



RIGHTS monitor



CHILD MARRIAGE

Still persists in remote areas

Child marriage and dowry is becoming the unexpected social problem in different districts of local level. The incidents are paving the way of family conflict, reducing female education rate, starvation, and suicide and increasing of left by husbands etc. The society is becoming unrest due to the problem in addition to disrespect towards law, non-

Her life becomes under threat during maternal delivery in tender age and her health become at risk. On the other hand, bride's father is becoming penniless to fulfill dowry requirements. Besides that, women have to face torture because of the failure of fulfilling promised dowry. Women left by husbands are to be burden of poor parents. Although various laws are

registrar arranges everything to hide the age of bridegroom. For the similar reason, most of the dowry issues do not come under law. Regarding the issues, discussion was arranged with the local people involving sufferer families, UP Chairman, UP members and IC of local police camp. They pointed some suggestions:



registration of marriage, hiding information of age during registration, social insecurity, lack of awareness and discrimination between girls and boys. Recently a group of child journalists from Shishu Prokash (Children's Express) conducted a field study, that examined the relationship between child marriage and dowry with unawareness, illiteracy and bad practices. Due to child marriage, daughters are entering a family without sufficient knowledge on responsibilities for husband and family. As a result, she becomes unpopular and family conflict arises.

available and justice procedure prevails under family law to defend child marriage but the overall scenario of child marriage is not improving. If any guardian arranges child marriage of girls under 18 and boys under 21, there is the provision of minimum 2000 taka fine. Section 4 of dowry law keeps the provision of highest 5 years jail for dowry. But the main problem here is that, most of the incidents are either undisclosed or non-complained. Registration is not emphasized at all for early marriage. Often the marriage

- Introducing social security to protect child marriage
  - Increasing public awareness
  - Increasing the rate of secondary school enrolment for girls
  - Motivating people for providing related departments with necessary information of child marriage and dowry.
- Therefore a concentrated effort needs to be taken to prevent child marriage and steps should be taken for awareness raising at local level.

Source: Children's Express, an initiative of Mass-Line Media Centre and UNICEF.

LAWanalysis

Election Tribunals and local body polls

MD NUR ISLAM

THE concept of local government entails governance from the grassroots level and participation of local people in the administrative, economic and welfare activities for ensuring overall development of a specific locality. Local government in all the developed democratic countries have been consigned to ensure law and order situation, to provide local people with some of the basic services like supply of gas, electricity, water, to resolve local disputes, and to make all sorts of arrangements for infrastructural development of a locality. There are six divisions, 64 districts, 500 upazilas, 251 pourashavas and 4451 unions in Bangladesh. The existing local government institutions are Union Parishads, which are concerned with the development of the rural areas and Pourashavas which are concerned with the development of urban areas. The activities of Union Parishad are now regulated by the Local Government (Union Parishad) Ordinance, 1983.

Bangladesh is a unitary, independent and sovereign republic. Its Constitution ensures effective participation by the people through their elected representatives in administration at all levels. The executive power of the republic is exercised by or on the authority of the prime minister. The parliament is composed of 300 members elected from individual territorial constituencies by direct election and stands dissolved on the expiration of 5 years from the date of the first meeting.

The election to the parliament is held under a non-party caretaker government headed by the Chief Adviser who takes office after the parliament is dissolved. The caretaker government stands dissolved on the date on which the prime minister enters upon his/her office after the constitution of the new parliament.

The Bangladesh Election Commission has been established in accordance with the provision of Article 118 of the Constitution. Superintendence, direction and control of the preparation of the electoral rolls for election to the office of President and to parliament and conduct of such elections vest in the Election Commission as per provision of Article 119. Delimitation of constituencies for the purpose of election to parliament is also done by the Election Commission.

The Commission is also required to perform such other functions as may be prescribed by the Constitution or by any other law. Thus the Election Commission conducts the elections of (a) Chairmen and members of Union Parishads; (b) Chairmen and female members of Upazila Parishads; (c) Chairmen and Commissioners of Pourashavas; and (d) Mayors and

Commissioners of City Corporations as prescribed by the Local Government (Union Parishad) Ordinance, 1983 (Sec. 24), the Upazila Parishad Act, 1998 (Sec. 20), the Pourashava Ordinance, 1977 (Sec. 25) respectively and the concerned City Corporation Ordinances and Acts. For the purpose of election to different elective bodies, electoral rolls for each electoral area or constituency are to be prepared under the superintendence, direction and control of the Election Commission as prescribed by the Electoral Rolls Ordinance, 1982.

The Local Government (Union Parishad) Ordinance, 1983 (vide section 27) provides for appointment of a Judicial Officer for an Election Tribunal for an area to be specified by the Election Commission. Appointments are made by the Election Commission for each election excepting the parliamentary election. Sub-Section (1) of Section 26 of the Ordinance provides that "no election under this ordinance shall be called in question except by an election petition under Sub-Section (2). Sub-Section (2) reads as follows: "(2) Any candidate may make an election petition challenging the election at which he was a candidate." Such a petition is required to be presented to the Election Tribunal within forty-five days next after publication of the names of the returned candidates in the official gazette under rule 41 in the manner prescribed as per rule 44 of the Union Parishad (Election) Rules, 1983.

The main function of Election Tribunal is trial of election petitions as per provisions of Section 29 of the Ordinance read with Rules 43-51 of the Union Parishad (Election) Rules, 1983. The rules prescribe the manner of presentation of election petitions and their disposal, powers of the tribunal etc. In disposing of election petitions, the tribunal shall give the contesting candidates an opportunity of being heard and take evidence [Sec. 29(2)]. Sub-section (3) of Section 26 of the Ordinance provides that an election petition shall be presented in such manner as may be prescribed by the Election Tribunal. The Tribunal shall, upon receipt of an election petition, give notice thereof to all the contesting candidates and such other candidates against whom any allegation, if any, of corrupt or illegal practice is made at the election to which the petition relates [Sec. 29(1), Rule 49]. The Presiding Officer or other officials need not be made parties. Decision of the Tribunal is final subject to the decision of the District Judge in appeal [Sec. 29(3)]. Appeal against the decision of the Tribunal lies to the District Judge within whose jurisdiction the election in dispute was held [Sec. 29(4)].

An election petition is required to be presented to the Tribunal within 45 days next after the publication of names of the returned candidates in the official gazette, either by the candi-



date himself or by a person duly authorised by him in writing [Rule 44(1) (2)]. The petition must accompany receipt showing deposit of prescribed amount for the cost of the petition and must set forth clearly the grounds on which the petition is filed and the relief sought [Rule 44(3) (5)]. The Tribunal shall follow the procedure for the trial of suits under the Code of Civil Procedure, 1908 (Vof 1908) except that instead of taking down the evidence of each witness in full, it may make a memorandum of the substance of the evidence of each witness and refuse to examine a witness [Rule 47]. As per rule 45, the petitioner may claim as relief only three declarations, namely:

- (a) that the election of any returned candidate is void; and
- (b) that the petitioner or some other person has been duly elected; or
- (c) that the election as a whole is void.

The Tribunal may make any of the three declarations if it is satisfied that the result of the election has been materially affected by reason of failure to comply with, or the contravention of these rules. The Tribunal shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (Vof 1908).

In the parliamentary election, judicial officers have no role as Tribunals. However, Article 91A of the Representation of the People Order, 1972 (PO No. 155 of 1972) provides for constituting a committee consisting of judicial officers to be known as the Electoral Enquiry Committee. This committee plays a very important role in prevent-

ing and controlling pre-poll irregularities. The committee is required to inquire into any matter or situation constituting an offence under the order or any pre-poll irregularity on the basis of information received by it, or complaints made to it or on its own initiative. The committee can ask in writing any person to appear before it and give evidence under oath and to produce any documents or objects under his control. The committee shall inform the commission of the enquiry and may make a recommendation about the action to be taken against the violators. The committee may conduct any inquiry as it deems necessary before the election is over.

Offences of corrupt practice and illegal practice are sometimes committed by or at the instance of contesting candidates materially affecting the result of the UP election. Voters are, in some cases, prevented from exercising their right of voting. Sometimes, incompetent – even ineligible – persons manage to get elected in such a process. The Tribunal can declare election of such a person void – thus ensuring free and fair election.

Similarly, the Electoral Inquiry Committee can play a very important role and ensure free and fair parliamentary election by preventing election offences and pre-poll irregularities. Thus the Tribunals and the committees play very important roles in the national and the local bodies elections.

The author is a Joint District Judge now working with the Election Commission Secretariat, Dhaka on deputation.

LAWevent



Combating domestic violence  
The way forward

Bangladesh National Woman Lawyers' Association (BNWLA) organised the national discussion titled "combating domestic violence: the way forward" on July 07, 2007 to share the experiences of fighting against domestic violence in the last three years and the strategic ideas of policy reform and community interventions to address domestic violence.

BNWLA has been striving for setting up a framework to provide integrated legal aid and rehabilitation services to vulnerable, disadvantaged women and children facing violence in Bangladesh. The association is dedicated to establishing their rightful legal status and mainstreaming them in the society. Over the period of time, BNWLA has adopted various strategies and implemented various activities. The organization helped create new horizon in addressing some of the issues like violence against women and children, including sexual abuse, sexual exploitation, trafficking, acid violence, reformation of various laws relating to the rights of women and children.

BNWLA, along with other program interventions, has been implementing an advocacy campaign in thirty-six Union Parishads under nine districts of the country recognising Domestic Violence as offence. An independent Domestic Violence Act has been drafted under the program following the consultations with different professional groups including legal experts, judges, journalists and grass roots people.

Advocate Fawzia Karim Firoze, Acting President and Sadrul Hasan Mazumder Program Manager of BNWLA jointly presented the keynote paper that include both legal and community interventions to address domestic violence. BNWLA strongly believes that Domestic Violence cannot be rooted out from the society if the attitude of the society cannot be changed, which is only possible through rigorous campaign at grass roots level. BNWLA is keen to create a social mechanism to address domestic violence through community interventions to be supported by the community for the community themselves. Such intensions make BNWLA unique and committed to develop the mechanism very much accessible to the ordinary citizenry.

This was the essence that drive BNWLA in drafting the Domestic Violence Law that includes clear indications how the law will be enforced and who will be the stakeholder.

BNWLA has engaged the respective component of the local government institutions to create Community Counselling Centre (CCC) for addressing Domestic Violence at community level.

BNWLA has planned to establish CCC at thirty-six Union Parishad under the working area during the next three years and will be advocating for enacting the proposed law on Domestic Violence drafted by BNWLA having specific



guidance of establishing such CCC in every Union of the country. BNWLA has been planning to legalise the entity of the Vigilance Teams registering as Community Based Organisation (CBO), which will be the driving force of the CCCs.

In addition to that out of the direct program intervention BNWLA has planned to create a Victim Trust Fund (VTF) mobilised at community for supporting the possible victims having no financial space to breath of their own. The VTF will be operated following a pre-designed guideline developed by BNWLA and managed by the Vigilance Team. If this mechanism can be developed BNWLA strongly believe that even after the completion of the project the interventions will sustain for a long time.

Advocate Salma Ali, Executive Director of BNWLA in her welcome speech states that like so many countries of the world, women in Bangladesh also face violence at home, which is not possible to address within the existing legal framework. The recent statistics collected from various courts of the country shows that in the year 2006 a total of 23457 cases have been filed under the Women and Children Repression Prevention Court and 25956 cases have been filed under the Family Court. Although, we know that all the incidences of Violence against Women are not reported or properly documented, just these figures give us the atrocious situation the women of Bangladesh have been facing in their daily life.

BNWLA strongly believes that enacting a law and ensuring its strict enforcement is not enough to address Domestic Violence. Rather we need to change the whole attitude of the society for which we have been implementing a comprehensive program at community level involving the specific component of the Local Government

Institution-the Union Parishad.

BNWLA has prepared a comprehensive critic on the Bill on Domestic Violence drafted by the Bangladesh Law Commission and we have also drafted a separate "Bill on Domestic Violence", which has been submitted to the Ministry of Law, Justice and Parliamentary Affairs & the Bangladesh Law Commission.

MJF Director, Rights Ms. Rina Roy called for ensuring accountability at all levels along with the enactment of a legislative framework to combat domestic violence.

Rangita de Silva, senior adviser to International Programmes of Wellesley Centre for Women, USA said the definition of domestic violence is no longer confined to physical violence, now the term incorporates mental, verbal and sexual torture of women.

She also suggested that the language of the law should be reader-friendly so that all can understand the law easily.

Ferdous Ara, member of the Convention on the Elimination of Discrimination Against Women (CEDAW) Committee, said special act should be enacted to eliminate violence against women at all levels.

She urged the authorities concerned to take strong stance against domestic violence like the ongoing anti-corruption drive.

She also called for taking initiatives to train up other stakeholders to combat domestic violence.

Nasrin Begum, joint secretary to the Ministry of Law, Justice and Parliamentary Affairs, Maleka Begum, visiting professor of women studies department, and Prof Sadeka Halim of social science department at Dhaka University also spoke on the occasion.

Source: BNWLA

LAWweek



Hasina, Khaleda given 7 days for wealth report

The Anti-corruption Commission (ACC) served notices on former prime ministers Khaleda Zia and Sheikh Hasina to submit their wealth statements as part of its initiative to find out whether there is any ground for filing graft cases against the two. In the notices, the government anti-graft watchdog asked the chiefs of BNP and Awami League (AL) to submit statements of their movable and immovable properties to the commission within seven working days from the date of the notification. AL President Sheikh Hasina, who had been arrested and sent to a sub-jail, was served with the notice through the jail authorities while the notice to Khaleda was sent to her Mainul Road residence in Dhaka Cantonment. Talking to reporters on the ACC premises, its Secretary Mokhles Ur Rahman said the decision was taken yesterday morning. "This is a routine work of the commission," the secretary added. On receiving the two most prominent leaders' wealth statements, the ACC will crosscheck the statements with the information gathered by itself with assistance from intelligence agencies. "The ACC will file cases against them, if they are found to be suppressing information about their wealth in the statements," a source in the ACC said. Sources in intelligence agencies said they already have information about the wealth of the two leaders. -The Daily Star, July 18.

Faizee's letter of resignation accepted

The Bangabhaban has accepted controversial High Court (HC) Judge Faisal Mahmud Faizee's letter of resignation to the president. Registrar of the Supreme Court (SC) Ikhtedar Ahmed confirmed that they have received a notification from the president's office to that effect. He also said that the resignation would be considered to have taken effect from July 12, the day Faizee communicated to the chief justice his decision to step down. Earlier on July 15, the SC registrar sent the resignation letter to President Prof Iajuddin Ahmed following a Supreme Judicial Council meeting. The council sent its first reference to the president about tampering of certificate by Faizee on March 19. Iajuddin sent it back with recommendation for a Supreme Judicial Council probe on March 21. However, the council could not begin the inquiry as Faizee filed a writ petition with the HC on March 19 against the Chittagong University (CU) syndicate's decision to cancel his LLB certificate. In his resignation letter, Faizee said that "vested political quarters" have been out to tarnish his image and that of the SC judges. Under the circumstances, he felt an urge to quit to "protect the image of the apex court". He went on leave on March 5, two days after the CU syndicate cancelled his certificate. Soon afterwards, the chief justice decided not to place him on any bench. Faizee was supposed to appear before the council for having judgment in 180 cases pending during his tenure as an HC judge. -Prothom Alo, July 18.

Woman SC lawyer found slaughtered

A woman lawyer of the Supreme Court was killed inside her Elephant Road apartment in the capital. The victim, Advocate Sayma Khanum, 44, was a former cultural affairs secretary of Dhaka Bar Association. She was also one of the prosecution lawyers of the sensational Shazneen case. Hearing the news that a youth believed to be acquainted with Sayma slit her throat, relatives rushed to the 15th floor house at Prince Tower. She was pronounced dead on arrival at Dhaka Medical College Hospital. Police could not find any clue to the murder. They suspect Sayma might have been killed as a sequel to her cases or over personal enmity. Newmarket police detained her domestic helps -- Mina, 22, and Aleya, 12 -- who were present during the gruesome murder. The victim's eight-year-old daughter Ayman Jara Tofa, a class III student of Scholar School and College in Dhanmondi, was asleep during the killing. Her husband, a retired PWD engineer, and son Ali Sayem Rumman, a doctor of Central Hospital, were outside the house. Mina told the police she opened the door hearing doorbell and saw a tall youth aged around 26 who looked for Sayma. Mina and Aleya told the police they realised Sayma was killed but did not raise an alarm fearing the same consequence. They informed the matter to relatives and neighbours when the killer disappeared. -The Daily Star, July 18.

None allowed to visit Hasina

The jail authorities did not allow Sheikh Hasina's family members and lawyers to meet her at the special jail to discuss the Anti-Corruption

Commission's notice for submitting her wealth statement. The Awami League (AL) sent a letter to the home ministry seeking permission for eight lawyers to meet the detained party chief to provide her with necessary legal aide but it did not get any responses. Police sources said that the charge sheet of the extortion case in which Hasina has been shown arrested will be given within a couple of days. According to the emergency rules the whole proceedings will also be completed in 45 days from the day the court takes the charge sheet into cognizance, they said. Hasina was detained on extortion charges and sent to a special jail set up in the parliament complex. -The Daily Star, July 19.

14,000 workers to lose jobs

The government has decided to shut down four state-owned jute mills and retrench 14,000 workers from 22 mills including these four as part of its three-year reform programme to revive the country's jute sector. Under this programme Bangladesh Jute Mills Corporation (BJMC) will resume operation at its 18 mills from this month, said Geeteera Safiya Choudhury, adviser to the jute and textiles ministry. The ministry has sought Tk 200 crore from the finance ministry for these mills to procure jute from this month. Geeteera said at a press briefing at her jute ministry conference room. She said the ministry has also sought Tk 138 crore to get cash credit from different commercial banks through issuing government bond and guarantee. The ministry found People Jute Mills in Khulna, Kamaphuli Jute Mills and Forat-Kamaphuli Carpet Factory in Chittagong, and Kaomi Jute Mills in Sirajganj non-viable to run and they will be closed permanently to sell out them to private entrepreneurs. The adviser said a total of 6,000 workers of these four mills will be retrenched. Another 8,000 workers will be retrenched from the rest 18 mills to bring down the work force of the mills by 50 percent. Then the necessary workers will be recruited on a daily basis to save a huge amount of money as labour cost. -The Daily Star, July 19.

Draft policy on shipbreaking aims to protect environment

The government has prepared a draft policy on shipbreaking, aiming to protect the environment and prevent accidents during shipbreaking that claim many workers' lives every year. A high official in the shipping ministry said the policy would be placed before the advisory council soon for the final go-ahead. The shipping ministry will hold an inter-ministerial meeting, where representatives of different ministries and stakeholders will place their recommendations before the draft is finalised. Sources said the policy would suggest the government to form a permanent advisory committee comprising government representatives, industry people and representatives of other institutions concerned to provide necessary suggestions to the government. Salaries of the committee members and expenditure of the committee is to be met by donations from scrap-ship importers and ship breakers, the sources added. Ships imported for scrapping cannot be used for other purposes and an importer has to acquire necessary approval from the government before importing a ship. To keep the environment clean, the draft policy suggested all ships imported for scrapping have to be free from any kinds of explosives, gases and poisonous materials. Ships may not have fuel, lubricants, refrigerators, batteries, asbestos and PVC pipes in them either. -The Daily Star, July 19.

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, fax 8125155; e mail dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net