



## Jessore Declaration

on

*Fighting against Human Trafficking and*

*Facilitation of Rescue, Repatriation and Integration*

**R**ECOGNISING the immense human-toll of trafficking, we the government representatives and civil society actors (NGOs including the representatives of networks, international organizations and UN organizations) of Bangladesh, India and Nepal, gathered in Jessore, Bangladesh in a two-day long Cross Border Consultation, organized by Rights Jessore under the regional anti-trafficking programme Sanyukt, supported by Groupe Developpement/ Acting for Life and the European Commission from 22nd to 23rd June 2012- stand united in ensuring humane and effective rescue, repatriation and integration of trafficking survivors.

Noting the progress made in legal instruments in addressing the problem of human trafficking, we observe that ineffective implementation of laws and legal inadequacies often delay the process of rescue of trafficking victims or in establishing legal identification of victims of trafficking. Along with capacity building of law enforcing and border security forces there is a need of building a regional framework based of SAARC

Conventions, national laws, harmonization of laws and bilateral arrangements to strengthen the cross-border cooperation and joint monitoring to identify, rescue and recover the victims of trafficking in a humane and effective way.

Recognizing that the RRRRI taskforces in Bangladesh and India made a headway in making the process of repatriation easier, it is observed that there is a possibility of reducing time in terms of communication, investigation, legal procedures, administrative measures and coordination between origin and destination. In this regard, along with strengthening of the RRRRI Taskforce, coordination among RRRRI taskforces and adoption of a homogenous SOP, we call upon the governments for pursuing legal and administrative reforms to expedite the process of repatriation and to ensure justice, privacy and participation of the survivors in such a process.

Observing that often the NGOs are challenged with legal and administrative barriers in organizing timely and humane repatriation of the trafficking victims, while a significant number of victims are not appropriately repatriated by destination authorities- we recognize the need of conducting all activities regarding repatriation within the existing legal and human rights charters endorsed by each of the states and nations. At the same time, we highlight on the urgent needs of removing all legal and administrative barriers that violates the rights of the trafficking survivors to access speedy, humane and safe repatriation.

Along side recognizing the cross-border initiatives of government authorities and NGOs, we observe the inadequacies in social, cultural and economic integration often further marginalize, victimize and stigmatize the survivors and in few instances even force toward re-trafficking. In this regard, along with economic and social empowerment of the survivors in terms of promotion and access to alternative livelihood, family reunion or community-based recovery and integration- we urge that further effort is required for quick prosecution of the traffickers, de-stigmatization of the survivors, expansion of social safety-net, access to psychosocial care and curbing the influence of the pull-push factors working behind human trafficking.

Noting that the trafficking survivors have access to livelihood training/supports from shelters after being rescued at destination country, we observe that often these skills do not match the cultural and market realities of the destination country in which they are ultimately repatriated. In this regard we recognize an urgent need of making the post-rescue support services at destination countries specifically relevant and appropriate for the origin country. Moreover, a standardize case-management with support including training and psychosocial care has to be installed in all forms of shelters for trafficking survivors.

Recognizing the roles of shelters in ensuring protection, psychosocial recovery, repatriation and integration of the trafficking survivors, we further note an urgent need of standardization of care and support at these facilities with special focus on psychosocial care, participation of the survivors in decision making, effective life-skill and livelihood capacity building and policy of non-institutionalization of graduated survivors with focus on community based protection-care and assistance with access to follow-up care including family counseling (where so is appropriate). Access to mainstream services after repatriation is essential in this regard both at shelters and after reunification or community based integration.

Noting the gender discriminatory social, cultural and legal structures across the borders, we emphasize upon empowering the girls/adolescents to recover from and to be protected from gender-based violence along with changing the socio-legal context of such gender-based violence and violations.

Recognizing that justice is an inalienable right of the trafficked victim, we observe that the process of delivering justice takes time which either delays repatriation or the court proceeding is disrupted due to repatriation of the victim. In this regard, we call on the governments (including law enforcing agencies and courts across the region) to ensure continuation of court proceedings without the physical presence of the victims so that neither repatriation process is affected by legal process nor legal process is negatively impacted by repatriation.

Noting that information on victims of trafficking, traffickers and trafficking survivors (repatriated and integrated) is critical for rescue, repatriation, integration and prosecution/extradition- we call on governments and civil society organizations to systematically share information (database) in which relevant ministries, RRRRI Taskforce, law enforcing agencies, border security forces and NGOs etc. need to keep each other informed based on an agreed protocol.

Along with recognizing that the expansion of cooperation and coordination between and among governments- we observe the networking among NGOs across the borders is critical in carrying out rescue, repatriation and integration of victims of trafficking. In this regard, we call on the civil society actors to ensure systematic coordination for greater cooperation and to avoid wastage of resources through duplication. At the same time we look for greater GO-NGO cooperation both within and across the national borders.

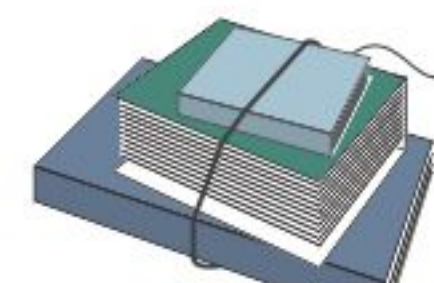
At the same time, we call upon the governments and civil society actors to work together to prevent trafficking by addressing both the supply and demand-side of the problem. Further, we call on the governments to take special measures for the child survivors of trafficking and for protecting children from the harm of trafficking.

With continual consultation, coordination and cooperation - we are confident that our concerted efforts will enable us to curb the heinous crime of human trafficking across the borders of South Asia.

This was adopted by civil societies from India, Nepal and Bangladesh in a cross boarder consultation, organized by Rights Jessore last month. To know more about it email: rightsjessore@yahoo.com.

-From Law Desk.

## LAW BOOK REVIEW



# Respecting disability rights

TASLIMA YASMIN

**T**HE disability rights movement has taken a significant place in the overall human rights activities of Bangladesh, owing to the continuous effort of the organizations working for disability rights protection throughout the last decade. As a part of such movement, Bangladesh Legal Aid and Services Trust (BLAST) has come forward with the book titled "Protibondhi Odhikar Ain: Ainjibider Nirdeshika" ("the Disability Rights Law Manual") written by Advocate Khondoker Shahriar Shakir. It is a joint publication of BLAST and the Harvard Law School Project on Disability.

This book is primarily aimed to be used as a guideline by the practicing lawyers to help them effectively deal with clients with disability. This is particularly an important initiative, as persons with disability are often left with no legal remedy due to the insensitivity of the legal system towards disability rights and also due to lack of proper legal framework accommodating the special need of the people with disability. Hence, this book very rightly attempts to examine the scope for protecting the rights of the persons with disability within the existing legal framework. In doing so it has also addressed the international standard and practices relating to the disability rights.

The book commences with addressing the issue of common negative perception towards persons with disability which negatively affects their full and effective participation in society. Based on the interviews of aggrieved persons with disability in five districts, the first Chapter has identified a number of hurdles commonly faced by them, which includes among others; absence of laws with specific attention to disability rights; less accessibility to the justice system and less participation of disability rights organizations in matters relating to ensuring access to justice.

Recognizing the difficulties faced by the persons with disability in accessing the justice system, the book then examines the international legal standards and best practices for the protection of such persons. Beginning with the reference to the rights ensured under the Convention on the Rights of Persons with Disability (CRPD), this chapter has discussed

about a number of concepts that are used in the international arena with regard to the disability rights practice. To mention few, the concept of ensuring physical accessibility to persons with disability and their reasonable accommodation into the socio-legal structure are discussed with reference to relevant case decisions of a number of foreign jurisdictions. This discussion has paved the way for evaluat-

of Civil Procedure of 1908, the Lunacy Act of 1912, the Protibondhi Kollan Ain 2001 (Disability Welfare Act of 2001) and the the Protibondhi Kollan Bidhimala 2008 (Disability Welfare Rules of 2008).

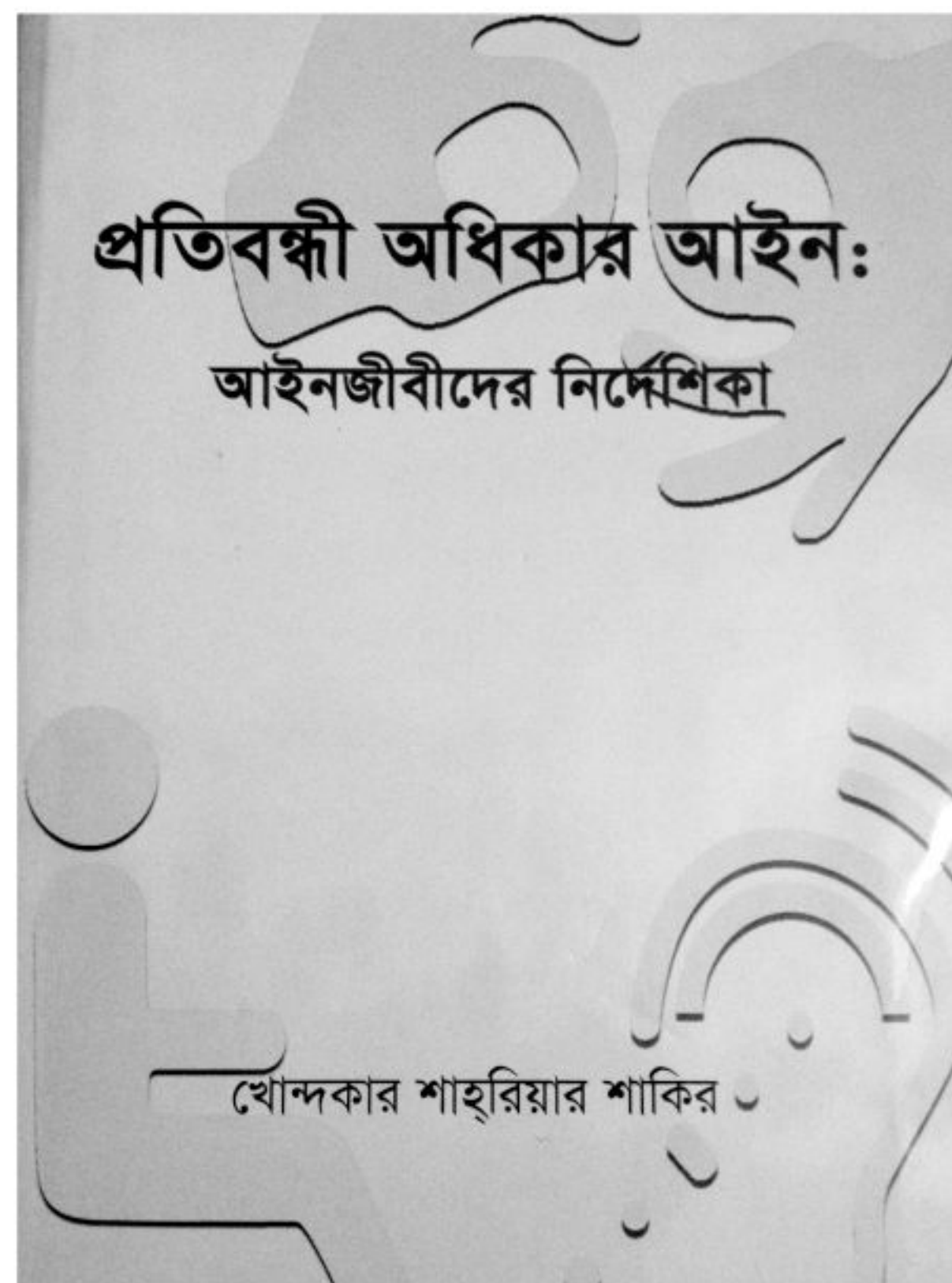
The next three chapters discuss the scope of laws and legal protection for persons with disability under Civil, Criminal and Writ jurisdictions. This is the most significant contribution of the book since these are the chapters which details the practical scope of the existing laws which has specialised provisions for persons with disability as well as the scope of the existing generalised laws and procedures and the manners in which they can be used to help persons with disability. The writer has taken a reader-friendly approach by annexing a number of model drafts at the end of the manual, for the various applications referred under the chapters relating to the three jurisdictions. This addition of draft applications is useful not only for legal practitioners but also for persons with disabilities to understand more about their own legal rights and protection.

At the end the writer has also added a chapter on how to form associations or organizations under the existing laws of Bangladesh keeping in mind the need for an institutional structure for better protection of disability rights. Another helpful feature of the manual which makes it an absolute must-have for disability rights lawyers is its compilation of the laws that are specifically required for disability rights practices. Also the inclusion of a list of appropriate words to be used for addressing persons with disabilities is noteworthy.

Above all, this manual is an excellent attempt for bringing together the disability rights practices both within and outside our own jurisdiction. Also this is a helpful guideline written in an easily understandable language to reach out those who are battling for ensuring real justice to persons with disabilities.

Although evaluating the appropriateness of our legal framework is beyond the scope of the book, yet it has successfully identified the vacuums within which protection of the rights of persons with disabilities remain a challenge for the disability rights lawyers.

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ing our own legal framework for protecting persons with disabilities and identifying scope for incorporating the best practices.

From the third chapter the book focuses on the domestic laws and practices and begins with listing the provisions of those laws that specifically provides for matters relating to persons with disabilities. For instance, the provisions relating to evidence of persons with mental disability and persons suffering from speech and hearing disability are mentioned in the Evidence Act of 1872. The laws listed in this chapter also include the Contract Act of 1872, the Code of Criminal procedure of 1898, Code



## YOUR ADVOCATE

*This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.*

### Query

I gave birth to a baby on 20th May 2012. The baby was born and when I saw her the first time, the doctors told me she was a normal baby with no recognisable problems. But then on the night the baby was born, I saw the nurses give her some injections. She has been sleeping since then and the doctors now differ from what they said when she was born and they are not providing me with enough information as to why my baby was given the injection and why she is asleep for so long. Is there any legal action that I can bring against the relevant persons?

Rubi Rai,  
Manikganj

### Response

I would like to thank you very much for your query. From the fact it appears that your problem is related to medical negligence. In Bangladesh, there is no specific legislation to deal with negligence of doctors. However, negligence is covered under the Law of Tort and hence the doctors may be rendered with tortious liability for negligence and also held vicariously liable for the negligence of the nurses. Unfortunately, in Bangladesh the practice of claiming compensation for wrongful treatment under Law of Tort is not much popular. Therefore, the Courts are not much prepared to entertain such cases and the lawyers are often reluctant to bring such cases.

Apart from law of Tort, the Penal Code has also provided for bringing an action against anyone for causing death by way of negligence. From your fact, it appears that your newborn is still alive but chances of any harm inflicted by negligent pushing of the injections cannot be ruled out as the doctors are inconsistent with their wordings and your newborn has been in sleep which is



unnatural indeed. Therefore, you may consult a lawyer and serve a Legal Notice to the Hospital authority for not providing you necessary information and also challenging their activities which according to you are responsible for your newborn's unnatural sleeping. You may also go before the Hon'ble High Court Division and file a Writ Petition in this regard. This may be possible as in recent times; the Hon'ble High Court Division has come forward and issued rulings on such incidents asking the hospital authorities as to why compensation is not payable. It is worth mentioning that in recent times, cases have also been filed against such allegedly negligent doctors causing death of patients and trial of some the cases have also commenced.

As the alleged incidences of negligence by the doctors are increasing alarmingly, it is of paramount importance to enact a legislation dealing with such cases of negligence comprehensively. Being human beings, doctors may commit error of judgment but they cannot avoid responsibilities in the light of the duty of care owed to the patients. I hope you will have answer to your query from the aforesaid opinion.

For detailed query contact: omar@legalcounselbd.com.



## LAW WEEK

### ICT-2 allows testimony of PWs in camera

The International Crimes Tribunal-2 on July 12, 2012 allowed a prosecution's appeal for recording statements of two women witnesses against war crimes suspect Jamaat-e-Islami leader Abdul Quader Mollah in camera with some directions. The tribunal fixed July 17 for recording the statements of the witnesses, who are the members of a victim family of 1971 Liberation War. The tribunal said it gave the permission as the witnesses belong to a respected Muslim family who intended to disclose the incidents of sexual violence and murder committed during the 1971 Liberation War. - *The Daily Star online edition July 12 2012.*

### Limon charged, secretly

Limon Hossain, the juvenile who was maimed by Rab shooting in Jhalakathi on March 23, 2011, has secretly been charge sheeted in the second case against him in connection with obstructing law enforcers from performing their duties. Ironically, the investigation into the case lodged by Limon's mother against six Rapid Action Battalion (Rab) personnel with Rajapur Police Station on April 10, 2011 has not been completed in 14 months. Sub-Inspector Ariful Islam, investigation officer of the case lodged by Rab with Rajapur police on March 23, 2011, submitted the charge sheet to Senior Judicial Magistrate's Court of Jhalakathi on July 1, 2012. Nusrat Jahan, magistrate of the court, fixed September 2 for hearing the defence. - *The Daily Star July 10 2012.*

### HC directs govt to produce boy

The High Court (HC) has directed the government to produce an around 10-year-old boy, who has been reportedly kept detained in a safe home in Gazipur in connection with a rape case, before it on July 18 to examine the legality of his detention. A report published on Bangla daily Jugantor on July 4 states that the child was arrested on June 17 in connection with the rape case filed with Begumganj Police Station under Nari-o-Shishu Nirjaton Domon Ain, 2000. In response to a writ petition, the HC on July 09 also issued a rule upon the government officials concerned as to why the child's detention should not be declared illegal as he is aged below 12 years and has not attained sufficient maturity to judge the nature and consequence of his conduct. - *The Daily Star July 11 2012.*

### 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: Law Desk, The Daily Star 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: