



HUMAN RIGHTS watch



Millions of older persons are denied their rights

Statement by the UN High Commissioner for Human Rights, Navi Pillay, to mark the International Day of Older Persons

THE United Nations High Commissioner for Human Rights, Navi Pillay, highlighted Friday, October 1, 2010 that "millions of older persons around the world face unequal treatment or denial of their human rights, particularly in relation to their right to personal security, health, social security and adequate standard of living."

"We must all accept the inevitability of ageing," Pillay said on the 20th Anniversary of the International Day of Older Persons. "What we do not have to, and must not, accept is that old age brings with it lesser access to, and enjoyment of, the full range of human rights."

In the last two decades the global population profile has changed more than at any time in history. One in every ten people is now aged 60 or more. By 2050, that figure will rise to one in five.

"This radical demographic shift has caught many policymakers off guard," the UN human rights chief said. "Not very long ago, the issue of ageing was considered a matter of importance for only a handful of countries, but statistics now show that every country is concerned."

"As a result of their invisibility and lack of access to decision-making, the human rights of older persons are often neglected. Many older persons are unemployed and abandoned, many others face violence and abuse by relatives or caregivers which in its cruelest forms can amount to torture," the High Commissioner said. "Older women are among the most vulnerable, some of them homeless or without a right to inherit from their families, husbands or children."

"The human rights community has also been slow in realizing



that the global agenda and the advocacy efforts at the national level can no longer ignore the rights of older persons.

Pillay said, "Non-discrimination is paramount to the human rights agenda; however, old age has yet to be featured prominently as one of the grounds of discrimination at legislative and policy levels. Positive measures are necessary to eradicate discrimination and exclusion of older persons and to ensure access to services according to their needs."

The High Commissioner emphasized that "while we have less clarity on age-related discrimination, we know that the existing human rights instruments, such as the two Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights, can and should be used as the tools to identify the necessary measures and entitlements and to engineer the fundamental policy changes required to accommodate this shift in the global demographic."

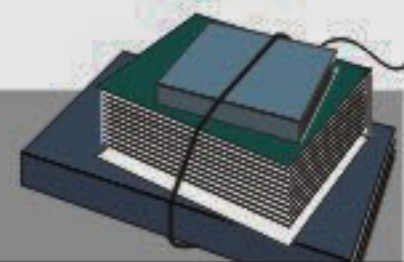
Observing that two thirds of the world's older people live in low- and middle-income countries, Pillay called on Governments to introduce social pension schemes for older people and to adopt adequate measures in such areas as housing, health, transport, access to water and personal security to ensure that they are not discriminated against or left unprotected and that they enjoy an adequate standard of living.

In her message, the High Commissioner also encouraged civil society organizations to widen the scope of their work and become more active on the rights of older people. "Every one of us must prepare for old age," she said.

The UN human rights chief added that older people are assets to society and can contribute significantly to the development process if given the opportunity. "As such, they need to be empowered and their participation ensured," she said.

Source: United Nations.

LAW lexicon



Disclaimer - To refuse a gift made in a will.

Discovery - The name given pre-trial devices for obtaining facts and information about the case.

Dismissal - The termination of a lawsuit.

Disposition - The order of a juvenile court determining what is to be done with a minor already adjudged to be within the court's jurisdiction. In criminal cases, the settlement of a case.

Dissent - To disagree. An appellate court opinion setting forth the minority view and outlining the disagreement of one or more judges with the decision of the majority.

Dissolution - The termination; process of dissolving or winding up something.

Diversity of citizenship - The condition when the party on one side of a lawsuit is a citizen of one state and the other party is a citizen of another state; such cases are under the jurisdiction of federal courts.

Diversion - The process of removing some minor criminal, traffic, or juvenile cases from the full judicial process, on the condition that the accused undergo some sort of rehabilitation or make restitution for damages.

Docket - An abstract or listing of all pleadings filed in a case; the book containing such entries; trial docket is a list of or calendar of cases to be tried in a certain term.

Docket control - A system for keeping track of deadlines and court dates for both litigation and non-litigation matters.

Source: Jurist International.

LAW event

Enforcing Court-Sponsored ADR

Enforcing Court - Sponsored ADR in Bangladesh
18 September, 2010
Venue: Zafar Imam Tennis Complex, Conference Room, Rajshahi
Organized by:
Bangladesh Law Commission in collaboration with the South Asian Institute of Advanced Legal and Human Rights Studies (SAILS)



TAPOS KUMAR DAS

ON September 18, 2010 Bangladesh Law Commission in collaboration with the South Asian Institute of Advanced Legal and Human Rights Studies (SAILS) arranged a day long seminar in Rajshahi on 'Enforcing Court Sponsored ADR in Bangladesh'. The seminar was presided over by Mr. Justice Mohammad Abdur Rashid, Chairman of Bangladesh Law Commission. Mr. Justice Muzammel Hossain, judge of the Appellate Division was the Chief Guest; Mr. Justice SK Sinha, judge of the Appellate Division and Dr. Kamal Hossain, Chairperson of SAILS graced the seminar as Guest of Honor. Professor Dr. M. Shah Alam and Mr. Sunil Chandra Paul both members of the Law Commission attended as key note speaker in different sessions. Judicial officers of the Rajshahi District court, members of the Rajshahi District Bar Association and Law teachers of the Rajshahi University participated in the seminar.

At the very beginning Dr. Shah Alam portrayed the seminar as an inquest to meet challenges of implementation of the court sponsored ADR in Bangladesh. He solicited recommendations from all quarters to make the ADR a success.

Mr. Sunil Chandra Paul in his speech identified dearth of awareness and unwillingness of the lawyers as root cause for failure of ADR. He proposed establishment of separate ADR courts under supervision of joint district judges and insisted upon activation of village courts and imposition of compensatory cost for false and frivolous litigations.

District judge of Rajshahi suggested amendment of section 89A of the CPC and enactment of new Rules to implement ADR. To check baseless cases other judges of the civil courts emphasized on maintainability hearing at the initial stage of the litigation.

CMM and CJM of Rajshahi recommended increasing the opportunity of ADR in criminal cases by widening the scope of section 345 of the CrPC. On the contrary Mr. Muzammel Hossain, J and Mr. SK Sinha, J expressed their concern as widening the ambit of compoundable offences may have adverse effect on the public peace and tranquility.

Judicial officers of Rajshahi vindicated their grievance for resource constraint and urge the Appellate Division Judges to take measures to provide required court rooms, stenographers and conference room for ADR. Mr. Muzammel Hossain, J assured them of the Government policy for strengthening judicial capacity by way of infrastructure development and providing adequate resources. His Lordship also suggested the district magistrate to setup court room in available unused building. His Lordship also encouraged round the year mobile court drive to impede drug trafficking and contamination of foods. Justice Hossain was optimistic in stating that, success of the ADR will widen the scope of the legal profession and there is every possibility of starting of an ADR based legal profession.

President and Secretary of the Rajshahi District Bar Association agreed with the suggestions forwarded by the key note speakers and expressed their commitment for implementation of ADR. They proposed combined training of the judicial officers and lawyers by the Judicial Administration Training Institute or by the Bangladesh Bar Council to ease implementation of ADR. As the members of the Bar expressed their concern as to the High Court Division's foggy directions in anticipatory bail petitions, Mr. Muzammel Hossain, J assured them that the recent decision of the Appellate Division will eliminate the misty as the High Court Division's jurisdiction will be limited in 'Yes' or 'No' in entertaining anticipatory bail petition.

As the President of the Rajshahi Bar emphasized on decentralization of the High Court Division benches to reduce backlog of cases Mr. Muzammel Hossain, J corroborated him without any assurance.

Dean of Law of University of Rajshahi expressed his commitment to insert in the academic syllabus the issues of civil and criminal ADR, probation of offenders and plea bargaining in criminal cases.

Professor Dr. M. Shah Alam informed the audience about the Bangladesh Law Commission's policy for ADR. Major policy decisions are- i. to amend CrPC ii. to amend CrPC iii. petty disputes to be resolved at grassroots iv. establishment of ADR training institute and allocation of fund v. court procedures and records

should be made computerized vi. leadership of the Supreme Court for implementation of ADR policy vii. national policy for the judiciary and viii. awareness building.

In his speech Mr. SK Sinha, J considered ADR a useful mechanism to reduce delay in dispensation of justice. His Lordship shared his experience of ADR in Korea and Australia and enlightened the audience with the success rate of ADR in different countries of the world. His Lordship expressed dissatisfaction as to the non utilization of court hours, as his experience of court inspection in different jurisdiction revealed that many judicial officers remain unengaged in the second half of the day. Justice Sinha criticized unnecessary adjournments and too many holiday vacations, and shared the proposal of the Supreme Court to reduce the off days. To ease delay by facilitating ADR, his lordship proposed amongst others: i. change in mindset of lawyers and judicial officers; ii. nation wide awareness campaign among stake holders; iii. training in ADR should be available to the law graduate; iv. lawyers succeeded in settling a dispute by way of ADR may be paid by the Government and v. petty cases should be finalized in district courts.

Dr. Kamal Hossain in his speech urged the combined effort of the Bar and Bench to make the ADR a success. He warned that public confidence on the administration of justice is seriously shaken due to prolonged delay in getting justice in which both the Bar and Bench can not avoid their responsibility. This legal luminary acknowledged the need for decentralization of the High Court Division and proposed circuit bench of the HCD to be held in different parts of the country to mitigate the miseries of the justice seekers. He solicited the Bar and Bench to maintain ethics and dignity of profession and to regain public confidence.

In his vote of thanks the secretary of the law commission expressed his gratitude to all participants, to the volunteers and specially thanked Abu Md. Amimul Ehsan CJM and Md. Alamgir JM but for whose efforts the arrangement would not have been possible.

The writer is Lecturer, Department of Law, University of Rajshahi.

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 have a five-year-old son. After seven years of marriage, my husband and I have decided to call it quits. My husband is a Bangladeshi and I am not. I just wanted to be clear on issues with regards to custody of my son. I would like to go back to my home country with my son. I am legally allowed to do that, right?

Hamidah Lakhani Gulshan

Response

Thank you for query. From your e-mail I understand that you are going to divorce your husband and now you want to know whether a divorced mother is entitled to custody of his son who is a minor.

For Muslims, the general rule is that the mother is entitled to custody over male children until the age of 7 (classical Hanafi position) and over female children until the attainment of puberty.

A father is a natural guardian of his minor children. Even when the minor children are in the custody of their mother, the legal control of the children vests in the father. But guardianship and custody are not the same. So, in case when the couple divorce, the question arises who will be the custodian of the child. I have already said that the father is the

natural guardian and the mother is the custodian of the child till certain age. Mother is entitled to minor's custody even if she had to leave the home of her husband under unavoidable circumstances. This means that the guardian/father will have to perform the duties, including the duty to provide for maintenance of the child though the mother will be able to retain the custody of the child. If your husband accepts this position without any difficulty, then there is no problem. If on the other hand, he retains the custody of your son or tries to create problem in your enjoyment of the custody, then you may go to the court and file an application for custody and also for guardianship under section 25 and section 7 of the Guardians and Wards Act 1890.

The Act stipulates that the court has to consider several matters in appointing guardian. The courts are also directed to consider the age, gender and religion of the minor and the character and capacity of the proposed guardian, as well as considering the minor's own opinion if s/he is old enough to form an intelligent preference. The court shall also consider the character and capacity of the proposed guardian and his nearness of kin to the minor. The mother does not lose the

right to custody because of the divorce or even after remarriage. But, if the mother remarries then she loses the preference. But, in every case the court gives supreme importance to the best interest and welfare of the child in determining the custody.

I also understand that you are not a Bangladeshi and you are desirous to go back to your home country with your son. The matter would be much easier if you continue to live in Bangladesh. But, if you are going abroad then two further difficulties arises. Your son is a citizen of Bangladesh and hence is entitled to live in Bangladesh. If you had to retain the custody of the child through court order, in that case you cannot take him beyond the jurisdiction without any courts order. The court can allow this for a temporary period but the court cannot determine whether the child will permanently stay and live abroad. This is largely dependent of the law of your own country on which our court has no expertise. In any some manner, you take your son with you in your homeland, then whether he will be permitted to stay over there and is so for how long will depend on the law of your country.

For detailed query contact omar@legalcounselbd.com.

LAW week



Reforms needed more than prisons

A good number of people are in jails without committing any offence while many are under trial, Law Minister Shafigue Ahmed said while reasoning out the overcrowding in the country's prisons. He argued that taking legal steps and constructing more prisons are not enough to resolve the issue, rather the authorities concerned should reform the prison management and amend the Criminal Procedure Code (CrPC). He made the remarks at the first day of an international conference titled "Locked up and forgotten" at Police Staff College in the city's Mirpur. The Ministry of Home Affairs and German Technical Cooperation hosted the two-day long conference with the support of Bangladesh Legal Aid and Services Trust, Brac and Madaripur Legal Aid Associate. -The Daily Star, October 7, 2010.

170 duty-dodging doctors identified

At least 170 doctors of the country's different public hospitals will face departmental action for being absent from workplaces without prior approval of the authority. The punishment includes cutting of their yearly increment and sending them on "punishment posting," said Dr Md Abul Hasnat, director (administration) of the directorate general of health services (DGHS). Punishment posting refers to posting of government officials in some of the country's remotest areas. The health and family welfare ministry conducted 16 surprise visits in the last two months at different district, upazila and union parishad hospitals and found 170 doctors absent from work, Health Secretary Humayun Kabir said. -The Daily Star, October 6, 2010.

6-month jail for offenders

Parliament passed a bill making strong provisions to protect women and children from family violence and repression. The legislation styled 'Family Violence (prevention and protection) Act 2010' authorises the court to hold trial in camera on consensus of both parties to dispose of cases filed under this law. "A person might be punished with up to six month's jail term and a fine of maximum Tk 10,000 or both for committing offence," says a provision of the bill. It also says a person, filing false case with ill motives, will face up to one-year jail term and a fine of maximum Tk 50,000 or both. According to the legislation, family violence means physical and mental torture, sexual harassment and financial loss caused by a person who has family relation with the victim -- woman or child. -The Daily Star, October 6, 2010.

Secularism back

The High Court ruled that Bangladesh is now a secular state since the original constitution of 1972 has been automatically restored following the Supreme Court judgement on the fifth amendment. In this secular state, everybody has religious freedom, and therefore no man, woman or child can be forced to wear religious attires like burqa, cap and dhuti, the HC said in a verdict. But nobody could be prohibited from wearing religious attires if he or she wishes to wear those, it said. The court also directed the authorities to immediately issue a circular asking all educational institutions not to compel students to wear religious clothes. A division bench of the HC came up with the judgement after hearing a suo moto rule issued by it on August 22 asking the government to explain why compelling women to wear religious attires should not be declared illegal. -The Daily Star, October 5, 2010.

Draft law to ensure safe meat okayed

Against the backdrop of anthrax scare, the government approved a draft law on The Animal Slaughter (Restriction) and Meat (Control) Act-2010. The proposed law aims to ensure checking of pre-slaughtered animals and their meats for the protection of human and animal health and environment. According to the draft law, every slaughterhouse and butcher shop must obtain licence from the government and ensure health check up of their workers. The law has been formulated to frame a legal structure for exporting meat and meat processed goods. The cabinet at its weekly meeting at Bangladesh Secretariat with Prime Minister Sheikh Hasina in the chair gave final approval to the draft law aiming to ensure safe meat for people. Livestock ministry placed the draft law before the cabinet meeting after getting it vetted by the law ministry. -The Daily Star, October 5, 2010.

Industrial police launched

The industrial police, a specialised unit of law enforcers, formally started its journey, aiming to maintain order in the country's four industrial zones. Initially, 1,580 personnel deputed from the police department will make up the force. They will later be joined by 1,410 more cops to patrol Dhaka, Gazipur, Narayanganj and Chittagong industrial hubs. A 10-day training programme for the new unit began at Police Staff College. Inaugurating the programme, Home Minister Sahara Khatun said the government has formed the force to ensure no outsiders can incite violence or create anarchy in the industrial sector. Salim Osman, president of Bangladesh Knitwear Manufacturers & Exporters Association, told The Daily Star they hope the industrial police will help tackle labour unrest. -The Daily Star, October 4, 2010.

Establish women's rights in all spheres

Prime Minister Sheikh Hasina has called for concerted efforts among South Asian countries to address the challenges of establishing women's rights in all spheres of life. She made the call while addressing the inaugural ceremony of the 7th South Asian regional conference on women rights at Hotel Sheraton. Ministry of Women and Children Affairs and United Nations Development Fund for Women jointly arranged the conference titled 7th South Asia Regional Ministerial Conference, Commemorating Beijing with the slogan "Delivering for Women in South Asia." High official delegates including ministers and secretaries from eight Saarc member states are attending the conference. The premier in her speech termed women and child trafficking as a major problem in South Asia. -The Daily Star, October 4, 2010.

1 every 3 days in last 9 months

Law enforcers killed one person extra-judicially on an average in every three days during the last nine months, revealed Odhikar, a human rights organisation. A report of the body published said at least 90 people allegedly faced extra-judicial deaths across the country during the period of January to September this year. Based on the reports published in national dailies, it stated that among the victims, 40 were killed by Rab, 33 by police, eight persons by the joint team of Rab and police, five persons by the Rab- police-Coast Guard joint team, three by the Rab-Coast Guard joint team and one by BDR. Of the total extra-judicial killings, 71 persons were killed either in 'crossfire' or 'encounters' or in 'gunfights' with the law enforcers. -The Daily Star, October 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