Present:

Mr. Justice Md. Imman Ali

And

Mr. Justice Md. Fazlur Rahman

SUO MOTU RULE NO.5621 OF 2009
State

-Versus-

Secretary, Ministry of Law, Justice & Parliamentary Affairs and others

.....Respondents

Dr. Naim Ahmed, Advocate

..... For Aparajeyo-Bangladesh

Ms. Fahima Nasrin, Advocate

..... For Bangladesh National Women Lawyers Association.

Mr. Md. Motaher Hossain, Deputy Attorney General with
Mr. Md. Soyeb Khan, Assistant Attorney General,
Dr. Md. Bashir Ullah, Assistant Attorney General
and **Mr. Mahabub-Ul Alam,** Assistant Attorney General ..... For the State

Heard on:25.06.2009, 08.07.2009, 10.08.2009 &12.08.2009

Judgment on: 03.09.2009

Md. Imman Ali, J.

On 10.04.2009 a news item was broadcast at about 9:00 p.m. on Channel I which caught our attention. It was reported that a minor girl by the name of S. [the identity of the girl is withheld in compliance with the provisions of section 17 of the Children Act, 1974 and section 14(1) of the Nari-o-Shishu Nirjatan Daman Ain, 2000] was allegedly raped by her neighbour and distant relative [identity withheld]. The parents of the girl, after getting treatment for her from a local clinic, took her for better treatment to the Osmani Medical College Hospital, Sylhet and, thereafter, took her to the Osmani Nagar Police Station on 27.03.2009 in order to lodge a First Information Report (F.I.R.). Police, after recording the case, sent the girl to the Court of the learned Magistrate, who ordered the girl to be kept in safe custody at the Safe Home in Bagbari, Sylhet, managed by the Department of Social Welfare. The mother of the girl ruefully stated to the reporter as follows:

> "`t° dvBqv †MvQ wePv‡ii jvM, Avwg AvZ ZvjvQ GLbK Avgvi ev"Pv‡i Av‡ivL KvówZ nvivBqv _BivLQBb ÐÐÐÐÐ gv Qvov evB"Qv Ngvqbv| BÐKb AvBb Avdbviv Kijvq (`tL †c‡q wePv‡ii Rb¨ †Mjvg| Avwg nvZ Z‡jvQ| GLb Avgvi ev"Pv‡K Ab¨ KvówW‡Z XKvBqv‡Qb ÐÐÐÐÐ gv Qvov ev"Pv Ngvqbv ÐÐÐÐÐ G †Kvb AvBb Avcbviv evbv‡jb|)"

It is reported that being aggrieved by the occurrence which took place, the parents of the victim girl took her before the authorities in order to seek justice and the 7 (seven)-year-old child, who reads in Class III, was sent to safe custody. She is so young that she cannot sleep without her mother. The mother posed the question: "what type of law is this?" It further transpires from the report that the parents are not allowed to visit the girl and the Magistrate would not give the girl to the Jimma of her father. It is also reported that one well-wisher of the locality spent Tk.26,500/- on publicity in a newspaper addressed to the Prime Minister, but nothing had happened as yet.

Dr. Naim Ahmed, representing Aparajeyo-Bangladesh informed the Court that according to his information the parents of the girl lodged an F.I.R., which was recorded as Osmani Nagar Police Station Case No.17(3)09 dated 27.03.2009 under the Nari-o-Shishu Nirjatan Daman Ain, 2000. The victim was produced before the learned Chief Judicial Magistrate, Sylhet who, on 31.03.2009, ordered her to be taken to safe custody.

Finding the above sequence of events to be rather disturbing, especially since it appeared to us that the little girl was being held in safe custody without lawful authority while her parents, who were willing and capable of keeping her, were allegedly denied her custody, we issued a Suo Motu Rule upon the respondents to show cause as to why S. shall not be released from the Safe Home of the Department of Social Welfare and be dealt with in accordance with law. Pending hearing of the Rule, S. was directed to be released from custody forthwith to the Jimma of her father. The Metropolitan Police Commissioner, Sylhet was directed to ascertain and report within seven days narrating the events leading up to the confinement of the seven-year-old girl S. in the safe home. The Chief Judicial Magistrate was directed to give an explanation within seven days as to under what authority he had passed the order of safe custody of a victim girl aged seven years, refusing custody to her parents. We also requested Aparajeyo-Bangladesh, represented by Dr. Naim Ahmed to offer assistance through their contact in Sylhet in order to obtain expeditious release of the victim from the safe custody.

In due course we received a response from the Deputy Police Commissioner (Sadar), Sylhet, enclosing the response of the Police Commissioner, Sylhet Metropolitan Police, Sylhet, under memo No.Oa-Sha-E 816/1(2) dated 16.04.2009. The Police Commissioner in his memo No.SMP/204/Con dated 20.04.2009, narrated that the case was recorded under section 9(4)(Kha) of the Nari-o-Shishu Nirjatan Daman Ain with Osmani Nagar Police Station on 27.03.2009 where the father of the victim was the informant. The victim was produced at the police station by her parents. The investigating

officer referred the victim to the Local Government Health Complex for treatment on 27.03.2009. The local health complex referred the victim to MAG Osmani Medical College Hospital, Sylhet, for examination, where she was produced on 29.03.2009. In the meantime she was kept in the jimma of her parents. After her medical examination at the OCC (Outdoor Crisis Centre) the victim was handed over to the investigating officer on 31.03.2009 and the investigating officer on the same day forwarded the victim to the Court of the learned Magistrate for recording her statement under section 22 of the Nari-o-Shishu Nirjatan Daman Ain. The learned Magistrate did not have time to record the statement on that day and sent the victim to the safe home on 31.03.2009 and her statement was recorded on the next day i.e. on 01.04.2009. After recording her statement the learned Magistrate again sent her to the safe home. In the meantime the Officer-in-Charge of Osmani Nagar Police Station made a prayer to the Court for allowing the victim's mother to stay in the safe home with her daughter S. The learned Magistrate did not allow this prayer on the ground that the matter is within the exclusive jurisdiction of the Nari-o-Shishu Nirjatan Daman Tribunal. The Magistrate sent the case record to the Nari-o-Shishu Nirjatan Daman Tribunal for proper order in the matter. At that time the father of the victim also filed Criminal Misc. Case No.89/09 in Nari-o-Shishu Nirjatan Daman Tribunal for taking Jimma of his daughter S. By order dated 12.04.2009 the Tribunal placed the victim in the Jimma of her father.

The learned Chief Judicial Magistrate, Sylhet, in his response under Memo No.CJM/Sylhet-1406 dated 5.5.2009 proffered his apology for not giving a response to the Court's direction earlier and explained that the faxed copy of the Court's order, which he received on 12.04.2009, did not contain all the pages and subsequently when he received the original version of the Court's order on 15.04.2009 he failed to respond to the Court's direction on the understanding that since he was not a party to the Rule, he was not required to send any explanation. He admitted that since he did not properly read the Court's order, he could not give an appropriate explanation to the High Court Division, for which he apologised. It is further stated in the explanation of the learned Chief Judicial Magistrate, Sylhet that on 31.03.2009 the victim was not produced before him and he did not pass the order for sending her to the safe home. He explained that it was the Judicial Magistrate, 1st Class, before whom the girl was produced, who ordered her safe custody and on the following day recorded her statement under section 22 of the Nari-o-Shishu Nirjatan Daman Ain and on that date neither the parents of the victim nor the police officer who brought her before the learned Magistrate, either in writing or verbally, made any request to give the custody of the victim to her parents. He further stated

that on 01.04.2009 the learned Magistrate, after recording the statement of the victim, did not pass any other order to send the girl to the safe home. Subsequently, on 07.04.2009 the Officer-in-Charge of Osmani Nagar Police Station lodged an application with a prayer to allow the victim's mother to remain with her in the safe home. Although, that application was made before the learned Chief Judicial Magistrate, Sylhet, in fact it was not placed before the learned Chief Judicial Magistrate, Sylhet; rather it was placed before the learned Magistrate, 1st Class, who recorded the victim's statement, who rejected the application on the ground that the same was beyond jurisdiction. On the other hand the case docket was ordered to be sent to the Nari-o-Shishu Nirjatan Daman Tribunal. Even at that time there was neither any oral or written prayer to give custody of the girl to her parents. Ultimately, on 10.04.2009 the request for the record from the Nari-o-Shishu Nirjatan Daman Tribunal in connection with Miscellaneous Case No.89 of 2009 dated 07.04.2009 was received and the records were sent to the Tribunal and on 12.04.2009 the victim was handed over to the custody of her parents. The learned Chief Judicial Magistrate, Sylhet also forwarded with his explanation photocopies of the order sheets relating to the matter which was then pending before the Court of the Magistrate.

In due course, we also sought an explanation from the learned Magistrate, 1st Class who had sent the victim girl to safe custody. By his Memo No.1324 dated 25.5.2009 the learned Senior Judicial Magistrate, 2nd Court, Sylhet explained that the victim S. (7) was produced before him on 31.03.2009 in the afternoon for recording her statement under section 22 of the Nari-o-Shishu Nirjatan Daman Ain, 2000. Since he was engaged with functions of Cognizance Court of Balagonj, Osmani Nagar, Companigonj Thana, trial Court of Senior Judicial Magistrate First and Second Court, recording of statements of as many as two victims and two witnesses of Goainghat GR-38/09, Dakhsin Surma GR-69/09 under section 22 of the Nari-o-Shishu Nirjatan Daman Ain, 2000, he, therefore, could not record the statement of the victim on that very day and passed the following order-

"‡`wLjvg| Av`vjZ e¨¯Z _vKvq AvMvgx 01/4/09 Bs Zwi‡L Dc¯nvcb Kiv †nvK| wfKwUg‡K wbivc` †ndvRZ evMewo, wm‡jU †cib Kiv †nvK|"

He states that since no prayer was made by the parents or nearest relatives of the victim seeking her custody, he had no alternative but to send her to the approved home managed and controlled by the Ministry of Social Welfare under section 58(a) of the Children Act, 1974.

In this case we heard submissions and also received written submissions from Dr. Naim Ahmed representing Aparayejo-Bangladesh, which we shall refer to in due course.

On her application, we also permitted Ms. Fahima Nasrin, representing the Bangladesh National Woman Lawyers Association (BNWLA) to file written submissions as well as to make oral submissions before us.

We also heard the submissions made by the learned Deputy Attorney General Mr. Md. Motaher Hossain.

Since we perceived certain underlying critical issues which have been brought to light as a result of this incident, we felt it to be only proper that we should deal with the matter in some detail.

The relevant provision of law dealing with custody of victim children is found in section 58 of the Children Act, 1974, which provides as follows:

"***58. Order for committal of victimised children***.-*The Court before which child is produced in accordance with section 57 may order the child-*

(a) to be committed to a certified institute or an approved home until such child attains the age of eighteen years or, in exceptional cases, for a shorter period, the reasons for such shorter period to be recorded in writing, or

(b) to be committed to the care of a relative or other fit persons on such bond, with or without surety, as the Court may require, such relative or fit person being willing and capable of exercising proper care, control and protection of the child and of observing such other conditions including, where necessary, supervision for any period not exceeding three years, as the Court may impose in the interest of the child.

Provided that, if the child has parent or guardian fit and capable, in the opinion of the Court, of exercising proper care, control and protection, the Court may allow the child to remain in his custody or may commit the child to his care on bond, with or without surety, in the prescribed form and for the observance of such conditions as the Court may impose in the interest of the child."

The learned Senior Judicial Magistrate in his written explanation sent to this Court stated that since he did not receive any prayer for releasing the victim girl to the custody of the parents he ordered for her to be sent to the safe home.

Upon a careful reading of the relevant section of law it appears to us that the proviso has an over-riding effect, inasmuch as if the child has a parent or guardian fit and capable in the opinion of the Court of exercising proper care, control and protection, then the custody of the victim girl is to be given to her

parents and that would obviate the need for the Court even to consider the other two alternatives, namely committing her to a certified institute or approved home or committing her to care of a relative or other fit person. We do not find from the above mentioned section of the Children Act that there is any requirement for an application to be made by the parents. On the contrary, in view of the age of the victim girl, who was seven years old at the relevant time, and had been brutally raped, we feel that the learned Judge should have realised that it would be inhuman to separate such a tender-aged girl from her parents and send her to a safe home. We find from subsequent records that the girl was crying to go to her mother and the mother was crying to have her back home. This must be sufficient notice to anyone that the girl is required to be given to the custody of her parent. Moreover, we note from the order sheet of the learned Magistrate that on 07.04.2009 there was a written application made by the Officer-in-Charge of the police station to allow the mother of the victim to stay with her in the safe home. At that stage it should have been abundantly clear to the learned Magistrate that the parents of the girl were eager to have her custody. Even then the learned Magistrate was not sufficiently moved either by sentiment, compassion or by requirement of law to release the girl to the custody of her parents. We may mention at this stage that the application made by the Officer-in-Charge at police station to allow the victim's mother to stay with her states, *inter alia,* as follows:

"wkï wfKwUg (**** ****) Gi wbivcËv I Zvnvi gvbwmK wechq tivaK‡í wfKwUg Gi gv (**** ****)tK Zvnvi m‡½ ivLv GKvš c‡qvRb| wbivc` tndvR‡Z _vKv D³ wkï mšÍv‡bi Rb¨ Zvnvi gv KvbvKwU Kwiqv wewfb ¯nv‡b QwUqv teovB‡Z‡Q| weÁ bvix I wkï wbhvZb `gb UvBebvj, wm‡jU nB‡Z wkï wfKwUgtK Zvnvi gv‡qi wR¤gvq t`lqvi ce chš wkï wfKwUg (**** ****) Gi wbivcËv I gvbwmK wechq Gi welqwU m`q we‡ePbv Kwiqv wfK-wU‡gi gv (*** ***)tK wfKwU‡gi mv‡_ wm‡jU kn‡ii evMevox¯n wbivc` tndvR‡Z _vKvi AbgwZ c`v‡bi Av‡e`b Kwi‡ZwQ|"

(****** names withheld in compliance with the provisions of section 17 of the Children Act, 1974 and section 14(1) of the Nari-o-Shishu Nirjatan Daman Ain, 2000)

The application is dated 06.04.2009; it was presumably placed before the learned Magistrate on 07.04.2009 when he rejected it. We glean from this application that the police officer was rather moved by his sentiments and feeling of human kindness to file it before the Court, but the same application exposed his ignorance of the law. As we have explained earlier, it is the right of the parent, if they are fit and capable of exercising proper care, control and protection, to have the custody of their child which is an overriding provision. Had the Officer-in-Charge of the police station been aware of the provision of law he would have made an application before the Magistrate to pass an order in compliance with the law.

From the explanation of the learned Senior Judicial Magistrate, 2nd Court, Sylhet, it appears that he was also under a misconception of the law when he seemingly passed an order for keeping the girl in safe custody when the law required that the safe custody should be only the last resort and the parents, if they are fit and capable, should get precedence so far as custody of the victim girl is concerned. To our mind, the learned Magistrate who believes that an application from the parents is necessary, and under that misconception ordered the girl to be held in safe custody, acted illegally and inhumanely in the facts and circumstances of the case. It is only natural that the best interests of a seven year old child can only be served when she is allowed to remain in the custody of her parents.

At this juncture we may also comment that we do not find the explanation given by the learned Chief Judicial Magistrate, Sylhet to be appropriate and satisfactory, inasmuch as he has admitted that he did not read the order of this Court properly, which is not expected from a judicial officer of his rank and status. He must be more careful in future, when dealing with the orders of the superior courts and to comply with the directions expeditiously. He should realise that having asked for explanation from the concerned officer the Higher Court waits to receive the same and lack of response leads to anxiety and delay. Common courtesy demands that when he is directed by the High Court to explain, he should at least respond by saying that he is not connected with the matter.

Dr. Naim Ahmed, learned advocate placed the facts and materials before us and submitted that there was clearly a need for a change in the law to meet the demands of present day requirements as illustrated in the International Instruments including the United Nations Convention on the Rights of the Child (CRC). He submitted that it is unfortunate that in the case of laws relating to children, the authorities concerned are slow in implementing the provisions of the CRC which has a mandate that all signatory State Parties must incorporate the provisions in their domestic law. He pointed out that when the high and mighty have the will to act, then laws can be changed quickly and expeditiously, especially when personal initiative is taken by someone in high position. He pointed out that in the case of the Protibondhi Kallyan Ain, 2001 initiative was taken by the then Prime Minister and all concerned were instructed accordingly and in no time the law was drafted and promulgated before the ending of the term of office of that government. But in spite of obligations which Bangladesh entered into upon signing the CRC in 1990, very minimal change has come about in the law incorporating the provisions of the CRC. He submits that there is no particular group or persons within the

government to take any initiative in amending the Children Act in order to incorporate the provisions of the CRC. He pointed out that Article 3 relating to the best interests of the child; Article 9 relating to the fact that the child is not to be separated from his or her parents; Article 12 providing that the child's view is to be considered; and Article 37 providing for protection from torture and inhuman treatment and indeed Article 35(5) of our Constitution have all been violated in ordering the seven year old victim girl to reside in the safe home. He further pointed out that the psychological damage done to the girl due to the insensitive and illegal acts of the State functionaries is irreparable and should be compensated by the State. He admitted, however, that compensation is only allowed under the Nari-o-Shishu Nirjatan Daman Ain from any fine to be levied on the perpetrator of the offence and that usually results in no benefit to the victim. He submitted that there ought to be a system of compensating the victim other than by the offender, namely the State should have a fund to cover this type of case. He further pointed out that where the harm was done to this girl by improper application of law and inattentive handling by government and judicial officials, the State should compensate the victim. Finally, he exposed the fallacy in the explanation of the learned Senior Judicial Magistrate, who stated that since there was no application from the parents for custody of the girl, he ordered her to be sent to safe custody, by pointing out that taking any child from the lawful custody of its natural parents or guardian can only be done by operation of law and in such an event there must be reasons given for depriving the parents of the custody of their child. In this case there is nothing in the order of the learned Magistrate to suggest that he took any initiative to find out whether the parents of the girl were at all able and willing to take custody of the girl nor has he stated in his explanation that since the parents could not be found he ordered the girl to be sent to the safe home. The learned advocate submitted that the explanation is simply an afterthought aimed to cover up his failures.

Dr. Naim Ahmed in his written submissions has listed a number of recommendations with regard to the initiatives that may be taken in order to improve the situation of children and in particular to implement the beneficial provisions of the CRC. We shall advert to his recommendations in due course.

Ms. Fahima Nasrin, learned advocate during her submissions pointed out that there is a gulf of difference between safe custody and safe home. From the order of the learned Magistrate it appears that the victim was ordered to be sent to safe custody which is not in conformity with the provision in section 58(a) of the Children Act which provides that the victim is to be committed to a certified institute or approved home and does not mention safe custody. The

learned advocate pointed out that the Children Act of 1974 is by now antiquated and there has been no incorporation of the provisions of the CRC and other international instruments in our domestic law, which the Bangladesh Government is obliged to incorporate in accordance with the obligation entered into by Bangladesh when signing and ratifying those instruments. She further pointed out that the Bangladesh Government in many of the reports before the CRC Committee has undertaken to implement the provisions of the CRC, but in the last 20 years only minimal change has been made to our legislation. She further pointed out that there is currently the National Plan of Action for Children, 2005-2010, but in that action plan there is no specific provision with regard to implementation of the provisions of the CRC or with regard to the amendment of our existing law, which is by now more than 35 years old. She further pointed out that even the existing provisions of law, which have been with us for so long, are still not properly interpreted and implemented by the authorities concerned, namely the judiciary, police and all other actors involved in the process of providing justice for children. She pointed out that in spite of the recommendation by this Court in the case of ***The State Vs. Md. Roushan Mondal @ Hashem***, ***59 DLR 72,*** which was a judgment delivered in the year, 2006, no effective progress has been made by way of amending the law or implementing the provisions of the CRC. She also pointed out that there have been directions given in a number of other decisions of this Court to properly implement the provisions of the Children Act. In particular, she referred to the decisions in the case of ***State Vs. Deputy Commissioner, Satkhira and others, 45 DLR 643*** and ***State Vs. Metropolitan Police Commissioner, 60 DLR 660***, where directions were given to set up special units in order to deal properly with the particular, distinctive and special needs of children. She submitted that till date no effective action has been taken to implement the directions of this Court.

Ms Fahima Nasrin also placed before us her written submissions highlighting the fact that the persons concerned, who regularly deal with justice for children, are not themselves fully aware of the juvenile justice system and the laws which regulate the justice system for children. She referred to the recommendations made by BNWLA which we shall refer in due course.

Mr. Md. Motaher Hossain, learned Deputy Attorney General appearing on behalf of the State submitted that he had drawn the attention of the Hon'ble Minister for Law, Justice and Parliamentary Affairs, to the issues raised in this case and he has been assured that there will be an inter-ministerial meeting held shortly to implement the recommendations of this Court as given in the cases of ***State Vs. Md. Roushan Mondal @ Hashem***, ***59 DLR 72*** and also in the case of ***Fahima Nasrin Vs***. ***Government of Bangladesh and others, 61 DLR 232***, ***State Vs.***

Metropolitan Police Commissioner, 60 DLR 660 and ***State Vs. Deputy Commissioner, Satkhira and others, 45 DLR 643***. The learned D.A.G. candidly admitted that different ages are given for definition of child in different legislations and there ought to be uniformity in the definition. He further submitted that all the different agencies dealing with children, including the judiciary, police, probation service and all others involved in children's affairs should be made aware of the provisions of the Children Act and appropriate training should be given to all concerned including the members of the Bar. He further suggested that there should be an awareness drive through the print media as well as the electronic media including television and radio.

Having considered the submissions of the learned advocates and keeping in mind the various recommendations and directions issued by this Court with regard to the provisions of the Children Act and international instruments containing beneficial provisions in the best interests of the child, we are somewhat perturbed to note that the authorities concerned and the agencies involved in dealing with children are still unfortunately unaware of the relevant provisions of the law and international instruments which are in a way binding upon us. Whether or not provisions of international instruments are binding was discussed in the case of State v. Metropolitan Police Commissioner, 60 DLR 660. In this regard we may again refer to the decision in the case of ***Hussain Muhammad Ershad Vs. Bangladesh and others, 21 BLD (AD) 69,*** where his lordship B.B. Roy Chowdhury, J. pointed out that although the provisions of international instruments are not binding unless they are incorporated in the domestic law, they should not be ignored. His Lordship went further to say that beneficial provisions of the international instruments should be implemented as is the obligation of a signatory State. We note that in the same vein we mentioned in the case of ***State Vs. Metropolitan Police Commissioner, 60 DLR 660*** that as signatory Bangladesh is obliged to implement the provisions of the CRC. We also stated in that case that if the beneficial provisions of the international instruments do not exist in our law and are not in conflict with our law, then they ought to be implemented for the benefit and in the greater interests of our children. But sadly the provisions of the International Instruments are rarely, if at all, implemented. Moreover, proper implementation of the provisions of our existing law is sadly lacking and often ignored.

We find that the neglect of the Bangladesh Government to implement the provisions of the CRC has led to numerous anomalies in our judicial system when dealing with cases where an offender and/or the victim are children. A glaring example can be found in the Railways Act, 1890 where in section 130 (1) the provisions of sections 82 and 83 of the Penal Code have been overridden,

thus making children below the age of 9 years liable to be prosecuted and punished for offences under the Railways Act. Quite clearly this is patently contrary to the intent and purpose of the provisions relating to children both in the Children Act and the international instruments. Had there been a proper assimilation of our laws then such a glaring discrepancy or incongruity would not have arisen. Another glaring anomaly is found in the Children Rules, 1976 where the punishment that can be awarded to a child who attempts to run away in violation of the Code of Conduct of the Detention Centre, is caning. This is in stark contradiction with the UN Instrument relating to punishment for children and the prohibition of corporal punishment.

A number of the anomalies and inconsistencies have already been highlighted in the case of ***Roushan Mondal***, cited above, and hence it was suggested and recommended that our law should be amended or a new law formulated in conformity with the provisions of the CRC. However, many years have passed and still we appear to be far away from implementing the provisions of the CRC.

We would, therefore, strongly recommend that immediate steps must be taken by the Government to enact laws or amend the existing law in order to ensure implementation of all the provisions of the CRC, which are beneficial to children and also to minimise the anomalous situations which arise when dealing with children. In particular, in order to avoid further complications in the proper application of the existing laws, prompt action must be taken to ensure that the definition of 'child' is uniformly fixed in all statutes as anyone below the age of 18 years [**Art.1 CRC**]; the date relevant for considering the age of the accused is the date of commission of the offence, which is fundamental to the concept of protection of children who are not fully mature and do not appreciate the consequence of their actions [explained in detail in the ***Roushan Mondal*** case]; in all matters where a child is an accused, victim or witness, the best interests of the child shall be a primary consideration [**Art.3 CRC**]; that a child's views shall be considered by the Court [**Art.12 CRC**]; in ALL cases where a child is accused of commission of any offence under the Penal Code or under any special law he is to be tried by a Juvenile Court or any other appropriate Court or Tribunal in accordance with the provisions of the Children Act and Children Rules [discussed in ***Roushan Mondal***]; the use of children for the purpose of carrying drugs or arms or in any other activity which exposes them to physical and moral danger or any harm must be made a criminal offence to be tried under the Children Act [**Art.33 CRC**].

We are of the view that for proper administration of justice for children, until such time as Juvenile Courts are set up in each district, there must be a

Court designated as being dedicated to hear cases involving children, otherwise the requirement of the law to have expeditious hearings will be frustrated. Reference may be made to **Rule 3** which requires hearing of children's cases at least once a week. This is not possible since the Courts are otherwise busy hearing the regular criminal cases, which are given priority. Hence, one Court in each district must be designated as being a Court dedicated to hear cases involving child offenders so that children's cases can be heard and disposed of on priority basis [**Art.37(d) CRC**] . Legal Aid must be made available in all matters involving children so that no child remains unrepresented [**Art.40(2)(b)(ii)CRC**]. Make Probation Officers available on call round the clock in all parts of the country to enable proper and effective implementation of **section 50 of the Children Act**. Similarly, places of safety must be set up, at least one in every district and local health clinics must be empowered for the purpose of medical examination of victims so that the need to detain victims in custody will be considerably reduced.

Incidentally, we may mention that various reports produced by the Bangladesh Government to the Committee of the UN CRC have come to our notice from browsing the internet. In their first available report in the year 1997 the Committee commented as follows:

> *"The Committee is concerned about the unclear status of the Convention in the domestic legal framework and the insufficient steps taken to bring existing legislation into full conformity with the Convention, including in light of the general principles of non-discrimination (art.2), the best interests of the child (art.3), the right to life, survival and development (art.6) and respect for the views of the child (art.12). It is deeply concerned at the lack of conformity between existing legislative provisions and the Convention with respect to the various age limits set by law, the lack of a definition of the child, the age of criminal responsibility, which is set at too young an age, the possibility of imposing the death penalty, and/or imprisonment of children 16-18 in ordinary prisons. The Committee also notes that, as recognized in the State party's supplementary report, many laws are inadequately enforced and that most children's lives are governed by family customs and religious law rather than by State law."*
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> The Committee recommended as follows:
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> *"The Committee recommends that the State party pursue its efforts to ensure full compatibility of its national legislation with the Convention, taking due account of the general principles as contained in articles 2, 3, 6 and 12 and the concerns expressed by the Committee. Furthermore, the*

State party should develop a national policy on children and an integrated legal approach to child rights."

In response to the second periodic report of Bangladesh Government the Committee in October, 2003 in its concluding observations dated 27th October, 2003 stated as follows:

"The Committee regrets that some of the concerns it expressed and the recommendations it made (CRC/C/15/Add.74) after its consideration of the State party's initial report (CRC/C/3/Add.38), particularly those contained in paragraphs 28-47, regarding the withdrawal of the reservations (para.28), violence against children (para.39), the review of legislation (para.29), data collection (para.14), birth registration (para.37), child labour (para.44) and the juvenile justice system (para.46) have been insufficiently addressed (emphasis added). Those concerns and recommendation are reiterated in the present document."

The Committee recommended as follows:

"The Committee recommends that the State party take all effective measures to harmonize its domestic legislation fully with the provisions and principles of the Convention, in particular with regard to existing minimum ages of criminal responsibility and of marriage, child labour and harmful traditional practices affecting children."

It appears that there have been assurances given by the Bangladesh Government that a Directorate of Children Affairs would be established, but in spite of recommendation to take all necessary measures to expedite the establishment of the Directorate no such Directorate has been established. The Committee further recommended that the State party take all appropriate measures to ensure that the principle of the best interests of the child is integrated into all legislation, as well as in judicial and administrative decisions and in projects, programmes and services which have an impact on children. The Committee also encouraged the State party to take all necessary measures to ensure that traditional practices and customary law do not impede the implementation of this general principle, notably through raising awareness among community leaders and within society at large.

The Committee further recommended as follows:

"The Committee strongly recommends that the State party take immediate steps to ensure that the imposition of the death penalty for

crimes committed by persons while under 18 is explicitly prohibited by law."

The Committee made further recommendation as follows:

"The Committee recommends that the State party:

(a) Promote and facilitate respect for the views of children and their participation in all matters affecting them in all spheres of society, particularly at the local levels and in traditional communities, in accordance with article 12 of the Convention;

(b) Provide educational information to, inter alia, parents, teachers, government and local administrative officials, the judiciary, traditional and religious leaders and society at large on children's right to participate and to have their views taken into account;

(c) Amend national legislation so that the principle of respect for the views of the child is recognized and respected, inter alia in custody disputes and other legal matters affecting children."

Recently in June, 2009 the Committee in its concluding observations upon considering the 3rd and 4th periodic reports of the People's Republic of Bangladesh made, *inter alia,* the following comments and recommendations:

"The Committee welcomes the establishment of the National Council for Women and Child Development in February 2009, headed by the Prime Minister. The Committee again urged the State party to take all necessary measures to address the previous recommendations that have not been fully implemented and to provide adequate follow-up to the recommendations contained in the present concluding observations on the combined third and fourth periodic report."

The Committee observed as follows:

"However, the Committee remains concerned that some aspects of domestic legislation continue to be in conflict with the principles and provisions of the Convention and regrets that there is no comprehensive law to incorporate the Convention into domestic legislation. In particular, the Committee is also concerned that the 1974 Children's Act has not been revised in line with the Convention.

The Committee recommends that the State party continue to harmonize its legislation with the principles and provisions of the Convention and incorporate the Convention into domestic legislation, ensuring that the Convention can be invoked as a legal basis by individuals and judges at all levels of administrative and judicial proceedings. The Committee also

recommends that the 1974 Children's Act be revised to cover comprehensively the rights of the child. Finally, the Committee encourages the State party to carry out an impact assessment of how new laws affect children.

The Committee welcomes the strong political will to address children's issues and notes the information shared by the delegation on the newly established National Council for Women and Child Development (NCWCD) as an oversight mechanism. Nevertheless, the Committee remains concerned that effective coordination and monitoring have not been fully developed, in particular due to the relatively low empowerment of the coordinating body (Ministry of Women and Children's Affairs (MoWCA)) vis-à-vis other ministries, sectors, and levels of administration involved in the implementation of the rights of the child. Furthermore, the Committee notes with concern the risk of overlapping and duplication between the NCWCD, MoWCA and Department for Children, expected to be established under the MoWCA."

We also considered the National Plan of Action for Children, 2005-2010, wherein we note that the then Prime Minister in her message wrote as follows:

"Children are the greatest asset of our country. We should provide them proper environment for blossoming to their full potentials. With the preparation of the 3rd National Plan of Action (NPA) for Children (2005-2010), the Government of Bangladesh reiterates its commitment to the rights and welfare of children."

In the plan of action we find mention of proposed Directorate of Children Affairs, National Children Taskforce and Independent Commission for Children. However, four years have already elapsed and we do not find the emergence of any of these proposed bodies/institutions. Reference has been made by the Committee of the CRC about establishment of the National Council for Women and Child Development. It only remains to be seen how far that promise comes to fruition.

However, in the National Plan of Action we do not find any specific proposition or mention with regard to promulgation of any laws or amendment of the existing laws. It appears to us that the aspect of juvenile justice or justice for children has received only nominal mention. It is stated in the plan of action that "an inter-ministerial committee has been established under the chairmanship of the Principal Secretary to the Hon'ble Prime Minister for the protection of children who come into contact with the law and the

improvement of the administration of juvenile justice. The Government recognises the need to harmonise national laws on juvenile justice, in conformity with the CRC." But there is no proposal within the national action plan as to how that will be realised.

The plight of children across the globe over the last 100 years had been considered in the decision of *Roushan Mondal,* cited above. Sadly, it appears that only lip-service is paid by many countries, including the so-called developed countries, to 'the best interests of the child.' We note that when it comes to children committing more serious crimes, they are tried effectively as adults and the best interests of child takes back-stage as a mere slogan. This is in spite of the clear mandate in Article 3 of the CRC for State Parties to ensure that in all actions concerning children taken by institutions, including courts of law, the best interests of the child shall be a primary consideration. The age old attitude of demonising children who commit serious crimes is to be deplored. Courts should at all times consider the reasons behind the deviant behaviour of the child and after taking into account all the attending facts and circumstances decide what treatment would be in the best interests of the child.

We are dismayed that till today Bangladesh is still lagging far behind in caring for its children. Because of our failure to implement the beneficial provisions of the CRC, the plight of our children has not improved to any measurable extent. The fact that we are lagging behind is only too apparent from the persistent recommendation of the Committee of CRC for Bangladesh to incorporate and implement the provisions of the international instrument.

In the facts of the instant case, had the best interests of the child been considered then the learned Senior Judicial Magistrate, Sylhet should have realised that the best interests of a seven year old girl demands *(emphasis added)* that she be allowed to remain with her parents. The learned Magistrate, if he had any sense of common humanity in his dealings with a child and if he had applied a humane attitude, then he would have searched out the girl's parents in order to ascertain that they are fit and capable of retaining her custody. Moreover, had the learned Magistrate properly appreciated the law, then he could not have torn the girl away from her parents and sent her to safe custody in the safe home. Clearly the option that he had applied is a subservient provision of the law, the proviso being the dominant provision, that is to say, if the parent/guardian of a child is fit and capable of providing proper care, control and protection, then the custody of the child should have been given to the said parent or guardian. To say that the girl was sent to safe custody because there was no application by the parents for the custody of the

girl is not proper interpretation of the law. Moreover, we find that on 07.04.2009 there was an application by the Officer-in-Charge of the concerned police station indicating that the girl needed to be with her mother. This clearly is an indication that the parent wished to have the custody of the girl and there can be no earthly reason why at this stage the learned Magistrate did not allow the girl to go to the parents. Quite clearly, the learned Magistrate acted in total violation of the provisions of law. When it is apparent that the girl was crying to be with her mother, that clearly is an expression of the view of the child to be with her mother and in compliance with Article 12 of the CRC the learned Magistrate should have given effect to it. A crying child is itself a patent application before any right-thinking person that s/he wants to be with her/his mother. We feel that the learned Judge is bound to take into account the child's view. There is nothing on record to suggest that the learned Magistrate at all considered the views of the child which shows abject ignorance of the international provisions, which are meant to be for the welfare and wellbeing of children. Moreover, the tearing away of a seven year old female child from the bosom of her mother can be nothing other than cruel and inhuman treatment which is contrary to Article 27 of the CRC as well as Article 35(5) of our Constitution. The learned Magistrate has clearly acted in contravention of the provisions of law, the Constitution and the CRC, to which Bangladesh is a signatory. He has caused immeasurable human suffering to the victim girl and her parents. It is abundantly clear that the lower judiciary is not sensitised enough nor indeed sufficiently aware of relevant provisions of law to cope with a situation of this nature. It does not take a lot of intelligence to realize that a seven year old girl, who had been raped and severely traumatised, needs the company and succour of her mother and yet the learned Magistrate caused even more trauma by wrenching the girl apart from her mother and putting her in a safe home totally isolated from her family at the time of her greatest need. Such a decision of the learned Magistrate clearly shows his lack of appreciation of the severity and gravity of the situation and the feelings of the victim girl. Moreover, his interpretation of the law shows his callous disregard for both our domestic law as well as international instruments. We would only remind all members of the judiciary that according to the decision in the case of ***Hussain Muhammad Ershad Vs. Bangladesh and others, 21 BLD (AD) 69***, unless the provisions of the international instrument conflict with our domestic law, as signatories to those instruments, we are obliged to implement and apply the provisions of those instruments.

When we consider the repeated exhortation of the Committee of the CRC aimed at the Bangladesh Government to implement the provisions of the

Convention, we find that the government has been very slow to react, particularly in the field of justice for children. As a result we find anomalous situations and decisions emanating from the sub-ordinate judiciary. In a recent decision by the learned Judge of the Nari-o-Shishu Nirjatan Daman Tribunal, Sirajgonj in Nari-o-Shishu Case No.764 of 2006, the learned Judge commented as follows:

"GLv‡b GKUv wel‡q D‡jL Kiv c‡qvRb 18 eQ‡i i Kg eqmx evjK‡K gZ"`Û †` Iqv hv‡e bv Zv AvB‡b bvB|"

It is correct that the Children Act defines a child to be anyone below the age of 16 years and, therefore, there is no prohibition in our law to award a sentence of death upon conviction of an accused aged sixteen years and above. However, applying the decision of the Appellate Division in the case of ***Hussain Muhammad Ershad Vs. Bangladesh and others, 21 BLD (AD) 69,*** the provisions of the CRC and ICCPR should be applied and hence there should not be any sentence of death awarded to an accused below the age of 18 years. Moreover, the learned Judge referred to a decision in the case of ***The State Vs. Tasiruddin, 13 DLR 203,*** in support of his contention that the death sentence may be awarded to someone below the age of 18, little realizing that in that particular case there were references to several other decisions of the subcontinent where the death sentence was commuted to imprisonment for life on the ground of youthfulness of the offender and in the very case referred by the learned Judge death sentence had been commuted and yet the learned Judge went ahead to impose the penalty of death on the accused who was allegedly below the age of 18 years. We only mention the above case in order to highlight the fact that anomalies are arising in the decisions of our Courts purely due to the fact that our laws are not consistent and in conformity with the provisions of the international instruments to which we are signatory.

We can only reiterate the comment of the Committee of the CRC which welcomed "the strong political will to address the children issues". We recollect the submission of Dr. Naim Ahmed that when there is a will and persons having that will have the power laws may be passed within a matter of months. We respectfully agree that where there is a will laws may be passed most expeditiously. However, that 'will' appears to be a forlorn cry in the case of the amendment/enactment of laws concerning children, as no significant changes have been made in our law in the past 20 years and in spite of the recommendation from this Court more than three years ago.

Coming back to the instant case, we find that in fact the release of the victim girl came about as a result of the initiative taken by the Prime Minister of the country. We also note the comment of the Committee to the UN CRC

welcoming the establishment of the National Council for Women and Child Development in February, 2009 headed by the Prime Minister and again reiterate that where there is a will development can take place, particularly in the interests of our children, who are citizens of the nation and future flag bearers. The benefit that the State can give to our children will accrue to the State itself and neglect in this regard will only cause immediate misery to the child victim/offender and ultimately misery to the nation.

We would suggest that for proper implementation of the provisions of the CRC as well as other international instruments, it is necessary to have sensitised personnel dealing with children at the various stages of the justice process. We, therefore, need dedicated and sensitised personnel in the various departments, ministries, judiciary, police, probation and other relevant agencies. Most of all, we need awareness in all those who deal with children as to their rights and needs and a benevolent attitude towards children and their plight. We should not forget the obvious truth that children, who become victims or come into conflict with the law, do not do so of their own volition. A little circumspection would reveal that they come into contact with the law due to actions or failures of adults around them.

In view of the above discussion, we feel that there is still lack of awareness about the existing laws, international instruments and their applicability as well as a general tendency to demonise criminal activity of children without applying the mind to the cause of the deviant behaviour. The lack of knowledge of the law and failure to properly appreciate the needs of a child victim in this case has led to immense and unnecessary suffering of a seven year old child. We would wish, therefore, to take this opportunity to make the following general and specific recommendations, keeping in view the suggestions made by Aparajeyo Bangladesh and BNWLA and the learned Deputy Attorney General:

1. First and foremost, we feel that for proper appreciation of the provisions relating to justice for children, it is essential that all persons concerned with children, including the concerned Government officials of the relevant Ministries and officials of the concerned Government Departments, law enforcing agencies, the judiciary, personnel in the detention and penitentiary system as well as community leaders and local government officials must be aware and sensitised to the needs of children in contact with the law.

2. Initial training and all subsequent refreshers training/courses for Judges, Judicial Magistrates and Executive Magistrates should include the concept and practice of Justice for children as a separate topic giving it proper importance.

3. Establishment of child-specific courts in every district which will be dedicated to cases relating to children and will deal with cases involving children on a priority basis and other cases only if there is no outstanding case of a child.

4. There is a patent need for a child-sensitive specifically trained Police force. Each Police Station shall have at least two officers, of whom one shall be a female, to deal with cases involving children in contact with the law. That officer shall be designated as a focal point for children in conflict/contact with the law who shall deal with all cases relating to children as far as practicable. The training courses of the members of the law enforcing agencies must include justice for children as a separate subject focusing on their duties and obligations under the law.

5. Detailed separate Rules under the Children Act, 1974 should be formulated and incorporated therein, which will deal with victim children and will specifically determine the duties and responsibilities of police officers, probation officers, the Court and others concerned in dealing with them.

6. It is time for Bangladesh to live up to its promises to set up a Children's Commission/Children's Ombudsman. Alternatively, a National Juvenile Justice Forum, which are in vogue in certain countries, may be set up under the Chairmanship of a senior sitting Supreme Court Judge. The practical benefit would be that the Forum may be empowered to issue directions and guidelines to the subordinate judiciary and other bodies regarding any issues relevant to justice for children. Such an institution shall be set up under the Constitution giving it specific powers to issue guidelines/handbook in relation to matters concerning justice for children. Such guideline shall be adopted by the Ministries concerned with justice for children and shall be translated into Bangla and disseminated to all the relevant bodies and institutions, including the police and other law enforcing agencies, probation service, prison service, Social Welfare Department, courts and tribunals.

7. A summary of the said guideline (to be followed by the members of the police and other law enforcing agencies with respect to the treatment of children in contact/conflict with the law) should be displayed in prominent places of police stations.

8. Each police station shall display in a prominent place the names and contact numbers of Probation Officers, Doctors on duty, places of safety, approved homes, certified institutions and NGOs working in the area.

9. In the police station, children shall be kept separately from adult accused persons.

10. Police officers should work in close cooperation with Probation Officers, the safe homes and NGOs working in the field in the local area so that protection, safety and well-being of a victim child can be provided without any delay.

11. As soon as a victim child is brought before the police station, or the police are informed about the whereabouts of a victim child, the Probation Officer should be informed.

12. The Probation Officer shall visit the victim child without any delay. He shall assist the police officer in determining whether the child needs medical treatment or examination and whether the child is safe with its parent or guardian. Where necessary the child shall immediately be taken to the nearest clinic or hospital. If medical examination cannot be done on the same day, the police officer concerned shall record reasons for the same.

13. When a child is brought before the Police Station or the Court, it shall be the duty of the police officer or the Court to determine whether it is safe for the child to return with the parent or guardian. If required, the child shall be asked about these matters confidentially and without presence of its parent or guardian.

14. A child shall not be separated from its parent or guardian save in exceptional cases. These will include cases where the parent or guardian is unavailable or where the threat of safety comes from the parent or guardian or where the parent or guardian is unable to provide safety to the child from any impending threat.

15. In the absence of a parent or guardian, a relative or other fit person may be entrusted to keep the child in safety.

16. Where appropriate, the child may be taken to a place of safety by the Probation Officer himself under section 55 of the Children Act.

17. The Government must provide sufficient number of places of safety, at least one in every district, so that such a place of safety is easily accessible from any part of the country.

18. While separating the child from its parent or guardian, the police officer, the probation officer or the Court must record the reasons thereof.

19. When it is necessary to separate a child from its parent or guardian, in exceptional cases and where the situation demands, the guidelines under sections 55 and 58 of the Children Act, should be strictly followed. Accordingly-

a) A probation officer or a police officer can take a child to a place of safety and detain the child for a period of not more than 24 hours before producing the child before the Court. (Section 55 of the Children Act).

b) Once produced before the Court in connection with any offence under the Children Act, before institution of proceedings, the Court may make such order

as the circumstances may admit and require for the care and detention of the child (section 56 of the Children Act).

c) After institution of proceedings, the child shall be produced before the Court and the Court may commit the child to the care of any relative or fit person, or to a certified institute or approved home. The conditions as provided in section 58 of the Children Act shall be strictly followed.

d) Where the parent/guardian is fit, capable and willing to take custody of the child then the Court shall hand over custody to the parent/guardian. The reasons for not doing so must be clearly stated by the Judge.

20. Under the Children Act, 1974 and under the system of Justice for children there is no requirement for anyone, including the parent or guardian, to apply before the Court for any relief. It is the duty of the Court to ensure compliance of the law in the best interests of the child.

21. Children shall be given special preference in getting legal aid under the AvBbMZ mnvqZv c`vb AvBb, 2000 and for this purpose appropriate instructions shall be given by the government to the District Legal Aid Committee.

22. Bangladesh Bar Council should develop a training manual for newly enrolled lawyers to include Justice for Children as a separate subject for better understanding of child protection and development of child rights and its different mechanisms where it should explain their role and responsibility, concept of child rights and United Nations Child Rights Convention and other international instruments.

23. The Judicial Administration Training Institute (JATI) should undertake training programmes for Judges and Magistrates, including follow-up training for senior Judges regarding Justice for Children and, in particular training regarding the provisions of the Children Act, 1974, the Children Rules, 1976 and relevant UN and other international instruments.

25. The Ministry of Women and Children Affairs and Ministry of Social Welfare should provide training for their own officers as well as for Probation Officers, Managers and concerned staff employed in the safe homes and other places used for detention of children.

26. The Government should ensure training in good parenting and for awareness development in the community to establish child protection and rehabilitation of deviant children in the community.

27. The Government must take positive steps for dissemination of materials regarding child rights in order to ensure awareness of all concerned with children in contact with the law through the print media as well as the electronic media, including television and radio.

28. Laws are required to be formulated for victim and witness protection in order to avoid harassment of the victim children and to ensure effective prosecution of offenders, keeping in mind the need to maintain confidentiality, privacy and dignity.

29. Informal atmosphere should be ensured in Juvenile Courts in order to protect child/youthful offenders, child victims and witnesses. Presence of police should be avoided, unless it is felt necessary for the protection of the child offender, victim or witness. Judges/lawyers should not wear uniform during trial.

30. The concerned Ministries should consider the need to formulate community based committees to develop child protection mechanisms, skill development training, and training in child rights.

31. The State through its relevant Ministries shall take necessary steps to identify children at risk of committing offences and at risk of being exploited by adult criminals for criminal activity, i.e. young children engaged in theft, robbery, picketing, vandalism, as carriers of drugs and arms, explosives, member/informer of criminal gangs and suicide squad and should identify the reasons behind the criminal activities of children and address the root cause of such deviant behaviour.

32. The concerned Ministries shall take appropriate measures to form, strengthen and activate Upazila/Union/Ward level child protection motivational committees and community based committees set up for ensuring and monitoring child protection in their locality.

33. The Government should take steps for setting up a system and mechanism for the rehabilitation of victims of crimes.

34. It is therefore imperative that the Government take immediate steps to amend the existing laws or formulate new laws in order to overcome the anomalies and procedural knots as highlighted above as well as to enable implementation of the provisions of the international instruments which will undoubtedly be beneficial to the children of this nation, thus fulfilling our obligations under international treaties and covenants.

Before parting with this matter we wish to express our appreciation to Dr. Naim Ahmed and Ms. Fahima Nasrin for their valuable submissions and recommendations. We also express our appreciation to Mr. Motahar Hossain, the learned Deputy Attorney General and the learned Assistant Attorneys-General who assisted him in giving valuable assistance to this Court. We are happy to learn from the learned DAG that he had received an assurance from the Ministry of Law Justice and Parliamentary Affairs that steps are being taken to amend the laws relating to justice for children.

Finally, we may mention that the work done by Channel I in broadcasting the plight and misery faced by an innocent minor girl is commendable. However, we are constrained to remind the media once again that disclosing the identity of minor accused and victims is prohibited under section 17 of the Children Act, 1974 and is punishable under section 46 of that Act. Publication of identity is also prohibited under section 14(1) of the Nari-o-Shishu Nirjatan Daman Ain, 2000 and is punishable under section 14(2) of the Ain.

With the above observations and recommendations, the Rule is disposed of, with a further direction upon the trial Court to conclude the trial expeditiously.

With regard to the claim for compensation, Dr. Naim was unable to give us any lead as to how in the criminal jurisdiction compensation might be awarded to a victim who undoubtedly suffered mental and physical trauma and hardship as a result of erroneous action of the learned Magistrate. However, we would strongly recommend that the Government should seriously consider disbursal of compensation in cases of this nature.

We do not propose to take any punitive action against the learned Magistrates for their failures as highlighted above. However, we hereby direct that a copy of this judgment be kept in the dossier of the learned Magistrate, who was at the relevant time Chief Judicial Magistrate, Sylhet, for future reference.

So far as the action of the learned Senior Judicial Magistrate, 2nd Court, Sylhet, is concerned, we find his explanation to be unsatisfactory and unacceptable. He is hereby warned that such lapses should never recur. Let a copy of this judgment be kept in his dossier for future reference.

Let a copy of this judgment be communicated to the Ministry of Law, Justice and Parliamentary Affairs, Ministry of Home Affairs, Ministry of Women and Children Affairs, Ministry of Social Welfare, Office of the Principal Secretary to the Prime Minister, Chairman of Law Commission, Director General, Judicial Administration Training Institute and Chairman, Bar Council for information and necessary action.

The Registrar is hereby directed to ensure that a copy of this judgment is circulated to all Judicial Officers in the service of the Republic.

Md. Fazlur Rahman, J.

I agree.

I s m a i l