

LAWeducation

Law as (hi)story

# Enslaved daughter, Bhawal Mejo Kumar and the Agartala Conspiracy Case

SHAHDEEN MALIK

LAW, it seems to me, is becoming rather disinterested in its own potential. We don't have our John Grisham to point out to us that law is fun! Since we don't have our equivalent to a John Grisham, I suppose one needs to say a few words about the actual John Grisham.

Some years ago, a young lawyer named John Grisham, wrote a novel based partly on an actual court case, but enhanced by an author's imagination. The book became a best seller. Still practicing law, but no longer so young, he wrote another book that not only became a best seller but was also made into a movie starring glamorous Hollywood stars. The movie became a mega-hit. Understandably, John Grisham left the profession, devoting himself to full time writing. The genre of novel, litigation dramas packed with courtroom scenes where the main characters are judges and lawyers, has proven to be unstoppable. Maybe his novels do not attain to literature, but they capture something of the irresistible drama of law, and of people in contact with the law such that thousands of people stop to purchase his books on their way to railway stations or airports or for weekend trips.

The movies based on his books, dramatically gripping, peopled with big names such as Julia Roberts and Denzel Washington, remain true to their essential focus, the law.

The title of the books readily convey the 'legal content' The Firm, The Pelican Brief, The Client, The Chamber, The Runaway Jury, The Street Lawyers, and so forth. It is estimated that more than 100 million copies of his books have now been sold world-wide.

Now, why this tale about John Grisham? Partly because of the fact that we neither have our own John Grisham, nor, partly, any tradition of popular books based on cases, trials and, generally, mamlas. I have always wondered, why?

One good example of a mamla on which not only one but many books could have been written is the famous Agartala Conspiracy Case of the late 1960s. One could have easily written the political history of those days based on the mamla -- its legal intricacies, the protests outside the courtroom, (real) hartals, galvanising the whole nation. Obviously, the characters in the book would include lawyers, judges, the jail-keepers, the accused, and their families. The book would also include the sub-text about the official version why the mamla was initiated, why the later decision to include Bangabandhu as an accused, what political or other goals or gains the official circle strove to achieve by making Bangabandhu an accused in this case, and so forth could form fascinating reading. And, the denouement of the novel? Why their attempt or plot failed so miserably.

Or this mamla could easily be the primary material for a history of the maturing of political movement in our country. One could even write a historical novel, based the feeling, experience, dreams (and nightmares) of the persons involved in this mamla the accused, the lawyers, the judges, the prosecutors and so on.

Alas, we don't have a book on the Agartala Conspiracy Case. Not that the Agartala Conspiracy Case has not been mentioned in the literature. It has been mentioned in a number of books as the defining moment in our political history. And the list of such books is rather long. Nevertheless, the fact remains that the Agartala Conspiracy Case is yet to merit a book-length treatment.

On a more popular front, a number of murder cases have captured our attention through extensive reporting in the newspapers and other media. However, none of these cases many of which had the classical ingredients for a best seller such as betrayal, extra-marital affairs, conspiracy for murder and planning and, finally, execution of the plans. Needless to say, one need

not portray the victim or the killer in any lurid or denigrating hue books nevertheless are easily possible for a number of criminal trials.

Not those books are being written about famous mamla. Partha Chatterjee's recent book, "The Princely Imposter? The Kumar of Bhawal and the Secret History of Indian Nationalism" is a splendid recent example. A Sannyas's claim that he was the long-dead Mejo Kumar of Bhawal Raj in the early 1920s did stir popular imagination and half a dozen books were written while the case was being decided at various courts. Not only that, two leading Kolkata newspapers brought out special evening editions, on the day of the judgement, to report the judgement of the case from the Dhaka Judge Court. In other words, the judgement of this case was the occasion on which the first ever evening edition of newspapers was published in Bengal.

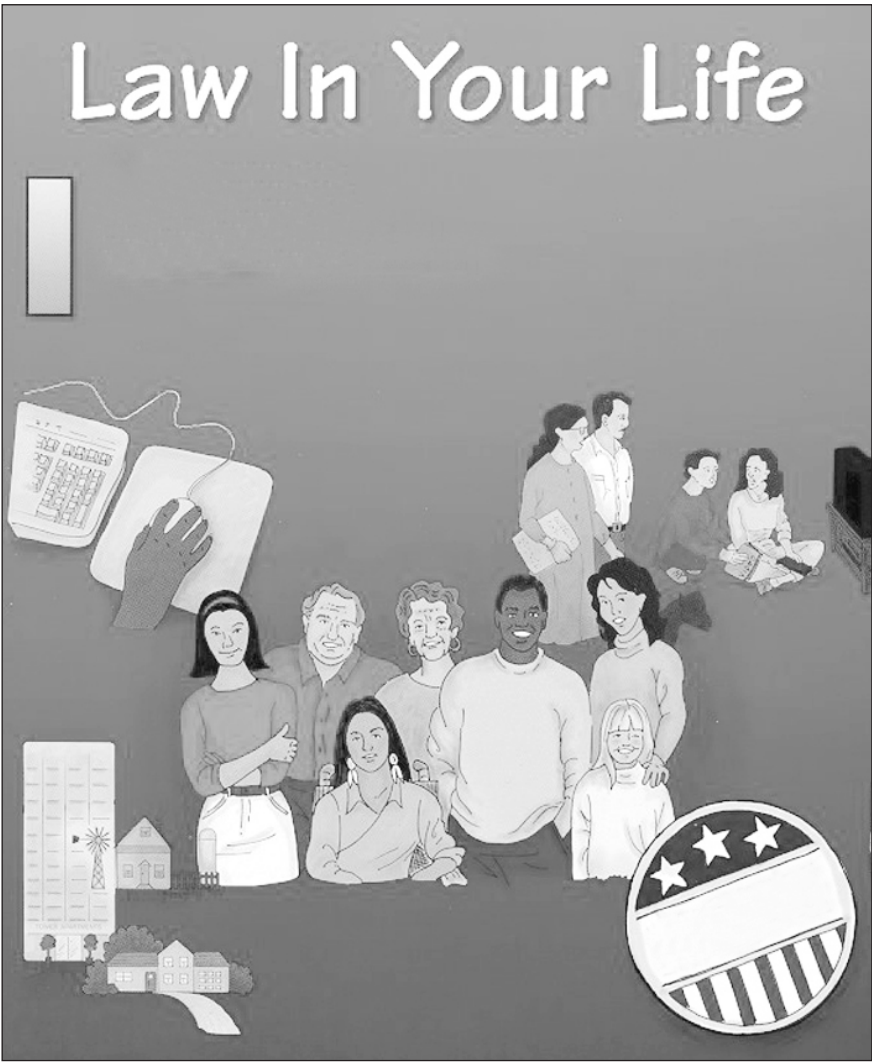
The Bhawal Mejo Kumar's story, at one level, is rather simple. The second son of Bhawal Raja went to Darjeeling in the late April of 1909 with his wife, wife's brother and a small retinue of twenty odd servants and house-helpers. He fell ill there, was treated by a number of doctors, including European ones. But, apparently, he died in the evening of 8th May, 1909, aged about 25 years. Late in the evening his body was taken to be cremated; there was a sudden storm and those who went to cremate run away to take shelter. Meanwhile, a group of wandering Sannyasis who happen to go through the cremation site found a man ready to be cremated, but alive and they took the man with them and nursed him back to health. The person became a Sannyasi as well, roaming all over India with them for a decade. In the process, or due to his illness before the supposed death, he had lost his memory of his earlier life and his moorings.

Meanwhile, a body was cremated on the morning of 9th May, 1909 as the Mejo Kumar and, officially, the Mejo Kumar had died in Darjeeling.

A dozen years later the Sannyasi started to recall his early life, came to Dacca in 1921, and stayed on the Buckland Bund for three months. Rumors about this strange Sadhu reached the Bahawal Raj -- the Sadhu resembled the Mejo Kumar. Meanwhile the Raja of Bhawal, the elder and the younger brothers of the Mejo Kumar had died, without leaving any male heir to the zamindari. Consequently, the zamindari was taken over by the Court of Wards.

I need not get into any further detail (its all there in the 400+ pages of the book), except to mention that a case was filed in Dhaka Judge Court by this Sadhu, claiming that he was the Mejo Kumar of the Bhawal Raj, who was supposed to have died in Darjeeling on the 8th May, 1909. The formal hearing started in 1933 and, thus, the recourse to law was taken more than a decade after the return of the Mejo Kumar. Appeal from the decision of the Judge Court was filed in Calcutta High Court and, therefrom, to the Privy Council in London. The Privy Council decided the case in 1946. The Mejo Kumar died two days after the judgment by the Privy Council.

The DC office of Gazipur is now housed in one of the palaces of Bhawal Raj, and many of the Gazipur courts are housed in other palaces of the Bhawal Raja. North of Farmgate, including major portions of the present day Banani, Gulshan, the airport, Uttara and northwards were part of the Bhawal



estate in the early twentieth century.

During the case, the grandmother and sisters of the Mejo Kumar claimed that the Sadhu was the Mejo Kumar, while his wife who was with him in Darjeeling during the time of his alleged death denied that the Sadhu was her husband. The rayats of the Bhawal Raj, overwhelmingly, supported the Sadhu as their Raja. There were more than 1,000 witnesses in favor of the plaintiff, i.e., the Mejo Kumar, while around 400 witnesses deposed, including his mistress and others, that the Sadhu was an imposter.

The mejo rani, the wife of the Mejo Kumar, died in Kolkata in the mid-1960s. Bibhabati Debi, the wife of the Mejo Kumar, "was regal in her bearing, even as she always wore the coarse white cotton sari and close-cropped hair of the Bhramin widow. She was deeply affectionate, caring, and singularly honourable."

The sub-judge of Dhaka who tried the case, resigned soon after pro-

nouncing the judgement in the case, which he heard uninterruptedly for almost three years. The sub-judge, Panna Lal Basu, was elected in 1952 to the West Bengal Legislative Assembly from Sealdah in Calcutta and joined the Congress Government of Bidhan Chandra Roy as the Education Minister. Two years later, as the Minister of Land Revenue, he moved the bill to abolish the zamindari system in West Bengal.

A Bench of three judges heard the appeal against the decision of Panna Lal Basu in the Calcutta High Court. Of the three judges, one was a Bengali and the other two were Englishmen. The Bengali Judge, Charu Chandra Biswas, joined in 1946 the interim government of Jawaharlal Nehru as the Union Minister in charge of Minorities, and from 1952 to 1957 was the Union Minister of Law of the Indian Government. In that capacity, he piloted through the Indian Parliament the four laws in the mid-1950s which 'abolished' Hindu Law in India. Panna Lal Basu abolished zamindari, and Charu Chandra abolished Hindu Law -- the dual infirmities from which all the actors and actresses of the Mejo Kumar's case seemed to have suffered.

And the house in Darjeeling in which the Mejo Kumar allegedly died in 1909 -- Step Aside was the same one in which Chitta Ranjan Das, whom Gandhi himself had hailed as "the uncrowned king of Bengal" died on 16th June, 1925, following a brief illness.

This is a fascinating story based on a mamla. By the way, the Mejo Kumar was not really a likable person formally illiterate, too fond of drinks, women, mistresses and so forth and shikar. But, apparently, the rayats loved him as they, in their droves, came to assert that the Sadhu was their Mejo Kumar and they would rather have him as the Raja, instead of the Court of Wards. Hence the history of "secret nationalism" by Partha Chatterjee who, as a Professor of Anthropology of Columbia University, is a very renowned scholar.

III

And what about Rukumbhai, a twenty five year old hindu wife who did not want to submit herself to her husband, whom she disliked intensely, and who fought the case for restitution of conjugal rights in the last quarter of the twentieth century, all the way to the Privy Council. She not only fought the case, but also wrote extensively in the media, yes, in the 1870s, about her plight and became a cause celebre.

Rukumbhai wrote, almost a century and a half ago:

Is it not inhuman that our Hindoo men should have every liberty while women are tied to every hand for ever? If I were to write to you all this system of slavery, it would require months to complete it ... Oh! But who has the power to venture and interfere in the customs and notions of such a vast multitude except the Government which rules over it? And as long as the government is indifferent to it I feel sure that India's daughters must not expect to be relieved from their present sufferings'

And Sudhir Chandra has written a book, based on Rukumbhai's legal battle: "Enslaved Daughters: Colonialism, Law and Women's Rights". Another engaging story.

All these bring me back to the central theme of this write-up, assuming that there is a central theme: why doesn't anyone write about our famous cases of more recent vintage? We all talk about rule of law, about access to justice, about independence of judiciary and so forth and all these jargon would be meaningful to those who are not trained in law if only we could make the operation of law interesting, through our stories, histories, and narratives.

Lawyers can and do tell stories about their interesting cases. But will any one write a book or two, and soon!

Shahdeen Malik is an advocate of the Supreme Court.

LAWopinion

# Rethinking appointment procedures of Supreme Court judges

BARRISTER M. MOKSADUL ISLAM

THE Court would say Order! Order! Order! The nation, however, is saying Shame! Shame! Shame! Recent controversies involving the highest court of the land i.e. The Honourable Supreme Court of Bangladesh shocked the entire nation. The nation demands to know why someone who deserves to be elevated in the Appellate Division was superseded. Are these honourable judges selected or appointed? What procedure is followed for the selection or appointment of them? And recent allegation of bribery against a judge of the apex court can only be compared with the news that counterfeit notes were discovered in the vault of Bangladesh Bank!

Firstly, let us see how these judges are given the job to uphold our Constitution. Actually it is the easiest of all recruitment policy, allegedly, provided you are in the good book of the political parties. President appoints a judge of the Supreme Court under Article 95 of the Constitution. To become a judge a citizen of the country will either have to be enrolled as an advocate of the Supreme Court for 10 years [Art. 95(2) (a)] or have to hold judicial office for ten years within the territory of Bangladesh [Art. 95(2) (a)]. Once confirmed after two years of his appointment, he not only exercises immense power conferred under the Constitution [Art. 101 (original, appellate and other jurisdiction), 102 (Writ Jurisdiction) and 103 (revisional jurisdiction/Complete Justice) etc.] without the fear of being transferred, dismissed, removed or terminated from his job until he is 65, [Art. 96(1)] but also enjoys financial security which "shall not be varied to the disadvantage during his [Art. 147(4) (e)] terms of office" [Art. 147(2)] and huge prestige. Unless a judge resigns by writing to the President [Art. 96(8)] he can only be removed from his post by the order of the President under Article 96 (6) following the provisions mentioned in clause 3, 4, 5 and 6 of Article 96 [Art. 96(2)] i.e. when the Supreme Judicial Council [constituted under Art 96(3)] after inquiry finds a judge to have ceased "to be capable of properly performing the function of his office by reason of physical or mental incapacity" [Art. 96(5) (a)] or has been "guilty of gross misconduct" [Art. 96(5) (b)]. The President may direct the Supreme Judicial Council "to inquire into the matter and reports its finding" to him "upon any information received from the Council or from any other source" [Art. 96(5)].

Let us see whether Art 95(2) (a) is enough for appointment of a judge in



the apex court of the country. There are different types of advocates from different background practising or non-practising but enrolled in the Supreme Court e.g. Law-College graduate Advocates, University graduate Advocates, master degree Advocates, Ph.D. Advocates, Justice Advocates, Barrister Advocates or mixer of the same and some with other educational qualifications in addition to the aforesaid. After enrolment one may only keep his enrolment updated by paying his dues and do not have to go to the court to keep is licence intact. There are many who are only busy in the mention hours which do not require any notable skill and may spend entire ten years, even more, by mentioning petty or simple matters before the Court e.g. extension of bail or stay. These lawyers may even sign the Vokalotnamas (power) of many cases although they were not in anyway involved in that case but to mention in the morning hours or monitoring the daily cause list during the court hours for other lawyers. Number of years an advocate is enrolled with Supreme Court or number of cases

he filed, under no circumstances, can be the basis for selecting the name of an advocate for the post of a judge of the Supreme Court.

As it is clear from Article 95 that President appoints the judges. However, as a president he is not supposed to know the names of the competent lawyers who would be suitable for the job. Then the question arises who supplies him with the name of the Advocates? Does he randomly select names from the enrolment list or he gets the name from the Law Minister, Attorney General or Chief Justice? In the 1972 Constitution (our first Constitution) there was provision of consultation with the Chief Justice. However, it is not there anymore in our present Constitution and consultation with the Chief Justice is not required anymore.

According to the former Law Minister and also present and former Attorney General the Chief Justice provides the President with the name of the advocates, through the Prime Ministers office (Art. 48(3)), to be appointed as additional judges of the Supreme Court. This begs the question if that is so then how Justice Syed Shadidur Rahman's name went to the President when there was allegation against him of misappropriating of the Supreme Court Bar Association's fund when he was holding a position of the Association.

If we cannot get a modern judiciary with honest persons the poor citizen of this country will have no place to go for justice. Under the banner of political parties we lawyers are clouding the atmosphere of the judiciary for no good reason. Sadly institutions like Bar Council, Bar Associations are under the bad influence of political parties. Attorney General's office is a constitutional post and should serve for the causes of the citizen of this country. However, are they serving for the purpose for which they are appointed?

Recent incidents regarding Justice Syed Shadidur Rahman can never be an isolated event but only one of the many issues buried under the carpet which need to be addressed to set up a modern and competent judiciary. People's Judiciary.

Barrister M. Moksadul Islam is an advocate of the Supreme Court.

FACTfile

## Female ward commissioners are looked down on!

ALPHA ARZU

Ward Commissioner Shamima Sultana's first meeting with the mayor of her Khulna City ended in bitterness. Soon after congratulating her on being elected as one of the female ward commissioners, the mayor offered a few shocking advice.

As Sultana narrated later the mayor, a male politician told her to stay home instead of trying to do something. "I'll send for your husband whenever I need you," the mayor reportedly told the woman. She got this reply after waiting for more than two hours to see the mayor.

Shamima has alleged that many male ward commissioners are unwilling to co-operate with female commissioners. Instead of co-operation, the men try to create obstructions so the women representatives cannot perform their responsibilities.

Shamima's experience is not an exception. It has rather become a common practice for the grassroots level local government administration across the country.

Says Mahmuda, the commissioner at Ward No. 7 of Dhaka City Corporation, the female commissioners are not always consulted when the mayor and his city corporation authorities discuss and take up development programmes. "Women are not always invited to important meetings. There is the delaying tactics whenever women want to discuss the development programmes of their constituencies."

"Those who have elected us want us to do something for their welfare. But we are not even allowed to write and sign something as simple as a character certificate," says a female ward commissioner in Rajshahi, who spoke on condition of anonymity.

However, there is no dearth of good words from the higher authorities. Considering the speech of Local Government and Cooperative Minister Abdul Mannan Bhuiyan's speech at a recent seminar organised by Nari Uddug Kendra.

"The government is exploring ways to improve women's participation in local government and end disparity between men and women," Bhuiyan told the seminar. He added that the government is serious about political empowerment of women. "Things are moving in the right direction," he said assuring the women.

He said female ward commissioners would get their separate offices. He also announced that female ward commissioners would get some responsibilities such as character testimonials or birth certificates. "There is nothing to worry," he told the female elected representatives.

In a research study presented at the seminar experts Tofael Ahmed and Mashuda Rashid Chowdhury discussed the need for reforming laws to ensure greater political participation of women and the female elected councillors.

The research study calls for a changing in the mentality of the male-dominated society so that female representative gets more rights and responsibilities. Some laws older than by many years than the country's constitution should be amended, says the study.

NewsNetwork.