



Star LAW report



READER'S queries



Your Advocate



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law. Send your queries to the Law Desk, The Daily Star. A panel of lawyers will address your problems.

Q: My parents married each other by courtship since they had love affairs and my maternal parents did not accept this marriage. Since my mother married against my grand parent's will, they verbally told my mother not to keep any relation with them and she is (my mother) dead entity to them. And since then my parents remained aloof from them. Even when I came in this world my maternal grand parents did not feel to see their first grandson. My grand parents after performing Haj and being old enough handed over all their moveable and immovable property to my only one uncle and my lone aunt (my mother's elder sister). My grand parents did not give any portion or single penny to my mother; though by born my mother is also their daughter. Due to this my mother was shocked tremendously. Outcome of indignation she did not ask for her due share. But after my grand parents death she just visited her father's house to see their face for ever. At present my uncle and aunt being owner of my grand parent's property enjoying it selfishly and did not feel for my mother. Under this circumstances my queries are: (a) As per Muslim law of heir is it legal to deprive my mother from her birth right i.e. to get due share as a daughter? (b) Is there any legal way, at present on my mother's part to claim her due to her brother and sister? If yes, please advise how? (c) Being grandson can I claim for my mother's due share and mine too, after my mother's death? Pl. Provide Legal advice.

Arpon Kabir,
Uttara, Dhaka.

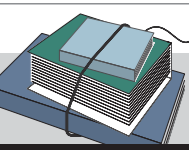
Your Advocate: Your case shows up a kind of contrast between our age-old sentiment and values on the one hand and our increasingly individualised modern life on the other. In these days of cut-throat individualism, personal liberty and freedom interference with personal choice particularly in matters of choosing a life partner looks funny and depriving or abetting to deprive an heir on that count from his or her paternal property is really unfortunate. Still this is the reality in our society. At least the younger ones, that is, your uncle and aunt could have played their role in ensuring the share of your mother but they are enjoying the entire property instead with complacency.

Whatever unkind it looks the legal position is an heir, say, a daughter inherits only when her parents die leaving behind some property open to be inherited. If there is nothing subsisting question of inheritance does not arise. If the owner of the property legally transfers the same to anyone else to the extent of the transfer law of inheritance does not apply precisely because nothing subsists to be inherited. You have used the words "handed over" which does not give a clear picture as to whether your grand parents disposed of their entire property by sale or gift or merely wished your uncle and aunt to enjoy the same to the exclusion of your mother. If it was a mere wish expressed under shock and indignation and there is no documentation there is scope for your mother to inherit her parents property.

You will have to take the trouble of collecting the information as to what is the nature of authority upon which your uncle and aunt are possessing the property. In the peculiar circumstances the possibility would be that there is a deed of gift executed by your grand parents in favour of your uncle and aunt. In that case fighting for share would be most likely to be a futile exercise. If it is found that the property is sought to be disposed of by "will" there would be a fighting point for your mother as a bequest to an heir is not valid unless the other heirs consent to it.

It is now advisable for you to collect necessary information and the copy of the deed, if any, and consult a good civil lawyer to examine whether there is still any subsisting interest of your mother in your grand parents property and if at all, how that can be recovered. So far as your entitlement is concerned in presence of the sons and daughters of your grand parents you are not entitled to any share. It is only after your mother's death that your entitlement sets in and you can set up your claim and vindicate the same.

LAW lexicon



Mediation

The most popular form of alternative dispute resolution (ADR), mediation involves the appointment of a mediator who acts as a facilitator assisting the parties in communicating, essentially negotiating a settlement. The mediator does not adjudicate the issues in dispute or to force a compromise; only the parties, of their own volition, can shift their position in order to achieve a settlement. The result of a successful mediation is called a "settlement." Compare with arbitration.

MOU

Abbreviation for "Memorandum of Understanding." A document which, if meeting the other criteria, can be, in law, a contract. Generally, in the world of commerce or international negotiations, a MOU is considered to be a preliminary document, not a comprehensive agreement between two parties but rather an interim or partial agreement on some elements, in some cases a mere agreement in principle, on which there has been accord. Most MOUs imply that something more is eventually expected.

Minor

A person who is legally underage. It varies between 21 and 18 years of age. Each state sets an age threshold at which time a person is invested with all legal rights as an adult. For many new adults, this may mean access to places serving alcohol and the right to purchase and consume alcohol, smoke cigarettes and drive a car. But there are many other legal rights which a minor does not have such as, in some states, the right to own land, to sign a contract or to get married.

Minutes

The official record of a meeting. Some minutes include a summary (not verbatim) of the discussion along with any resolutions. Other minutes just contain a record of the decisions. Minutes start off with the name of the organisation, the place and date of the meeting and the name of those person's present. Minutes are prepared by the corporate secretary and signed by either the president or secretary.

Mis-joinder

When a person has been named as a party to a law suit when that person should not have been added. When this is asserted, a court will usually accommodate a request to amend the court documents to strike, or substitute for, the name of the mis-joined party. Compare with non-joinder.

People's representatives may be suspended for misconduct

Appellate Division (Civil Jurisdiction)
The Supreme Court of Bangladesh.
Civil Petition for Leave to Appeal No 1734 of 2002.
Md Abdur Rashid
Vs
Bangladesh & Others
Before Mr. Justice Md Ruhul Amin, Mr. Justice
KM Hasan and Mr. Justice Md Fazlul Haque.
Date of Judgement: January 27, 2003.
Result: Petition dismissed.

Background

Md Ruhul Amin, J: This petition for leave to appeal by the writ-petitioner is against the order dated August 26, 2002 of a Division Bench of the High Court Division in writ Petition No. 3668 of 2002 vacating the order of stay dated July 27, 2002.

The writ petition has been filed challenging the order of the bench dated July 20, 2002 suspending the petitioner from the office of Chairman of the Dewangonj Pourashava in the District of Jamalpur. It also challenged the Memo dated July 21, 2000 directing Deputy Commissioner, Jamalpur to inquire into the allegations of 10 Commissioners of the Pourashava against the Chairman and in case of finding the allegations correct to ascertain through secret ballot the final opinion of the Commissioners and to report the result. The petitioner had been elected Chairman of the aforesaid Pourashava in the year 1999. The order of suspension has been passed alleging corruption, irregularity, misappropriation of money and guilty of conduct unbecoming of the office of Chairman.

The petitioner has challenged the order of suspension by filing the aforesaid writ petition on the ground that as the elected Chairman of the Pourashava till the expiry of the terms he is entitled to discharge duties of the office. Although in the order of suspension it has been mentioned that 10 Commissioners out of 12 Commissioners of the Pourashava said to have taken resolution for his removal but in fact the same was taken by 5 Commissioners. Five other Commissioners have affirmed affidavit denying the truth of the resolution. And that meeting of the Pourashava called for disposal of the resolution taken by the Commissioners was not legal.

The High Court Division while issuing the rule stayed the order of stay stating primarily that 10 Commissioners out of 12 Commissioners of the Pourashava have passed resolution for the removal of the writ petitioner. Thereupon the authority in consideration of the said resolution as well as fact of corruption, misconduct and misappropriation of the fund of the Pourashava has passed the order of suspension. And that upon passing of the order of suspension the charge of Office of the Chairman by the Memo dated July 20, 2000 has been given to the No. 1 penal Chairman and as such the order of stay is seriously hampering functions of the Pourashava. The High Court Division after hearing the learned Advocate for the parties has vacated the order of stay made at the time of issuance of the Rule.

Deliberation

The learned Counsel for the petitioner submits that petitioner being an elected representative has a legal right to function as Chairman of the Dewangonj Pourashava for the period he has been elected. As such petitioner has not been removed from the office. It has also been contended that order of suspension has been passed at the instance of the petitioner's political rival at the local level and that the order of suspension has been passed upon total non-application of mind as well as in absence of the proper materials. It has also been submitted that office of Chairman being an elected office and that petitioner being the representative of public he should

have been allowed to perform his functions as the elected representative. Lastly, it has been submitted that in a society which is making all endeavours to practice democracy at all levels through elected bodies and in order to democratise the society and its institution through the elected representative, the High Court Division seriously erred in law in vacating the order staying suspension of the petitioner.

The learned Counsel has contended that for the purpose of making an order of suspension the authority is required to form its opinion on the basis of tangible material. In support thereof he has referred to the case reported in 46 DLR (AD) 163 where it has been held if there is no material at all on which to form an opinion or if the materials that exist are totally unconnected with the kind of opinion that the Government is required to form, then the order of suspension will fall through.

In view of the materials on record the contention of the learned Counsel that there authority to form opinion as to non-desirability of the petitioner to

its deprivation however temporary, will be strictly viewed at". The learned Counsel has also referred to the case reported in (2001) 6 SCC 260 wherein it has been observed "In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held"

The view expressed in the aforesaid reported cases can hardly be dis-

puted. In other words there is hardly any reason to take a view different from the views expressed in the aforesaid reported cases as regard disapproval of deprivation of office of an elected representative from his office. But there may be occasion(s) or case (s) where public representative by his conduct has made him undesirable to perform the function and duties of the office of elected representative. In that situation the authority on consideration of tangible materials is quite competent to act within its limit to form opinion to put such public representative out of his office because of the view that his continuation in the office is undesirable from the administrative point of view. In the instant case it is seen that there was allegation of serious nature like misappropriation of fund of the Pourashava and that there has been an enquiry as regard the said allegation and that a resolution was taken by the 10 commissioners out of the total 12 commissioners of the Pourashava for removal of the petitioner from his office. And the authority in consideration of the resolution of the commissioners for the removal of the Chairman and the inquiry report relating to allegation of corruption formed opinion for removal of the petitioner from his office from the

administrative point of view. And thereupon the authority passed the order of suspension and following that also has appointed penal Chairman to perform the functions of the Pourashava.

Decision

In the background of the discussions made here in above we find no substance in the petition. Accordingly the petition is dismissed.

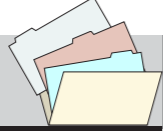
Mr Abdur Wadud Bhuiyan, Senior Advocate, instructed by Mr ASM Khalequzzaman, Advocate-on-Record, for the Petitioner. Mr Md Nowab Ali, Advocate-on-record for Respondent Nos 2 and 11.



continue in the office of the Chairman appears to be not well founded. The order of suspension impugned in the writ petition sufficiently indicates that there were materials before the authority for forming an opinion as to non-desirability of the writ-petitioner to continue in the office of the Chairman. The order of suspension has been passed in the background of material available to the authority for the purpose of making the said order.

As regards the other contention that in an elected body the elected representative should be allowed to discharge his duty or perform his duty. Removal there form has been highly disapproved by the court the learned Counsel has referred to the case reported in 46 DLR (AD) 163 wherein it has been observed "The Office of Chairman is a public representative office and

LAW letter



Operation Spider Wave



Law and Order situation of the country has deteriorated beyond description. Hijacking, kidnapping, trafficking of women and children, rape, terrorism, murder and other form of violence made our life miserable. Peace loving people urged the government to save them from this situation. The civil administration failed to control these crimes. So, the government launched an operation titled 'Operation Spider Wave' after operation 'Clean Heart' form 20 July 2003 with a view to control this disordered situation. This operation is being conducted jointly by Police, BDR, Ansar and coastguard in the southwestern part of the country. The joint forces have arrested 1100 persons and recovered good number of arms and ammunitions during operation. It is a matter of regret that some innocent persons have been arrested, harassed and tortured under the joint force custody. If the government carries on this sort of operation neutrally in future all peace loving people will welcome it. Because our socio-economic development largely depends on the stable condition of law and order.

Mohammad Erfan Ullah,
LL.B (Hons), 1st year, Chittagong University.

PM's directives and 25th BCS

We came to know from newspaper reports that the Prime Minister has directed PSC authorities to circulate the 25th BCS specially for appointing teachers. But it is very regretful and heart breaking for meritorious students of other disciplines who will be deprived of such facilities. For instance, many students of university, who are studying Law, Information Science & Library Management, Journalism and Mass Communication, Public Administration, International Relations, Anthropology, will be disqualified for such circulation. Because there is no college which offer such subjects. We could not apply for the 24th BCS as our integrated final examination was completed just few days after the last date of applying for 24th BCS. In these circumstances, we, who has already completed honours course, and passed BA, B.Com, BSS, BSC (Pass) course, and who has passed three years honours course under National University, and who will complete honours course very soon, wish to participate 25th BCS. Therefore, we like to draw the kind attention of PM and authorities concerned to male the 25th BCS open for all. And I think it will offer an exact evaluation of merits of students of these disciplines.

Tarif,
Department of Law, Dhaka University.

LAW week



More judges in the Supreme Court

The government has appointed six judges to the High Court (HC) Division and one judge to the Appellate Division of the Supreme Court. The newly appointed additional judges of the High Court Division are Miftah Uddin Chowdhury, Zobaer Rahman Chowdhury, AKM Asaduzzaman, Fazle Kabir and Ashfaul Islam and Khandker Musa Khaleid. On the other hand Justice Tafazzul Islam has been appointed in the Appellate Division superseding Justice Syed Amirul Islam Earlier, Amirul Islam was superseded by Justice MM Ruhul Amin in the Appellate Division on July 12. That incident touched off widespread resentment among lawyers, who demanded an end to the superseding affair. They also urged the government to ensure that Amirul gets an Appellate Division appointment in the next opportunity. But the government turned a deaf ear to the plea. With this appointment the present government has so far given appointments to 27 new judges at the High Court level. -Law Desk.

HC rejects petition on jail killing case

The High Court Division has rejected the application for transfer of the jail killing case from the trial court to the High Court Division for trial. A High Division bench comprising Justice Md. Abdul Quddus and Justice Syed Md. Dastagir Hossain passed the judgement. Johra Tajuddin, wife of slain Tajuddin Ahmed, filed an application before the High Court Division for transfer of the case from the trial court to the High Court Division and try the same. Following this petition the Court issued a rule upon the government to show cause as to why the said case should not be transferred from the trial court to the High Court Division. After hearing all the parties the High Court Division discharged the rule on the finding that the circumstances did not suggest transferring the case. -Inqilab, 26 August.

Backlog of cases in High Court Division

Due to shortage of judges in the High Court Division of the Supreme Court the number of pending cases is increasing day by day. In 1982 the number of cases in High Court Division was 17 thousand, in 2001 this number was 1 lakh 27 thousand. At that time 25000 cases were enlisted everyday for hearing in 33 benches of the High Court Division. In December 2002, the number of cases under trial in the High Court Division was 1 Lakh 54 thousand. According to latest data, the number of cases in the High Court Division till April of this year was 1 lakh 56 thousand 581. -Dinkal, 23 August.

Violence against women increasing

In the last one year violence against women has increased alarmingly. Bangladesh National Women Lawyers Association (BNWLA) revealed this information in the programme they arranged for the occasion of publication of their annual report on violence against women. Comparing the annual report 2002 to the annual report of 2000 published by the association they expressed it. It also informed that the types of violence increased are domestic violence, child-rape and suicide. The reveals that in 2002 a total of two thousand five hundred and eleven women became the victims of violence while in 2001 this statistic was one thousand six hundred and fifty. In the report the data of violence and ill treatment are presented classifying them into domestic violence and social-violence. In the last year 540 became victims of domestic violence, from whom 325 became victims of dowry.

-Pratham Alo, 22 August.

Judge beaten up in courtroom

A man attacked a judge in the courtroom at Narayanganj on 26 August. According to police Ruhul Amin Swapan stormed into the courtroom, jumped over the table of the orderly and started beating Joint District Judge Rokeya Begum at around 11am. He also tried to strangle her and hit her on the head with a bottle. However, the orderly got hold of the enraged man and handed him over to police. Police said Swapan, son of Nannu Miah of Sonargaon Upazila, mumbled in delirium following his arrest. Soon after the incident, District Judge Abul Mansur, Deputy Commissioner Harunar Rashid and Superintendent of Police Helaluddin Badri rushed to the spot. This was

the second untoward incident in the court since July 9 when 17 under-trial prisoners fled from the court. -Daily Star, 27 August.

Call for implementation of CEDAW

Participants at a workshop underscored the need for implementation of the convention on the elimination of all forms of discrimination against women (CEDAW) in our country which adopted by the UN General Assembly in 1979. The participants also called for the implementation of the constitutional rights of women to remove all forms of discrimination against them. The workshop on 'Constitutional Rights of Women in Bangladesh and CEDAW Convention' was organised by Bangladesh Mohila Samity. Justice Nayeemuddin Ahemd attended the workshop as chief guest while Begum Ivy Rahman, president of Bangladesh Mohila Samity, presided over it. Barrister Amir-ul Islam, vice chairman of Bangladesh Bar Council, presented the keynote paper at the workshop. Justice Nayeemuddin said the government should take necessary steps to implement the CEDAW Convention as soon as possible. About marriage and divorce of Muslim women, he observed that they are being exploited by misinterpreting the holy Quran. Ayesha Khanam, general secretary of Bangladesh Mohila Parishad, Advocate Sahara Khatun, general secretary, and Begum Shamsunnahar Siddique, vice-president, of Bangladesh Mohila Samity also spoke. -The Daily Star, 22 August.

Execution of verdict demanded

Sammiilita Nari Samaj (SNS) at a rally has demanded immediate execution of the verdict of Yasmin rape and murder case. The rally was organised to mark of rape and murder of Yasmin by the patrol police in Dinajpur on August 24, 1995. The SNS observed the day as the day of resistance against repression on women. The speakers at the rally expressed their deep concern at the increasing number of incidents of women repression in the country. They opined that empowerment of women can resist repression at a great extent. Kazi Reena Reza, Naila Khan, Khaleida Khatun, Shamsunnahar Jyosna, Kohinur Begum, Hazera Sultana, Rokeya Rafiq Baby, Advocate Alina Khan also addressed at the rally. -The Daily Star, 25 August.

2,723 certificate cases pending

A total of 2,723 certificate cases for realising a total of Tk 7,91,49,562 of various banks are pending for disposal in the Jhinedah collectorate office for years. Of the total cases, the Bangladesh Krishi Bank has lodged the highest number of cases. Thirteen branches of the bank has lodged a total of 1520 certificate cases for realising a total of Tk 2,53,19,706 while Bangladesh Rural Development Board (BRDB) has lodged 461 certificate cases for realising Tk 2,44,41,900. Agrani Bank has lodged 97 certificate cases for realising Tk 1,45,45,780, Sonali Bank 287 cases for Tk 82,47,709, Janata Bank 94 cases for Tk 20,83,579, Pubali Bank 12 cases for Tk 1,80,578. In most cases, the loanees borrowed cash or kind from the banks or other organisations with a contract to return the cash along with the nominal percentage of interest within a specified short-term period. But as the loanees did not return the loan money after elapsing the last payment date, the banks lodged the cases. -Independent, 26 August.

Writ against GPA-based admission withdrawn

A writ petition filed on 09 August by the Notre Dame College (NDC) principal challenging an education ministry circular on admission of students into colleges on the basis of Grade Point Average (GPA) has been withdrawn from the High Court Division on 26 August 2003. The dispute was settled between the college authority and education board. According to the settlement the ministry allowed the NDC authorities to take interview of aspiring students instead of written exams to categorise students in the GPA format. The High Court Bench comprising Justice MA Aziz and Justice Syed Rifat Ahmed discharged the petition. -Daily Star, 27 August.