



Star LAW report

Ensuring fundamental rights for under trial child prisoners

BLAST v. Bangladesh and Others

TAPAS KANTI BAUL & TASNOOVA ZAHIN ZAKI

ARTICLE 40 of the United Nations Convention on the Rights of the Child says: "State parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

It is evident from this Article of Convention on the Rights of the Child (CRC) that there was a time when no difference was recognised between youthful offenders and adult criminals but with the development of human civilisation, states have pledged to change the situation. At present times most of the legal system and societies in the world recognises the differences in punishing youthful offenders and adult criminals. Youthful offenders are more commonly known as juvenile delinquents and represent the age group between 10-17 representing various social strata and circumstances.

This distinction is recognised because youth are different than adult in their ability to make prudent decisions, understand the effect of their actions, and comprehend the irreversible reality of committing a criminal act. At the same time young offenders are viewed as having a better chance than adults of changing criminal behaviour patterns which means that a first time offender availing proper care and opportunity may not grow as a habitual criminal. On the other hand, an examination of the laws shows that although they are meant to protect the interests of children, they have been formulated from the point of view of adults and not children. They are neither child-centred, nor child friendly, nor do

they always resonate with the CRC.

In 2003, Bangladesh Legal Aid and Services Trust (BLAST) filed a Writ Petition before the Hon'ble High Court Division of the Supreme Court of Bangladesh in the light of a report published in the Daily Star (title: "Behind Bars, Sans Trial for Years" Issue No. 23 Dec., 2003) where the timeless agony of the under trial prisoners including women and children had been depicted. According to that report and the Petition of BLAST, 7402 persons including children and women are languishing in the custody without trial. These persons had been under custody for years and they do not know when their cases will be finally decided. Conditions of the juveniles are worst among all under trial prisoners, as several human rights common to all human being like -- right to life, right to speedy trial, etc. as well as those which are specially applicable for juveniles, like -- camera trial, separate accommodation from the adult criminals etc which are otherwise guaranteed by our Constitution and other international human rights documents, are violated.

After hearing the parties, it appeared to the Hon'ble Division Bench of High Court Division of the Supreme Court of Bangladesh comprising of their Lordships Mr. Justice Md. Abdul Matin and Mr. Justice Tariq Ul- Hakim that there is no dispute about the allegation made in the petition about continued custody of the under trial prisoners including the women and the children. There is also no dispute that such action is a total denial of the fundamental rights of the prisoners as guaranteed by the Constitution specially Articles 31, 32 and 35(3).

Article 31 of the Constitution of Peoples' republic of Bangladesh says that:

To enjoy the protection of law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within



Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

These under trial prisoners including women and children have been in different jails for periods longer than the maximum term, which they could have been sentenced if convicted at all. That means, as these persons were not convicted in accordance with law, the state or any body empowered by it has no authority to hold these persons in jail and this amount to an "action detrimental to the life, liberty, body, reputation or property of" these persons which can only be taken "in accordance with law".

Furthermore, according to Article 32, no person shall be deprived of life or personal liberty save in accordance with law. By unauthorised incarceration of these persons, they are

deprived of their personal liberty and right to life. Right to life includes not only any threat of loosing it but also all other means which distorts the normal continuance of life.

Again Article 35 (3) of the Constitution says that, every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law.

This Article emphasises on the inalienable right of speedy trial so that no one languishes in the jail without any lawful reason effecting his life and liberty. Some of the under trial prisoners including women and children were in the jail for 10 years and that shows that we failed to ensure their right to speedy trial and if we cannot comply with that then by no means we are allowed to incarcerate them for an unexpectedly longer period which is unlawful and unconstitutional.

In A.R.Antulay v R.S.Nayak it was stated, "incarceration of individuals for long periods of delay without trial must be held to be denying human rights to such under trial prisoners."

It is also violative of the governments obligation under international human rights treaties in particular Article 14 of the International Covenant on Civil and Political Rights to a speedy trial as ratified by Bangladesh in 2000.

Considering this, their Lordships gave specific directions for both adult and under age under-trial prisoners. For adults, the Court directed both the parties to co-operate each other for providing legal aid to them under government Legal Aid Scheme under the Legal Aid Services Act, 2000.

Bearing the special situations of children under-trial prisoners, the Court was more specific while giving directions to the juveniles. The Court also considered an earlier suo moto Order No. 248 of 2003, which also came into attention due to another report of the Daily Prothom Alo where the tale of four hundred children under trial prisoners who were languishing in Dhaka Central Jail has been depicted. Referring to this earlier Suo Moto Order, the Court ordered to follow the same directions given in the above mentioned Suo Moto, which are:-

1. Trial, if any of all juvenile accused should be completed with utmost expedition by the juvenile courts and the concerned law enforcing agencies. Prosecuting agencies and legal aid committees be directed to take immediate steps in the matter.

2. Taking in to consideration of provisions of section 82 and 83 of the penal code it is directed t that the government do consider making prayers to the courts concerned for discharging the juveniles accused in appropriate cases. Order of discharge may also be sought for pursuant to section 53 of the Children Act, 1974.

3. The government also do consider withdrawal of juveniles accused from prosecution under section 494 of the code of criminal procedure in appropriate cases especially from the cases charged under ordinary penal laws.

4. The Local Legal Aid Committees formed by the government be instructed to move the courts for bail of the juvenile accused.

5. Juveniles accused in jail must be kept apart from other prisoners.

6. Non-official jail visitors should include Human Rights Activists specially the representatives of Children Organisations of the country.

7. Juveniles accused are to be transferred to correction house and other approved homes with utmost expedition.

The petitioners (BLAST) referred the above-mentioned directives of the previously mentioned Suo Moto and asserted that there is no meaningful implementation by the respondents (the government). While the learned Deputy Attorney General contended that the petitioners who are also members of the national legal aid trust could have taken steps to improve the overall situation but no such initiative has been taken.

The learned judges in this writ petition agreed that the children are entitled to trial before the juvenile courts and positive steps should be taken to make their trial in accordance with law of the juvenile court and not to be tried jointly with adults. The Court also expected that BLAST and the National Legal Aid and others would come forward to solve the problem with maximum promptitude and expedition by implementing the aforesaid directions to make fundamental rights of the prisoners meaningful.

In conclusion, the Rule was disposed of with the aforesaid direction upon the respondents to comply with the direction in suo moto Rule 248 of 2003 and report compliance within 6(six) months from date.

Your Lordships Mr. Justice Abdul Matin and Mr. Justice Tariq Ul-Hakim declared the Judgment on the 3 August 2004. Senior Advocate Mr. Md. Nizamul Haque represented petitioners.

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LAW opinion

Laws relating to voter ID card : Responsibility of Election Commission

ADVOCATE SHADEKA JAHAN

Identity cards, which are in use, in one form or another in numerous countries around the world, have some different functions and integrity. And certainly that vary enormously. Around a hundred countries have official, compulsory, national IDs that are used for a variety of purposes. Many developed countries, however, do not have such a card. Bangladesh is one of them. There are varieties of reasons for having ID cards. Race, politics and religion were often at the heart of older ID systems. ID card is a necessary tool in modern vote system.

Now the point of Bangladesh perspective. Bangladesh has an election commission established under article 118 of the Constitution and its function has been defined in Article 119 of the Constitution. Article 119 briefly discusses the duties of election commission. Further under section 11A of the Electoral Roll Act 1982 the election commission is under statutory mandate to prepare and distribute Voter ID Card to every voter/elector.

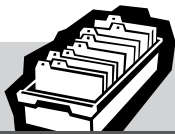
In 1994 the relevant laws were amended and in order to fulfil the objective of the said provision of law it was included that no voter would be given a ballot paper in the polling station unless he/she has a valid identity card. Then the election commission constituted a project for preparation and distribution of voter's identity card. In 1995 the work of this project started and accordingly tender was invited through newspaper and then a work order was issued and the parties concerned went for the work and prepared many ID cards and the election commission also distributed those to some voters. But in 1997, for political reasons, the preparation and distribution of voter ID card was stopped. The project was altogether cancelled in 2000 on the allegations of corruption and on information that fake voters had received ID cards. But in Article 119(2) of the Constitution it is clearly shown that the election commission shall perform such functions as may be prescribed by this Constitution or by any other Law and as such Election Commission is under legal authorisation to arrange and allocate voter ID Card.

Then Bangladesh Legal Aid and Services Trust (BLAST), a human rights organisation, filed a writ petition under the High Court Division of the Supreme Court against Election Commission and Project Director of Voter ID Card Project. Justice M.M Haq and Justice Khairul Haq issued a rule nisi on 7th of September 1998 calling upon the respondents to show cause as to why they shall not be directed to prepare and distribute Voter ID Card within a reasonable period and or before election of Pourashava likely to be held within September 1998 and that decision of suspension of Voter ID Card project was not permitted by law and thus of no legal effect. The case is still pending for hearing before the High Court Division of the Supreme Court.

Many countries of the world are adopting modern voting systems. Even India also successfully held its general elections by using electronic voting machines. Voter ID Card is one of the tools for modern voting system. But even then this is a matter of distress that we could not follow that system. After adopting the project of Voter ID Card we had two general elections in 1996 and 2001 and also some other elections but could not be able to start the ID card system. Now we have to prepare for another general election. We don't have any preparation for ID card which is essential for fair election. We hope election commission will be concerned about the matter as early as possible.

The author is working for Bangladesh Legal Aid and Services Trust (BLAST).

FACT file



A shelter for survivors of trafficking

ZAM KHAIRUZZAMAN

Nasima Khatun, 15, and Josna Khatun, 14, two innocent girls hailing from Cox's Bazar district, went to India illegally after being misguided



Two survivors of trafficking, Nasima Khatun and Josna Khatun, are seen with their brothers and Dhaka Ahsania Mission (DAM) officials.

by a co-villager about three years ago. The co-villager, in the guise of their brother-in-law, lured them away from home with false promises of lucrative jobs. Many girls fall for this trap. Difficult economic situations, coupled with dysfunctional family backgrounds and low levels of education, are behind most trafficking cases.

Women and girls are either lured by promises of well-paying jobs in other countries, or are kidnapped and forced to go abroad. In Bangladesh, it is estimated that hundreds of children and women are being trafficked each year.

Nasima and Josna trafficking route took them to India, after a long journey by bus and on foot. As they were loitering there, Indian police caught them on suspicion and handed over them to the authorities of a local NGO, who could not trace their actual address. The girls were

then handed over to members of the Indian Border Security Force (BSF), who pushed back them to Bangladesh through Benapole border of Jessore district. In Benapole, members of the Bangladesh Rifles (BDR) transferred them to police, who kept them in safe

realised their actual position and built a new life. In the meantime, the DAM personnel started frantic efforts to search for their near and dear ones in Cox's Bazar. In the process they contacted the authorities of a local NGO, Uddipan, working at the resort town. Following earnest efforts, they finally identified their parents and located their homes. DAM fixed a suitable date and handed over them to their near and dear ones.

Unfortunately, happy endings like Nasima and Josna are rare. For each girl rescued, hundreds of others remain trapped in prostitution and other shameful jobs. Surveys show that trafficking of children and women is lucrative, well-organised and linked to criminal activity and corruption.

The Bangladesh Government has identified trafficking as one of its priorities in fighting organised crime. It is hoped that both Nasima and Josna get back on their feet and reintegrate themselves into society, using the tools DAM provided them to succeed and avoid stigmatisation.

DAM president and chief executive Kazi Rafiqul Alam told The Daily Star, that his organisation has taken up an extensive community awareness programme along the border belts from Panchagarh to the Sundarbans to resist the crime. People are being made conscious about trafficking through various programmes, such as processions, dramas, courtyard meetings, and distribution of posters and leaflets. Moreover, DAM has built a transit home in Dhaka for the child camel jockeys who are returning from the United Arab Emirates (UAE). DAM also handed over a few of them to their parents and relatives. "We take necessary timely steps as and when called for," the DAM chief added.

The writer is working as Sub-Editor of The Daily Star.

LAW week



Peace Mission in Sudan UN rejects Dhaka's bid to change chief

Bangladesh might lose the helm of the UN peacekeeping mission in Sudan as the government insists on having the present force commander replaced by another senior army officer, against the policy of the United Nations, sources said. Highly placed sources in the government said the UN has already rejected the government's proposal for replacement. Instead, it has requested the government to give the incumbent a nine-month extension. But the government is sitting on the UN request though over two weeks have gone since it [UN] formally asked for the extension, added the sources. "If the Bangladesh government does not comply with the UN request it will lose the commanding post in the Sudan mission as the UN policy is always against having replacement from the same country," a source told The Daily Star citing the UN peacekeeping policy on the appointment of force commander. Foreign Ministry Secretary Hemayetuddin during his visit to the US this month met the head of UN peacekeeping operations and submitted the replacement proposal. But Under-Secretary-General for UN Peacekeeping Operations Jean-Marie Guéhenno declined to consider the proposal as, he said, the UN policy does not provide for replacing the incumbent force commander by someone from the same country. -The Daily Star, October 23.

Call for UN resolution on victims of power abuse
The Commonwealth Law Ministers' Meeting (CLMM) has called for adoption of the United Nations Resolution on victims of crime and abuse of power. The CLMM gave the call in a 33-point communiqué issued on the concluding day of the October 17-20 meet in Accra, Ghana, according to a report of the Commonwealth Secretariat. Law, Justice and Parliamentary Affairs Minister Moudud Ahmed led the Bangladesh delegation at the 13th CLMM. Terrorism, human rights and juvenile justice in the Commonwealth were some of the major issues that came up at the meet, attended by over 160 delegates who included the law ministers or their representatives from the 53 member countries of the organisation. The meeting reaffirmed the principles that such victims must be treated with courtesy, compassion and respect for their personal dignity. It called upon member countries to consider implementation of the measures designed to give practical effect to these principles. -The Daily Star, October 23.

Home ministry orders arrest of Rohingya involved in crime

The home ministry has recently issued an order to prepare a list of Rohingyas illegally living in the inaccessible hilly areas of Bandarban and to arrest those involved in criminal activities. The order said a section of Rohingyas living in Bangladesh is involved in drugs and arms dealings as well as other criminal activities. The home ministry, in the order sent to the offices of district commissioner, police super, and detective agencies, asked for the arrest of suspected Rohingyas to curb human and arms trafficking and other form of crime. A home ministry insider said a large number of Rohingyas have been living in Bandarban for more than three decades but their involvement in crime was discussed for the first time at a meeting of the home ministry in

September. -The Daily Star, October 24.

Bush hails ban on HuJi in Bangladesh

US President George W Bush has appreciated Bangladesh government's banning of Islamist group Harkat-ul-Jihad Al-Islami (HuJi) by terming it 'a great decision.' The president requested Bangladesh Ambassador to Washington Shamsheer M Chowdhury to convey his appreciation to Prime Minister Khaleda Zia, foreign ministry said in a press release. In a brief discussion at the White House the ambassador apprised the US president of the steps taken 'to uphold the image of Bangladesh' and its 'continuous effort to root out terrorism from its land.' The discussion took place at a recent Iftar party hosted by the US president. President Bush, who is leading a global 'war on terror', agreed that Bangladesh deserves due recognition and attention for its effort to eradicate terrorism and exercise the rule of law. -UNB, Dhaka, October 24.

Pro-BNP lawyers' strife flares up afresh

The wrangling between two factions of pro-BNP lawyers led by two ministers flared up again, with one group dissolving central committee of the Jatityabadi Ainjibi Forum (JAF) and the other ousting the chief of a new convening committee. Communications Minister and Vice President of the JAF Nazmul Huda unilaterally dissolved the central committee before forming the 501-member convening committee headed by him. Soon after the announcement of the new body, JAF President TH Khan, and its Secretary General and Telecommunications Minister Aminul Haq gathered in an emergency meeting to oust Huda and BNP Law Secretary Advocate Joinal Abedin from the JAF for their anti-organisational activities. The impromptu meeting at Aminul's residence was attended by about 40 pro-BNP lawyers. The JAF central committee in a press release said Huda and his partner in the coup Abedin were asked on October 3 to show cause within seven days why they should not be expelled for their anti-organisational activities but they failed to respond. -Prothom Alo, October 25.

Another HC stay on Bac staff screening

The High Court (HC) once again stayed the Anti Corruption Commission's (ACC) screening criteria for recruitment of former staff of the Bureau of Anti Corruption (Bac). The court also stayed the functioning of ACC's October 2 letter that requested the government to withdraw 263 former Bac employees who do not qualify in its recruitment criteria. Besides, the court stayed June 29 appointment of 20 anti corruption officers (ACOs) at the ACC. Following a writ petition by some former ACOs of the Bac, the court also asked the ACC to explain why its appointment of 33 ACOs, the screening criteria and the October 2 letter will not be declared illegal. Earlier, following separate writ petitions filed by two batches of former Bac staff, the HC stayed the screening criteria and the October 2 letter, and sought the ACC's explanation about the legality of both these matters. -The Daily Star, October 25.

LAW news



Sudan detains lawyer defending refugees

Sudanese authorities have arrested and allegedly mistreated a lawyer defending the rights of refugees who live in camps outside the capital Khartoum, rights group Amnesty International said in a statement. About 2 million people who fled regional



conflicts in Sudan live in slums surrounding Khartoum. Police clashed with refugees in the Soba al-Arabi camp in May, leaving at least 30 people dead, including 14 policemen, rights groups and witnesses said.

The lawyer, Mohamed Ahmed Abdel Gadir al-Arbab, had helped provide information about many of those arrested and killed during the clashes. He had said earlier he feared for his life after being threatened by security forces. "Allegedly he has been ill-treated in custody, and is at risk of further ill-treatment," Amnesty said in a statement. "Amnesty International considers him a prisoner of conscience, detained solely for his work in defence of human rights."

Amnesty has not seen the lawyer as it does not have international staff in Sudan and has tried unsuccessfully to get visas to visit. Amnesty employees, including Secretary-General Irene Khan, were granted visas for one visit after the British Foreign Minister Jack Straw intervened.

Authorities have denied opening fire in the camp but witnesses heard shooting and some camp residents said they had lost relatives who were killed by gunshot wounds. Hundreds were arrested in the shooting's aftermath and an independent paper was suspended for printing reports on it.

Amnesty said Arbab had reportedly been charged for crimes including waging war against the state, murder and undermining the constitutional system. Two of the charges carry the death penalty.

Interior ministry officials declined to comment on Arbab's arrest and said they had not seen the Amnesty report. Most refugees in the camps around Khartoum are from the war-torn south and remote Darfur regions. Authorities have often demolished their homes without warning, forcibly moving the refugees, a move condemned by the United Nations.

Source: Reuters.

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