

LAW opinion



RIGHTS corner



Negligence of authorities hinders the very purpose of juvenile justice system

SHEIKH HAFIZUR RAHMAN KARZON

THE society of Bangladesh is passing a transition from 1950s. An agro-based village oriented society started to transform into an urban society causing the emergence of single parents' family. Urban life with its anonymity, complicity and material infrastructure offers more opportunity for criminal activities. That is identified as one of the major causes for high rate of criminality including extensive juvenile delinquency. Continuous famine in some regions, unemployment, bringing down banks of rivers and increasing poverty caused large-scale migration of people from village to city. The migrated people with their family members took shelter in slum areas and remain deprived of basic civic amenities. Criminal activities are taking strong hold by taking advantage of unemployment, deprivation and vulnerable economic condition of slum people. Absence of strong parental control and lack of opportunity to get education are pressing the juveniles of slums to have more involvement with criminal activities.

Extensive satellite culture has some impact on the mindset of the young folk in no way that is always functioning positively. All these social conditions are contributing heavily for increasing delinquency rate among the juveniles.

Problem of definition of child

The United Nations Convention on the Rights of the Child (CRC) defined child as any person under the age of 18 years unless under the law applicable to the child, maturity is attained earlier. Bangladesh ratified the Convention on the Rights of the Child in November 1989. In Bangladesh there are a number of laws which defined a child. These laws are conflicting regarding the age of children. Some described a child as a person below 12 years, others state below 14 years and some defined them as a person below 18 years of age. But the Children Act, 1974 defined a child as a person under the age of 16 years. Article 2(f) provides that, "Child" means a person under the age of 16 years, and when used with reference to a child sent to a certified institute or approved home or committed by a Court to the custody of a relative or other fit person means that child during the whole period of his detention notwithstanding that he may have attained the age of 16 years during that period.

Juvenile justice system in Bangladesh

The Children Act, 1974 is the substantive law for juvenile offenders and their treatment. The law was made to consolidate and amend the laws relating to the custody, protection and treatment of children and trial and punishment of youthful offenders.

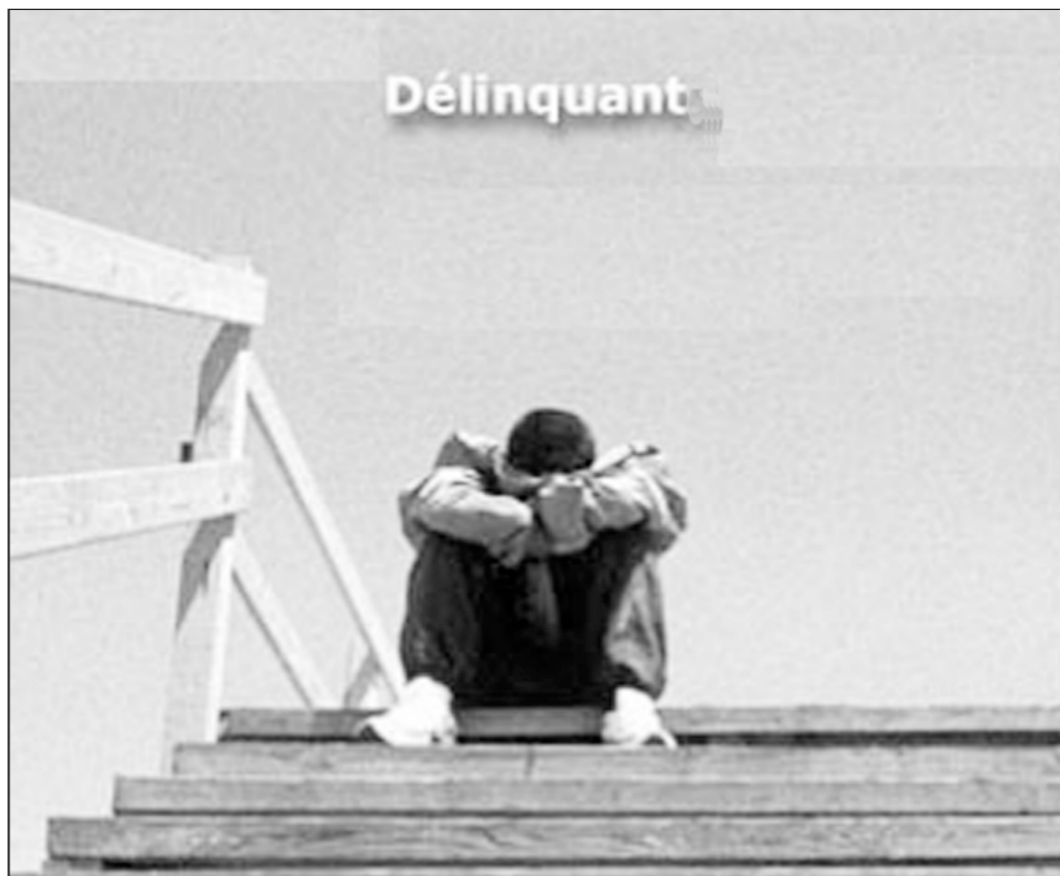
Problem of determining criminal responsibility

As per section 82 of the penal code, the age of criminal responsibility in Bangladesh is above seven years of age. But the Children Act defines a child as a person under the age of 16 years of age. Section 52 of the Act provides that, where a child is convicted of an offence punishable with death, transportation or imprisonment, the Court may, if it considers expedient so to deal with the child, order, him to be committed to certified institute for detention for period which shall be not less than two and not more than ten years, but not in any case extending beyond the time when the child will attain the age of eighteen years. Penal Code and the Children Act, 1974 are contradictory. The age of criminal responsibility is not clear from the above mentioned laws. The minimum age of criminal responsibility requires clarity.

Assuming above seven years as the age of criminal responsibility in Bangladesh the government functionaries are dispensing their activities. When any child of above seven years commits any punishable offence then they are arrested by the police. The police do not consider street children, child prostitute or delinquent juvenile as children and are treated them like adult offenders.

Arrest, bail, detention and discharge

Where a person apparently under the age of sixteen years is arrested on a charge of non-bailable offence and cannot be brought forthwith before a court, the officer-in-Charge of the police station to which such person is brought may release him on bail, if sufficient security is forthcoming, but shall not do so where the release of the person shall bring him into associa-



tion with reputed criminal or expose him to moral danger or where his release would defeat the ends of justice. [Section 48, the Children Act, 1974] Where such a person is not released under section 48, the officer-in-charge of the police station shall cause him to be detained in (i) remand home or (ii) a place of safety until he can be brought before the court. A court, on remanding for a trial a child who is not released on bail, shall order him to be detained in (i) a remand home or (ii) a place of safety. [Section 49, the Children Act]

Immediately after the arrest of a child, the officer-in-charge shall inform to the Probation Officer of such arrest to enable the said probation officer to proceed forthwith in the matter of the juvenile. No child shall be charged with, or tried for, any offence together with an adult. Police officer has to submit separate charge sheet and concerned magistrate has to conduct separate trial when a juvenile has been charged with any offence. [Section 50 and 6 of the Children Act, 1974]

No child shall be sentenced to death, transportation or imprisonment. Provided that when a child is found to have committed an offence of so serious a nature that the court is of opinion that no punishment, which under the provisions of this Act it is authorised to inflict, is sufficient or when the court is satisfied that the child is of so unruly or of so depraved character that he cannot be committed to a certified institute and that none of the other methods in which the case may legally be dealt with suitable, the court may sentence the child to imprisonment or order him to be detained in such place and on such conditions as it thinks fit.

Alternative measures

A court may, if it thinks fit, instead of directing any youthful offender to be detained in a certified institute under section 52 order him to be (a) discharged after due admonition, or (b) released on probation of good conduct and committed to the care of his parent or guardian or other adult relative or

other fit person on such parent, guardian, relative or person executing a bond, with or without sureties, as the court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding three years and the court may also order that the youthful offender be placed under the supervision of a Probation Officer. If it appears to the court on receiving a report from the probation officer or otherwise that the youthful offender has not been of good behaviour during the period of his probation, it may, after making such inquiry as it deems fit, order the youthful offender to be detained in a certified institute for the unexpired period of probation.

Difference between text and practice

The purpose of juvenile justice system is not to penalise the juveniles, but to make them understand their mistakes and afford them an opportunity to rectify themselves. Any confinement or detention in a remand home, place of safety or correction centre is a major barrier for the rectification of juveniles. Because detention within an institute creates guilty feelings among the juveniles and people also treat them as offender. Considering this attitude of society the Children Act, 1974 gives power to

the officer-in-charge of the police stations to forward the juveniles on bail and to the magistrates to order the juveniles to be released on probation of good conduct and committed to the care of the parents or any other relative even after the conviction of the juveniles. But unfortunately these alternative measures remain unexhausted due to lack of motivation, ignorance of magistrates and unavailability of parents or reluctance of parents. Deprivation of liberty of juveniles by sending them to the correction centre should be the last resort and should be used in the rarest of the rare cases. But deprivation of liberty is extensively used which is frustrating the purpose of juvenile justice.

The provisions to treat the children separately after arrest, to submit separate charge-sheet and to conduct separate trial in a homely atmosphere are not maintained due to ignorance of law, proper motivation and an attitude to avoid extra burden by the police officers and magistrates.

Concluding remarks

The transition of society, complicity of urban life, absence of parental control and care, impact of satellite culture and overall malfunctioning of society cause to develop deviant juvenile subculture in Bangladesh. Implementation of law by the main actors, exploitation of alternative measures, and all out efforts of societal people of different strata are required to combat this problem.

Sheikh Hafizur Rahman Karzon is a Lecturer, Department of Law, University of Dhaka.

RIGHTS monitor



Women's Rights in Bangladesh The need for a paradigm shift

MRS. JAHANARA IMAM

A woman's right is violated in the moment she is born. 'Why is it a girl? Why couldn't you produce a boy?' Some husbands would ask their wives as if the wives are to blame for the birth of baby girls. Many people fail to realise that the chromosomes that decide the gender of the child comes from the father, not the mother. What is more sinister is the case of a doctor who threatened to divorce his wife because she could not produce a baby boy. He knew how chromosomes worked, yet he saw fit to overlook this by blaming his wife. If educated people behaves like this then who needs enemies?

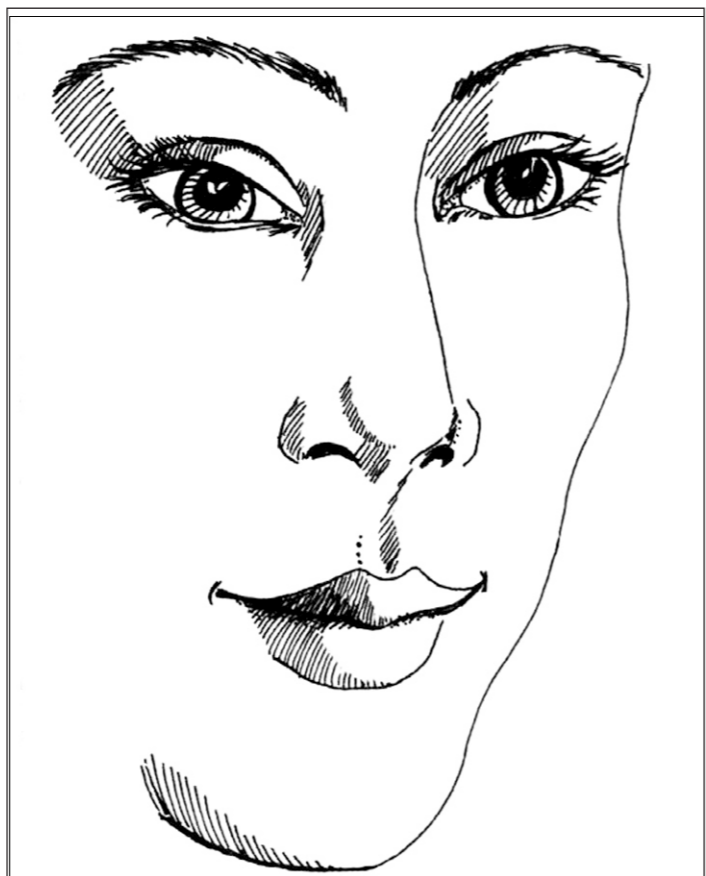
The allergy to baby girls has become so endemic in our culture that it violates the very basic human rights that Islam had granted to women 1500 years ago. In pre-Islamic Arabia (Jahiliya), many baby girls were buried alive because Arabian society considered them to be burden on families. Muhammad (SWS) put an end to this evil practice and said in a hadith that if a man brings up a girl and a boy equally, then he will enter paradise. Based on this criteria, how many men in Bangladesh today will enter paradise? But the problem doesn't end there. Due to peer pressure many women themselves have a strong aversion to baby girls even though they are of the same gender! We need to ask ourselves how this 'Jahili' mentality came about and how we can get rid of it.

Education

Once female rights have been violated after birth, the next level of violation takes place in education. Many women are forced to give up education because of the mistaken view that education has no value for a housewife. Education is the most valuable asset that any human being can have and everyone, whether male or female has a right to be educated. As Mahatma Gandhi once said, 'educate one man, you educate one person, but educate a woman and you educate a whole civilisation'. Children suffer if mothers are not educated. There needs to be a paradigm shift in our education system where young children currently rely on private tutors to help them with homework and exam preparation. As education starts from the home, then it is imperative that mothers are educated to a level where they can be directly involved in their children's education without the need for private tutors at an early age. Fail to educate a woman, and you fail to educate an entire nation, and the nation suffers.

Forced marriages

Once a woman has been forced to give up her education, the next level of violation of women's rights is in marriage. There are countless stories of



women being forced into marriages against their will because of the mistaken view that parents have full monopoly over their children's future. Many women are at the receiving end of such attitudes by their parents. Once a

woman is forced into a marriage without their consent there is no exit route from an oppressive marriage, she cannot turn to anyone for help.

Relationships during marriage

Even if there is consent from the woman about her marriage partner, the problems don't end there. Many women who move into their husband's family face problems in adjusting to the new lifestyles. This itself is not an issue, but the real problems lie in the relationships between the mother-in-law and the daughter-in-law. In an ideal home, there should be no problems between the two individuals. Unfortunately, the reality is different. Many families of the sub-continent have problems that are caused by misunderstandings between mother-in-laws and daughter-in-laws. Why should there be problems between them? One theory suggests that the mother's role of caring for the family has been undermined by the new wife which her son has brought into the family, and would see her as competition. Furthermore, there may be a fear by the mother, who for so many years received the attention of her son(s), but then finds his attention being diverted to his new wife which would cause jealousy. Despite the fact that Muslims are commanded to treat all family members well and to avoid jealousies (one of the worst sins any Muslim could commit), it is a sad reflection on our society that such noble principles are not generally adhered to.

There are other problems too, for instance the strained relationships between new wives and their mother-in-laws. Oppressive husbands is also another problem where they would mistreat their wives. If a wife complains about oppression within a family, chances are that she will be blamed for all the problems. Who can the wife approach for redress without being blamed for it? There are currently no support structures to deal with such problems and the government needs to set up an initiative to help oppressed women receive justice.

The need for a paradigm shift

The issues highlighted above are controversial but need to be recognised urgently as they violate the principles of human rights. What is needed is a major shift in attitudes held by peer groups and society in general. The Government has a major responsibility to help society make this fundamental shift. If women are the committed helpers of their men folk and make up half of the society, then how can society progress if their rights have been violated from the moment they are born?

Mrs. Jahanara Imam is the Director of Human Rights Implementation Society.

Killing of Dr. S.K. Mukherjee An alarming dimension in the matrix of murder

M. MOAZZAM HUSAIN

Following every incident of murder there is some outcry for some days from different quarters, which does not take much time to fade away from our memory. Gradually we turn a blind eye to its development in terms of investigation, detection and punishment of the killers. If it is a murder of a man directly attached to a political party, the uproar is louder and continues for some more times for the purpose of politics instead of justice.

The most recent two agonising murders namely, of former MP Mohammad Mamtazuddin of Natore and of Advocate Monjurul Imam of Khulna have utterly shocked the conscience of the whole nation. These two successive murders specially, have rocked our confidence that distinguished people living honest and dignified lives or popular politicians striving for restoration of positive politics are not above the risk of life.

The last in the sequel is the murder of Dr. S.K. Mukharjee of Jhenida, an extreme old man of 84, one of the senior most doctors of the country, a senior politician, a renowned social worker and freedom fighter having unblemished career all his life. Dr. Mukharjee was killed on the 18th instant allegedly by members of a local terrorist group by inflicting repeated knife-blows on his person. As disclosed by his family sources the terrorists demanded a huge amount of money from him and having been refused they threatened him and ransacked his chamber couple of days before the occurrence. Dr. Mukharjee's family insiders, in view of his clean background, dismissed all other probabilities and reiterated their suspicion on the malcontent terrorists as responsible for the killing.

The entire population of Jhenida stood cross-fixed in overwhelming grief and surprise at the utterly senseless murder of S.K Mukharjee. An octogenarian, father figure, renowned social worker, a celebrity S.K. Mukharjee initiated his battle for the betterment of his people. He participated in the Anti-British movement, language movement, fought in our liberation war and finally reached the fag end of his people-oriented life donating other day the penultimate piece of his paternal land to a local school. He did never foresee a time that dedication of total life for the cause of humanity would be counted much less than an amount of illegal toll and refusal to pay the same would cause his death.

Thank God, Md. Mamtazuddin and Advocate Monjurul Imam were leaders of a major political party and as such we could feel the weight of protest. Had they been non-partisan victims I am afraid, there would be hardly any people outside his family and friends to mourn their deaths. A politician whatever party he belongs to can expect at least an outcry in case he is killed. One can not but feel pity for thousands of distinguished non-partisan people who do have none but their family and friends. If any one of them falls prey to the predators and gets killed can the tragedy make headline in a newspaper or spark off outcry in any circle?

The popular slogan demanding 'the guarantee for natural death' coined years ago prompted by many different unnatural deaths caused in those



days seems to be a far cry. As I understand, the slogan emanated from frequent deaths caused by accidents, medical negligence, curable diseases, violence, manslaughter etc. The expanding horizon of manslaughter alone has by now assumed a new and alarming dimension.

The grim history of murder is as old as the civilisation itself and no one can claim total eradication of it as, precisely, it is not possible. History witnessed tragic cases of political murder, murder out of female intrigue and murder for gain. The ordinary and the distinguished citizens considered themselves off from those avenues of risk, felt more or less unaffected by at least some kind of logical deductions. Now we are far removed and have entered upon a new era in which every citizen irrespective of his innocence or respectability will feel insecure and thrown at the mercy of the outlaws. Thematically it is just a game and depends upon wishful decision of the killers regardless of any sense or else a game played by the hired killers at a bargain price. It is a new phase of utter disregard for human life. Life has become so cheap and insignificant that it may be taken by the killers at any moment on a trifling altercation or disagreement like refusal to pay illegal toll or upon a bit of resistance put to the them for however lawful cause. The killers, abductors and terrorists are hunting their prey like game birds as of hobby.

There is no reaction from the Government or the opposition political parties, which clearly send the message to the terrorists and killers that this time they mean to see an end of lawlessness. It is now well accepted view that criminalisation of politics and absence of political commitment are by and large responsible for growing lawlessness and terrorism. Police is responsible for maintaining law and order and protecting the law abiding citizens through surveillance and bringing the criminals to justice. It is also unfortunate that they have failed to protect the life of Dr. Mukharjee and many others like him but far more unfortunate and alarming is the daring and desperate mind set of the outlaws nurtured in their confidence that they are above law.

M. Moazzam Husain is an Advocate of the Supreme Court.

Corresponding Law Desk
Please send your mails, queries, and opinions to: post - Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email dslawdesk@yahoo.co.uk