



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 sister was married in 1996. But her conjugal life was not a happy one though her husband was a very well of man. He used to torture her regularly both mentally and physically. As a result she left her husband's house in June 2001 with her only daughter. Since then she is leaving with her (daughter). My brother in law did not pay any single penny for their maintenance, even he did not come to visit them for a single day. In the meanwhile, in January 2001 he got married to another women. Now my sister wants to divorce her husband. I want to know the following matters: (I) Is second marriage legal divorcing the first wife? (II) Is my sister entitled to divorce her husband? If so, what are the procedures? (III) Can she claim her dowry money after divorce? (IV) Can my sister keep the baby with her and (V) Can she claim maintenance of the baby from the father?

Fatima Ahmed, Uttara, Dkaha.

Your Advocate: Your case is pathetic but a common social scenario in our country. This is a vice really we could not overcome rather it seems to be engulfing our whole society day by day. A good number of strict legislations are made to protect the women folk from whimsical, domineering and cruel treatment by men. But the ultimate result does not seem to be satisfactory. Social unrest, unemployment, insecurity and uncertainty in life possibly have played their role. So far as legal aspect of things is concerned let me give the answers as per the succession of your questions. As for the first question my answer is- yes, a man can contract second marriage divorcing his first wife. But the act is not as simple as it sounds. For effecting a divorce one has to address a notice to the chairman with a copy to the wife. The chairman then constitutes an arbitration council and notifies the parties to appear before him so as to examine scope for reunion. If the efforts fail, in normal situation i.e., she is not pregnant, talak automatically takes effect with expiry of ninety days from the date of delivery of the notice to the chairman. And after the talak takes effect one is entitled to take second wife. If the wife is pregnant at the time talak shall not be effective until pregnancy ends. As for the second question the reply is, yes. She can exercise the power of divorce in the similar way provided she has the delegated power to do so. The procedure is provided in section 8 of the Muslim Family Laws Ordinance, 1961. Reply to your third question is if there is no specific mention in the nikahnama about the mode of payment the entire amount of dower shall be presumed to be payable on demand. The reply to the fourth question is yes, she can. Since the baby is a female your sister can keep her in her custody until she attains puberty. To the last question the reply is once again "yes". Your sister can claim maintenance of her daughter until she is married.

LAW lexicon

Donatio mortis causa

A death-bed gift made by a dying person, with the intent that the person receiving the gift shall keep the thing if death ensues. Such a gift is exempted from the estate of the deceased as property is automatically conveyed upon death. In most jurisdictions, real property cannot be transferred by these death-bed gifts.

Donee

Another words to describe the beneficiary of a trust. Also used to describe the person who is the recipient of a power of attorney; the person who would have to exercise the power of attorney.

Donor

The person who donates property to the benefit of another, usually through the legal mechanism of a trust. The law books of some countries refer to the trust donor as a "settlor." Also used to describe the person who signs a power of attorney.

Due process

A term of US law which refers to fundamental procedural legal safeguards of which every citizen has an absolute right when a state or court purports to take a decision that could affect any right of that citizen. The most basic right protected under the due process doctrine is the right to be given notice, and an opportunity to be heard. The term is now also in use in other countries, again to refer to basic fundamental legal rights such as the right to be heard.

Emancipation

Term used to describe the act of freeing a person who was under the legal authority of another (such as a child before the age of majority) from that control (such as child reaching the age of majority). The term was also used when slavery was legal to describe a former slave that had bought or been given freedom from his or her master. When Abraham Lincoln outlawed slavery he did so in a law called the "emancipation proclamation".

LAWSCAPE

Two law partners leave their office and go to lunch. In the middle of lunch the junior partner slaps his forehead. "Damn," he says. "I forgot to lock the office safe before we left." His partner replies "What are you worried about? We're both here."

An Amish man named Smith was injured when he and his horse were struck by a car at an intersection. Smith sued the driver. In court, he was cross-examined by the driver's lawyer:

Lawyer: "Mr. Smith, you've told us all about your injuries. But according to the accident report, you told the investigating officer at the scene that you were not injured at all?"

Smith: Well, let me explain. When the officer arrived at the scene, he first looked at my horse. He said 'Looks like he has a broken leg,' and then he took out his gun and shot the horse. He then came up to me and asked me how I was doing. I of course immediately said "I'm fine!"

LAW letter

Is government respectful to citizens' rights?

The High Court on April 7 in the landmark judgement in the case of Bangladesh Legal Aid and Services Trust (BLAST) and others vs. Bangladesh sets out a 15-point directives to ensure human rights of a person under arrest or detention or on remand. As it has observed that some of the provisions of the Section 54 and Section 167 of the CrPC are not consistent with the fundamental rights of the citizens guaranteed under the Constitution, it asks the govt to amend the relevant sections of the CrPC within six months from the date of ruling. It also orders that the law-enforcing agencies will comply with the recommendations of the judgement until the said sections are amended.

Among the diverse aspects of the judgement, as it is reported, the most important one is that it is made mandatory not only that the concerned police officer will produce a person before the nearest Magistrate within 24 hours of his/ her arrest but also that a) the arrested person has to be informed of the reasons for his arrest, b) the police will have to inform a friend or relative of the arrested person, unless he is arrested from his home or workplace, and c) the arrested person must be allowed to consult a lawyer, if he so chooses. Needless to say, what usually happens until now is that after arrest on vague and undefined suspicion police keeps the person in police/ than custody and produces him to the Magistrate within 24 hours without any obligation of informing the person of the reasons for his arrest, nor communicating the fact of his arrest to any relative or friend of the arrested person and the arrested person is not allowed to talk to a lawyer. The judgement says, 'We like to emphasis on this point that the accused should be allowed to enjoy these rights before he is produced to the Magistrate because this will help him to defend himself before the Magistrate properly, he will be aware of the grounds of his arrest and he will also get the help of his lawyer by consulting him. If these two rights are denied, this will amount to confining him in custody beyond the authority of the Constitution.'

Another very important aspect of the judgement is that to eliminate the illegal practice of torture in police thana hazat when the arrested person is brought back there on 'remand', the Court directs that such interrogation can take place only in the jail taking special measures. Not only that, this judgement also recommends to include in the Penal Code a new crime of hurt in police or jail custody for extorting confession and punishment thereof. This also raises the issue of compensation for victims of torture and cruel and inhuman treatment by police.

However, this extraordinary and forward-looking judgement is widely hailed by the civil society, and it is expected that the govt will take sincere initiatives to implement the directives. But, till now there is no sign that police is following the directives, and more regrettably, the govt has appealed against the verdict. This has created not only serious resentment but also frustration in the civil society.

Article 11 of our Constitution speaks that the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed. Here, in Bangladesh, human rights are being violated every moment, the dignity and worth of human person is being wallowed on the ground unceasingly; and when the judiciary is coming to prevent the degradation, the govt is obstructing it instead of welcoming it. The question comes naturally which type of democracy is it?

Apparently, such activity of the govt is not only baffling the aim of our Constitution but also a gross disrespect to the citizen's rights. Govt is reiterating a sentence everyday: we want to render the country a honourable position; we want to present Bangladesh as a model for the developing countries. But it is quite impossible until and unless the rights and liberties of the citizens are ensured. The govt should not forget or overlook it.

Star LAW book review

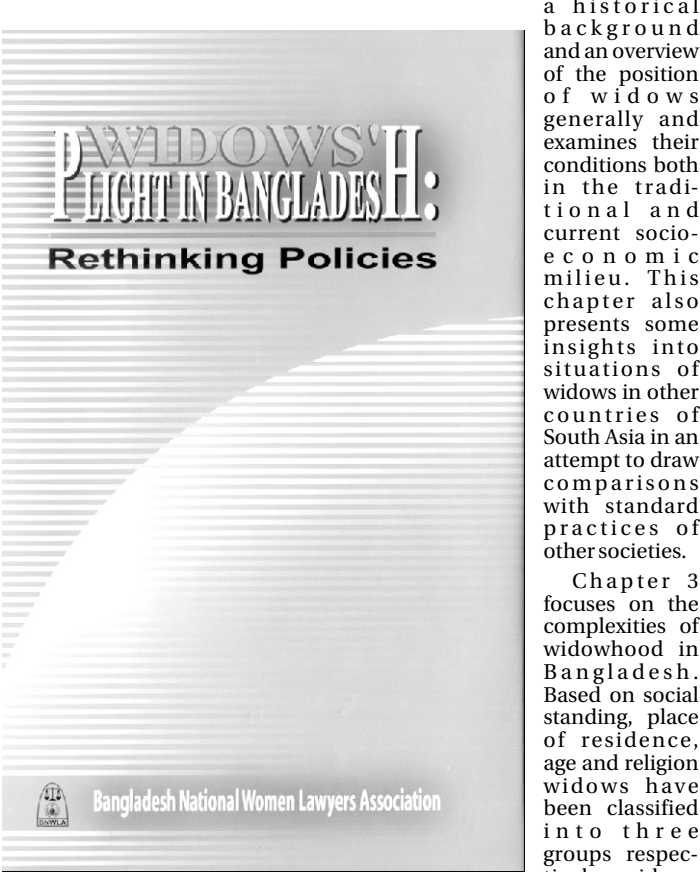
Widows' Plight in Bangladesh : Rethinking Policies

Dr. SUMAIYA KHAIR

(Widows' Plight in Bangladesh : Rethinking Policies Published By Bangladesh National Women Lawyers Association (BNWLA) (BNWLA, December 2002), Text pp. 104, Price Tk. 150)

THE book examines various dimensions of widowhood in Bangladesh from socio-cultural and legal perspectives. Its primary objective is to scrutinise that status of widows in the socio-legal contact and to trace their special vulnerabilities with the aim of recommending possible policy measures. The book is an outcome of a research that combined both primary and secondary methods of investigation. While questionnaires were used to collect empirical data from selected study locations, focus group discussions and case studies essentially provided the premise for qualitative assessment of the issue. The book also draws upon secondary material derived from leading authorities in this field, law books, journals and BNWLA's own documentation cell.

The book comprises 9 chapters in all. While Chapter 1 concentrates on introductory and methodological aspects of the study, Chapter 2 provides a historical background and an overview of the position of widows generally and examines their conditions both in the traditional and current socio-economic milieu. This chapter also presents some insights into situations of widows in other countries of South Asia in an attempt to draw comparisons with standard practices of other societies.



widows by age and widows by religion. In the first instance, widows have been grouped as rural and urban, in the second, as younger and older and

Zahid Biswas, Student of law, University of Dhaka.

Another experiment to combat crime

It is evident from the news paper reports that law and order situation is deteriorating all over the country day by day. Every we see a lot of news on murder, kidnap, rape, dacoity, acid throwing and the list goes on. Criminality has taken a new turn recently. Policemen are increasingly becoming target of the terrorists. More than 12 police members were killed in last one and half month. This is a matter of concern for all of us. Attack on police member is not new in Bangladesh. But vulnerability of the law enforcers was never so acute. This is an indication of the existing lawlessness prevailing in the country. It seems that the government has no comprehensive plan to combat the situation. Operation Clean Heart also failed to create any long lasting positive impression. Another experiment is going on in the form of Rapid Action Team (RAT). This special team of police was trained by the army and better equipped. Since its inception, the RAT created sensation by arresting Assistant Commissioner of RAT and some Traffic sergeants. Except those, RAT has no major achievement. Now the government is considering set up a new force to be named as Rapid Action Battalion (RAB). We may see RAB in action shortly. But will these help improving existing law and order? I don't think so. Because I think, the solution lies in increasing efficiency of police, the principal law-enforcing agency. They should be equipped with modern arms and com-



munication tools. I don't think there is substitute of police reform. And we need a comprehensive plan of action to combat crime. Otherwise these experiments will not bring any good to us.

Mohammad Mizanur Rahman, Advocate, Dhaka Judge Court.



LAW week



16 to die for Sutrapur double murder

Sixteen people have been sentenced to death, three to life term and one to seven years imprisonment in the sensational Sutrapur double murder case. They have been given the death penalty for murdering Mohammad Mohsin and Mohammad Saem, two local youths on 15 September 2000. Shaded Noor Uddin, Judge of the Speedy Trial Tribunal 1, Dhaka Division, gave the verdict in a crowded courtroom. The court found them guilty of murdering the two young men. In its verdict the court gave death sentence twice to the 16 accused for murdering Mohsin and Saem. But one of the two sentences will be effective subject to confirmation by the High Court Division. It may be mentioned that Moshin and Saem were taken to a local club and tortured to death for a ransom of Tk. 50000 by the accused on 15 September 2000 and cut their dead bodies in 12 pieces and dumped those into an under construction culvert. Mohsin's father filed a murder case in this connection on 16 September 2000. The IO submitted charge sheet on 3 March 2001. But following a 'naraji' petition by the complainant, the then CMM ordered further investigation. The Detective Branch (DB) of police further investigated the case and submitted a supplementary charge sheet against thirty-four accused and the court framed charge against the accused on 13 November 2002. The trial of the case began at the tribunal on 11 December 2002 and was completed in 131 working days. Twenty-five out of forty prosecution witnesses were cross-examined during the trial. - Law Desk.

Cases to be filed against war criminals

Preparations are underway to file cases against the war criminals with the International Court of Justice (ICJ) as the local thanas refused to accept cases against them. This was disclosed at a daylong conference of Ghatok Dalal Nirmul Committee (GDNC) at Chittagong. GDNC leaders also reiterated their demand for immediate trial of the war criminals at home. They said it is unfortunate that some of the war criminals are acting as ministers. Terming the matter as a matter of shame they called upon all to buildup move against them. - The Daily Star, 17 May.

WCRP Act to be amended

The Women and Children Repression Prevention Act 2000(WCPR) would be amended shortly to prevent its abuse. Law Minister Mr. Moudud Ahmed said this in a discussion meeting on 'Child Repression, Existing Law and Implementation' organised by Save the Youth Forum. He blamed the law enforcers for the abuse of the law. Emphasising on the role of the guardians, he said rights of children must be protected through abolishing child labour. National Professor and child specialist Dr. MR Khan said there are anomalies in determining age of children, as laws in this respect are not clear. He informed the meeting that 7,445 reports of violation of child rights were published in different newspapers in 2002, while the number was 3,776 in 2001. He said there are about five thousand juvenile delinquents in the city and of them five hundred are listed by police. Dr. Khan said Dhaka Metropolitan Police arrested 45 children aged between 12-18 from 1 March to 30 April for their alleged involvement in different criminal activities. - The Daily Star, 17 May.

System of minister in-charge challenged

The High Court Division issued a rule upon the government to explain why the system of minister-in-charge in the district should not be declared illegal. The rule was issued following a writ petition by Anwar Hussain Monju challenging the notification giving responsibility to the cabinet ministers and others to supervise the law and order and the overall development of different districts. The petitioner contended that the so called minister-in-charge has been made chief executive of the district where the local administration cannot exercise its authority justly, honestly and fairly. The local administration is bound to serve minister-in-charge of the district who virtually dictates all the departments in the district. Though MP's are accountable for overall development of their constituency, due to interference of the minister-in-charge they cannot discharge their responsibility properly. A division bench comprising Justice MA Rashid and Justice Siddiquir Rahman Miah issued the order and asked the government to answer the rule within two weeks. - Daily Ittefaq, 19 May.

Steps to maintain balance of environment

Environment and Forest Minister Shahjahan Sijar said twenty percent of the total land of the country would be brought under green coverage by the year 2015. He said the four party alliance government has taken some active steps in this regard like ban on use of wood as fuel in brickfields to maintain the balance of environment. Mr. Shahjahan Siraj urged the real state developers to replace old bricks with compressed concrete blocks, which is environment friendly. The minister also said that the government is contemplating to recycle used articles as raw material of different electrical and organic products. - Bangladesh Observer, 20 May.

Private container terminal illegal

The Supreme Court rejected the government's leave to petition against the High Court Division's verdict declaring approval for setting up private container terminal illegal at Patenga in Chittagong and Pangoan of Narayanganj undertaken by Stevedoring Services of America, Bangladesh (SSA, B). A seven member full bench of the Appellate Division of the Supreme Court headed by Chief Justice Mainur Reza Chowdhury delivered the decision upholding the High Court Division's verdict. The decision disposed off all the leave petitions filed by the government and SSA, B'. Earlier, a Division Bench of High Court Division on 26 November declared the setting up of private container terminal project illegal with an observation that the government had approved the project randomly without feasibility study and paying proper attention. The verdict was delivered upon a writ petition in the form of public interest litigation (PIL) filed by four persons including former chairman of Chittagong Port Authority. - Daily Ittefaq, 20 May.

Anti corruption bill is in snail pace

Law minister Barrister Moudud Ahmed said a bill on an independent anti-corruption commission would be tabled in the parliament in its upcoming budget session. He said the government has finalised a bill to set up the independent anti-corruption commission. The cabinet has also decided in that line. He further said that the bill first has to be placed before the Secretariat Committee on Administrative Development (SCAD) for scrutiny to ensure smooth functioning of this commission as well as the existing Bureau of Anti-Corruption (BAC). Once the parliament approves the bill, the BAC would be placed directly under the commission. However, the commission retains the officials who it felt are impartial and competent while it would send the remaining staffs to the governments' executive wing. - The Daily Star, 14 May.

20,420 cases against mills and factories

Factory and Establishment Directorate under the Ministry of Labour and Employment has lodged a total of 20,420 cases against various mills and factories so far. Of them, 17,600 cases are under trial while the rest have already been disposed off. These include 4,727 cases lodged during the last six months till March this year. These cases were lodged for violation of different rules including environment protection rules in establishing these mills and factories. A total of Tk. 5,88,00975 was realised as fine during the last six months. As many as 879 cases were filed with seven labour tribunals of the country on owner-employee disputes from October 2002 to March 2003. However, a total of 951 such cases both old and new were disposed off during the period while 2,472 cases including the old ones remained unsettled. - Daily Star, 14 May.

New energy pricing policy in the offing

The energy division of the ministry of power, energy and mineral resources has prepared a draft proposal for the energy pricing policy. In the proposed policy an upward adjustment of gas price is suggested once in a year with a provision to review the gas price situation in every six months. The petroleum product price has been proposed in the draft policy to be adjusted in every six months. The World Bank (WB) earlier suggested formulation of an energy pricing policy incorporating 15 percent profit margin to be calculated on the total assets of energy marketing companies. The energy division prepared its earlier proposal following the WB's suggestion for 12 percent price hike, but a cabinet committee turned down the move. The draft proposal suggested having a 15 percent profit margin only on equity, not on capital. It also proposed to review the petroleum product price every month and adjust the price in every six-month. - News Today, 14 May.