



# On legal position of triple talaq in Bangladesh

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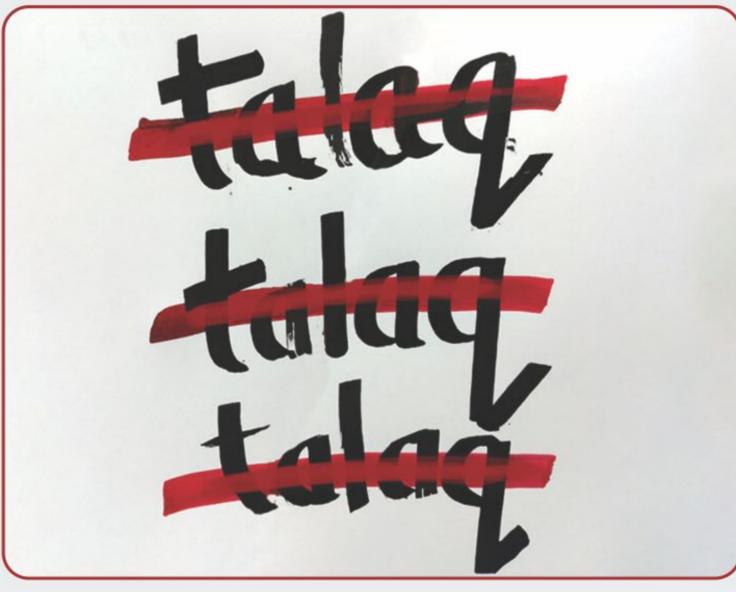
THE Supreme Court of India, by a majority decision of 3:2, has pronounced the Muslim practice of instant triple talaq unconstitutional as it is violative of several provisions of the Constitution of India. At the backdrop of this judgment, a question may arise: what is the legal position of triple talaq in Bangladesh? The persons with legal background are more or less acquainted with the matter, but not all the other people.

Although talaq-al-bida (a single irrevocable pronouncement) is thought to be a sinful act, this is practiced by the followers of Hanafi sub-

a valid form of talaq because it uses the phrase 'any form whatsoever'. So the next question is: how can we then say that triple talaq is prohibited by section 7? In interpreting this section, scholars come to the conclusion that ultimately triple talaq is prohibited under this section as the effectiveness of talaq under this section is delayed for 90 days from the service of notice to the chairman and also initiative of reconciliation is tried between the parties which are not possible in case of talaq-al-bidda (triple talaq) as it becomes effective instantly. This position is also confirmed by the Supreme Court of Pakistan in the case of *Syed Ali Nawaz Gardezi v Lt.-Col. Muhammad*

DLR 700; *Dilruba Aktar v AHM Mohsin* 55 DLR (2003) 568, the court held that non-service of notice under section 7(1) renders the talaq ineffective. Again in some cases (*Serajul Islam v. Helena Begum and others* 48 DLR 48; *Md. Nurul Islam v. Nur Ayesha Begum* 16 BLC (2007) 10), the court decided that mere non-service of notice under section 7(1) cannot invalidate an otherwise valid talaq.

Although these cases were not directly connected with triple talaq except the *Ali Newaz Gardezi's* case and the decisions arrived at in each case were due to the individuality of the facts of each case, generalisation of principle to the effect that non-service of notice to the chairman under



*Before the promulgation of Muslim Family Laws Ordinance of 1961, there was no bar on the practice of triple talaq. This Ordinance has brought about some significant changes in the matter of talaq in section 7.*

school of Sunni school. As the Bangladeshi Muslims are mostly the followers of Hanafi School, this practice also exists in our country. Before the promulgation of Muslim Family Laws Ordinance of 1961, there was no bar on the practice of triple talaq. This Ordinance has brought about some significant changes in the matter of talaq in section 7. At first, section 7(1) states that the husband has to serve a written notice of his so pronouncing a talaq to the chairman of the local government unit soon after the pronouncement of talaq in any form whatsoever. As per section 7(3), unless revoked earlier, a talaq shall not be effective until the expiration of 90 days from the day on which the notice is delivered to the chairman and the chairman will constitute an arbitration council for reconciliation between the parties after getting the notice under section 7(4).

If we go through these sub-sections of section 7, it seems that the legislature at first recognised the talaq-al-bidda (triple talaq) as

*Yusuf* 15 DLR (SC) 9 (known as *Ali Newaz Gardezi's* case) where their Lordships have observed that 'talaq-i-biddat is not outside the purview of section 7 as the words "talaq in any form whatsoever" clearly indicate. With utmost respect it becomes very difficult for us to conclude in the face of what sub-section (3) says, that talaq-i-biddat has not completely and irrevocably lost its right of validity. There appears no doubt that the provisions of sub-section (3) are wholly incompatible with talaq-i-biddat mode of divorce.'

Therefore, the court arrived at this decision of invalidity of the triple talaq on the basis of the provision of postponing the effectiveness of talaq for 90 days from the date of service of notice to the chairman. However, ambiguity arises due to different interpretations of the provision of this service of notice to the chairman by our apex court. In some cases (*Ali Newaz Gardezi's case; Abdul Aziz v Rezia Khatoon* 21 DLR 733; *Serajul Islam and others v State* 46

section 7(1) cannot invalidate an otherwise valid talaq hits the very foundation of the invalidity of triple talaq under section 7. If the service of notice to the chairman is immaterial for the validity of a talaq, then how can we rely on the provision of passing of 90 days from the service of notice as the basis of invalidating triple talaq? Again, strict adherence to the principle of invalidating an otherwise valid talaq due to non-service of notice may give rise to some practical problems.

Therefore, it can be a better course to abolish the practice of talaq-al-bida (triple talaq) altogether either through legislative enactment (amendment of the prevailing provision) rather than drawing any conclusion by analogy or through arriving at identical decision of Indian jurisdiction by our apex court (if this practice is ever challenged as unconstitutional in the court).

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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.

## Query

I have been working for a private company for more than 5 years. Last week, my employer gave me a letter which stated that I was to be retrenched from employment as the company do not have any more work for me. On the other hand, I see my colleagues are working as usual. I find this reason to be vague and when I spoke to my colleagues and lawyer friends regarding the matter I found their responses to be more confusing. I would like to know my rights according to law and also if the company can take such arbitrary step.

amendments along with the Bangladesh Labour Rules (BLR) of 2015. The local labour laws are applicable for employees who fall under the definition of worker under the BLA and for the rest their individual employment contract governs their individual employment contracts. As it is unclear from your particular query, I assume that the local labour laws are applicable in your situation.

Retrenchment is one of the legally prescribed methods by which an employer can terminate the employment of a particular employee. Under section 20 of the BLA, a worker may be retrenched from service

given one month's notice in writing or payment of one month's basic wages in lieu of such notice. Then a copy of notice has to be submitted to the Chief Inspector of Labour. Additionally, the employer has to pay the worker thirty days' wages for his every year of service or gratuity, if any, whichever is the higher. Additionally, the said notice shall be provided by the employer under the prescribed procedure of rule 27 of the BLR.

As per section 20(4) of the BLA, for a worker of any particular category to be retrenched the employer shall, in the absence of any agreement between the employer and the worker in this regard, retrench the worker who was the last person to be employed in that category.

It is not clear whether you were the last person to be recruited in your position in the concerned department, if so, then such retrenchment may be in compliance with the law. Alternatively, if you were the only person employed in the particular department which has been dissolved due to lack of work, then such can be justified as valid reason for retrenchment. Therefore, as you have mentioned that your other colleagues are still doing their regular work does not necessarily mean that your retrenchment is unjustified or illegal, provided that the employer has followed the prescribed procedures under the law.

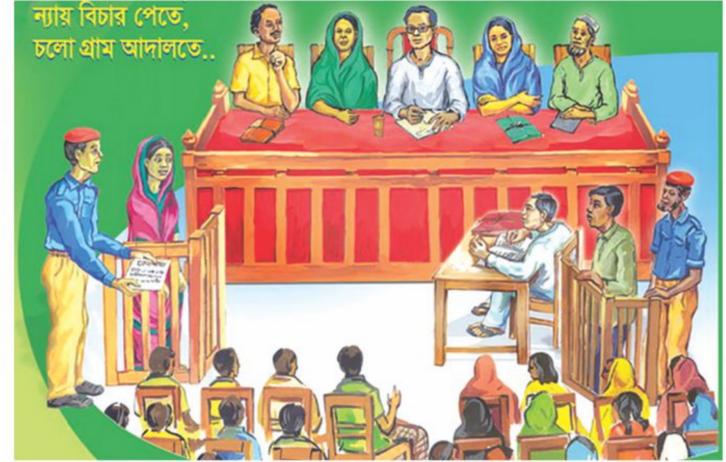
Provided that all the aforementioned legal criteria are satisfied, such retrenchment shall be less likely to be illegal. It would be advisable that you consult with the HR department of your institution for a clear understanding of the particular reason for such retrenchment. On the other hand, if you feel that there has been any discrepancy in the process you can take the matter by way of serving a grievance notice to your employer specifically stating your grievance(s).

I hope that in light of the aforesaid discussion, you shall now have a better understanding of retrenchment and its prescribed procedure.

FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.



## To make village courts effective



MOHAMMAD TARIKUL ISLAM

IN rural Bangladesh, conflict management has been apparent over the years. The Village Courts Act of 2006, which replaced and updated the Village Courts Act of 1976, provides for the establishment of a court in every Union Council. Village Courts are comprised of a panel of five: the Union Council's chairman; two other Union Council members, one of whom is chosen by each party in the dispute; and then two additional citizens, who are also chosen by the parties respectively. The Courts have jurisdiction over civil disputes valued up to BDT 75,000. They also have jurisdiction over some crimes, including assault and theft, though they do not have the power to fine or imprison; rather they can grant simple injunctions and award compensation up to BDT 75,000. Administratively, the nodal department in charge of Union Councils is the Local Government Division (LGD) within the Ministry of Rural Development and Local Government. Village Courts and Arbitration Councils are also under the supervision of LGD, rather than of the Ministry of Law, Justice, and Parliamentary Affairs. This placement reflects the distinctiveness of the Village Courts and Arbitration Councils from the rest of the judicial system as Village Courts and Arbitration Councils are more local and less legal.

Village Courts are largely defunct and Union Council members have little knowledge of the Village Courts Act. The conflict-management system in Bangladesh is still inefficient, often

favouring those parties with better financial means or with close contact to institutions. Poor and marginalised groups are clearly disadvantaged. Nepotism and corruption hinder smooth conflict resolution processes. Traditional conflict management and resolution procedures (mediation of elite villagers, shalish) and the intervention of Union Council seem to work well for small-scale conflicts. Nevertheless, their efficiency is severely limited in most land ownership-related conflicts.

Meanwhile, development partners (UNDP and EU) extending their technical support to the Ministry of Local Government Division for transformation of the local justice system on the basis of equity and inclusion within the context of broader local governance reform in Bangladesh. Village Courts can help to bridge between Bangladesh's informal and formal justice institutions in providing a fair arbitration process leading to delivering justice and human security. With a view to enhancing the fairness of Village Courts, policy makers can deem limiting the authority of the Union Council chairman, inclusion of refusal rules, requirements of public announcement of the sessions, and the right of parties to exclude a panelist. Insisting that Village Courts apply the general body of substantive formal law may be unworkable and imprudent. But fairness may be served by specifying a core set of fundamental rights with which Village Court decisions would be required to comply.

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## Democracy for conflict prevention

DEMOCRACY provides the natural environment for the protection and effective realisation of human rights. The values of freedom, respect for human rights and the principle of holding periodic and genuine elections by universal suffrage are essential elements of democracy. These values are embodied in the Universal Declaration of Human Rights and further developed in the International Covenant on Civil and Political Rights which enshrines a host of political rights and civil liberties

International Covenant on Economic, Social and Cultural Rights and subsequent human rights instruments covering group rights (e.g. indigenous peoples, minorities, people with disabilities) are equally essential for democracy as they ensure an equitable distribution of wealth, equality and equity in respect of access to civil and political rights. Recognising the indivisible links between peaceful societies and effective, accountable and inclusive institutions, the 2030 Agenda for Sustainable Development addresses democracy in

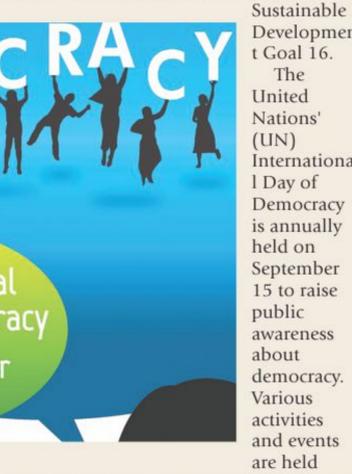
underpinning meaningful democracies

A more integrated approach to foster resilient societies calls for effective and inclusive democratic governance with respect for human rights and the rule of law. Strong leadership

to support democracy, strengthen civil society, empower women and uphold the rule of law are conditions that preserve stability and peace in such resilient societies.

The link between democracy and human rights is captured in article 21(3) of the Universal Declaration of Human Rights, which states that the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

The rights enshrined in the



around the world to promote democracy on this date. This day each year basically provides an opportunity to review the state of democracy in the world. Democracy is as much a process as a goal, and only with the full participation of and support by the international community, national governing bodies, civil society and individuals, can the ideal of democracy be made into a reality to be enjoyed by everyone, everywhere. This year's theme of democracy and conflict prevention focused on the critical need to strengthen democratic institutions to promote peace and stability.

-FROM LAW DESK. (SOURCE: UN.ORG).



Tareq Shamsur, Dhaka

## Response

It is my understanding from your query that your company has served a notice of retrenchment to you, and you are desirous to know whether this is legal and what remedies do you have, if any.

It is imperative to mention at the very outset that matters related to employment in the country are governed by the Bangladesh Labour Act (BLA) of 2006 and its subsequent

of any establishment on the ground of 'redundancy'. Therefore, as per law in any particular situation, if the employer is faced with a reduced work load or a certain project comes to an end or the particular service is no longer required, etc. in such case the employer may resort for the option of retrenchment.

Section 20(2) of the BLA provides that if a worker has been in continuous service under an employer for not less than one year, the employer, in the case of redundancy shall be