



LAW campaign

International programme on the elimination of child labour

Global ratification campaign

INTERNATIONAL programme on the elimination of child labour, IPEC's aim is to work towards the progressive elimination of child labour by strengthening national capacities to address child labour problems, and by creating a worldwide movement to combat it.

IPEC's priority target groups are bonded child labourers, children in hazardous working conditions and occupations and children who are particularly vulnerable, i.e. very young working children (below 12 years of age), and working girls.

The political will and commitment of individual governments to address child labour in cooperation with employers' and workers' organizations, other NGOs and relevant parties in society such as universities and the media is the starting point for all IPEC action. Sustainability is built in from the start through an emphasis on country "ownership". Support is given to partner organizations to develop and implement measures which aim at preventing child labour, withdrawing children from hazardous work and providing alternatives, and improving the working conditions as a transitional measure towards the elimination of child labour. A phased and multi-sectoral strategy is applied consisting of the following steps:

- Motivating a broad alliance of partners to acknowledge and act against child labour.
- Carrying out a situational analysis to find out about child labour problems in a country.
- Assisting with developing and implementing national policies on child labour problems.
- Strengthening existing organizations and setting up institutional mechanisms.
- Creating awareness on the problem nationwide, in communities and workplaces.
- Promoting the development and application of protective legislation.
- Supporting direct action with (potential) child workers for demonstration purposes.
- Replicating and expanding successful projects into the programmes of partners.
- Mainstreaming child labour issues into socio-economic policies, programmes and budgets.

By ratifying ILO Convention No. 182, Worst Forms of Child Labour Convention, 1999, the countries commit themselves to take immediate action to prohibit and eliminate the worst forms of child labour. This Convention is enjoying the fastest pace



of ratifications in the ILO's history since 1919. In parallel, ILO Convention No. 138, Concerning the minimum age for admission to employment, 1973, setting forth a larger framework for the longer-term objective of the effective abolition of child labour, has also been receiving a surge in ratifications. The increase in ratification of the Convention clearly demonstrates that support for the movement against child labour is growing very rapidly throughout the world.

In the last two years, hundreds of thousands of children throughout the world have taken part in the global march to ban child labour. Many reached the ILO in Geneva holding hands with adults who cared enough to join their quest in this 'impossible dream'. These girls and boys organized and advocated for themselves and on behalf of millions who could not present.

The Campaign is to bring an end to the worst forms of child labour that are stunting the lives of millions of girls and boys. Child labour is not jobs for kids. It is neither valuable work experience nor apprenticeship combined with schooling that enhances a child's present and future prospects. Child labour in its worst forms is abuse of power. It is adults exploiting the young, naive, innocent, weak, vulnerable and insecure for personal profit, although so many valuable efforts are going on, it is yet to be mustered enough courage and imagination to really go beyond chipping at the margins and actually stop it.

Intuitively, creating and ratifying a Convention for children's benefit is the easy part. The tougher part is finding ladders for them to climb out of the deep pits of violence and discrimination they live in.

Source: International Labour Organisation (ILO).

FOR YOUR information

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 Entered into force on 12 February 2002

Some basic features:

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

- Such recruitment is genuinely voluntary;
- Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- Such persons are fully informed of the duties involved in such military service;
- Such persons provide reliable proof of age prior to acceptance into national military service.

Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction.

States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

LAW letter

Our right to know the report of judicial inquiry commission

Recently our judicial inquiry commission that was formed after 21 August's grenade attack on the opposition party has submitted their report. The gravity of terror and shock of 21st August 's attack is needless to say. The whole nation was waiting eagerly to know who is behind this heinous attack from the report of inquiry commission. But breaking the aspiration of the nation, the committee has refused to disclose the report. They have mentioned that this responsibility is on the government to take the decision of disclosing the report.

In our constitution Article 39 states that (1) Freedom of thought and conscience is guaranteed. (2) Subject to any reasonable restrictions imposed by law in the interests of the security of the state friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, the right of every citizen to freedom of speech and expression and freedom of the press are guaranteed.

According to this section this freedom consists of the right to express freely one's opinion on any matter orally or by writing, printing or any other mode. In *Hamdard dawakhanna vs India* (AIR 1960 sc554), it was decided that this freedom of expression includes not only one's ideas through any visible or audible representations made to others but also the right to acquire and import from others ideas, thoughts and information about matters of common interest.

The Universal Declaration of Human Rights has very comprehensive definition on freedom of expression in article 19 that states, everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive information through any media and regardless of frontiers. Though article 39 of our constitution does not expressly provide freedom of information, but it can be assumed that the right of expression itself contains the right to access of information.

Now let's see a case of U.S.A. In 1971 the publication of the 'pentagon papers' by New York Times brought the conflicting claims of free speech and national security. The pentagon paper, a voluminous secret history and analysis of the country's involvement in Vietnam was leaked to press. When the Times ignored the government demand that it ceases publication, the stage was set for Supreme Court's decision. In the landmark decision in *U.S.A Vs New York Times* case the court ruled that government couldn't through prior block publication of any material unless it could prove that "security result in direct immediate and irreparable" harm to the nation. The government failed to prove and the public was given access to vital information about an issue of enormous importance.

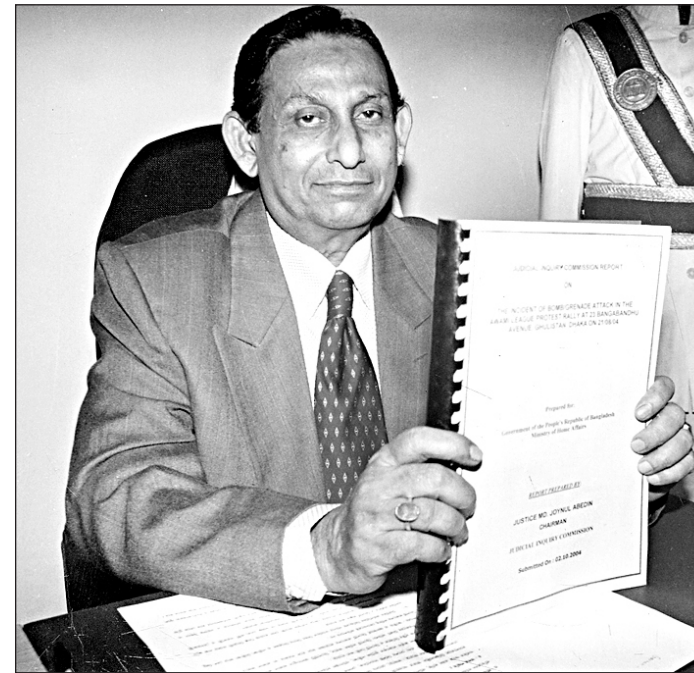
Yes, we have restrictions on our right to know the report of inquiry commission, we have 'Official Secrecy Act', Evidence Act and Rules of business Act etc. But these restrictions exist for national security, for the better interest of our country. But if this report is not disclosed before public the nation will become sharply divisible on this issue. Our two main political parties will be

Feminist Jurisprudence

We know feminism is a modern influential concept. It has influenced almost all the sphere of human life. Pertinently there has been developed a branch named feminist view of jurisprudence. However the feminist view of jurisprudence is not matured enough. As a field of legal arena, feminist jurisprudence began in 1960s. Feminist jurisprudence is a philosophy of law based on the political, economic, and social equality of sexes. It now holds a significant place in US law and legal thought and influences many debates on sexual and domestic violence, inequality in the workplaces and gender-based discrimination. Through various approaches, feminists have identified gendered components and gendered implications of seemingly neutral laws and practices. Laws affecting employment, divorce, reproductive rights, rape, domestic violence, and sexual harassment have all benefited from the analysis and insight of feminist jurisprudence.

Feminists believe that history was written from a male point of view. Male-dominated history does not reflect women's role in making history and structuring society. History has created a shameful bias in the concepts of human nature, gender potential, and social arrangements. The feminist says the language, logic, and structure of the law are male created and reinforce male values only. The male oriented law takes all the initiatives to deprive the women and perpetuate patriarchal power. Feminists do not believe that the biological make-up of men and women is so different that certain behavior can be attributed on the basis of sex. According to feminists gender is created socially, not biologically. Sex determines such matters as physical appearance and reproductive capacity, but not psychological, moral, or social traits.

Feminists believe in common commitments to equality between men and



continuing to throw blames on each other's and within this course of blaming and confusion that has created already, our democracy will be more fragile. It will lose all its charm, glory and continuance and definitely we ourselves will put the weapon on the hands of our enemy to destroy us. What will be then the output of these restrictions?

The report of the inquiry commission of 9/11 has been disclosed and has been made available for the people though it contains criticism of its own government's organizations. Japan is on the way to enact laws that will provide easy access of the people to government's file. Toady all prudent countries' government has opened their doors for free flow of information for the people. Because no restriction is greater than people's wish, and people's wish is they want to know what is going on with them.

We the people of Bangladesh have the right under article 39 to know the report of judicial inquiry commission. The attack on 21st August is an attack on our democratic structure. We have the right to know who wants to destabilize our democracy, who don't want that we place ourselves as a respected nation before the world. It is our request to our elected government let us know who are against us.

Sharin shajahan naomi
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women. However feminist jurisprudence is not uniform till now. There are three schools of thought within feminist jurisprudence, traditional or liberal feminism, cultural feminism and radical or dominant feminism. Traditional, or liberal, feminism asserts that women are just as rational as men are. That's why they should have equal opportunity to make their own choices. Liberal feminists challenge the assumption of male authority. They want to erase gender-based distinctions recognised by law so that woman can compete in the workplace.

Another school of feminist legal thought is cultural feminists. They focus on the differences between men and women and celebrate those differences. Following the research of psychologist Carol Gilligan, this group of thinkers asserts that women and men are different in their nature. The cultural feminists think women emphasise the importance of relationships, contexts, and reconciliation of conflicting interpersonal positions, on the other hand men emphasise abstract principles of rights and logic. The objective of this school is to give equal recognition to women's moral voice of caring and communal values.

Like the liberal feminist school of thought, radical or dominant feminism focuses on inequality. Radical feminists think that men, as a class, have dominated women as a class, creating gender inequality. According to them gender is a question of power. Radical feminists urge us to abandon traditional approaches that take maleness as their reference point. They argue that sexual equality must be constructed on the basis of woman's difference from man and not should be a mere accommodation of that difference.

Every branch of knowledge has some outstanding important characteristics and some flaws also. This is same about feminist view of jurisprudence.

Arif Khan
Dept of Law, Dhaka University

LAWweek

Judicial probe report

The judicial inquiry commission in its report has obliquely referred several times to a country which it blamed for the August 21 grenade attack on an Awami League rally, but it did not name the country for diplomatic reasons.

The source, however, would not name the local agents of the foreign enemies blamed for the carnage, saying it is impossible for the judicial commission to identify the perpetrators. It is the responsibility of the intelligence agencies to trace them. The report termed the deadly incident a naked attack on the independence and sovereignty of the country and recommended the intelligence agencies be immediately revamped for foiling a repeat of such incidents. The report made 22 recommendations including one for increased security for the leader of the opposition.

Apart from recommending filming of rallies and meetings by intelligence agencies for identifying perpetrators of such attacks in future, the commission suggested cordon off the rally venue to facilitate an immediate search for and arrest of the attackers. All buildings near the venue must be checked properly before a rally or meeting begins, the commission recommended. The commission also suggested a forensic laboratory be set up at the Criminal Investigation Department (CID) and a bomb disposal squad of the police. *The Daily Star, October 4.*

Family flees home for fatwa

A family in a village under sader upazila of Rangpur district has fled their home after local religious extremists attacked and threatened to kill them for non-compliance with a fatwa. Efzalul and Anjuma Khatun, a young couple of Bouyipara under Uttom union, had been subjected to the fatwa (religious decree) that eventually spared none of the family from the terrible ordeal.

Efzalul said that, on July 15, at one stage of a typical husband-wife altercation he in a fit of temper uttered the word 'talak' (divorce). Three days later when they had almost forgotten the trivial incident, local religious leadership of the village came to his house and asked him to send his wife to her parents.

He was also told that he would have to live without Anjuma unless she performs a 'hilla' (marry someone else other than his husband). They warned him that he would have to face dire consequence if he continues to live with his wife. Efzalul had filed a case with Kotwali Police Station but the police are yet to arrest anyone in this connection. *The Daily Star, October 4.*

Dr Zahir blames police

Dr M Zahir, counsel for the petitioner who demanded and secured ad-interim injunction on Sept 29 against the mass arrest ahead of the October 3 grand rally of Awami League, blasted the police action and pleaded for the arrestees' immediate release. Zahir submitted his complaint that police had acted trampling the fundamental rights of citizens.

Meanwhile, a government report submitted to the High Court reveals that police arrested 3,025 people in Dhaka city in the wake of Awami League's April 30 deadline of toppling the government of which 2,200 were awarded short-term jail.

The report said the magistrates sentenced them to jail for one or two days for violation of Section 86 of DMP Act (suspicious movement). "Why were so many people thrown behind the bars when produced before the court? Who have testified their offence? How did the magistrates prove their offence beyond doubt?" Zahir raised the pertinent questions before the vacation bench comprising Justice M Awlad Ali and Justice AFM Abdur

READER'S queries

Q: We frequently hear about privilege against self-incrimination. No one can be compelled to make any statement that is self-incriminating. Nor is he bound to make any statement, which tends to incriminate him. In our country police is found to compel accused persons to make confessions. And custodial torture is now an open secret. Judges, lawyers, accused himself, his relatives and all others are fully aware why police pray for remand and what do they do taking an accused in remand. A boy of good and stout health is returned half-dead with apparent marks of violence on his person. Magistrates are not found to take judicial notice of the battered physical condition of the accused nor do the lawyers and others mind much about it. As if the system is going indefinitely with the tacit approval of the society, my questions are a) do the law approve such mechanism for detection of crime? b) if not what is the remedy in case of torture by police? c) is there any safeguard against torture? d) can police compel anyone to disclose anything? e) can anybody be compelled to testify that tend to incriminate him? Thank you in anticipation.

Tanvir Ahmed
Dhaka.

Your Advocate: The questions you have raised cannot but trouble the mind of any conscious man or woman in the society. The legal answers are not far to seek. But the unwholesome practice is going on and the whole society seems to have resigned to it. Very recently we saw some outcry from different quarters against custodial death, torture and inhuman treatments.

Law does not approve inhuman or degrading treatment of any kind. Life and liberty of an individual being most fundamental of fundamental rights are strictly guaranteed by our constitution. Articles 35(5) of the Constitution spell out in specific terms- "No person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment". So there can be no law that sanctions or purports to sanction inhuman or degrading treatment by police or any other agency for any purpose whatsoever. I have noticed some reservations in many in matters of saying final words against torture as a means of squeezing information. According to them without some degree of torture detection of crimes and criminals would be difficult. This view cannot be approved for the simple reason that physical and/or mental torture offenses against our Constitutional mandate and international standard set for holding back every treatment on human scale. Experience shows torture does more harms than good both in terms of protecting innocent people and furthering cause of justice. Police must find some other means for detection of crime and criminals.

There are remedies against torture. Police are as amenable to law as other people. Against custodial death cases are recorded in the PS automatically. But problem lies in torture during police custody either taken into by remand or by arrest. Traces of torture may not be apparently clear but inwardly the victim might have sustained serious injury to the detriment of his mind and health. This being criminal offence criminal cases may be filed against the delinquent police officer under the appropriate sections of law. Lawsuit for damages may be filed and side by side departmental proceedings may also follow. The most effective check against custodial torture would be to change our extra-legal culture to facilitate, observe through and give it a go-by. The engaged lawyer at least, has a duty to complain to the Magistrate in relation of the case against torture on his/her client. The court needs to take serious notice of it and call for an explanation from the police officer responsible for the crime and thereafter make appropriate order according as the circumstances demand. At the same time police need to be brought back to compliance of law by changing their traditional attitude to and practices of pumping put information by physical force. The change may be effected by higher training of police, oriented to respect for human dignity, life and personal liberty guaranteed by our Constitution and international instruments of human rights. This depends by and large upon what we really want. If there is a political will to eradicate this cruel and inhuman mechanism to be used by one man against another this is not difficult. And in that case the question of safeguard against torture will automatically lose significance.

The third and the fourth questions are related to right to silence and the power of police and court to compel someone to answer. Right to silence, in our country, is only available to accused. He/she is not bound to make self-incriminating statements. This lends support from Article 35(4) of our Constitution which reads- "No person accused of any offence shall be compelled to be a witness against himself." But a witness is not exempted from answering the questions on the ground that it may incriminate him or the answer will expose him to penalty. Of course law provides a kind of protection to the witness so compelled. Law says that such answer shall not subject him to any arrest or prosecution or be proved against him in any criminal proceeding, except for perjury.

A police officer can arrest any person who in his presence has committed or accused of committing a non-cognizable offence refuses to give his name and residence or gives the name or residence which the officer has reason to believe to be false. Otherwise police do not have any legal mechanism for coercion intended to force any person to disclose facts believed to be in his knowledge.

Your Advocate M. Moazzam Husain is a lawyer of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

Rahman.

Additional Attorney General AJ Mohammad Ali sought time for hearing of the petition. *The Daily Star, October 4.*

Roundtable on children in trouble with law

Senior ministers, legal practitioners, child-rights activists and NGO leaders at a roundtable called for a more child-friendly legal system to stop abuse of children in confinement for falling foul of the law.

Despite a comprehensive Children Act, 1974, over 1,000 juvenile offenders are wrongly tried as adults and abused under the system due to mismanagement, wrong approach to the juvenile framework and ignorance of the law by a section of the lower judiciary, police and government officers. Law, Justice and Parliamentary Affairs Minister Moudud Ahmed and Minister for Social Welfare AAM Mujaheed, who were present at the roundtable, admitted to inadequate state systems to prevent abuse of confined children. They felt across-the-board changes in the legal system were necessary and said the amendments are in the pipeline to prevent abuse of children by the law.

As many as 1,004 children are currently in jail and 253 others in different Kishore Unnayan Kendras (KUK), according to Save the Children, UK (SCUK) study titled 'Children in Trouble with Law'.

Shohana Shabnam of the SCUK presented a keynote paper which said in 2002, an inter-ministerial committee was formed to protect the rights of the children and taskforces were constituted at national, district and upazila level.

Mahfuz Anam, editor of The Daily Star, moderated the roundtable, called for specific government initiatives for more concrete results in ensuring the rights of the children. *The Daily Star, October 5.*

Jail Killing Case Commission visits witness

The three-member commission tasked with verifying reported ill health of Saifuddin Ahmed said the key witness to the historic Jail Killing Case is unable beyond doubt to appear at court. The commission members said they would appeal to court on October 9 to drop his name from the list of witnesses on grounds of poor health, paving the way for the judgement without further delay.

The commission of Metropolitan Public Prosecutor (PP), Officer-in-Charge of Sutrapur Police Station and Taheruddin's counsel visited a bed-ridden Saifuddin at his Nawabpur house. A diabetic patient for 30 years, Saifuddin has been suffering from Parkinson's disease since 1999. *The Daily Star, October 6.*

No more foreign consultants for judicial reform

The Supreme Court decided to run the legal and judiciary capacity building project on its own after the foreign consulting company for the project had left Bangladesh in June 2004 without giving any notice. The decision came at a meeting, presided over by Chief Justice Syed JR Mudassar Hussain. The meeting formed a high-powered committee to supervise reforms in the judicial system, expeditious development of the judicial administration and computerisation of the courts under the project. The committee, headed by the chief justice, comprises Law, Justice and Parliamentary Affairs Minister Moudud Ahmed, Justice Md

Ruhul Amin, Justice Mohammad Fazlul Karim and Justice MM Ruhul Amin of the Appellate Division, Justice Md Ali Asgar Khan of the High Court Division and the registrar of the Supreme Court. The US-based Institutional Reforms and Informal Sector was engaged as consultant for the Tk 240 crore project. The company was scheduled to complete its work by October 2004. However, all the ten persons of the company, who had been working on the project, one Australian and the rest US citizens, left the country in June without giving any notice to the government or the project authorities. According to sources, those foreign experts took Tk 16 crore as their fees, allowances and other benefits before leaving the country, although they had completed only 41 per cent of the project. *The Daily Ittefaq, October 6.*

Triple murder case Charges against Kajal

Criminal Investigation Department (CID) of Police pressed charges against Jubo Dal leader Rafiqul Islam Kajal and eight others in the macabre triple murder case of a Old Dhaka businessman, his son and chauffeur in March last.

Mohammad Shamsul Haq, a businessman of Old Dhaka, his son Russel Sheikh, 29, and chauffeur Moazzem Hossain were abducted on March 26 and butchered in a bid to grab a hosiery market and Tk 5 lakh.

Besides Kajal, the 4-page charge sheet submitted to the Court of Chief Metropolitan Magistrate, Dhaka, accused his. *The Daily Star, October 6.*

Rab seals 3 godowns of milk powder

Members of Rapid Action Battalion (Rab) sealed three godowns of milk powder and arrested five people, including leader of a trade body, in the city's Chaktai area for marketing adulterated and smuggled milk powder.

Acting on a tip-off, the Rab team went to the area and sealed the three godowns, owned by one Tarik Sowdagar, with huge quantity of adulterated milk powder.

During the operation, business leader Abul Hossain, persuaded by the godown owner, made an attempt to settle the issue by offering Tk 2 lakh to the Rab team. He was ready to pay Tk 1,20,000 at that time and the remaining Tk 80,000 the next day. The team responded positively to the offer camouflaging their real intention, sources said.

The Rab team arrested Abul Hossain, Farid and Shah Alam as soon as they approached the team with the money. More than 250 bags, each containing 25 kg of adulterated milk powder, were also seized from the godowns.

The gang used to collect date-expired milk powder from some importers, mixed it with smuggled milk powder and sold them in packets, sources said. *Daily Prothom Alo, October 6.*

Corresponding with the Law Desk

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