LAW & our rights
www.dailystarnews.com/law
"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-*Article 27 of the Constitution of the People's Republic of Bangladesh*

The Daily Star
DHAKA SUNDAY JULY 28, 2002

RIGHTS *corner*

Depriving divorced women of dower

SHAHIDA QUADER

RAHELA Akhter, 30, was divorced three years back, but her ex-husband is yet to pay the money of her denmohor as per the marriage documents. "After the divorce, my ex-husband wanted me to forget the denmohor, but I didn't agree. I think it's my right to have the money," said Rahela Begum who filed a case to realise the money. She, however, thinks that denmohor is a matter of insult to women. "Through denmohor, women are virtually sold to men," she observed. Denmohor is considered a security to women who are always at risk of divorce in the social context of Bangladesh. But most of the divorced women fail to realise the money despite repeated attempts.

Rahela is entitled to get Taka 1.5 lakh as the total amount of denmohor was Taka 2 lakh as mentioned in the marriage documents and Taka 50,000 was deducted as the value of ornaments given to her. "I'm fighting the legal battled. But I do not know whether I would get the money or not," said a frustrated Rahela, who badly needs the money to run her new family.

According to Muslim Marriage Law, denmohor can be paid instantly or after marriage. After divorce, it becomes mandatory. But except a few cases, denmohor is not paid to the divorced women. "In few cases men voluntarily pay the denmohor while in most cases women have to go to court to compel them to pay the money," said Arifa Akhter, 35, another divorcee woman. She knows that marriage is an agreement between two parties and both parties should abide by the terms and conditions of the agreement, particularly the denmohor.

"Everyone mentioned an amount in the marriage document as denmohor, but how many people think that he would have to pay it?" questioned Arifa Akhter, who also failed to realise her denmohor. However, denmohor was introduced in Muslim Marriage Law as a mark of honour to the wife by the husband who has the responsibility to pay it accordingly.

Legality of Usul

It has become a tradition that the amount of denmohor is reduced deducting the value of ornaments given to the bride. This is called "Usul" but there are questions about its legality. Women rights activists think that the ornaments are gifts for the wife on behalf of the husband and the value of these should not be tagged to the agreement of the marriage.

"This is a tactic to deprive the women. The brides are deceived through this system," Rokeya Kabir, an activist observed. In fact, the term "Usul" does not exist in the marriage law. It has been created by the male-dominated society, she said.

According to the marriage law, the denmohor is divided into two portions. One is supposed to be paid instantly and pending the other is kept due. This due must be paid after divorce and even after death.

Lawyer Shahin Akhter also suggests that deduction of the value of ornaments from the total amount of denmohor is illogical. "This is a basic right of the women," she said.

During marriage, guardians of both sides determine whether the value of

ornaments should be deducted from the denmohor or not. They also fix an amount for the ornaments or other things. "This has become a tradition. But women will have to be aware in this regard. It should be ensured that the women are not deceived by any means or tactics like Usul," said advocate Sigma Huda.

Divorce process: Difficult for women

Although marriage is equally important to men and women, its perception and significance is different to women who have to leave their own family and adopt a new family.

Divorce is a very old phenomenon, but women seldom seek separation or divorce in spite of many logical reasons. Due to their dependence on men, they consider divorce a disaster for them. In most cases, men divorce their wives or seek divorce from them. It is very easy for them to go for divorce taking advantage of some provisions in marriage document. On the other hand, women face numerous difficulties while seeking divorce. They have to present strong reasons for it and prove those in the court. Sometimes they fail to do so.

Moreover, delay in disposal of cases and other legal complexities deprive women of divorce. "The rules-18 of the Nikahnama (marriage document) is clearly in favour of men. It allows them to divorce the wife anytime, without any valid reason," said advocate Seema Zahur. She suggested that a similar provision should be included in the marriage document for women or the provision for men should be abolished for the sake of equality.

"This rule has been introduced to maintain dominance of men. This is totally unnecessary," said Prof Jahanara Haq, president of National Women Programme Formulation and Implementation Association. She said the husband should not have the sole right to divorce. It is also a right of women. Prof. Jahanara observed that the rule-19 of the marriage document also empowers men and deprives women of their rights. But it is practiced in the country without anyone really objecting.

The rule says it should be mentioned clearly that the husband would have to divorce through court, she said. Women rights groups are campaigning to abolish the rules-18 and 19 of the Nikahnama to protect women from illogical divorce and establish their equal rights to divorce their husbands. They said the rules-5 of the marriage document is also discriminatory. It questions whether the bride is unmarried, widow or divorced. But there is no similar provision for the bridegroom.

Women leaders think that the rules mentioned in the marriage document must be amended properly to remove all gender discriminations and ensure equal rights to men and women. Besides, they opine that the legal complexities in divorce cases would have to be reduced so that women could seek and get divorce easily.

Furthermore, it should be ensured that the divorced women get their money of denmohor as per the marriage document and the value of ornaments are not deducted from the total amount of denmohor.

By special arrangement with News Network

LAW *watch*

Reporting obligations by states parties

The Human Rights Committee adopted a General Comment on reporting obligations by States parties to the International Covenant on Civil and Political Rights. The Committee started its discussion on the text of the General Comment during its previous session held in New York last March.

According to the General Comment, the Committee noted that only a small number of the 149 States parties submitted their reports on time. Most of them were submitted with delays ranging from a few months to several years. Some States parties were still in default despite repeated reminders by the Committee. Other States announced that they would appear before the Committee but did not do so on the scheduled date.

To remedy this situation, the Committee said that it had adopted new rules. If a State party submitted a report but did not send a delegation to the Committee, the Committee might notify the State party of the date on which it intended to consider the report or might proceed to consider the report at the meeting that had been initially scheduled. When a State party did not present a report, the Committee might, at its discretion, notify the State party of the date on which the Committee proposed to examine the measures taken by the State party to implement the rights guaranteed under the Covenant.

If the State party was represented by a delegation, the Committee would, in the presence of the delegation, proceed with the examination at the date assigned; and if the State party was not represented, the Committee might, at its discretion, either decide to proceed at the initial date or notify the State party of a new date. For purposes of the application of those procedures, the Committee would hold its meetings in public, if a delegation was present, or in private, if a delegation was not present.

In the text adopted, the Committee said that after it had adopted concluding observations, a follow-up procedure should be employed to establish, restore and maintain a dialogue with the State party. For that purpose, the Committee would appoint a special rapporteur who would report back to it.

There was a discussion among the Experts on whether to consider a country situation in public or in private in the absence of a delegation. Some Experts said that the concluding observations should be provisional and should be adopted in private. The Gambia's situation of "no-report, no-delegation" was referred to. The Gambia's human rights situation had been scheduled to be considered yesterday in the absence of a report but in the presence of a Government delegation. However, because of the failure of a delegation to show up, the Committee decided to consider the situation in private.

Article 40 of the International Covenant stipulates that "the States parties to the Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: within one year of the entry into force of the present Covenant for the States parties concerned; and thereafter whenever the Committee so requests".

The Committee has so far adopted 29 General Comments to assist States parties in fulfilling their obligations under the International Covenant. The purpose of the General Comments is to make the Committee's experience available for the benefit of all States parties in order to promote their further implementation of the Covenant; to draw their attention to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedure; and to stimulate the activities of those States and international organizations in the promotion and protection of human rights. Those comments could also be of interest to other States, especially those preparing to become parties to the Covenant and thus to strengthen the occupation of all States in the universal promotion and protection of human rights.

Law Watch is a Centre for Studies on Human Rights Law<lawwatch2001@yahoo.com>

LAW *update*

Mubarak plays Pharaoh: Egypt's 'new' NGO law

HUMAN RIGHTS FEATURES

The Government of Bangladesh is reportedly working on a new draft law to deal with NGOs of Bangladesh. While it is early to comment on the process or possible outcome, we publish a critique on a new NGO legislation enacted recently by Egypt's Shura Council (People's Assembly) for greater understanding of some of the issues relevant to Bangladesh. The passage of the law marks a return to legislative restrictions on the operations of NGOs in Egypt, following the 2000 repeal of its predecessor, Law 153 of 1999. - Law Desk

ON 3 June 2002, Egypt's Shura Council (People's Assembly) passed Law 84 of 2002 (the NGO Law). The NGO Law provides the executive with a number of political controls over the work of NGOs, including restricting their access to foreign funding, restricting their ability to join international associations and wide powers of dissolution. The passage of the law marks a return to legislative restrictions on the operations of NGOs in Egypt, following the 2000 repeal of its predecessor, Law 153 of 1999. Law 153 was found unconstitutional by the Egyptian Constitutional Court in June 2000 on the basis of procedural shortcomings in its adoption. The 2002 reincarnation of Law 153, however, is more draconian and invokes the powers of the Executive over NGOs to a much greater degree.

Investing government with wide powers

A direct affront to the right to freedom of association, the NGO Law invests the Ministry of Social Affairs with wide powers over the operation of NGOs. NGOs must be registered by the Ministry. The Ministry must also approve nominees to the boards of directors of associations in advance of their appointment (article 34) and NGOs may not be affiliated with any international organisations without the prior approval of the Ministry (article 16). The Ministry of Social Affairs can liquidate any association--including seizing its property, confiscating its papers and freezing its assets--if it violates certain conditions (article 42). Conditions which may lead to dissolution include: allocating resources for a purpose outside the organisation's mandate, if it joins any institution or association outside of Egypt without prior permission from the authorities, if it accepts foreign funding without prior permission, if it violates any aspect of the law and if its general assembly is not held for two consecutive years. Dissolution is by an administrative decree and is conducted without a judicial determination.

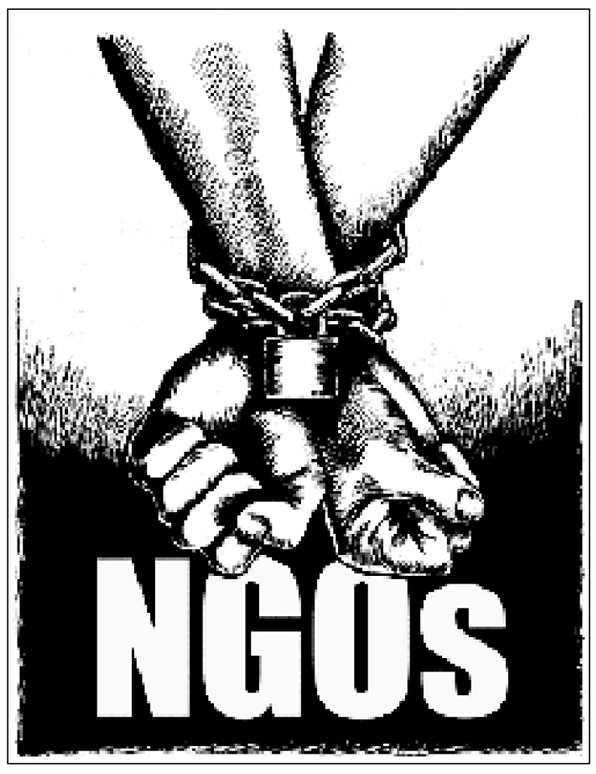
Article 17 of the NGO Law significantly tightens the executive's control over the purse strings of NGOs. While the equivalent provision in Law 153 allowed funding from foreign institutions operating within Egypt (in light of their agreements with the Ministry of Foreign Affairs), article 17 prohibits any funding from a foreign body, whether it is based in or outside of Egypt, without the prior permission of the Ministry of Social Affairs.

Political nature of NGO work

Under the new law the Ministry is given a wide discretion to make determinations on the 'political nature' of NGO work. Article 11 bans NGOs from practising "political and union activities that are restricted to political parties and trade unions and professional syndicates". However the legislation is silent on the scope of 'political and union activities'. A recent *Al Ahram* article illustrates how Article 11 stands to risk political manipulation. According to the report when a Member of Parliament asked whether NGOs raising funds for the Palestinian cause would be considered political under the new law. Kamal El-Shazli, Minister for Parliamentary and People's Assembly Affairs stated that it would not be considered political, in that the entire Egyptian population is behind Palestine. At the same time, El-Shazli reported attacked "associations which work to promote democracy" in Egypt, claiming that this was not "their job". Finally, the NGO Law also exposes NGO activists to the threat of criminal punishment for exercising their right to freedom of association. Members of NGOs that are not registered under the law of association--which includes most Egyptian human rights NGOs--can be subject to prosecution for carrying out their work. Penalties include large fines (up to US$2,000) and imprisonment up to one year.

Old wine in a new bottle?

Such restrictions upon NGO freedom are not new in Egypt. The government has acknowledged that the NGO Law is largely based on the repealed Law 153 of 1999. Law 153 was enacted in May 1999, with the intention that it would replace the similarly restrictive Law 32 of 1964. It mandated excessive restrictions on the activities of NGOs and criminalised any "political" activities by NGOs. In its May 2000 Concluding Observations on Egypt's periodic report the UN Committee on Economic, Social and Cultural Rights expressed its concern over the NGO Law's 1999 predecessor. The Committee noted that it "is deeply concerned that law 153 of 1999 (Law on Civil



Associations and Institutions, popularly called the "NGO Law") does not conform to article 8 of the Covenant and contradicts article 55 of the 1971 Egyptian Constitution affirming the right of citizens to form associations, and gives the Government control over the right of NGOs to manage their own activities, including seeking external funding" (E/C.12/1/Add.44, 23 May 2000, paragraph 19). On 3 June 2000, Egypt's Constitutional Court struck down the law following which the Ministry of Social Affairs announced that Law 32 of 1964 would remain in force, and that the text would be reintroduced with amendments suggested by the Court, without further NGO consultation.

The NGO Law marks the renewed efforts of the Egyptian government against NGOs. The Minister of Social Affairs Amina El-Guindi has noted that the text based on Law 153, includes new articles "aimed at enhancing NGOs' capacity to work effectively". She has noted that meetings were held with NGO representatives before the Cabinet reviewed the bill. In fact, two meetings were held with a limited number of NGO representatives. Those NGOs in attendance have stated that none of the suggestions to emerge from those meetings were incorporated in the draft that was presented to the People's Assembly. While, the Peoples' Assembly did introduce an increased NGO presence to the arbitration committee empowered to mediate disputes between NGOs and the Ministry of Social Affairs (from one NGO representative on a four-member committee, to one on a three-member committee), its other amendment to the draft tightened restrictions on NGOs. The Peoples' Assembly amendment to--the already draconian--article 42 empowers any ministry to liquidate any NGO that operates within its field.

The law vis-à-vis human rights regime

ÊEgypt ratified the International Covenant on Civil and Political Rights in 1982 and in late 2001 submitted its third and fourth periodic report pursuant to its treaty obligations. As emphasised to the United Nations' Human Rights Committee, article 55 of the Egyptian Constitution provides that citizens have the right to establish associations in the manner specified by law. The Constitution does not permit the formation of associations that engage in activities inimical to social order or secret or military in nature. The report notes that the law of associations is otherwise governed by Law 32 of 1964. According to Law 32, it is forbidden to establish associations that undermine public order or morals or the aims of which are unlawful or inimical to the State or social harmony. The procedures and methods for founding an association and the reasons for its dissolution are also laid down in the Law.

In its report to the Human Rights Committee, the Egyptian government emphasises domestic safeguards for the protection of the right to freedom of association as provided in Article 22 of the ICCPR. Specifically, the Egyptian submission notes that: "[t]hrough the Ministry of Social Affairs, the State supports the role of private associations in various spheres with a view to strengthening the role of the voluntary sector in such a way as to increase the benefits for society and expand the tremendous range of services that the sector offers to citizens." (CCPR/C/EGY/2001/3, 15 April 2002, paragraph 526). The report to the Human Rights Committee makes no mention of the role of the Ministry of Social Affairs in regulating NGOs, as Cairo submitted the report prior to the adoption of the NGO Law. The Human Rights Committee is scheduled to consider Egypt's report at its 76th session from 21 October to 8 November 2002.

The NGO Law is clearly in violation of article 22 of the ICCPR. Article 22 provides for the right to freedom of association with others. Paragraph 2 of the provision states that: "[n]o restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms others…". How the NGO Law falls within this claw-back clause is unclear.

As indicated by the Committee on Economic, Social and Cultural Rights, the NGO Law is also in violation if article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides for trade union rights. The NGO Law is also antithetical to the UN Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Protect Universally Recognized Human Rights and Fundamental Freedoms (the Human Rights Defenders Declaration). In her latest report, the UN Secretary-General's Special Representative on Human Rights Defenders, Hina Jilani has expressed concern that "the use of laws that could restrict access to resources for the promotion and protection of human rights and could be used for penalizing human rights defenders for soliciting, receiving and utilizing funds for this human rights activity." (E/CN.4/2002/106, paragraph 161) The adoption of the NGO Law only confirms the Special Representatives fears about freedom of association. Hina Jilani has requested an invitation to visit Egypt. Cairo has yet to respond to the request.

NGO freedom and funding

The NGO Law has been enacted at a time when the retrial of academic and human rights defender Saad Eddin Ibrahim is already drawing attention to the issue of NGO freedom and funding. While the Egyptian government is the recipient of large amounts of foreign--"Western"--aid, it denies its NGOs similar opportunities. The Egyptian government's ability to control NGOs boards of directors, stop foreign funding and dissolve NGOs if they are 'political', seriously threatens meaningful human rights work in Egypt.

The NGO Law undermines the very foundations of NGO independence in Egypt. NGOs, by their very nature, must be free of executive control or influence. Now, the danger is that NGOs in Egypt will either be legally registered, or independent. Increasingly it will be difficult for them to be both.

Human Rights Features is an independent, objective and analytical attempt to look comprehensively at issues behind the headlines from a human rights perspective. It is a joint initiative of SAHRDC and HRDC based in Delhi, India.

LAW *news*

Waiting to treat AIDS is a crime

LAW WATCH

New data reassert the feasibility of anti-retroviral treatment in resource-poor settings governments still refuse to commit funds for life-extending medicines. At the XIV International AIDS Conference in Barcelona, Médecins SansFrontières (MSF) and Health GAP accused wealthy nations of wilful neglect that is costing millions of lives. Before a joint satellite meeting called "Time to Treat," activists focused attention on the failure of most governments to deliver on promises of lower cost antiretroviral treatment, particularly the world's wealthiest nations who have failed to fund the fight against AIDS. This represents an enormous political failure on the part of developing and rich country governments.

"If I as a doctor ignore a sick person in desperate need of care, I am committing medical malpractice, and can be charged with a crime," said Morten Rostrup, MD, President of MSF's International Council. "Today and every day, more than 8,000 people with AIDS will die. Yet the international community refuses to mount and fund an adequate global response - we are faced with nothing less than a crime against humanity."

The NGOs said that, because so little funding is available, precious time is being wasted debating the "cost-effectiveness" of prevention over treatment interventions, when in fact it is necessary to implement both simultaneously. This debate could be put to rest if resources were not so scarce and if allocated funds could go towards the lowest price drugs. Relying on the goodwill of pharmaceutical companies instead of making use of generic competition and bulk purchasing means that some countries are paying three times more than necessary for ARV cocktails.

"The refusal of the US, the European Union and other donor governments to commit funds for lowest cost medicines has already condemned millions to death," said Alan Berkman, MD, founding member of Health GAP. "The feasibility of treatment has never been more certain. But as long as wealthy countries refuse to pay, feasibility does not matter. Donors must be held accountable for their wilful neglect."

Many have argued that even if adequate funding were available, treatment would not be feasible in resource-poor settings. "There are some people who say that in Africa, people will not be able to take these drugs because they cannot tell time," said Fred Minandi, a farmer from Malawi. "I may not have a watch, but I can assure you that since I started taking my triple therapy in August last year, I haven't missed one dose. I had 107 CD4 cells when I started the treatment and today I have got 356 and I am very proud. I am one of the first patients to get ARVs for free in Malawi and if I am speaking here today, it is because of this treatment."

At satellite meeting, MSF presented results from seven pilot projects in-South Africa, Malawi, Cameroon, Kenya, Cambodia, Thailand, and Guatemala-that show that providing effective treatment has concrete clinical benefits as well as dramatic effects on the lives of individuals and their communities. Patients in MSF projects enter the programmes in advanced stages of AIDS (median CD4 cell counts of 48 cell/mm) and are treated in diverse health care settings, including primary health clinics in poor townships, rural clinics, and outpatient units at district and capital hospitals.

The probability of survival for the 743 patients followed was estimated at 93% at six months . At six months, patients who were weighed had gained an average of three kilos and patients who had CD4 cell counts taken had an increase of 104 cells/mm3 on average. In the three projects that systematically tested viral load at six months of treatment , 82% of patients showed undetectable levels of virus in their blood (<100 copies/ml). Patients' compliance to treatment has also been impressive, with 95% of patients taking their treatment properly at six months.

By special arrangement with Law Watch.