

সংকলিত কপি থেকে প্রস্তুতকৃত

৩০ মে ২০১৮



গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

আইন কমিশন

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১৫ কলেজ রোড, ঢাকা - ১০০০

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বিষয়

**Opinion of the Law Commission upon reference made by the Ministry of Law, Justice and Parliamentary Affairs with respect to giving legal basis for Women and Children Torture Resistance Cell of the Ministry of Women and Children Affairs**

৩১ মার্চ ১৯৯৭

পুরাতন হাইকোর্ট ভবন

ঢাকা-১০০০

**Government of the Peoples Republic of Bangladesh**  
**Office of the Law Commission**  
**Old High Court Building**  
**Dhaka.**

**Sub: Opinion of the Law Commission upon reference made by the Ministry of Law, Justice and Parliamentary Affairs with respect to giving legal basis for Women and Children Torture Resistance Cell of the Ministry of Women and Children Affairs.**

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Women and Children Affairs Ministry made a reference to the Ministry of Law, Justice and Parliamentary Affairs seeking legal opinion in respect of providing the legal basis ensuring the status and authority regarding the functions of the Women and Children Torture Resistance Cell in analogy with or by re-enacting the Women Rehabilitation and Welfare Fundamentals of the Act, 1974 (since repealed) keeping in view the necessity of some incidental amendments of the Women and Children Torture Resistance Act, 1995 and Muslim Family laws Ordinance, 1961. The Law Ministry has forwarded the same to the Law Commission for its opinion.

2. The background as given in the letter of reference of the Women and Children Affairs Ministry dated August 12, 1996 is that in 1972 an Institute was set up by the name of 'National Board of Women's Rehabilitation' with the programme of rehabilitating the women who were tortured or otherwise affected during liberation war. In 1974 it was renamed as 'Bangladesh-Women's

Rehabilitation and Welfare Foundation' by Act LI of 1974. In 1984 by Ordinance 37/84 the Foundation was abolished and the Act of 74 was repealed. All acts and functions of the previous Foundation were then taken over by the Women and Children Affairs Ministry. On March 09.1986 an executive order of the said Ministry created the Women and Children Torture Resistance Cell for giving legal aids and facilities to the tortured or affected women by fixing up its duties and functions enumerating the same in 4(four) points, namely:-

- (1) Cell will function as an advisor or counseling body or an arbitrator;
- (2) Cell will receive complaints, call the parties, hear them and then give and implement its decisions. If any one is aggrieved by the decision of the Cell it may be decided how redress in Court can be had.
- (3) Police will cooperate with the Cell in implementing its decisions.
- (4) If the Cell can not give redress to the affected persons the Cell will arrange to deupte lawyer for obtaining relief from court.

3. In pursuance of the said executive order the Cell has been performing the following functions:

(Ka) Giving legal counsel for securing the interest and legal right of women.

(Kha) Receiving complaints of affected women and giving hearing and making attempt of reconciliation on the basis of mutual understanding of the parties.

(Ga) Taking legal steps for realising the dues of maintenance for the affected women or children.

(Gha) Collecting information of cases of torture and taking legal steps.

(Uma) Giving medical and to the affected women.

(Cha) Conducting cases of affected women through lawyers.

4. It thus appears that the Cell has been performing exactly the same functions as have been authorised and enumerated in the executive order and does not exercise or exert any kind of authority in any matter. Its entire functions are of the nature of social services to the affected women and children by hearing their grievances, receiving their complaints, trying to reconcile the disputes on mutual consent and failing that to give legal aid for having the relief from court by employing lawyers for them. The Cell also renders medical aid by arranging medical treatment of victims in hospital.

5. So far as the suggestion to vest the Cell with the power to implement its decision is concerned, the Commission is of the opinion that vesting the Cell with such powers will virtually tantamount to vesting it with judicial power. Various courts, such as, the civil courts, the family courts, the tribunals under various special Acts are operating in the country for adjudicating disputes in which women and children are aggrieved and to enforce their decisions after adjudication. It will not probably be desirable to vest the Cell with such powers of adjudication and implementation of its decisions, the role of the Cell being conciliatory.

6. Thus having considered the objects for which the Cell has been created and the functions entrusted to and performed by the Cell on the basis of the executive order, we do not think that there is any necessity of enacting any law for giving legal authority to the Cell for rendering such social services as we find no legal bar in performing the functions of the Cell as they have been doing now on the basis of the executive order of the Government.

7. As far as the matter of torture on women and children is concerned there are appropriate laws and courts for that. To create further authority by making further law in that regard will not be proper in our view.

**Singed /= 31.03.1997**  
(Justice Dr. F.K.M.A. Munim)  
Chairman

**Singed /= 31.03.1997**  
(Justice Amin-ur-Rahman Khan)  
Member

**Singed /= 31.03.1997**  
(Justice Naimuddin Ahmed)  
Member