CHILD RIGHTS

Safeguards under the Children Act 2013

QUOTA REFORM MOVEMENT IN CONTEXT

The rights and legal safeguards guaranteed under the 2013 Act and the CRC are there for a reason. When these principles are violated, it serves as a stark reminder that even the most well-crafted laws are powerless without genuine commitment to their enforcement.

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Amid the quota reform protests, A juvenile court in Dhaka rejected bail petition of a 17 year old Dhaka College student Hasnatul Islam Faiyaz. Below is a general analysis on the legality of treating children in contact and in conflict with law.

Firstly, coming to the question of who a child is, section 4 of the Children Act 2013 categorises a child as anyone under the age of 18, which is consistent with the United Nations Convention on the Rights of the Child 1989 (CRC). The preamble of the Act also mentions that it was enacted to implement the CRC.

Section 3 of the Act stipulates that *"notwithstanding anything contained in any other existing law, the provisions of this Act shall prevail."* This overriding clause ensures the Act's primacy over all other laws concerning offenses committed by children and other specified matters within the statute. Moreover, section 17 of the Act provides that in any case where a child in conflict with the law or a child in contact with the law is involved under any law whatsoever, the children's court shall have the exclusive jurisdiction to try that case. The reality, however, paints a far different picture, showcasing a glaring disconnect between our law's noble intentions and its actual implementation.

When a child is tried at a normal court as opposed to a children's court, it constitutes a direct violation of the Children Act. Additionally, by not transferring the case to the children's court, the court fails to adhere to the essential principles of child protection and justice. The overarching aim of the Children Act is to ensure that children in conflict with the law are treated with dignity and provided with the opportunity for rehabilitation, rather than punitive measures designed for adults. It is important to adhere to this principle as general courts are ill-equipped to address the unique needs and rights of a child.

Section 28 of the Act explicitly prohibits the publication of any material that could identify a child involved in judicial proceedings. Under the provisions of the Children Act 2013, in any case under trial before the children's court involving a child, no photograph or description of the child may be published in any print or electronic media or on the internet that could directly or indirectly identify the child, unless the court determines that such publicity will not harm the child's interests. Needless to say, when a child is not tried at a children's court, this provision is not complied with. As a result, it not only contravenes the protections outlined in the Children Act but also raises significant concerns about the treatment and rights of children within our legal system.

Our High Court Division (HCD) and Appellate Division (AD) of the Supreme Court play a crucial role in protecting children's rights and overseeing the juvenile justice process in the country. In numerous cases, the Supreme Court has actively contributed to the development of children's rights and ensured awareness of the judicial process. In *Ridoy* v *State* (Criminal Appeal No. 7533), the HCD, presided over by Justice Enayetur Rahim and Justice Mostafizur Rahman, identified several conflicting legal provisions between the Children Act 2013 and other significant legislations. These conflicts pertain to the cognizance, trial procedures, and bail hearings. Recognising the critical need for a coherent legal framework, the HCD recommended amendments to the Children Act 2013 to eliminate these contradictions and ensure the protection and fair treatment of minors. The HCD also issued seven directives for magistrates and children's courts to follow until the recommended legislative amendments are enacted to protect children's rights in the judicial system and highlight the judiciary's proactive role in advocating for legal reforms to improve child justice in Bangladesh.

In *The Children Act 2013: A Commentary,* Honorable Justice Imman Ali observed, *"No child shall be arrested or detained under any law relating to preventive detention".* At first, as per section 44(3) of the Act, the real age of the child needs to be determined. The same provision also mentions that no child shall be hand-cuffed. Section 52 of the 2013 Act highlights the need for special care and treatment of minors and outlines specific provisions for granting bail to children. If a non-adult is produced before the children's court, the court has to release him on bail or order his custody/detention in a safe home or a Child Development Centre.

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RIGHTS AND REMEDIES

Revisiting the Quota Reform Movement and police powers

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Amidst the turbulent circumstances arising from the recent Quota Reform Movement, a significant number of allegations were brought against the actions of the police forces. Along with the reports of deaths and injuries, overwhelming number of arrests and detentions without prior explanation, stops and searches, and custodial tortures were reported this time, while the authorities consistently branded such actions as countermeasures to internal political turmoil.

Firstly, Section 54 and 167 of the Code of Criminal Procedure, 1898 (CrPC) gives wide powers to the police to arrest anyone without warrant or even prior explanation, on reasonable suspicion concerning a cognizable offence. However, Article 33(1) of the Constitution contradicts (and prevails over) that by putting a condition that an arrestee should be informed of the grounds of arrest in the shortest time possible.

Bangladesh's legal system guarantees transparency, accountability, and preservation human rights, including the prohibition of torture and the protection of privacy. However, the police conduct reveals a gap between the law and its enforcement, emphasising the vital need for reform to preserve fundamental rights and uphold the rule of law.

In the landmark *BLAST v Bangladesh* (2003) case, the High Court Division pointed out these nuances between provisions of the Code and the Constitution. The court further addressed the vague ambit of 'concerned' cognizable offence under section 54 of the Code, which in turn gives unhindered power to a police officer to arrest any person under arbitrary suspicion, even potentially going against the fundamental rights of life and liberty. The court also chalked out guidelines for the police including necessitating disclosure of identity while making arrests, explaining grounds of arrest and letting the accused to consult a suitable lawyer.

In *Saifuzzaman v State* (2004) the court further scrutinised arresting powers by emphasising on expressions such as 'reasonable suspicion' and 'credible information' and providing guidelines on documenting the arrest to stop harassment of the citizens. Therefore, the recent instances of indiscriminate arresting are not lawful as not only they were against the demonstrators' constitutional right to life, liberty, as well as peaceful assembly, but also the relevant laws hold the police accountable for their deeds.

Secondly, there has been complaints and reports against the police and its detective branch regarding torture on the detained demonstrators. In fact, police here have a long-standing vile culture of inflicting third degree method on detainees. Not only does the law not empower them to do so, but also the law condemns such actions punishable under the Bangladesh Penal Code.

Our nation has both domestic and international obligations to condemn custodial torture. Article 35(5) of our Constitution prohibits torture or cruel, inhuman, or degrading punishment or treatment to any person. Bangladesh has also ratified the Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment (CAT) on 5 October 1998, which codifies an absolute prohibition of torture. While Article 2(2) of the CAT prohibits every kind of justification of torture, despite the existence of exceptional circumstances such as war or a threat of war, internal political instability or any other public emergency, Article 13 of the same empowers the victims to such torture with the right to complain and fair trial before competent authorities.

Furthermore, despite the protection provided by Section 197 of the CrPC to public officials like the police from getting convicted for their offences committed in an official capacity, Section 12 of the Prevention of Torture and Custodial Death Act, 2013 renders such excuses for torture inadmissible. This provision is in conformity with Article 2(2) of the CAT. Further in compliance with the CAT, the act prescribes trial and punishment for the delinquent officers under Sections 14 and 15. Ultimately, the plea of a superior's order or internal political unrest is not a defence for delinquent officials liable for custodial torture.

Thirdly, albeit the practice of stop and search being a commonplace for police all over the globe and statutes like The Police Act 1861, the Dhaka Metropolitan Police Ordinance 1976, the Penal Code 1860 and even the Digital Security Act 2018 in fact vest the police in Bangladesh with such power, police operating phone searches on students and pedestrians is a gross misuse of this power and violation to the constitutional right to privacy.

Article 43 of our Constitution provides safeguard against forceful house entry, search and seizure and ensures privacy of correspondence and other means of communication. Article 17 of the ICCPR also enshrines this right. Although reform to police search and seizure is still a long overdue in Bangladesh, constitutional remedy is available to the victims under Articles 44 and 102 of the Constitution.

Bangladesh's legal system guarantees transparency, accountability, and preservation human rights, including the prohibition of torture and the protection of privacy. However, the police conduct reveals a gap between the law and its enforcement, emphasising the vital need for reform to preserve fundamental rights and uphold the rule of law.

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LAW OPINION

ICJ's Advisory Opinion on Israel's Presence in the Occupied Palestinian Territory

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On July 19, 2024, the International Court of Justice (ICJ) issued its advisory opinion in Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. The proceeding was initiated by the General Assembly of the United Nations, under the Resolution A/RES/77/247 adopted on December 30, 2022.

ICJ was requested to render an opinion regarding the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, and regarding how the policies and practices of Israel affect the legal status of the occupation, along with the legal consequences that arise for all States and the United Nations from such status. ICJ was of the opinion that Israel's continued presence in the Occupied Palestinian Territory is unlawful, that Israel is under an obligation to bring to an end its illegal presence in the occupied territory as rapidly as possible, that Israel is under an obligation to cease immediately all new settlement activities, and to evacuate all settlers from that territory, and that Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned in that territory.

ICJ put the responsibility upon the General Assembly and the Security Council to determine the modalities required to ensure an end to Israel's illegal presence in the Occupied Palestinian Territory and ensure the full realisation of the right of the Palestinian people to self-determination. A corresponding duty was placed on all states to cooperate with the United Nations to put such modalities into effect. While it is not for other states to solve this conundrum, they are now under an obligation to cooperate to bring an end to this crisis through lawful means, and also not to render any aid or assistance to Israel that may help maintain the unlawful situation. This position is consistent with the court's previous observations in the *Separation of the Chagos Archipelago from Mauritius* opinion and the *Construction of a Wall in the Occupied Palestinian Territory* opinion. Again, the court has called upon the states to distinguish in their dealings with Israel between its own territory and the Occupied Palestinian Territory, i.e., the obligation to abstain from treaty relations, or entering into economic or trade dealings, or establishing diplomatic missions with Israel, or to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory or a part thereof.

State cooperation to promote and ensure self-determination in this case, might require that the UN put forth the modalities for such purpose through the General Assembly and the Security Council. And the major obstacle behind this is the veto politics in the Security Council. However, in the past, the Security Council did prohibit aid or assistance in maintaining the illegal apartheid regime in South Africa and Portuguese colonies.

States could, however, halt and prohibit economic and trade activities that occur in the occupied territory. Some recent official documents procured from the Dutch Foreign Ministry expressed doubts that almost every Israeli business has a connection to the illegal settlements. Thus, through necessary implications, it can be understood that sanctions and countermeasures, including economic restrictions, arms embargoes and the cutting of diplomatic and consular relations, should be the immediate response of the states if Israel fails to immediately and unconditionally withdraw armed forces and close military administration in the occupied territory. In recent times, cases have been filed in Netherlands and Germany regarding export of arms and military equipment. The Dutch Appeals Court already ordered the government to block the delivery of parts of fighter aircrafts to Israel over concerns of violation of International Law. Pursuant to the observation of this advisory opinion, states must do their part to bring an end to this prolonged illegal occupation.

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