



LAW news

Muslim board to divorce 'triple talaq'



In what may come as a big relief to the Muslim women, their husbands would not be able to get rid of their wives

in future by simply reciting talaq, talaq, talaq.

The All-India Muslim Personal Law Board is set to ban this practice from next month and ratify the new model talaqnama. The Board is likely to adopt a resolution at its annual meeting of 41-member working committee on July 4 at Nadwa College, in Lucknow. The new talaqnama, carefully drafted by the Board clerics after carrying out deliberations for three years, disapproves of the age-old three-talaq system and replaces it with the Shariat-approved 'phased-talaq'.

Though the draft of the new talaqnama was already approved in Board's Patna meeting in October 2003, it was awaiting a final nod from the 41-member working committee, Board's highest-decision making body.

Under the new talaqnama, the separating couples would be given a minimum of three months to reconcile, instead of shauhar (husband) just firing talaqs to separate without giving any chance to his begum.

Source: Times of India, 28th June.

FOR YOUR information

The Children's Act 1974

Definition of Children and Age Determination

Section 2(f): A child means a person under the age of 16 years

Section 66: Whenever a person is brought before any criminal court and it appears to the court that he is a child, the court shall make an inquiry as to the age of that person and, for the purpose shall take such evidence as may be forthcoming at the hearing of that case, and shall record a finding thereupon, stating his age as nearly as may be.

Initial Contact with Law Enforcing Agencies and Bail

Section 48: Where a person apparently under the age of 16 years is arrested on a charge of non-bailable offence and cannot be brought forthwith before a court, the officer-in-charge of the police station may release him/her on bail.

Section 49: Where a person apparently under the age of sixteen years having been arrested is not released on bail, the officer-in-charge of the police station shall cause him/her to be detained in a remand home or a place of safety until he can be brought before a court.

A court, on remanding for trial a child who is not released on bail, shall order him to be detained in a remand home or a place of safety.

Section 50: Immediately after the arrest of a child, it shall be the duty of the police officer or any other person affecting the arrest to inform the Probation Officer of such arrest in order to enable the Probation Officer to proceed forthwith in obtaining information regarding the antecedents and family history and other material circumstances likely to assist the Court in making its order.

Section: 13(2): Where the child is arrested, the officer-in-charge of the police station to which he/she is brought shall forthwith inform the parent or guardian of such arrest, if found and shall also cause them to be directed to attend the court before which the child will appear and specify the date of such appearance.

Jurisdiction and Trial

Section 4: The powers conferred on a Juvenile Court shall be exercisable by the High Court Division a court of Session, a Court Additional Sessions Judge and of an Assistant Sessions Judge and a Magistrate of the first class.

Section 6: No child shall be charged with or tried for any offence together with an adult.

Section 7: In the trial of a case in which a child is charged with an offence Court shall sit in a building, or a room different from that in which the ordinary sittings of the Court are held, or on different days, or at different times from those at which the ordinary sitting of the Court are held.

Section 8: When a child is accused along with an adult of having committed an offence, the case shall be separated and transferred to the Juvenile Court or the Court empowered to exercise the powers of a Juvenile Court.

Punishment

Section 51: No child shall be sentenced to death, transportation, or imprisonment unless the court is of

the opinion that the crime committed is of so serious nature or the child is so unruly or depraved that he can not be committed to a certified institute, the child can be sentenced to imprisonment.

A youthful offender sentenced to imprisonment shall not be allowed to associate with the adult prisoners.

Section 15: For the purpose of any order with a Court has to pass under the Children's Act, the Court shall have regard to the following factors: the character and age of the child; the circumstances in which the child is living; the reports made by the probation officer; and such other matters required to be taken into consideration in the interests of the child.

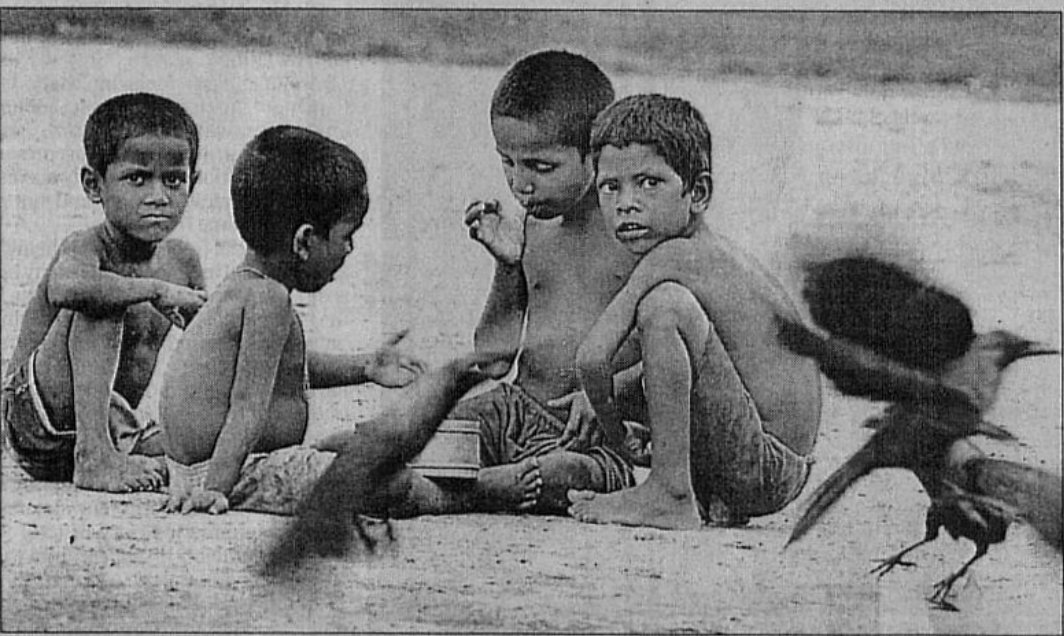
Section 53: A court may discharge any young offender after due admonition, release on probation of good conduct or commit a child to the care of a fit person executing a bond with or without sureties.

Confidentiality and Non-stigmatization

Section 9 & 10: The trial of juveniles shall be held in camera i.e. only people directly involved in the case and the officers of the court can be present during the trial. The Court may also ask people not involved with the case to withdraw.

Section 16 & 17: The report of Probation Officer or any other report considered by the Court under 15 shall be treated as confidential and publication of report of proceedings, photograph of child leading directly or indirectly the identity of such child is prohibited and punishable by a fine of tk 200.

Section 70 & 71: Words convictions and sentenced can not be used in relation to children and when a child is found to have committed any offence, the fact that she/he has been so found shall not operate as a disqual-



ification for any office, employment or election under any law.

Probation Officer for Specialized Assistance

Section 31: A Juvenile Court may appoint Probation Officers from among suitable persons in the district, if there is no Probation Officer in its area and may appoint a Probation Officer for a particular juvenile. His duties to be under the supervision of the Juvenile Court and where no court exists, the Court of Sessions.

Duties of the Probation Officer include: visit or receives visits from the child at reasonable intervals; see that the conditions of bond are fulfilled; report to the Court as to the behaviour of the child; advise assist and befriend the child and, where necessary, endeavor to find him suitable employment; and perform and any other duty which may be prescribed.

Section 2(j): Place of safety includes remand home, or any other suitable place or institution and where such institution is not available, in the case of male children only, a police station in which arrangements are available or can be made for keeping children in custody separately from other offenders.

Section 20: "Remand Home" is a place established and maintained by government for the purposes of detention, diagnosis, and classification of children committed to custody by the Court or Police.

FACT file

Sudan crisis

DARFUR is situated in the West of Sudan and covers an area the size of France. For a number of years it was the scene of sporadic clashes between farming communities such as the Fur, Masalit and Zaghawa, and nomadic groups, which led to many deaths and the destruction and looting of homes. The government blamed competition over scarce resources for the clashes.

In February 2003 a new armed opposition group, the Sudan Liberation Army (SLA) took up arms against the government, because of what they perceived as the lack of government protection for their people and the marginalisation and underdevelopment of the region. The support base of this armed group came mainly from the agricultural groups in the region. Shortly afterwards another armed group, the Justice and Equality Movement (JEM) emerged.

The government of Sudan responded by allowing free rein to Arab militias known as the Janjawid (guns on horseback) who began attacking villages, killing, raping and abducting people, destroying homes and other property, including water sources and looting livestock. At times government troops also attacked villages alongside the Janjawid, and government aircraft have been bombing villages sometimes just before Janjawid attacks, suggesting that these attacks were co-ordinated. The links between the Sudanese armed forces and the Janjawid are incontrovertible, the Janjawid are now wearing uniforms provided by the army.

Hundreds of thousands of people have been forcibly displaced from their homes as a result of actions by the Janjawid and the government forces and large areas of Darfur have been depopulated. The UN estimates that there are now almost one million internally displaced people in Darfur who have fled from their burnt villages

and taken refuge within Darfur, mostly in towns and camps, often in very poor conditions, while more than 120,000 have crossed the border into Chad.

According to the report issued by the Office of the High Commission for Human Rights in May "the mission identified disturbing patterns of massive human rights violations in Darfur perpetrated by the Government of Sudan and its proxy militia, many of which may constitute war crimes and/or crimes against humanity. According to information collected, it is clear that there is a reign of terror in Darfur".

Since late 2003 hundreds of people from the Darfur region have also been arrested, apparently because they were suspected of contacts with the armed opposition groups operating in the region. Those arrested have been held under Article 31 of the National Security Forces Act, which allows detention for up to nine months without access to judicial review. Many of those detained have said they were tortured in custody.

On 8 April the government of Sudan and the SLA and the JEM signed a cease-fire agreement that was due to come into effect on 11 April. Under article 5 of the agreement "[t]he parties have decided to free all the prisoners of war and all other persons detained because of the armed conflict in Darfur" (article 5).

Amnesty International is calling on all parties involved in the Darfur conflict to immediately end human rights violations including the unlawful killing and abuse of civilians. The organisation is also calling on the international community to support the deployment of international human rights monitors to Sudan.

Source: Amnesty International.



LAW week

Speedy trial for trafficking

Seventeen women and children trafficking cases will be tried in the Speedy Trial Tribunals, while 344 are under trial in different trial courts and 25 are under investigation. An inter-ministerial meeting, held on Sunday on human trafficking, decided to try sensational women and children trafficking cases in the Speedy Trial Tribunals in order to check human trafficking after being threatened with sanctions by the United States. Five-hundred and sixty-two cases had so far been filed against 616 persons on trafficking charges. Twenty-four people had been convicted for trafficking. 23 had been given life terms and one had been awarded rigorous imprisonment for 10 years. The meeting also formed a monitoring cell comprising representatives of ministries of home and law, Attorney General's office and NGOs to pursue the trafficking cases. The meeting identified Dhaka, Barisal, Benapole, Satkhira, Chapainawabganj, Darshana and Dinajpur as vulnerable points for human trading. -New Age, 28th June.

One held for Banskhalhi carnage

The police 27th June arrested a man at Khankanabad village for suspected involvement in the Banskhalhi carnage. In a predawn raid, the Banskhalhi police arrested Akbar, pushing the number of arrested in the case to 30. Akbar is accused in a number of cases, the police claimed. Eleven persons of a single household, including seven women and a four-day infant, were burnt alive early November 19, 2003. -New Age, 28th June.

EPZ Trade Unionism

US Ambassador Harry K Thomas yesterday warned Bangladesh of withdrawing either the GSP (generalised system of preferences) facility or export-import bank financing if it does not adhere to labour standards and allow trade unionism in its exclusive trade zones by the month-end. The US envoy said at a 'Meet-the-Press' address titled "US-Bangladesh Relations", celebrating the golden jubilee of the National Press Club at its VIP lounge yesterday. The cabinet on May 23 approved a draft law titled, "EPZ Workers Association and Industrial Relations Act, 2004" to allow limited trade unionism in the six exclusive trade zones. Dhaka made an agreement with Washington and other donors on May 10 to adhere to International Labour Organisation standards, including the rights to association

and collective bargaining, at the EPZs (export processing zones) by June 30. The government decided to allow limited trade union activities in the exclusive industrial areas from November 1, 2006. -The Daily Star, 29th June.

US envoy for Bangla Bhai's arrest

US Ambassador to Bangladesh Harry K Thomas yesterday condemned the Sunday murder of Khulna Press Club President Humayun Kabir Balu saying radicals including Bangla Bhai, religious and political extremists should be arrested immediately. Thomas said, "Fundamentalist groups have killed Humayun Kabir Balu. Fundamentalists are killing journalists today, they might kill everyone tomorrow. Police should now arrest Bangla Bhai and other fundamentalists." -The Daily Star, 29th June.

DB takes over Balu murder case

The investigation of the murder of the Khulna-based Janmabhum editor, Humayun Kabir Balu, also the Khulna Press Club president, was transferred to the Detective Branch Tuesday evening. The police, meanwhile, sent four of the detained to jail after seeking 10-day remand for them.

The Purba Banglar Communist Party (ML) has sent a fax message to the Khulna Press Club claiming the responsibility which said the killers had been serving self-interest and there is no interest of the common people or revolution involved in the murder. -New Age, 30th June.

2,078 people killed in last 6 months

As many as 2,078 people including three journalists were killed in last six months, showing an upturn in murders comparing to the killings of corresponding time last year, according to Bureau of Human Rights Bangladesh (BHRB). The BHRB in its report said 392 people, 13 on an average every day, were killed across the country in June.

Odhikar, a human rights organisation, in its report said 287 people were killed in last six months due to political violence, the number of which was 195 from January to June in 2003. The report further said 143 people including women and children were acid-burnt, while 52 people died in police custody. As many as 451 women and children were raped during the time. Of them, 63 were killed and eight committed suicide, the report added. -Daily Star, 1st July.

Gas Act in next parliament session

The government has finalised a 'Gas Act' to ensure better management of the sector and it may be placed in the next parliament session, State Minister for Energy and Mineral Resources AKM Mosharraf Hossain said yesterday.

Mosharraf hoped the law will empower the newly formed Energy Regulatory Commission (ERC) to function as a fully independent body.

"The move will encourage entrepreneurs to establish more CNG stations in the country and thus solve the problems of CNG users," the state minister hoped.

The energy minister said prepaid meters will be introduced for electricity billing from January 1 next year. According to Mahmood, at present there is 28 percent systems loss in the electricity sector. He said the government is planning to privatise the electricity transmission system to reduce the systems loss and pilferage. -Daily Star, 2nd July.

High Court order was violated

The High Court's order on army deployment at every polling centre of Dhaka-10 by-polls was violated and the election was not held up to expectations, said by acting Chief Election Commissioner (CEC). "I hope legal action will be taken against the persons responsible for the violation. The High Court will take legal action if the matter is brought to its cognisance," said the acting CEC.

Turning down the Bikalpa Dhara Bangladesh's (BDB's) demand for cancellation of the by-election, Sufur said the EC had not got any evidence of the alleged polling centre captures or stuffing of the ballot boxes. The election can not be annulled on the ground of absence of army and polling agents alone, he maintained. On the absence of BDB candidate's polling agents, Sufur admitted agents for kula were absent in most of the polling centres he visited.

Earlier, the EC asked the government to commit at least five army personnel along with police, paramilitary forces and ansars to each of the constituency's 103 polling centres.

But the government on Sunday virtually rejected the EC's request for army deployment, as the home ministry reviving an earlier circular informed the EC that two companies of army would be deployed as strike force in the constituency, not every voting centre. The government stance forced the EC to depend on the court. -Law Desk, 2nd July.

LAW letter

Former Chief Justice Mainur Reza Chowdhury passes away



Former Chief Justice of Bangladesh Justice Mainur Reza Chowdhury has passed away on June 27, 2004. He was a champion of justice and passed some landmark judgements. He was chairing the full branch when Supreme Court passed verdict on Ekushey Television. Nation has lost a good citizen at his death.

His wife Ms. Nazma Chowdhury is also an educationist and was the adviser of a caretaker government in 1996. His wife also played a vital role as an adviser of the caretaker government in conducting election in 1996. Their children are also very successful in their professional careers.

Bangladesh needs such people in great number at this moment. His ideal of upholding justice and impartiality would inspire his predecessors,

nevertheless. Ohi Md. Abdullah Chowdhury Nikunjha Residential area, Dhaka.

Why not an Ombudsman

Bangladesh is one of the most corrupt country in the world. For the third time, this country has become top listed by the TIB report for the corruption and manipulation in its total activities. From the topmost officials of the Govt to the clerks or pions are involved in various kinds of grafts. The officials of private companies are not also excluded from this respect. We are an unfortunate nation that everyday we have to read the news of huge corruption. Hundreds of examples can be seen in newspaper. But our law enforcing agency and justice system have failed against it because of their corruption. Then what is the resort to have an honest country? Is there any effective enforcement mechanism to stop this corruption? Can the so-called independent corruption repression commission (recently made) eradicate this misfortune? Where the constitutional provision (Art.77) lies and law (The Ombudsman Act, 1981) has already been made for its implementation and this has been proved successful in other countries. Then why can't we have it forcefully by legislative action? Unluckily our Govt. was so eager to display the portraits of their heads in Govt. offices and other institutions even by the constitutional amendment, which was not so much necessary for the welfare of a nation. I think that there is no alternative way to enforce an Ombudsman to oppose the potential race of corruption and the waste of thousands crore of money and I expect that the civil society will agree with me.

Muhammad Jakaria LLB 3rd year, Dhaka University.

LAW amusements



What to do
You're trapped in a room with a tiger, a rattlesnake and a lawyer. You have a gun with two bullets. What should you do?
You shoot the lawyer. Twice.

The Junior Partner
A junior partner in a firm was sent to a far-away state to represent a long-term client accused of robbery. After days of trial, the case was won, the client acquitted and released. Excited about his success, the attorney telegraphed the firm: "Justice prevailed." The senior partner replied in haste: "Appeal immediately."

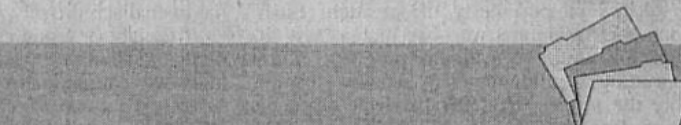
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