



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 a 25-year-old Bangladeshi citizen by birth. I am in love with a foreigner and we are planning to marry her in Bangladesh soon. The problem is, my fiancé do not have a work permit for Bangladesh. He is currently living in Japan. Few days ago I heard that a foreigner must have a work permit to legally marry in Bangladesh. Is it true? If we get married in Bangladesh, will our marriage be recognized by the existing marriage laws of our land? Please advise. I have been asking a lot of people and each time I get confusing reply.

S. Hossain
Dhaka

Your Advocate: I am sorry to know that you have had lot of run-around on your problem before you could decide to take recourse to a lawyer for an opinion. In our society people in general, are in the habit of prescribing medicine to patients without asking them to go to doctors. The case is also nearly same with the legal problems. If you could approach a lawyer instead of wasting time on asking stray questions to the people around, you would have got a legal opinion much earlier. Of course, lawyers' opinions may differ. That is altogether different and a matter to be resolved among experts.

Your query goes short of adequate information so as to facilitate an opinion to be given by a lawyer. Lawyers will require you to answer some basic questions before passing any comments about your marriage. In addition to ones you have given the most relevant and primary information that would be necessary for the purpose are: your religion, if you at all profess any; religion of your fiancé, if any; marital status of you both i.e., whether you and your fiancé are bachelors, earlier married etc.; whether you are a public servant? Moreover the term "foreigner" by itself does not suggest now-a-days that he or she is not a person of Bangladeshi origin. Therefore, the question of interrelationship, if any, between the parties comes in. Of course, your style of expression and diction suggest that your fiancé is an unmixed foreigner. Answers to these questions may divert the attention of the lawyer to multiple legal dimensions in search of solutions.

Be that as it may, for a reply to your question I take you to be a Muslim woman as your Arabic name suggests and also assume your fiancé to be a Muslim. From your silence in respect of other aspects and exclusive emphasis on supposed 'work-permit-impediment' I can presume that there is no legal barrier for a valid marriage between you as per Muslim law.

I am coming to the question of work-permit in the later part of the reply. If it is only a work-permit issue, and there is no other impediment, I assure you, it cannot stand on your way to marry your foreign fiancé. Before that I feel like making you aware of the basic law rather gratuitously in respect of the marriage of a Muslim woman with the hope that those may be of use in case your problem travels beyond the mere work-permit issue.

As per Muslim personal law, a Mohammedan woman cannot contract a valid marriage except with a Mohammedan. She cannot contract a valid marriage even with a Kitabi, that is, Christian or a few. A marriage, however, with a Kitabi, that is, a Christian or a few is irregular not void but there are controversies in respect of whether marriage with a non-Kitabi, that is, an idolater or fire-worshipper is void or irregular. Overwhelming view weighs in favour of calling it irregular. There are different incidents and legal consequences of irregular and void marriage which, I think, are not relevant here, that too, cannot be dealt with in this short span.

Back to your basic concern. In Bangladesh there is no law which imposes work-permit as a precondition for marriage with a foreigner. Work permit is something related to visa, staying in particular country, citizenship etc. In our country marriage is substantially regulated by our personal laws, that is, for Muslims by the Muslim law and for Hindus by Hindu law and so on. And if the proposed marriage between the parties is otherwise valid under the personal law there is nothing to prevent it. The only legal bar that is created is in respect of the public servants. The Public Servant (Marriage with Foreign Nationals) Ordinance, 1976 has put complete bar on the members of our diplomatic service in marrying foreign nationals and provided similar restriction on members of other public services with a relaxation that they can contract such marriage subject to prior permission to be given by the President.

LAW lexicon

Silent partner

A person who invests in a company or partnership but does not take part in administering or directing the organization; he or she just shares in the profits or losses.

Sine die

Adjourned without giving any future date of meeting or hearing. A court that adjourns sine die essentially dismisses the case by saying that it never wants to hear the case again! A meeting which adjourns sine die has simply not set a date for its next meeting.

Slander of title

Intentionally casting aspersion on someone's property including real property, a business or goods (the latter might also be called "slander of goods"). A form of defamation. For example, stating that a house is haunted or alleging that a certain product infringes a patent or copyright.

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email <dslawdesk@yahoo.co.uk>

LAW vision



Wrong news report vis-a-vis contempt of court

JUSTICE MOHAMMAD GHOLAM RABBANI

It happened in November 1960 long before the independence of Bangladesh. Sheikh Mujibur Rahman was convicted on a false charge of corruption when he was a minister. Preferred an appeal in the Dhaka High Court. His advocate Abdus Salam Khan then moved an application for expedite hearing of the appeal before a Division Bench, but the senior judge felt embarrassed to hear the appeal. The Chief Justice sent the record to another Division Bench. This time both the judges felt embarrassed.

Khan then moved the application before the chief justice who directed the Bench Clerk to place the application in his chamber for order. But Khan got the impression that the chief justice had allowed the application and he reported accordingly to the press. On the next day four daily national news papers published the news.

The chief justice issued rule against those newspapers for contempt of court. All appeared and expressed their unconditional apology stating that advocate Khan was their source. Thereafter rule was also issued against Khan.

Rules against the newspapers were disposed accepting their apologies with the warning that they should be careful in future while reporting the matters. But the rule against Khan was disposed of with adverse remark, "So the explanation submitted by Salam, we regret, we are unable to accept as satisfactory one nor at the same time we say that he deliberately caused a

wrong thing reported. There is some confusion somewhere." (Ref: PLD 1963 Dac 8).

The said report in the newspapers did not cause any adverse impression on the public, yet it was held as contemptuous simply because it was wrong. But in similar cases the opinion of the judges of the Federal Supreme Court of the United States of America is totally different and liberal. There criterion for contempt of court is not that the news report is simply wrong, but it has failed to pass the "clear and present danger test."

A newspaper named "Pennkemp" in Florida State wrote in its editorial that a judge had dismissed a rape case on the ground that the charge against the accused persons were not framed properly and the courts in Florida were intentionally releasing the criminals on technical and trifling grounds. The editor was convicted by the State Supreme Court on the ground that the statement in the editorial was wrong because after dismissing the rape case, the Judge on the next date framed proper charges against the accused persons.

On appeal the Federal Supreme Court held that the finding of fact of the State Court was correct, but acquitted the editor holding, "the factual misstatements and the editorial comment was not such a clear and present danger as to impair the effectiveness or independence of the State Courts and their judges." Ref: (1904) 328 US 331.

Justice Mohammad Ghulam Rabbani is a Retired Judge of Appellate Division.



LAW week

HC rules on women's reserved seats in JS

The High Court yesterday in a rule on the government asked why the provision of reserved seats for women in parliament, made in the 14th amendment to the constitution, should not be declared unconstitutional.

The court followed a writ petition the women's rights groups filed on Sunday challenging the constitutional amendment introduced to pave the way for 45 reserved seats in the Jatiya Sangsad for women. Parliament passed the provision on May 16. -Daily Star, 22nd June.

Law to facilitate easier int'l trade on cards

The government has formalised a new law to make international trade easier which is expected to be placed in the next parliamentary session. The law will facilitate export-import trade using state-of-the-art technologies, he said inaugurating a two-day workshop on 'International Trade Tools and Incoterms 2000' organised by International Chamber of Commerce-Bangladesh (ICC-B) in Dhaka. -Daily Star, 22nd June.

Cabinet nods to bank law changes

The cabinet yesterday approved amendments to the Bank Company Act 1991 to tighten the central bank's noose on loan defaulters, make every one from bank directors to bank union activists more accountable and check unruly activities. The act has been amended in nine areas, some of which are very significant and some are just revision of word arrangements. Loan defaulters have been redefined. Previously, a borrower failing to repay loan six months into the expiry of deadline became a defaulter. Under the new definition, a borrower becomes a defaulter as soon as the loan is marked as classified under the Bangladesh Bank rules. -Daily Star, 22nd June.

HC stays remand for Quazi Faruque in sedition case

The High Court on Monday stayed within hours the CMM court order allowing police to take Proshika president Quazi Faruque Ahmed to five-day remand for interrogation in a sedition case filed on Sunday.

A High Court Division bench of Justice MA Matin and Justice Tariq-Ul-Hakim also directed the government to transfer Faruque to Bangabandhu Sheikh Mujib Medical University hospital from Dhaka central jail hospital for better treatment till he remains in custody.

Hearing a writ petition filed by Quazi Faruque, the court also issued a rule nisi on the government to explain why the manner in which the Proshika chief was being held in custody would not be declared to be without lawful authority. -New Age, 22nd June.

Pressure' on judge to free criminals

An absconding accused in the much-talked-about TV model Tinni murder case was arrested from Gulshan in the city on Friday.

On a special drive, a team of the detective branch of police arrested Tapan Gazi Friday night, a DMP press release said Saturday night.

The police produced him before a CMM's court in Dhaka with a prayer for a five-day police remand. After hearing both the sides, the court fixed June 22, the next date for hearing of the case. He was sent to jail.

ICC campaign



BANGLADESH:

New action to ratify International Criminal Court



AMNESTY INTERNATIONAL

BANGLADESH was the first South Asian State to sign the Rome Statute. It should now fulfil its pledge to international justice and pave the way for other South Asian states to do the same by completing the ratification process as soon as possible. At the close of the Rome Diplomatic Conference, at which the Statute was signed,

Bangladesh declared that its adoption "represented a giant leap forward in the establishment of justice and human rights worldwide".

Bangladesh signed the Rome Statute on 16 September 1999, indicating its intention to ratify the treaty. To date, it has not done so. When ratifying the treaty, the government will need to enact legislation allowing the Bangladesh courts to exercise their primary responsibility to investigate and prosecute crimes of genocide, crimes against humanity and war crimes and to provide full co-operation with the International Criminal Court. Amnesty International is urging the government of Bangladesh to begin the process of enacting implementing legislation as soon as possible. In the past half century, millions of victims of genocide, crimes against humanity and war crimes have been denied justice, truth and full reparations. The Rome Statute creates a new system of international justice to end this injustice and to send a clear message to those planning such horrific crimes that they will no longer enjoy impunity for their actions.

The International Criminal Court requires the support of the whole international community. Amnesty International is encouraging the people of Bangladesh and all the peoples of South Asia to take part in this action calling on Bangladesh to ratify the Rome Statute as soon as possible. In doing so, they will be joining the struggle to end impunity for these horrific crimes forever.

This is an edited version of the website action of Amnesty International.

US withdraws resolution on ICC immunity



ACKNOWLEDGING resistance among the members of the U.N. Security Council, the United States this morning withdrew a draft resolution that would have exempted U.S. personnel from prosecution by the U.N. permanent war crimes tribunal.

Deputy Ambassador James Cunningham said although he felt the draft fairly addressed the concerns of all council members, "the United States has decided not to proceed further with consideration and action on the draft at this time in order to avoid a prolonged and divisive debate."

The 15-member council was deeply divided over the issue, with most countries seeing the draft and the two identical resolutions the council adopted in the previous two years as an attack on the legitimacy of the International Criminal Court. The Iraq and Afghanistan prisoner abuse scandals, in which U.S. soldiers tormented detainees in violation of the Geneva Conventions, intensified opposition to the measure.

While no country was likely to vote against the draft, council diplomats said it was likely that there would be enough abstentions to deny the United States the nine votes needed to pass the resolution.

Cunningham hinted today that Washington would remember the forfeiture when it came to future votes on U.N. peacekeeping operations.

"In the absence of a new resolution, the United States will need to take into account the risk of ICC review when determining contributions to U.N.-authorised or established [peacekeeping] operations," he said.

Council delegates said they were pleased the United States decided not to press the draft to a vote.

"It is better not to present a draft resolution to a vote when the council appears to be divided," Ambassador Heraldo Munoz of Chile said.

"This is better than voting on such an important issue and appear divided after the consensus and the unity we showed on Iraq" (Jim Wurst, U.N. Wire,

Source: UNWIRE 24 June, 2004.

The 29-year-old youth was also the main accused in the Mithu murder case that took place at a place under the Tejgaon police station on October 1994, the police said. -New Age, 24th June.

Ignored complaints led judge to go to court

District and Sessions Judge Shaikh Jahangir Husain, who filed a writ petition Tuesday against alleged government pressure to free some criminals before the Dhaka-10 by-election, had earlier made a series of complaints of threat and obstruction to work. He also sought the Supreme Court protection and help from the government, say his letters to the Supreme Court registrar, law secretary and law ministry solicitor. Tuesday's petition to the High Court, which was unheard-of in recent years, came after he did not get a response from them, his lawyers said. -Daily Star, 24th June.

JS debate soon on law & order, judiciary

Treasury and opposition members in the Jatiya Sangsad Thursday agreed to soon hold extensive debates on urgent public issues like the law and order, independence of judiciary and foreign policy. The two sides reached a consensus to this effect in 24th June's session after a brief debate that was kicked off by opposition lawmakers on points of order.

It also followed repeated demands made in the house in past few days by opposition parliamentarians to allow elaborate debates on such pressing issues. On Thursday, main opposition Awami League lawmaker Mohammad Nasim took the floor at the beginning of day's proceedings and raised a number of issues, including the writ petition filed by a judge seeking protection from the superior court in discharging his duties without any interference or pressure. -New Age, 25th June.

AL candidate wins Pirojpur municipal election

Habibur Rahman Malek of the Awami League was unofficially declared elected chairman of the Pirojpur municipality in the polls held on Thursday.

Malek bagged 16,496 votes while his nearest rival Shahidul Alam of the ruling 4-party alliance secured 7,145 votes. Polling was peaceful except unknown criminals hurled three crackers at Suhrawardy College centre at around 2:00pm. But none was hurt. Election was earlier suspended thrice because of dispute and stay by the court. -New Age, 25th June.

Injunction on Scholastica till July 1

The injunction on the collection of increased tuition and fees of Scholastica International School will continue till July 1. Senior Assistant Judge of Dhaka, AKM Shahidul Islam passed the order after hearing the case filed against increasing the yearly charges on Thursday. The court fixed July 1 for the next hearing. -New Age, 25th June.