



HUMAN RIGHTS monitor

State of juvenile justice system in Bangladesh

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THE edifice of juvenile justice system is built on, firstly, the separate trial for children and secondly, the concept of segregation. There are two reasons behind the development of the juvenile justice system. One is the recognition that children are separate entities who cannot understand the consequence of the act committed due to immaturity and the other is the prison condition. Children are often suffer neglect, abuse and violence when they are picked up by the police. Children might come into conflict with laws for multifaceted reasons. But when they are arrested they should be treated differently than the adults. They shall be treated in a manner consistent with the basic rights of the child, i.e. right to dignity, right not to be tortured, right to privacy. That's why a separate trial system becomes imminent, which will consider the age of the child and where the welfare and promotion of the child rights will get priority. Whatever criminal charges they face, children should only be deprived of their liberty as a last resort and for the shortest possible time.

Crime or criminal?

Juvenile justice system is not a new concept. It is part of criminal justice.



But unlike the criminal justice, juvenile justice looks to the criminal instead of crime. The word 'trial' used in the juvenile justice is also different in implication form the that used in the criminal justice. In the latter case the word 'trial' is used in the sense to determine the guilt of a person, which is followed by punishment or acquittal. But in the former case it is used to fix the punishment following the trial but to provide with their custody, protection and treatment. In the juvenile justice reintegration of the child into the society takes priority over determining the guilt of the child.

It is worth noting a well defined law has been promulgated in Bangladesh after few years of independence. The Children Act 1974 speaks for a separate trial, care and reintegration of the child into the society. Moreover, the Nari O Shishu Nirjaton Domon Ain, 2000 and the Nari O Shishu (Bishwas Bidhan) Ain, 1995 are important domestic legislations which children frequently come across. But only the former advocates for the different treatment of the young offender except punishment. Let us see some important issues revealed by the Children Act.

a) Establishment of Juvenile Court: The Children Act imposes a duty on the government to establish juvenile court in any local area as the

government thinks fit. Until and unless the juvenile courts are established, the Act empowers the court of Additional Session Judge, Assistant Session Judge, Magistrate First Class and the High Court Division Court to exercise jurisdiction

of the juvenile court. A juvenile court will perform two main functions. Firstly, to try cases in which a child is charged with commission of an offence and secondly, to deal with and dispose of other cases under the Act. It is to be mentioned that children may be brought before the juvenile court not only for trial but also for their protection, care and treatment. For example when destitute children are brought before the court it may order, after reasonable satisfac-

tion, the children to be sent to the approved home.

b) Prohibition of joint trial: The Act prohibits the trial of a child jointly with an adult. Section for the commission of an offence 239 of the Code of Criminal Procedure, 1898 provides for the joint trial in some circumstances where persons who are accused of commission of the same offence in the same transaction. But the Children Act 1974 is an exception of this section where a separate trial for the child is required though he commits an offence with an adult. In other words where the child and an adult commit a crime jointly their trial will not be held jointly. A child will not be tried jointly with an adult (Shipu and another Vs State, 49(1997) DLR, HCD, at p-53).

c) Prohibition of public trial: Section 9 and 10 of the Children Act 1974 reveals that except the members and officers of the court, parties to the proceedings, parents and guardians of the child and such other person as the court thinks fit, no one will be allowed to be present in the trial of a child. This is an exception to the provisions of the Constitution as well as the international human rights instruments on public trial.

This deviation from the public and

open trial in the case of the children only mean that the juvenile trial is an exceptional criminal proceeding where the court will not allow the harmful exposure of the crime committed by the child. This principle of private trial will not only be maintained in the case of trial but also will be applicable in the case of the examination of a child in any other criminal proceedings.

d) Reformatory approach of the court: An important aspect of the Children Act 1974 is that it advocates for the reform of the child offender. It provides that the court will look to the offender not to the crime committed by him. That it will take into consideration the character, age, circumstances in which the child is living and such other matters as the court thinks fit before passing sentence. Unlike the criminal justice the court will not determine the guilt of a child based on the act alone. This principle is also reaffirmed by the High Court Division in the case of State Vs Deputy Commissioner, Satkhira (45(1993) DLR, HCD, at p-643).

e) Prohibition to publish particulars of a child: It is noteworthy that the court shall always look to the well being of the child while he is going under trial. The Act also prohibits

publication of particulars of a child in any newspaper, magazine for future well being of the child. Even the words 'conviction' and 'sentence' cannot be used in relation to a trial of a child or juvenile offender.

Concluding remarks

It is the irony of fact that after a few decades the realisation and implementation of this important law is still frustrating. Even this Act is never taught in the educational institution as a course or a part of a course. There was no much talk about this Act either until nineties. That leads to the students of law joining court without having any knowledge of juvenile justice or separate trial for the child offenders. Besides, the Judicial Training Institute, Bangladesh Bar Council and other government institutions providing training for the Judges, Lawyers and government employers do not include this law in their training curriculum. Therefore, the issues of juvenile justice is remaining unknown to the judges, lawyers, police and other public servants who are directly dealing with children.

The writer is Lecturer of Law, Stamford University, Bangladesh. In the next episode he will glimpse over the reasons for non-implementation of the Children Act.

LAW opinion

The Inns of Court

BARRISTER M. OMAR BIN HARUN KHAN

INCOLN'S Inn and the Gray's Inn as well as the Inner Temple and Middle Temple, are the four Inns of Courts. These Inns were established at the very heart of London city primarily to offer accommodation to legal practitioners and their students and facilities for education and dining. They are ancient unincorporated bodies of lawyers which for five centuries and more have had the power to call to the Bar those of their members who have duly qualified for the rank or degree of Barrister-at-Law. With the power to call, however, goes a power to disbar or otherwise punish for misconduct, though this power is exercised rather infrequently. The Inns of Court, which taught English Common Law, developed the three levels of membership: Masters of the Bench, who are elected from amongst the eminent members of the profession; Barristers, who are qualified to practise on Call to the Bar; and Bar Student-members.

None of the Inns of Court has a proven year of foundation. However, all the Inns offer some assumed year of establishment depending on the oldest records available to them. There are, however, contradictions amongst the Inns with regard to the year of establishment of the other Inns. As per the information provided by Lincoln's Inn it was established in 1422, Middle Temple in 1501,



Inner Temple in 1505 and Gray's Inn in 1569.

During the sixteenth century the four Inns of Court had greatly prospered. Not only were the Judges closely connected with the Inns, but the prosperity of the Inns had attracted the support of the statesmen of the day. As the sixteenth century advanced, prosperity attracted a broader culture to the Inns. Good manners, courtly behaviour, singing and dancing came to the fore. Perhaps the Inns were too successful in these pursuits, because they soon became fashionable places for noblemen and country gentlemen to send their sons. Many members had no intention of becoming barristers, but still sought the membership of the Inns to reflect their pride, prestige and dignity.

For the next hundred years or more, qualification for Call to the Bar depended only on eating dinners at the Inns and on the recommendation of a Judge or a Bencher. Those days are gone by but even after hundreds of years, the fallacy remains that the Barristers qualify themselves as Barristers only by dining at the Inns! By the 1840s the regulations had changed little from the 1740s except that taking the Sacrament according to the rites of the Church of England had ceased to be a condition for Call. By 1846 it was being urged in the legal profession as well as in the Parliament that students ought to receive a comprehensive legal education and that there should be uniformity of practice of

In modern days all the four Inns perform almost the same functions with subtle differences in their traditional practices/customs (e.g. dining customs etc.). As already stated the precise histories of the Inns are not always very vivid and clear. Despite this as the British people are very traditional and world famous for maintaining records and history, the basic historical information remains intact. The following parts of my writing may help the readers to have a brief appreciation of each of the Inns of Court. The detailed history, information etc. can be found in their respective web-sites, which are well administered and updated on a regular basis.

The Hon'ble Society of Lincoln's Inn

Lincoln's Inn is the oldest of all Inns. Lincoln's Inn probably takes its name from Henry de Lacy, third Earl of Lincoln. At present time, in the Inn there are chambers to live and work in, a hall to eat and drink in, a chapel to pray in and a fascinating library to consult books in. This Inn is undoubtedly the most popular amongst the barristers of the Indian Sub-continent, especially the Bangladeshi and Pakistani Barristers. The highest number of Bangladeshi barristers were called to the Bar from the Lincoln's Inn. In recent years, however, the membership of Bangladeshis in the other Inns seemed to have been

increased.

Middle Temple and Inner Temple

These two Inns were founded on the same historical basis and hence require discussion together. The Inns' names derived from the Knights Templars who were in possession of the site we now call the Temple for some 150 years. On Christmas Day 1119 and at the instance of King Baldwin II of the Latin Kingdom of Jerusalem and of the Patriarch of Jerusalem, nine knights took monastic vows styling themselves as 'The Poor Fellow-Soldiers of Jesus Christ'. They were quartered in the remains of the Temple of Solomon. The purpose of the foundation was the protection of pilgrims from Western Europe on their way through the Levant to visit the holy places.

Once established, the Order grew quickly in its importance. Houses of the Order were founded in many European countries to recruit members for the Knights. In England in the middle of the 12th century, the Military Order of the Knights Templar built a fine round church at Holborn by the river Thames in Jerusalem, which became known as the Temple Church. Two centuries later, after the abolition of the Order in 1312, lawyers came to occupy the temple site and buildings. They formed themselves into two societies: the Inner Temple and the Middle Temple. However, the Outer Temple has never been

formed as a separate lawyers' society.

At present Inner Temple has over 8,000 qualified members with an increase in the membership each year. Some of these buildings date back to the 17th century. This Inn has recently attracted the world attention because of the world famous book of Mr. Dan Brown, 'The Vinci Code', where the story revolves around the Temple Church. The church is jointly administered and maintained by the Inner Temple and Middle Temple and enjoys the status of a 'Royal Peculiar'. The Choir of the Temple Church is world-renowned and the Inns have in recent years commissioned works from celebrated composers. Middle Temple attracted Bangladeshis the least, though there is no specific reason behind it. This Inn offers similar facilities for its members by keeping intact its distinct custom and culture.

Gray's Inn

The first habitation known to have been on or close to the site of the present Hall was the Manor House. The Manor House was the property of Sir Reginald de Grey, Chief Justice of Chester, Constable and Sheriff of Nottingham, who died in 1308. However, the records of Gray's Inn did not commence until 1569.

Queen Elizabeth herself was once the Inn's Patron Lady. Lord Burleigh, the Queen's First Minister, Lord Howard of Effingham, the Admiral who defeated the Spanish Armada in 1588, and Sir Francis Walsingham, the Chief Secretary who founded the Queen's secret service, were all members of Gray's Inn. It was not only from the Benchers' table that the Inn took its fame, the Inn was renowned for its 'Shows' and there can be little doubt that William Shakespeare played in Gray's Inn Hall, where his patron, Lord Southampton was a member. Between 1680 and 1687 there were three disastrous fires in Gray's Inn, which had burnt a whole lot of valuable documents, manuscripts and records. Gray's Inn has proved to be an attractive Inn for Bangladeshi barristers in recent years.

In the conclusion, I must express my sincere gratitude to Mr. James Dewar of Lincoln's Inn who allowed me to use their documents in writing this article and I also thank my friends of other three Inns who, too, have provided me with necessary information and documents.

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FACT file

Arms in Sudan fuel human rights violations

Arms, ammunition and related equipment are still being transferred to Darfur in the west of Sudan for military operations. Extremely serious violations and abuses of human rights and international humanitarian law are being committed by the Sudanese government, the government-backed Janjawid militias and armed opposition groups in these operations.

In a report Amnesty International (AI) describes the arming process and its effects on the people of Darfur and neighbouring eastern Chad, many of whom have been forcibly displaced. It describes violations of the United Nations arms embargo on Darfur by parties to the conflict that occurred during January to March 2007.

Amongst other things, it shows how the Government of Sudan violates the UN arms embargo and disguises some of its military logistics operations in Darfur. It details what types of arms supplied to Sudan from China and Russia -- two Permanent Members of the Security Council -- have been used by the government of Sudan for violations of the Security Council's own mandatory arms embargo.

States supplying weapons, munitions and other military equipment



to Sudan and to other parties to the conflict know, or at least should know, that these arms are often used to commit serious violations of human rights and international humanitarian law in Darfur and now in eastern Chad. The fact that the UN Security Council has left the UN arms embargo on Darfur somewhat vaguely formulated and especially lacking strong UN monitoring, verification and public reporting mechanism is allowing some states and persons to violate it with impunity.

AI is urgently calling upon the international community to assert its authority and immediately adopt steps to strengthen the implementation of the UN arms embargo and stem the flow of arms to Darfur as part of a package of immediate measures to help protect civilians and uphold their human rights as is required by international law.

Source: Amnesty International.