



RIGHTS corner



Migrants fare badly in Italy

**R**ELOCATING to Italy for work might not be such a good deal for Bangladeshis, says a report on the social impact of migration in Bangladesh to be released on 31 October. "Migrants who have left recently have not been able, so far, to establish themselves in Italy in terms of finding a viable living in either business or employment... let alone remit money home," said Nicoletta Del Franco, who carried out the study in Brahman Baria Sadar, eastern Bangladesh. Commissioned by Terre des Hommes Italia (TDH), facilitated by the WARBE Development Foundation, and funded by the European Union, the study focused primarily on families affected by a new trend of migration from Bangladesh to Italy, the second most popular destination in Europe after the UK. "Migration has long been an important livelihood strategy for the people of Bangladesh. Though most attention is devoted to remittances and their uses, it is also important to promote migrants' rights and look into the situation faced by families who are left behind," said Patrizia Gattoni, TDH country representative in Bangladesh.

**Fixer fees**  
According to the Italian Bureau of Statistics (ISTAT), around 70,000 Bangladeshis are regularly residing in Italy; a number which doubles if you include those who arrived through alternative methods, according to an estimate of the ISMU Foundation. The research shows some migrants pay up to \$20,000 to different kinds of intermediaries with a promise, not always fulfilled, of obtaining proper documentation and a job, often as a labourer. Others take higher risks by trying to enter through irregular channels for up to \$10,000.

As a result, only relatively prosperous families can support the huge cost of legal migration, which typically requires borrowing a large sum of money.

Bangladesh Immigrants to Europe	
UK	500,000
Italy	70,000
Greece	11,000
Spain	7,000
Germany	5,000

Source: Bangladeshi Government

In the current financial environment, the traditional method of sending money home to pay off this debt and supporting the family is becoming less feasible, leading to more and more stranded migrants, some even needing relatives in Bangladesh to support them financially.

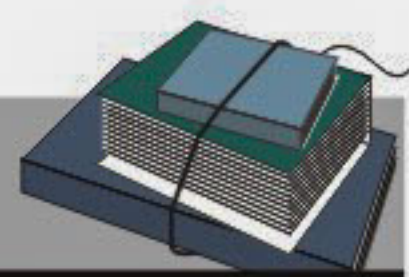


Families with inadequate savings run the risk of losing their land, putting pressure on the women and children to provide economic support. "The report highlights the need to create safety nets for parents, wives and children to [help them] face possible situations of economic difficulty... [and] find ways to raise awareness of the potential hazards of migration," Del Franco said. Another research paper to be released simultaneously looks at Bangladeshi migrant workers in the Italian labour market. In 2009 Bangladeshis working overseas sent back more than US\$10.7 billion, according to the International Organization for Migration - more than the total amount of international aid to Bangladesh.

The total number of Bangladeshis - both legal and illegal - in Italy is over 135,000, according to the ISMU Foundation, an independent organization promoting research on multi-ethnicity.

Source: IRIN, the humanitarian news and analysis service of the UN Office for the Coordination of Humanitarian Affairs.

LAW lexicon



**Ex parte** - On behalf of only one party, without notice to any other party. For example, a request for a search warrant is an ex parte proceeding, since the person subject to the search is not notified of the proceeding and is not present at the hearing.

**Expert testimony** - Testimony given in relation to some scientific, technical or professional matter by experts, i.e., person qualified to speak authoritatively by reason of their special training, skill or familiarity with the subject.

**Ex post facto** - After the fact, ordinarily used in reference to constitutional prohibition on ex post facto laws. For example, a person cannot be punished for conduct committed before a criminal law was enacted.

**Expungement** - The process by which the record of criminal conviction is destroyed or sealed.

**Extradition** - The surrender of an accused criminal by one state to the jurisdiction of another.

**Extraordinary writ** - A writ, often issued by an appellate court, making available remedies not regularly within the powers of lower courts. They include writs of habeas corpus, mandamus, prohibition and quo warranto.

**Fair market value** - The value for which a reasonable seller would sell an item of property and for which a reasonable buyer would buy it.

**False arrest** - Any unlawful physical restraint of another's personal liberty, whether or not carried out by a peace officer.

**False pretenses** - Representation of some fact or circumstance which is not true and is calculated to mislead, whereby a person obtains another's money or goods.

**Family law** - Those areas of the law pertaining to families, i.e., marriage, divorce, child custody, juveniles, paternity, etc.

**Federal Bureau of Investigation (FBI)** - A federal agency which investigates all violations of federal laws.

Source: Jurist International.

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

As a citizen, I want to know the procedure with regards to how I can get maintenance cost from my husband. Please also inform names of the organisations who provide these kinds of support or help distressed women. I am describing my case in brief:

*I live in Dhaka and also work in an NGO. I started my career in December 2007. We were married on May 2006. June 2008, I conceived. Due to some family related problems and security issues, I went to my own home in Chittagong on February 2009 (with the concern of my husband and my mother in law) for delivery. My delivery was on March 2010. After delivery, a girl child was born but she died after 3 hours of delivery (due to congenital heart disease). My in-laws' and my husband blamed me for this death. Before my release from the clinic, my husband departed from Chittagong and came to Dhaka.*

*I came to Dhaka alone after maternity leave from Chittagong on May 2009 and stayed with my maternal uncle. After my return, I communicated with my husband and tried to solve the problem as I was determined that I was unable to live together with his family as living with them would be mental torture for me. I told him that I will take separate home near my uncle and we will live there. But he refused and even didn't come to my uncle's house to meet me. My uncle tried to communicate with them but failed. Since then I have been living with my maternal uncle till date.*

*My husband is not communicating with me now and he did not provide my maintenance cost or living cost from April 2009 to till date. Now I want to take my maintenance cost from him. But I don't want to divorce him. If he wished, he can. My husband is the chief executive of his own organisation.*

So, please provide me assistance. I need your advice. What should I do to get my maintenance cost from him. Thanking you in anticipation and looking forward to hearing from you.

Distressed

Response

Thanks for your query. From the given queries it appears that you are desirous to know about the laws regarding maintenance. It is noteworthy that in Bangladesh family matters are governed by the personal laws of the religious community to which an individual belongs to. Accordingly, the issues like Marriage, Divorce and Maintenance of Muslims are dealt by the Islamic Law along with pertinent statutory laws of the land.

As far as your query regarding right to get maintenance is concerned, your husband is bound to provide maintenance during the validity of the marriage. Therefore, you are also entitled to receive it as the marriage is still in existence albeit



you and your husband are now living separately. But, your husband would not be so bound if you have left him without any reasonable excuse like cruelty. From the fact it appears that your in laws inflicted severe mental torture on you. Hence, it is unlikely that your husband could deny providing maintenance showing the cause of your leaving his home. Although you are not interested to divorce your husband but it is worth mentioning that maintenance is available even after divorce following the period of Iddat. In addition, the failure by the husband to provide maintenance may also be one of the valid grounds for obtaining a decree for dissolution of marriage under the Dissolution of Muslim Marriage Act 1939.

If your husband denies providing maintenance, you may have the following options: Firstly, it goes without saying that you should communicate with your husband to settle the matter amicably. Although, your husband is no longer in touch with you but you should give reasonable effort to settle with him first. You may also decide to take the help of the elder members of both the families to settle the matter. After reasonable efforts, if you cannot settle it in the above mentioned process, you may serve him a Legal Notice before resorting to litigation. Filing a case in a continuing marital relationship may not always be the best thing to do. If no satisfactory response is made to the Legal Notice, you may only then decide to recourse to the Family Court by way of filing a suit for maintenance. Maintenance is within the jurisdiction of the Family Court as per Section 5 of the Family Courts Ordinance 1985.

Besides, Section 9 of the Muslim Family Law Ordinance 1961 contains provision for Maintenance. Accordingly, if your husband fails to provide you with maintenance, in addition to seeking any other

legal remedy, you may apply to the Chairman of Union Parishad/Paurashava or Mayor of the City Corporation, as the case may be, who will constitute an Arbitration Council to determine the matter and specifying the amount to be paid as maintenance. The amount has to be equitable and adequate. The financial position of the husband along with the standard of living to which the wife is accustomed shall also be considered.

Further, from the fact it appears that you are not being provided maintenance since April 2009. This may be termed as 'past maintenance'. Although the Muslim Family Law Ordinance 1961 and the Family Courts Ordinance 1985 contain no specific provision in this regard but case law suggests that the Court may allow past maintenance in appropriate cases. Hence, whenever you are going for a judicial solution to the problem, you may recover that past maintenance as well.

There are quite a few organisations providing assistance to distressed woman. The One Stop Crisis Centre may be noteworthy. It has been established in the Dhaka Medical College Hospital. The Centre provides counseling in relation to crisis resulting from domestic violence and family matters. Besides, some groups of Women Lawyers like Bangladesh Mahila Ainjibi Samity are also working for the welfare of distressed women. You may also take advice from a Lawyer dealing with family matters.

I hope that the above shall clarify your query. I advise you to act with a positive mindset to resolve the problem amicably so that the need for going to the Court can wither away. However, even after giving reasonable efforts, the things do not change or the problem remains, you should go for the aforesaid legal remedies.

For detailed query contact omar@legalcounselbd.com

HUMAN RIGHTS monitor

Possible measures to uphold human rights

**O**DHIKAR defends civil, political, social, economic and cultural rights of the people and as part of its mission, observes reports and analyses the human rights situation of Bangladesh. In line with this campaign, an account of the human rights situation of Bangladesh covering the period of October 01 - October 31, 2010 have been analysed and here are some of Odhikar's recommendations.

The government needs to act immediately and responsibly to

taken against those who are responsible. The case filed against thousands of anonymous individuals needs to be withdrawn.

The issue of human rights violations at the borders needs to be raised at talks between Bangladesh and India. Trespassing illegally in to the land of a sovereign country, purposefully shooting its citizens without any provocation on their part are serious breaches of International and Human Rights laws. The Bangladesh government needs to take efficient and urgent steps to stop the trespassing and killing of civilians by the BSF at the border. It also needs to adopt measures to ensure the safety of the citizens who reside near the border. Also, proper investigations need to be carried out into the shooting and killings conducted by the BSF, those responsible must be given requisite and exemplary punishment, and the families of the victims of violence at the border need to be compensated by the Indian government.

Communities struggling to attain self-determination need to be treated with compassion and political sensitivity as well as in line with the international norms and covenants.

An independent commission, to investigate into extrajudicial killings, needs to be set up and those responsible for such crimes need to be brought to justice.

Transparency and accountability must be ensured in the trials of those accused of the BDR mutiny.

The government needs to protect the rights of religious minorities and needs to ensure safety of their life and property.

The government needs to take proper steps to bring a stop to violence against women. The perpetrators must be brought under the ambit of law, properly judged and punished. The government also needs to play a responsible role in assisting the victims to take requisite legal actions.

Human rights, Women's rights, Laws for the Prevention of Violence against Women and Children need to be incorporated into the curriculum of primary and higher-secondary education. The substantial reasons behind why men go astray and resort to committing violent acts against women and children need to be identified.

The Government must immediately stop patronising its student and youth activists who have committed grave offences. Such patronisation can only encourage extremely serious future repercussions.

Source: Odhikar Human Rights Monitoring Report, 01 31 October 2010.



stop political- violence as this form of violence. Proper and lawful measures need to be taken against those responsible for, and involved in political-violence. The judiciary needs to be kept independent and free from party influence. The incidents of usurpation of land by the army in Rupganj and the running over of civilians by a train in Sirajganj, need to be investigated independently and proper action needs to be

LAW week



Get anti-stalking policy

Expressing grave concern over repeated instances of men stalking women and girls with tragic consequences, the High Court directed the government to formulate a policy and guidelines to arrest the prevalence of the crime. The court asked the law secretary to work on it in consultation with secretaries to the home, education, labour, local government, women and children affairs ministries, and the cabinet division; and with the inspector general of police (IGP). An HC bench ordered all deputy commissioners (DCs) of the country, and some other government agencies to remain on high alert regarding such stalking, and to take effective steps. The law ministry will be responsible to turn in a report within a month about the steps to be taken.

-The Daily Star, November 02, 2010.

HC bench goes for split orders

A division bench of the High Court passed split orders on a writ petition challenging the 1974 agreement among Bangladesh, India and Pakistan under which 195 Pakistani prisoners of war (POWs) were released. Senior member of the bench Justice Mohammad Anwarul Haque rejected the petition. And junior member of the bench Justice Syed Abu Kowser Md Dabirush-shan issued a rule upon the government to explain within four weeks why the tripartite agreement should not be declared illegal. The rule also asked the government to explain why it should not be directed to bring the 195 POWs back to Bangladesh to put them on trial. Wing Commander (ret'd) Hamidullah Khan filed the writ petition in September as public interest litigation.

Court orders Koko's arrest

A Dhaka court issued a warrant for arrest of BNP Chairperson Khaleda Zia's younger son Arafat Rahman Koko in a money-laundering case. It also directed the police to report by November 30 on execution of the warrant. "The court order means there's no legal bar to arresting Koko on his return to the country," Mosharraf Hossain Kajol, special public prosecutor dealing with graft cases, told The Daily Star. Koko, who was arrested in September 2007 on graft charges and paroled for treatment abroad in July the following year, is now in Bangkok. Incensed, pro-BNP lawyers brought out a procession on the court premises, demanding cancellation of the arrest warrant. Asked about the court decision, State Minister for Home Shamsul Haque Tuku said, "How long will a person be on parole? Should parole last forever?" Talking to The Daily Star last night, he also said, "Since the court, not the government, has issued the warrant, Koko must face it. If he is found innocent in the trial, he will come out free."

Fasten seatbelt, stop jaywalking

Make sure you fasten your seatbelt in your car from today. Or else you might be fined up to Tk 500. If you are walking, stick to the pavements and use footbridges or zebra crossings to get to the other side. Even pedestrians will be fined for jaywalking. Bangladesh Road Transport Authority starts a drive today against motor vehicle ordinance violators exercising executive power, said BRTA Chairman Mohammad Ayubur Rahman. BRTA would coordinate the efforts of Rab, police and the district administration in the drive. Even though the drive aims to reduce accidents, most motorists and pedestrians are unaware of the drive due to poor campaign by the government. BRTA's campaign regarding the use of seatbelts, footpaths, footbridges and underpasses, helmets and against the use of mobile phones while driving apparently makes little impact on people as the campaign is restricted to a few print and electronic media houses.

Target genocide apology

After a break of three years, the Bangladeshi and Pakistani foreign secretaries will hold talks on bilateral relations at a two-day annual consultation to be held in Islamabad on November 1-2. Bangladesh will dominate the talks with its three vital issues including Pakistan's apology for the 1971 genocide. It will officially raise the issue of its continual demand for repatriation of stranded Pakistanis and division of assets at the two days talks. Official sources said Foreign Secretary Mohamed Mijarul Quayes would lead an eight-member Bangladesh delegation at the upcoming consultation with his Pakistani counterpart Salman Bashir. "This will be an ice-melting session in the bilateral relations between the two countries as no such meeting was held for long since the last Foreign Secretary-level consultation in Dhaka in August 2007," said a foreign ministry official.

Muhith spurs digital land recording

Rapid digitisation of land recording system is a priority for the government to curb widespread corruption in land management in the country, Finance Minister AMA Muhith said. "Automating the land recording is certainly our priority at the moment under the digitisation process of the country", the finance minister said at the inauguration of the BCS ICT World 2010 in the city. "This could be an effective solution to the rampant corruption in the land registration, mutation, and other land-related irregularities that is tangling the sector", he added. The finance minister's view came at a time when the government is moving to fully computerise land management system at all the upazila AC (Land) offices in the country to digitally track down and update all land related data and records through easy access.

Army sues 50-60 for Rupganj violence

Bangladesh Army filed a case against 50 to 60 unidentified people in connection with the recent clashes between law-enforcers and villagers in Rupganj of Narayanganj. Aminur Rahman, a warrant officer of unit 34 of East Bengal Regiment in Dhaka Cantonment, filed the case with Rupganj Police Station around 12:30am. The case statement claims that the accused inflicted a loss of Tk 45.2 lakh on the army by attacking its camps during the violence. It also says a local vested interest group had been creating various types of obstacles to an army housing scheme in the area over the last few months. The group created a negative image and fear of the army and the housing scheme among the local people including landowners through instigation, the case reads. A total of 138 army personnel including officers who were deployed in four camps in Rupganj on that day have been made witnesses in the case.

**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