



Daughter's Share in Succession

Law Commission's report revisited

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A Law Commission report on daughter's share in the succession of parents' property in absence of son has been published in the Daily Star's 'Law and Our Rights' page on June 9, 2012. It shows the praiseworthy effort of the Commission in recommending necessary amendments to laws of Bangladesh. Thanks a lot to it for this. In addressing the issue of the 'succession of daughter' the report tends to cause some misunderstandings that need clarification. The report provides, in the beginning, two remarkable sentences: (i) 'however, under normal circumstances, if father dies leaving only daughter/s, she does not get the whole property, as she is entitled to get as representative of the predeceased father under the 1961 law' and (ii) 'the part of the property also goes to collaterals i.e. uncles'. The first statement is somewhat misleading, because:

(a) Daughter is never entitled to inherit her father or mother under the 1961 law i.e. section 4 of the Muslim Family Laws Ordinance (No. VIII) of 1961 (MFLO of 1961). This law of 1961 was designed to make scope of inheritance not for a son or a daughter from his/her parents; rather for four types of orphaned grandchildren, from their grandparent, who have lost parent prior to the propositus. The four types of grandchildren are: (i) son's son [SS], (ii) son's daughter [SD], (iii) daughter's son [DS], and (iv) daughter's daughter [DD]. It

should be emphasized that to the cases of these four types of grandchildren the law of 1961 applies but the law doesn't cover the case of a daughter.

(b) Perhaps and in fact, son's daughter (SD) was, in this sentence, wanted to be meant who inherits under the 1961 law. But then also the statement does not reveal the real fact, for she actually takes whole property when she (SD) is the only heir to the grandparent propositus. Her father, the predeceased son of the propositus (i.e. S), is presumed to be alive who, as the residuary, takes entire property of his father. This ultimately comes to his daughter (SD) under section 4 of the MFLO.

Even, if the MFLO is kept out of the way, under classical Muslim law also SD first takes 1/2 as a Quranic sharer and the rest 1/2 under the principle of raad which make 1 i.e. whole property. If there are more than one SD they first receive collective share 2/3, and then, in absence of any other heir, the rest 1/3 under the principle of raad. It's to be mentioned that only two heirs, husband and wife, out of a number of 12 Quranic sharers, are not entitled to receive property under the principle of raad/proportionate return under Sunni Muslim law of succession which is in practice in Bangladesh.



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The second statement may now be considered. It implies to ignore the entitlement of the propositus' male collateral, i.e. the propositus' full brother (FB), who is the paternal uncle ('chacha' in Bangla) of the daughter (D); and basing on this philosophy it has been strongly recommended in the concluding part of the Law Commission Report that a provision should be added after section 4 of the MFLO which would prohibit any part of the property of the propositus from going to his FB whereby her portion would increase.

The Law Commission, in the purpose of allocating more portions for D, wants to exclude FB by D. The Commission is presumed to take the stand that if under section 4 of the 1961 law the predeceased son of a propositus, i.e. the dead father of SD, is presumed, for the actual purpose of entitling the SD, to be alive excluding all

collaterals including FB and FS (also consanguine brother i.e. CB and consanguine sister i.e. CS) why a D, who remains at one higher degree than the SD and closer to the propositus, shouldn't exclude her paternal uncle?

But what is the stand of the recommendation of the Commission in regard to the position of a full sister (FS) of the propositus who is the paternal aunt ('fufu' in Bangla) of the daughter? Such FS is a Quranic sharer in absence of FB, as well as a residuary in presence of FB. Under Sunni Muslim law when FS stands with FB she is converted from a Quranic sharer into a residuary and either both of them receive property or are excluded. If the propositus is survived by D and FS, D takes her Quranic portion 1/2 and FS takes 1/2 as accompanying residuary. But if in this case there were FB, the FB would have converted FS into a residuary and their portions have stood: FB=2/3 of 1/2= 2/6 and FS= 1/3 of 1/2=1/6.

If the proposed addition after section 4 of the MFLO provides, as a mitigation, that the male collateral FB in presence of FS would be excluded by D it does not hold good or relevant and does not look pretty. Because in such a discriminatory way the principle of tasib, the principle of male taking twice

female's share, a cardinal principle of Muslim law of succession, is infringed. It will also make scope for a writ on behalf of the FB under Article 27 of the Constitution of Bangladesh that provides for the fundamental right of equality before law.

If, again, keeping in view the notion of maintaining equality before law, the provision proposed by the Law Commission includes FS along with FB and provides that property will be prohibited from going to both FB and FS, it will mean strengthening one female sharer D at the cost of another female sharer. It will not also stand in line with the present movement for women's human rights. It will tantamount exclusion of a Quranic sharer FS that may gear up anti-government movement.

Another important thing is to be kept in mind. If tasib is endeavored to be removed by means of attempting to exclude FB why shouldn't it be extended to the most important and most claimed case of son and daughter whereby daughter should take equal to son? There will rather, in such attempt to bringing equality between son and daughter of the propositus, be no scope for infringement of fundamental right of equality. Such removal of tasib from the case of son and daughter of the propositus would better be in line with the present day human rights movement mostly propounded by the human rights organizations and the organizations for women's rights.

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YOUR ADVOCATE

This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Query
I'm Nibir (not real name) from Chittagong wanting a suggestion from you. I've a relation with a Muslim girl for a long time. In the mean time we have finished our academic education and we both are committed to marry. But we none want to divert. We have read a article written by you through internet and we become known that according to the special marriage act of 1872 it will not be possible for us to make the marry remaining ourselves as Hindu and Muslim. We need to declare ourselves as atheist by a notary public before registering the marriage. That was not problem to us. We went to several notaries public and discussed it, they also had the idea but shown unwillingness because of being conservative minded. The advocates we met wanted to do it after diversion me as a Muslim. We don't want this. We want to register as atheist. So, we seek help to you that if you have any known notary public register in Chittagong from whom we can do it. And where we can register the marriage?

Anonymous

Response
I would like to thank you very much for your queries. From the given fact it appears that you have correctly understood the requirements as far as marriage between persons professing different



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religions in Bangladesh is concerned. However, under the Special Marriage Act 1872, cross marriage is possible among persons professing certain specified different religions and also among persons declaring themselves as non-believers. A marriage between a Hindu and Muslim is not allowed under the Special Marriage Act 1872 or any other law in Bangladesh.

When a marriage is solemnized under the Special Marriage Act 1872, the bride and the bridegroom have to sign a Declaration which reads as: "I do not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religion: or (as the case may be) I profess the Hindu, or the

Buddhist, or the Sikh or the Jaina religion".

Construing the words of the aforementioned Declaration, it appears that you may either declare yourself a non-believer i.e. professing none of the religions or you may declare to profess any one of the religions listed there in. Marriage is only allowed between persons declaring to profess any one of the religions specifically mentioned in the second part of the Declaration. Hence, if you declare that you are a Hindu, it will not be possible for you to marry the Muslim girl as the name of Islam religion is not mentioned there in. Therefore, the girl has only the option to marry under this Act if she declares herself a non-believer. In consequence, you can marry the girl by declaring yourself a non-believer (i.e. conforming to the second part of the Declaration). Thus, as you mentioned in the query, it appears to be possible for both of you to get married by declaring yourselves as non-believers.

You do not have to go to any Notary Public or Lawyer separately for declaring yourselves as non-believers as both of you have to sign the declarations under the 1872 Act, while the marriage is being registered.

I hope you will have answer to your queries from the aforesaid opinion.

For detailed query contact: omar@legalcounselbd.com.



HUMAN RIGHTS ADVOCACY

Open borders for refugees fleeing Burma

THE government of Bangladesh should immediately open its borders to people seeking sanctuary in Bangladesh from sectarian violence in Arakan State in western Burma.

The Bangladeshi government, anticipating an influx of refugees fleeing sectarian violence between Buddhists and Muslims in western Burma, this month reportedly ordered its border guards and naval services to prevent Burmese from crossing the border into Bangladesh. Foreign Minister Dipu Moni said at a news conference in Dhaka that, "It is not in our interest that new refugees come from Myanmar [Burma]." Bangladeshi authorities reported that at least 500 people aboard 11 boats have been denied access to Bangladesh over the last three days.

"By closing its border when violence in Arakan State is out of control, Bangladesh is putting lives at grave risk," said Bill Frelick, Refugee Program director at Human Rights Watch. "Bangladesh has an

obligation under international law to keep its border open to people fleeing threats to their lives and provide them protection."

Brutal violence in Arakan State between Buddhists and Muslims erupted on June 3, 2012, and has intensified since then. Security forces have shot and killed an unknown number of Rohingya, and sectarian mobs from both groups have burned down the homes and businesses of the other. On June 10, Burmese President Thein Sein issued a state of emergency in the area, ceding authority for law enforcement to the Burmese army.

Although Bangladesh is not a party to the 1951 Refugee Convention or its 1967 Protocol, it is obligated by the customary international law principle of nonrefoulement not to reject asylum seekers at its border when they are fleeing threats to their lives or freedom.

Human Rights Watch called on the Bangladeshi

government to allow independent humanitarian agencies free and unfettered access to the border areas. Other governments should provide humanitarian assistance and other support for the refugees. They should also help in finding durable solutions both for the new arrivals and for the 29,000 registered and an estimated 200,000 unregistered Rohingya refugees from Burma already in Bangladesh, who are living in some of the poorest provisioned camps in the world.

"Bangladesh needs generous support right now from the international community to assist the refugees fleeing Arakan State and to find durable solutions later on," Frelick said. "But Bangladesh can help itself by allowing immediate and full access to humanitarian agencies so they can provide life-saving assistance to desperate refugees."

Source: Human Rights Watch.



6 additional HC judges appointed

President Zillur Rahman appointed six additional judges for two years to the High Court Division of Supreme Court ON June 13, raising the number of HC judges to 100. The new judges are Ashish Ranjan Das, secretary to the Law and Justice Division of the Ministry of Law, SC lawyers Mahmudul Haque, Badruzzaman Badal and Zafar Ahmed, and Deputy Attorneys General Kazi M Ejarul Haque Akond (Sagar) and ABM Altaf Hossain. The Awami League-led grand alliance government has so far appointed 58 HC judges after assuming power in early 2009. - The Daily star June 12 2012.

HC to remove business establishments

Declaring commercial operations in Dhanmondi residential area illegal, the High Court on June 11 directed the authorities to remove all business establishments from the area to protect its residential character and environment. The government has been asked to allow the institutions time essential for shifting their setups. It ordered Maple Leaf International School authorities to windup its all branches from the area and to shift those to a suitable place within next three years. A division bench of the HC asked the school authorities to control traffic jams in the school areas by their own manpower during the three-year period. The judges however said the ruling will not hamper the business of the authorised commercial establishments at the Mirpur Road, Satmasjid Road and Dhanmondi-2 and Dhanmondi-27 areas. -The Daily star June 12 2012.

Alim indicted

The International Crimes Tribunal-2 on June 11 framed 17 specific charges of war crimes against former BNP lawmaker Abdul Alim, which include genocide, murder of Bangalee civilians, and burying people alive during the Liberation War. He also charged with attempt, abetment and conspiracy to commit crimes against humanity during the war. Of the 17 charges, 15 were framed in connection with Alim's alleged involvement in the killing of at least 585 people in 15 incidents. The two other charges were in connection with looting, arson, deportation and detention of unarmed civilians. Of the 15, three were for committing genocide, which claimed the lives of 406 people, mostly Hindus. According to the charges, Alim allegedly committed all the crimes in Joypurhat. - The Daily star June 12 2012.

Bail granted in corruption cases

A court on June 11 granted bail to 35 persons, including engineers and contractors of Chittagong Development Authority (CDA), in 22 corruption cases. However, the court issued arrest warrants against three persons in the same cases, as they did not appear before it. Metropolitan Judicial Judge, S M Mujibur Rahman, passed the order. The Anti-Corruption Commission (ACC) filed the cases against 47 persons with Chadgaon Police Station on September 5, 2010 on charges of corruption in development work of Bahadderhat to Kalurghat road in Chittagong city. - The Daily star June 12 2012.

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