



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.

Q: I am working with an international organisation. My wife also works in a private wife. We are married for more than 12 years. We have two children. I am a Muslim and my wife is Hindu. We got married without consent of our families. We don't have any problem in this inter-religion marriage. Now we are facing problem with regard to religion of our children. I want them to follow Islam while my wife wants them to follow Hindu religion. I think our children may have to face legal problem with regard to inheritance and succession. I know there are some differences between Muslim and Hindu law in this regard. Is there any way to determine which religion our children will follow? Can we leave it to them? What law will be applicable for them for succession and inheritance?

B.M. Akhter Hossain,
Dhanmondi, Dhaka.

Your Advocate: You have raised complicated questions of personal laws, particularly of the Muslim law. The legal problem you have posed is emerging with the change of time and the determinations of the rights and liabilities of the parties to such marriage and their offspring and others that come along would necessitate more and more in-depth search into the personal law hardly ever attracted.

You have not mentioned the faith or the law according to which your marriage was solemnized. It is important to determine the status and incidents of marriage and the questions of inheritance and successions etc. of your children. As I could gather from your words you being a Muslim male married a Hindu girl supposedly in accordance with your own faith, that is, Muslim shariah. According to Muslim law a Muslim male may contract a valid marriage with a Muslim, Jewish or Christian woman but not with an idolatress or a fire worshipper. But marriage with an idolatress or fire-worshipper is not void. It is merely irregular. Since your marriage is not void your children are legitimate. Therefore, they will inherit your property in accordance with Muslim law of inheritance. As for the mothers property, it will automatically go to them as her son irrespective of the question of legitimacy.

So far as the question of options of your sons to profess a religion is concerned primarily they are Muslims by birth as sons born to a Muslim father. As a Muslim father and natural guardian a duty is cast upon you to raise your children in accordance with the injunctions of Quran and Hadith. So, question of determination of religion is not relevant here. Upon attaining age if they feel inclined to their mother's or any other faith and inwardly feel called to profess it, well, it would be entirely within their choice.

Star LAW report

Section 4 of the Dowry Prohibition Act, 1980

Any fresh demand of dowry will constitute an offence

High Court Division (Criminal Revisional jurisdiction)
Criminal Misc. Case No. 10301 of 2003
Md. Hanif Howlader
Vs
Most. Jahanara Begum and another
Before Mrs. Justice Nazmun Ara Sultana and Mr. Justice Muhammad Abdul Hafiz
Date of Judgment: July 26, 2003
Result : Petition rejected summarily

Background

Nazmun Ara Sultana, J: This application under section 561A of the Code of Criminal Procedure has been filed by the accused-petitioner praying for quashment of the proceeding of the CR. Case No. 9 of 2003 under section 4 of the Dowry Prohibition Act, 1980 pending in the Court of Magistrate, First Class, Zone-1, Perojpur.

The above mentioned CR case was started on a petition of complain lodged by the complainant-opposite party Most Jahanara Begum on the allegation that she was married to accused-petitioner, Md. Hanif Howlader on 14.2.1994 by registered kabinnama. Two children were born in their wedlock. But since few months after their marriage the accused-started demanding dowry from the complainant and also used to torture her on that demand. At one stage the accused after torturing the complainant for dowry drove away her from his house with her children. Since then the complainant had been residing at her father's house. The father and other relatives of the complainant requested the accused to take her back abandoning the demand of dowry. But the accused did not agree and remained insistent on his demand of dowry.

However, the quashment of the above proceeding has been sought on the ground that the ingredients of section 2 of the Dowry Prohibition Act are absent in this case and as such this case will not come under the purview of section 4 of the said Act.

Deliberation

Mr. Syed Ziaul Karim, the learned advocate for the accused petitioner has argued that according to the FIR the dowry was demanded long after the marriage and that there is no mention in this FIR that at the time of marriage or even at any time before or after the marriage there was any agreement for giving of any dowry. The learned advocate has contended that since at the time of marriage there was no agreement for giving of dowry, the subsequent demand of money or any other thing from the complainant will not constitute the offence of demand of dowry as defined in section 2 of the Dowry Prohibition Act, 1980.

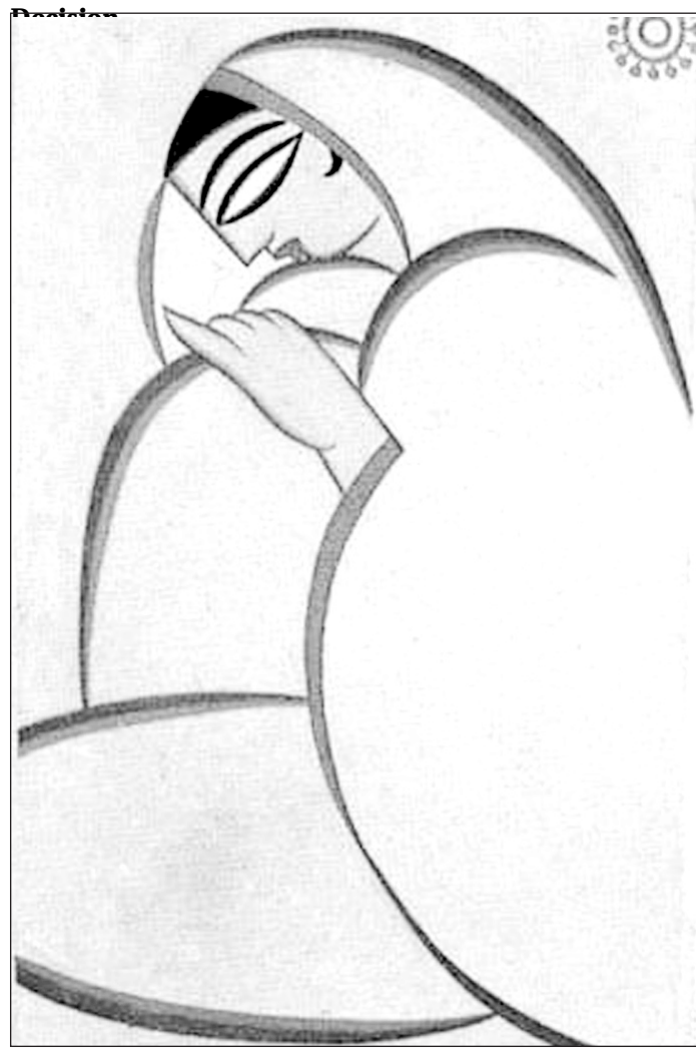
In support of his contention the learned advocate has cited a decision of this Division reported in 37 DLR at page 227 wherein it was held that to be 'dowry' it has to be given or agreed to be given either directly or indirectly by the parties at the time of marriage or at any time before or after the marriage.

But the Appellate Division, in another case has already given a decision as to the dowry differing with the above decision of the High Court Division. In the case of Abul Basher Howlader Vs. the State and another reported in 46 DLR at page 169, the Appellate Division upheld the conviction and sentence imposed on the appellant under section 4 of the Dowry Prohibition Act. The Appellate Division held that the subsequent demand of dowry even if there was no agreement for giving of the same would

constitute the offence of demand of 'dowry'.

In that case the demand of dowry was made long after the marriage and there was no agreement for giving of dowry either at the time of marriage or at any time before or after the marriage. The Appellate Division upheld the conviction of the appellant Abul Basher Howlader under section 4 of the Dowry Prohibition Act 1980. The court held that for a conviction under section 4 of Dowry Prohibition Act, the word 'Dowry' need not be interpreted in terms of the definition of 'dowry' in section 2 of the said Act. Their Lordships held thus: "we will say that if a fresh demand for dowry is made after solemnisation of marriage about which there was no prior agreement and which demand does not fall strictly within the definition of dowry in section 2, then the word 'dowry' in Section 4 is repugnant in the subject or context to the definition itself." Dowry in section 4 has therefore to be understood in its ordinary meaning, namely property brought by woman to her husband at marriage or vice versa."

So, it is evident that the Appellate Division has already settled this point that if dowry is demanded after the marriage about which there was no agreement at the time of marriage or at any time before or after the marriage, will constitute the offence of demanding dowry which is punishable under section 4 of the Dowry Prohibition Act, 1980.



LAW letter

None to repeal the draconian law?

The provision for preventive detention in the Constitution (Article 33 (4)) has been a stumbling block for the development of constitutionalism in Bangladesh since its incorporation by the 2nd Amendment Act 1973 (Act XXIV of 1973). The provision for preventive detention is not something undemocratic. But this is to be used in the times of emergency or when the internal security of the state is at stake. In other democratic countries including Britain and the USA law authorises preventive detention during the time of war and external aggression. There is no scope for abuse of power in those countries due to strict constitutional safeguards. A person

opposition and throttle personal liberty guaranteed by the Constitution. Every year a huge number of political workers and leaders are detained without trial under the Special Powers Act 1974. When in power, President Ershad signed an ordinance to repeal the Act but as it was not gazetted it had no validity. Then BNP came in power and it forgot the pre-election commitment in regard to the repeal of the Act which is full of sinister looking features. And after that the Awami League government gave an avowed commitment to repeal the Act, but after coming to power it changed its tone quite in the opposite direction. The Constitution was one of the best in democratic countries around the world but have been made one of the worst ones by inserting few undemocratic provisions which curtail some fundamental rights of the people. Now many problems are there and preventive detention is one of them.

Md Al-Amin,
Department of Law (2nd Year), Dhaka University.

Faith upon police and Judiciary

There are three bodies in Bangladesh. Executive, legislature and judiciary. People respect our judicial process. But have they proper faith upon it? The answer is no. why this situation has created? If we observe the current situation of Bangladesh we will be able to find out the answer. In Noakhalee, what is happening? People have taken their security in their own hand. They are not only catching the robbers but also killing them. But what is the role of police in this area? This incident is enough to reveal that people have lost their faith upon police department and judicial process. The main reason is corruption. People are suffering when a criminal after arrested by police release on bail and take revenge. In the recent days we have found that the accused of the murder of Mookhooree's case has obtained bail. If criminals come back after getting bail who will ensure the security of the people that logged the charge?

As the police department has failed to do so, mass people are taking law in their own hand and take the responsibility of their own security. We can not expect this situation any more.

Shaikh Muzahid-ul Islam,
Department of Law (1st year), Dhaka University.

Alarming land suits

The number of logged land suits has been increasing at an alarming rate that have overburdened our judiciary. Statistics shows that 80% civil & criminal cases are connected with land disputes. Subsisting complicated land law is very much responsible for this severe problem. Therefore, modernisation & reformation of existing land law is badly needed. The land survey & record preservation system need to be computerised. Transfer & registration process of property require to be made more comprehensive & handy. Centralisation of land authority under land ministry should be introduced through reformation of land administration. The enactment of strict rules & implementation of those should be ensured to prevent corrupt officials. Formation of summary trial court & proper utilisation of ADR (Alternative Dispute Resolution) should be regarded as temporary solution to this contest. Measures of speedy settlement of land disputes will save the more waste of time, energy & money of the government and obviously of the common people.

Md. Al Amin Sagor,
Department of Law (1st year), Dhaka University.

LAW lexicon

Pardon

A pardon is a government decision to allow a person who has been convicted of a crime, to be free and absolved of that conviction, as if never convicted. It is typically used to remove a criminal record against a good citizen for a small crime that may have been committed during adolescence or young adulthood. Although procedures vary from one state to another, the request for a pardon usually involves a lengthy period of time of impeccable behaviour and a reference check. Generally speaking, the more serious the crime, the longer the time requirement for excellent behaviour. In the USA, the power to pardon for federal offences belongs to the President.

Parens patriae

Latin: A British common law creation whereby the courts have the right to make unfettered decisions concerning people who are not able to take care of themselves. For example, court can make custody decisions regarding a child or an insane person, even without statute law to allow them to do so, based on their residual, common law-based parens patriae jurisdiction.

Pari delicto

Latin for "of equal fault." For example, if two parties complain to a judge of the non-performance of a contract by the other, the judge could refuse to provide a remedy to either of them because of "pari delicto": a finding that they were equally at fault in causing the contract's breach.

Pari passu

Latin: Equitably and without preference. This term is often used in bankruptcy proceedings where creditors are said to be "pari passu" which means that they are all equal and that distribution of the assets will occur without preference between them.

Pendente lite

Latin: during litigation. For example, if the validity of a will is challenged, a court might appoint an administrator pendente lite with limited powers to do such things as may be necessary to preserve the assets of the deceased until a hearing can be convened on the validity of the will. Another example is an injunction pendente lite, to last only during the litigation and, again, designed simply to preserve something until the decisive court order is issued.

Percolating water

Water which seeps or filters through the ground without any definite channel and not part of the flow of any waterway. The best example is rain water.

Peremptory

Final or absolute or not open to challenge. An adjournment to a date which is set to be "peremptory" means that their matter will go ahead on that date with no further applications for adjournment to be granted.

Perpetuating testimony

The recording of evidence when it is feared that the person with that evidence may soon die or disappear and that this person's evidence, if recorded, could then be used in the future to prevent a possible injustice or to support a future claim of property.

Perpetuity

Forever; of unlimited duration. There is a strong bias in the law against things that are to last in perpetuity. Rights that are to last forever are said to hinder commerce as an impediment to the circulation of property. That is why there is a rule against perpetuities.

LAW week

Ministers dropped from selection body

The government has decided to drop law and finance ministers from a committee which would select the members of the proposed Anti-corruption Commission. A former cabinet secretary would replace two ministers in the selection committee. The other four members would be two judges of the Supreme Court, chairman of the Public Service Commission and the auditor and comptroller general. The commission would also get financial independence like the Supreme Court and have a wider range of activities than originally envisaged. The three-member anti-graft body will also have prosecution authority under the new decision. Law Minister Moudud Ahmed that an amendment to the bill for the commission now under scrutiny by parliament will be brought in the next session. The new move is being viewed as a result of the civil society's demand for dropping ministers from the selection body. A bill for the commission was placed in parliament on July 10 and is now lying with the Parliamentary Standing Committee on the Ministry of Law. Under its extended jurisdiction, the commission would be able to implicate accomplices of a corrupt person in the case. The commission will also be able to pursue cases relating to customs, excise, banking and foreign exchange dealings, which are now being dealt by the anti-corruption bureau. -Law Desk.

Launch security compromised

The government caved in to the pressure of launch owners and backpedaled to the 1993 six-ansar security arrangement for ferries and large vessels from its decision to deploy 14 ansars to each. Leaders of the launch owners opposed the government decision in a meeting at home ministry. Justifying the demand for lowering the number of security personnel they said that most launch robberies took place for looting firearms from the ansars. The meeting also decided on skill building through training for the embedded ansars and equipping them with modern firearms. It also made dues and salary clearances certificate from the Ansar Headquarters mandatory for the launches to get surveillance certificate and asked their owners to clear dues and salaries by December every year and pay new ansars one-month advance during recruitment. About 2,000 large and small launches ply the 8,000 kilometres of rivers, with over 1,000 ansars serving in the passenger vessels for security. -Daily Star, 15 December.

Bail provision in WCRP Act challenged

The High Court has issued a rule nisi on the government to explain why the Section 19 of the Women and Children Repression Prevention (WCRP) Act 2000 should not be declared ultra-vires and void. Section 19 of the Act empowered the tribunals concerned to deal with the bail petitions. The section says no capital accused (allegedly main offender) will be granted bail, if the plaintiff is not heard and the tribunal is satisfied that the accused may be convicted of the charge, or the accused is not a woman, child or disabled and the tribunal is not satisfied that the justice will not be hindered for granting his/her bail. It says the tribunal may grant bail to any accused other than the capital accused, putting the cause of doing so, if it thinks proper to grant bail. A High Court Division Bench of Justice Awlad Ali and Justice Miftahuddin Chowdhury passed the order hearing a writ petition filed by Maola Nursing Home, Dr Nagma Harim Afriq. Quoting the section petitioner's counsel argued that the section empowered the tribunals instead of magistrates to deal with the bail petitions. So, the section was made contrary to Article 33 of the Constitution, as the article provided for producing any person before the nearest magistrate within 24 hours of arrest of the person. -Ajker Kagoj, 16 December.

UNDP submits proposal for police reform

The United Nations Development Programme (UNDP) has submitted a \$13.5 million three-year police reform proposal to the government. The Integrated Police Reform Project seeks to raise facilities, change police recruitment method, introduce on-job training, increase forensic capacity including DNA test, launch intelligence-based investigation to detect crimes and ensure job satisfaction of good officers. It also envisages putting the police on a higher moral ground, making the force corruption-free and pro-people. The proposal also plans to improve the force's case management, legal and disciplinary, monitoring and media dealing capacities. If its three-year scheme is properly implemented, the UNDP will extend police reform support for up to another six years. The UNDP proposed to develop the existing police force, giving new assignments to constables. -Daily Star, 14 December

New cadet service for land sector

The government is now planning to introduce a new cadre service in the land sector in a bid to facilitate the ongoing land reform process. The plan was unveiled in the fourth meeting of the cabinet committee on land reform. A draft of the proposed amendments of different land laws with 20 recommendations, prepared by a subcommittee led by an additional secretary was placed in the meeting for review. The draft suggested repealing of backdated land laws that have existed for more than a 100 years and replacing them with new ones that are relevant to the present times. It further suggested 'obligatory mutation' of inherited lands under religious laws within 20 years. The draft recommended mandatory declaration by a land-purchaser if he owns at least 60 bighas of land. To check selling of the same land more than once, the draft stressed the registration of baina (earnest money). The draft also recommended faster handover process of deeds from sub-registrars' offices and specifying the duties of sub-registrars. To finalise the recommendations, the committee will hold at least two to three meetings further to review the proposed amendments. The final recommendations will be sent to the Cabinet for approval. -New Age, 15 December.

87 states sign UN anti-graft pact

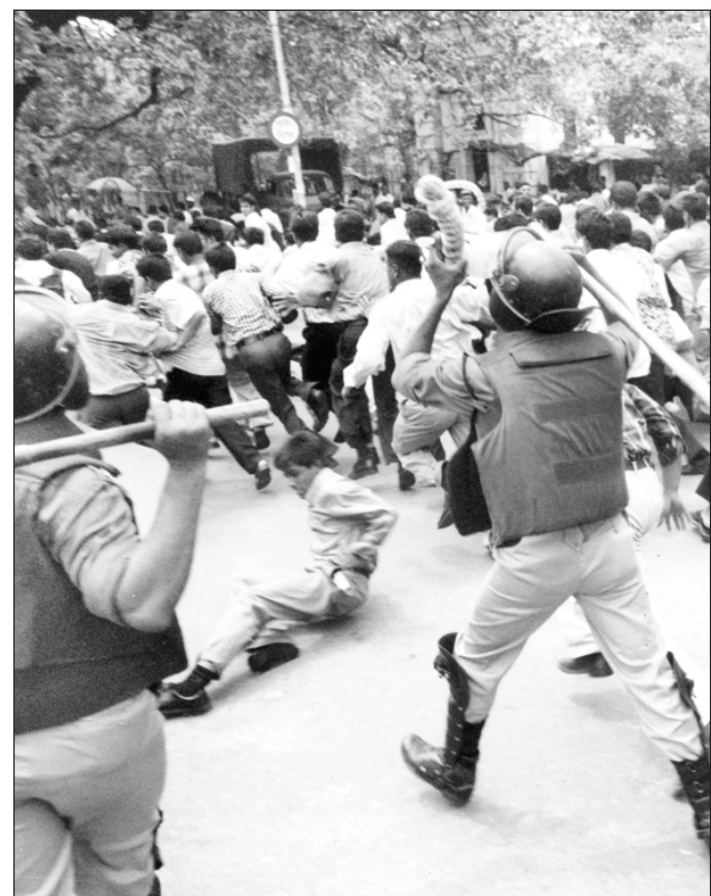
A total of 87 governments had signed the first UN Convention Against Corruption at a UN conference on corruption. The convention must be ratified by a minimum of 30 national assemblies before it can go into effect. It is the first document of its kind that is expected to have a global impact. It also requires signers to beef up and enforce anti-corruption laws, and to include internationally recognized concepts such as money laundering and influence peddling. The convention treats corruption as something more than a simple crime, saying it destabilizes countries, slows development and erodes democratic institutions, such as elections. Signatory governments commit to conducting business transparently, to hire and promote on merit and to streamline bureaucracies. The drafting committee began its work in January 2002 and 128 UN members are collaborating in developing the convention. The United Nations has distributed a manual with 44 legal, economical and political recommendations for countries to fight corruption. -Daily Star, 12 December.

Land survey tribunals to be set up

The government will set up Land Survey Tribunals, which will exclusively deal with civil cases regarding land records and surveys for speedy disposal of those cases. A Bill to this effect has been approved in principal by the Cabinet. The Land Survey Tribunal Bill provides that the government will have the power to set up such number of Land Survey Tribunals across the country as it thinks proper. If the bill is passed all cases regarding land records and surveys will have to be filed with the tribunals. The tribunals will deal exclusively with those cases. They will have the power and jurisdiction of civil courts and will have to follow the Code of Civil Procedure to the extent possible. According to the bill, the government will have to form a Land Survey Appellate Tribunal to deal with any appeal against the verdicts and orders of the tribunals. -Ajker Kagoj, 16 December.

Corresponding Law Desk

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can be detained for an indefinite period in Bangladesh which is quite unimaginable in those countries.

Every government is using this law here as a weapon to crash down the