme Court Judge R.V. Raveendran at New Delhi on 5 September 2010. The Society of Indian Law Firms (SILF) and Menon Institute of Legal Advocacy and Training (MILAT), which have instituted the award celebrated Law Teachers' Day on 5th September, where eminent law teachers from the South Asian Association for Regional Cooperation (SAARC) region were honoured. The SILF is the apex body established in 2000 to protect, safeguard and promote the interests of law firms in India. The SILF serves as a forum for exchange of ideas and information as also a medium for interaction with the government, the judiciary and the bureaucracy. Read out by Living Legend of the Law in the Commonwealth Padmashree Professor N R Madhava Menon the citation says that Dr. Mizan through his concept of rebellious lawyering the essence of which is lawyering with the poor is lawyering for justice, successfully initiated a 'one man revolution' in legal education in Bangladesh. "The Human Rights Summer School which he established single-handedly ten years ago, attracted legal giants from all over the SAARC region is a unique experiment in learning law in social context and using law creatively to advance the cause of justice"-- the citation mentions. Professor Menon applauded the Bangladesh Government's decision to appoint a law professor like him to be the NHRC Chief and expressed the view that the entire law teaching community has been honoured at this, sending a message to other governments of the SAARC Region. Dr. Mizan in response recalling his whole teaching life to reorienting the students in the true spirit of human rights and dignity said, "When I would see the law students the future judges and lawyers fighting for a change to uphold the spirit of liberty and justice, I would regard it a translation of my relentless effort to fight social inequities, discrimination and poverty".

On the occasion, the SILF and MILAT also held a National Symposium on "Ethical Lawyering: Role of Law schools" where Professor Rahman spoke on "Law School's Role in Teaching Legal Ethics". The former Chief Justice of India, J.S. Verma, noted constitutional jurist of Bangladesh Dr. Kamal Hossain and SILF President Lalit Bhasin were also present. Speaking on the occasion, Mr. Bhasin said: "We are proud to extend our reach across boundaries to other SAARC countries." "It is an honour to

award Professor Rahman with the 'Professor N.R. Madhava Menon Best Law Teacher Award-2010', he added. The symposium focused on issues and concerns related to the codes of ethics and underlying principles of ethics. The Role of Law Schools in Teaching Ethics was a special accompanying event. Justice Raveendran, Solicitor-General and Bar Council of India Chairman Gopal Subramaniam, and M.P. and Supreme Court Bar



Association President Ram Jethmalani were amongst other keynote speakers. The Chairman of the NHRC Dr. Mizan also delivered a lecture at the Center for Governance and Legal Studies of Jawaharlal Nehru University on "Rebellious Lawyering for Empowerment of the Poor: In Search of a New Jurisprudence of Insurgency".

Compiled by Law Desk

HUMAN RIGHTS monitor

Lebanon: Judiciary failing to protect domestic workers

INDIFFERENCE, lengthy procedures, and restrictive sponsorship system defeat justice Lebanon's judiciary is generally failing to hold employers accountable when they violate the basic rights of migrant domestic workers, Human Rights Watch said in a report released on September 16, 2010. The government should adopt a plan to ensure that these workers can rely on Lebanese courts to protect their rights, Human Rights Watch said.

The 54-page report, "Without Protection: How the Lebanese Justice System Fails Migrant Domestic Workers," reviews 114 Lebanese judicial decisions affecting migrant domestic workers. It finds that lack of accessible complaint mechanisms, lengthy judicial procedures, and restrictive visa policies dissuade many workers from filing or pursuing complaints against their employers. Even when workers file complaints, the police and judicial authorities regularly fail to treat certain abuses against domestic workers as crimes.

"By turning a blind eye to violations affect-

ing domestic workers, Lebanon's police and judiciary are complicit in the ongoing violations by employers against this vulnerable group," said Nadim Houry, Beirut director at Human Rights Watch. "Locking someone up or slapping them is a crime regardless of the identity of the victim."



Human Rights Watch did not find a single example among the 114 cases it reviewed in which an employer faced charges for locking workers inside homes, confiscating their passports, or denying them food, even though these violations of the law are commonplace. Lebanese families employ an estimated 200,000 migrant domestic workers, primarily from Sri Lanka, Ethiopia, the Philippines, and Nepal.

Complaints filed by these workers against employers often languish in court for months, and sometimes years. This poses an added burden on the workers, because Lebanon's restrictive visa policies make it hard for them to remain in the country to pursue the case.

Cases of physical violence against migrant domestic workers often fail to garner sufficient attention from police and prosecutors. In a case dating from 2005, the police waited 21 days to begin investigating after receiving a complaint that an employer was beating a domestic worker. A review of police reports in numerous cases of violence against these workers shows that in investigating these cases, the police regularly ask employers only general questions and accept their statements as truthful without cross-checking their state-

ments with other potential witnesses. While the authorities have prosecuted certain cases of severe beatings against migrant domestic workers, these cases remain rare and have led only to light sentences. In a widely hailed case, a Lebanese criminal court sentenced an employer to prison on December 9, 2009, for repeatedly beating a Filipina domestic worker. However, the sentence was only 15 days. The most severe sentence for beating a domestic worker of which Human Rights Watch is aware was one month in prison. It was imposed by a criminal court on June 26, 2010, against an employer who repeatedly beat a Sri Lankan domestic worker while forcibly confining her to the house. Even employers who kill their workers often get away with lean sentences. In a 1999 case, a criminal court sentenced an employer who beat a Sri Lankan worker to death to only one-and-a-half years in jail.

"These verdicts are a small step in the right direction, but remain a mere slap on the wrist,"

Houry said. "The authorities need to ensure that employers who abuse domestic workers receive penalties that are appropriate to the offense and serve as deterrents for others." Human Rights Watch documented a number of violations of due process and the right to a fair trial in cases in which migrant domestic workers were accused of a crime, usually theft. Of the 84 criminal cases against domestic workers reviewed by Human Rights Watch, 37 of the workers - 44 percent - did not have a defense lawyer. Most - at least 57 of 84 cases reviewed - also faced police and court proceedings without the help of certified translators, despite the fact that many do not speak fluent Arabic. Interpreters were rare even in cases in which the worker was accused of a serious crime.

The report also found widespread pretrial detention of migrant domestic workers accused of crimes. At least 76 percent of the workers in the cases reviewed - 64 out of the 84 - were detained before trial. Most who were eventually found not guilty had been detained during trial for an average of three months before being released, although at least four had spent more than eight months in jail before a court found them not guilty.

"Domestic workers too often end up in jail on the basis of accusations by their employers, without benefiting from the assistance of a lawyer or translator," Houry said. "They deserve the same presumption of innocence and due-process guarantees as everyone else." Despite recent pronouncements by Lebanese officials, including the Ministers of Interior and Labor, that they want to improve the treatment of migrant domestic workers, government action has been limited to narrow reform initiatives, such as a compulsory standard employment contract for these workers introduced in January 2009. The government also has failed to create effective mechanisms for inspecting the workplaces of migrant domestic workers.

Human Rights Watch called on the Lebanese authorities to: Develop a national plan to increase the likelihood that complaints against employers for crimes committed against migrant domestic workers lead to a prosecution; Enact legislation to create a simplified dispute resolution mechanism to settle salary disputes between employers and migrant workers in a timely manner; Provide access to legal aid and certified interpreters for migrant domestic workers who are victims of abuse or are accused of a crime; Implement training programs for police officers, immigration officials, and judges to identify and respond to migrant domestic workers' abuse complaints; and Reform the visa sponsorship system so that workers' visas are no longer tied to individual sponsors and so that the workers can file complaints without fear of detention and deportation.

Human Rights Watch called on the Lebanese authorities to: Develop a national plan to increase the likelihood that complaints against employers for crimes committed against migrant domestic workers lead to a prosecution; Enact legislation to create a simplified dispute resolution mechanism to settle salary disputes between employers and migrant workers in a timely manner; Provide access to legal aid and certified interpreters for migrant domestic workers who are victims of abuse or are accused of a crime; Implement training programs for police officers, immigration officials, and judges to identify and respond to migrant domestic workers' abuse complaints; and Reform the visa sponsorship system so that workers' visas are no longer tied to individual sponsors and so that the workers can file complaints without fear of detention and deportation.

Human Rights Watch called on the Lebanese authorities to: Develop a national plan to increase the likelihood that complaints against employers for crimes committed against migrant domestic workers lead to a prosecution; Enact legislation to create a simplified dispute resolution mechanism to settle salary disputes between employers and migrant workers in a timely manner; Provide access to legal aid and certified interpreters for migrant domestic workers who are victims of abuse or are accused of a crime; Implement training programs for police officers, immigration officials, and judges to identify and respond to migrant domestic workers' abuse complaints; and Reform the visa sponsorship system so that workers' visas are no longer tied to individual sponsors and so that the workers can file complaints without fear of detention and deportation.

Human Rights Watch called on the Lebanese authorities to: Develop a national plan to increase the likelihood that complaints against employers for crimes committed against migrant domestic workers lead to a prosecution; Enact legislation to create a simplified dispute resolution mechanism to settle salary disputes between employers and migrant workers in a timely manner; Provide access to legal aid and certified interpreters for migrant domestic workers who are victims of abuse or are accused of a crime; Implement training programs for police officers, immigration officials, and judges to identify and respond to migrant domestic workers' abuse complaints; and Reform the visa sponsorship system so that workers' visas are no longer tied to individual sponsors and so that the workers can file complaints without fear of detention and deportation.

Human Rights Watch called on the Lebanese authorities to: Develop a national plan to increase the likelihood that complaints against employers for crimes committed against migrant domestic workers lead to a prosecution; Enact legislation to create a simplified dispute resolution mechanism to settle salary disputes between employers and migrant workers in a timely manner; Provide access to legal aid and certified interpreters for migrant domestic workers who are victims of abuse or are accused of a crime; Implement training programs for police officers, immigration officials, and judges to identify and respond to migrant domestic workers' abuse complaints; and Reform the visa sponsorship system so that workers' visas are no longer tied to individual sponsors and so that the workers can file complaints without fear of detention and deportation.

Source: Human Rights Watch.

LAW week



Real estate bill passed

The Jatiya Sangsad passed a bill providing for punishment to real estate developers for wrongdoings and protection of the interests of landowners and buyers. On the recommendations of a parliamentary body, provisions were included in the bill also for punishing landowners for violation of contracts with developers. The bill was placed in the House on September 7 last year and sent to the parliamentary standing committee on the housing and public works ministry for scrutiny. The committee was asked to submit its report to the House within three weeks. -The Daily Star, September 23, 2010.

Bangladesh faces risks of terror finance

Bangladesh should amend laws against money laundering to plug the loopholes that allow international transactions in drug trade, terror finance and corruption, says a global taskforce. In a draft report to the government, Financial Action Task Force (FATF), the world's lone anti-money laundering organisation, has observed that Bangladesh is a transshipment point for illegal drugs bound for markets in Europe, the USA and Canada. "Bangladesh faces significant risk of money laundering and some risk of terrorism financing," said the report handed over to the government on September 15. -The Daily Star, September 23, 2010.

UK detains 10 Bangladeshis for working illegally

The UK Border Agency arrested ten Bangladeshi expatriates under a special law enforcement operation aimed at reducing illegal immigration, said a press release of the British High Commission in Dhaka. They were detained during August 19 to mid-September for working illegally in the UK and for committing other immigration offences. Steps are being taken to deport them, said the press release. The businesses will be penalised up to £100,000 or an estimated Tk10,700,000 for employing the illegal immigrants, unless they can prove they had carried out the correct 'right to work checks', the release said. The release quoted UK Immigration Minister Damian Green as saying "We are determined to make it harder than ever for illegal immigrants to work in the UK." -The Daily Star, September 22, 2010.

2 factories fined for pollution

The Department of Environment (DoE) fined two factories a total of Tk 16 lakh for polluting Turag and Dhaleswari rivers with untreated liquid waste. The dyeing plants, Rakef Apparels Washing and Packaging Industries Limited in Kaliakoir and Towel Text Limited in Savar are more than ten years old and process around two tonnes of knit fabrics everyday. Despite receiving prior warnings from the DoE, the factories did not bother to set up effluent treatment plants (ETP) to treat the toxic liquid waste before discharging. Both the factories had been warned that their gas, electricity and water supply would be disconnected unless they comply with the environmental rules and regulations. A team of DoE led by Mohammed Munir Chowdhury, director of enforcement and monitoring unit led the unannounced drive during the 'Operation Prevent Environment Crime'. -The Daily Star, September 22, 2010.

Strong laws for safe climate

Two bills were placed in parliament seeking to increase power and number of environment courts to take stern actions against polluters and also to establish a trust to tackle adverse impacts of climate change. State Minister for Environment and Forest Hasan Mahmud placed the bills, which were sent to the parliamentary standing committees on environment and forest ministry for scrutiny. The bill to enact new law aims to expedite trial of environment related offences and offers setting up environment court at every district headquarters with expanded jurisdiction to take stern actions against all sorts of polluters. -The Daily Star, September 21, 2010.

NGO pulls strings, govt to revoke it

Under pressure from various lobbies, the government is set to return the licence of Bangladesh Centre for Workers Solidarity (BCWS), a non-government organisation (NGO) working for labour rights. The government cancelled the licence of BCWS in June this year for "instigating workers' unrest" at a number of garment factories in Narayanganj, Savar, Gazipur and Ashulia. The NGO Affairs Bureau (Ngob) is also considering renewing licences of 17 other foreign funded NGOs that have lost licences for various irregularities including misuse of funds. -The Daily Star, September 21, 2010.

Firm fetters for border guards

If two or more members of border security force collectively express their angst, it would be considered mutiny, according to the proposed legislation for the force. People involved in such activities or attempts shall be punished which could even be the death penalty. The proposed law is likely to be placed in parliament on September 20, 2010, the first day of this parliament's sixth session. The government has moved to introduce the new law, repealing the existing one, to restructure the force with a new name "Border Guard Bangladesh" in the wake of the heinous killings of army officers at Bangladesh Rifles headquarters in February last year. The unprecedented mutiny broke out when BDR jawans at their yearly Darbar (assembly) raised demands before officers who refused to give in to those. Home Minister Sahara Khatun will place the bill titled "Border Guard Bangladesh Act, 2010" before the House, sources in the Parliament Secretariat said. -The Daily Star, September 20, 2010.

JS committee plays safe

The parliamentary special committee for constitutional amendment decided not to recommend scrapping from the country's supreme charter the clause that declares Islam the state religion, and opted to suggest instead adding a clause that will ensure secularism as well. The committee unanimously agreed to recommend adding clauses banning extra-constitutional takeover of state power and undermining of the constitution, with provisions for stern punishments for the offences, committee sources said. The 15-member parliamentary body led by Deputy Leader of the House Syeda Sajeda Chowdhury also decided to invite constitutional experts to its next meeting on September 23 seeking their opinions on the issues. -The Daily Star, September 20, 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