

Law and Our Rights

Young Law Students Speak Out

Towards Law Reform and Legislative Advocacy

by AH Monjurul Kabir

VARIOUS programmes of public importance arranged at the CIRDP Auditorium are generally participated in by senior professionals, experienced researchers, higher officials, age-old service holders etc. Young people, as usual, are neglected in such programmes and initiatives. But on 4th March, 1998 a remarkable exception was set up at the same premises. Some 50 young law students actively participated in the roundtable discussion on 'Towards Law Reform and Legislative Advocacy' with great enthusiasm. Young voice are heard and transcribed. And definitely the credit goes to Dr Borhan Uddin Khan, Coordinator of The Legislative Advocacy and Participation of the Civil Society (LAPCS) Project. Dr Khan who was also an Assistant Professor of the Department of Law, University of Dhaka, moderated the whole session.

It may be mentioned here that the LAPCS is a project of the Bangladesh Legal Aid and Services Trust. Ain O Salish Kendra and Madaripur Legal Aid Association. All the participants are the students of different academic years of Department of Law, University of Dhaka. The moderator of the programme was assisted by some of his colleagues who work in the same project as 'Research Lawyer'.

Views of the Participants

Special Powers Act and Section 54 of the Criminal Procedure Code

Moniruzzaman Monir, 4th Year
Section 54 of the Criminal Procedure Code clearly men-

tions 9 grounds when a police officer may arrest a person without warrant and the order of a Magistrate. Under section 54 (1) a police officer may arrest a person without warrant and the order of a Magistrate on reasonable suspicion. The term "reasonable suspicion" has not been defined under the Act. In the guise of "reasonable suspicion" a police officer generally abuses this power given to him. He may even misuse this power under the influence of a third party. It is to be mentioned that misuse of this power in many cases violates the norms and principles of not only the fundamental rights stated in our Constitution but also violates human rights and principles of the Universal Declaration of Human Rights.

This Act is commonly criticized by all walks of people specially by the political parties as a "black law". Under this law the Government can detain any person for months on its own satisfaction.

He opined in favor of reforming the Act. The time mentioned for submission of the Report by the Advisory Board can be reduced to 3 months instead of 6 months. If it is proved that the detainee is innocent then the Government should compensate him.

Tarek Hossain Siddiqui 4th Year

There are clear provisions regarding the time and circumstances under which the Government may exercise this power in the Constitutions of Pakistan, India, Singapore, United Kingdom and United States of America. But unfortunately there is no such provi-

sion neither in our Constitution nor under the Special Powers Act. The Latif Mirza case of 1974 is a landmark in this regard. Mr Latif was detained without trial for more than 5 years under the Special Powers Act. He suggested 3 measures are to be adopted, i. specific period of time should be inserted up to which a person may be detained; ii. the Advisory Board should submit its report within 3 months instead of 6 months; iii. specific provisions should be incorporated under which a person can be detained.

Speedy Trial

Rabeja Jamali, 3rd Year
The lawyers of our country generally have a tendency to file time petitions both in civil and criminal cases. By this practice hundreds of cases are pending in the Courts which are yet to be disposed of. She firmly opined that the Superior Court should have effective supervisory jurisdiction to look into this matter.

Ronnie, 2nd Year
Specific provision under the Civil Procedure Code the provision which should be amended.

Rape

Nazlee, 2nd Year
Under the present law the burden of proof in regard to rape case is on the person who has been raped. But she opined that this burden should be on the person who has committed the rape. We shall have to amend the Evidence Act in this regard.

Police Remand

Nazmuzzaman Bhuiyan, 3rd Year
Article 35 (5) of the Bangladesh Constitution states

that, no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. But under Section 167 of the Criminal Procedure Code, a Magistrate may authorize the detention of the accused from time to time but for a term not exceeding 15 days in the whole. Since the accused is confessing in front of the Magistrate, then what is the necessity of sending him to police custody at all? The general practice is that when an accused is taken to police custody then he or she is being tortured inhumanly by the police for collection of information of the alleged offence. This is a clear violation of the Constitutional provisions mentioned in Article 35 (5).

So, he demands the abolition of the provisions relating to police remand. If it is not viable to repeal the remand provisions then the time of keeping an accused under police remand should not be more than 3 days in the whole.

Kashem Bhuiyan, 4th Year
If the remand provisions are repealed from the Code how will it be feasible to collect information of the alleged offence? In some cases this provision should be applied. But this power should be duly exercised. He also agreed with view of Nazmuzzaman Bhuiyan that, the time of keeping the accused under police remand should not be more than 3 days as a whole.

Hindu Law

Shahrana Yesmin Lily, 2nd Year
In the period of 1955-1957 the Indian Parliament has enacted various laws concerning

the right of inheritance of women, the right of adoption and the right of Stridhana. But unfortunately, there are no such laws for the Hindu women of Bangladesh. She stressed the need for enacting up to date laws like these.

Afroza, 2nd Year

Under the Dhayabhaga School prevailing in our country a Hindu woman is not entitled to inherit from her father. She gets some property at the time of her marriage from the same as Stridhana. But after passing the Dowry Prohibition Act, the passing of such property becomes difficult, because the Stridhana thus given is being considered as dowry. So we should look into the fact whether the Dowry Prohibition Act, hampers the interest of a Hindu Woman and should take necessary steps to amend the said Act.

Joy, 3rd Year

The establishment of a Uniform Family Code has been one of the fundamental demand of the Women Organizations in Bangladesh for the last decade. He opined that such a Code can ensure justice and equity for women irrespective of religion, race and caste.

Nazlee, 2nd Year

A survey should be conducted over the Hindu Community whether they at all prepare for the changes which Shahrana Yeasmin Lily has proposed for.

Ashrafjal Alam, 3rd Year

In India, the Law is very clear that a person can adopt a boy or a girl. But in Bangladesh only a boy can be adopted the right to adopt a girl has completely been avoided. Like the

Law existing in India, we should also have the right option to adopt a girl or a boy.

Manna, 3rd Year

The principles of Dayabhaga are applied over the Hindu Community in Bangladesh and the principles of Mitakshara are applied over the Hindu Community in India. So, if any reforms are suggested then it should be done within the framework of the Dayabhaga School.

Official Secrets Act, 1923

Mia Mohammad Azad, Research Lawyer

The Act was enacted to protect the interests of the colonizers during the colonial regime. In the name of the wording prejudicial to the safety and interest of the state all public documents are kept secret under this Act. The citizens cannot know by whom and by what rules they are governed. The trials under this Act are also held in camera at the will of the court. This is also a violation of the universally accepted procedure of open trials. The Rules of Procedure, 1936 also acts as a barrier to the citizens' right to access to information.

On proposed law

Farzana Chowdhury, Research Lawyer

We all know that women and children are disadvantaged group in the Society. The United Nations even has from its very inception, worked with the women movements to achieve its asserted objectives in its Charter calling for full equality of men and women. The Government of Bangladesh has drafted a Bill titled "Nari, Shishu O Shantirash Shonkranta Aparadh" (Bishesh Bid-

han) Ain, 1998 in order to protect the rights of women and children. But unfortunately, like the previous laws this law is not also above criticism. And the insertion of provisions regarding "Shantrash" (Terrorism), which is inconsistent with the proposed law has vitiated the very object as well as the importance of the said law.

The proposed law will be a Special Law. In 1995 the then Government enacted a Special Law under the title of "Nari, O Shishu Nirjaton (Bishesh Bidhan) Ain, 1995 (Women and Children Repression [Special Provisions] Law, 1995) which is now in force. Proposal of another one within the span of only 2 years proves the non effectiveness, non acceptance of a Special Law. Hence, enactment of special laws frequently cannot serve the purpose of a well designed law. She strongly think that protection of the rights of women and children can be done through the amendment of the Penal Code and insertion of new provisions therein.

Vested Property Act

Jagannath Paray, Research Lawyer

Vested Property Act owes its existence to the Enemy Property (Custody and Registration) Order II of 1965 which was promulgated following the outbreak of war between India and Pakistan in September 1965. This Act was enacted on the ground that it was of necessity on the part of the government to look after the property as custodian of the citizens who left for enemy country leaving their property matter unsettled.

Bangladesh emerged as an independent state, obviously not as a successor of Pakistan on 26th March 1971 by waging a war of independence against Pakistan. In the Liberation War India was not an enemy rather an ally. So the question arises why the law remains in force if the circumstances under which it was made exists no longer. This law still remains in force and stigmatized as a black law to serve the purpose vested interest group of the society and paves the way of corruption, injustices and deprivation.

Legal Aid Legislation

Abullah Al Farooque, Research Lawyer

The concept of the quality is the bedrock of any democratic society. Most of the people in our country are deprived of approaching the legal justice due to poverty, ignorance and other constraints. It amounts to denial of right of equal opportunity. The provision of legal aid through arrangement of the State can play a vital role in ensuring equal access to justice of the poor, marginalized and vulnerable section of the people. Code of Civil Procedure contains the provisions of pauper suit to deliver legal aid in civil suits. But this provision becomes absolute to achieve the desired purpose due to insufficiency of the arrangement and procedural hurdle. On the other hand, the Criminal Procedure Code contains provisions of legal aid only in case of capital punishment. To provide comprehensive and effective legal aid, a single legal aid legislation taking into consideration both civil and criminal aspects becomes imperative.



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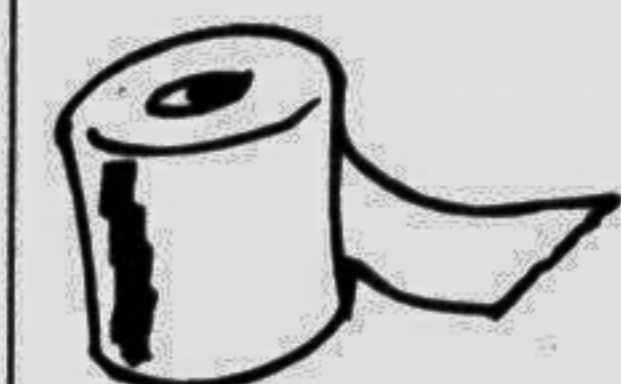
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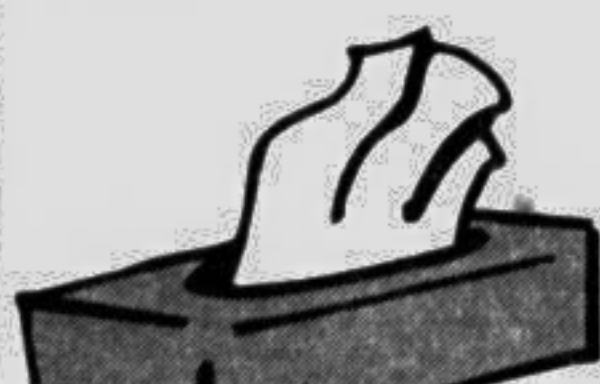
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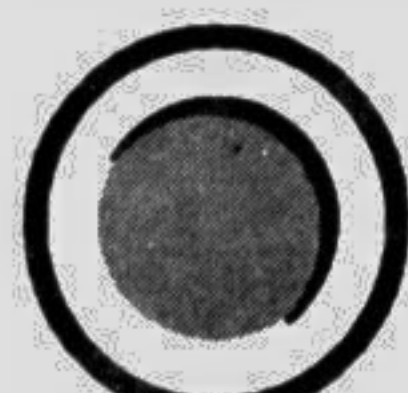
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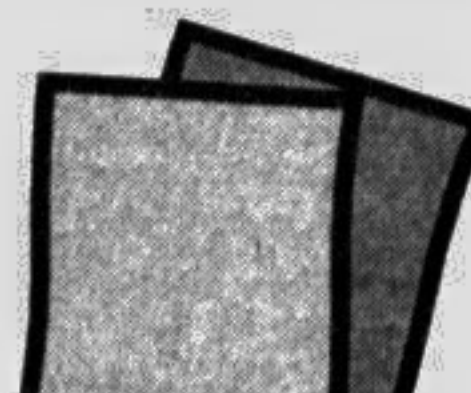
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