



Welcoming Children Act 2013

SHAT SHAMIM

CHILE'S Nobel Prize winning poet, Gabriela Minstral said in one of his speech "We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait, the child cannot, right now is the time his bourses are being formed, his blood is being mode and his senses are "being developed". To him, we cannot answer tomorrow. His name is "Today". Thus children being an important asset, every effort should be made to provide them equal opportunities for development so that they become robust citizens physically fit, mentally alert and morally healthy endowed with the skills and motivations need the societies. The Neglected children and juveniles fall an easy prey to criminality. The adolescents claim the highest share in violence due to dashing nature, lack of foresight, uncritical enthusiasm, physical strength, endurance and desire for adventure. Though the juveniles are innocent, curious, full of hope, belongs to thrill, aspirations, ambitious but they are also vulnerable. As juveniles are the member of vulnerable section, utmost sincerity and best care should be provided to them through laws and policies. The edifice of juvenile justice system in Bangladesh is founded on the Children Act 1974 and this is the sole instrument to deal the juvenile delinquency. Unfortunately, most of the provisions of the Children Act, 1974 and the Children Rules, 1976 are not exercised



in Bangladesh. The Children Act, 1974 suffers some inherent weaknesses and after the 40 years it has lost its applicability. Even The aims and standards maintained in the local legislation in Bangladesh do not in every aspect show the resemblance of the standards and aims contemplated by the International Conventions. Thus to amend the children Act was the demand of time to met the present situations specially regarding the age limit of juvenile, insufficient child court, inefficacious post trail treatment system. An updated children Act urged by the legal experts and NGO's for long time. Finally last week the cabinet has given their final approval for Children Act 2013.

According to Children Act, 1974 the age limit of juvenile is 16. Interestingly,

In Bangladesh there are number of laws which defined a child. These laws are conflicting regarding the age of children. Some defined a child as a person below 12 years, others state below 14 years and some defined them as a person below 18 years of age. The United Nations Convention on the Rights of the Child defined child as any person under the age of 18 years unless under the law applicable to the child, maturity is attained earlier. Now The Children Act 2013 ensures those below the age of 18 would be regarded as children.

Beside this, a very encouraging provision has been inserted in the Children Act, 2013, under the new law Child Court will be set up at every district under the law. Children Welfare Funds will be constituted at the

national, district and upazila levels and desk on child affairs will be formed at each police station headed by a police officer. Moreover it includes, cruelty towards the children will be punished by five years in jail and a fine of Tk 100,000, the acts of hitting, neglecting or leaving a child in an insecure condition will be deemed as 'torture'. Again, if someone forces or encourages a child to beg or leads him to do something illegal, the person will get a five-year jail term and slapped a fine of Tk 100,000. If a custodian gets intoxicated while handling a child, it will be considered a crime and that person will be sentenced to one year in jail and fined Tk 50,000. If someone uses or compels a child to carry or transport drugs or illegal contraband, he will be put behind bars for three years and fined Tk 100,000 If anyone encourages a child to gamble, that person will be jailed for up to two years and fined Tk 50,000. The Secretary said if anyone assists a child flee his home, he will be sentenced to one year in jail and fined Tk 50,000.

In addition to, the Act elaborately mentions about measures for care of children, including institutional care for the deprived ones and it will be considered a crime if the children are forced to attend any rallies.

In essence, upcoming Children Act will cover lacunas of earlier one. Nevertheless, ultimate success of the Act will depend on the proper implementation and now at least we can hope for so!

The writer is senior Lecturer of Law, BGC Trust University Chittagong.



LAW REPORT

HUMAN RIGHTS MONITORING REPORT- FEB 2013

Extra judicial killing continues

ACCORDING to the Human Rights monitoring report- February 2013, prepared by 'odhikar' an organisation working as a human rights defenders in Bangladesh, 37 people killed extra judicially. They provided a clear structure of the number killed in various occasions is given below.

In February 37 persons were killed extra judicially, allegedly by RAB and Police. The 28 killings occurred during the movement started in Shahabag, and in related incidents.

Shot to death: Among the 37 persons were killed extra-judicially, 28 persons were shot to death by police.

Crossfire/ encounters/ gun fights: In February 2013, according to information compiled by Odhikar till 4:30 pm on 28 February, 37 persons were killed extra-judicially. Among the crossfire/ encounters/ gun fights, seven were killed in 'crossfire/ encounters/ gun fights'. Among the deceased, four were allegedly killed by Rapid Action Battalion (RAB) and three by the police.

Beaten to death: Among the deceased, one person was beaten to death by police.

Tortured to death: Among the deceased, one person was tortured to death by Detective Branch (DB) police.

Identities of the deceased: Of the 37 persons who were killed extrajudicially, 17 were Jamaat-Shibir activists, three were members of other Islamic parties, one was a BNP activist, one a garment factory worker, two traders, a security guard, a college students, a madrassah student, a farmer, one was a youth; one was a vegetable vendor; and seven were alleged criminals.



Public lynching continues

In February 2013, eight people were allegedly killed due to public lynching. Many people are killed by mob violence in various places in the country. Odhikar believes that due to the weak criminal justice system, the tendency of taking the law into one's own hands is increasing, as people are losing their confidence and faith in the police and judiciary.

Imposition of Section 144 of the Cr.PC

According to Odhikar's statistics, in February 2013, a total of 10 instances of the imposition of Section 144 of the Cr.PC by the local administration, were recorded across the country; mainly to stop political gatherings and rallies from occurring.

For example, on February 8, 2013 Alinagar Union unit Chhatra Dal called a meeting at Kailganj field in Kalkini upazila under Madaripur district. The local Awami League, Jubo League and Chhatra League of Alinagar Union announced a meeting to demand the hanging of Abdul Quader Molla at the same place and time.

As a result, the local administration imposed Section 144 of the Cr.PC.

Odhikar believes that stopping peaceful public gatherings by imposing section 144 is interference on democratic rights and contrary to the Constitution of Bangladesh. The Government must stop declaring 'counter' programmes of the ruling political party in order to obstruct programmes of the Opposition and cause the imposition of section 144.

Source: Odhikar, Human rights monitoring report February 1 - 28, 2013. For further information visit www.odhikar.org



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 have a query that child's & husband,s right to the woman,s property .my mother had died 3 years ago & left two children me 28 years old and my youngest sister 25 years old married and my father is 60 years old .My mother had 6 acres land & a building on that land .So I want to know that by the Muslim Sariah law in Bangladesh how much each of us can get share from her property . Earlier, My mother got this property from her father.

Anonymous.



Response

I would like to thank you very much for your queries. Your queries are concerning inheritance of property. From your queries it appears that you are a Muslim and as such the distribution of property is governed by the Muslim law of inheritance. As far as the distribution of your mother's property is concerned, her successors have already become the co-owners of the property following her death as the right to own such properties has been automatically triggered with the death of your mother.

As far as the distribution of the property is concerned, the successors of your mother inherit the property as per the shares fixed for a particular category of successor under the Muslim law of inheritance. However, it has to be kept in mind that in Muslim law, daughters are entitled to half of the share to any property compared to the sons. Accordingly, your father is entitled to 25% of your mother's property and you along with your sister are entitled to 50% and 25% of the property respectively in the ratio of 2:1.

It is advisable to amicably distribute your mother's property by way of a registered partition deed so that each of them can mutate their respective names against their respective portions of properties later on. On the contrary, the successors of your mother may have to file a partition suit to distribute the property that will result into wastage of valuable time and cost. I also advice you to procure a succession certificate specifying the names of the successors therein.

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

For detailed query contact: omar@legalcounselbd.com.



LAW WEEK

Counsels for Alim fined for absence

The International Crimes Tribunal-2 on February 27 fined the defence of BNP leader Abdul Alim for their repeated failure to appear before the court and repeatedly seeking adjournment without "valid grounds". The three-member tribunal led by Justice Obaidul Hassan fined the defence Tk 2,000 after two conducting counsels, who used to cross-examine the prosecution witnesses, remained absent on three consecutive dates. The court asked the defence to deposit the fine money through treasury receipt "under the respective head from his own pocket by March 4" and submit a compliance report. February 27 was fixed for recording cross-examination of Dilip Kumar Chakrabarty, 11th prosecution witness in the case against Alim. The prosecution, the witness, the accused and other defence counsels were present at the courtroom. Earlier on June 11, 2012, the tribunal framed 17 charges of crimes against humanity against Alim including genocide and murder of Bangalee civilians and burying people alive. As many as 11 prosecution witnesses have so far testified since August 6, 2012. - *The Daily Star February 28 2013.*

3 to die for killing ATN videographer

A Dhaka court on February 26 sentenced three muggers to death for killing Shafiqul Islam alias Mithu, senior videographer of ATN Bangla, in 2010. The convicts are Md Sujan, Md Ratan and Md Raju. Mithu, 40, was found dead at Mirpur-Uttara embankment in Rustampur, on the outskirts of the capital, on May 9, 2010. Judge Md Akhtaruzzaman of the Third Additional Metropolitan Sessions Judge's Court handed down the verdict in a crowded courtroom in presence of the convicts. The convicts can appeal challenging the legality of the sentence within seven days from the day the judgement copy is received. Earlier, the prosecution and the defence completed their arguments and the court recorded statements of 20 out of 36 prosecution witnesses including complainant of the case. According to the prosecution, Mithu, a resident of Madhyapara, fell victim to muggers while returning home by a rented microbus from his office at Karwan Bazar on May 8, 2010. The muggers boarded the vehicle in guise of passengers. - *The Daily Star February 27 2013.*

Trial of 46 opposition men resumes

A Dhaka court on February 25 resumed the trial of 46 opposition leaders, including BNP acting secretary general Mirza Fakhru Islam Alamgir, after a six-month hiatus for their alleged involvement in an arson attack. In response to a writ petition, the High Court on August 6 last year stayed proceedings of the case filed with Tejgaon Police Station in connection with torching of a bus near Prime Minister's Office during hartal hours of April 29 of that year. Mirza Fakhru filed the petition, challenging the legality of the trial court's jurisdiction to try the case against them. Later, the Appellate Division of the Supreme Court vacated the HC stay order and directed the trial court to resume the case's proceedings. In line with a summons, Fakhru and 34 other accused appeared before the court on February 25. Metropolitan Magistrate Harun-or-Rashid passed an order on the complainant of the case to appear in the court on March 28 to give an account of the arson. - *The Daily Star February 26 2013.*

HC judge to face investigation

President Zillur Rahman on February 25 ordered formation of a Supreme Judicial Council to investigate alleged misconduct of High Court judge Mizanur Rahman Bhuiyan. The law ministry sent the presidential order to the Supreme Court registrar for forwarding it to the chief justice. Allegations of misconduct were raised against Justice Mizanur after he distributed copies of a February 17 newspaper report among the judges of the High Court and the Supreme Court. The report, published by the daily Inqilab, terms slain Shahbagh activist Ahmed Rajib Haidar a murad (non-believer), citing alleged blog posts by him. Rajib was hacked to death near his Palash Nagar residence in the capital's Pallabi on February 15. The Supreme Judicial Council comprising the chief justice and two other senior most judges of the SC investigates allegations of misconduct of any judge and makes necessary recommendations to the president. Justice Surendra Kumar Sinha and Justice MA Wahhab Miah are now the senior most judges, next to the CJ. This will be the second such council to probe allegations against an HC judge. - *The Daily Star February 26 2013.*

Kamaruzzaman's War Crimes Trial

ICT-2 closes prosecution witness' cross-examination. The war crimes case against Muhammad Kamaruzzaman reached a new stage on February 24 when the International Crimes Tribunal-2 closed the cross-examination of the last prosecution witness for repeated failures of Kamaruzzaman's counsels to appear before the court. The three-member tribunal led by Justice Obaidul Hassan took the stern stance as a senior defence counsel, who used to cross-examine the prosecution witnesses, remained absent for three days, during the cross-examination of this witness. The tribunal, the second of two set up to deal with war crimes committed during the Liberation War, also asked the defence counsels to start adducing their witness from February 25. After recording the testimonies of the defence witnesses, the tribunal will hear the closing arguments of both the defence and prosecution before delivering the verdict, as per the related

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