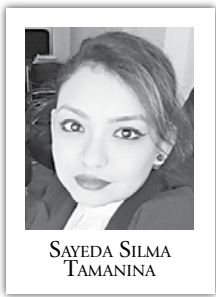


# Losing loved ones during the pandemic: The legal rights of Muslim heirs



SAYEDA SILMA TAMANINA

AS deaths surge daily, we are losing innumerable friends and family during the health crisis created by the global pandemic. As a legal professional, I often have to deal with clients facing legal issues with properties and inheritance. However, due to a significant increase in death rates resulting from Covid-19, more and more people are now facing inheritance related problems. While coping with grief and loss, legal complications and procedures become one of the many burdens that a grieving family often has to deal with.

It is often the case that the deceased leave behind estate or assets that they possessed during their lifetime. The estate comprises of all property that the deceased had owned, whether moveable and/or immovable. When Muslims die, there are four duties that need to be performed with such assets they possessed.

They are—paying funeral and burial expenses, paying debts of the deceased (if any), determining the will of the deceased, if any (which can only be up to one third of the estate), and distributing the remainder of estate and property amongst the relatives or heirs of the deceased. In Bangladesh, legal distribution of property in such circumstances is governed by the principles of *Shariah* law.

Therefore, it is necessary to determine the relatives of the deceased who are entitled to inherit the estate or property along with the proportion of the shares to be inherited by them individually and collectively. Broadly, according to the principles of *Shariah*, spouse, parents, children, grandchildren, siblings, grandparents (paternal), grandmother (maternal), uncles (paternal), nephews/nieces are considered as heirs (*warish*) to a deceased's estate. The ambit of this head is too broad and as a result, even distant kindred are entitled to succeed thereto in the absence of primary heirs. Further, it is important to bear in mind that a son inherits double the share of a daughter in such circumstances. As such, inheritance is considered as an integral part of *Shariah* Law and the heirs and descendants have the right to claim the estate and property of the deceased.

However, inheriting a deceased's property does not happen automatically and the heirs must take certain legal steps in order to ensure legal transfer of the properties. Firstly, it is essential to make an inventory of all assets. Part of the work of making the inventory of assets is finding them all. This task could include collecting a complete set of property ownership documents from land offices; ascertaining bank accounts, shares, stocks, bonds etc; locating vehicle registration documents etc and could require some time.

Next, one of the key documents the heirs have to collect is the *Warishan* Certificate or Legal Heir Certificate. This certificate is essential in order to



PHOTO: COLLECTED

determine the number of legal heirs and the proportion of share of property to be received by each legal heir. Such a certificate plays an essential role during property division/partition; mutation of property; declaratory suits; collecting pensions etc.

Yet another key document needed to establish the authenticity of the heirs and give them the authority to inherit debts, securities and other assets that the deceased may have left behind is the Succession Certificate. Such a certificate is to be obtained from the Court of Joint District Judge as per the

Succession Act, 1925. It is now possible to file for the succession certificate in the virtual court. A succession certificate is usually compulsory to transfer movable properties such as shares, stocks, bonds, funds in bank accounts etc (in the absence of a nominee) or even for the transfer of ownership of vehicles.

Once the said certificates are procured, the legal heirs can next move towards mutation of lands that had been owned by the deceased. The process of mutation is the insertion of the name of the new owner(s) in the

*Khatian* (Record of Rights) to replace the former owner upon transferring the ownership of land(s). To mutate a piece of land, one has to apply to the Assistant Commissioner (Land) office. Executing and registering a Partition Deed at the relevant Sub-Registry office may also be required at this point in order to divide or demarcate the property amongst the legal heirs.

It is generally upon completion of these steps, that the inheritors can successfully transfer the properties in their individual names. It may sometimes be the case that the inheritors agree and desire equal distribution of property. In such circumstances, they ought to legally transfer the portion of properties amongst one another through registered deeds, upon completion of the transfer of properties in their individual names.

Indeed, the law of intestate succession is one of the most complex segments of law associated to one's life and it is almost impossible to point out each and every aspect in a gist. As such, it is imperative to stay patient with the process, but moving forward in a planned manner would make things much smoother and easier. Certain procedures may take slightly more time than usual considering the pandemic situation. However, don't panic and make sure to start the process with the help of an experienced lawyer who will be able to make the whole procedure more comfortable for you.

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# Banning cryptocurrencies: A hurdle in the way of digitalisation?

MD KHADEMUL ISLAM CHOYON AND NAFIZ AHMED

FROM small barter societies to the world-wide acceptability of fiat money (mainly paper money or coin), the evolution of payment methodologies throughout human history has not been anything short of astonishing. One of the newest members of this evolution is bitcoin, which has been defined as an "online communication protocol that facilitates the use of virtual currency, including electronic payments."

The Financial Action Task Force (FATF), an independent inter-governmental body as well as a global money laundering and terrorist financing watchdog, defined virtual currency as "a digital representation of value that can be digitally traded and functions as a medium of exchange, and/or a unit of account, and/or a store of value but does not have the status of legal tender." Therefore, virtual currencies may be considered as a private mode of exchange. However, it does not reflect a sovereign guarantee of the value or legal tender status in any manner whatsoever. Virtual currency is distinguished from fiat currency and also distinct from e-money, which is a digital representation of fiat currency used to electronically transfer value denominated in fiat currency.

In the era of digitalisation, a majority of the countries are allowing transactions through virtual currencies. However, not all governments are laying down a bed of roses for the use of virtual currencies (such as bitcoin) in their jurisdictions. In Bangladesh, virtual currencies neither have the status of legal tender nor does it fall within the ambit of the definition of "currency" or "coin" as defined under the Foreign Exchange Regulations Act, 1947 (the "Act of 1947") and



PHOTO: COLLECTED

the Bangladesh Bank Order, 1972. Interestingly enough, Section 2(b) (ii) of the Act of 1947 kept its door open for introducing new currencies by empowering Bangladesh Bank to declare some physical or non-physical instruments as currency. This means that the Bangladesh Bank has the power to treat the virtual currency as a legal currency by publishing a notification under the provisions of the Act of 1947.

However, instead of declaring the virtual currency as a legal currency, Bangladesh Bank has prohibited the dealing of virtual currencies or cryptocurrencies (such as Bitcoin, Ethereum, Ripple, Litecoin) by two cautionary notices issued in 2014 and 2017. Collectively, these two cautionary notices connoted that transactions of virtual currencies are not supported by the Act of 1947, the Money Laundering Prevention Act, 2012, or the Anti-Terrorism Act, 2009 and banks are to

refrain from making such transactions. In 2019, in a circular directing banks to take safeguards against illegitimate online payment through international cards, Bangladesh Bank termed the purchase of cryptocurrencies as an illegitimate online payment.

Until recently, a similar sort of prohibition was enforced in India by its central bank, the Reserve Bank of India (RBI). In 2018, RBI banned cryptocurrencies stating, *inter alia*, all entities regulated by RBI are not to deal in virtual currencies including bitcoin or cryptocurrencies. However, in a historic judgment passed on March 4, 2020, the Supreme Court of India has lifted the ban on cryptocurrencies transaction in India. In the case of Internet And Mobile Association vs. RBI, India's Apex Court held, amongst other issues, that the RBI had failed to provide enough empirical data to demonstrate that virtual currencies

had any adverse impact on the traditional economy and found a total ban on trading in virtual currencies to be disproportionate and excessive. Resultantly, the ban of RBI has been quashed and India has added one more badge on its shoulder of digitalisation and globalisation.

The trend in globalisation is adopting major changes smoothly. Dawdling in this aspect may result in a major setback for a country in the very competitive global market. It is a widely popular notion of jurisprudence that law ought to be dictated by reason, morality and conscience, and changes in laws should be justified on two grounds—reason and the will of the people regulated by the laws. Changing laws on the ground of reasonableness makes the legal system just and effective. One does not have to look very far to find reasonableness behind allowing the transaction of

*In the era of digitalisation, a majority of the countries are allowing transactions through virtual currencies. However, not all governments are laying down a bed of roses for the use of virtual currencies (such as bitcoin) in their jurisdictions.*

cryptocurrency.

It has been reported that the Minister of State for Information and Communication Technology (ICT) said in an event that the time has come to think about cryptocurrencies like bitcoin and other virtual currencies, and he will request Bangladesh Bank to think about virtual payment systems. It was also reported that currently around BDT 10,000 crore is spent annually for shopping online and he expects the BDT 20,000 crore mark to be crossed by 2025.

With the vision of digitalising the country, the government is investing a lot of money and effort into the ICT sector. A remarkable growth in the number of freelancers working in the ICT sector from Bangladesh has been witnessed in recent years. Experts are seeing this as a way of diversifying the modes of bringing in foreign currency into Bangladesh. Since these earnings are in millions, soon foreign investments may be seen in this sector.

Virtual currencies such as bitcoin can very soon become the principal mode of transaction in disbursing remuneration of online labour. In such a situation, if virtual currency transactions are prohibited in Bangladesh, the freelancers may fall behind in acquiring their online earnings. Also, in the era of globalisation, virtual currencies can become a great means of liberalising the economy and display the government's role as a facilitator, which helps to create an enabling environment for foreign investment in Bangladesh. The consequence of this will be an increase of confidence on the part of foreign investors regarding the ease of doing business in Bangladesh.

Md Khademul Islam Choyon and Nafiz Ahmed are an Advocate and apprentice lawyer, respectively.

ON THIS DAY IN HISTORY

**JULY 29, 1958**

National Aeronautics and Space Administration established

*Criticised for allowing the Soviet Union to launch the first man-made satellite to orbit Earth (Sputnik 1, on October 4, 1957), US President Dwight D Eisenhower signed legislation this day in 1958 that created NASA.*

CROSSWORD BY THOMAS JOSEPH

ACROSS

1 Sea dogs

6 Bathroom fixture

11 Turn away

12 Bitter humor

13 Yard plus a bit

14 Search deeply

15 Kick out of office

17 Horse healer

18 Freud topic

19 Gaskets' kin

22 Cariou of "Blue Bloods"

23 Writer Marcel

24 Rascal

25 Eggy dish

27 Wine choice

30 Spy's asset

31 Running bird

22 Take in

33 Cook's collection

35 Copter part

38 Plain to see

39 Island greeting

40 Jessica of "Frances"

41 Juan of Argentina

42 Door sign

DOWN

1 Composer Barber

2 Pay back

3 Admits

4 Grove growth

5 Nonbinding vote

6 Bridge action

7 Verb for you

8 Cracks

9 Overturn

10 Russian refusals

16 Goals

20 Penguins' place

21 Shade

24 Stephen of "The Crying Game"

25 "My Favorite Year" star

26 Trusted teacher

27 New

28 Come into view

29 Cowboy's coat

30 Scuffle

34 Infamous czar

36 Cry of discovery

37 Sought a seat

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YESTERDAY'S ANSWERS

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BEETLE BAILEY

BY MORT WALKER

BABY BLUES

BY KIRKMAN & SCOTT