



FOR YOUR information



International Migration Convention

THE International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force in July 2003. Its primary objective is to protect migrant workers and their families, a particularly vulnerable population, from exploitation and the violation of their human rights.

UNESCO advocates ratification of this convention by all states and disseminates information about this convention and other legal instruments concerning migrants.

Contents

The Convention on Migrant Workers defines the rights of migrant workers under two main headings:

- Human Rights of migrant workers and members of their families (Part III) : applicable to all migrant workers (undocumented included)
- Other Rights of migrant workers and members of their families (Part IV): applicable only to migrant workers in a regular situation.

Human rights of migrant workers and members of their families

The Convention is not proposing new human rights for migrant workers. Part III of the Convention is a reiteration of the basic rights which are enshrined in the Universal Declaration of Human Rights and elaborated in the international human rights treaties adopted by most nations.

So why are those rights subject to another International Legal Instrument?

The Convention seeks to draw the attention of the international community to the dehumanisation of migrant workers and members of their families, many of whom being deprived of their basic human rights.

Basic freedoms

Applying these fundamental rights to migrant workers and members of their families, the Convention provides for their right to leave and enter the State of origin (Art. 1). The inhumane living and working conditions and physical (and sexual) abuse that many migrant workers must endure are covered by the reaffirmation of their "right to life" (Art. 9) and prohibition against cruel, inhuman or degrading treatment or punishment (Art. 10) as well as slavery or servitude and forced or compulsory labour (Art. 11). Migrant workers are also entitled to basic freedoms like the freedom of thought, conscience and religion (Art. 12), and the right to hold and express opinions (Art. 13). Their property should not be confiscated arbitrarily (Art. 15).

Due process

The Convention then goes on to explain in detail the need to ensure due process



for migrant workers and members of their families (Art. 16 - 20). Investigations, arrests and detentions are to be carried out in accordance with established procedures. Their right to equality with nationals of the State before the courts and tribunals must be respected. They must be provided with necessary legal assistance, interpreters and information in a language understood by them. When imposing a sentence, humanitarian considerations regarding the person's migrant status should be taken into account. The arbitrary expulsion of migrant workers is prohibited (Art. 22).

Right to privacy

A migrant worker is entitled to his or her honour and reputation and also to privacy, which extends to one's home, family and all communications (Art. 14).

Equality with nationals

Migrant workers are to be treated as equal to the nationals of the host country in respect of remuneration and conditions of work (overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of work contract, minimum age, restrictions on home work, etc. (Art. 25)). Equality with nationals extends also to social security benefits (Art. 27) and emergency medical care (Art. 28).

Transfer of earnings

On completion of their term of employment, migrant workers have the right to transfer their earnings and savings as well as their personal effects and belongings (Art. 32).

Right to information

They have the right to be informed by the States concerned about their rights arising from the present Convention as well as the conditions of their admission, and their rights and obligations in those States. Such information should be made available to migrant workers free of charge and in a language understood by them (Art. 33).

Other rights of migrant workers and members of their families

Providing additional rights for migrant workers and members of their families in a regular situation, the Convention seeks to discourage illegal labour migration, as human problems are worse in the case of irregular migration.

Right to be temporarily absent

Migrant workers should be allowed to be temporarily absent, for reasons of family needs and obligations, without effect on their authorization to stay or work.

Freedom of movement

They should have the right to move freely in the territory of the State of employment and they should also be free to choose where they wish to reside (Art. 39).

Equality with nationals

Employment contract violations

When work contracts are violated by the employer, the migrant worker should have the right to address his or her case to the competent authorities in the State of employment (Art. 54 (d)). They shall have the right to equal treatment with nationals and be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law (Art. 18.1).

Rights of undocumented ('illegal') workers

The Convention recognises that "the human problems involved in migration are even more serious in the case of irregular migration" and the need to encourage appropriate action "to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental rights" (Preamble). As measures for preventing and eliminating illegal labour migration, the Convention proposes that the States concerned should collaborate in taking appropriate actions against the dissemination of misleading information relating to emigration and immigration, to detect and eradicate illegal or clandestine movements of migrant workers and impose sanctions on those who are responsible for organising and operating such movements as well as employers of illegal migrant workers (Art. 68). However, the fundamental rights of undocumented migrant workers are protected by the Convention (Art. 8 - 35).

Source: United Nations Educational, Scientific and Cultural Organization (UNESCO).

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

In the recent DV-2012 under children's serial #14, I found that, I have to mention names and details of any of my legally adopted children. In the American context, will legal adoption under our Bangladesh "notary public" be acceptable to the DV Authorities in the USA? I have observed in the USA, Notary Public is quite popular and extensively acceptable in the Judiciary/Courts unlike, in our Bangladesh context. Also kindly advise alternative/s and approximate expenses to process through the Court. Thanking you once again.

Putool

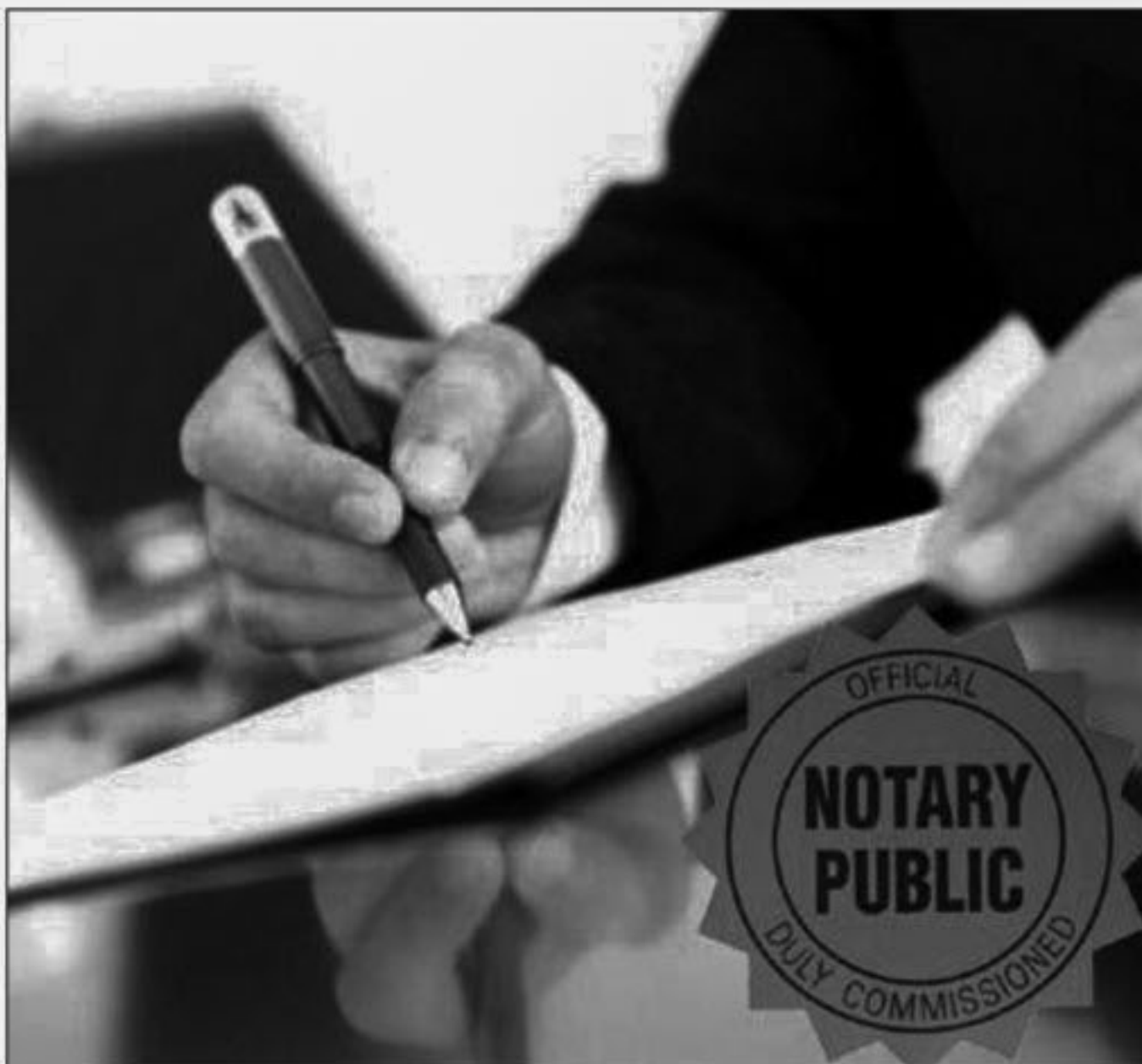
Response

Thanks for your query. From the given fact it appears to me that you are desirous to know the law regarding Adoption and the acceptability of notarial acts executed in Bangladesh in the United States of America. It is noteworthy that in Bangladesh family matters are governed by the personal law of each community to which an individual belongs. Accordingly, the issues like Marriage, Divorce, and Adoption are dealt by the personal religious law along with relevant statutes of the land.

As far as Adoption is concerned, it is not permitted under the Islamic Law. Thus, in Bangladesh Muslims cannot lawfully adopt a child. Although in practice there are many instances of families adopting a child, these are resulting into informal adoptions in consequence having no legal recognition. Muslims can, however, take the custody of a child till the attainment of majority through court order subject to the satisfaction of the court.

Unlike the Muslims, in Bangladesh the Hindus can lawfully adopt as the Hindu law allows the same. However, it is only the son, who may be adopted under Hindu Law. The son to be adopted must belong to the same caste. It is only a Hindu male of sound mind who may adopt a son. An unmarried Hindu female cannot adopt in Bangladesh. A Hindu wife has no right to adopt a son without the express consent of her husband. As far as a Hindu widow is concerned, adoption is not permissible unless she has been permitted by her husband during his lifetime to adopt.

Therefore, a legal adoption may only be declared by way of an Affidavit in front of a notary if it is done under the Hindu Law by a Hindu male or a female as discussed above. Concerning your query as to the acceptability of the notarial act (i.e. the Affidavit before the Notary Public) by the DV authorities, the Notaries Ordinance 1961 appears to be pertinent. Section 14 of the Ordinance provides that the government by way of a Gazette notification may recognize the notarial acts



lawfully done in a foreign country or place provided the notarial acts done by notaries in Bangladesh are also recognized in that country or place for all or any limited purpose.

Considering the case law it appears that the section provides for a reciprocal (i.e. mutual) arrangement between Bangladesh and the United States, such Affidavit should be acceptable in the United States. On the contrary, the case law further suggests that notarial act in a foreign country can be accepted as evidence, if there is evidence to show that the person before whom the notarial act was done was a notary public and the state in which it was done authorized by him by law to do the notarial act. However, such authorization is also needed in the foreign country in which the notarial work is to be produced. As you have mentioned in your query that Notary Public is extensively popular and acceptable in the United States, it is likely to increase the likelihood of admitting the Affidavit in the given case. I have dealt with many matters involving notary public and have found that the same were admitted by different US authorities.

As an alternative, you may swear the Affidavit in front of a First Class Magistrate in addition to the Notary Public which will increase its strength. As far as expenses are concerned, the notarial acts are not expensive.

I hope that the aforesaid guidelines shall help you to understand your queries regarding the issues of Adoption and acceptance of notarial act in the United States.

For detailed query contact omar@legalcounselbd.com

HUMAN RIGHTS monitor

When sexual harassment leads to suicide

SEXUAL harassment against girls and women in Bangladesh is turning deadly: 28 women have committed suicide this year and another seven attempted it to escape frequent sexual harassment, says a Dhaka-based human rights organization, Ain O Salish Kendra (ASK). A father also committed suicide fearing social insult after his daughter was harassed and in other cases, stalkers killed three women, reported the NGO.

According to the Bangladesh National Women Lawyers' Association, almost 90 percent of girls aged 10-18 years have experienced what is known locally as "eve-teasing", where boys intercept girls on the street, and shout obscenities, laugh at them or grab their clothes. Eve-teasing has escalated ever since girls and women started entering formal education and employment in larger numbers in the 1980s, said Paul Subrata Malakar, from the NGO Plan International, in Dhaka.

Impacts

On 16 November, Sharmin, a 20-year-old student in Dinanpur, (400km northwest of Dhaka), was returning home from college when a stalker forcibly held her hand and tried to hug her.

Since then, her parents say, she has stopped going to college.

"As sexual violence is happening on the way to school, it will panic parents and the parents will discourage their daughters from going to school," said Rekha Saha, director of Dhaka-based NGO, Steps Towards Development.

In a country where 1.5 million girls (out of 10.4 million eligible) are not enrolled in school, an unknown number are avoiding school out of fear and humiliation of daily harassment.

Since January of this year, ASK has received 61 complaints from

girls who had dropped out of school because they were harassed.

Moreover, in a country where more than 64 percent of girls marry before they are 18, some parents have pushed eve-teasing victims into early marriage to "protect" their honour and safety, said Malakar and Saha.

Causes

Ishrat Shamim, a gender studies



expert and professor of sociology at Dhaka University, is calling for further investigation into the causes of the rise in violence against women.

"[The] mindset of both men and women is important. Many men, also women, believe women are second-class citizens after men. [While] women's participation in education, the labour force and other activities is increasing, men

are not yet to get used to seeing women outside the home."

Changing this mindset has proven to be a long-standing obstacle.

"In a male-dominant society, eve-teasing can be viewed as a rite of passage for boys on their way to becoming men," said Malakar of Plan International. "All the steps [we take] will be futile unless the male segment of the society change its patriarchal mindset."

The fact that girls are hesitant to report violence has made studying and fighting the phenomenon even more difficult.

"Many girls believe that if they complain, their parents and community leaders will blame her," said Sayeda, a 14-year-old student in the capital, Dhaka.

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

LAW week



BNP to tell UN of 'torture' on SQ Chy

BNP will report to international communities including the United Nations about the "police torture" on BNP lawmaker Salauddin Quader Chowdhury. Opposition Chief Whip Zainul Abidin Farroque said. "When an MP was held without an arrest warrant and lawmakers were barred at the VIP lounge of an airport from seeing off a three-time prime minister [Khaleda Zia], it does not seem that the country has democracy," he said after visiting Salauddin's family members at their Dhanmondi residence. Salauddin, a standing committee member, was arrested on December 16 on charges of planning and financing an arson attack on a car in Moghbazar on June 26 that left one person dead. - *The Daily Star, December 22, 2010.*

Afghan police move to free kidnapped Bangladeshis

The police in northern Afghanistan have launched a drive to rescue the five Bangladeshis who were abducted by local criminals on Friday night, December 17, 2010. Foreign ministry officials said the Afghan authorities have also taken necessary steps to send back the body of Bangladeshi engineer Kazi Altaf Hossain, who was killed during the abduction. Altaf was killed and seven workers held hostage on December 17 when Afghan gunmen stormed a remote road-building camp run by a South Korean construction firm at Mazar-I-Sharif, which lies between the northern Afghan provinces of Balkh and Samangan. - *The Daily Star, December 22, 2010.*

Ansar seeks arrest power, renaming

Bangladesh Ansar seeks authority to arrest anybody without warrant and believes such power would increase its efficiency in playing an effective role to ensure public safety.

The force sought more authority in a proposed law titled "Ansar Battalion Act, 2010" which has been sent to the home ministry. The police meanwhile observed that such powers for Ansar would interfere with their activities and weaken their authority. Drafted by the Ansar high-ups, the proposed legislation also seeks to rename the battalion "Public Security Force" (PSF), Maj Gen Chowdhury Hasan Sarwady, director general of Ansar, told *The Daily Star*. In section-8 of the draft law the Ansar also seeks some powers which are usually vested in the police. - *The Daily Star, December 21, 2010.*

Graft alleged in fire equipment purchase

A parliamentary sub-committee has recently revealed anomalies and corruption of the fire department in awarding international tenders for buying fire-fighting equipment. The sub-committee on home ministry in its report on November 28 alleged that the director general (DG) of Fire Service and Civil Defence and the members of tender evaluation team unlawfully awarded tenders to two companies causing a huge loss. The fire service authorities floated international tenders on November 10, 2009, January 28 and April 8 of 2010 for purchasing nine fire engines and rescue vehicles and 1,578 sets of fire-fighter suits at a cost of around Tk 25 crore. - *The Daily Star, December 21, 2010.*

SQ Chy now booked for war crimes

Detained BNP leader Salauddin Quader Chowdhury was shown arrested for crimes against humanity during the Liberation War, following an arrest warrant issued by the International Crimes Tribunal. A three-member judges' panel headed by Justice Nizamul Huq directed the authorities concerned to produce Salauddin before the court on December 30 on the charges. The tribunal also comprised Justice ATM Fazle Kabir and Justice AKM Zaheer Ahmed. It passed the order after hearing a petition filed on December 15 by war crimes investigation agency for Salauddin's arrest. - *The Daily Star, December 20, 2010.*

Tough anti-trafficking law in the offing

Human trafficking and related crimes will be considered non-bailable and non-compoundable offence and tried in the speedy trial tribunals to be set up in all districts and metropolitan cities, says a draft anti-trafficking law. The persons convicted of the crimes would be punished with a minimum of eight years rigorous imprisonment plus fines and a maximum of life sentence. The proposed Human Trafficking (Prevention and Protection) Act-2011 also provides for setting up National Human Trafficking Prevention Authority (NHTPA) to pursue human trafficking cases and take measures to combat the crime. The tribunals will take into cognizance the cases against government officials even if the complainants have not taken the government approval to file those, says the draft. - *The Daily Star, December 20, 2010.*

6-month maternity leave from Jan

Working women are likely to enjoy six months of paid maternity leave from January 2011, said a high official of the Ministry of Finance. The government will immediately issue a gazette notification to implement the maternity leave, which is now under consideration of the president, he said. As a priority issue of the government, it might take about a week to get the president's approval for implementation of the leave programme, Dr Mohammad Tareque, finance secretary, told *The Daily Star*. All formalities in this matter have been done, he said. According to the Bangladesh Labour Act 2006, a woman employee is entitled to a maternity leave for 16 weeks before or after delivery. - *The Daily Star, December 19, 2010.*

City holding tax relief mulled for war heroes

The government has a plan to exempt all the freedom fighters living in the city from seven percent holding tax, Dhaka City Corporation (DCC) Mayor Sadeque Hossain Khoka has said. "The liberation war heroes are the best sons of the soil. They deserve extra benefits. That is why the government is planning to cut holding tax of the freedom fighters in the city by seven percent," the mayor said. The comment came following a demand of a freedom fighter at a reception arranged for the freedom fighters of Dhaka yesterday. DCC organised the programme at Osmani Udyan marking the 40th Victory Day of the nation. - *The Daily Star, December 17, 2010.*

HC asks for expert probe

The High Court directed the government to frame rules within next three months to ban import of any hazardous ships for scrapping. The rules must be framed in the light of six existing laws-- Basel Convention Act, 1989; Bangladesh Environment Protection Act, 1995; Bangladesh Marine and Fisheries Ordinance, 1989; Bangladesh Labour Act, 2006; Bangladesh Territorial Water and Maritime Zone Act, 1974, and Environment Protection Rules, 1997, according to the HC ruling. In response to a petition filed by Bangladesh Environmental Lawyers' Association (Bela), an HC bench also ordered the government to form an expert committee within a month to check whether any ships with inbuilt hazardous materials enter the country's territorial waters. - *The Daily Star, December 16, 2010.*

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