



Star **LAW** analysis

# Special Marriage Act: Rationality and relevance

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**P**RIOR to understanding the concept of special marriage, it is essential to comprehend what is marriage. Marriage is a legal recognition of the union of two people, more specifically a male and a female of legal age, which is most often celebrated by a ceremony. Some marriages even unite differing religions, colours, races and communities. Provisions for special marriage may help the people to unite who belong to different religions.

Special marriage is performed in Bangladesh by the Special Marriage Act 1872. The Act clarifies extent of applicability of the Act, how such a marriage should be solemnised, which religion will be followed in the marriage, what will be the effect of succession etc. The law speaks for a special form of marriage for those who do not profess Christianity, Judaism, Hinduism, Islam, Buddhism, Sikh or Jaina religion and those who profess Hindu, Buddhism, Sikh or Jaina religion. It also aims to legalise certain other marriages, the validity of which is doubtful.

It has been settled in case law that if the parties with differing religious beliefs do not abandon their religion the marriage will be void. So in circumstances of such a special marriage, the religion must be forsaken (18 DLR 509).

According to Muslim family law of Bangladesh, a Muslim male can marry a female who professes other religion. If the other party professes to revert to Islam then the marriage would be entirely legal and face no problems. However, if the other party does not revert to Islam, then although the marriage will be solemnised, it will be 'irregular'. On the other hand, a Muslim female cannot marry a man who professes other religion. If the other party, in this case the male, agrees to revert to Islam only then would the Muslim female be able to marry the newly reverted Muslim male.

According to Christian family law there are no bindings. Since the 1872 Act treats the Muslims, Christians, Jews and Parsi alike, it may be understood that Jewish and Parsi family law would be the same.

At the time of marriage, neither party must have a living husband or wife. According to the Gregorian calendar, the man must be eighteen years of age, and the woman must be fourteen years old. Each party must, if s/he has not completed the age of twenty-one, must have obtained the consent of his/her father/guardian to the marriage. The parties must not be related to each other in any degree

of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

The Government may appoint one or more Registrars under this Act for any portion of the territory. The officer appointed shall be called the 'Registrar'. One of the parties must give notice in writing on a prescribed form, within which at least one of the parties has resided for fourteen days before such a notice is given. The Registrar shall enter a valid copy of every such notice in a book, namely 'Marriage Notice Book', which shall be open at all reasonable time, without fee, to all persons desirous of inspection.

Any person may object to such a marriage on the ground that it would contravene someone or more of the condition described in clauses 1, 2, 3, or 4 of Section 2 of Special Marriage Act 1872. The objector may file a suit in any civil court having jurisdiction (except a Court of Small Causes) for a declaratory decree, declaring above contrivance. The marriage shall not be solemnised till the decision of such Court has been given or if there is an appeal from such decision, till the decision of the Appellate Court has been given. If it appears that the objection was not reasonable and bona fide, the Court may inflict a fine upto one thousand taka on the person objecting.

In the presence of the Registrar and of three witnesses, who signed the declaration, the marriage will be solemnised. In any form it may be solemnised with the condition that, each party states to the other, in the presence and hearing of the Registrar and witnesses that, "A takes B, to be his/her lawful wife/husband".

At the office of the Registrar the marriage may be solemnised, certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Government for each such extract.

Every person who, being at the time married, procures a marriage of himself to be solemnised under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Penal Code, as the case may be; and the marriage so solemnized is void (Section 15).

Every married person who contract any other marriage during the life time of his/ her wife/ husband, shall be subject to the penalties provided in Section 494 or 495 of the Penal Code for the offence for marrying again during the life time of a husband/ wife, whatever may be the religion which he/she professed at the



time of such second marriage (Section 16).

The Divorce Act shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2 of the Special Marriage Act.

The issue to which their father were subject to the prohibition of marriages by reason of consanguinity and affinity, marriages solemnised this Act shall be deemed to be subject to the law. The provisions to Section 2 of the Act also shall apply (Section 18). Nothing in the Act contained affects the validity of any marriage, nor does the Act deem directly or indirectly affect the validity of any mode of contracting marriage (Section 19).

Every person who either knows or believes to be false or doesn't believe to be true, which signing or attesting any declaration or certification, containing a declaration, which is false, he will be guilty of the offence described in Section 199 of the Penal Code (Section 21).

Any member of an undivided family who profess the Hindu, Buddhist, Sikh or Jaina religion, if marriage under the Act, he shall be deemed to effect his severance from such family (Section 22).

A person who profess the Hindu, Buddhist, Sikh or Jaina religion but married under the Act, he shall have the same rights and same disabilities in regard to any right of succession to any property as a person to whom the Castle Disabilities Removal Act 1850 applies (Section 23).

Succession to the property of any person who professes the Hindu, Buddhist, Sikh or Jaina religion, married under this Act, and property of issue of such marriage shall be regulated by the provisions of the Succession Act 1925 (Section 24).

A person who professing the Hindu, Buddhist, Sikh or Jaina religion marrying under this Act, he shall have no right of adoption (Section 25). But his father shall have the right of adoption another person as a son under the law to which he is subject, provided that if he has no other son living.

If different party professes different religion, solemnisation of marriage becomes very difficult. The Special Marriage Act removes such difficulty. The objective of the concept of special marriage is to allow those professing diverse religions in a marriage to continue following their own religion even after the marriage.

The writer is a human rights activist.

HUMAN RIGHTS monitor



## Era of increased mobility requires better protection of migrants' rights

**I**N an era where people are crossing borders in greater numbers seeking better opportunities, it is more vital than ever that States safeguard the rights of migrants, Secretary-General Ban Ki-moon told a high-level gathering in Athens on November 4, 2009.

"Let us never forget that in the end, policies and laws are really about people and values," he said in his remarks to the opening of the third Global Forum on Migration and Development.

The Secretary-General noted that the number of international migrants today is greater than at anytime in history, with 214 million people living outside their country of birth.

Highlighting the good that such mobility can generate, he said that, when managed well, global migration greatly improves human welfare and development. Also, migrants contribute to development in their homelands by transferring remittances and transmitting new ideas and technologies.

Meanwhile, in countries of destination, migrants fill gaps in labour demand and skills to make the economy more productive.

"But we have work ahead of us," he told the gathering. "Around the world, migration is often the subject of shrill debate a wedge to provoke social tensions, drive political extremes, fan the flames of discrimination and hatred."

"We cannot yet say that the development potential of international migration is being fully realized. We cannot yet declare that the rights of migrants are being fully respected."

He noted that the conditions in which many migrants move and live continue to be "treacherous," that human trafficking and sexual exploitation are disturbing realities and, in many parts of the world, migrant workers still face appalling working conditions.

Mr. Ban called on all countries to work together to tackle migration, highlighting three challenges that add to the urgency for action the economic crisis, climate change, and the scourge of human trafficking, particularly of women and girls.

"As we look to these challenges, we recognize that in many ways, migration is not just a journey of people it is a journey of policy," he said.

"Our destination is a global system of mobility that allows people to move in legal, safe and orderly ways with full respect for their dignity."

The Secretary-General reiterated the importance of



promoting and protecting the basic human rights of all migrants, regardless of their legal status, during a press conference with Teodora Tzakiri, the Deputy Minister of Interior, Decentralization and E-Governance of Greece.

"Providing basic rights, access to education, social safety networks, sanitation and health these are basic, which each and every country should provide," he stated.

Mr. Ban also met with Prime Minister George Papandreou, with whom he discussed a number of regional and global issues, including climate change, migration and development, Cyprus, the former Yugoslav Republic of Macedonia, UN peacekeeping operations and reform, and also piracy and the Millennium Development Goals (MDGs) the global anti-poverty targets with a 2015 deadline.

Speaking to reporters after the meeting, the Secretary-General said he will spare no effort to facilitate progress on the UN-backed talks between Greek Cypriot and Turkish Cypriot leaders aimed at unifying the Mediterranean island.

"The international community has invested a great deal in this Cypriot-driven process, and has high expectations. I believe the talks are making reasonably good progress, and this momentum must be kept up."

He also noted that his Personal Envoy for the talks between Greece and the former Yugoslav Republic of Macedonia, Matthew Nimetz, is set to restart discussions on the name issue as soon as both parties are ready.

He said he was encouraged that the Greek Prime Minister had told him that Greece is ready and will fully support Mr. Nimetz's ongoing facilitation role. In that regard, Mr. Nimetz reports that he is in touch with the parties and has proposed to them the holding of meetings either joint or separate in New York at a time to be determined.

Also on November 4, 2009 Mr. Ban attended a luncheon hosted by Greek President Karolos Papoulias. He is scheduled to address the Greek Parliament before returning to New York.

Source: UN News Service.

## CRIME & Punishment

# Recidivism: Punishment and reformation of the criminals

SHAKILA YEASMIN SUCHANA

**T**HE word recidivism is not that much familiar with us. However, of late, specially, after incarceration of serial killer 'Rasu Kha' we are talking about it; in newspaper, television, or even in our home. Recidivism means repetition of crime, although, not only serial killing but also repetition of every kind of crime is supposed to fall within the ambit of recidivism. As it is one of the reasons for increasing crime in Bangladesh, we have to take proper step against it as soon as possible.

Recidivism is the act of a person repeating an undesirable behavior after they have either experienced negative consequences of that behavior, or have treated or trained to extinguish that behavior. It may be said as the habit of relapsing into crimes by the criminals. Those who are committing the same crime repeatedly, even they had punished for that crime are called recidivists. Recidivists have a long criminal record

and have frequent inmate of penal laws or correctional institutions.

Even recidivist know the punishment of crime, they do. In our country, the main reasons of recidivism are:

- Poverty
- Lack of education
- Lack of parental guidance
- Psychological problems
- Lack of proper rehabilitation
- Involve to gangs etc.

Poor people, who could not fulfill even basic needs of life, sometimes indulge into crime for leading life. Biting of the poverty and subsequent criminalization puts them into a point of no return and makes them an incorrigible offender.

In Bangladesh, juveniles are committing crime, for the lack of parental guidance and for their peer groups. They also take drugs which is a prime reason of becoming recidivist. If they are punished, they are not capable to be free from committing crime because of addiction.

However, if anyone is treated once as criminal,

always s/he is neglected by the society and even by the

family.\* Nobody provides him/her job. Friends, neigh-



bors and family members mistreats with them. They fell in frustration. Most of them are unskilled, so they are unable to do something single-handedly. Therefore, they could not revert back to the normal life any way.

Psychopaths, who commit crime for there psychological problem, are not treated properly. Proper rehabilitation often a misnomer for the criminal. If they are in prison, they get punishment but never are they re-socialized. We never think that, 'nobody born as a criminal' and 'every man has the right to back in normal life. For these reasons, the problem of recidivism is increasing day by day. According to crime statistics of Bangladesh police, numbers of register cases of last five years are:

- 2004 - 119320
- 2005 - 126167
- 2006 - 130578
- 2007 - 157200
- 2008 - 157979

It is evident, crime rate is increasing over the years. Serial killer Rasu Kha is a recidivist having psychologi-

cal problem. He was not only a killer but also a rapist and thief. Many other types of recidivist are committing different crimes repeatedly. We have to protect our country from the bad effect of them and make a positive thinking about crime prevention, 'hate the crime not the criminal'.

In early criminology, it was thought that crime could be capably prohibited by inflicting severe punishment or penalties on the criminals. By these, a criminal could realize his fault, be penitent and pays for the crime and refrains from repeating crime in future. Now, in the newer world criminologists are contending that it is hard to prevent crime by applying this theory. To prevent repetition of crime, we have to treat juvenile delinquents for intensive rehabilitation; psychopath should be under proper treatment. Reformation should also be the prime concentration of criminal justice.

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