



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 24 year old Muslim woman. I'm in love with a 26-year-old Hindu man. Under which act I can go for marriage and as a Muslim can I claim dowry money or anything under our Mohammedan law?

Rubana
Dhanmondi, Dhaka

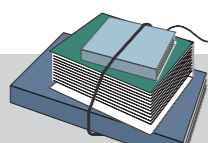
Your Advocate: You can have some idea about the problems and incidents of inter-religious marriages you have indicated if you revert back to my answers given to similar queries published on the 21st and 28th December last. With the change of time questions of inter-religious marriages and their attendant consequences are coming to the fore. This is really unavoidable and therefore, some streamlining of law is required so as to cover this emerging area of problem. In the prevailing position of law a Muslim woman cannot contract a valid marriage with an idolater, such as a Hindu. So you cannot marry the man you love maintaining your faith nor he can marry you maintaining his faith. There is a stalemate in the transaction if you call yourself a Muslim and the gentleman calls him a Hindu. The only way out for you is both of you have to renounce your respective faith and declare that neither of you professes any religion. Once you secularize yourself by renouncing your faith your marriage comes within the ambit of the Special Marriage Act, 1872. And you can conveniently get married as per the provisions of that law. Since in the event you cease to be a Muslim naturally you cannot claim any dowry as per Muslim law.

Q: I'm a Hindu, married a Muslim woman for the past five years in a Mandir. We have three-year-old daughter. My in-laws now want me to convert to Islam. But I don't want to do so. Is it not possible to live together and follow our own religions? And, if my wife continues to be a Muslim, can my daughter still be a Hindu? Can my in-laws take away my child, legally, if I don't convert? Who will be the guardian of the daughter?

Devashish Roy
Dinajpur.

Your Advocate: You as a Hindu cannot validly marry a Muslim woman, therefore, question of Mandir or Masjid does not arise. This kind of inter-religious marriage is not permissible in Hinduism or Islam either. So it is not legally possible for you both to continue with your respective faith and be recognized as husband and wife. You would be faced with many complications. Birth of a child has further complicated the situation. Your daughter comes out to be neither a Hindu nor a Muslim. The question of legitimacy of your daughter also is there. Under your personal laws you cannot legitimize her. Therefore, your in-laws cannot legally take away the child. Minor girl legitimate or illegitimate there must be a guardian to look after her. In this peculiar circumstances mother is the guardian of the minor daughter.

LAW lexicon



Restitution

Under ancient English common law, when a party enforced a court judgement and then that judgement was overturned on appeal, the appellant could ask the appeal court for "restitution", or financial compensation placing that appellant in the same position as if the original legal decision had not been enforced. A new strain of common law has also developed called "restitution", closely associated with unjust enrichment, whereby a person is deprived of something of value belonging to them, can ask a court to order "restitution". The best example is asking a court to reverse or correct a payment made in error.

Resulting trust

A trust that is presumed by the court from certain situations. Similar to a constructive trust but for resulting trusts, the court presumes an intention to create a trust; the law assumes that the property is not held by the right person and that the possessor is only holding the property "in trust" for the rightful owner. In constructive trusts, the courts don't even bother with presuming an intention; they simply impose a trust from the facts.

Retainer

A contract between a lawyer and his (or her) client, wherein the lawyer agrees to represent and provide legal advice to the client, in exchange for money. The signed retainer begins the client-lawyer relationship from which flow many responsibilities and duties, primarily on the lawyer, including to provide accurate legal advice, to monitor limitation dates and to not allow any conflict of interest with the relationship with the client.

Reversion

A future interest left in a transferee or his (or her) heirs. A reservation in a real property conveyance that the property reverts back to the original owner upon the occurrence of a certain event. For example, Jim gives Bob a building using the words "to Bob for life". Upon the death of Bob, the property reverts back to Jim or to Jim's heirs. Differs from a remainder in that a remainder takes effect by an act of the parties involved. A reversion takes effect by operation of the law. Nor is a reversion a "left-over" as is a remainder. Rather, it reverts the entire property.

Riparian rights

Special rights of people who own land that runs into a river bank (a "riparian owner" is a person who owns land that runs into a river). While not an ownership right, riparian rights include the right of access to, and use of the water for domestic purposes (bathing, cleaning and navigating). The extent of these rights varies from country to country and may include the right to build a wharf outwards to a navigable depth or to take emergency measures to prevent flooding.

LAW letter

Ombudsman: Still a far cry

The constitution of Bangladesh provides for the provision of ombudsman. This is very effective machinery to safeguard the rights of the citizens and is considered as one of the important organs in the changing world to polarise the society on equitable norms.

The concept of ombudsman traces back to the feeling of a vested quarter that a watchdog is needed to redress the outcry of the people arising from authoritarianism. Etymologically this word derives from a Swedish word, which means "representative of the government". The increasing convulsion of modern states, omnipotence of the government and the clogging in the court procedure led to the emergence of ombudsman in 1960's. Denmark was the first country to set up ombudsman and many developed countries have made a remarkable headway in giving this state organ a concrete shape. According to the recent World Conference of the International Ombudsman Institute which took place in Argentina, presently ombudsman type offices are in vogue in 85 countries under different nomenclatures.

The ombudsman demonstrates a commitment to the rule of law and constitutional democracy. As it operates non-politically and the citizens enjoy easy access to this government machinery it can prevent infringement of human rights and maladministration. In the recent times Bangladeshi people witnessed the indiscriminate arrest of innocent people following the threat from the opposition to topple the government. Police crammed the prisons with the people who have no nexus with politics and they were given 3 day's imprisonment without producing them before the court. Even their relatives were not informed of their arrest. This tyrannical attitude of the government was a flagrant violation of constitution and it has reminded the mantle of ombudsman in Bangladesh once again. The value of democracy consists of making the constitutional norms sacrosanct.

Inmran Ahmed, Mohammadur, Dhaka

Fourteenth amendment and our superior judiciary

The Judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the Executive and thereafter it is absolutely essential that the Judiciary must be free from Executive. Independence of Judiciary is the sine qua non of democracy. So long as the judiciary remains truly distinct from both the legislature and the Executive, the General Power of the people can never be endangered from any quarters.

Recently the parliament has passed a bill which provides a new provision that Judge of Supreme Court shall hold office until the attains

the age of 67 years. Cause of such amendment as mentioned by our Hon'ble Law Minister is for want of experienced Judge in the Supreme Court. Opposition has said that such proposal for amendment has been brought only to hold next election under Mr. KM Hassan, the immediate passed Chief Justice, once who was associated with BNP politics and close relative of Colonel Faruque and Rashid.

Law Minister said that within 2 years about 25 experienced Judges will be retired from Supreme Court, consequently there would be a grate crisis. In order to avoid crises the Government has decided to amend the constitution. Question is who is responsible for creating such crises? This Government did not confirm 15 High Court Judges who

the government did not confirm 15 judges in spite of the recommendation of the Hon'ble Chief Justices. Now the Government is trying to resolve the crises by amending the Constitution. If service of the Judges depends upon the sweet will of the appointing authority the Principle of Judicial independence will be a mockery and public confidence will be shaken and that has been done.

Hon'ble Prime Minister please try to assess the depth of the crises and pulse of Learned Lawyers of the Supreme Court. They did not accept the Government's activities in the Supreme Court area. Consequently your candidates like Mr T H Khan and Dr Zahir lost in last two consecutive election. At the time of



got their appointment during tenure of Previous Government. They have not been confirmed only because they were appointed by previous Government inasmuch as their performance was better than that of the subsequent appointees. Throwing them out mercilessly and inhumanly present Government appointed some Judges. One of them has recently been removed on the allegation of corruption. Number of disposal of the cases particularly Criminal Appeals against conviction is shockingly low. People's confidence upon the Higher Judiciary is gradually decreasing day by day. The litigants expected quick disposal of Criminal Appeal against conviction, bail petitions, civil dispute, writs etc. One does not know after filing a case when the same will be disposed of. That is, there is a great crisis in superior judiciary and our Law Minister accepting the position decided to amend the Constitution.

After completion of 2 years probation period

holding election your opponent group seriously raised issue of non-confirmation appointment of High Court Judges and other problems in Court area. Please try to find out the way to get rid of suffocation caused by the excessive dominance of the executive and allow enjoying the normal breathing of the unpolluted air of judicial independence.

The role of the judiciary under the Constitution is pious trust reposed by the people. The Constitution and the democratic polity thereunder shall not survive, the day judiciary fails to justify the said trust if the Judiciary fails, the Constitution fails and the people might opt for some other alternative. It is our expectation that both position and opposition will come forward to find out the root of crises and resolve the same for the interest of the Nation.

Anik Rohman, student, Dept. of Law, Dhaka University.

CRIME punishment



LAW DESK

Robbery

Robbery is a special and aggravated form of theft or extortion. Robbery may be distinguished from theft and extortion by the presence of force and imminent fear of violence and therefore could be defined as felonious taking of any thing from the victim or in his presence against his will by violence or putting him in fear of injury. (AIR, 1928 Cal 498).

Section 390 of Penal Code defines robbery. In practice it is perpetually a matter of doubt whether a particular act of robbery is theft or extortion. A large proportion of robberies will be half theft half extortion.

Theft is robbery when it is committed by carrying away of property and at the end voluntarily causes or attempts to cause death, hurt, wrongful restraint or fear of instant death or hurt or instant wrongful restraint of any person.



On the other hand, if the offender at the time of committing the extortion put in fear of instant death, hurt or wrongful restraint to anybody and by putting in fear induces the person to deliver up the thing extorted, will be considered as robbery. Dishonest intention is a *sin qua non* of the offence of robbery.

In a charge of robbery, it must be shown that there was not only presence of violence or hurt or wrongful restraint but also that it was caused for the purpose of enabling theft to be carried out. An accidental injury by a theft will not convert the offence into robbery. "Wrongful restraint" implies abridgement of the liberty of a person against his will. Removal of ornaments from the body of a person after causing death does not amount to robbery.

Punishment

Section 392 of Penal Code

described punishments for robbery. The punishment for robbery is rigorous imprisonment for a term, which may extend to ten years and also be liable to fine. If robbery is committed on highway between sunset and sunrise, the imprisonment may be extended to fourteen years. Highway robbery is a very heinous offence for which deterrent sentence should be passed by the court. In such a case the value of the stolen property should not be considered as criterion for fixing the amount of punishment.

When in committing or in an attempt to commit robbery the offender voluntarily causes hurt of a person may be punished with imprisonment for life or with rigorous imprisonment for a term of ten years and also be liable to fine.

If at the time of committing robbery or dacoity the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt, in that case the imprisonment

shall not be less than seven years. Also while attempting to commit robbery the offender is armed with any deadly weapon shall be punished with imprisonment not less than seven years.

Section 401 of Penal Code provides punishment for a person belonging to a gang or thieves. If any person belongs to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery may be punished with rigorous imprisonment for a term of seven year and shall also be liable to fine. The word "belong" connotes something more than casual association. It involves a notion of continuity over a period of time sufficiently long to absorb the tenants of the gang whose purpose is the habitual commission of robbery.

Star LAW history



American Declaration of the Rights and Duties of Man

LAW DESK

The American Declaration of the Rights and Duties of Man is the world's first international human rights instrument of a general nature. The basic essence of the declaration is all men are born free and equal, in dignity and in rights and being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another. The Declaration was adopted by the nations of the Americas at the Ninth International Conference of American States in Bogota, Colombia, in April 1948. The same meeting that adopted the Charter of the Organisation of American States and thereby created the OAS.

In the preamble it is explained that, the fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty. Although strictly speaking a declaration is not a legally binding treaty, the jurisprudence of both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights holds it to be a source of binding international obligations for the OAS's member states.

The American peoples have acknowledged the dignity of the individual. Moreover their national constitutions recognise that juridical and political institutions, which regulate life in human society, have as their principal aim for the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness. The American States have on repeated occasions recognised that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality;

Chapter One of the Declaration sets forth a catalogue of civil and political rights to be enjoyed by the citizens of the signatory nations, together with additional economic, social, and cultural rights due to them. In brief it includes the following rights: right to life, liberty and personal security; right to equality before law; right to religious freedom and worship; right to freedom of investigation, opinion, expression and dissemination; right to protection of honour, personal reputation, and private and family life; right to a family and to protection for mothers and children; right to residence and movement; right to the inviolability and transmission of correspondence; right to the preservation of health and to well-being; right to education.

Every person has the right to receive, free, at least a primary education; right to the benefits of culture; right to work and to fair remuneration, leisure time and social security; right to recognition of juridical personality, civil rights and fair trial; right to nationality, vote and to participate in government; right of assembly, association, property; right to due process of law and right of asylum.

As a corollary, its second chapter contains a list of corresponding duties. These are: Duties to society, towards children and parents; duty to vote obeys the law, to serve the community and the nation; duties with respect to social security, welfare and pay taxes; duty to work, refrain from political activities in a foreign country.

Source: Wikipedia.

Corresponding with the Law Desk

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LAW week



Two rules for lower court appointments planned

The government is likely to make two sets of rules in line with a 12-point Supreme Court directive on separation of the judiciary towards appointment of 70 assistant judges in lower courts against vacancy of 210 posts. Drafts of the Bangladesh Judicial Service (Constitution, Recruitment to Entry Posts and Absorption) Rules and the Bangladesh Judicial Service (Posting, Promotion, Leave, Control and Discipline) Rules will be placed before the prime minister time next week for approval. If approved, the draft rules will be submitted to the president for promulgation through gazette notification. - *NewAge, 25 May.*

Scotland Yard in city to probe shrine blast

A team of the UK police service, Scotland Yard, arrived in Dhaka yesterday to investigate Friday's deadly bomb blast at Hazrat Shahjalal Shrine in Sylhet that injured British High Commissioner to Bangladesh Anwar Choudhury among 70 other people and killed three. The investigation goes two-pronged as the Criminal Investigation Department and Scotland Yard members with the help of local police will investigate the second bomb blast in five months at the 700-year-old shrine. - *Daily Star, 24 May.*

Qazi Faruque remanded

Proshika President Qazi Faruque Ahmed yesterday was placed on three-day police remand in two corruption cases filed by the Bureau of Anti-Corruption (BAC). Police produced Faruque before the court of Chief Metropolitan Magistrate (CMM), Dhaka at around 2:45pm with two separate prayers, each for a five-day remand. - *Daily Star, 24 May.*

HC order to reconsider 'Kula' for Mannan

The High Court yesterday directed the returning officer (RO) for Dhaka -10 by-election to reconsider allocation of "Kula" in favour of the Bikalpa Dhara Bangladesh (BDB) candidate Major (retired) Abdul Mannan. - *Daily Star, 24 May.*

4 gets life for killing brickfield owner

A Dhaka Court on Saturday sentenced four persons to life term for killing one Saleh Mohammad on January 22 in 2001 at Savar Upazila in Dhaka district. The convicts are Bhasani, Sayem alias Shamim, Mohammad Israfil and Mustaqin. All the convicts except Mustaqin were present in the court during the pronouncement of the judgement. The court also fined them TK 10,000 each. They will suffer another one year in jail if they fail to pay the fine. The court framed charges against them on January 26 this year and trial was completed in 107 working days. - *Daily Star, 24 May.*

Cabinet okays draft of EPZ trade union act

The Cabinet on Sunday approved the "EPZ Labour Organisation and Industrial Relations Act 2004" that allows trade union in the country's export-processing zones. An official announcement said the draft new law recognised "the rights of the workers of the industrial enterprises in the export-processing zones to form trade unions". The Cabinet also endorsed a proposal for amending relevant section of the Penal Code to raise the "Official Age of Criminal Responsibility" of children. - *Bangladesh Observer, 24 May.*

Ex-BTTB boss gets 180yrs for graft

A Dhaka court yesterday sentenced former chairman of Bangladesh Telegraph and Telephone Board (BTTB) Maksud Ali Khan to 180-year imprisonment for embezzling Tk 10 crore in six graft cases. Judge Rezaul Karim Khan of the Special Court for Dhaka Division handed down the verdict in the absence of the convict and fined him Tk 12,8349 crore. The convict will have to serve another 30 years in jail in failure to pay the fine. The court also directed the district magistrate to take steps to collect the fine in the event of the convict's failure to pay. - *Daily Star, 25 May.*

No progress in Custom House theft case

No progress in the sensational case of looting goods worth over Taka one hundred million from the warehouse of Chittagong Custom House is yet in sight, official sources said. Officials in the Chittagong Custom House alleged that influential quarters reportedly involved in the theft were trying to divert the investigation through putting pressure on the police and investigation officials. - *Bangladesh Observer, 25 May, 04*

FBI special squad likely to arrive

Extending the hands of co-operation to the British, a special squad of FBI (Federal Bureau of Intelligence) is likely to reach Dhaka for conducting a full-fledged inquiry into the Sylhet bomb blast incident. FBI team may arrive in Dhaka after getting approval from the Bangladesh government. A senior intelligence official told The Bangladesh Observer that a special team of British Military Intelligence may arrive in Dhaka very soon for the same purpose. - *Bangladesh Observer, 26 May.*

Review petition of Haji Selim's rejected

The High Court yesterday rejected a revision petition filed by Haji Selim, a former lawmaker and Joint General Secretary of Dhaka City Awami League, in a ransack and bomb blast case pending in a Speedy Trial Tribunal of Dhaka. Now the proceedings of the case will continue in the Speedy Trial Tribunal. - *Bangladesh Observer, 26 May.*

Tarique to sue Hasina for defamation

BNP joint secretary general Tarique Rahman is to file a Tk 100-crore defamation suit against Sheikh Hasina and Abdul Jalil unless they apologized for their "derogatory" remarks about him within a week. His lawyer Barrister Nawshad Zamir served two legal notices on the Awami League president and leader of the opposition and the AL general secretary for allegedly casting aspersions on Tarique. The legal notice served on Hasina mentioned 13 remarks reportedly made by her about the rising BNP leader and published in national dailies. - *NewAge, 26 May.*

Order to add word 'Muslim' with Salimullah Hall

The High Court yesterday ordered the government and the Dhaka University authorities to add the word "Muslim" with the name "Salimullah Hall" of the University of Dhaka. The order came upon a writ petition filed by Rakib Uddin Ahmed, a former student of Salimullah Hall, challenging the decision of Dhaka University authorities to pen through word "Muslim" from the name "Salimullah Muslim Hall". A division bench of the High Court comprising Justice Jounal Abedin and Justice Sharif Uddin Chaklader also declared illegal the decision taken by the Dhaka University authorities to strike off the word "Muslim". - *Independent, 26 May.*

High Court stays by-poll in Dhaka-10 till June 12

The High Court on Wednesday stayed all proceedings of the by-election in Dhaka-10 constituency till June 12 following a dispute over election symbol allocation. The by-election was scheduled for June 6 and the High Court interruption came when electioneering was at its peak in the constituency. - *Bangladesh Today, 27 May.*

Appeal against HC stay on Dhaka-10 by-polls

It has become a sheer mystery as to who filed the appeal petition against the High Court verdict staying all proceedings of the parliamentary by-election to Dhaka-10 constituency until June 12.

The appeal came after the High Court on Wednesday issued the stay order as Bikalpa Dhara Bangladesh (BDB) candidate for Dhaka-10 Abdul Mannan filed a writ petition, being denied the election symbol Kula. The by-poll was slated for June 6. Court records show the returning officer (RO) of the constituency filed the petition with the Appellate Division of the Supreme Court, which is tantamount to jumping the hierarchy of the Election Commission (EC). - *Daily Star, 27 May.*

Court bans journalists

The Special Bench of the Appellate Division yesterday banned newsmen from the next hearing of the petition filed by returning officer (RO) of the Dhaka-10 parliamentary by-polls against the High Court order that stayed all election proceedings in the constituency until 12 June. - *Daily Star, 28 May.*