"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH • dslawdesk@yahoo.co.uk

LAW WATCH

Plights of domestic workers

RAISUL ISLAM SOURAV

USUALLY domestic worker means a person do or help to do our household chores for money or benefit. However, our existing Labour Law denies their rights and does not include them as worker. The word "Servant" used by the Act is itself an offensive word.

Nonetheless, recently enacted the Domestic Violence (Prevention & Protection) Act, 2010 also does not cover domestic workers under its purview. Only the Domestic Servants' Registration Ordinance 1961 defines them as domestic servant among all others laws in this country. However, the law again does not ascertain any of the rights or duties of the domestic workers rather it merely deals with the provision of registration.

The term "Domestic worker" is very recent trend to recognise them as worker. Formally the Domestic Workers Convention, 2011 (Convention No. 189 of ILO) first recognises domestic work as "work" and persons engaged in this sort of work as worker and also introduces a set rights for these workers. This work may comprise cleaning house, cooking, washing, taking care of children/elderly/sick members of a family etc.

Though there is no special law on domestic workers but constitutional provision has guaranteed some rights as fundamental rights and enforceable by the court for every citizen of the country. Also there are few ordinary laws, which can defend the rights of domestic workers as an ordinary citizen of Bangladesh.

Among those, the Nari O Shishu Nirjatan Daman Ain, 2000 can be used to punish and prevent death, attempt to murder, grievous hurt or mutilation by using corrosive, incendiary or poisonous substances (especially throwing of acid), trafficking of women for prostitution and allied matters, trafficking and stealing of children, rape etc. Although this Act of 2000 covers many aspects relevant for domestic workers, it was promulgated to safeguard women and children in general and no specific attention was given to the domestic workers.

However, all criminal acts are adjudicated by criminal courts and tribunals and the domestic workers, like any other citizen, are under the jurisdiction of these criminal courts of the State. A domestic worker can take the advantage of the Penal Code, 1860 to prosecute the culprits for culpable homicide, murder, hurt, grievous hurt, wrongful restraint, wrongful confinement, assault, kidnapping, abduction, rape, theft etc. There is however no statute that specifically deals with domestic workers and declares an act to be a criminal act considering the special circumstances of the domestic workers.

Whenever a domestic worker starts to work in a household, there is an agreement between the employer and the worker. This agreement is almost oral. Everybody shall be paid for his work on the basis of the principle 'from each according to his abilities, to each according to his work'. However, there is lack of law which can determine minimum wages for every sorts of domestic worker and can ensure other employment rights as ensured for other workers.

One can enforce his agreement by the Contract Act, 1872 if any breach has been occurred. Moreover, in case of any violation of the service contract, or any injury sustained by the worker, a case of compensation can be filed before the civil courts.

Domestic workers are mostly unlettered and unaware about their rights. Moreover, we have no effective mechanism to inform them about these legal protections and cannot bring them under the shield of the court of law. In addition, it is really difficult for them to fight against their wealthy and giant bosses. Hence, State should arrange such effectual machinery to inform them about their rights and provide sufficient legal aid to fight against suppression.

Bangladesh National Women Lawyers Association (BNWLA) V *Govt. of Bangladesh* is the first judicial pronouncement to uphold the rights of the domestic workers and recognise them as worker. The HCD directs that the children between the ages of 14 to 18, who are engaged in the domestic sector, should be incorporated automatically within the provisions of the Labour Act.

There should be a system of registration and monitoring of all persons engaged in domestic work. It also declared that the cases relating to the violence upon the domestic workers must be monitored and prosecution of the perpetrators must be ensured by the government. The government has a duty to protect all citizens of this country, be they rich or poor.

Apart from this, a draft policy titled 'Domestic Workers Protection and Welfare Policy, 2010' had also been finalised about couple of years ago by the Ministry for Labour and Employment. Despite the fact the policy is still under scrutiny and yet to be implemented by the authority.

Employing children in domestic work is a problem of our society, culture and economy. As a consequence initiatives have to be taken at first to keep child domestic workers away from exploitative and dangerous works and to provide all of them safe and decent working environment, appointment letter, identity card and other necessary things to ensure the payment of their due wages and other rights as worker like other workers.

Domestic work is particularly isolated in nature as it is carried out in the home of the employer. Domestic service thus needs to come under some form of private and public regulation, inspection and supervision. Hence to protect the rights of the domestic workers there needs to be in place a sound and functioning institutional framework that will ensure that the legal provisions and policies are observed as well as enforced. In addition, sufficient help centers should be established in different parts of the country where domestic workers can seek help in cases of cruelty, violence and a violation of their bill of rights.

Bangladesh is obliged under both national and international law to protect and promote the rights and interests of the domestic workers. Hence Bangladesh should become a signatory State to the ILO C189 and should ratify the provisions into domestic law immediately.

A special piece of legislation for the domestic workers could be a proper solution in this regard. However, mere enactment of a new law may not be able to bring changes to the society. We need to change our mind set up, otherwise the scenario will remain same. A more humanitarian approach towards the domestic workers can ensure more contentment in the mind of them.

FOR YOUR INFORMATION

Significance of autopsy report

MD. AYUB ALI

CRIMINAL Investigation is a science that involves study of facts, identification of the offender, location and proof of the guilt, collection and examination of the physical evidences to ensure punishments. Of the various scientific techniques employed by the modern-day criminal investigations, autopsy plays the most decisive role in resolving a case. Also known as post mortem examination, autopsy means to "see for yourself". It is a special surgical operation, performed by specially trained physicians, on a dead body with a view to discovering the cause of death.

The legal provisions on post mortem examination are enshrined in section 174 of the Code of Criminal Procedure (CrPC) and sections 303 to 308 of the Police Regulations of Bengal (PRB). According to law, the procedure of post mortem is preceded by an inquest investigation conducted by the officer in charge of the concerned police station. The police officer shall send the dead body for post-mortem examination to the nearest Civil Surgeon where there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do. The dead body must be accompanied by a copy of *surat hal* report and a *challan* in triplicate in B.P. Form No. 49. On completing the post-mortem examination, the medical officer shall prepare a report in the B.P. Form No. 50 and a copy thereof shall be forwarded to the Superintendent of Police who shall cause the same to be laid before the court concerned.

A post-mortem report is the best evidence of an unnatural death that is admissible in evidence before the court as an expert opinion. Every criminal case has two major parts, i.e. the presentation of evidence and the presentation of witnesses. When the expert is summoned by the court as a witness, the submission of his findings is an expert opinion and when he corroborates these findings with the autopsy report, this becomes the most reliable evidence in the eye of law. In *Hadiuzzaman* V *The State*, BLD (AD) (1986) 191, it was held that the deposition made by the medical officer on oath is a substantive piece of evidence, whereas his medical certificate is a corroboration of his evidence on oath.

The law provides the judges with absolute discretion to decide the admissibility and reliability of the autopsy report through the process of examination of the concerned expert. But it is seen that most of the lawyers and even judges do not have sufficient training and expertise as to how the post mortem reports are to be utilised for the purpose of justice.

In our country, medico-legal investigations lags behind the normal standard followed. In the cities where a government medical college is available any academic staff of forensic medicine department is empowered to perform an autopsy otherwise, by the civil surgeon in the district hospitals. However, in practice, reality is far from these words. It is seen in most of the district hospitals that untrained doctors from any branch are involved in the procedures of post mortem. They are not especially trained but chosen from other duties on a particular day. Therefore, they just sign the reports and the entire activities are performed by dooms.

The post-mortem report helps the police officer come up with a reasonable conclusion as to the actual cause of death. Hence he will have to go through the report very carefully as each and every word of the report is very significant for the investigation into the cause and manner of death. Unfortunately, most of the investigation officers do hardly understand the post-mortem report as the same is written in the language of medical science. As per section 306(b) of the PRB, police officers shall refer to the Civil Surgeon if they have any doubt in regard to any part of the medical report but the real scenario is totally different. Even the situation goes the worst when the post-mortem report does not contain the actual cause of death. As a result, thousands of deaths buried without proper investigation in Bangladesh.

The law provides the judges with absolute discretion to decide the admissibility and reliability of the autopsy report through the process of examination of the concerned expert. But it is seen that most of the lawyers and even judges do not have sufficient training and expertise as to how the post mortem reports are to be utilised for the purpose of justice. So the experts, during deposition in courts have to face some questions from the judges and lawyers those are not only irrelevant but also embarrassing.

There should be coordination among police, judges, magistrates, lawyers and forensic medicine experts to ensure a high standard of medico-legal investigation. To this end, there should be a provision of six months intensive training for newly recruited police officers, judges and lawyers to be enrolled in Bangladesh Bar Council.

LAW EVENT

Genocide of 1971- "It must be remembered, not forgotten"

ABDUR RAZZAK RAZIB *and* UJJAENE ACHARJEE PUJA

THE most ignominious episode in lifetime of Bangladesh is the Genocide that had been occurred 43 years back in 1971 but the blood stain didn't fade away. The cruel birth of Bangladesh confers upon the nation a moral obligation to know and study about 1971's Genocide and the other international crimes that the history of mankind experienced in different times. It is said that, to prevent genocide we must know about genocide as it must be remembered, not forgotten.

With an intent to increase the understanding of the history and legacy of genocide and other massive violations of human rights, Centre for the Study of Genocide and Justice (CSGJ), Liberation War Museum, Bangladesh, has embarked on a mission to organise and promote research, documentation, study, education and network on genocide, crimes against humanity and war crimes committed in Bangladesh and other parts of the world.

As a corollary of this initiative, the Centre offered its very first month long certificate course on Genocide and Justice on may 2014 and it we were privileged to meet Professor Anisuzzaman Sir as a Chairperson of the Centre. The course brought together 30 vibrant participants from diverse backgrounds including students, journalists, academics, researchers, doctors, lawyers and bankers. Alongside, it gathered a cohort of country's renowned figures from relevant fields as resource persons to enlighten the participants on various aspects in relation to Genocide and issues of justice viewed from the perspective of different national and international tribunals established for the prosecution of international crimes.

All of us may have a vague and indefinite idea on Genocide but the prodigious speakers made their points on basis of definite structure. The course offered lectures by renowned academicians like Professor Dr. Mizanur Rahman, Dr. M.A. Hasan, Professor Imtiaz Ahmed, Dr. Ashfaque Hossain, Professor Abu Md. Delwar Hossain and Ms. Christine Richardson on basic understanding of Genocide and its human rights implications with reference to Genocide Convention and some other international legal instruments.

In line with that, different international crimes tribunals were comparatively discussed linking with Bangladesh's one. Author-activist Shahriar Kabir and Mofidul Hoque, Director of CSGJ had heaved many unfolded parts of Bangladesh's history which made the whole classroom spellbound as if they are watching the live history. Prosecutor Zead Al-Malum, Barrister Beerangonas remained outside the purview of State's priority and policy formulation which needs to be addressed as soon as possible.

This course indeed, apart from imparting knowledge and understanding of Genocide and Justice, gave the participants, essentially a good insight into the history of our liberation war. It prompted them to re-think some issues quite afresh and sensitised to stand by the victims of liberation war and work on mobilising efforts to successfully hold the trial of war criminals.

Tureen Afroz and Barrister Tapas Kanti Baul along with the Chief Investigator M.A Hannan from ICT-BD brought to the participants a brief account of Tribunal's functions, challenges and success in the trial process.

Umme Wara, Coordinator of CSGJ, raised concerns in regard to the protection of witnesses testifying in the tribunal and urged for enacting a legislation ensuring the protection for witnesses. The eminent activist Barrister Sara Hossain and Zayed Hasan, Co-ordinator of Samajik Sahayata Udyog drew attention to the fact that

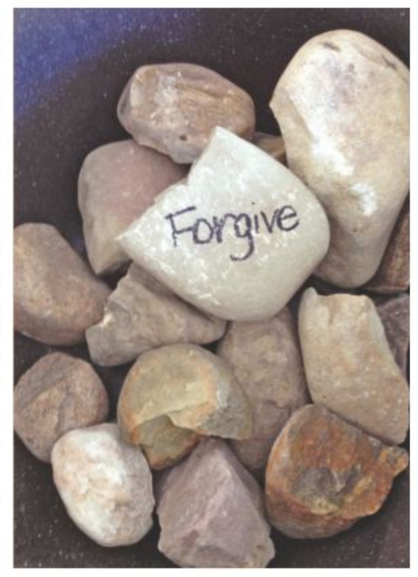
The certificate giving program was held on 31 May, 2014 which was graced by the presence of National University Vice Chancellor, Dr. Harunoor Rashid as the chief guest. Among others, the trustee board members, Mr. Mofidul Hoque and Ziauddin Tariq Ali, were present. At the end of the program, CSGJ expressed its desire to initiate, in near future, a Diploma Course and journal publication on Genocide and Justice.

THE WRITERS ARE LLM STUDENTS FROM

LAW LETTER

Stoning to death: A misconception

STONING to death is treated as a very well known punishment system in the Muslim world although it gives rise to several controversies. In the countries where Islamic Law is strictly followed this stoning to death is imposed upon a person who is found convicted of fornication or adultery.



In case of offering the sentence of stoning to death several hadiths (traditions of the prophet) are cited without assessing the authenticity of them or without analysing the overall perspective of the hadiths. But priority is not given upon the Holy Quran which never says anything regarding stoning to death rather it signifies that Allah has commanded only to impose hundred lashes upon the person who is proved guilty of adultery or fornication.

Generally Islamic Law is based upon four sources i.e. Quran, Sunnah, Ijma and Qiyas. But in case of maintaining the hierarchy they are often arranged horizontally which is a serious mistake. Allah Himself declared that the Holy Quran is the book which never gives rise to any doubt (Sura Al-Baqara:2). So if the arrangement is made vertically then obviously the Holy Quran must be given the highest position. Then comes the Sunnah, Ijma and Qiyas respectively.

But when the matter of stoning to death comes forward it will be noted that several hadiths are cited without giving any priority upon the Holy Quran which remains silent regarding imposing the sentence of stoning to death if someone commits adultery or fornication.

In most of the regions of the whole universe some Muslims are always found whose conduct has given birth to religious orthodoxy. Same situation have taken place in case of punishing an adulterer. Several groups will be found who will always deny stoning to death having respect for Quran and Sunnah in true sense and some other groups will misinterpret the Sunnah skipping the verses of the Holy Quran and thus serious confusion arises because of the attitude of the later.

Anything done going beyond the divine command of the Holy Quran is strictly prohibited. But adding an opinion during interpreting any verse is permitted if it is done through Ijtihad and if it does not become inconsistent with the Quran and Sunnah. Heresy has been strictly opposed both by the Quran and Sunnah. Therefore if it is found in any Hadith or any Ulema's saying that he has heard of stoning to death then it must not be believed rather it should be the primary task to ensure its authenticity.

No human being possesses any authority to urge for death sentence of another human being where Allah Himself is against killing any person. Moreover in case of murder the Holy Quran has also gone for a flexible approach through providing a rule regarding blood money. Therefore, before offering death penalty the judge must think at least hundred times and must not act in such a way which seriously hinders the growth of the justice system.

Wasequzzaman
Student of Law , Eastern University