



# Good samaritan law, or the lack thereof

RAIHANATUL JANNAT  
**A**CCORDING to a study conducted by Bangladesh Jatri Kalyan Samity, it has been found that, in 2014 approximately 8,589 people died in road accidents. This roughly calculates up to at least one death per hour. As the numbers cannot be verified by an official databank, realistically it is probable that the death toll is much higher than what may have been reported throughout the country.

ries. The general public are awry of volunteering to save lives of those who are in dire need, simply because of the bitter experiences of being harassed in the hospital, by the police and the risk of being sued with a civil or criminal charge.

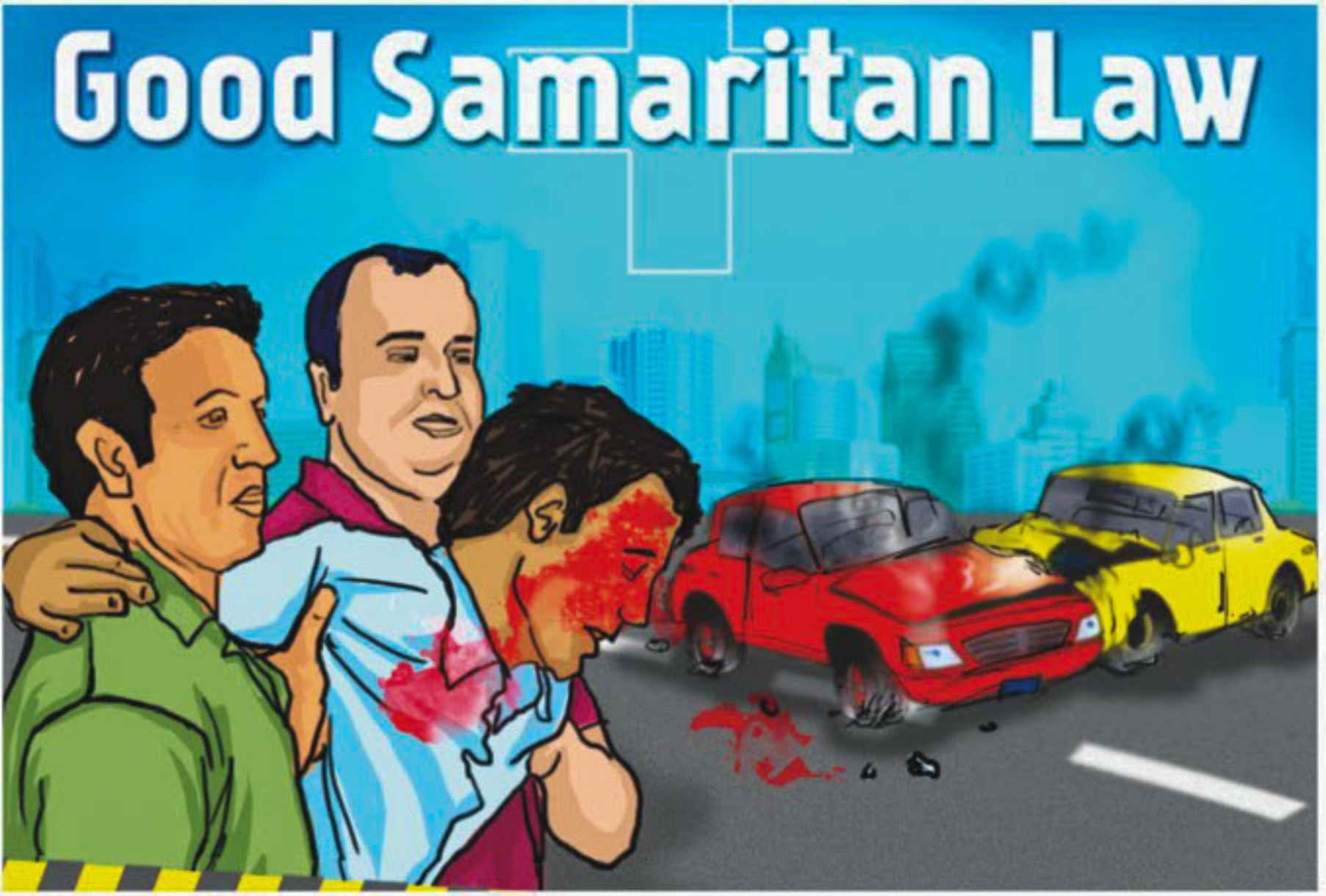
Even though the Penal Code, 1860 of Bangladesh includes a provision which provides that an act will not be constituted as an offence when it is done without consent but in good faith for the benefit of an individual, it is not wide-

reduce hesitation of bystanders for helping the ill or injured. Through the law, the benevolent bystanders are not held liable for any unintentional injury or wrongful death that occurs through such assistance.

However, it is a novel concept in south-east Asia. This year as a significant move on their part, the Supreme Court of India initiated a draft legal framework for Good Samaritan law. The panel published recommendations, which mainly indicates that the law would: (i) protect good Samaritans from procedural harassment and legal liabilities; (ii) allow good Samaritans to assist without disclosing their identity; (iii) allow witness to make official statements through affidavits; (iv) witness statements be recorded in a single hearing; (v) make first-aid training compulsory in secondary board curriculum; (vi) launch first aid-centres and ambulances within every 30 km on a national highway; (vii) introduce disciplinary action for doctors who refuse to treat road accident victims; (viii) issue obligatory regulations for hospitals on admitting accident victims, specifying that those accompanying them should not be detained or asked to pay fees; and (ix) inflict strict penalties on hospitals, in case of non-compliance. According to Save LIFE Foundation, India - such an initiative could save up to 70,000 lives a year.

As a country which is experiencing development at an incredible accelerating pace, it is likely that adoption of a similar framework will safeguard our interests further and probably save thousands of lives. Advocacy for such laws by civil societies would also create awareness among the mass and the Government, and educate them on taking the right step towards preventing untimely deaths. Furthermore while we wait for a specific law, we should not hesitate in saving lives where possible - as a single provision does exist to offer somewhat protection, until the specific statutory regulations arrive.

THE WRITER IS A BARRISTER, LINCOLN'S INN, UK



Such a high toll of death can also be attributed by poor law enforcement policies and a sheer lack of emergency medical care. According to experts, where a victim of fatal road accident receives medical assistance within an hour of the incident, their chance of surviving can be increased by up to 50%. The one hour period after the accident, is deemed as the golden hour, and it is likely that catastrophes may be averted if the victim is admitted in a hospital within that time. Sadly, the common scenario in Bangladesh revolves around - the victim abandoned on the side of the road in a serious condition with fatal bodily inju-

spread knowledge. The general public barely has access, or awareness of this single legal provision embedded within the laws of Bangladesh, and therefore it has not been successfully interpreted into our lives. The common belief is rooted in fear of persecution for being benevolent through this cause.

In North America and most European countries, a specific legal framework, called the Good Samaritan law exists. Good Samaritan laws offer legal protection to people who give reasonable assistance to those who are injured, ill, in peril, or otherwise incapacitated. It seeks to provide legal protection and thereby

**LAW NEWS** Let journalism thrive

**WORLD PRESS FREEDOM DAY 2015** Let Journalism Thrive!

Towards Better Reporting, Gender Equality, & Media Safety in the Digital Age

**T**HE United Nations commemorated World Press Freedom Day 2015 on May 3 with a moment of silence for journalists killed in the line of duty, and drew attention to the need for greater gender equality in the media and the safety of journalists in the digital age, where protection from surveillance will become increasingly important.

This year's theme was, 'Let Journalism Thrive - Towards better reporting, gender equality, & media safety in the digital age.'

UN Under-Secretary-General for Public Information, Cristina Gallach, said the commemoration event "gives us an opportunity to address two vital topics, gender equality and the safety of journalists, in the digital age, where protection from surveillance will become increasingly important."

Noting that 2015 is a historic year during which the United Nations celebrates its 70th anniversary and is "also the year when the international community must take once-in-a-generation decisions on sustainable development goals, on climate change, and on financing for development." Ms. Gallach said, "It is a fitting to reaffirm the relevance of the right to freedom of expression, without which we would not be able to achieve many of the goals for 2015."

In his remarks, General Assembly President Sam Kutesa said that in 1993, the Assembly established the Day. Some 22 years later, delegations were gathered to express our utmost respect to the many courageous men and women who brave hazardous terrain and dangerous environments to tell the important stories the world needs to hear.

"These men and women go about their critical work in often inhospitable environments. From the comfort and safety of our homes and workplaces, we can learn about important issues around the world, including some dark and troubling events," he said, stressing that journalists bridge the information gap and through that work, we learn about important discoveries and innovations shaping our world.

"Without them, we would have difficulty knowing about positive developments in the furthest corners of the world. In the same way, we would never hear the cries that are being silenced or the injustices being committed, said President Kutesa, adding, "We may never know of abuses being perpetrated, hostages being taken or lives brutally stolen."

Noting that already this year, more than 40 journalists and media staff have been killed around the world, with many more are being held hostage or simply disappeared, he said the Universal Declaration of Human Rights is clear: The freedom for all to seek, receive and impart information, regardless of borders should not be tampered with.

On the issue of safety of journalists, Kahram Haliscek of the UN Correspondents Association (UNCA) said the UN-based press corps were awaiting Security Council action on protection of journalists in conflict areas. Speaking on the issue of gender equality, George Papagiannis, Representative of the UNESCO New York Liaison Office, noted that women hold just 26 per cent of positions in media governance.

COMPILED BY LAW DESK.

## 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.**

**Query**  
 I have been working at a well-to-do insurance company for around one and half years now. For personal reasons, I wish to keep the name of this company confidential at the moment. I had been employed in the company as personal assistant of a higher official. In the past one and half-years, there was no complaint against me apart from minor day to day dissatisfaction and work rectifications. However, this month when I was about to collect my monthly remuneration, I was also provided with a letter which stated that I have been dismissed from employment owing to my underperformance. I wish to know whether I can be dismissed like this without any detailed reasons or without being given a chance to improve my performance. Any advice will be very helpful.

**Anonymous Dhaka**

**Response**  
 I understand your concern and distress. Being dismissed for underperformance is a problem that employees seem to face often these days. From your role in the organization, I assume that you will be considered as a worker. For your understanding, as per S2(65) of the Bangladesh Labour Act (BLA) 2006, 'worker' means any employee except for employees employed mainly in managerial, supervisory or administrative capacity.

As per the BLA, you can only be 'dismissed' from employment if you are considered to have committed a 'misconduct'. S23(4) of the BLA lists the followings as misconduct:

- a) Willful insubordination or disobedience, whether alone or in combination with others to any lawful or reasonable order of a superior;
- b) Theft, misappropriation, fraud or dishonesty in connection with the employer's business or property;
- c) Taking or giving bribe in connection with his or any other worker's employment under the employer;
- d) Habitual absence without leave or absence without leave for more than 10 days;
- e) Habitual late attendance;



- f) Habitual breach of any law or rule or regulation applicable to the establishment;
- g) riot, disorder, arson/torching or vandalism in the establishment;
- h) Habitual negligence of work
- i) Habitual breach of any rule of employment, including conduct or discipline, approved by the Inspector General of labour;
- j) Falsifying, tampering with, damaging or causing loss of employer's official records.

You could, therefore, only be dismissed for committing 'misconduct' if you were considered to have committed any of the above. Needless to say, 'underperformance' or 'dissatisfaction with service' does not appear in the above list and thus, you cannot be dismissed for the same. If it is alleged that you habitually neglected your work (S23(4)(h)), that too shall depend upon whether your job description and official position requires you to carry out all the duties that you have allegedly failed to do, the frequency of such neglect and many other factors. To that end, your employer shall provide you with a more detailed account of what activity/lack of activity on you part has been considered by them as underperformance to an extent that it amounts to habitual negligence of work.

Besides, your employers can lawfully dismiss you only after the formal disciplinary procedure is completed and misconduct is proved through the procedure. The

procedure includes, but is not limited to, issuing show cause notice to you allowing you time to respond; forming an inquiry committee; providing you with a chance of fair hearing and carrying out sufficient investigation to prove the misconduct. Without proving the misconduct, you shall neither be dismissed nor be subject to any other punishment.

In light of the aforesaid, I have every reason to opine that underperformance is not a misconduct and hence someone cannot be dismissed for the same. Besides, the disciplinary procedure has not been followed. In a situation where your employer is dissatisfied with our performance and was unwilling to keep you in employment, they should have done 'termination simpliciter', i.e. termination without assigning any reason. And in the situation where your employment is in fact terminated, as opposed to being dismissed, you shall duly be entitled to the payment of compensation at the rate of 30 days' wages for every completed year of service, or gratuity (if any), whichever is the higher. Furthermore, 120 days' notice or payment in lieu of notice should have been given.

I would advise you to give a written grievance notice to your employer immediately stating your grievances.

FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.

## Promoting Child Rights

### CHILDREN ABDUCTION Are duty bearers accountable?

OLI MD. ABDULLAH CHOWDHURY

**T**HE horrific story of a murdered boy got published in The Daily Star on March 16, 2015. The report entitled, "Sylhet numbed" revealed involvement of a police constable and his accomplices. One of the accomplices is also a leader of an affiliated organization of the ruling party as it appeared in the report. The prime accused was known to the child and his family as the constable used to live in their house as a tenant. It has brought forward a sensitive issue upfront that people known to child and family might be responsible for gross violation of child rights.

On the following day, abduction and killing of another boy published in the noted Bangla daily Prothom Alo (March 17, 2015). A 10 year boy in Dinajpur was strangled to death as his father failed to pay ransom. As appeared in the newspaper report, the boy was brutally tortured before abductors finally killed him. The family lodged general diary with police but it was not possible to rescue the boy alive. His uncle discovered the dead body in a nearby oat field in the village.

For children, the right to life is the chance to be able to live and have the possibility to grow, to develop and become adults. This right comprises two essential aspects: the right to have one's life protected from birth and the right to be able to survive and develop appropriately. Bangladesh is one of the earliest signatories of UN Convention on the Rights of the Child (CRC). Like other human rights conventions, right to life has been highlighted in this convention. It has been stated in Article 6(1), "States Parties recognise that every child has the inherent right to life". It has further been elaborated in the later part of article. "States Parties shall ensure to the maximum extent possible the survival and develop-

ment of the child"- said in Article 16(2).

As per the provision of the Penal Code 1860; a person who kidnaps any person from Bangladesh or from any legal guardian shall be punished with detention of either description for a term which may extend to seven years and shall also be liable to fine. Furthermore, Section 364 prescribes the punishment for kidnapping or abduction where the intention is to murder up to imprisonment for life or rigorous imprisonment for a term, which may extend to ten years and fine also.

There are further provisions of punishment for the abduction of children under the age of ten. If a person kidnaps or abducts any child under the age of ten, in order that such child may be murdered or subjected to grievous hurt, or slavery, or to the lust of any person, shall be punished with death or with imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years, and shall not be less than seven years.

However, children are increasingly facing threats from people known to them and duty bearers have largely failed to ensure protection for children. The State, through its agents, is the principal duty-bearer responsible for fulfilling the child's right to life. It has been stated in article 4 of the CRC, "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".

Will there be appropriate measures in place to protect children from abduction and killing?

THE WRITER IS A HUMAN RIGHTS WORKER.

