

 **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
One of my distant relative, an working lady, now find herself in an irreconcilable position out of her marriage after attempting on her life a few months back. Survived by luck, due to timely hospitalisation by her own relative (not by husband), she is considering options for a divorce. Situation update is :
1. Husband had sent one or two formal (?) notice by a social cum semi-legal organization of some repute for a SHALISHI
2. The wife, is still in a trauma, mentally and not yet consented to a Divorce petition .BUT Husband has not also submitted a formal notice.3. My relative is afraid of the social stigma attached during the post divorce period and also is apprehending a back lash from the husband, if she applies for divorce.4. Husband never approached her or her family for a new settlement. Her family is not interested for any settlement except for Divorce.
5. The husband is now sending mails to her colleagues, indicating that he has registered a GD, excepting that she can initiate a criminal case. The intention as I presume is continuation of harassments.



BLOG-MARTINDALE.COM

from spouse without divorce in Islam. Secondly, I understand that your relative's husband (hereinafter referred to as the "Husband") purports to have filed a General Diary (GD) against your relative (hereinafter referred to as the "Wife"), is torturous and threatening, and is sending mails to her colleagues with an intention to harass the Wife. I understand that the Husband had sent two notices, but it is not clear precisely what the notices were. When a spouse sends divorce notice, a copy of it is sent to the City Corporation as well, and the same sends "Shalishi" or arbitration notices, thereby calling the couple to settle the dispute. If the husband had sent divorce notice and the Shalishi notices were from the City Corporation, and 90 days have passed thereafter, then by now the divorce should have been registered and the couple can be said to be legally divorced. The City Corporation might have by now registered the divorce, so it is advisable that the Wife checks with the City Corporation first and have the divorce registered, if not already done. However, if the notice were not divorce notices, then if it is possible, the Wife and her family should talk to the Husband and his family with an open mind and try to settle the issues relating

to GD, torture and harassment, thereby trying to negotiate a mutual divorce. A common friend or a mutually trusted person can be invited to facilitate the discussion. If their best interest lies in divorce, then each partner should try to help the other in completing the process. However, if amicable resolution fails, which is likely be the case then the Wife can go for a unilateral divorce. From your query I perceive that the couple is Muslim. Under the Muslim law, the husband has the automatic right to divorce. But the same can be delegated by the husband to the wife or any other person. In recent times, it is a common phenomenon that husband delegates the right to divorce to the wife. Such delegation can be found at clause 18 of the Wife's Nikahnama. Exercising the said right, the Wife can unilaterally divorce and initiate the process by serving a notice to the Husband through the Quazi and/or a lawyer. Once the process is started it will take around hundred days to complete the total process and get the divorce registered as per law. Note, however, that independent of the right to divorce conferred to a wife in the Nikahnama, the wife can also divorce the husband under the provisions contained in the Dissolution of Muslim

Marriage Act 1939. A suit can be filed for such dissolution on many grounds including, but not limited to, where a husband treats the wife with cruelty that is to say for example habitual assault; living a notorious life by the husband; forces the wife to do immoral acts; disposes of wife's property; restraining her from religious practices; etc and on any other grounds which is recognized as valid for the dissolution of marriages under Muslim Law, for example, incompatibility of temperament. The benefit of filing the divorce petition is that, the grounds for filing so are very wide and the Wife's situation is a good ground to attain a divorce. As per section 5 of the Dissolution of Muslim Marriage Act 1939, her right to her dower or any part thereof shall not be affected on the dissolution of marriage, because dower is unrelated to divorce, and related only to marriage and consummation. No matter how a divorce is initiated the Wife is always entitled to three months' maintenance. The Wife may, however, at her complete discretion, decide to waive the right to dower (whether or not paid fully partly) and maintenance since she feels that there is a likelihood of trouble in relation to money matters. Note that, any divorce has to be registered under the Muslim Marriages and Divorces (Registration) Act-1974. For the safety of the Wife, it is advisable that she contacts a lawyer and sends a Legal Notice to the Husband to stop him from further harassing the Wife at the workplace and to stop threatening of all kinds. If things do not improve then a General Diary (GD) may be filed. It is good to know that there are provisions for punishing a person involved in character assassination, harassment and defamation to women under the Penal Code 1860 and there are many redress and protections under the Anti-Women and Children Oppression Act. We wish all happiness in their family lives.

For detailed query contact: omar@legalcounselbd.com.

The question my relative wants to know:
a. Will there be any repercussion if she files for divorce?
b. Can she claim any benefit if she files divorce petition?
c. Is there any term called Separation in Muslim Family Law?
d. Where she should file for an legally tenable divorce?

The major reason for asking a divorce continuous psychological torture, prompted by husband and his family.

Anonymous

Response
Thank you very much for your query. I have understood your situation and query and our opinion is as follows. Firstly, there is no term called Separation in Muslim Family Law and accordingly there is no legal provision in relation to separation or being separated

 **LAW LEXICON**

- Sidebar** - A conference between the judge and lawyers, usually in the courtroom, out of earshot of the jury and spectators.
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- Slander** - Spoken defamation which tends to injure a person's reputation.
- ***
- Small Business Administration (SBA)** - A federal agency which provides assistance of all kinds, including loans, to small businesses.
- ***
- Small Claims Court** - A state court that handles civil claims for small amounts of money. People often represent themselves rather than hire an attorney.
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- Social Security** - A system of federal old-age pensions for employed persons begun in 1935. A portion of the payment is deducted from the employee's salary and an equal portion is contributed by the employer.
- ***
- Social Security Administration** - The federal agency which administers the national social security program.
- ***
- Social Security Tax** - A payroll deduction based on gross wages paid; this amount is matched by the employer as required by the Federal Insurance Contribution Act (FICA).
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- Sovereign Immunity** - The doctrine that the government, state or federal, is immune to lawsuit unless it give its consent.
- ***
- Specific performance** - A remedy requiring a person who has breached a contract to perform specifically what he or she has agreed to do. Specific performance is ordered when damages would be inadequate compensation.
- ***
- Spendthrift trust** - A trust set up for the benefit of someone who the grantor believes would be incapable of managing his or her own financial affairs.
- ***
- Standard of proof** - Indicates the degree to which the point must be proven. In a civil case, the burden of proof rests with the plaintiff, who must establish his or her case by such standards of proof as a "preponderance of evidence" or "clear and convincing evidence."
- ***
- Standing** - The legal right to bring a lawsuit. Only a person with something at stake has standing to bring a lawsuit.

Source: Jurist International.

 **LAW EVENT**

'Controversial democratic spaces: Land, environment and human rights in Bangladesh'

MAHDY HASSAN

A two-day long International Workshop on 'Controversial Democratic Spaces: Land, Environment and Human Rights in Bangladesh' has been just over. It was jointly organized by Bielefeld University and University of Dhaka at Nawab Ali Senate Hall on 16-17 October 2012. The workshop was inaugurated by Prof. Dr. Shahnaz Huda, Chairman, Department of Law, University of Dhaka and Prof. Dr. Joanna Pfaff-Czarnecka, the Director of R.G. Social Anthropology, Bielefeld University. This international workshop focused on the interfaces between land, environment, and human rights in Bangladesh. The workshop sought to explore both the modes and dynamics of land dispossession in Bangladesh. It asked how environmentalism and human rights, through their vernacularized meanings, in relation to land dispossession, intersect at the local level, and how thereby local political spaces evolve. In this vein, the workshop emphasized some particular issues like the role of the conflicting concepts of democracy, democratization in relation with violence, security, fear, environmental and resource justice, as well as the modalities of inclusion and exclusion in these political arenas. The workshop was tailored by the Research Group Social Anthropology at the Faculty of Sociology, Bielefeld University, Germany, in close collaboration with the Department of Law, University of Dhaka. The R.G. at Bielefeld studies the global spread of the terms 'democracy' and 'democratisation' based on their local appropriation in Bangladesh.



In the inaugural session chaired by Prof. Borhan Uddin Khan, Prof. Katy Gardner of Sussex University and Dr. Ridwanul Hoque of the Department of Law, Dhaka University, presented keynote papers. Katy Gardner talked on "Accumulation by dispossession in an era of corporate social responsibility?" with particular reference to the case study of Chevron's Bibiyana gas extraction plant in Sylhet. Dr. Hoque presented his keynote paper on 'The World of Rights: Issues Concerning Land, Environment, and Human Rights', in which he argued that instead of a single problem, there are a number of problems in this area that are deeply rooted in socio-economic, political, and cultural make-ups of the Bangladeshi society. Following the inaugural session, there were four discussion panels. In the first panel, chaired by Prof. Eva Gerharz of Ruhr University, Prof. Rehman Sobhan, Chairman of CPD, and Prof. Shelley Feldman of Cornell University spoke. Prof. Sobhan spoke on 'The Political Economy of Land Dispossession in Bangladesh', making a number of recommendations for agrarian reform in Bangladesh while Prof. Feldman spoke on 'Dispossession,

Alienation, and Insecure Property Rights' linking these issues to what she called 'Neoliberal Democracy'. The second session of the first day, presided over by Prof. Joanna Pfaff-Czarnecka of Bielefeld University, comprised two papers by Dr. Atiq Rahman and Sanjeeb Droong, respectively focusing on environmental fears in Bangladesh and human rights and environmental dynamics of Indigenous Peoples. Prof. Asif Nazrul presided over the third panel in which Prof. Amena Mohsin and Prof. Mesbah Kamal, both from Dhaka University, gave papers on 'Limits of Majoritarian Democracy in Bangladesh' and on 'Denial of Diversity: Politics of Non-Accommodation and Its Implications' respectively. Dr. Iftekharuzzaman, Executive Director of Transparency International Bangladesh, presided over the last session with Dr. Meghna Guhathakurta, Executive Director, Research Initiatives Bangladesh (RIB) Bangladesh, as a speaker. Dr. Guhathakurta spoke on several aspects of human security and human rights, with special reference to 'South Asian realities'. The writer is a Student of Law, University of Dhaka.

 **LAW WEEK**

Gen Harun granted conditional bail
The High Court on October 18 granted conditional bail to Destiny Group President Lt Gen (ret'd) M Harun-Ar-Rashid for two months in two money laundering cases. The court granted Harun-Ar-Rashid, also former army chief, on conditions that Harun would disassociate himself from the controversial MLM company, and not leave the country without court permission. The court asked Harun not to influence the investigation into the cases against him, and to cooperate with the investigation officers, the court said. The bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Farid Ahmed also barred the Destiny president from making public statement over the cases. His bail will be automatically cancelled if Harun breaches any of the conditions, the bench added. - *The Daily Star online edition October 18 2012.*

Stay on Moudud's graft case extended again
The Supreme Court on October again extended till November 11 its earlier order that stayed the proceedings of a corruption case against BNP leader Moudud Ahmed. A five-member bench of the Appellate Division headed by Justice Surendra Kumar Sinha also directed Moudud to file a leave to appeal petition with this court against a High Court verdict in this case. On September 16 in 2007, the Anti-Corruption Commission filed the case against Moudud on charge of amassing wealth worth more than Tk 7.38 crore illegally and concealing information about his wealth of more than Tk 4.4 crore from the commission. The HC on October 7 cleared the way for continuing the proceedings of the case. - *The Daily Star online edition October 18 2012.*

Limon gets exemption from appearing before court
Considering his physical condition and studies, a Jhalakathi court on October 17 exempted Limon Hossain, the young college student maimed by Rab last year, from appearing before the court during future hearings. Limon, aided by his lawyers, appeared before the Senior Judicial Magistrate's court on October 17 for hearing in the case filed against him by Rab for obstructing law enforcers from conducting their professional duties, attempted murder and injuring the Rab personnel. The same court also heard the objection plea filed by Limon's mother Henoara Begum over the police report submitted in a case she had filed against six Rab personnel. The report submitted by Rajapur police to the court cleared Rab of all allegations. The next hearing date for both the cases has been fixed for December 12. - *The Daily Star October 18 2012.*

HC rule on health budget rise
The High Court on October 16 asked the government to explain in three weeks why it should not be directed to increase budgetary allocation for public health service as per recommendation of the World Health Organisation (WHO). The WHO, in its 2011 report, recommended every government to spend \$44 for each citizen annually for health service, but the Bangladesh government spends only \$21. An HC bench came up with the rule following a writ petition filed by Supreme Court lawyer Omar Sadat on October 14 seeking HC directives in this regard. - *The Daily Star October 17 2012.*

14 held for fraudulence in HC
Law enforcers on October 16 held 14 people from the High Court premises for fraudulence after an HC order. The detainees are Ashraf, Mawla, Gulzar, Tuhin Kiah, Khairuzzaman, Bikul, Dulal Matubbor, Mirza, Obaidul Mollah, Mahbub, Kalam Matubbor, Masud, Firoz and Hafizur of Nagarkanda in Faridpur. The detainees, who appeared before an HC bench for bail in an attempted murder case, suppressed information to the court about an earlier order that rejected their another bail petition last week. The HC gave the order after Assistant Attorney General Ali Jinnah informed the court about the fraudulence. - *The Daily Star October 17 2012.*

HC clears way for trial of a corruption case
The High Court on October 16 cleared the way for continuing the trial proceedings of a corruption case against BNP leader and former health minister Khandker Mosharraf Hossain. The Anti-Corruption Commission (ACC) filed the case with Ramna Police Station on January 10, 2008 against Mosharraf on charge of amassing illegal wealth worth Tk 12.51 crore and concealing information about Tk 3.11 crore. HC on October 16 rejected a petition filed by Mosharraf for quashing the case proceedings. Mosharraf, in his petition, claimed that the ACC's notice asking for his wealth statement was illegal, as it was sent to him while he was in jail. - *The Daily Star October 17 2012.*

Dear reader,
You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: Law Desk, 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: