

Star

LAW

analysis

CONFENSIONAL STATEMENT AND REMAND

Do citizens get the protection provided by the constitution?

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CONFENSIONAL statement recorded under section 164 of Criminal Procedure Code plays a significant role in administration of criminal justice. Article 35(4) of our constitution precisely states that no person shall be compelled to be a witness against himself. But the law enforcement agencies are allegedly continuing frequent infringements of this constitutional binding in the name of remand, which is designed to interrogate the accused. This article will attempt to find out how far this constitutional protection has been ensured in our legal arena.

What is confession? Confession is a statement made directly by the accused person admitting the charge brought against him. In the words of Stephen, "Confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime." Stephen's observation was accepted, acted upon by courts in this sub continent until the Privy Council disapproved that in a leading case, *Palvinder Kaur V. State of Punjab*, 1953 scj 545. In this case, Mahajan, J., observed "the confession must either admit in terms the offence or at any rate, substantially all the facts which constitute the offence."

Confession may be either judicial which is made only to the courts or Magistrates, or extra judicial which is made to any person other than courts or Magistrates.

Code of Criminal Procedure, 1898 Criminal Procedure Code has provided the procedures of recording confessional statement. Section 164 of the Code has empowered Magistrates to record confessional statement. The Magistrates must follow the procedures of Section 364 of the code in so doing.

Only the first class magistrates and the second class magistrates specially empowered in this behalf by the Government are given jurisdiction by Section 164. Sub-section 3 of Section 164 has provided some duties on the Magistrates before recording confessional statement. This Sub-section states as follows:

A Magistrates shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no magistrates shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:

"I have explained to (name) that he is not bound to make a confession and that if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by

him.

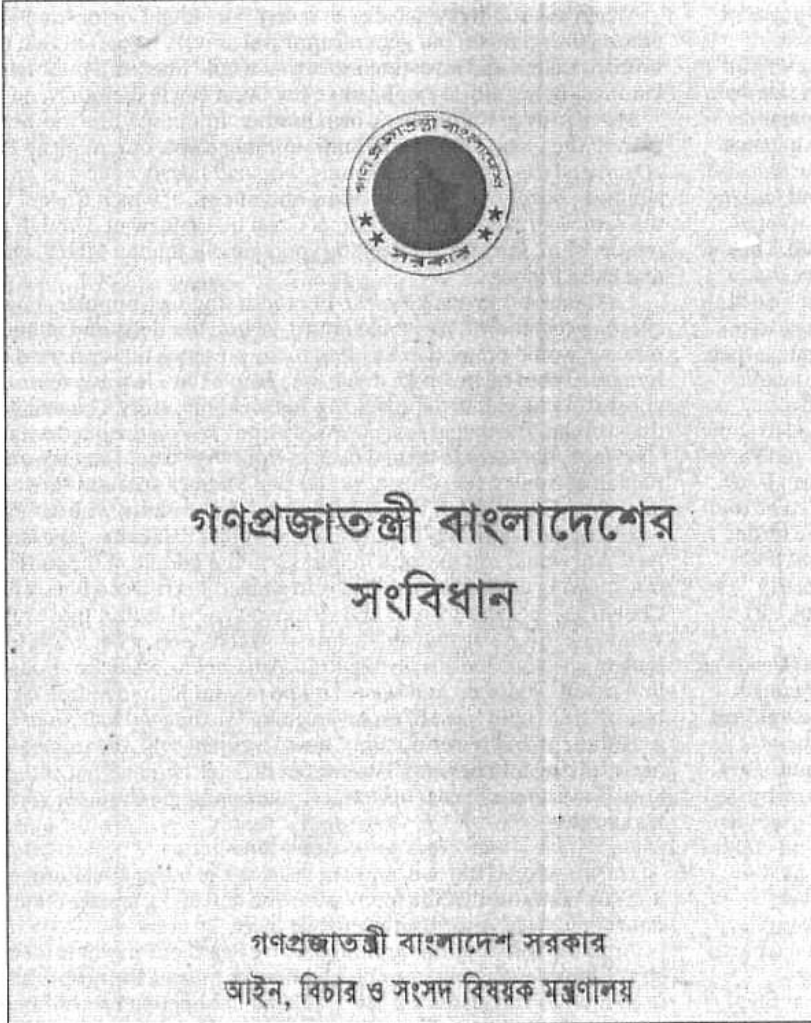
(Signed) A.B. Magistrate."

We therefore, observe that voluntary nature is the essence of a confession. Confessional statement made under compulsion is of no effect. This section has thus protected the constitutional right of individuals as has been enshrined in article 35(4).

Recently High Court Division has instructed the magistrates to give the accused at least three hours to think in a cool head whether he would confess the matter or not. Again the magistrates are bound to follow the procedures stated in section 364 which says that the courts or magistrates shall record the examination of the accused in full, in the language in which it is written if practicable, and such record shall be shown or read over to him. Every question put to him and every answer given by him shall be recorded in examining the accused. The record shall be signed by the accused and the Magistrate or Judge of such court and shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

Evidentiary value of confession:

A confession is received in evidence on the presumption that no person will voluntarily make a statement which is against his interest, unless true. The force of a confession depends upon its voluntary character. If the making of the confession is proved beyond question it is the highest sort of evidence, and one of the



most effective proofs in law. Sections 24-30 of Evidence Act have provided provisions protecting constitutional right of individual u/art.35 (4).

Section 24: Under this section a confession is rendered irrelevant if it is

caused by inducement, threat, or promise. Such inducement, threat or promise should have proceeded from a person in authority, and sufficiently give the accused person reasonable grounds for supposing that by making the confession he would gain an advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Section 25: No confession made to police officer shall be proved as against a person accused of any offence.

Section 26: No confession made by any person whilst he is in custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

The object of these two sections is to prevent the abuse of the powers by the police. A confession is admissible, if made to a Magistrate or to a person other than a police officer but in the immediate presence of the Magistrate, but it will be inadmissible if it is made to police officer even in the presence of a Magistrate.

Sections 24, 25 & 26 have excluded confessions as evidence. But these sections have an exception which has been stated in section 27 of the Evidence Act. Under this section, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

So it is clear from these sections that a confessional statement made to a police officer is inadmissible in evidence. But such improperly obtained statement (whether amounting to confession or not) may lead to the discovery of facts, things, documents etc. When a statement leads to the discovery of some dead body, weapon or ornaments, the presumptions of falsity attached to the excluded confessions disappears and that part of the information which relates distinctly to the discovery of a fact is held to be admissible by the theory of confirmation by subsequent facts.

What we have observed in the foregoing discussions is that the statute has fully ensured the constitutional protection enshrined in art.35 (4) of Bangladesh Constitution. Section 164 of Criminal Procedure Code has provided provisions which have guaranteed the voluntary nature of a confession. Again the provisions contained in sections 24, 25, 26 of Evidence Act have omitted to confer evidentiary value on a confession given under inducement, threat or promise, any confession made to the police officer, or in the police custody. So theoretically everything is o.k. No person is compelled to be a witness against himself. The court will take a confession into account only when it is satisfied that it has been made voluntarily, freely and under no compulsion.

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HUMAN RIGHTS

advocacy

Child labour in Bangladesh

Poverty alleviation must for overcoming the problem

NURUL HAQUE

CHILD labour in Bangladesh although not new but has increased alarmingly in recent years. It started in agricultural sector then and has spread over 430 sectors now. Among the lot of obstacles we have child labour appears to be the most imposing in the way to reach the millennium development goal. For this reason a number of organizations are working for reducing child labour in the country. Child labour in Bangladesh came in the lime-

the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Concept of child labour

There is no universally accepted definition of child labour. Various definitions of the term are used by international organizations, non-governmental organizations (NGO), trade unions and other interest groups. Writers and

Different forms of child labour in Bangladesh

Firstly we can divide the total child labour in Bangladesh in three segments, namely Child labour in general, Hazardous child labour and Worst forms of child labour. According to Bangladesh Shishu Adhikar Forum, our child workers are involved in 430 types of economic activities. Child labour can be factory work as in tannery, metal workshop, garments or in big factories; mining or quarrying; agriculture; helping in the parents' business, having one's own small business (for example selling food), or doing odd jobs. Some children work as guides for tourists, sometimes they are work for bringing in business for shops and restaurants (where they may also work as waiters). Other children are forced to do tedious and repetitive jobs such as assembling boxes or polishing shoes.

In an agricultural country like ours, most of the families depend on farming. Most of the children who live in rural or suburban areas are involved in agricultural sector and guardians treat it as family responsibility. As a result urban children do better in every sector than rural children. This sector had not been highlighted as a child labour due to our social beliefs, norms and values.

Another form of child labour which has been increasing in Bangladesh is that many Madrasha children are getting involved in collecting money on different highways in the country. This is one of the worst form of child labour because from morning to evening they are reportedly standing on the highway trying to collect money for their survival and development of their madrasha premises instead of attending classes. This scenario is getting common day by day for the entire country but we intensively observed it in the northern part of the country especially in Nilphamari district.

Child labour is part of a vicious cycle, with poverty as a main cause as well as a main consequence. This implies that child labour cannot be addressed in isolation. Main factors among those contributing to child labour are rapid population growth, adult unemployment, bad working conditions, lack of minimum wages, exploitation of workers, low living standard, low quality of education, lack of legal provisions and enforcement, low capacity of institutions, gender discrimination, conceptual thinking about childhood, etc. One or more of the above contribute to the large numbers of children working under exploitative or hazardous conditions.

There is a direct link between child labour and education. Nearly 50 percent of primary school students drop out before they complete grade V, and then gravitate towards work, swelling the number of child labourers. The high drop-out rates are correlated with the low quality of public primary education, low adult literacy, low awareness of the importance of education, teacher-student ratio (sometimes this goes up to 1 per 100), non-availability of didactic and learning materials, and the cost of education. Basic primary education is free as far as direct costs and school books are concerned. But many indirect costs are involved as well, such as transport, uniform, pens, pencils, and



paper/notebooks.

Bangladesh has only limited provision for pre-vocational/vocational skills training and there are related constraints such as the quality of the skills training, market and employment linkages and certification. While this could be an attractive option to working/disadvantaged children and their families, neither the government nor many of the non-governmental organizations have the institutional capacity and technical expertise required to deliver skills training facilities effectively. Finally, the level of awareness on the issue of child labour is still low. Society in general has a rather indifferent attitude towards the problem. In many cases, it is not even realized that the children who are employed in, for example, domestic service, often have no access to education or medical care.

Recommendation

- Awareness programme should be increased by GO/NGO
- Increased number of vocational schools for drop out children
- Increased family incomes
- Education that helps children learn skills will help them earn a living
- Social services that help children and families survive crises, such as disease, or loss of home and shelter

- Family control of fertility so that families are not burdened by children
- Child labour policy should be ratified

Child labour is one of the most critical issues in our country context. Whenever we discuss about child labour we should consider the existing poverty. Child labour and poverty are running simultaneously with same degree and magnitude. For growing awareness about child right and reducing child labour GO and NGO's have taken a lot of programmes, like child rights week observation, rally, seminar, awareness rising programme etc. Bangladesh started observing such week from 29 September 1999 with a national plan of action for children and a call to ensure a better life and bright future for all children of the country.

Under the direction of the ministry of women and children affairs, stakeholder especially those who are working for children observe the Child Rights Week (29 September - 05 October) every year. They involve for seven days in reducing child labour but rest 358 days of year we don't remember that. Last but not least I would like to say that if we dream to be citizens of a developed not a developing country someday free from all sorts of child labour, we should change our mentality towards children and their proper rights now.

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light in mid-1990s when a US senator lobbied for a bill to restrict the import of Bangladeshi garment products that used child labour.

Child labour is of course the most severe form of child exploitation and child abuse in the world. In any society, working children, as a socio-economic group, happens to be the most disadvantaged of all since they are forced to work for a living, sacrificing their childhood as well as their future for bare survival of self and family. The United Nations and the International Labour Organization has always been working against child labour. In article 32 of the Convention on the Rights of the Child it is stated that... State Parties recognize the right of

speakers don't always specify what definition they are using, and that often leads to confusion, nonetheless we are trying to conclude the meaning of child labour:

When children undertake jobs which are risky in regards to their age, exploitative in nature and in conflict with the existing laws, it is identified as child labour. The formal as well as informal child labour which is physically, mentally and morally harmful to children and do not commensurate with their needs and rights can be called child labour. However, any productive work which is conducive to the physical, mental and moral development the child can be considered as child's work.