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PRESS RELEASE

High Court issues Rule Nisi directing the Ministry of Women and Children Affairs and the National Human Rights Commission to constitute a Committee to formulate detailed criteria and guidelines on assessing guardianship issues

Today, the High Court issued a Rule Nisi upon the Government to show cause as to why section 19 (b)) of the Guardians and Wards Act, 1890 should not be declared to be *ultra vires* the Constitution as being violative of fundamental rights as guaranteed under the Constitution, in particular Article 26 (laws inconsistent with fundamental rights to be void), Article 27 (right to equality before law) and Article 28 (prohibition of discrimination on grounds of sex, religion etc)

The High Court also directed the Respondent No. 2 (Ministry of Women and Children Affairs) and the Respondent No. 4 (National Human Rights Commission) to constitute a committee comprising the respondents and independent experts to formulate detailed criteria and guidelines to help decision makers assess guardianship issues and submit the said guidelines to the Court within 4 (four) months of issuance of the Rule i.e by 4 August 2024.

A Division Bench of the High Court, comprising Madam Justice Naima Haider and Madam Justice Kazi Zinat Haque, issued the Rule and directions in a writ filed by five petitioners – namely Think Legal Bangladesh, Bangladesh Legal Aid and Services Trust (BLAST), Bangladesh Mahila Parishad, Naripokkho and the Academy of Law and Policy (ALAP).

The respondents to the petition are the Ministry of Law, Justice & Parliamentary Affairs, the Ministry of Women and Children Affairs, the Law Commission, Bangladesh and the National Human Rights Commission, Bangladesh.

Sara Hossain, Senior Advocate, Supreme Court of Bangladesh, said “*This order today is an important step in moving us towards ensuring equality for women in relation to rights within the family and particularly to guardianship of children. It marks a timely effort to address and change the discriminatory attitudes and concepts that were embedded in colonial laws and continue to prevail across society.*”

Barrister Anita Ghazi Rahman, Advocate, Supreme Court of Bangladesh and Trustee, Think Legal Bangladesh, who filed the petition, stated “ *This Guardians and Wards Act, 1890 is a 134 year old colonial Act, made when women had not any legal status nor any rights which is absolutely not applicable in this 21st era. This is an excellent first step to recognizing mothers’ rights as the guardian of the children and we hope that the reports that will disseminated on the 4th August will go towards upholding women’s rights in terms of guardianship.*”

Sara Hossain, Senior Advocate, appeared for the petitioners, with Barrister Anita Ghazi Rahman, Barrister Rashna Imam, Advocate Masuda Rehana Begum and Advocate Ayesha Akhter. Deputy Attorney General Amit Das Gupta was present on behalf of the Government.

Background

The petitioners filed this writ in the public interest impugning section 19(b) of the Guardians and Wards Act, 1890, as being violative of the fundamental rights of women to equality and non-discrimination, and praying for a declaration that women and men be treated on an equal footing for the purpose of being appointed or declared as the guardian of a minor under the Guardians and Wards Act, 1890 in accordance with the fundamental rights guaranteed under Article 26,27 and 28 of the Constitution.

For more information, please contact :

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