

RIGHTS CORNER



# Rights of the children deprived of family care

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BA NGLADESH is one of the earliest signatories of UNCRC and has taken a number of legislative and administrative measures to realise the rights enshrined in the convention. "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation"-said in Article 4 of the UNCRC. However, there is no comprehensive national legislation governing the rights of children in Bangladesh. Provisions related to children are spread across various different laws, many of which predate the Convention on the Rights of the Child (CRC). Consequently, provisions are not always consistent with the rights outlined in the CRC.

It appeared in the newspaper (The Daily Star/ April 18, 2012) that a leading Human Rights Lawyer sued Ex-DIG and his wife for stealing children for the purpose of trafficking. Perpetrators made every attempt to obstruct justice. The seven children had hit the headlines in 2006 as ex-DIG Anisur Rahman claimed paternity of them. He said that they are 'septuplets'. Interestingly, he

also had seven more children. Notably, investigation officer gave final report requesting the court for the acquittal of the accused. The court, however did not accept the police report following a Naraji submitted by the plaintiff.

Under Section 169, 170 and 173 of The Code of Criminal Procedure of 1898 (CrPC), police gives the final report after completing the investigation showing the result of the investigation. Under Section 169 of CrPC, the report is made when it appears to the officer-in-charge or the police officer making the investigation that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate. Under Section 170 of CrPC, the report is made when it appears to the officer-in-charge or the police officer making the

investigation that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate.

Section 173 of CrPC contains general directions relating to both. Section 173 does not contain the term 'charge-sheet' or final report. A police report in which no accused is recommended to be prosecuted is ordinarily known as final report. On the other hand, police report recommending the accused for trial is called charge-sheet. If the police submit a final report, the magistrate may accept it or reject it. After rejecting the final report, s/he may order for



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further investigation. If the magistrate accepts it, the aggrieved informant can file a naraji petition in the court. Naraji petition is considered as a complaint and the court if upon examination of the complaint or other witnesses, if any, is satisfied, may issue process upon the accused or may direct inquiry into it by another magistrate.

Due to DNA test, it has been possible to unearth the fact. On the basis of this test, the High Court (HC) earlier ruled that former deputy inspector general (DIG) of police Anisur Rahman and his wife Anwara

Rahman are not the biological parents of the "septuplets" rescued from their house. Dhaka Medical College (DMC) authority was responsible to carry out the tests in the DNA Lab under the supervision of the SC authorities.

Judge of the Fourth Special Tribunal for Prevention of Women and Children Repression sentenced the DIG and his wife to 31 years rigorous imprisonment each for stealing seven children and keeping them in their custody for trafficking abroad. Though perpetrators have been awarded punish-

ment, there are still unfinished tasks. Ex-DIG is still absconding justice and there is hardly an attempt to establish parental identities of children. It is the duty of state to help children in this regard.

"Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity"- said in Article 8(2) of the UNCRC. Rights of the child include right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. Though the court gave verdict against the accused, children is still unaware of their parental identities and the state needs to help them establishing family identity.

What is the other option if it is not possible? There is guidance in the CRC for state party. It has been stated in Article 20 "A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State". Alternative care include foster placement, kafalah of Islamic law and adoption. Would state party and other duty bearers come forward to facilitate the process?

The writer is a human rights worker.

## CRIME & PUNISHMENT

### Offences by or relating to public servants



favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(c)A, a public servant, induces Z erroneously to believe that A's influence with Government has obtained a title for Z and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section. Under Section 162, whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Government or Legislature, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Under Section 163, whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Government or Legislature, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

#### Illustration

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust, - are not within this section, inasmuch as they do not exercise or profess to exercise personal influence. Under Section 164, whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### Illustration

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Source: Penal Code by L.Kabir.

Under Section 161 of the Penal Code, whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or for bearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Government or Legislature, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Explanations-"Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating but he is not guilty of the offence defined in this section.

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money. "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which is permitted by the authority by which he is employed, to accept.

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

#### Illustrations

(a)A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(b)A, holding the office of Consul at the Court of a foreign Power, accepts a lakh of taka from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the Government of Bangladesh. But it does appear that A accepted the sum as a motive or reward for generally showing

## LEGAL MAXIM



**Non facias malum ut inde veniat bonum** - You shall not do evil that good may come of it.

**Non jus, sed seisin, facit stipitem** - Not right, but seisin makes a stock (from which the inheritance must descend).

**Non refert quid notum sit iudici si notum non sit in forma iudicii** - It matters not what is known to the judge if it is not known judicially.

**Non sequitur** - An inconsistent statement, it does not follow

**Nullus commodum capere potest ex sua injuria propria** - No one can derive an advantage from his own wrong.

**Nullus recedat e curia cancellaria sine remedio** - No one should depart from a Court of Chancery without a remedy.

**Omne sacramentum debet esse de certa scientia** - Every oath ought to be of certain knowledge.

**Omnia delicta in aperto leviora sunt** - All crimes (committed) in the open are (considered) lighter.

**Omnia praesumuntur contra spoliatoem** - All things are presumed against a wrongdoer.

**Omnis innovatio plus novitate perturbat quam utilitate prodeat** - Every innovation disturbs more by its novelty than it benefits by its utility.

**Optima legum interpret est consuetudo** - The best interpreter of laws is custom.

**Optimus interpret rerum est usus** - The best interpreter of things is usage.

**Pacta privata juri publico non derogare possunt** - Private contracts cannot derogate from public law.

**Pari passu** - On an equal footing.

**Partus sequitur ventrem** - The offspring follows the mother.

**Pater est quem nuptiae demonstrant** - The father is he whom the marriage points out.

Source: Inrebus.com.



## 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

What is the proper procedure for deed registration? If Deed registrar refuses to registrar my deed what legal action I can take against him. In that case where can I go for registration?

Sagor Ahmed  
Mohammadpur, Dhaka

#### Response

I would like to thank you very much for your queries. The Registration Act 1908 deals with the registration of various types of instruments. The 1908 Act has made it compulsory for registering certain documents and it has also made registration optional for some other documents. Non-registration of documents required to be so shall render such documents inoperative to create, declare, assign, limit or extinguish any right, title or interest in relation to the immovable property.

As far as procedure for registration is concerned, application has to be made before the Sub-Registrar within three months from the date of execution of such document. The document has to be presented along with the executor or by any of his agent or representative authorized by a duly executed Power of Attorney to that effect. If the delay of making the application does not exceed four months, the document may be registered by way of paying a fine not exceeding ten times of the registration fee.

Upon the receiving the application, the Sub-Registrar shall enquire as to whether such document has really been executed by the person purporting such execution and satisfy himself as to the identity of person appeared before him as the executor. In case where appropriate, the Sub-Registrar shall satisfy himself as to the right of any representative or agent to make such representation.

Where the Sub-Registrar refuses an application, he has to make an order to that effect and record his reasons in prescribed manner. An Appeal may be preferred against the order of the Sub-Registrar refusing registration within 30 days from such order before the Registrar. Where the Registrar orders for registration of the documents, it has to



be duly presented for registration within 30 days of the Registrar's order and the Sub-Registrar shall obey the same and accomplish registration within a practicable time.

However, where the Registrar refuses the appeal, it is possible to institute a suit for Decree directing such documents to be presented for registration within 30 days from the passing of such Decree at the civil court within whose jurisdiction the Sub-Registry office is situated.

I hope you will have answer to your queries from the aforesaid opinion.

For detailed query contact: omar@legalcounselbd.com.

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