



## REVIEWING the views

## Juvenile justice system in Bangladesh

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JUVENILE justice denotes access to justice for all children. Generally the term juvenile means a person who has not reached the age at which one should be treated as an adult by law. A proper function of juvenile justice system ensures protection of child who is in conflict with the law. Article 28(4) of the Constitution of Bangladesh requires the government to enact legislation for women and children and in pursuance of that The Children Act 1974 was adopted. Bangladesh has also ratified the Convention on the Right of the child (CRC) in August 1990 and is obliged to reflect the principles of CRC in our national laws. How ever until now The Children Act 1974 is the substantive Law for juveniles in Bangladesh. The Children Act deals both with children in need of protection as well as children accused of breaking the law. In the present write up an attempt has been made to make an analogous discussion of the substantive Law and the prominent decisions of the highest Court of Bangladesh. The discussion may help one to understand what the law is and how it is set forth in the decisions by the highest Court in Bangladesh.

Section-3 of the Children Act 1974 provides for Juvenile Courts and section-4 of the said Act identifies the courts empowered to exercise powers of Juvenile Court. The section includes the High Court Division, Court of Session, Additional Sessions Judge, Sub-divisional Magistrate and Magistrate of first class. In the case of *Bimal Das v. State* 46 DLR 460 it has been stated that the Sessions Judge may also, whether the situation demands it, exercise the power of a Juvenile Court. The sitting place and environment of Juvenile Courts are described in section-7 of the Children Act. The section requires separate date and time for juvenile Courts from the ordinary Court. How ever we may view the opinion given in the judgment by High Court Division (Criminal Appellate Jurisdiction) in *Munna and others v. State* 7 BLC 409. It is stated in the judgment that when section-4 of the Children Act 1974 empowers sessions Judge and Additional Sessions Judge to exercise the powers of Juvenile Court in the case involving child offenders for offence exclusively triable by Court of Session, mere registration of case as simple Sessions Case after receipt of the case record from the Sessions judge and non registration of the same as juvenile Court case will expose no gross irregularity in the matter. Further it is stated that it will also not be a gross irregularity and

illegality to negative the proceedings and its ultimate decision unless it is alleged or shown specifically that there has been miscarriage of justice or failure of justice causing prejudice to the accused.

Section-5 of the Children Act embodies the powers of Juvenile Court, etc. Under the section trial of children is exclusively within the jurisdiction of Juvenile Court and no other Court can take cognizance of any offence committed by the child below the age of 16 years. It is to be mentioned that the said Act defines child as a person below the age of 16 years. In this connection the decision of the High Court Division (Special Original Jurisdiction) in *Bangladesh Legal Aid and Services Trust and others v. Bangladesh and others*-7 BLC 85 is noteworthy. It is revealed in the judgment that considering the provisions of Law and the decisions of the Superior Courts of this Sub-continent the Court fined that the trial of child and adult together is void *ab initio*. (*ab initio* means from the very beginning). Section-6 of the Act provides for separate trial of child and adult. The section makes it clear that there can be no joint trial of child and adult and as such no child is to be charged with or tried for any offence together with an adult. The child must be tried separately in the Juvenile Court and not in the ordinary Court. Only the Juvenile Court is competent to take cognizance against the juvenile offenders. In this relation the decision of *Nasir Ahmed v. The State* 42 DLR (1990) HCD 89 is considerable. In the aforesaid judgment it is said that the trial of child along with adult is forbidden by Law. In view of the legal position such trial is hit by want of jurisdiction and stands vitiated. It is clearly stated in *Kadu & others v. The State* 43 DLR (1991) HCD 163 that the joint trial of child and adult is illegal. It is also mentioned in the case of *Kawsarun Nessa & others v. The State* 15 BLD 1995 HCD 21 that the trial of minor together with adult is illegal. At the same time it is stated in the case of *Baktiar Hossain v. State* 47 DLR 542 that once a child offender crosses the age of 16 years and then charged with an offence or tried for the same, the statutory requirement of the child being tried by juvenile Court comes to an end.

Section-66(1) (2) of the Children Act 1974 deals with presumption and determination of age of child. The section left the matter at the apparent opinion of the Court and it reads as '... Where it appears to the Court that the person so brought before it is of the age of sixteen years or upwards, the person shall, for the purpose of this Act, be deemed not to be a child'. Under section-66 of the Children Act it is



for the Court to consider whether a person charged with an offence and brought before it for trial appears to be a child or not and then to proceed accordingly. Here, we may consider the decision of *State v. Mehdi Hasan and others* 10BLC 1 where it is stated that when it does not appear to a Court or Tribunal that a person charged of an offence is below 16 years and above 16 years it got no duty to ascertain the age of that person. In the decision of *Monir Hossain v. State* 53 DLR it is said that when age of the accused is claimed to be below 16 years a duty is cast upon the Court to direct an enquiry to be satisfied itself as to whether the accused is a child below 16 on the day of framing charges against him. Earlier in the decision of *Abdul Mumen Chowdhury v. State* 47 DLR (AD) 96 the same view was revealed that it is for the Court to consider whether the person brought before it for trial appears to a child or not.

In conclusion the judgment of High Court Division in *Bangladesh Legal Aid and Services Trust v. Bangladesh and others* 57 DLR 11 is noteworthy. The writ petition was filed following news published in the reputed national news paper the 'Daily Star' on 23 December, 2003. In the judgment it is clearly stated that the prompt and meaningful implementation of *Suo Moto* Order No.248 of 2003 with the following directions is necessary to make fundamental right of the prisoners meaningful and to improve the over all condition of juveniles. The worthy directions are---

1. Trial, if any, of all juvenile accused to be completed with utmost expedition by the Juvenile Courts and the concerned law enforcing agencies. Prosecution agencies and Legal Aid Committees be directed to take immediate steps in the matter.

2. Juvenile accused in jail must be kept apart from other prisoners.

3. Non-Official Jail visitors should include Human Rights Activists, specially the representatives of Children Organizations of the country.

4. Juvenile accused are to be transferred to correction houses and other Approved Homes with utmost expedition.

When these directions are executed in the real sense of the term, there will be a materialistic development in the Juvenile justice system of Bangladesh. The implementation process requires the participation of Government and other relevant bodies. NGOs may play a vital role in this regard. There is a common notion that Bangladesh lacks in Juvenile Justice system but we can easily say the Substantive Law and the Verdict of the Apex Court of Bangladesh are supportive to Juvenile Justice System; factual and prompt implementation of these laws will reduce the distinction between text and practice. Only then a sound Juvenile Justice system will be ensured.

The writer is a legal researcher.



## RIGHTS corner

## Spain: Migrant children at risk

We welcome that the Canary Islands government intends to close the worst of these facilities, where children are at risk. We look forward to seeing that intent translated into a firm plan and concrete measures to ensure the center is actually closed. At the same time, it should end the emergency regime as a whole and bring all centers for unaccompanied minors in line with mainstream standards of care.



THE Canary Islands government's decision to keep more than 250 unaccompanied migrant children in unregulated emergency shelters puts the children at risk and threatens their well-being, Human Rights Watch said in a report released on June 22, 2010.

The 40-page report, "Eternal Emergency: No End to

Unaccompanied Migrant Children's Institutionalization in Canary Islands Emergency Centers," says that the centres fail to comply with the Canary Islands government's minimum care standards for migrant children and have no occupancy limits. The approximately 100 children in the biggest and most secluded emergency centre, La Esperanza, receive low-quality food,

lack adequate heating, hot water, and blankets, and report frequent violence from other children.

In the wake of this report's publication, the Canary Islands government informed Human Rights Watch orally on June 15 that it plans to close down La Esperanza emergency centre by December 2010 and move children to other centres, including the emergency centres at Tegueste and Arinaga. It has not committed itself to make those centres subject to its own established minimum standards of care.

"We welcome that the Canary Islands government intends to close the worst of these facilities, where children are at risk," said Simone Troller, children's rights researcher at Human Rights Watch. "We look forward to seeing that intent translated into a firm plan and concrete measures to ensure the centre is actually closed. At the same time, it should end the emergency regime as a whole and bring all centres for unaccompanied minors in line with mainstream standards of care."

The emergency centres were established in 2006 as a temporary measure in response to the arrival of an unprecedented number of unaccompanied migrant children on the Islands.

Human Rights Watch's new findings come three years after it first documented serious allegations of ill-treatment of children in the centres by staff, overcrowded and sub-standard infrastructure, violence by older children against younger ones, and lack of oversight by bodies in charge. The initial findings were published in a June 2007 report, "Unwelcome Responsibilities: Spain's Failure to Protect the Rights of Unaccompanied Migrant Children in the Canary Islands."

Some conditions have improved since 2007, Human Rights Watch said. Children have access to education and training opportunities outside their residences, and monitoring visits by institutions charged to oversee conditions appear to be more frequent. Human Rights Watch found that conditions at Arinaga centre in particular had improved, in large part because fewer children are housed there. Human Rights Watch is

concerned that in the absence of careful planning and enforceable standards of care, the transfer of significant numbers of children from La Esperanza to Arinaga may jeopardize the progress made.

Other serious concerns also persist in emergency centres, Human Rights Watch said. These include the absence of a functioning mechanism to file confidential complaints, mixing of younger children with older peers in one emergency centre, insufficient access to the system for seeking asylum, the absence of occupancy limits, and the limited opportunities to become integrated in the community. In addition, the sub-standard conditions at La Esperanza centre threaten children's well being.

A 16-year-old boy described conditions at La Esperanza: "It is very hard, especially in the winter... of course I'm cold at night. I have one blanket... there is no point to ask for another blanket. They won't give it to you. Nobody has two blankets... Sometimes it's so cold you can't sleep."

Human Rights Watch called on the Canary Islands government to close La Esperanza as a matter of priority and to bring all remaining structures into conformity with Canary Islands minimum standards and occupancy limits for centres accommodating unaccompanied migrant children.

At the time the emergency centres were established in 2006, large numbers of migrants without proper documents arrived from West Africa, including 1,000 unaccompanied children that year. The stream of arrivals has slowed down since then.

The Canary Islands had faced arrivals of unaccompanied migrant children prior to 2006, and had a functioning network of smaller, regulated homes, which continue to provide care and integration opportunities for a total of 250 children at a given time. Unaccompanied migrant children exceeding that number, however, are sent to the unregulated emergency structures.

The Canary Islands government says it has tried to establish more small centres that would conform to existing minimum standards, but met resistance from local municipalities. But that does not explain why it

has closed some existing smaller centres, while it kept La Esperanza open and running.

Centre staff, nongovernmental organizations, and public prosecutors in the Islands interviewed by Human Rights Watch attributed the lack of progress to the government, saying it lacked the political will to grant children better care or kept emergency centres open as a means to put pressure on the central government in Madrid to increase funding or transfer children to other parts of Spain.

The central government in Madrid has stepped up its financial contributions for the Canary Islands in recent years and provided more than half of the archipelago's \$26 million budget for the care of migrant children in 2009. It has also helped arrange and finance the transfer of children to other regions of Spain.

The government in Madrid should require the Canary Islands government both to provide adequate care and to develop a concrete plan for closing the centres as a condition of its financial assistance, Human Rights Watch said.

Spain's children's rights record will come under increased scrutiny this year. Spain has declared the plight of unaccompanied migrant children a priority issue during its European Union presidency, and it must report on its own children's rights record to the United Nations Committee on the Rights of the Child in fall this year.

"Spain has pushed the plight of migrant children onto the EU's policy agenda during its EU presidency," Troller said. "It should lead by example and ensure proper protection in the Canaries for these children."

We welcome that the Canary Islands government intends to close the worst of these facilities, where children are at risk. We look forward to seeing that intent translated into a firm plan and concrete measures to ensure the center is actually closed. At the same time, it should end the emergency regime as a whole and bring all centers for unaccompanied minors in line with mainstream standards of care.

Source: Human Rights Watch

## LAW week



## DAP now official

Despite government gazette notification approving the detailed area plan (DAP) for Dhaka City, certain errant land development projects are likely to remain unscathed due to legal loopholes. The government issued the notification incorporating all recommendations of a six-member expert review committee headed by noted civil engineer Prof Jamilur Reza Choudhury, said Md Nurul Huda, chairman of Rajdhani Unnayan Kartripakkha (Rajuk). The recommendations were aimed at protecting flood flow zones in and around the capital. But now government high-ups are saying that they might have to take a softer stance in certain cases as the Town Improvement Act, Wetland Conservation Act, and DAP itself provide chances of appeal for violators, and discretionary authority for government high officials. - *The Daily Star*, June 24, 2010.

## Father denied paternity

Heart-racking information came out during the remand interrogation of the in-laws of Farzana Akter Rita, who with her two children were found dead in their Jurain house on June 11. During the interrogation, Shafiqul Kabir, Farzana's father-in-law, said his son Rashedul denied paternity of Pabon and Payel during an altercation on May 6. Shafiqul admitted that they remained silent when the children in tears were seeking a little support from the people present during the altercation as Rashedul verbally divorced Farzana and asked her to leave the house with the children. Detective police were interrogating Farzana's parents-in-law, her sisters-in-law Sukhon and Kabita and Kabita's husband Delwar Hossain Patwari, who had been placed on three-day remand each. - *The Daily Star*, June 24, 2010.

## Mizanur new chief of HR commission

The government reconstituted the National Human Rights Commission (NHRC) by appointing a new chairman and six members. Dr Mizanur Rahman, a law professor of Dhaka University, has been made new chairman of the commission. President Zillur Rahman also appointed six new members of the commission, as its incumbent Chief Justice Amirul Kabir Chowdhury will go into retirement this week and two members have already retired. The new members of the commission are-- former secretary Kazi Reazul Haque, also executive director of Legal Education and Training Institute; advocate Fawzia Karim Feroze, a Supreme Court lawyer; Dr Giasuddin Mollah, a professor of the department of political science of DU; Aroma Dutta, executive director of PRIP Trust; Selina Hossain, executive director of Faria Lara Foundation and also a former director of the department of research, anthology and folk of Bangla Academy; and Niru Kumar Chakma, a professor of DU and also a former member of the NHRC. - *The Daily Star*, June 23, 2010.

## No legal basis for hoisting flags of other countries

There is no legal basis for hoisting flags of other countries in Bangladesh, as seen these days, for supporting the teams in World Cup Football, said Law, Justice and Parliamentary Affairs Minister Barrister Shafique Ahmed in the Parliament. Shafique was replying to a written question from Awami League lawmaker Apu Ukil (women seat-2). But the Minister said that the government has no plan to take action against the youths who hoisted flags of their favourite countries as this is a "sensitive" matter. In this regard, he advocated for a move to create awareness through television, radio and newspapers so that the youths refrain from such activities. - *The Daily Star*, June 23, 2010.

## Dhaka readies for long legal battle

Bangladesh is preparing for a lengthy legal battle at an international tribunal to establish its claim over territorial waters in the Bay of Bengal, as talks for an amicable settlement of maritime boundary disputes with India and Myanmar do not seem promising. Bangladesh's documents in the case regarding the dispute with Myanmar have been finalised, and will be filed at the International Tribunal for the Law of the Sea (ITLOS) by July 1. The deadline for filing of counter-documents by Myanmar is December 1. Bangladesh is also scheduled to submit, by May 31, 2011, a memorandum to the Arbitral Tribunal of the United Nations, claiming its legitimate authority over territorial waters in connection with the dispute with India. India will submit a counter-memorandum by May 31, 2012. - *The Daily Star*, June 22, 2010.

## Anti-hartal bill placed

A bill was recently submitted to the Parliament Secretariat seeking to enact a law that would enable authorities concerned to punish individuals who force people to observe hartals. According to the bill, if anybody is found guilty of forcing people to close markets, shops, offices and prevent people from using or running vehicles on streets, he or she could be sentenced up to seven years' imprisonment. The bill will be placed before the parliament soon. The private member's bill, submitted by Jatiya Party lawmaker Mujib-ul-Haque Chunnun, also proposed to deploy mobile courts on hartal days to hold trials of the offence summarily or the court may hold trials later if cases are filed in this connection. - *The Daily Star*, June 22, 2010.

## It's worst genocide since World War II

The mass killing during the Liberation War of Bangladesh was the worst genocide since World War II, speakers said in a conference yesterday and also urged international community to recognise the "Genocide." The Pakistan Army and its local auxiliary forces killed 3 million people and raped more than 200,000 women in nine months, the conference said in its resolution. The MSSK Trust, Forum for Secular Bangladesh and Trial of War Criminals of 1971 and South Asian People's Union against Fundamentalism and Communalism jointly organised the conference titled "The International Conference on Peace, Justice and Secular Humanism" at Osmani Memorial Auditorium. In the resolution titled "Dhaka Declaration", the conference also called on international community for extending support to the process that Bangladesh government has initiated to try the war criminals. - *The Daily Star*, June 21, 2010.

## Court to hear charges July 12

A Dhaka court fixed July 12 for hearing on charge framing against the managing director, two directors and two pharmacists of Rid Pharmaceuticals in connection with a case filed for manufacturing toxic paracetamol syrup. Judge Mohammad Abdul Majid of the Drug Court set the date after receiving the advertisement published in two national Bangla dailies that asked Director Abdul Gani and pharmacists Mahbulul Islam and Enamul Haque to appear before the court by May 26. But the officials did not comply with it. Police earlier took more than eight months to submit a report before the Drug Court that the three accused were absconding. - *The Daily Star*, June 21, 2010.

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