



## LAW book review

International relations & challenges  
at the 21st century

INTERNATIONAL  
RELATIONS AND  
BANGLADESH

Harun ur Rashid

International Relations & Bangladesh  
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By Harun ur Rashid  
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Dhaka 1000, Bangladesh  
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The book contains 18 Chapters, divided into four Parts and total 449 pages. It traces the evolution of major events of international relations from the 19th century to 21st century. The book provides deep insights into rivalry and power play of big powers in influencing global and regional events including some of the on-going intractable conflicts in many parts of the world.

The September 11 attacks in the US in 2001 has brought about a dramatic change in international relations and this book contributes to an understanding the impact on weak and small states in a post-September world. It includes a chapter on Bangladesh's Foreign Relations and how small states such as Bangladesh is adapting its policies in the context of new world security environment in South Asia.

The book also deals with some issues of international law from Bangladesh perspective, such as recognition and succession of states, law of the sea, law of international rivers, and extradition. It includes a chapter on social and humanitarian issues, such as, human rights, migration, displaced persons, role of civil society, disarmament, gender-equality, women and development and empowerment of women in developing countries.

The author (Former Bangladesh Ambassador to Australia & to the UN) argues in the book that no state, not even a powerful one, can alone address the challenges of the 21st century in an inter-connected world. All states need to work together with the UN to effectively resolve global issues, such as, terrorism, health, poverty, contagious disease, environment, gender-equality, organized crimes and drug trafficking.

The book deserves a wide readership.

Law desk

READER'S queries  
Your Advocate

Q. Honorable lawyer, I desperately want answer of my small question! Kindly let me know, if a married woman; mother of two adolescent children marry her lover; sending divorce letter to her husband, on any back ground "can she keep her children of ex-husband with her lover, at her lover husband's cost"? I am disabled following a road traffic accident. My husband is the mentioned lover! Kindly respond me explaining briefly. Thanking you.

Anonymous  
On E-mail.

Your Advocate: You have not made any secret of the fact that your husband is the paramour of the lady you have indicated. This is unfortunate but law has hardly anything to do about it. Nonetheless for a Muslim lady it may not be as easy as it is usually thought to be. Because Muslim law has put some checks and balances on divorce particularly for woman. Firstly, the foremost precondition for marrying for the second time (in case of person other than the husband) by a Muslim woman is the dissolution of the subsisting marriage by divorce or by decree of a competent court. Death of any of the parties, of course, automatically dissolve the marriage. It is, therefore, needless to say that she will have to take divorce from her husband in either of the way before she proceeds to contract second marriage.

Secondly, in Islam a woman does not have the right to divorce her husband. She can take divorce from her husband if her husband delegates his power of divorce to his wife. That means, she can divorce herself from her husband if she possesses delegated power. This is usually mentioned in the Nikahnama at the time of marriage. Mere sending a divorce notice to her husband will not bring about valid divorce. For a valid divorce she will have to send a notice in writing to the local UP Chairman (to Mayor, City Corporation or to Chairman, Paurashbha according as the place of residence of the wife suggests) in accordance with the provisions of Muslim Family Laws Ordinance, 1961, informing him that she has delegated power of divorce and has divorced herself from her husband in exercise of the power.

Pursuant to the notice the Chairman shall constitute an Arbitration Council for reconciliation between the parties. Due notices would be served upon the parties requiring them to nominate their respective representatives to represent them before the 'Council. And a brief reconciliatory session will be held for reconciliation. If the efforts fail for any reason talak will automatically take effect on the expiry of 90 days from the date of receipt of the notice by the Chairman. In case of pregnancy of the wife talak takes effect on the expiry of 90 days as mentioned at the time the pregnancy ends, whichever is later. Thirdly, if she does not have delegated power she can, of course, file a suit for dissolution of marriage on some or other grounds specified in Section 2 of the Dissolution Muslim Marriages Act, 1939. For dissolution through court she will have to prove any one or more of the ten grounds enumerated therein which would be difficult for her to do. I mention here some of those thought to be most relevant in your case. The grounds are: a) husband neglects her or failed to provide maintenance b) he has taken additional wife c) he has been insane for a period of two years or suffering from virulent venereal diseases d) her life is made miserable by habitual assault or cruelty of conduct e) he associates with women of evil repute f) forces her to lead immoral life and g) obstructs in her religious practices.

Fourthly, your husband cannot also take second wife without your consent ventilated through Arbitration Council constituted as per the provisions of aforesaid Ordinance. Because taking second wife without the permission of the Arbitration Council is punishable with imprisonment for one year and also with fine. As for the children you have virtually raised the complicated questions of their custody. Custody of minor children is essentially a matter related to their well being, a controversial welfare to be judged by the court. That is, court will see where best of welfare of the minor is ensured. Ordinarily, in case of a boy mother is entitled to his custody until he attains the age of 7 years and for a girl until she attains puberty i.e., an age between 14-15 years in our country. A girl may attain puberty at an earlier age also according to the climatic and other conditions incidental to her. Here again the lady suffers legal infirmities. Because law says, amongst others, - mother loses the right of custody of her minor children if she leads an immoral life and marries a person who is not related to the child within the prohibited degree.

These are all legal hurdles she will have to get over for materialization of her dream. For her it seems to be a long way to go. If she at all succeeds there would be no point in bothering for who is being raised at whose cost.

Your Advocate M. Moazzam Husain is a lawyer of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

## Star LAW report

YOUR  
HONOUR

## Code of Civil Procedure, 1908 (V of 1908)

## Trial Court may set aside ex-parte decree only on reasonable grounds

High Court Division  
(Civil Revisional Jurisdiction)  
Civil Revision No. 147 of 2003  
Asia Bewa and others  
v  
Md Bachchu Fakir & another  
Mr. Justice Mohammad Abdur Rashid  
and Justice Syed A B Mahmudul Huq  
Date of Judgment: April 27, 2004  
Result: Rule absolute

## Background

Mohammad Abdur Rashid, J: The plaintiffs obtained the Rule upon making a revision application under section 115 (1) of the Code of Civil Procedure against the order No. 128 dated 17.11.2002 passed by Joint District Judge, Court No. 1 at Bogra in Miscellaneous Case No. 73 of 1999, which set aside the decree dated 08.02.99 and restored the suit to its original file and number.

It is stated that on 02.02.92, petitioners No. 8 to 12 and the predecessors of the partition suit No. 31 of 1992 against 44 defendants, out of the defendants, defendant No. 2 to 6 and 9 only contested the suit.

The suit was first decreed in the preliminary form on contest against said defendants and ex-parte against the rest by Judgment and decree dated 08.02.99. After the report of the Advocate Commissioner effecting partition of the Joint property was filed, the preliminary decree was made final on 19.08.99. In execution of the decree in other Execution No. 01 of 2000, the plaintiff got possession of his shares and on 24.10.01 the execution proceeding was finally disposed of on full satisfaction.

Meanwhile, on 20.06.99 defendant No. 40 and 41 jointly made an application under Order IX Rule 13 of the Code of Civil Procedure for restoration of the suit to its original file and number after setting aside the decree mainly on the ground that no summons was served upon them. The application was registered as Miscellaneous Case No. 73 of 1999.

Opposite Party No. 10 of said application opposed the application by filing a written objection.

In support of the case, defendant No. 40, Bachchu Fakir alone was examined on behalf of himself and on behalf of defendant No. 41 while on behalf of the plaintiffs four witnesses were examined including the process server and two witnesses who witnessed the services.

On 08.02.99 by the impugned order, learned Joint District Judge allowed the application with cost of Taka 2000.00 and restored the suit to its original file and number by setting aside both the preliminary decree and final decree.

It appears from the record that the process server returned the process with the report that he went to the house of defendant No. 39, 40, 43 and 44, and found defendant No. 41 present. When he asked him to receive the summons with acknowledgment, he refused, consequently, he served the summons by affixing copy at the door of the house. The return was duly verified by statutory declaration upon the aforesaid return, the Court found

that the summons was duly served and proceeded to hear and dispose of the suit.

Opposite party No. 2 of Miscellaneous Case No. 73 of 1999, Md Moksed Ali examined him as PW 1 on behalf of opposite party No. 1 to 10. He deposed that the process served the summons upon defendant No. 40 and 41 in presence of witnesses, namely, Md Abdus Sattar Mandal and Md Abu Bakar Siddique. Process server, Sheikh Sultan Ali as OPW2 testified that on 18.04.92 he served summons upon defendant No. 40 Bachchu Fakir and 41 Dulu Fakir. Reaching the address, he found defendant No. 40 Bachchu Fakir and 41 Dulu Fakir. Reaching the address, he found defendant No. 41 Dulu Fakir and explained the contents of the summons and asked him to receive them. But he refused to receive them. Then, he served the summons by hanging at the main door of their house. At the time, Md Abdus Sattar Mandal, son of defendant No. 7 and Md Abu Bakar Siddique, son of defendant No. 8 were present there. They signed the return as witnesses. He proved the return as exhibit-'Ka' and identified his signature as exhibit-'Ka'1.

Both Md Abu Bakar Siddique and Md Abdus Sattar Mandal as open 3 and OPW 4 corroborated OPW 2 process server Sheikh Sultan that they took the process server to the house of Bachchu and Dulu. Dulu was present. The peon asked him to receive the summons after reading that over. Dulu refused to receive it. Then, the peon hanged the summons at the door of their house. They also signed the return, which they identified.

Defendant No. 41 did not appear. Defendant No. 40 claimed that they did not receive any summons. They could not however claim that they did not live in the house at the door of which the summons was served by hanging.

## Deliberation

After careful scrutiny of the evidence of said OPW 1 to 4, we have no hesitation to say that the summons was rightly found to have been duly served upon said defendant No. 40 and 41. Learned Joint District Judge also could not say that the summons was not served.

Mr Md Khurshed Alam, learned Advocate for opposite party no. 1 and 2 read entire evidence of the witnesses and submitted that the witnesses contradicted with each other; But the inconsistency in the depositions of the witnesses as mentioned by Mr Khurshed Alam could not displace the proof that the summons was duly served by hanging at the door of the house of defendant no. 40 and 41 who are full brothers.

Under Order IX Rule 13 of the Code of Civil Procedure, the trial Court has got discretion to set aside a decree passed ex-parte but such discretion could only be exercised on either of the grounds, namely, (a) summons was not duly served or (b) absentee defendant was prevented by sufficient cause from appearing when the suit was called on for hearing. In the absence of any such findings, the trial Court has no jurisdiction to set aside an ex-parte decree.

In the case at hand, the learned Joint District Judge allowed the application on the view that it was reasonable to give them opportunity to be reasonable, upon such assumption, exercise of the discretion by the learned Joint District Judge resulted in serious indiscipline, which no doubt occasioned failure of justice in the facts and circumstances of the case.

## Result

In the result, the Rule is made absolute without however, any order as to cost. Order of stay granted at the time of issue of the Rule on 18.01.2003 is hereby recalled and vacated impugned order dated 17.10.2002 is hereby set aside.

No one appears for the petitioners.  
Mr Md Khurshed Alam Khan, for the opposite party No. 1 and 2

## LAW week

## Forestland grabbed

Land grabbers have encroached upon around 12,250 acres of forestland under Dhaka Forest Department over the years. Most of the illegally occupied land is in four forest ranges in Gazipur district. Of them, over 2,526 acres are in Kachigata range, 3,707 acres under Kaliakoir range, 1,330 acres under Rajendrapur range and 4,686 acres in Sreepur range, according to an estimate made by the department.

Different private organisations and powerful individuals grabbed forestland in connivance with a section of officials of district administration and forest and land departments, sources said. Moreover, the armed forces, various government and private organisations and individuals have secured 2,262 acres of forestland under Dhaka zone either through lease or permanent arrangements, official sources said. The army took 1,126 acres and air force 392 acres between 1966 and 1988 for various defence installations. According to officials of the Ministry of Environment and Forest, the three services and paramilitary Bangladesh Rifles have already taken 2282,73 acres of forestland across the country and recently sought about 500 acres more.

The forest department has so far filed 170 cases against land grabbers in Dhaka zone, which are still to be disposed of. But sources pointed out the department merely files cases but hardly make serious efforts to recover illegally occupied land. *The Daily Star*, October 17.

## IG says no foreign link to bomb blasts

The inspector general (IG) of police said no international link has been found to the recent spate of bomb blasts, a claim that contradicts the government's one-member judicial commission, which hinted at the link of a 'foreign enemy' to the August 21 grenade attack.

"(A) Few bomb blast incidents occurred in the recent past, but most of them (bombs) are locally made. (The) Bangladesh Government promulgated special anti-terrorism law(s) such as Speedy Trial Tribunal Act to combat these (crime) trends. However, no international link has been found (to) these incidents," IG Shahidul Haque said at the 73rd Interpol General Assembly in Mexico on October 7. He, however, admitted in the speech that none of the dozen incidents of bomb blasts and grenade attacks that have taken place since 1999 could be unearthened.

Apart from the bomb blasts, the IG also said Bangladesh's geographical vulnerability, as it is in the middle of world's largest narcotics-growing belt, has meant that its land, sea and air facilities are being used to traffic drugs to South America and Europe. *The Daily Star*, October 18.

## Tk 4.62cr graft in 9 civil surgeon's offices

A parliamentary probe body investigated irregularities in only nine civil surgeon's offices and found Tk 4.62 crore in corruption, which it says was only a partial picture. "It's a syndicated theft," said Abdullah M Taher, convenor of the parliamentary sub-committee on corruption in civil surgeon's (CS) offices, placing the probe report at a meeting of the Public Accounts Committee (Pac). The Pac however apprehend that the syndicate has embezzled as much as Tk 109 crore in purchasing equipment and medicine for 17 CS offices across the country.

M Abdul Gani, another member of the sub-committee, questioned how could a clerk of the health department become a millionaire. Pac Chairman Harun Al Rashid told reporters after the meeting that they were astounded to see embezzlement of such a gigantic amount of money by government officials. "It's like plundering an ocean," he observed. The sub-committee in its investigation found a network involving CS offices, health ministry, health directorate, district account offices, purchase committees and some senior officials of finance ministry that grabbed the public money. *The Daily Star*, October 18.

## RAB must face trial for killing

The Awami League has branded the Rapid Action Battalion as extra-legal

and demanded that it be disbanded. "RAB is not a lawful governmental force. We call them killers and murderers and they must face trial for killing 37 people in 'cross fire,'" senior AL presidium member Suranjit Sengupta said at a press conference. Awami League secretary general Abdul Jalil said his party would bring RAB members to justice, if and when "the time comes".

The Awami League organised the press conference at its Dhanmondi office in protest against the alleged "torture of Awami League leaders" by RAB. Jalil said two workers of the Sweekhchasebok League were taken into custody by RAB on October 1 and they were said to have been brutally tortured with electric shock without being produced before any court. He alleged that RAB tortured the two SSL workers in order that "they confess to their involvement" in the August 21 grenade attack. The two were also asked to admit to RAB that they had thrown the grenades following the directive of some Awami League leaders, Jalil said. Suranjit said the government would have to grant indemnity to RAB for their actions and the fatalities. *Prothom Alo*, October 19.

## Bangladesh most corrupt for fourth year

The Berlin-based graft watchdog Transparency International rated Bangladesh as the most corrupt country for the fourth consecutive year in its global ranking order. Bangladesh shares the position with Haiti at 15.5 points in the corruption perception index of 146 countries, according to a Transparency report released worldwide. In 2003 it scored 1.3 ending up at the bottom of the heap among 133 countries. The index reflects the perceptions of business leaders, academics and risk analysts, both resident and non-resident, and draws on the findings of 18 surveys conducted by 12 independent institutions between 2002 and 2004. Professor Muzaffar Ahmad, a member of the board of trustees of the Bangladesh chapter of Transparency, said it was unfortunate that Bangladesh's position had remained unchanged despite inclusion of more countries in the index this year. He also said the index had been published from London and the Bangladesh chapter of the corruption watchdog had no involvement in its preparation. *The Daily Ittefaq*, October 21.

## 3 to die, 12 awarded life in Jail Killing Case

A Dhaka court sentenced three to death, awarded life imprisonment to 12 and acquitted five in the long-awaited verdict of historic Jail Killing Case. Ruling BNP lawmaker KM Obaidur Rahman, Shah Moazzem Hossain, Nurul Islam Monzor, Tahiruddin Thakur and Additional Secretary to foreign ministry Khairuzzaman, who were freed on bail soon after the ruling coalition came to power, were relieved of the charges. All the convicts are former army personnel. Of the total 21 charge-sheeted accused, three are in custody, five on bail, 12 have been evading arrest, and one died.

While delivering the verdict in a jam-packed courtroom amid beefed up security, Judge Mohammad Motiur Rahman came down heavily on the investigation officer (IO), saying all the killers could not be punished due to the "farical investigation." The verdict came about 29 years after the brutal assassination of four national leaders, who led the government in exile of Bangladesh during the Liberation War. The infamous Indemnity Ordinance blocked the investigation and trial of the killings for about 21 years until the law was scrapped during 1996-2001 Awami League regime. The trial was delayed for repeated interventions by governments and judicial tangles. The verdict was deferred twice last month.

Syed Nazrul Islam, acting president of Bangladesh government in exile, Tajuddin Ahmed, prime minister, M Mansur Ali, finance minister, and AHM Qamaruzzaman, minister of home affairs, relief and rehabilitation, were killed inside Dhaka Central Jail on November 3, 1975.

Relatives, friends and supporters of the five acquitted chanted slogans outside the court building to welcome the judgement while those of the punished burst into protest and said they would challenge the verdict. The prosecution, however, was silent about the judgement. *The Daily Star*, October 21.

## LAWevent

## South Asians for Human Rights (SAHR) calls for sustained peace talks

Bureau members of South Asians for Human Rights (SAHR), a non-government organisation (NGO), met in a two days meeting on October 15-16 in Lahore and discuss the human rights situation in the region. The organisation noted that efforts were underway to end internal and external conflicts that have affected the peace and stability in the region, said a declaration that came out on October 17. According to the declaration, SAHR bureau members praised peace efforts between Pakistan and India and called upon South Asian governments to address all issues through a sustained dialogue. The organisation showed concern over the worsening security situation in the region, especially the growing extremism, and called it unfortunate that some secular politicians were also playing up religious affiliations to fulfil their political agendas. SAHR noted that though some special laws, that subverted the process of law had been repealed, several others were still in force that were harming the public. The organisation expressed concern that the majority of such laws were being used in the war against terrorism. The NGO admitted the threat of terrorism but resented the manner in which peoples' rights were being curtailed on the pretext of combating terrorism. The bureau also noted the infringement of freedom of expression in some South Asian countries and urged the