

**LAW ANALYSIS**

# ELDER ABUSE

## In search for legal strategies



MOHAMMAD ABU TAHER

**B**ANGLADESH'S elderly population is increasing rapidly. According to the national census of 2011, Bangladesh has a population of about 150 million people, and 7.4% of its population is elder. This percentage of elderly population is projected to increase to 8.0% in 2020, 11.9% in 2035 and it will be an ageing nation when it reaches 17.0% in 2050. Traditionally, elderly people are revered in

Bangladeshi society. However, along with changes to the traditional social institutions, these values of deference and respect of the elderly are also changing rapidly due to the impacts of modernisation and urbanisation. The numbers of nuclear and small size families are increasing while the traditional status and role of the seniors have at the same time reduced.

Elder abuse covers two broad categories—abuse and neglect. Abuse is a positive act, commonly an act of commission, and there is active involvement or interaction on the part of the abuser. Neglect, by comparison is used to describe acts of omission, specifically those with a passive involvement of the abuser. The easiest and most obvious type of abuse is physical abuse, while other types of abuse are less obvious and require further investigation and examination, an example of which being financial abuse.

In the society of Bangladesh, elder abuse occurs with little recognition or response. Until recently, this serious social problem is hidden from the public domain and considered mostly a private matter. One way in which elder abuse may be reduced or monitored is to ensure that the rights of older persons are protected by laws.

Under the Contract Act 1872 and the Law of Torts, any mistreatment and failure in caring may be subject to a civil suit. The cause of action may be taken against the management

of an institution for a breach in contract to care, even though there might not be a written contract; and damages can be claimed for the wrong done. It is required to bring the institutions (which are providing care to the elders) under legal purview and in that effort to alleviate elder abuse, there is a need to seriously taking cognisance of the relevant provision in the Penal Code under which a breach of contract may attract criminal liability.

Elder abuse is also regarded as domestic violence. In Bangladesh, the Domestic Violence (Prevention and Protection) Act, 2010 recognises violence towards elderly, and defines it as a breakdown in social relations between an older person and his or her family. While this legislation stands out as an important adult protection law it, nonetheless, loses out as an enforcement mechanism, thus limiting its utility as an intervention into adult abuse cases. Even though, the government has enacted the Act but the application of this Act is not strongly visible in the society. Moreover, only older women may take action under this Act and lodge a report.

The most significant Act to ensure the wellbeing of the elders is the recently enacted Parents' Maintenance Act, 2013. This is the first legislation of its kind which not only recognises the right to maintenance of the parents but also the grandparents in the absence of parents from both father and mother side. The Act is considered a signifi-

cant improvement to ensure the wellbeing of the elders and prevent them from abuse especially financial abuse but, the Act is not fully successful due to some inherent loopholes. For example, the Act does not specify the amount of maintenance. This creates problems and confusion in the society like Bangladesh where the economic discrimination and income disparity is enormous. Besides, there is nothing mentioned in the Act about the maintenance for the parents and the grandparents who do not have any children. Further, the Act only states reasonable amount but did not explain the term reasonable. Additionally, the awareness program about this Act is relatively sparse. As a result, until recently, only a few complaints under this Act have been filed under this Act.

Bangladesh faces an uphill task in addressing elder abuse. Therefore, the first priority would be to have a comprehensive legal framework or regime followed and supported by designated agencies or institutions for implementation purposes. Certainly, the best way forward to show the real and full commitment to the issue at hand is to enact a model law like the Elder Justice Act 2010 of the USA. The U.S. Congress has enacted this legislation to address and overcome the issue elder abuse, neglect and exploitation through a comprehensive legal regime and mechanism.

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**HUMAN RIGHTS RIGHTS ADVOCACY**

# Health and human rights

MD. KAMRUL HASAN ARIFF

**T**HE right to the enjoyment of the highest attainable standard of physical and mental health is not a new concept. Internationally, it was first articulated in the 1946 Constitution of the WHO, whose preamble defines "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". The preamble further states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."

The right to health means that States must generate conditions in which everyone can be as healthy as possible. The right to health does not mean the right to be healthy. The right to health has been enshrined in numerous international and regional human rights treaties as well as national constitutions all over the world. All countries which are Members of the United Nations may become mem-

bers of WHO by accepting its Constitution. Now it has 194 parties, Bangladesh is also a member state.

Under Article 25 of the Universal Declaration of Human Rights states that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services". Moreover, the right to health is also protected in other international human rights instruments including article 12 of the International Covenant on Economic, Social and Cultural Rights.

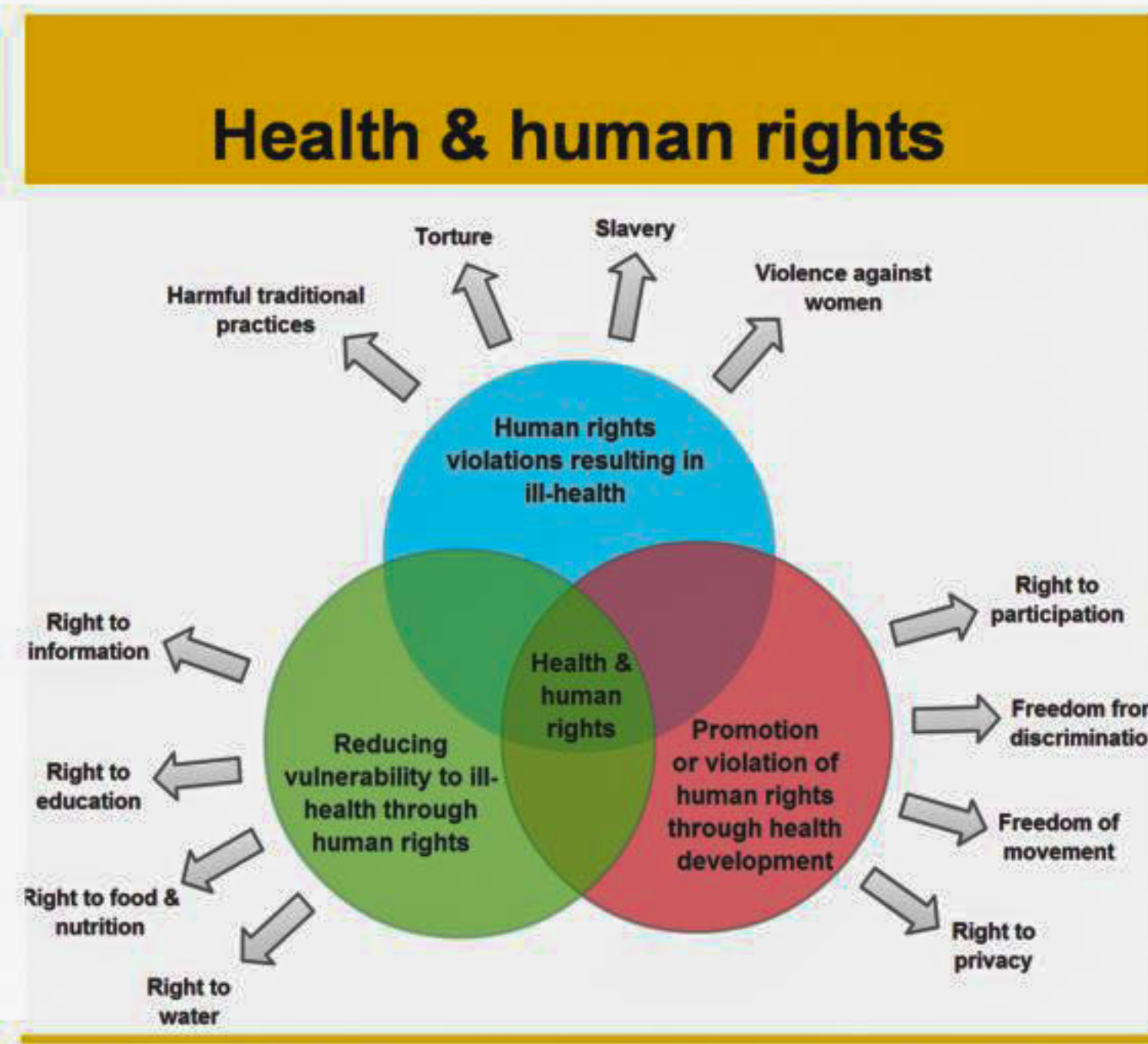
The right to health is also recognised in several regional instruments, such as the African Charter on Human and Peoples' Rights, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador, and the European Social Charter, the American Convention on Human Rights and the European Convention for the Promotion of Human Rights and Fundamental Freedoms contain provisions related to health, such as the right to life, the prohibition on torture and other cruel, inhuman and degrading treatment, and the right to family and private life.

According to Article 18 (1) of the Constitution of Bangladesh stated that; The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health.

Human rights obligations are defined and guaranteed by international customary law and international human rights treaties, creating binding obligations on the States that have ratified them to give effect to these rights. The Committee on ICESCR has underlined that; States should at a minimum adopt a national strategy to ensure to all the enjoyment of the right to health, based on human rights principles.

Finally, the right to health or the right to health care is recognised in at least 115 constitutions. The right to health is relevant to all States; every State has ratified at least one international human rights treaty recognising the right to health. The UN Charter declares that promoting respect for human rights, and international human rights treaties envisage a particular role for UN bodies and specialised agencies in their implementation.

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**FOR YOUR INFORMATION**

### From farm to plate Make food safe

- Access to sufficient amounts of safe and nutritious food is key to sustaining life and promoting good health.
- Unsafe food containing harmful bacteria, viruses, parasites or chemical substances causes more than 200 diseases – ranging from diarrhoea to cancers.
- Food borne and waterborne diarrhoeal diseases kill an estimated 2 million people annually, including many children.
- Food safety, nutrition and food security are inextricably linked. Unsafe food creates a vicious cycle of disease and malnutrition, particularly affecting infants, young children, elderly and the sick.
- Food borne diseases impede socioeconomic development by straining health care systems and harming national economies, tourism and trade.
- Food supply chains now cross multiple national borders. Good collaboration between governments, producers and consumers helps ensure food safety.

**HOW SAFE IS YOUR FOOD?**

From farm to plate, make food safe

**MAJOR FOODBORNE ILLNESSES AND CAUSES**

- Food borne illnesses are usually infectious or toxic in nature and caused by bacteria, viruses, parasites or chemical substances entering the body through contaminated food or water.
- Food borne pathogens can cause severe diarrhoea or debilitating infections including meningitis. Chemical contamination can lead to acute poisoning or long-term diseases, such as cancer.
- Food borne diseases may lead to long-lasting disability and death. Examples of unsafe food include uncooked foods of animal origin, fruits and vegetables contaminated with faeces, and raw shellfish containing marine biotoxins.

SOURCE: WWW.WHO.INT

**Query**  
I live in the US and am a citizen of Bangladesh. I am an avid reader of daily newspapers owing to my keen interest in the well-being of our country. Recently, I came across the issue of 'mobile courts' in several articles and news. I understand that it is probably a process for instant punishment of offences. I wish to know more about such mobile courts. Any details as to areas covered, procedure, etc will be very helpful.

**Response**  
Thank you for following the newspaper. I am delighted to know that you are remaining updated with different issues of Bangladesh including that of legal developments. Your understanding of the concept of mobile courts is correct—that it is, primarily, a means of providing instant decisions/punishments to criminal offences to which the mobile court law becomes applicable, without the requirement of resorting to lengthy court procedures.

The procedure in relation to conferring of sanctions by a mobile court is encompassed in the Mobile Court Act-2009. The Act empowers Judicial magistrates and Metropolitan magistrates to take into cognizance and try an offence instantly. Such instant trials shall only apply to specific offences which are particularly mentioned in the Schedule to the Act, which are mostly simple offences. Section 6 of the Act further unambiguously states that punishment may only be conferred under this Act, if the accused confesses instantly, and punishment may include fine and/or imprisonment. If no confession is forthcoming from the accused, the mobile court shall have no authority to confer any punishment. The case shall then be referred to the appropriate court and shall proceed as per normal court proceedings.

Allow me to elucidate the same with an illustration. For

**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.*

instance, a common situation where mobile courts come into play are in regulation of the food business. A mobile team may enter a restaurant, and if a random inspection reveals existence of food that fall below the stipulated standards (e.g rotten vegetables, unhygienic environment, etc), the mobile court may impose on-spot fine upon the said restaurant within the ambit stipulated by the Bangladesh Hotel and Restaurants Ordinance-1982, and provided that the restaurant authorities admit the breach. S9 of the Act also provides for immediate realization of the fine imposed in situations where no other form of punishment, apart from the said fine, has been imposed.

Nevertheless, it is imperative to mention here that the Act does stipulate some general limitations in relation to punishment. Section 8(1) states that the mobile court can only impose imprisonment for a period not exceeding 2 years, and a period not exceeding the punishment stipulated in the Act in contravention of which the offence has been committed. The Act further leaves the avenue of appealing the decision of the mobile court by way of S13 which states that an aggrieved person may be able to file an appeal to the district magistrate against



the decision.

The Act contains a list of different offences under as many as 96 separate legislations, which can be tried by the mobile court. Other important features of the 2009 Act include the rule against double jeopardy encompassed in S10 whereby an individual, if tried and punished by a mobile court once, cannot be tried or punished again for the same offence.

The 2009 Act had given rise to a wide-ranging variety of opinions regarding the constitutionality of the same, and also regarding its effect on the separation of powers between the judiciary and the executive. Much has also been said about the implementation of such mobile courts in ensuring public safety during recent hartals and blockades. While the positive view recognises the mobile court system as a means of speedy resolution of some offences, on the downside it is argued that the system allows officers to act arbitrarily and that in the absence of instant advice from lawyers, accused persons often appear to be victims of the situation.

On a more personal note, it is my belief that the mobile court system is a cost-effective means of speedy solution of cases which would be unnecessarily time-consuming if dealt with as per the normal court procedure. In addition to being efficient and cost-effective, the system also encourages a better legislative process in general by reducing a significant portion of the plethora of cases that are referred to courts, and which in turn slow down the legal process as a whole.

I hope that the aforesaid will clarify your understanding of the concept and the operation of mobile courts in Bangladesh.

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