



RIGHTS investigation



HUMAN RIGHTS advocacy



Hindu women in Bangladesh Suffering for absence of marriage registration

BY SHANCHITA SHARMA

MINATI KARMAKAR in her 20s suffers at her husband's house for inability to bring dowry. Minati's husband tortures her, as she cannot bring dowry money for him. Fed up, one day she leaves her husband's house and returns to her parents. The husband is still after her and insists to return to him with dowry money.

The harassment is too much for her to bear. Minati wants to terminate the marriage. She goes to court and finds to her surprise that the Hindu law does not help her much.

In Bangladesh, Hindu marriages differ from caste to caste. The Hindu marriage rituals have often no lawful ground. So, when the Hindu women want to come out of bad marriages they are in trouble because there is no marriage registration system in the Hindu society in Bangladesh.

Consider the case of Kazali Rani Das, 23. She works as a day-labourer at her village. Her neighbour, Sanjoy Madhu, lured Kazali with a marriage proposal and convinced her. Then they got married and began their conjugal life at the house of Kazali's parents. Before long, Kazali becomes pregnant and Sanjoy is asked to take Kazali to his own house.

Kazali's trouble begins here. It does take long for Kazali to understand that she has fallen into a trap. Sanjoy delays to take Kazali to his house by making false excuses and later disclaims his marriage with her. Kazali is now too helpless to express her plight. Society does not want to believe what she says. She has no official document, as her marriage was not registered.

This is no exception. It happens to thousands of Hindu women in Bangladesh.

According to Hindu social customs, Hindu marriages are solemnised merely through some religious rituals. There is no marriage registration system for Hindu people in Bangladesh. It is surprising that there is also no Hindu marriage law or Hindu marriage register in the country. So, if any Hindu woman suffers in the hands of her in-laws, she does not get legal help.

As per a 1946 law, Hindu women can file cases with courts to only regain the rights to conjugal life. Besides, the Hindu women can file cases under Family Court Ordinance 1985, Dowry Act 1980 and Women and Children Repression Act 2003. But these laws are too inadequate to protect the Hindu women's rights.

A total of 926 marriage cases were received by Ain O Shalish Kendra during July 2003 to February 2004 period. Of them, only 17 cases were related to Hindu women.

Says lawyer Nina Goswami, "Hindu women do not complain much fearing the marriage will break. That fear grips them because divorced Hindu women find it hard to get new

husbands. There is no law allowing Hindu widows to remarry."

But the situation is very different in neighbouring India. There are laws in that country to protect the rights of Hindu women such as Widow Marriage Act 1856, Racial Inability Remission Act 1850, Child Marriage Prevention Act 1929 (Amendment 1938), Earned Property Affairs Act 1930, Inheritance Act 1925 and Hindu Women's Rights to Lands Act 1937.

Besides, new laws have been made in India after independence in 1947. These include Hindu Marriage Act 1955, Immature Children's Property Act 1956, Hindu Adoption and Maintenance Act 1956, Hindu Inheritance Act 1956 and Special Marriage Act 1960.

Efforts to enact laws to protect Hindu women's rights in Bangladesh are thwarted by conservatives. There are Hindu men who leave their first wives and take second ones, but the same people resist changes for the better.

Although the clauses No 19 (1) and 19 (2) of the constitution carry clear provisions that the state will ensure equal rights to all citizens and remove social and economic disparities, no government came up with steps to reform Hindu laws for protecting Hindu women's rights.

Awami League presidium member Surajit Sen Gupta says, "Hindu laws need to be reformed in our country. But the free democratic environment that is needed for the reforms has not properly developed yet."

Hindu religionist and Professor of Culture and Pali Department of Dhaka University Dr Niranjan Odhikari says, "Marriage registration is as necessary as the babies' birth registration. It will be helpful if Parliament makes laws in this regard."

President of Metropolitan City Universal Puja Committee Swapan Shaha says: "There should be laws to guide Hindu marriage, including rights to divorce because Hindu women are sometimes forced to leave their husbands' houses. In such a case, a woman should be able to obtain legal divorce and take another husband."

Organising Secretary of Bangladesh Mohila Parisad Rakhi Das Purkaiasha says, "Marriage registration is a legal right of women. Marriage registration needs to be obligatory to all people irrespective of religion, cast and creed because marriage registration does not disregard religion."

But leaders of Hindu, Buddhist, Christian Oikya Parishad have different views. They think

marriage registration is unnecessary for Hindu people. They think Hindu boys believe in single marriage and the number of those who go for polygamy is very few. The leaders say Hindu women will be repressed more if marriage registration and divorce laws are enacted.

A Hindu woman social worker, preferring anonymity, regrets, "People in our country only think of the society. They forget that marriage registration is a right of women". Advocate Nina Goswami also says, "In fact, the Hindu women have no right in our country. But we have nothing to do."

Source: NewsNetwork.



LAW opinion

Criminal responsibility for torture under Bangladesh law

ADVOCATE ARAFAT AMIN

THE criminal laws prevailing in Bangladesh do not have the definition of torture in particular. The definition of torture as stated in the Article-1, of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment is as follows:

"Torture" means any act by which severe pain or suffering,



whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

But in Bangladesh such kind of definition of torture has not been enacted yet. However the Bangladesh Penal Code 1860, and the Criminal Procedure Code 1898 provide some definitions of offences and procedures to be followed which very narrowly covers the area of torture.

In the Bangladesh Penal Code Chapter XVI contains the offences affecting the human body-

- = Offences affecting Life (Section 299-311)
- = Offences causing miscarriage, injuries to unborn child and concealment of birth. (Section 312-318)
- = Offences relating to Hurt (section 319-338A)
- = Offences relating to wrongful restraint and wrongful

- confinement (Section 339-348)
- = Offences relating to criminal force and assault (Section 339-358)
- = Offences relating to kidnapping, abduction, slavery and forced labour (Section-359-374)
- = Offences relating to rape (Section 375-376)
- = Unnatural offences (Section 377)

The offences mentioned above are all cognisable offences which means that in case of an information given to the police relating to the commission of such offences the police can arrest such person involved with the offence committed without any warrant issued from the Magistrate.

In case any of the offences mentioned above is caused the procedure enumerated in the Criminal Procedure Code 1898 is followed. Part V, Chapter XIV of the Code of Criminal Procedure deals with the Police and their powers to investigate. As per section 154 when any information relating to any commission of a cognisable offence if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant and every such information whether given in writing or reduced to writing shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer. This is generally known as FIR (The First Information Report).

It has been discussed earlier that there is no specific definition of torture in the Penal Code of Bangladesh. If any injury is sustained by any person either the accused shall be charged with hurt, grievous hurt, attempted to murder, murder, kidnapping or abducting etc. if any of these element is present. But no criminal liability of torture can be imposed upon the accused. According to the definition of torture it means to cause pain or suffering, whether physical or mental, on a person for the purposes of obtaining any unlawful gain. But the Bangladesh Penal Code did not mention anything about such offence. Though it has stated about the offences affecting the human body but not the offences affecting the human body with a view to obtain any unlawful gain. Therefore the law relating to torture in Bangladesh is very inadequate to cover the crime of torture.

Torture Committed by the Governmental Agencies

Torture by Police: At present it has become a major social issue, which has threatened the fundamental rights of the people in Bangladesh. There are many reports of death in police custody mostly due to torture. The Police have been given with immense power in Bangladesh. According to section 54 of the criminal procedure code the police can arrest anyone whom it suspects to be involve with any crime. And after the arrest police forward the person before the magistrate with a prayer for remand under section 167 of the criminal procedure code. And if remand is approved by the Magistrate the arrested person is taken into the police custody for interrogation for the interest of investigation. And in the name of interrogation usually the police torture the arrested person to obtain information or confessional statement. Now a days it has become a practice by the police and they also take money from the arrested person just not to torture him. After the expiry of the remand period the arrested person is brought before the Magistrate and if there is any confessional statements the Magistrate records it and the police also may pray for further remand. There is no provision of compulsory medical examination of the arrested person after remand period and therefore the police have the opportunity to utilize the situation. If at the time of appearing before the Magistrate it appears to him that the person is sick he may be sent to the hospital for treatment and medical examination and the arrested person may also apply before the magistrate for medical examination. There are no specific procedures to be followed in case of death in police custody. The same procedure mentioned earlier is followed.

There have been several cases of conviction of police officers for causing death in custody. The leading cases are-

1. Arun Murder Case
2. Yasmin Murder Case
3. Rubel Murder Case.

Torture by Army: In the recent past due to the rise of terrorist activities and crimes in country the Government deployed Army to arrest the top criminals. The Army in the name of arrest of the criminals arrested thousands of people without any proper ground and put them into torture to obtain information whether they can get it or not. There has been however 44 reported deaths at the time of the operation by the Army during the period of 16 October 2002 09h January 2003. But not a single case was investigated and the Government on 24 February 2003 passed an Act called 'Joutha Abhijan Daemukti Ain-2003 by which all the acts of the army at the time of the operation from 16 October- 9 January 2003 were legalised and it has been also contended in the said Act that no action of the army during the said period can be challenged in any court.

Constitutional Safeguards against Torture

Though there are no specific laws relating to torture in Bangladesh hence the Constitution of Bangladesh provides safeguards against torture. It has been made a fundamental right under the Constitution. Article 35(5) of the Constitution provides that "No person shall be subject to torture or to cruel, inhuman or degrading punishment or treatment."

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State Responsibility Wrongful acts under international law

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IT is a rule that if any one breaches law then he will be prosecuted, as well as in international law if a state does any wrongful act then that state would be liable for that act. At present the details of State Responsibility and the consequence of internationally wrongful act is laid down in 'Draft Article on Responsibility of State for Internationally Wrongful Act', which was adopted by the International Law Commission (ILC) at its fifty-third session (2001) together with accompanying commentaries. The completion of the draft article and its submission to the General Assembly is one of the most significant milestones done by Commission. In addition to these Draft Articles, the law of state responsibility has been developed through case law. However, the articles do not seek to set forth a state's primary obligations under international law but focus on the secondary responsibility resulting from a state's breach of an obligation.

The draft articles are divided into four parts. Part one of the draft articles defines the general conditions of an international wrongful act of the state; Part 2 deals with legal consequences of the responsibility; Part 3 deals with the implementation of the state responsibility, and Part 4 containing a number of general provisions. The present draft articles cover the whole field of state responsibility; therefore, they are not limited to the breaches of obligations of bilateral character.

Article - 1 states that a State would be responsible for breach of any international wrongful act. An internationally wrongful act of a State may consist in one or more actions or omissions or a combination of both. Whether there has been an internationally wrongful act depends, first, on the requirements of the obligation which is said to have been breached and, secondly, on the framework conditions for such act, which are set out in Part one. The principle of Article 1 was applied in many cases by International Criminal Court (ICC), e.g. - the Corfu Channel Case, the Gabcikovo-Nagymaros case. In the Rainbow Warrior case the Arbitral Tribunal held that "any violation of a state of any obligation, of whatever origin, gives rise to state responsibility." Interestingly, in Reparation for Injuries Case the International Court of Justice (ICJ) held that United Nations (UN) is also a subject of international law.

Article 2 provides two conditions of international wrongful act. Firstly, the conduct in question must be attributable under international law and secondly, that conduct constitutes a breach of an international obligation of State. However, whether the responsibility is 'objective or subjective' depends on the circumstances. The 'objective' or 'risk' theory of responsibility means that once a breach of obligation is established, the state will bear all the risk irrespective of any fault. The 'subjective' or 'fault theory' defines that responsibility arises even if there is conduct in violation of a binding obligation, unless the state is in some way subjectively to blame. However, there is no general rule in this regard. It is essential that the act or omission, which arises from responsibility, causes a breach of an international obligation is binding on the state at the time of the act or omission.

Article 3 deals with two characteristics of internationally wrongful act. Firstly, international wrongful act will be governed by international law; secondly, a State cannot escape from that by internal law. Therefore, international responsibility cannot be avoided by pleading that the disputed act is lawful in national law.

Article 4 provides that a State will also liable by the conduct of its organ also. By Article 4 'State organ' covers all individual or collective entities, who acts on behalf of the State, e.g. legislative, executive, judicial or any other function, whatever position it holds in the organisation of the state and whatever its character as

There is no distinction between a terrorist organisation and a state, both are the same if the state shields or supports the terrorist organisation.



an organ of the central government or of a territorial unit of the state. Therefore, if any organ of the State supports any terrorist organisation then state will be responsible for that act.

Article 5 deals with the attribution to the state of conduct of bodies, which are not covered by Article 4. This article includes, e.g., public corporation, public company, which exercise elements of governmental authority in place of state organs. So, it is clear that if any of these bodies does any internationally wrongful act then the state would be responsible. One of the important points is mentioned in Article 8. It provides that a state would be responsible if the person or group of persons is in fact acting on the instruction of, or under the direction of, or control of the state. Article 8 deals with two situations, Firstly, state would be liable if private person or group acting under 'instruction of state'. Secondly, the state would also be liable when private person or group acting under 'direction or control' of the state. The word 'control' and 'degree of control' is widely interpreted here. These include, for example, individuals or group of private individuals who though not specifically commissioned by the State, and not forming part of its police or armed forces, are employed as auxiliaries or are sent as "vol-

unteers" to carry out particular missions aboard. Thus in the Iran case, ICJ held that the initial attack on the US Embassy by militias would not be imputable by Iran as they were not agent or organ of the state, however, later Ayatollah Khomeini's ordered an organ of Iran to attack the Embassy was regarded as a state action and as a result the state was internationally responsible.

Article 9 states that if a conduct carried out by a person or group of person in the absence or default of official authorities then the state will be internationally responsible for their act. However, this article applies to exceptional situation, such as armed conflict or during revolution, where the regular authorities are dissolved (e.g. the Yeager case).

Art 10 provides that where an insurrectional movement is successful then the act of such movements, which becomes the new government of the State, shall be considered as acts of that State (e.g. Short v The Islamic Republic of Iran). Article 11 provides: 'Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that State acknowledges and adopts the conduct in question as its own'. Therefore, if a State 'subsequently' acknowledges or adopts any conduct that is done by any other party then the state responsibility question arises. Article 12 provides that there is a breach of an international obligation when an act of that state is not in conformity with what is required of it by that obligation, regardless of its origin or character.

Another important situation is considered in Art-16. It says that where a State aids or assists another State in commission of an internationally wrongful act, then the State would be responsible. For example, by knowingly provides financial support, or shielding them or giving them permission to use their land. Therefore, if a State requests another state to assist them by using that State's soil as they want to attack against third State then there is also violation of international law under state responsibility.

However, as an exception, Article 21 provides: the wrongfulness of an act of a state is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations. In its Commentary, it notes, "the existence of general principle admitting self defence as an exception to the prohibitions against the use of force in international relations is undisputed", since Article 51 of United Nations Charter preserves a State's 'inherent rights' of self-defence in the face of an armed attacked or threat. The title of chapter III of part II of the draft Article is 'serious breach of obligations under peremptory norms of general international law'. Art 40 provides for what kinds of breach a State would be liable under international law. This article has two criteria. First criteria relate to 'obligation' breached, i.e. breach must arise under a peremptory norm of general international law. The concept of peremptory norms is general practice. It is accepted that prohibition of 'aggression' and 'genocide' is regarded as peremptory. In this article the second criteria is 'serious breach'. Serious breach involves a 'gross' or 'systematic' failure by the responsible state to fulfil the obligation. However, Article 40 does not give any procedural guidelines for serious breach and aggression; therefore, it is the General Assembly and the Security Council's duty to give specific guidelines.

What are the consequences of internationally wrongful acts? First, cessation; the state responsible for the internationally wrongful act is under an obligation to cease that act, if it is continuing, and to offer appropriate assurances and guarantees of non-repetition if circumstances so require. Second, reparation; In the Chorzow Factory case the ICJ held that, "the essential principle contained in the actual nation of an illegal act is that reparation must, as far as possible, wipe out all the consequences of the illegal act and

re-establish the situation which would, in all probability have existed if that act had not been committed." Third, state's internationally wrongful acts breaches the preparatory norms of international law (jos cogens), which is considered international crime (jos cogens), which is considered international crime (jos cogens), which is considered international crime by international community. Examples of such international crimes are- aggression, the establishment or maintenance by force of colonial domination, slavery, genocide and massive pollution on the atmosphere or sea.

Finally, the Draft Articles on State Responsibility for Internationally Wrongful Acts make a significant change to international law. It is clear that there is no difference between a terrorist organisation and the state, both are same, who shields or control, aids or support them (either- directly or indirectly). Now, force had been used against a State for aiding, abetting or supporting international terrorist organisation, example of state responsibility is recent Afghanistan attack, who supported the international terrorist group Al-Qaeda.

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