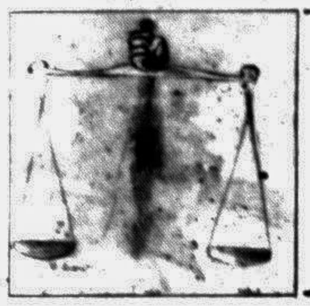

Law and Our Rights

What Next for Child Workers?

The deadline for eliminating the remaining young garment workers has been postponed. What does the future hold for these children? Lamis Hossain goes to AAFLI and BGMEA to find out

THE young garments workers have made their position clear: "Do you want to see us work or forced to become prostitutes?" This time their appeal has been heard. The Bangladesh Garments Manufacturers' and Exporters' Association (BGMEA), after a meeting with NGO's and international organisations has decided not to eliminate the remaining 8,000 to 10,000 child workers by the October 31 deadline.

But what happens next? The threat of the Child Labour Deterrence Act 1994, or the Harkin Bill has not disappeared. Have any concrete arrangements been made for the children or does the postponement merely delay the inevitable?

Despite their differences, the parties agree that a comprehensive agreement is in the making which will involve the Asia American Free Labour Institute (AAFLI), GSS, ILO, UCEP, and UNICEF. To begin with, the BGMEA president Redwan Ahmed MP, revealed, "We will not be recruiting further underage workers. We will appeal to the owners."

Another crucial point is conceded: 12-14 year olds will be allowed to do light work. This had been a matter of much uncertainty following the introduction of the bill. Mitigation clauses of ILO Convention 138 Concerning the Minimum Age for Admission to Employment, including article 7, state that children may be allowed to do light work in a country whose economy and educational facilities are insufficiently developed, but the Harkin Bill does not expressly refer to it.

According to Terry Collingsworth, AAFLI's country director, it was always envisaged that ILO Convention 138 would be the guiding instrument for the Harkin Bill. He said it last year on August 2. Everyone was nervous about this here, so when I was in Washington three weeks ago, I asked if Senator Harkin would issue a statement confirming that ILO Convention 138 was the controlling law."

The remaining irony is that international organisations and NGO's are in the unenviable position of proposing a solution which violates our current laws. Bangladesh has not ratified the ILO Convention, although the new draft labour code, currently sitting on the back burner, incorporates article 7 of ILO Convention 138. Our Factory Act 1965 stipulates that a child is someone who has not completed his sixteenth year, and that a factory may not employ anyone under 14. Working hours for those between 14-16 are limited to five hours a day. Even though Bangladesh has ratified the Rights of the Child Convention and our national laws are quite tough, the child labour issue demonstrates the yawning schism between laws and their implementation.

As for the practical steps such as setting up the necessary schools, Redwan Ahmed informed, "We have drafted bilateral agreements with GSS and UCEP. On principle it has been agreed that GSS will provide 25 schools and UCEP another five or so." BGMEA's side of the bargain will be letting children between 12-14 years to go to school for two hours and work a total of six hours. The organisation will also have to pay full wages.

The BGMEA informed that the association had its own plans for rehabilitating the young workers, but except for one school in Malibagh, none of the plans have crystallised. The preparations are "still going on", according to the BGMEA.

It is now clear that "light work" will be allowed, but what exactly is it? It should exclude any work which, according to article 32 of the Rights of the Child Convention is "likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, moral or social development." Redwan Ahmed believes that working in garments is definitely not hazardous. "With the exception of sitting at the machine and ironing, there are no 'hard' jobs anywhere," he asserted. In a recent Children's Rights Seminar organised by IPEC in Bangkok, BGMEA proposed that thread-cutting and helping operators should count as light work.

In an ILO testimony in April 1994, Gabriela Stoikov stated, "Where children work long hours...the work they do cannot qualify as light". But how can one guarantee that the current solution will not reintroduce full time child labour through the back door?

Both AAFLI and BGMEA comments reveal that monitoring remains the main obstacle to any agreement. Redwan Ahmed asked: "There are 2,000 factories. How many thousands of people will you need to monitor them?" He informed that the BGMEA will be doing school-based monitoring in its own interest. "Going to the factories will be simple harassment," he said. However, the weakness of relying solely on school based monitoring may be that children could fulfill their two hours education requirement and at the same time make up for it by working overtime at the factory.

AAFLI believes that factory based monitoring is possible, as their work in Nepal shows. "There's a finite number of factories here and they are all registered. You can check 100 factories a week with a regular team of five," Collingsworth proposed.

Any plan also has to make provisions for the children of garments workers in the future, so that the employees do not start bringing their offsprings to the workplace.

Whereas there seems to be some hope for the remaining children in the industry, it may be impossible to help those already retrenched. Employee files are closed as soon as they leave, which gives little scope to trace the children, according to the BGMEA. Collingsworth pointed out another difficulty, "If you see four children sitting on a curb, you may ask yourself whether two of them used to work in a factory. But then, it would be unfair to make the distinction and provide benefits only to those two."

The Harkin Bill has already made a distinction between garments workers and other children. In fact, Collingsworth's example points out that by taking a sectoral approach, the bill may have simply transferred workers from one area to another. "I admit the garments sector is not the worst," Collingsworth said. "But now everyone involved is committed to expand the plans to other areas." AAFLI informs that the tea estates are likely to be the next area under study.

The Harkin Bill has no doubt been a 'loud wake up call' for all concerned, but the approach of coercion instead of cooperation has made it easier for developing countries to cry foul play. The U.S. has been accused of hypocrisy and conspiracy because the bill is a unilateral measure by a country that apparently has 5.5 million working children and has not ratified the relevant international instruments itself. Underlying the protests by the developing world is also the fear that the current trend of linking human rights with trade is just another way of curtailing their competitiveness.

As far as child labor is concerned, there is no doubt that the garments sector has suffered from the negative publicity such as the Newsline Walmart expose on American T.V. "It has dented our total growth," the BGMEA confirms. But AAFLI points out that Bangladesh has made great strides in solving the problem compared to neighbouring countries. This fact alone could be used as a tool of competition and highlighted to attract investment. We are not competing with the U.S. garments sector, where wages are 43 times higher, but with others like Nepal, India and Pakistan.

The parties who are currently hammering out the agreement may not agree on whether poverty causes child labour or whether child labour causes poverty, but practical considerations have forced them to attempt a solution. As Redwan Ahmed says, "Our first concern is to keep the sector alive. We're businessmen, not philanthropists, but despite being a trade association we have adopted a plan which aims to rehabilitate."

An agreement will hopefully be signed by this month. If the organisations wish to adopt a fair deal for the children, then the following need further consideration: a clear definition of light work, provisions for under 12 year olds and future children of garment employees and a workable monitoring system. Only then can we conclude that the Harkin Bill has done any good.

Putting waistbands into trousers and skirts. Light work or heavy duty? — Photo by Shehzad Noorani/UNICEF

Editor's Note

You may know how to balance your budget and how the bank works, but how much do you know about the law? Are you aware of many of the rights and obligations which affect your life?

Most people are not. The law is something that we choose to ignore or are indifferent about, unless we are forced to confront it. We have ceased to believe that laws exist for the people and not the opposite.

Yet laws relate to you on many levels: from labour law, traffic law, tax law, customs law, tenancy law, company law, copyright law, human rights law, and environmental law—the list is long and diverse.

By starting a page of this kind, we hope to stimulate your participation in legal issues and help to create a legally informed society. This is above all a forum to assist you, our reader. Tell us about the legal problems that you face and the topics that interest you. Feel free to ask our panel of lawyers for clarifications on the law.

We look forward to contributions from our readers, especially lawyers and legal bodies. It's all yours from here.

Arrest Laws Leave Wide Scope for Abuse

Laws on arrest provide ample scope for the misuse of police power, and lack adequate remedies to protect the right to personal liberty, says **Isaac Robinson**

ABSENCE of arbitrary use of executive power is one of the pillars of the rule of law. But when laws of the land provide scope for the use of such arbitrary power, then it becomes inevitable that the citizens will be deprived of their right to personal liberty ensured by the Constitution.

Unlawful arrest and detention are two means through which personal liberty can be infringed. Sometimes arrest and detention, though made in accordance with the law, can violate one's personal liberty when the law itself provides scope for unjustified use of power by the authorities. In this respect, Section 54 of the Code of Criminal Procedure (CrPC); 1898 can be mentioned, according to which the police can arrest a person without any warrant under nine circumstances specified therein. This section, although argued to be somewhat necessary for the detection of offenders, results in indiscriminate use of power by giving the police wide scope to make arrests without a warrant. There are innumerable incidents where the police have used section 54 of CrPC to harass one person at the behest of another.

Article 32 of the Bangladesh constitution however, provides some safeguards against arrest. Accordingly an arrested person is given the right to know the grounds of his arrest within a reasonable time, and to consult a legal practitioner of his choice. Moreover, he should not be detained in police custody for more than 24 hours without the leave of the nearest magistrate.

These safeguards have little meaning for those who have already suffered due to arbitrary use of police power. In many of the cases, they face miserable torture inside the police station. There must, therefore, be positive checks so as to deter law enforcing agencies from making unjustified arrests. One notable point under section 54 of CrPC is that although it doesn't require any warrant of arrest, the police must have reasonable grounds for making the arrest. Therefore, when the police unreasonably arrest any person under section 54, legal action can be certainly taken against such member of the law enforcing agency under section 28 of the Bangladesh Police Regulation 1861. This complaint can be filed with the officer in charge of the police station. But the question is whether a poor person has the capacity or the courage to become involved in this kind of litigation. The answer is surely "no". Legal proceedings against the police have become very rare. Moreover, it is difficult to prove the unreasonable action of the police.

As far as Dhaka, Chittagong and Khulna are concerned, the situation is further aggravated by their respective Metropolitan Police Laws. In the capital, the Dhaka Metropolitan Police Ordinance 1976 (DMP Ordinance) is in force, thus excluding the application of the Police Act 1861 from the Metropolitan area. Under section 54 of CrPC, power to arrest without warrant is confined to nine circumstances, but under section 100 of the D.M.P Ordinance, the power is much wider irrespective of the degree of the offence. It is interesting to note that the ordinance defines many petty matters as offences, and for these the police can arrest a person without a warrant as per section 100. The list of offences are given in section 46 to 98 which includes wrong parking, obstructing a footway, letting loose any animal, indecent behaviour in public, exhibiting mimetic, musical or other performances, for example.

Misconduct committed by a member of the police force is controlled by the DMP Ordinance as well. Although section 46 to 55 deal with the offences committed by the police force, it is unfortunate that under section 99 of the Ordinance, no court can take cognizance of these offences unless it receives a written report from a police officer. Thus, to set the law in motion against the misuse of power by the police, one has to rely on another police officer for his report. This makes it quite difficult to institute a case against a police officer under the DMP Ordinance. The position is almost the same under the Chittagong Metropolitan Police Ordinance 1978, and the Khulna Metropolitan Police Ordinance 1985.

Under section 8 of the Special Security Force Ordinance, the force can arrest without warrant any person when there is a reason to believe that the presence or movement of such person at the vicinity of the PM or the VIP is prejudicial to their physical security.

The writer is the Joint Secretary of the Law Review, Dhaka University's Centre for Legal Research.

Crime Wave Challenges Law and Order

Successive governments have failed to adopt a well-planned approach to law and order. Unless the issue is taken seriously, we may have to pay a higher price, says **Advocate Mohiuddin Ahmed**

THE problem of law and order and justice in our society appears to have really assumed an unhappy shape. It is such though we did not begin from zero : we inherited a fairly well-conceived administrative structure to take care of the issue of law and order, a judicial organ to administer justice through adjudication of legal disputes and also a good crop of laws — both civil and criminal which were fairly comprehensive and successfully withstood the test of time. Pertinent to mention here that in pre-partition days, complaints or grievances regarding law and order and administration of justice were rather rare. Gradually, the position took a different turn in post-partition days, and an onset of deterioration became visible in this sphere as it did in other fields.

Without dilating much, it would not be wrong to say that the situation worsened rapidly after the emergence of Bangladesh and to be frank, the position that has obtained nowadays, may be described as a virtual breakdown. Leaving aside detailed particulars of all the crimes of serious nature reported from the capital during October, 1994, I would only refer to the diabolical murders of seven persons which took place in that month. These are the murders of : Prof. Shamima Choudhury and her daughter, a student of Mymensingh Medical College on October 2 in their Lalmatia residence in broad day light; of Istiaque Ahmed (Isha) in Elysium Building, Hatkhola (also in day light), on October 19; of Mahtabuddin Ahmed reportedly by rifle shot on October 24 on a street; of Suman, a College student on the same day in day light in Bangshal; Zakir Hossain, a Varsity student shot dead in Jagannath Hall on October 28 ; Saiful Islam Bakul on the same day in Mirpur (2 hands and his right leg were chopped off); and of Nurul Islam Mitho, another college student who was shot dead on October 28 in Nakhalpara. Whatever may be said, these murders are nerve-shaking, a challenge to the guardians of law and order and indicate that none of us is safe.

The question that crops up in the above unhappy context is : how and why the situation has come to such a stage and how to get out of this nightmare?

For getting the answer, some reflection in retrospect is essential. Though after the emergence of Bangladesh, top priority ought to have been attached to the issue of law and order, administration of justice and restoration of order and discipline in all the spheres of national life, our approach in this regard was not at all consistent with the need of the hour. An issue of seminal importance was unfortunately relegated to a secondary position. This was an invitation to deterioration but we continued to be blissfully unmindful in this respect.

Let us now see how the matter was handled by different governments. When deterioration came to surface, the Awami League government in 1972 promulgated the Schedule Offences (Special Tribunal) Order 1972 (P.O. No. 50/1972) for dealing with the crimes specified therein. After about two years when the result was obviously not satisfactory, the Special Powers Act was passed in February, 1974, since special measures for the prevention of certain prejudicial activities and for speedy trial and effective punishment of certain grave offences were considered necessary. This act repealed P.O. No. 50/1972 and is still in force though it was later widely described as a piece of black-law.

As the above steps were also not found to be adequate, the government headed by Lt. Gen. Ziaur Rahman promulgated the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978) which came into force on June 1, 1979. This Ordinance amended the Code of Criminal Procedure rather extensively in a bid to bring about improvement in the administration of criminal justice, but again the result was obviously not up to the expectation.

Subsequently, the administration headed by Lt. Gen. H.M. Ershad embarked on an apparently ambitious scheme which included extensive amendment of laws plus decentralization of the judiciary professedly for sprucing the administration of justice and taking justice to the door-steps of the common men, despite repeated caution by the legal profession that implementation of the scheme without weighing all its pros and cons was not advisable. The scheme was implemented and after a costly experiment with the same for several years, it turned out to be a self-defeating one. Litigation and costs thereof went up considerably, malpractices in outlying stations by designing persons became rampant inviting odium and in many stations the presiding officers also had to face awkward position due to various reasons which were not visualised before. The weighty remarks of an eminent jurist that the concept of local and instant justice is naive but touching, proved true in our case also.

After the exit of the government headed by Lt. Gen. H.M. Ershad, the general elections of 1991 and assumption of office by the elected representatives of the people, it was expected that this time the vital issue of law and order and administration of justice, would certainly get the priority it eminently deserved and steps would be taken to eradicate the laches and shortcomings which are responsible for the lingering unhappy situation.

It was more so, because the Ministry of Law was headed by a Senior Lawyer and the Cabinet also included a number of learned members of the legal profession. The government headed by BNP withdrew the Courts established in the Upazilas and the Supreme Court which was bifurcated, came to its original seat and shape after the judgment by the Apellate Division in the case relating to the 8th amendment to the constitution. But to our misfortune the government's approach so far, to this vital problem is characterised by a sort of torpor and the deterioration continues. For example, the Hon'ble Minister of Law, Justice and Parliamentary Affairs announced on June 26, 1993 in the Jatiya Sangsad that a Commission on Law Reform would be formed within two weeks, but we are not aware of the formation of the said Commission though more than a year has elapsed. In the meantime, what was however done, was the passage of Act No. 44 of 1992 on November 6, 1992 (The Anti-Terrorism Act) for controlling the offences described in the said Act and setting up of few Tribunals to try those cases. The government claims that passage of this act yielded good results, but the claim is disputed by many and not without reason.

One thing needs to be made clear in this respect. The three laws referred to above contained very harsh provisions for dealing with the alleged offenders. A dispassionate analysis would reveal that these harsh laws also did not produce the dividends expected to be derived This indicates that mere enactment of harsh laws conferring wide powers on some agency by itself is not the only answer to the problem faced by us. Something more is essential.

In this connection it is necessary to reiterate that prompt and proper application of law as well as reasonably quick trial and disposal of criminal cases produce a salutary effect on the law and order situation. That being so, performances of the agencies which are entrusted with the specified job in this regard need be under watch and they ought to be guided for better result. But arrangement for such monitoring, though essential, is inadequate in our case.

Viewed from all the angles, though fairly belated, we must take up the matter with all the seriousness it desires. Otherwise we may have to pay a heavier price.

Young Victim of Greed and Lust

by Salma Ali

MARRIED and divorced at the tender age of eleven, Rebecca Akhtar Bilkis portrays yet another ill-fated case like thousands of young girls in this country. Having lost her mother at a young age, Bilkis had to live with her paternal aunt, when her father took a second wife.

Alamgir Siddiq, a mathematics teacher in his thirties and house tutor of Bilkis' cousin, becomes attracted to Bilkis who is a lovely girl but shows no sign of physical maturity.

Initially, the aunt balks at the idea, but as Alamgir continues to insist and promises an attractive sum of money to the aunt and Bilkis in return for the girl's hand in marriage, the aunt yields on the condition that Alamgir should not consummate the marriage for another two years. Bilkis would live with her aunt till then.

Once married, Alamgir begins to take Bilkis out. Violating his agreement with her aunt, he coaxes Bilkis into a physical relationship with him. When he discovers that the girl is indeed too young, he bolts and files a divorce.

The aunt complains to Bangladesh National Women Lawyer's Association (BNWLA) as soon as the divorce is filed. What she thought would be a great marriage for a poor, uneducated girl only 11 years old, blew up in her face. BNWLA summons Alamgir and sends a copy of the notice to the Headmaster of the school Alamgir works for. The culprit shows up and claims that he was deceived by the girl's parents into believing that Bilkis was of age. When asked how he could have possibly been ignorant about her sexual immaturity given the obvious lack of signs of physical growth, Alamgir claimed that some girls come of age without any outward indication.

The legal solution

In accordance with Islamic Law, Alamgir was ordered to provide Bilkis with the *mohrana* of Tk 20,000, as mentioned in the *'Kabin'* or marriage contract. He was also asked to offer compensation for violating the Child Marriage Restraint Act 1929. However, upon his plea for a reduced compensation and given evidence of his inadequate financial status, the fine came to Tk 25,000 (Tk. 5,000 fine and Tk. 20,000 mohrana). BNWLA wanted to finance Bilkis' education and other needs with the money, but Bilkis' aunt and uncle wouldn't hear of it. They demanded the money. Finally, BNWLA resorted to calling the father and handing the money to him.

Comments

BNWLA realizes that Bilkis will not be able to use the money and that her guardians will benefit from the money for their own purposes, but there is nothing they can do. Our family values, especially guardians' attitudes towards female wards must change if girls and women are to benefit fully from the legal solutions the organisation provides.

If Bilkis' guardians realised the crucial need for Bilkis to be educated and thus have a more secure life in the long run, they would not have objected so vehemently to keeping the money in BNWLA's safekeeping.

Why does the organisation suspect that the guardians' intentions might not be noble? Simply because the girls' guardians, hoping to reap an economic benefit, as well as relieve themselves of a "burden," had married their underage ward off to a man 20 or more years older than her.

According to the Muslim Family Law Ordinance 1961, a man cannot marry a second time, while having a first wife, without the first wife's permission. Yet, Alamgir married Bilkis without informing his first wife, who he claims had been "ill for a long time." It is suspected that Alamgir had other wives before. Effective steps must be taken to preserve women's rights in this regard, and exemplary punishments should be meted out so that potential transgressors might be severely discouraged. BNWLA could have taken Alamgir to court for his act, but such cases tend to drag on for years, causing much distress to the victims.

Although our laws include the Child Marriage Restraint Act, there are often limitations to its application in real life. Had the divorce not prompted Bilkis' guardians to lodge a complaint, nobody might have ever known that such a marriage had taken place. Unless acute public awareness supports our laws, the latter might as well not exist.

Last but not least, given Alamgir's actions, what moral values can he be expected to teach his students? Teachers are usually a role model, someone their students will follow, consciously or subconsciously, in their private or public lives in days to come. What can students be expected to learn from a character such as Alamgir ? Nobility ? Honesty? Respect for human beings and laws ? Love for the young and respect for the old ? Hardly.

The writer is an advocate and Executive Director of Bangladesh National Women Lawyers Association (BNWLA).