

**LAW INTERVIEW**

# Securing a child-friendly society is our duty

*The Honourable Justice Muhammad Imman Ali was elevated as Judge of the Supreme Court of Bangladesh, High Court Division in February 2001 and Appellate Division in February 2011. Previously, he had been Deputy Attorney General for Bangladesh from September 1998 to February 2001. On December 2014, he was honoured with the 'Juvenile Justice without Borders' International Award by the IJJO for his dedication to the protection of children's rights. He has become an inspiring example of the defence of children's rights for many countries in the Asia-Pacific region.*

**What sparked your interest in children's rights?**

In 2006, I presided over a Division Bench in the High Court Division of the Supreme Court of Bangladesh. During the course of hearing a death reference case involving a 15 year old who was sentenced to death for the rape and murder of an eight year old girl, we realised that there was almost total ignorance of the provisions of the Children Act, 1974. There was apparent hostility towards children who misbehaved and were alleged to have committed crimes. The case was one of no legal evidence, because the confessional statement was found to have been extorted by police torture as admitted by the victim girl's father. There was no other evidence against the accused. So, instead of writing a two page judgement acquitting the boy, I decided to expound the law on juvenile justice and included reference to international instruments and norms as well as decisions from other countries. I also started training judges, prosecutors, advocates, probation officers, social workers and others working on cases involving children. Based on my lectures, I compiled a book as guidance for actors in the juvenile justice arena.

**What are the main factors you see contributing to the vulnerability of children in Bangladesh?**

The most prevalent factor causing vulnerability is the perpetual cycle of poverty, which is linked also with the lack of education. Socio-cultural factors, such as patriarchy makes girls particularly vulnerable. Children from broken families, those affected by natural disasters such as cyclones, floods, river erosion, drought etc., are forced to leave their original homes and find themselves without shelter and means of support. Orphans and children of single parents are also naturally in a vulnerable situation. Either parent's remarriage exposes the child to violence from and deprivation by the non-biological parent. Trafficking of children leads to their vulnerability.

**What are the main difficulties you have encountered in the application of international standards for children within the Bangladeshi justice system?**

The biggest hurdle has been the hostile attitude of adults towards children who do not conform to the perceived notions of good behaviour. The vast majority of the people who matter are still of the "old school" of thought



who believe that children must be given a good beating for them to understand the difference between right and wrong. Those in the higher echelons of society do not care to stop and think about the circumstances of the children who develop criminogenic behaviour. The judges who sit to hear the cases of alleged offenders are by and large all from the middle and higher social and economic strata.

The lack of awareness of the beneficial provisions enshrined in the international instruments in respect of children, and ultimately for the uplifting of any society and the common reluctance to try anything new is a huge barrier to the application of international norms.

**Which are the main trends in terms of juvenile justice reform?**

Changing the law to adopt the provisions of international

instruments is the new trend. We now have the Children Act, 2013 which incorporates the provisions of the Convention on the Rights of the Child (CRC) which are relevant to children in conflict with the law as well as those who come into contact with the law as victims or witnesses. New Rules are in the draft stage. These will allow implementation of the concept of diversion from the time of arrest and beyond. Other alternative measures will be put into action. Alternatives to detention will have to be considered as part and parcel of the newly introduced concepts. There will be better and well-monitored facilities for custody of children who cannot be given to the custody of family or relatives.

**What improvements have you seen in ensuring due process of the law for young people since the enactment of the Children Act in 2013? How important is it to the protection of children in contact with the law?** Rules which are needed to implement some of the newly enacted provisions are in the draft stage. Nevertheless, the statute has enabled functioning of specific Children Courts, one in each district, compared with only two specific juvenile courts which existed under the old law. Although there are teething problems, hopefully there will be quicker disposal with dedicated courts specifically for children. The provision with regard to mandatory legal representation before a case can proceed if the Court is already in place.

Child Affairs Desks have been set up in some Police Stations and more are in the process. Under the new law, the Child Affairs Police Officer will be able to set in motion diversionary measures; failing that, he can grant bail. In this way the need to detain children in safe homes will be greatly reduced. In the long run, when the new concepts are fully in place, fewer cases will need to go to court.

**What is the current state of the development of alternative measures to the detention of children within the Bangladeshi legal system?**

The concept of alternative custody for vulnerable children and those in contact with law is in the new legislation, but requires Rules to put it into practice. When in force, the Rules will allow custody to be given to parents or

extended family members or to a suitable person in the community. Failing custody to any person, a child may be sent to a suitable institution.

**The legal age for marriage in Bangladesh is 21 years for boys and 18 for girls. Nevertheless, Bangladesh has some of the highest rates of child marriage in the world. What are the main causes of this phenomenon and what measures would be most effective to reduce these rates?**

Child marriage in Bangladesh is by and large poverty driven. There is a vicious cycle of poverty preventing children from getting education and that in turn causes poverty. The following may be considered specific reasons for child marriage:

- The most prevalent reason is sexual harassment of girls. Poor parents who both work are afraid of leaving a grown-up girl alone in the house. So, the easiest solution is to marry her off so that her husband can look after her.
  - Inability to provide food and clothing often leads to early marriage.
  - Fear of having to pay higher dowry as the girl gets older results in decision to marry girls at an early age.
  - Lack of education of girls leads to ignorance of the dangers and drawbacks of early marriage and results in lack of resistance from the girls.
- What is necessary most of all is the drive to educate girls. For this to be effective there needs to be provision for:
- Suitable facilities in school for adolescent girls.
  - School curriculum to include instruction on reproductive health matters including child marriage, hygiene, etc.
  - Counseling for parents/guardians about the harms brought by child marriage and benefits which will be brought by educating the girls.

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**GOOD NEWS**

## A coat free court!!!

In a recent event of the Dhaka Judge Court titled "Justice Sector Co-ordination: Challenges and Opportunities", Mr. Chief Justice S.K Sinha contended that the age old court apparel of black coat and gown is no longer practicable.

He mentioned, our country is frequented by power outage. He has personally observed many instances of blackouts happening at courts amidst a judicial proceeding. The judges may get some relief from the warmth by running a small fan, but lawyers continue to suffer nevertheless, which is not at all bearable. He said it is now time to get rid of coats in summer.

Referring to the British as the trendsetter for this apparel he added, the very people who started the practice of black coats and gown themselves have brought around changes. Our lawyers too should raise the claim for a change in summer apparel and that they have his utmost support.

Chairman of Dhaka Ainjibi Shomiti, Advocate Masud Ahmed Talukdar in his speech, also showed his appreciation towards the remark made by the Chief Justice.

At present, lawyers wear a black coat over shirts, and then they wear a black gown over the top. The Civil Rules & Order and Bar Council Order have various provisions setting up the requirements of court apparel. If not abided by the specific dress code,

lawyers aren't usually allowed to participate in a court proceeding.

- FROM LAW DESK.



**RIGHTS WATCH**

## Essential surgical care is our right to health

A. Z. M. ARMAN HABIB

In a rights-based approach to health, the provision of essential surgical services is not a luxury, but a critical component for the "highest attainable standard of health". Considering the fact that approximately 5 billion people have no access to basic surgical care, it needs to be considered as a human right.

Millions of people around the globe die each year or suffer lifelong disability from easily correctable conditions like obstructed labor or appendicitis. Being an operative procedure, essential surgery in medical science is contemplated to be vitally necessary for treating a disease or injury. There is a possibility of a patient's death or permanent impairment in case of postponing or deciding against an essential procedure. The right to essential and emergency surgery can bypass most of these procedures since the right to health already exists in major international human rights treaties. Such treaties are: article 25(1) of the Universal Declaration of Human Rights (UDHR), article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), article 24 of the Convention on the Rights of the Child (CRC) and article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

On January 29, 2015 the World Health Organization (WHO) Executive Board unanimously adopted a draft resolution on 'Strengthening emergency and essential surgical care and anaesthesia as a compo-

nent of universal health coverage'. Similarly on 22 May 2015, the 68th World Health Assembly (WHA) passes the resolution A68/15 for strengthening emergency and necessary surgical service as a constituent of global health care. This resolution is expected to help the countries adopt and implement policies which will integrate safe, quality and cost effective surgical care into the health system as a whole.

The WHO has recognised the importance of surgery in global health service and has begun to identify low-cost essential operations that significantly reduce the burden of disease. In 2005, the WHO established the Global Initiative for Emergency and Essential Surgical Care, which strives to strengthen the capacity to deliver effective emergency surgical care, as well as reduce death and disability from road traffic accidents, trauma, burns, pregnancy related complications and other disasters.

Surgery has the potential to reduce child mortality and improve maternal health by treating obstetrical complications. Surgery can also help to tackle infectious diseases, including HIV through male circumcision. Bangladesh has reduced the maternal mortality ratio by three-quarters between 1990 and 2015, but the rate of decline needs to speed up over the next decade. The Government of Bangladesh must initiate free essential surgical services for pregnant woman who need caesarian operation. Needless to say, obstructed labour, haemorrhage and infection often cause harm to a woman patient. Obstetric fistula isolates women from society, resulting in unemployment and makes power loss. Hence, access to essential surgical care can promote

women empowerment and gender equality.

Article 15(a) of the Constitution of Bangladesh mandates that "it shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase in productive forces and a steady improvement in the material and cultural standard of living of the people with a view to securing to its citizens the provision of the basic necessities to life, including food, clothing, shelter, education and medical care". Moreover, article 18 provides for the raising of the level of nutrition and the improvement of public health as the primary duties of the State.

The Government of Bangladesh has developed the National Health Policy and the National Population Policy respectively in 2011 and 2012 for strengthening the health care sector to ensure that access to health is a fundamental right of every human being. It guarantees the standardised and quality health services, and protects the people's right to gain access to health services. Now it is time to consider essential surgery as one of the national health priorities for including it in the National Health Policy and relevant laws.

The world is starting to acknowledge the importance of embedding essential surgical services as a part of the primary health care assurance in order to address the current need for surgical health services. To that end, essential surgical care should be considered an essential component of the basic human right to health in Bangladesh.

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**BOOK REVIEW**

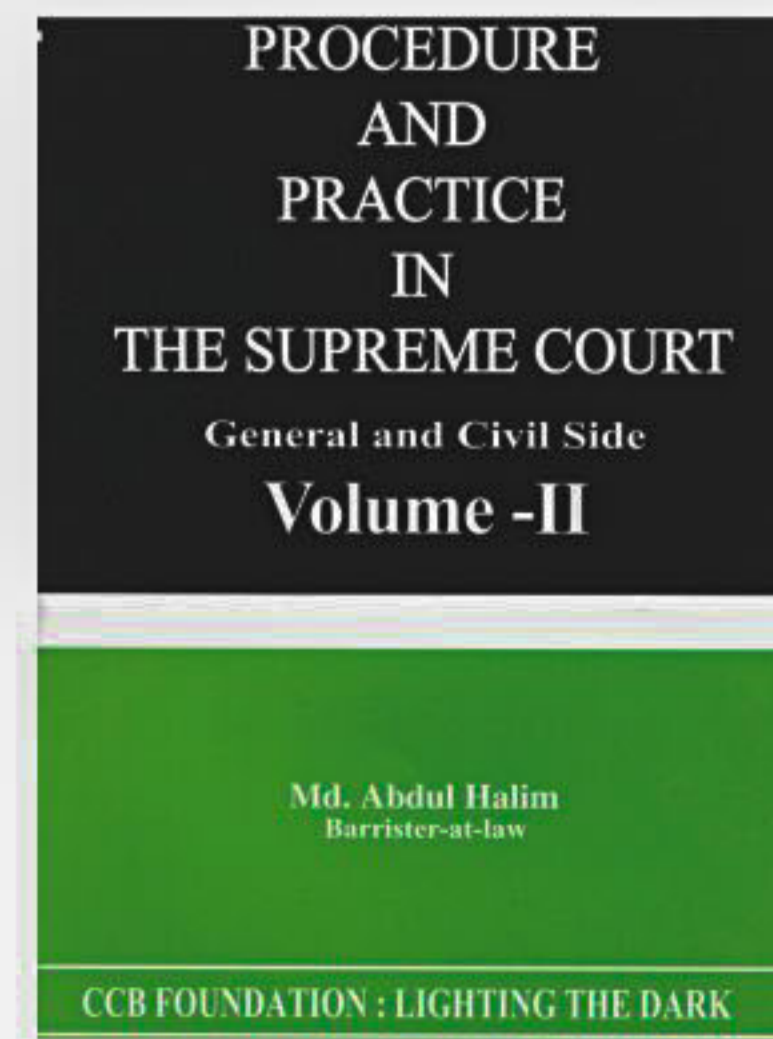
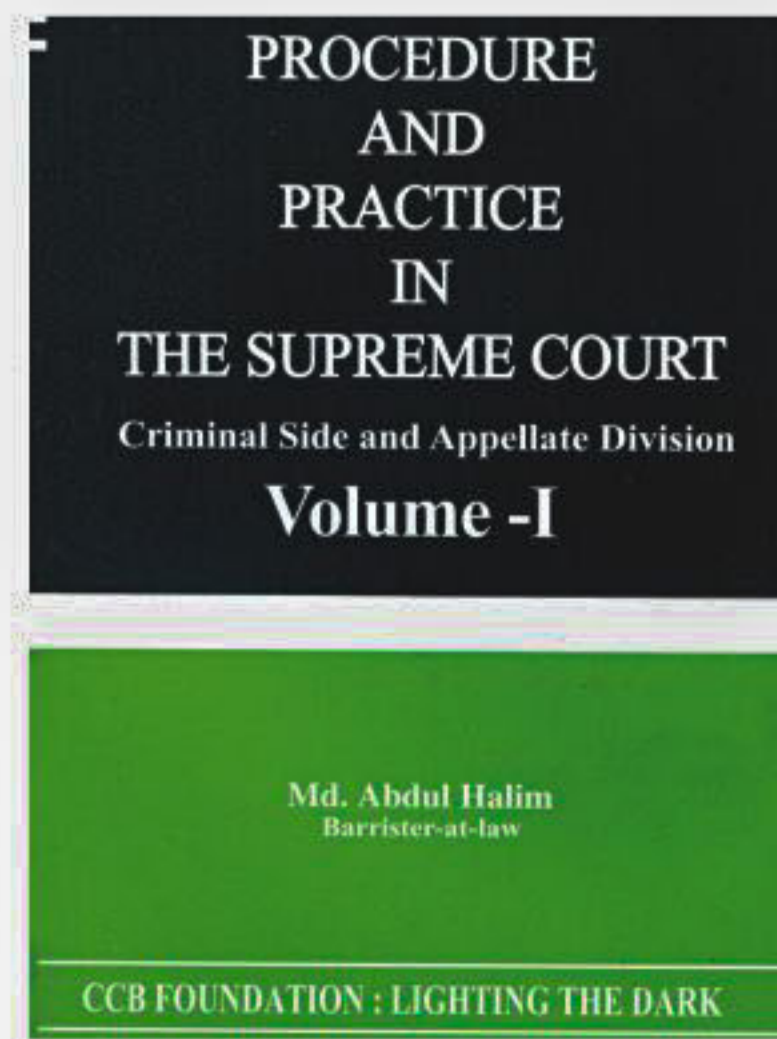
DR. ZAHIDUL ISLAM

The third edition of Barrister Md. Abdul Halim's book entitled 'Procedure and Practice in the Supreme Court', which has been thoroughly revised and updated in the light of the newly introduced rules of the High Court Division of the Supreme Court, has been published recently. The first and second editions of the book were out of print for a long time and there was a great demand of the book among the new practitioners in the Supreme Court. With its updates in light of the new rules of the High Court Division, now it has been a quite useful book for both the old and new legal practitioners in the Supreme Court.

The first volume of this book dealing with Criminal side and Appellate Division has nine chapters. Chapter 1 deals with the substantive and interim remedies provided for in different jurisdictions of the Supreme Court. Chapters 2 and 3 contain criminal matters covering aspects of jurisdic-

tions of criminal appeal, revision, miscellaneous and bail matters. Chapter 4 and 5 contain procedural as well as pleading aspects of criminal revision and criminal miscellaneous jurisdiction. Chapter 6 discusses both procedure and pleadings on bail with particular reference to various authoritative judicial decisions which will certainly assist both bar and the bench. Chapter 7 discusses jurisdiction on transfer of criminal cases with examples of pleadings and procedure. Chapter 8 deals with both conceptual and procedural aspects of contempt matter. Lastly, Chapter 9 contains procedure and examples of pleadings on Appellate Division in the Supreme Court.

The second volume of the book discusses general and civil jurisdictions in the High Court Division in nine chapters. Chapter 1 discusses various conceptual and substantive provisions of the Supreme Court like the Supreme Court's original, appellate, revisional, reference, admiralty and miscellaneous jurisdictions. Chapter 2 of



Procedure and Practice in the Supreme Court  
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this volume discusses various technical aspects of cause list, motion, mention, in re, affidavit, applications and petitions in the High

Court Division. Chapter 3 discusses advocates, their responsibilities with the court, vakalatnama, power of attorney and related issues, of course, with citations of proper authorities. Chapter 4 discusses detailed procedure and systems in writ jurisdiction with all possible formats of applications and petitions. Chapter 5 and 6 discuss practice and procedure on civil appeal and civil revision. Similarly, chapters 7, 8 and 9 discuss and deal with procedures and pleadings on admiralty matter, company matter and reference applications.

There is a legal doctrine that there is no vested right in remedy or in the mode of procedure. It means that the procedural rules may be changed by the authorities when necessary or when greater social interest requires the change. That is, a remedial statute or procedure may be made applicable to cases pending at the time of the enactment or change. However, the doctrine does not mean that existing procedure and rules may be bypassed or may be broken down

at any time when an individual judge or lawyer feels it convenient. The procedure must be fair and the fair procedure must be followed with caution, because the procedural fairness is an essential component of natural justice.

The beauty of this book is that it has covered both the written and unwritten procedure and practice of the Supreme Court. The practicing lawyers in the Supreme Court know that there are two types of rules to follow. Some rules are specific, fixed and written in the sense they are prescribed by the Rules of the Supreme Court. Other rules are customary and followed in practice, and can be learned only by practicing in the court.

These books has documented most of these unwritten rules and practices which will be of immense use for the new legal practitioners. It can be a valuable reference book for the practicing lawyers, judges, and legal researchers.

THE REVIEWER IS AN ADVOCATE, SUPREME COURT OF BANGLADESH.