

LAW ANALYSIS



MOHAMMAD GOLAM SARWAR

ACCESS to justice is an important element of rule of law which is instrumental to safeguard the rights of individuals by ensuring “access” to justice system when rights of individuals are under threat of violation and insecurity. To ensure “access” to justice for the large amount of population in the rural area Village Court Act 2006 are functioning which reduces burden on the formal justice system to a large extent as petty disputes are being settled by this aforesaid court without requiring the sufferings of prevailing justice system. In line with this, recently the Cabinet approved the Draft Village Court (Amendment) Act 2012 containing few changes upon which this write up will focus.

The Proposed Act made changes in the provision of formation of Village Court increasing the number of members of a village court to five which is three under existing framework. As per the draft law, one of the members of the village court must be the member of a Union Parishad including UP chairman who will chair the court and there must be a woman representative if the court wants to settle any women or children affairs related disputes. This particular provision deserves attention from two aspects. The first one is the mandatory requirement of inclusion of UP chairman and member as well. The underlying objects here for quick disposal of minor cases at the lowest tire of local government system. This provision reflects an urge to strengthen the local government system which is a preferred framework to ensure good governance over local arena. But the regretful point is that the local government bodies particularly the Union Parishad are fighting to deliver service due to lack of institutional capacity along with financial constrains.

Another noting point is the election process of local government which is found in reality questionable, and the exercise of voting suffers from lack of transparency, and incredibility. By this process the opinion of local



ARTICLE: WN.COM

THE DRAFT VILLAGE COURT (AMENDMENT) ACT 2012

# Commitment for informal justice: Practicable or impossible?

people to select their representative at local level often remains unheard vitiating the true essence of right to vote. Accordingly, the voices of local people are neglected and local representatives are elected through the facilitation of political influence which does not correspond with the norms of free, fair and incredible election.

Now the practical question comes into operation that to what extent the UP chairman or other local representatives elected through political influence will be competent and reliable to settle local disputes? This question poses an uncooperative implication over the justice delivery process at local level through this proposed draft Act. Unless the election processes are made free, fair and participatory where the representation of common people are ensured, the extended formation of village court may not get its true functionality and the ultimate purpose of reducing burden of case backlog by the informal justice system may be frustrated.

However, the second aspect of this provision reflects

the utmost commitment of state to empower the voices of women by their participation in the formation of village court. Their meaningful participation will takes into consideration the interests and perspectives of women in terms of decision making at grass-root level which will facilitate to attain the goals of equality and formulate the village court going beyond the exclusive domain of male in exercising power.

But mere incorporation of a provision for women participation would be in futile in the context of Bangladesh particularly in the local level unless their capability approach are made strong to raise their voice against injustice and oppression and make them able to come out from the scenario of subordination and vulnerability.

For the attainment of capability approach and advancement of women the constitutional pledges inserted in Article 28(4) should be implemented with due consideration to make them capable for their assertions and entitlements. Only then the Village courts can be a platform to ensure the effective participation of women and accelerates their empowerment process.

Other notable change in the proposed Act is the increasing of fine to deal with complaints involving a maximum amount of Tk 75,000 which is now Tk 25000. This insertion widens the jurisdiction of the court and creates a sense of assurance for awarding remedy to the aggrieved party with adequate amount of fine.

From the above analysis conclusion can be drawn that the underlying commitments to deliver justice for the rural people under this proposed Act will make some impression to ensure “access” to justice of the common people and at the same time contribute to the informal justice system of this country. For this, the commitments must be accompanied with necessary measures and obligations for the effective implementation of this proposed Act.

The writer works with Law Desk, The Daily Star.

## RIGHTS CORNER

# Victory for gay rights

THE successful ballot initiatives on same-sex marriage in Maine, Maryland, and Washington State on November 6, 2012, were major victories for gay rights both in the United States and globally.

“The three state referendums endorsing marriage equality are groundbreaking because nowhere else in the world has same-sex marriage been won by a popular vote,” said Boris Dittrich, advocacy director of the Lesbian, Gay, Bisexual, and Transgender Rights Program at Human Rights Watch. “All other marriage-equality measures in the US and elsewhere have been made by legislators or courts.”

In Maryland, voters upheld a law legalizing same-sex marriage that was passed by the legislature and signed by the governor. This means that, most likely beginning January 1, 2013, same-sex couples will be able to get married in the state.

In Washington State, the legislature had approved same-sex marriage, but opponents gathered enough signatures to force a referendum in an effort to ban it. The referendum vote means that civil marriage will be opened for same-sex couples.

In Maine, gay rights activists had lost a vote on same-sex marriage in 2009, but put the issue on the ballot again. This year they were successful.

Additionally, voters in Minnesota turned back an effort to restrict gay rights. They rejected a proposed marriage equality ban by voting “no” in a referendum seeking to amend the state constitution to restrict marriage to a man and a woman.

The election results in Maine, Washington, and Maryland reversed a trend, Human Rights Watch said. Previously, whenever same-sex marriage had been put before voters in US states, it had lost. In 30 states voters have limited marriage to a man and a woman through constitutional amendments, and same-sex marriage had also been blocked in referendums, as it was in California in 2008.

Same-sex marriage will now be legal in nine US states. The others are Connecticut, Iowa, Massachusetts, New Hampshire, New York, and Vermont, as well as Washington, DC. However, under the Defense of Marriage Act, the US government denies recognition of same-sex marriages and federal benefits that are conferred upon married couples.

Outside the US, same-sex marriage is legal in Argentina, Belgium, Canada, Denmark, Iceland, the Netherlands, Norway, Portugal, South Africa, Spain, Sweden, and Mexico (where same-sex marriages are allowed in the capital city, but are recognized nationwide). In Spain the Constitution Court decided on November 6, 2012, that the same-sex marriage bill, implemented in 2005, is constitutional. In Brazil, the Superior Justice Court set an important precedent in October 2011 by interpreting the Brazilian civil code as allowing same-sex marriages.

Marriage equality laws are expected to be adopted soon in France, the United Kingdom, and New Zealand. “Marriage equality is unstoppable,” Dittrich said. “The votes in these US states should galvanize initiatives around the world.”

Source: Human Rights Watch.

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 would like to get your kind opinion in accordance to my following information:

#) My 2 uncles, 3 aunts and my father had prepared a deed on a stamp paper regarding allotment (Bontonna) of 3 of their father's land properties in Dhaka in 1999 in presence of their uncles (brothers of their father). According to that deed, my father, one of my uncle and two aunts ( a total of 4) got possession in one land, the other aunt got possession in the other land and my other uncle got possession in the rest land property. But, they did not register the deed afterwards.

Meantime, one of my aunt died. As she had no children except her husband, her possession ownership transferred to her living husband, my father, one my uncle, my other uncle's 2 boys and wife (by this time my other uncle died) and my two aunts. As we failed to register that 1999 deed afterwards for showing less value of 3 properties in reference to the government fixed rate and also for the absence of my one uncle and one aunt, we made a new deed (Bontonna) as per the suggestion of a lawyer and registered it with Tejgaon registry office and finally made their mutations in the land office concerned.

It is mentionable that we mentioned due shares of all my living uncles and aunts including my dead uncle that past among his 2 children and one wife, and also of my dead aunt whose possession shares went among his living husband and my living aunt and uncle, including my father in all the 3 properties of my grandfather. It is simply to say, all the Warishans (according to the succession certificate and Warishan certificates) were shown as the owner of the 3 properties during registering the Bontonna deed this year.

According to the Bontonna and Mutation, my father, one uncle and one aunt became owner of one property, my one aunt became owner of the other property, and finally my dead uncle's 2 boys, wife and my other dead aunt's husband became owner of the rest land.

At present, my aunt who became sole owner of a single land is threatening us to lodge a case against my father and other uncle and aunt's property demanding her share that she was supposed to get in absence of my dead aunt. She is showing us the 1999 unregistered deed to establish her claim. Though, in the registry deed we already mentioned that no one will be able claim his/her share in others land, even any legal suit in this regard will be treated as void.

Now my question is: Is there any legal ground under which my aunt will be able to establish her claim in our land despite her declaration of non-claiming in the registry deed.

Thanks & regards,

Saad

**Response**  
I would like to thank you very much for your queries. From the fact it appears that your queries are over the succession of property and claim from your aunt to her shares to the property. As you mentioned, your aunt is claiming her share with reference to the unregistered deed prepared in 1999. Your aunt will not be able to claim her share using that deed as under the Registration Act of 1908, it is compulsory to register instrument of partition of immovable property [Section 17(f)]. The requirement to register such instrument of partition has also been mentioned in Section 143B of the State Acquisition and Tenancy Act 1950. As the deed of 1999 was not registered, any claim having recourse to the same is likely to go in vain.

Considering the amicable partition (i.e. Bontonna) and Mutation Certificate it is not clear how the Mutation Certificate was obtained. Besides, from the given fact it is also not clear if the distribution of property was done in line with the concerned law of succession. Generally, a Mutation Certificate is obtained by way of filing a succession suit in the competent Court. It has to be considered as well whether the property has been distributed as required under the concerning law of succession. The amicable partition is also unlikely to be challenged provided that the Mutation Certificate in the given fact was obtained from the competent Court and the property distributed in due manner. The mutation of the property as appeared from the fact has also confirmed ownership of your aunt to the respective share. This will also make it impossible for her to raise any question over her ownership. Furthermore, the possibility of instituting any legal suit is likely to be barred as in the registry deed your aunt pledged not to claim any share in other's land and instituting any suit to the same effect.

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

For detailed query contact: [omar@legalcounselbd.com](mailto:omar@legalcounselbd.com).



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LAW WEEK

## Graft charges pressed against Jamir Uddin

The ACC on November 7 pressed charges against former speaker Jamir Uddin Sircar and an official of parliament secretariat in two cases filed against them for misappropriating Tk 33 lakh. Mohammad Moniruzzaman, ACC deputy director and also the investigation officer of the cases, submitted the charge sheets to the Chief Metropolitan Magistrate's Court of Dhaka. The Anti-Corruption Commission (ACC) lodged the cases with Sher-e-Bangla Nagar Police Station on December 28, 2010. In a case, the ACC brought allegation that Jamir Uddin and former chief whip late Khandaker Delwar Hossain, abusing their power misappropriated furniture and other goods worth over Tk 6 lakh supplied by the parliament secretary. In another case, the ACC said Jamir Uddin and former chief accounts officer of the parliament Ashraf-ul-Islam, who is now posted at the post and telecommunication ministry, misappropriated over Tk 27 in the name of medical checkup abroad. -The Daily Star online edition November 7, 2012.

## HC clears way for ACC case against

### Habib

The High Court on November 6 cleared the way for the Anti-Corruption Commission to resume trial proceedings of a corruption case against former BNP lawmaker Habibur Islam Habib. The ACC had filed the case on July 3, 2008 against Habib on charge of illegally amassing wealth worth Tk 87.94 lakh and concealing information about it. The HC rejected a petition filed by the BNP lawmaker for quashing the proceedings of the case and vacated its earlier order in 2008, which had stayed the proceedings. The HC bench of Justice Khondker Musa Khaled and Justice Md Nazrul Talukder came up with the verdict saying that it cannot accept any petition for quashing a case which is under investigation. Earlier in, July of 2008, another HC bench had stayed the proceedings of the case and issued a rule upon the ACC to explain why the case should not be scrapped. -The Daily Star November 7, 2012.

## HC directs govt to save Turag,

### Shitalakhya

The High Court on November 6 directed the government to stop sand business on the banks of the rivers Turag at Shinnirtek in the capital's Mirpur and Shitalakhya at Kanchpur in Narayanganj in three days. Responding to a writ petition, the court also ordered the government to remove sand from the two places within 15 days. The HC bench of Justice Naima Haider and Justice Muhammad Khurshid Alam Sarkar asked the government to submit a report after complying with the order within four weeks. The court also issued a rule upon the authorities concerned of the government to explain in ten days why they should not be directed to evict sand traders from the river banks and protect the areas from encroachment. Secretary to the ministry of shipping, chairman of Bangladesh Inland Water Transport Authority, director general of the Department of Environment, deputy commissioners of Dhaka and Narayanganj and nine other government officials concerned have been made respondents to the rule. -The Daily Star November 7, 2012.

## HC wants probe into fatwa incident in

### Mirsarai

The High Court on November 5 directed the home secretary to form a high-profile committee led by a joint secretary to investigate the allegation of imposing a fatwa on a housewife in Mirsarai of Chittagong. During hearing of a rule, the court asked the secretary to submit the probe report before it within four weeks, and fixed December 10 for passing a further order on this issue. Media reports said ruling Awami League leader of Nayduria and local union parishad member, along with some supporters at a village arbitration declared that stones will be thrown at housewife Asma after putting her in a hole, which was chest deep. The arbitration was held on October 2 after Asma had filed a case against Mahfuzul and his aides on charges of sexual harassment in July. They reportedly sexually abused her days before the case was filed. After that, following a writ petition, the HC on October 16 issued a rule upon the government to explain why it should not be directed to act against those responsible for the fatwa incident. -The Daily Star November 6, 2012.

## SC to hear appeal Dec 11 in Jail Killing

### Case

The Supreme Court on November 4 fixed December 11 for hearing of an appeal filed against a High Court verdict that acquitted six former army personnel in the jail killing case. The government filed the appeal last year challenging the HC verdict in the case filed for killing four national leaders inside the Dhaka Central Jail on November 3, 1975. The four leaders are Syed Nazrul Islam, Tajuddin Ahmad, AHM Quamruzzaman and Captain Mansur Ali. The government recently submitted a concise statement to the SC praying for upholding the lower court verdict that had awarded death penalty to three former army personnel and life term imprisonment to 12 others. On November 4, a five-member bench of the Appellate Division of SC headed by Chief Justice Md Muzammel Hossain fixed the date for hearing the appeal after Attorney General Mahbubey Alam and Anisul Huq, principal state counsel for the case,

#### 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: