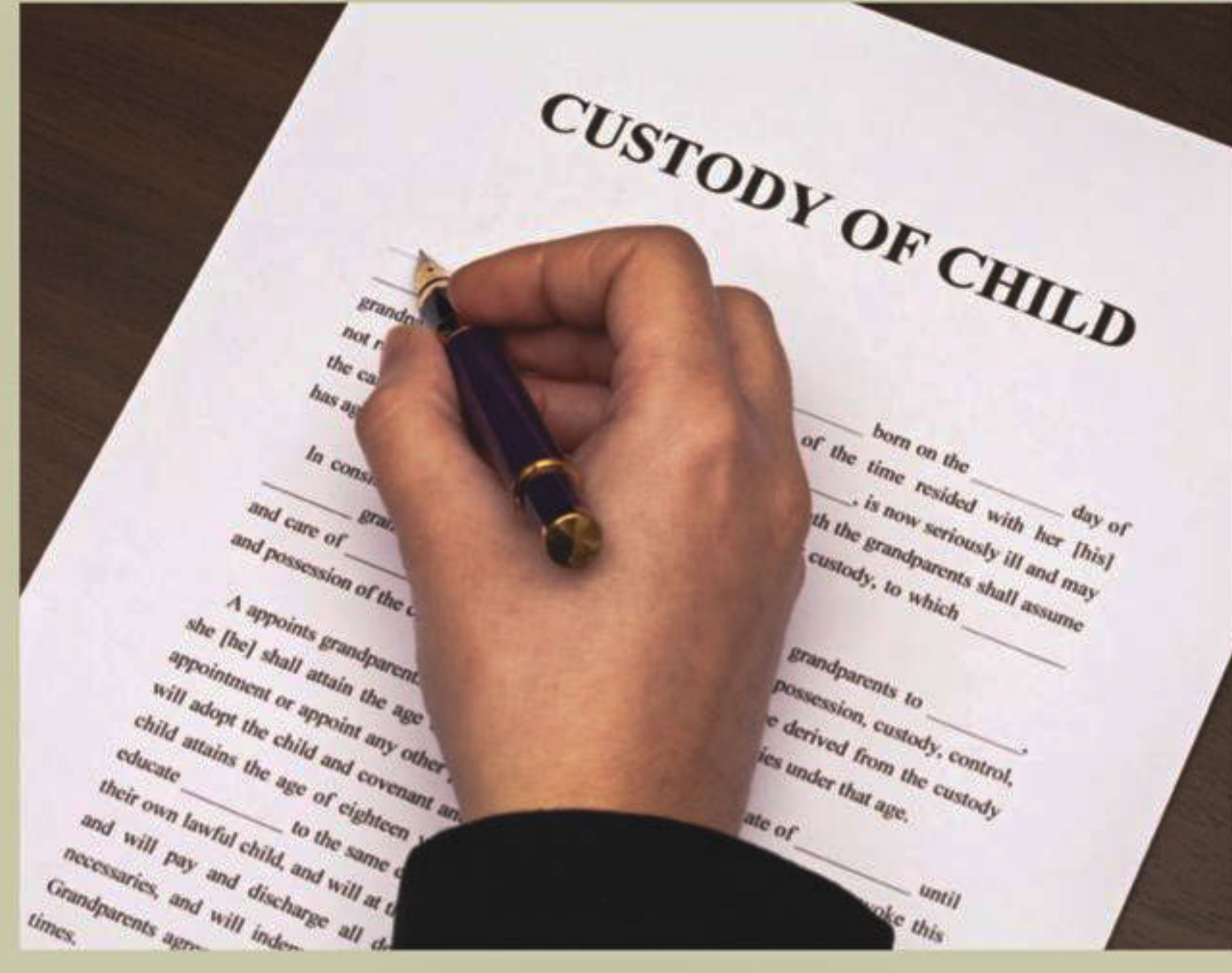


LAW ANALYSIS

Mother's remarriage and custody of children

Bombay High Court affirmed that "there is no dogmatic insistence that the child must remain with the father even against the wishes of the child at the moment that the mother gets remarried to a stranger."

FARIANA YESMIN
"MOHIT" - is the son (five years) of a divorced couple Atiq and Rehana. Both of them remarried and demanded the custody of Mohit where he chooses to stay with his mother. But Muslim Personal Law disentitles Rehana from the custody of her son for her blunder of remarriage. What will be the fate of Mohit and Rehana?
 According to the traditional Muslim Jurisprudence a father is the natural guardian of the children and in his absence, nearer male relations from paternal side. A Muslim mother can never be the guardian of her minor child rather she can claim only the custody for a very limited period which is seven years in case of male child and age of puberty is the ceiling point in case of female child unless and until she remarries a stranger, i.e; a person not within the prohibited degrees of relationship to the girl. The underlying principle behind such theory is the presumption that if she marries a stranger, the child might be treated cruelly while he/she will be treated kindly if the mother marries a person closely related to the child. But, sometimes injustice may occur if we remain sophisticated to this principle



especially when the child itself wants to remain with his mother.
 Our judiciary took a positive turn back from the tradition by upholding the best welfare of child doctrine. Absence of clear Quranic injunction and lack of harmony among the Islamic jurists on the rules relating to custody have enabled the Courts to take some reasonable decisions which appear constructive towards both the mother and the children. Moreover, Section 17 of the Guardian and Wards Act, 1890 also obliged the Court to consider the welfare of the minors as a paramount point in deciding the custody of a minor.
 Accordingly, in *Ayesha Khanum v*

Major Shabbir Ahmed, 46 DLR, the High Court Division of Bangladesh declared that personal law of the parties are subject to the paramount need of the welfare of the child. There is no debate regarding the fact that the welfare of the minor lies with the mother. There is no substitution of motherly love and affection and no one can substitute her and the wellbeing and proper take care can be ensured only by mother. The assumption that mother will not take care of her own children in the event of her remarriage is not acceptable in all situation.
 Thus, it is the consideration of the welfare of the minor which led the Court to take its first position in favour of the mother in the *Haji Ali Baksh v Mst Baghul* (15 DLR), where it was held by the Court that nobody having better title than the mother has come with this petition though she remarried after the death of her husband. Here, another claimant of the custody was the child's paternal uncle and according to Court the property of the minor is the main attraction for her uncle's demand of custody. Later on, in *Akhtar Ahmad v Mst Hazoor Begum* (17 DLR), the Court reiterated the observation. In *Rahamatullah v Sabana Islam* 54 DLR,

the Court give its judgment with the underlying principle that where a widow has to remarry for the purpose of protection and shelter of the minor and herself, she should not lose her guardianship.
 The judiciary of India and Pakistan also established the preferential rights of the mother to have the custody of minor child even in the event of her second marriage. References include the leading case *Irfan Ahmed Shaikh v Mrs Mumtaz* 1999, where the Bombay High Court affirmed that "there is no dogmatic insistence that the child must remain with the father even against the wishes of the child at the moment that the mother gets remarried to a stranger."
 These decisions of the court are some flaming examples of judicial activism in the family matters which make it feasible for lot of Mohits to get back their mother and these positive approaches of the judiciary will ultimately encourage women to claim their family rights through Court from which they are being deprived of.
THE WRITER IS A LECTURER, DEPARTMENT OF LAW, UNIVERSITY OF CHITTAGONG.

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.

Query
 I am a university student in Bangladesh. For a long time now, I have been receiving unwanted friend requests and a large number of disgusting messages on Facebook almost every day. I am very annoyed about this fact and I would like to know if I can take action against these people.
Nikita Dhaka

Response
 Dear reader, thank you very much for your query. Facebook has been a useful platform along with other social networking sites by



which we connect with friends, exercise freedom of speech, and get updated on current events. However, it is also true that this medium of global communication has been misused on a daily basis that interferes with the personal life of many of its users.
 Now, coming to the matter in question, it

has to be admitted that this has been an issue of recurrent discomfort that a lot of Facebook users face on a daily basis, and unfortunately, majority of these sufferers are women. This is more of a social problem as opposed to a purely legal one.
 At the very outset, let me make it clear that sending friend requests to unknown people or even sending them a message is not illegal by any law of Bangladesh and it also does not violate any laws of Facebook. In fact, this was initially the concept behind Facebook: to connect with new friends around the globe. However, the misuse of such facilities by a handful of troublemakers has resulted in Facebook changing its privacy settings, and domestic laws of different countries are also focusing on such social networking sites. You may easily avoid many such occurrences simply by maintaining stricter privacy settings for your Facebook account.
 Speaking from a legal point of view, it is not at all illegal to send friend requests to unknown persons. However, as far as the private messages are concerned which you have commented to be 'disgusting' ones, one might need to consider the nature and contents of such messages. If these messages are indecent and/or threatening in nature, there might be a scope of legal measures to be taken against the sender. As under the Bangladeshi Penal Code, such indecent and/or threatening messages may constitute offenses. Nevertheless, if such messages are not indecent and/or threatening in nature but rather merely annoying, there might not be any legal consequences/remedies for them.
 We have to consider the fact that Facebook has been the focal point of several raging debates as to a platform for exercising Freedom of Speech of an individual user. Such debates stem from legal sanctions imposed by the law enforcing agencies of many countries on the users of Facebook. For example, most

recently, Section 66A of the Information Technology Act in India made it an arrestable offence to put up Status or Comments on social networking sites, which the Government of India felt were offensive. Several people were, in fact, arrested for criticising several political figures. However, very recently the Indian Supreme Court ruled that S.66A is unconstitutional and, therefore, it was struck down. This again goes on to show the thin line that today's social networking site users have to walk by, as many countries still have laws that prevent anti-government remarks or publications to be termed as offenses under law.
 Reverting back to the query, it is completely understandable you are uncomfortable with such friend requests or messages from unknown Facebook users. It would perhaps be wise to revisit your Facebook privacy settings and customize the same according to your preference.
 On the other hand, if you feel that some of these messages were indecent and/or threatening, you may also choose to lodge a General Diary ('GD') before the police station stating the scenario. If these messages are, in fact, indecent and/or threatening, the same may be punishable under the Penal Code. Although the laws as well as the investigation procedure in Bangladesh relating to cyber-crimes are still in a primary stage, and are yet to be developed, nevertheless, such messages may also attract violation of several sections under the Information and Communication Technology (ICT) Act 2006 (as amended in 2009).
 I expect that reasonable and responsible use of the social networking sites by all individuals alike would minimize such unwanted incidents, resulting in the enhancement of positive experience of users.
FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.

RIGHTS CORNER

Ban on stickers

TANJIB RASHID KHAN
 On 4th May 2016, Dhaka Metropolitan Police Commissioner, Mr Asaduzzaman Mia made an announcement during a briefing session held at DMP media centre that DMP would not allow the use of stickers on vehicles identifying various professionals like press, police and lawyers. Only organisations can use painted logos on their vehicles. However, lawmakers and their families, employees of the Parliament and Parliament secretariat and its other departments can use stickers on their personal vehicles. DMP has also imposed a ban on the use of hydraulic horns in vehicles, and the use of tinted, black or colored glasses.
 Undoubtedly it is very good initiative to control the use of hydraulic horns, as it creates intolerable noise. It is also understandable that the use of tinted, black or colored glasses should be controlled as in many cases, our law enforcers were unable to see crimes being committed or identify criminals in such vehicles because of it. Quite the reverse, I was rather dumbfounded after knowing DMP's reason for imposing such a ban on the use of professional stickers. The decision has been taken as criminals tend to commit and flee the crime scenes using vehicles with unauthorised stickers of press, police and lawyers. According to DMP, in many cases law enforcers even show flexibility to check such vehicles! This reason formulated few observations and one crucial question in my mind, which I am sharing below-
 Firstly, nowhere in the 177 sections of our Motor Vehicles Ordinance 1983, it is stated that using professional stickers on private vehicles is an offence. However, according to Section 98, no person driving a motor vehicle shall allow any person to stand or sit or anything to be placed in such a manner or position as to hamper the driver in his control of the vehicle. Hence, a sticker should only be banned if it obstructs the view of the driver, but not solely because of it bearing any professional title. This standard is also followed in many of the European countries. Such as, in California (USA), stickers are permitted if they are a maximum 7-inch square, placed in the lower left corner of the windshield farthest removed from the driver, or a maximum 5-inch square placed in the lower corner of the windshield nearest the driver. Also in Alberta (Canada), a person may apply stickers to the window of a motor vehicle only if they do not limit

the driver's field of vision or otherwise impair the safe operation of the motor vehicle.
 Secondly, as a commonwealth country, we generally do not differ much from the laws of UK. In UK, a car sticker is prohibited under section 5 of its Public Order Act 1986, only if it displays any writing, sign or other visible representation which is threatening, abusive or insulting to the public in general. To my understanding, the use of professional stickers does not fall under these criteria, which Bangladesh should also follow as a commonwealth country.
 Thirdly, it is completely a mystery to me that why would the law enforcers show flexibility (as per DMP) to check cars with stickers of press, police and lawyer. In the absence of any specific instructions from the higher authority or any express law from the parliament, showing such flexibility must amount to negligence. Hence, instead of banning the use of professional stickers on private vehicles, DMP should rather put emphasis on reminding the law enforcers about their obligations, and instruct them to check any vehicle which appears suspicious to them.
 Fourthly, DMP should in fact insist all the professionals to use permanent professional stickers on their vehicles to be certain of their profession.
 By this way less people would be able to dodge the law enforcers by falsely using temporary professional stickers. Recently in UK, the Bradford Council passed a new rule effective from 1st January 2016, directing all private hire drivers to display permanent stickers on the side of their vehicles. Similar rules had already been in place in Leeds and other regions of UK too.
 Finally, according to the Bangladesh Bar Council guidelines (Bangladesh Bar Council is a Statutory Autonomous Body of the Government constituted under the Bangladesh Legal Practitioners and Bar Council Order, 1972 (President's Order No. 46 of 1972)), I am entitled to introduce myself as an Advocate as soon as my name is entered in the roll of Bangladesh Bar Council.
 Hence DMP's recent ban on professional stickers vividly conflicts with the Bangladesh Bar Council guidelines. Only because the law enforcers allegedly feel uneasy to check vehicles with certain professional stickers, should those persons refrain from expressing their own professional identity?
THE WRITER IS A LECTURER, DEPARTMENT OF LAW, EAST WEST UNIVERSITY.



FOR YOUR INFORMATION

Course of action against "Threats"

MR. JABBAR, a father of two residing in Kallyanpur, received an eerie phone call last night. In a muffled voice, the man from the other side demanded a sum of taka four lacs from Mr. Jabbar who is a mere banker. If the demand is not met harm will be brought to the little kids, the man said before hanging up the phone after what seemed to be a perplexing phone call for Mr. Jabbar. He is genuinely confused and of course intimidated. He knows these things are not to be taken lightly.
 There are ways of legal regress in situations like above. You need to take the following steps:
 First file a General Diary (GD) by going to your nearest police station. If in the assessment of police the issue is deemed to require greater attention, they themselves will submit a non-prosecution report to take action against those involved.
 Filing of a General Diary is simple, really. It's like every other application that you wrote in high school, but you have to address it to the Officer In-Charge (OC) of the police station. You explain to him your predicament and state your personal information such as name, address and phone number.



There is also an alternative course of action. You can bring court proceedings under Section 107 of The Code of Criminal Procedure 1898. According to section 107 whenever a District Magistrate or any other Executive Magistrate is informed that any person is likely to commit a breach of the peace or disturb the public tranquility, the Magistrate may require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for

keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.
 So course of action will be brought through the Executive Magistrate. If the court finds the alleged persons indeed liable, they will be asked to come to the court and sign a bond. Through the deponent they will promise to refrain from making further threats.
BY LAW DESK.