

Writ Petition No. 5863 of 2009 with
Writ Petition No. 754 of 2010 and
Writ Petition No. 4275 of 2010

Dated 2.2.2011

It has come to our notice that in page 21 of the judgment in direction (i) in the last line the words "of law" before the word "laws" were wrongly incorporated. Therefore, we would like to direct the office to delete the words "of law" occurring in the last line of direction before the word "laws"

The office is directed to do the needful.

Later

Ms. Sara Hossain and
Mr. Mahbub Shafiq
..... for the petitioners

It has been brought to our notice by Ms. Sara Hossain and Mr. Mahbub Shafique that even after pronouncement of the judgment in Writ Petition No. 5863 of 2009 with the Writ Petition No. 754 of 2010 and Writ Petition No. 4275 of 2010 a harrowing incident of extra-judicial punishment in the name of execution of fatwa occurred in Shariatpur as reported in the first page of "The Daily Pratom Alo" dated 2.2.2011. We have been observing that the directions ^{given} ~~are~~ in the judgment in particular, direction Nos. (iii) and (iv) have not been implemented by the concerned authority of the Government and as a result the incident reported in the Protom Alo dated 2.2.2011 took place. Therefore, we direct the Ministry of Local Government and Rural Development to all

law enforcing agencies and all Union Parishads and Pournshavas across the country intimating them that imposition of extra-judicial punishment is beyond the Constitution and is punishable under the law.

The Ministry of Local Government shall intimate the aforesaid bodies in this regard within one month from the date of receipt of this order.

The Ministry of Information is directed to disseminate the following parts of the judgment in different electronic and print media both in English and Bengali for the general public for their awareness that imposition extra judicial punishment is not only illegal but also punishable. The relevant parts of the judgment are quoted below :

“ The kind of offences for which women have been subjected to lashing and beating are ‘talking to a man’, ‘pre-marital relations’, ‘having a child out of wedlock’. None of these are offences under Bangladesh law. It should be pointed out that a man is liable to punishment for committing adultery, but the woman involved cannot be prosecuted as an abettor.

The trial of any offence and imposition of penalties may only be done by established courts and tribunals. To the extent that traditional dispute resolution or alternate dispute resolution takes place,

It is also required to be carried out in accordance with law and this cannot involve the imposition of penalties for conduct not recognized as offence under Bangladesh law.

Under Bangladesh law only the Supreme Court, Courts established under the Code of Criminal Procedure and those constituted under special laws can adjudicate on offences.

←/ We have already stated that the extra-judicial punishment in the form of lashing, beating are inflicted on women and men across the country. These acts attract sections 323 to 326 of the Penal Code according to the nature of the injuries. When a woman is compelled to perform Hilla-marriage it is also an offence as it is contrary to the existing law of the country. In such cases, section 508 of the Penal Code will be attracted. The other form of extra-judicial punishment is wrongful restraint which attracts section 341 of the Penal Code, cutting of hair/wearing of shoes attracts section 354 of the Penal Code, wrongful confinement attracts section 342 of the Penal Code. Force to beg pardon (Fay) and eviction from village also attract section 508 of

the Penal Code. The another form of extra-judicial punishment by creating obstacles to burial attracts section 295 of the Penal Code. Declaration that oral talaq is valid and enforcing to execute such talaq attracts section 7(2) of the Muslim Family Law Ordinance, 1961. The persons inflicting such punishments/injuries are liable to be punished under the relevant provision of the Penal Code and law of the land and the persons present at the place of occurrence are also liable for abatement of the offence."

The concerned Ministries are directed to take proper action in this regard and communicate the compliance of this order within 4(four) weeks from the date of receipt of this order.

Let this matter appear in the list for further order after 4(four) weeks.

Let this order (later portion) be communicated to the Ministry of Local Government and the Ministry of Information by special messenger of the Court at the cost of the office.

S.M. Hossain.
Md. Nazrul Islam Talukder.

Copy forwarded to,

1. Bangladesh, represented by the Secretary, Ministry of Local Government and Rural Development, Bangladesh Secretariat, Police Station - Ramna, Dhaka.
 4. Secretary, Ministry of Information, Bangladesh Secretariat, Police Station - Ramna, Dhaka.
- For information and necessary action.