



RIGHTS corner



Convention on the Rights of the Child turns 21

21 years ago on November 20, 2010 a remarkable milestone for the protection and realisation of the rights of all children - the Convention on the Rights of the Child was officially opened for signature by United Nations Member States.

The Convention on the Rights of the Child (CRC) is the first legally binding instrument designed to protect and promote the rights of people under 18 years old. Its adoption by the UN General Assembly on 20 November 1989 is celebrated annually as Universal Children's Day. It has now achieved near-universal acceptance, with ratification by 193 parties.

The Convention sets out rights that children enjoy as human beings and also identifies special rights and protections they require during this vulnerable phase of their lives.

The rights in the Convention are predicated on the principles of universality, non-discrimination and accountability. This means that they apply equally to every child, including the most disadvantaged. The Convention creates a moral imperative, determined by the world leaders and governments who drafted and subsequently joined the Convention, to ensure that efforts to protect and promote children's rights must be equitable. Every child, no matter how disadvantaged by parental income or family circumstance, geography, disability, race or gender, has an equal right to enjoy the protection of the Convention and the rights it sets out.

There are 54 articles in the CRC. These set out universal human rights, including the rights to:

- * survival
 - * develop to the fullest
 - * protection from harmful influences, abuse and exploitation
 - * participate fully in family, cultural and social life
- Every one of these rights is essential to human dignity and to



the harmonious development of every child. In a more concrete sense, these rights set global minimum standards for children's health care, education and their access to legal, civil and social services.

By ratifying or acceding to the Convention, national governments commit themselves to protecting and ensuring children's rights as outlined in the Convention and they hold themselves accountable for this commitment before the international community.

In every part of the world, there are examples of how the Convention has impacted law and practice. In Burkina Faso, for example, a Children's Parliament was created to review proposed legislation in response to the principle of participation set out in the Convention.

The CRC was the first international convention to be ratified by South Africa, leading to legislative changes such as a prohibition of corporal punishment and the development of a separate juvenile justice system.

The Russian Federation set up new juvenile and family courts to meet its responsibilities to children under the CRC, while Morocco established a National Institute to Monitor Children Rights.

At UNICEF the provisions and principles of the Convention guide our mission. By advocating for the protection of children's rights and helping children to meet their basic needs and expand their opportunities, UNICEF works towards the realization of the rights for every child. The focus of our work is not just on building the capacity of duty bearers, but just as much to build the capacity of rights holders.

The Convention is complemented by two Option Protocols; on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography.

Source: UNICEF.

LAW lexicon

Forfeiture - A cancellation. A legal action whereby a contract purchaser following default loses all his interest in the property.

Fraud - A false representation of a matter of fact which is intended to deceive another.

Garnishment - A legal proceeding in which a debtor's money, in the possession of another (called the garnishee) is applied to the debts of the debtor, such as when an employer garnishes a debtor's wages.

General jurisdiction - Refers to courts that have no limit on the types of criminal and civil cases they may hear.

Good time - A reduction in sentenced time in prison as a reward for good behaviour. It usually is one third to one half of the maximum sentence.

Grand jury - A jury of inquiry whose duty it is to receive complaints and accusations in criminal matters and if appropriate issue a formal indictment.

Grantor - The person who sets up a trust. Also referred to as "settlor."

Grievance - In labour law a complaint filed by an employee regarding working conditions to be resolved by procedural machinery provided in the union contract. An injury, injustice, or wrong which gives ground for complaint.

Guardian - A person appointed by will or by law to assume responsibility for incompetent adults or minor children. If a parent dies, this will usually be the other parent. If both die, it probably will be a close relative.

Guardianship - Legal right given to a person to be responsible for the food, housing, health care, and other necessities of a person deemed incapable of providing these necessities for himself or herself.

Source: Jurist International.

LAW letter

Preserve Lalbagh Kella

ARCHEOLOGICAL sites in Bangladesh need to be protected and preserved by applying environmental and archeological law. Rajdhani Dhaka is standing on its 400th year. In that account, Dhaka is older than any other cities of the country. It retains a long history. Many rulers reigned and made themselves unforgettable by their illustrious constructions. Lalbagh Kella is one of the historic constructions of Mughal-era (1526-1857). It was built by Shahesta Khan, the then Subehdar of Subeh Bangla. Mughal emperor Aurongzeb (1658-1707) entrusted him the charge of Subehdar of Bangla. Shahesta Khan was famous and well known for his ability to afford the people foodstuffs in a much underrated price. He built Lalbagh Kella in 1688. So, Lalbagh Kella is very important historical and archeological site in Dhaka city. It is considered as a great heritage of Bangladesh for its innovative scriptures and artistic outlook. Unfortunately, land grabbers and land encroachers gradually are capturing land pertaining to Lalbagh Kella.

Recent news about the Kella has attracted our attention. One Haji Abul Hashem has claimed portion of land precisely within the site. On March 16, 2009, Mr. Hashem filed a writ petition against the Archaeological Department following opposition of the Fort authorities when he took initiative to raise a building.

In its verdict on October 10, 2010, the High Court (HC) directed the government to "conduct survey within three months to identify and demarcate the actual area of Lalbagh Kella with cooperation of the Director General (DG) of Land Survey Department. The court also asked the authorities to "demolish the construction within territory of Lalbagh Kella". The court also ordered to construct a five metre wide walkway, if necessary, by acquiring the land in accordance with law to save Lalbagh Kella.

Lalbagh Kella is described in the books to be on the bank of Buriganga in the northeastern part of Dhaka. But one cannot see the Fort now from the other side of the river. Built 322 years ago, the Fort now



stands threatened, as 40 old buildings have come up in the last about four decades alongside its southern and western vicinity. As a result, no part of the Fort's southern and western wall can be seen at present from outside.

Now let us have a glimpse on the legal regime in relation to preservation of archeological site. The following provisions of law can be pointed out:

1. Section 5(1) of the Environmental Conservation Act 1995 has laid down that if the government is satisfied that an area is under an environmentally critical situation or is threatened to be in such situation, the government may, by notification in the official Gazette, declare such area as an ecologically critical area.

2. The Environment Conservation Rules 1997 in section 3(1) stipulates that the government shall take the following factors into consideration while declaring any area as 'Ecologically Critical, i.e. a) Human habitat, b) Ancient monument, c) Archeological site etc.

3. The Antiquity Act, 1968 has envisaged that raising any kind of new structure adjacent to any archaeological site affecting the ancient monument is

totally prohibited.

4. Bangladesh is a party to the Paris Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972. The objectives of the Convention, to quote from its preamble, are "to establish an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods". In essence the Convention casts a responsibility on the state parties to take necessary measures for the identification, protection, conservation cultural and natural heritage belonging to them for the future generations. Bangladesh ratified this convention in 1983. So, pact should be served on good faith.

It is submitted that the government should take necessary action against the Lalbagh Kella encroachers. It is to be protected for a reminiscence of the past, to understand the historical legacy--to better grasp the gradual transformation of the psychology of an old city.

Md. Mokarram Hossain PhD Fellow, Dhaka University

LAW analysis

Revisiting Real Estate Act, 2010

QUAZI ARIFFUR RAHMAN

THREE or four conglomerates started limited-scale real estate dealings in Dhaka before 1971. After the emergence of Bangladesh a handful of local entrepreneurs followed suit and, observing that the business was fairly lucrative, numerous others gradually embarked upon the same business in and outside Dhaka. No legislation was enacted to regulate their activities, as a consequence of which many among them flouted ethical standards resulting in myriad landowners and purchasers of real estate suffering loss, some even utter ruin, not to speak of mental tribulation.

The present government considered it expedient to bridle such dishonest developers and placed a Bill in the Jatiyo Shangsad in September 2009 which, after scrutiny in the relevant Standing Committee, was enacted in October 2010 as *রিভেল এন্ডেট উন্নয়ন ও ব্যবস্থাপনা আইন, ২০১০* (Real Estate Development and Management Act, 2010) (Act 48 of 2010). Having gone through the Act, I feel that certain stipulations in it is required to be revamped, as some of those go against a landowner and some against a developer, while a few others may give rise to controversy. In my evaluation of the Act, I am referring to a developer as a company or a firm and am describing a purchaser as a singular numbered male which would include more than one individual and also belonging to the female gender. As per the definition given in section 2 (12) of the Act, the words "real estate" connote any residential, institutional, commercial plot or apartment or flat.

Conditions of purchase and sale of real estate

Under the heading "রিভেল এন্ডেট উন্নয়ন ও ব্যবস্থাপনা আইন, ২০১০", Section 8(1) of the Act, dealing with sale-purchase, registration, transfer, et cetera, states that a developer shall elaborate in its prospectus or allotment letter (to be issued to an intending purchaser) outstanding features of a property it proposes to develop. Every developer in our country brings out a prospectus (or a brochure) for an upcoming project. The highlights of such prospectus often allure a prospective purchaser to invest his money in the project but, to the latter's detriment, certain unscrupulous developers do not incorporate all such features in their allotment letters, which an unwary purchaser may fail to perceive.

The innocent-looking single-lettered word "or" (in English, "or") in the section grants latitude to a dishonest developer to disperse allotment letters ignoring or bypassing certain provisions depicted in its prospectus. To protect an intending purchaser and for him to keep away from a situation that may go against him, it should be made obligatory that allot-

ment letters do not add, alter or omit any feature specified in the prospectus. As such, the word "or" (or) in the section should be replaced by the word Ges (and). The same word "or" (or) also appears in sections 12(1), 13(1), 14(1) and 14(2) of the Act, which deal with discharge by a purchaser of the consideration for his real estate, handing over to him possession, et cetera. To shield a prospective purchaser from the uncanny clutches of a sinister developer, the very same word "or" (or) should be substituted by the word Ges (and) in these sections.

Interest rate

Section 14(4) of the Act provides that in the event of a purchaser requiring to clear any of his installments beyond the time limit agreed upon by him with a

the span of time for such computation should be specifically mentioned in both these sections.

Bargaining power

Section 11(3) of the Act, dealing with advantage of a real estate, states that a developer shall comply with the conditions of an Agreement executed by and between a landowner and itself [section 10 (1)]. Such Agreement, compulsorily registrable under the Registration (Amendment) Act, 2004 (Act 25 of 2004), requires a developer to take care of a real estate of a landowner for a minimum of one year after handing over its possession. As nowadays a landowner in Dhaka city often gets from a developer half (or almost half) after a property is developed, and as the section precisely provides that 'as per the Agreement entered into by and between the parties', I feel that section



developer, he may do so by paying interest at the rate of 10% (ten percent), but the law is silent as to whether discharge of such interest would be *বার্ষিক* (per year) or *মাসিক* (per month). In the case of an understanding between a developer and a purchaser (proviso to section 15(1) remaining tacit about the quantum of compensation, or payment of damages to be paid by a developer to a purchaser for failure to deliver possession of the latter's real estate within the stipulated date. Section 15(2) of the Act provides that the compensation should be at the rate of 15% (fifteen percent). Here, too, this section does not mention whether payment of interest should be made *বার্ষিক* (annually) or *মাসিক* (monthly). To avoid any variance of opinion between a developer and a purchaser with regard to the period for which interest is to be calculated, and to keep an aggrieved party away from suffering any loss, monetary or otherwise,

11(3) should be repealed, because it is doubtful whether any honest and truthful developer would agree to insert such a condition in its Agreement with a landowner, as taking care of half (or nearly half) of the developed property for a minimum of one year would entail financial burden on itself.

Conclusion

From the perspective of all concerned parties a landowner, a developer and an intending purchaser of a real estate-I strongly feel that the Act should be remodeled I am not sure whether REHAB has formally reacted to any provision of the law, but better late than never. The lawmakers and concerned standing committee of the parliament may think over it to make the law more humane and jurisprudentially sound.

The writer is a Solicitor and Advocate, Bangladesh Supreme Court.

LAW week



Limit crossed

Fuelled by ideas and shaken by law and order slide, the then state minister for home Lutfozzaman Babar in 2002 sat with top police officials and proposed formation of a special force comprising members from different armed and security forces. Babar's worries, recall officials attending that meeting, were rising crime in the capital and southeastern region, and the police alone, he was quoted as saying, were "unable to contain it". The police were not much interested. The department had several identical proposals for a special police-only force shelved since 1996. But Babar was persistent. He sat with the armed forces' chiefs, who, to his dismay, also rejected the idea citing shortage of troops. -*The Daily Star, November 25, 2010.*

Let economy grow

Top business leaders may propose passing a law banning hartal to put an end to its detrimental effects on trade, business and other economic activities. Stressing that political unrest is greatly hampering investment and economic growth, the businessmen urged the political parties to find an alternative to hartal or 'similar destructive activities'. Political programmes like hartal virtually stand in the way of the country achieving its potential double-digit growth, they said at a discussion meeting organised by the Federation of Bangladesh Chambers of Commerce and Industry in the capital. "This (hartal) is even more unacceptable when the country is on track of vigorous economic growth in the coming days thanks to its startling rise in trade and export activities," said FBCCI President AK Azad, who chaired the discussion. -*The Daily Star, November 25, 2010.*

23 BDR men jailed

A special court sentenced 23 border guards to different terms in jail for their involvement in 2009 BDR mutiny in Lalmonirhat. The court acquitted one of the 24 accused jawans of the district's 31 Rifles Battalion. A three-member panel handed down the 23 jawans prison terms ranging from four months to five years and fined Tk 100 each. The verdict was passed in presence of the defendants, reports our Lalmonirhat correspondent. Dinajpur Sector Commander Col Muhammad Saleh Ahmad headed the panel also comprising Lt Col Mahfuz Alam and Major Didar Al Latif. The two-day mutiny that had sparked at the Bangladesh Rifles headquarters in Pikhana on February 25, 2009 spread to different barracks across the country. -*The Daily Star, November 24, 2010.*

Soup up local government

Ruling Awami League Lawmaker AKM Mozammel Huq termed the Upazila Parishad Act a "black law" for allowing a lawmaker board have control over upazila parishes and chairmen. Huq, also the chief of the parliamentary standing body on land ministry, said amendment should be brought in the law to scrap the provision of empowering MPs as adviser to upazila parishes. He was speaking at a roundtable "Local Government Elections and Strengthening Democracy" organised by Shushashoner Jonney Nagorik (Shujan), a citizen rights organisation, at Jatiya Press Club. Prof Mozaffer Ahmad, president of Shujan, chaired the roundtable. -*The Daily Star, November 24, 2010.*

Evidence 'convincing'

The Anti-Corruption Commission has claimed to have found "convincing" evidence that former prime minister Khaleda Zia had shown fake sources of funds for establishing Zia Charitable Trust. Nearly Tk 2 crore spent on the establishment of the Trust came from unknown and fake sources, said a commission official referring to the findings of an ACC probe into corruption allegations against Khaleda. The probe did not find any involvement of Khaleda's sons Tarique Rahman and Arafat Rahman Koko in the corruption. Meanwhile, another ACC investigation found lack of diligence on the part of the then prime minister Khaleda Zia in the allocation of Tk 100 crore for construction of the Bhairab bridge, said a source at the commission. -*The Daily Star, November 23, 2010.*

Mobile court jails youth

A mobile court convicted a young man for stalking a 13-year old girl and sentenced him to one-year imprisonment in the capital, but the trial gave rise to a controversy among local residents. The victim's father Faruque Hossain filed a general diary with Ramna Police Station on Sunday stating that Sakib Hossain Sajib, 20, kidnapped the girl and took her to his residence where he kept her captive, three days before Eid-ul-Azha. Ramna police arrested Sajib from his grocery shop adjacent to his residence in Gabtala of Moghbazar yesterday noon and then informed the mobile court which convened at the police station in the afternoon. -*The Daily Star, November 23, 2010.*

KL to regularise 3 lakh workers

Malaysia has started regularising three lakh undocumented Bangladeshi workers and will hire more on completion of their regularisation, Expatriates' Welfare and Overseas Employment Minister Khandaker Mosharrar Hossain said. The workers remained undocumented since they were employed through "underhand dealings" that involved some Bangladeshi private recruitment agencies, the minister told journalists at Shahjalal International Airport on his return home yesterday after a two-week visit to Mexico, Canada and Switzerland. "We have excellent bilateral relations with Malaysia. It is a gesture of goodwill that Malaysia is absorbing the undocumented workers in its economy," Mosharrar said. -*The Daily Star, November 22, 2010.*

CID seeks 90 more days for probe

The Criminal Investigation Department here sought 90 more days for further investigation into the sensational Chittagong arms haul case. Investigation Officer (IO) of the case Md Moniruzzaman, also a senior ASP of CID, submitted a petition to the court of Acting Metropolitan Sessions Judge Golam Haider through the Public Prosecutor (PP) Kamal Uddin seeking time extension. The court would hear the petition on November 25, said a source in the court. The IO moved the petition -- three days before the expiry of previously extended time. Earlier on September 26, a Chittagong court for the tenth time granted CID two more months and extended the time till November 24 for further investigation into the case. -*The Daily Star, November 22, 2010.*

Indian premier pledges action

India's premier defended himself against accusations of inaction in a 40-billion-dollar telecoms scandal as he promised anyone found guilty in the case would be punished. Prime Minister Manmohan Singh is accused of failing to act on allegations that his telecoms minister acted improperly and he scandal has engulfed Singh, whose ruling Congress party's popularity partly rests on his "Mr Clean" image. "There should be no doubt in anyone's mind that if any wrong thing has been done by anybody he or she or will be brought to book," Singh told reporters in his first public declaration on the firestorm. -*The Daily Star, November 21, 2010.*

Dear reader,
You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: LawDesk, The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; email: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net