



HUMAN RIGHTS *advocacy*



LAW *alter views*



Children and Human Rights

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CHILDREN are the future of a nation. They need to be looked after spiritually, materially and physically so that they can become worthy citizens of a country. In fact some say that the yardstick to measure the progress and development of a country lies on how a nation looks after its children. If they are healthy, if all of them receive education and live within a comfortable and safe environment, these elements will indicate that a nation has progressed.

Sub-Saharan Africa and only 1 per cent in developed countries. The disparity of the above statistics shows that with economic progress, child labour diminishes.

In the 19th century, Britain employed children in many industrial plants and the social injustice, perpetrated on child workers, was aptly described by English novelist, Charles Dickens, in his novels, such as, *Oliver Twist* (1839) and *David Copperfield* (1850). With the economic development in Britain, child labour disappeared in the 20th century.

1989 UN Convention on Rights of the Child



Children, by reason of their physical and mental immaturity, are one of the most vulnerable groups in any society. They are weak and are liable to be abused by elders.

One of the gross violations of children's basic rights is the child labour. Child labour occurs primarily because of poverty, discrimination, migration, and scarcity of jobs for adults and armed conflicts.

ILO's grim statistics on child labour

According to a report of the Geneva-based International Labour Organisation (ILO), released in May 2002, about 246 million children are involved in unacceptable forms of child labour. Of these, 179 million, most under 15 years of age, are in hazardous employment, such as mining, fishing, forestry and construction. About 8.4 million are trapped in slavery, trafficking and forced recruitment for armed conflicts. Of the millions of children working in hazardous and unacceptable environment, 60 per cent live in Asia-Pacific region, 23 per cent in

The international community agreed that some basic document on rights of Children must be prepared. Finally, in 1989, the UN Convention on the Rights of the Child was adopted. It is a very comprehensive document with regard to every aspect of rights of a child.

A child has been defined in the Convention as any person under the age of 18. Many countries however consider persons under 14 as children. Therefore there remains a discrepancy between the UN Convention and domestic laws of many countries.

The core of the Convention is described in Article 3: "In all actions concerning children, whether undertaken by public or private social welfare organisations, courts, administrative authorities, or legislative bodies, the best interests of the child shall be a primary concern."

The above paragraph demonstrates that all agencies of the state and private sectors must consider and accord priority to the interests of the child. What are the interests of a child? Although the Convention does not

define it, it indirectly indicates that a child should have an upbringing in an environment in which a child can develop his/her full potentials in adult life.

Common sense dictates that the fundamental interests of a child lie in the right to nutritious food, shelter, primary health care and education. If all these aspects of a child are cared for, the child will emerge as a worthy citizen.

Another aspect that has been highlighted in the 1996 European Convention on the Exercise of Children's Rights is the right of the children to be consulted for any decision made in respect of them by adults. It means that children should be informed by media campaign of possible consequences of any decision adopted by adults in respect of them (Article 3 of the Convention).

Children Rights and broken marriages

Another issue is the wrongful removal of a child by one of the separated or divorced parents without his/her consent. Such cases are frequent in broken marriages and separated parents hardly think of the views of the child.

The case of Elian Gonzales, a six-year old Cuban boy, aroused interest across the globe, when the boy was rescued, from the sea in 1999, while his mother was drowned. The question of custody of that boy arose between his biological father and close relatives of the mother, settled in Florida. The father wanted the boy to grow up in Cuba while his relatives want him to live with them and get all the facilities available in the US.

The US government intervened and forcibly removed the boy from the custody of the relatives and handed over the boy to his father who came to USA from Cuba. Some lawyers suggest that at present there is no international law that governs such cases of custody of a child.

The question is whether the Cuban boy should have the right or be able at that age to voice his priority as to where to live, in Cuba or USA. This remains a difficult question because his mother died while escaping from Cuba. Some argue that Elian's mother's escape from Cuba demonstrates that his mother wanted him to have a better quality of life in the US. Others argue that in the absence of the mother, the boy should grow up with his father.

The 2002 UN special session on children

At the Special Session of the UN General Assembly, 180 countries attended. It was the first session that was devoted to the rights of children of the General Assembly. It was for the first time that children were allowed to speak from the rostrum of the UN Assembly. One female child (13) from Bolivia, Gabriela Azurduy, made it clear for adults:

"We are the children whose voices are not being heard... We want a world fit for children, because a world fit for children is a world fit for everyone."

It was a powerful message from a child of a poor Latin American country, where she and her parents struggle to live day-to-day. Finally a UN document "A World Fit for Children" was prepared and adopted.

Concluding remark

The rights of children are interconnected with economic progress of a country. So long a country is riddled with poverty, abuse of rights of children will occur including child labour.

Another aspect is to consider whether a child should work or starve at home in an environment where parents cannot feed all of the children. According to some experts, ILO's strict regulation prohibiting child labour may end in denying the fundamental right of a child, that is right to food to live.

Therefore, the issue of child labour is a difficult subject of humanitarian consideration and there will always be two strong opposite views on child labour.

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LAW *vision*



Adoption law is need of the hour

K M RASHEDUZAMAN RAJA

IN the old part of Dhaka city an elderly woman was killed by her nephew. The cause of the murder as the perpetrator disclosed before media was that he could not bear the delay of getting the property of the victim as her only heir. To expedite his inheritance he hired a professional killer to commit the grisly homicide. A human being having filial feelings generally would not have done so. It could have been otherwise had she had a child who should have taken care of her in her last days as the other children do in our society in the case of their parents. It is the common craving of human beings that they would die peacefully being assured of that h/she is leaving behind some one who will mourn his/her death and maintain or flourish the property which h/she earned by hard work. Perhaps keeping this phenomenon of human relations in mind the concept of the law of adoption has developed.

Causes for enactment of the law

In our country the number of rich people has increased in a great degree. Many of them have no issue. It will amount to denial of the truth if any one says that he/she is free from such phenomenon as I have mentioned earlier. The non-Muslims may have no problem in coming out of such issueless situation as the provision of adoption is existed in the personal law. But there is no such provision in the

personal law of Muslims, the majority people of the country. The Muslim Law bears the provisions of fostered son/daughter who is unable to inherit the property of his/her foster father. So, the fostered son/daughter returns to his/her original state of living condition if the foster father fails to make a suitable wasiat (will) or hiba in his/her favour in time. On the other hand, in the Hindu Law which also governs the many other minorities of our country, the adopted children inherit the property of the adaptor as the natural one.

It is reported from the facts of a lower court case that an expatriate woman came to visit her town of his country and came to know from her relatives in the town that a pregnant mother got admitted into a local clinic but fled the clinic after the delivery of a son keeping the new born unattended. The expatriate woman who was cherishing for motherhood for long time expressed her desire to her relatives to adopt the baby and took him with her to her migrated country. Accordingly she filed a petition before the Family Court only to be surprised to know that the law can only provide her with guardianship of the child on consideration of her legal capacity not let it be adopted on consideration of her parental affection.

Apart from the temporal view the humanitarian aspect is also important to enact the law of adoption in our personal law. Many unattended child can get a cosy lap of the caring parents in the process of adoption and become a valuable member of



our society being properly educated. Since we have no provision of adoption in our personal law, therefore, a secular municipal law can be enacted to accommodate the heavenly parental desire of the Muslim community. The Family Court is there to administer such provision of law if it is adorned with such jurisdiction--

- ! To satiate the parental thirst;
- ! To give the feelings of security at the tail end of the life of an opulent person;
- ! To ensure the shelter of the unattended/unclaimed baby;
- ! I think it is a point to be pondered upon by our legislature to enact the Muslim Adoption Act or any thing like that.

Contents of law

The Act may contain, among others, the following features--

- ! The adopted child shall be treated as the natural one in matters of inheritance;
- ! The law of marriage and the provision of prohibited degree of the personal law shall be applicable in the person of the adopted child;
- ! The killer/abetter of killing of the adopted child shall be excluded from inheritance.

Consistent with the Muslim law

Question may arise from some quarter as to whether the law of adoption will contradict the provisions of Muslim law. The answer is "no". The argument in favour of

contradiction may be that by such law the inheritor-in-waiting shall be deprived. This argument has no leg to stand as the would-be adopter can easily deprive such inheritor-in-waiting by disposing of his property by way of Hiba, Wasiat or Waqf at his choice. Since the provision of alienation of property causing deprivation of the inheritor-in-waiting and taking fostered son is there in the Muslim Law then what harm would happen if a person chooses to preserve his private property in his own identity by adopting a child.

Concluding remark

Private property based individualism has reached the culmination in the modern time. Wealthy industrialist, business tycoon or financially solvent persons having no issues or issue of any specific sex are not rare around us. At a certain age they may become tired and cast a vacant look upon their heard-work-earned huge property and cast a deep sigh thinking that who will maintain their empire of wealth in their absence in the world, resulting in throwing out their entrepreneurial endeavour in wilderness. To let them come out of such despairing condition the adoption law can play a magic and keep them active till their last day to flourish the economy of the country by expanding their wealth base as many having adopted child have done in our neighbouring countries.

So the sooner the adoption law comes into formation is the better.

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Doctrine of incompatibility

ABU B. SIDDIQUE

Common law doctrine of incompatibility bars one person from holding two offices of a sovereign if the person is in a position "to promote the interests of one constituency at the expense of another". The incompatibility condition may arise in a number of different ways. As separation of 'judicial powers' is the distinction between exercise of judicial and non-judicial powers of a Judge. This allows a judge to be appointed as 'persona designata' to discharge his/her non-judicial power only. For example: Judges can be appointed to or as a 'head of a Commission' by the executive. By Bangladesh Constitution a Judge other than an additional judge after his retirement or removal (!) can hold any office of profit which is judicial or quasi-judicial office or office of chief adviser or adviser. [Article:99] Does Election Commission is a Quasi-Judicial office? If not what is our practice then?

The 'persona designata' enables an individual as a person selected to perform a particular role. This power is also subject to limitations and conferral of such power upon a judge of the Supreme Court is not a conferral of power on the court itself. Therefore, a judge cannot be asked to perform any non-judicial tasks which are incompatible with judicial ones or which would interfere with the proper discharge of the judiciary's functions as an institution.

Now, what are the consequences of such violation of the doctrine of incompatibility? If two offices are incompatible, a person is deemed to have relinquished the first office upon qualifying for and accepting the second. This may breached the doctrine of separation of powers because it involves a judge to get political advice from numerous political parties. This gives to a risk of diminution of public confidence in the judiciary through the involvement in pure political matters. 'Long arm of Law' considers such activity as a 'Contempt of court' even by a Judge.

Since incompatibility is a common-law doctrine, it may be over come by statute and constitutional



Other side of the coin is: such appointment should not be of 'conflicting loyalties'. 'Conflicting loyalties' exists if the duties of two offices are or may be inconsistent or in conflict. The conflict does not exist, however, if the duties are wholly unrelated, are not inconsistent, and are never in conflict. This type of incompatibility is generally present when one government body has the authority to impose its will on the other in any matter. For example, since a district judge could be in a position to render judgment against the school district where he also serves as trustee, the same person cannot hold those two incompatible offices.

Incompatibility might consist in so permanent and complete commitment to the performance of non-judicial functions by a judge is not practicable. It might consist in the

provision can be change to make room for 'dual office holding'. It is necessary for justice. We should retreat form all the injustice and malpractices, to be honest. Another solution can be 'Automatic Resignation' or popularly know as resign to run. Therefore, a judge if appointed with other non-judicial office he may resign from the office of a Judge. In that case, alteration of the Constitution would not be necessary. Because, Article 99 puts conditions of 'retirement and removal' only; and the term 'resignation' is not covered there. To my understanding this would be a step forward towards 'Separation of Powers'.

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