

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

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

In the matter of

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

And

In the matter of

Bangladesh Legal Aid and Services Trust
and Others

..... the petitioner in Writ Petition
No.5863/2009

Advocate Md. Salahuddin Dolon

..... the petitioner in Writ Petition
No.754/2010

Mahbub Shafique and others

..... the petitioners in Writ
Petition No.4275 of 2010

Versus

Government of Bangladesh and Others

..... the respondents

Ms. Sara Hossain

..... for the petitioners in W.P.

Nos. 5863 of 2009 and W.P. No.754 of 2010

Mr. Mahbub Shafique

... the petitioner-in-person
in W.P.No. 4275 of 2010

Present:

Mr. Justice Syed Mahmud Hossain

And

Mr. Justice Gobinda Chandra Tagore

Heard on 3.6.2010, 9.6.2010 and 10.6.2010
Judgment on 8.7.2010.

Syed Mahmud Hossain J:

Writ Petition Nos. 5863 of 2009, 754 of 2010 and 4275 of 2010 have been heard together and are being disposed of by this common judgment as they do involve common questions of law and facts.

In Writ Petition No. 5863 of 2009 a Rule Nisi was issued on the following terms:

Let a Rule Nisi issue calling upon the respondents to show cause as to why their failure to act in a timely manner and to comply with their legal and constitutional duties to take effective measures to prevent the imposition and execution of extra-judicial/legal penalties by way of framing and adopting and disseminating appropriate guidelines, directions or orders to all concerned authorities to report any information regarding the occurrence or likely occurrence of such incidents should not be declared to be without lawful authority and is of no legal effect and/or violative of fundamental rights as guaranteed under Articles 27, 31, 32, 35(5) and 43 of the Constitution and why the respondents should not be directed to frame, adopt and disseminate such guidelines, directions or orders as appropriate including through Bangladesh Television and Bangladesh Betar and/or such other or further order or orders passed as to this Court may seem fit and proper.

This Writ Petition has been filed by petitioner No. 1 Bangladesh Legal Aid and Services Trust (BLAST), petitioner No. 2 Bangladesh Mahila Parishad, petitioner No. 3 Ain-O-Salish Kendra (ASK), petitioner No. 4 BRAC and petitioner No. 5 Nijera Kori.

The petitioners stated about many incidents of extra judicial punishments across the country, detailed in different paragraphs of the Writ Petition and the application for direction. A few of them are stated below:

The petitioners came to learn from a newspaper report published in “The Daily Prothom Alo” on 24.5.2009 that a woman in Noagoan village, Biteshor Union, Daudkandi Upazila, Comilla had been subjected to 39 lashes by community members, allegedly following a village salish in which certain persons had purported to pronounce this ‘sentence’ after the woman had initially called on community members to mediate to resolve the issue of the acknowledgement of paternity of her child born out of wedlock. The woman was seriously wounded and was admitted to Daudkandi Upazila Complex Hospital. Subsequently, following a news report on the issue and her father’s lodging of an FIR, the police arrested several persons and the woman was admitted to One Stop Crisis Centre in Dhaka.

A report published in “The Daily Prothom Alo” dated 31.5.2009 narrated that a woman and a man in Nobigonj Upazila, Hobiganj were subjected to 101 lashes on the order of several village elders who had earlier accused them of having ‘breached social norms’ during a salish which was held in the house of the Chairman of the Union Parishad. The report also stated that these elders ordered the woman’s husband to divorce her.

The report in “The Daily Star” on 16.8.2009 titled “Fatwa Again” 101 Lashes for refusing uncle’s sexual advances’ stated that a woman was whipped in public following issuance of a fatwa by a local muezzin.

A news report was published in “The Daily Prothom Alo” dated 5.10.2009 stating that the wife of a Madrasa teacher of Ghat nagar Union of

Porsha Upazila, Naogaon district was directed to undergo a Hilla marriage and both the husband and wife were subjected to 101 lashes by the local Matbars after they admitted that the husband had out of anger pronounced talak upon his wife. The couple were reportedly severely injured but were not allowed by the matbars to receive medical treatment.

A report in “The Daily Prothom Alo” dated 7.6.2009 stated a woman in Shashon village, Srimongol, was found by a group of self-professed religious leaders and elders to have been ‘talking to a man on the road’ and were subjected to 101 lashes. A case was filed by the victim’s husband and the police have so far arrested 1 of the 12 persons accused.

A news report published in “The Daily Janakantha” dated 12.9.2009 narrated that the local Matbars led by one Miru cut the hair of one Manira Begum of Uttadeshai Chairmanpara under Jaldhaka Upazila of Nilphamari district and forced her to leave the village with her two children as she refused to engage in sexual relations with Miru, son of the U.P Chairman of the same village, and demanded justice from the Chairman.

According to a news report dated 19.9.2009 published in “The Daily Samakal”, the local Matbars isolated the family of Nazim Uddin Kha of Ariara village under Lohagara Upazila of Norail district because of the family’s refusal to make Asma Khatun, wife of Nazim Uddin Kha, undergo hilla marriage after Nazim Uddin Kha pronounced talak upon her. The matbar also reportedly forced the son of Nazim Uddin Kha to leave the local Madrasa where he was studying and the local Mosque refused to allow them to eat their Iftar.

Pursuant to a news item published in “The Daily Star” on 24.1.2010 under the caption “Village Arbitration-Rapist spared, victim lashed”, Mr. Salauddin Dolon, a learned Advocate of this Court as petitioner filed Writ Petition No. 754 of 2010 in which Rule Nisi was issued on the following terms:

Let a Rule Nisi issue calling upon the respondents to show case as to why the extra judicial punishment imposed upon the victim (not named in the news item) in the name of execution of fatwa should not be declared to have been passed without lawful authority and is of no legal effect and why respondent Nos. 3 and 4 should not be directed to take necessary legal steps against respondent Nos. 5 and 6 and/or such other or further order or orders passed as to this Court may seem fit and proper.

The case in the Writ Petition, in short, is that eight months after being raped, a 16 year old at Village-Khargor of Kasba Upazila in Brahmanbaria had to receive 101 lashes as punishment. A village arbitration found her guilty and issued 101 lashes pursuant to fatwa (religious edict) but amazingly left the alleged rapist Enamul Mia, 20 years of age untouched. The arbitration also fined the victim’s father Tk.1,000/- and issued another fatwa that her family would be forced into isolation if he failed to pay the fine. The local village matbar (local leader) Delwar Hossain alias Ullashi executed the durra (lashes) on January 17. The family sources said Enamul Mia of Gabbari used to eve tease the girl on her way to ‘Sathgram Advocate Haroon-or-Rashid High School’. He raped her in April last year. Fearing the shame, the girl did not disclose the incident. She was given in marriage to a man of neighbouring Ghatiara village but after a month of the marriage

medical test discovered she was seven months' pregnant and she was divorced and she had to live at her father's place after an abortion. Following her return, a group of so-called matbars led by Manik Mia declared that her family was to be isolated until punished. On January 17, 2010 the influential group arranged the arbitration at the yard of the victim and sentenced the girl to suffer 101 lashes. At one stage of inhuman torture the girl collapsed and fainted. She regained her sense after two hours. The girl's father said members of the influential group were now keeping a watch on them so that they could not move or seek legal action. The arbitrators did not call Enamul during the arbitration as he belonged to another village.

Subsequently, Ain-o-Salish Kendra (ASK) was also impleaded as the co-petitioner No. 2 on 7.2.2010 with the consent of the original petitioner. On the date of issuance of the Rule, we directed respondent No.3, the Deputy Commissioner, Brahmanbaria and respondent No.4, the Officer-in-Charge, Kasba Police Station, Brahmanbaria to produce the victim before this Court on 24.1.2010. In obedience of the Court's order dated 24.1.2010, the victim was produced before this Court. On queries made by the Court the victim stated that no occurrence took place as alleged in the news report published in "The Daily Star" on 24.1.2010. She, however, admitted that she had an affair with respondent No. 6, Enamul Mia, who happens to be her paternal cousin. She also stated that she was given in marriage to another person and when her ex-husband came to know about her affairs with respondent No. 6, her ex-husband assaulted her and sent her to her father's

house. Subsequently, at the mediation of the villagers she was again given in marriage to respondent No.6.

Considering all aspects of the case, the Court dispensed with the personal appearance of the victim before this Court. Later, the Court directed respondent Nos. 3 and 4 to ensure her safe return to her place of abode.

Based on the news item published in “The Daily Prothom Alo” under the caption “বাঙ্গারামপুরে তরুনীকে ১০১ দোররা, গ্রেফতার ৪”, Mr. Mahbub Shafiq, learned Advocate along with two more learned Advocates of this Court filed a Writ Petition being No. 4275 of 2010. Accordingly, Rule Nisi was issued on the following terms:

Let a Rule Nisi issue calling upon the respondents to show cause as to why the imposition of extra-judicial punishment in the name of Sharia/Fatwa as evidenced by a news item published in “The Daily Protham-Alo” dated 22.5.2010 under the caption “বাঙ্গারামপুরে তরুনীকে ১০১ দোররা, গ্রেফতার ৪”, (Annexure-A) should not be declared to be illegal, without lawful authority and is violative of fundamental rights enshrined in the Constitution and is of no legal effect and why the respondents should not be directed to incorporate various types of articles and educational materials in the syllabus in School, College and University level and particularly in Madrasha level highlighting the supremacy of the Constitution and the Rule of law and discouraging imposition of extra-judicial punishment of any form in the name of execution of Islamic Sharia/Fatwa and/or such other or further order or orders passed as to this Court may deem fit and proper.

The news item stated that the victim had an affair with a Hindu boy of the same village. The news report further states that at a meeting, the village

elders along with three Imams, Maulana Abdur Rahim, Abu Bakar and Mobarak Hossain ordered lashing 101 dorra on the victim and externment of the victim from the village. The victim uncle's Mainuddin carried out the lashing of 101 dorra and at one stage the victim became unconscious. The news item also stated that Moulana Abu Bakar opined that 101 lashes were inflicted as per Islami Sharia.

None of the respondents filed affidavit-in-opposition controverting the statements made in the Writ Petitions.

Ms. Sara Hossain, learned Advocate appearing in Writ Petition No. 5863 of 2009 and Writ Petition No. 754 of 2010, submits that the imposition of extra-judicial punishment and its execution in the name of Fatwa is illegal and without jurisdiction; unless authorised by law, nobody can take law in his own hand and impose punishment. According to her, imposition of extra-judicial punishment is contrary to Articles 31 and 35 of the Constitution.

Mr. Mahbub Shafique, learned Advocate appearing in Writ Petition No. 4275 of 2010, submits that if the statements of the victim, her mother and the report of the Deputy Commissioner are considered in juxtaposition it will appear that the victim was subjected to extra-judicial punishment and that 101 doora were lashed on her person. He further submits that the question of administration of Tawba arises only when Fatwa is given and in the instant case, the victim admitted that she was administered Tawba and as such, it is a clear case that the victim was subjected to extra-judicial punishment in the name of execution of Fatwa. The learned Advocate then submits that the report submitted by the Deputy Commissioner reveals that

the victim was treated in a hospital and that she sustained injuries on her person.

Mr. Md. Salahuddin Dolon, learned Advocate, who is petitioner No. 1 in Writ Petition No. 754 of 2010, submits that imposition of extra-judicial punishment is not only illegal but also without jurisdiction.

We have considered the Writ Petitions and their annexures. We do not like to restate the incidents of extra-judicial punishments like beating, canning and whipping already mentioned in Writ Petition No. 5863 of 2009.

In Writ Petition No. 754 of 2010 on the date of issuance of the Rule, we directed respondent No. 3, the Deputy Commissioner, Brahmanbaria and respondent No. 4, the Officer-in-Charge, Kosba Police Station, Brahmanbaria to produce the victim before this Court on 7.2.2010. In obedience to the Court's order, the victim was produced. On the queries made by the Court the victim denied the occurrence as alleged in the news report published in "The Daily Star" on 24.1.2010. She, however, admitted that she had an affair with respondent No. 6, Enamul Mia, who happened to be her paternal cousin. She also stated that she was given in marriage to another person and that when her husband came to know of her affair with respondent No. 6, he assaulted her and sent her to her father's house. She further stated that at the mediation of the villagers she was again given in marriage to respondent No. 6.

Having considered the news report and the statement made by the victim, we are of opinion that the news report published in "The Daily Star" on 24.1.2010 cannot be brushed aside. Similar news items were published in other national dailies across the country.

In Writ Petition No. 4275 of 2010, on the date of issuance of the Rule, we directed respondent No. 7, the Deputy Commissioner, Brahmanbaria to send a report about the occurrence. Respondent No.8, the Superintendent of Police, Brahmanbaria and respondent No.9, the Officer-in-Charge, Police Station-Bancharampur, District-Brahmanbaria were directed to ensure production of the victim before this Court on 2.6.2010. In obedience to the Court's order the victim was produced on 2.6.2010. Both of us had the occasion to talk to her and she admitted the occurrence in part. She stated that she had an affair with a Hindu boy. She further stated that on the date of occurrence she was administered tawba by three Imams in their courtyard in presence of 14/15 persons including the neighbours as she had an affair with a boy of different religion. Her uncle slapped her twice after tawba. She, however, denied giving any Fatwa by the Immams. The mother of the victim also supported the statement of her daughter but contradicted her by saying that only 3 to 4 persons were present in their courtyard. We also called a report from respondent No. 7, the Deputy Commissioner, Brahmanbaria, who in his report stated the news report was true in part. The Deputy Commissioner, however, supported the statement of the victim in his report. In the report the Deputy Commissioner, however, stated that the victim's mother denied giving Fatwa by three Immams and that the girl was administered tawba by the Immams because of her extra-marital affair. The Deputy Commissioner in his report also stated that the following day of the occurrence, the victim was taken to Bancharampur Upazila Health Complex. Doctor found injuries on her body. The injuries mentioned by the doctor as found by the Deputy Commissioner are quoted below:

“Description of injuries: one oblique swelling at Rt. lumber region posterior size 2'' X $\frac{1}{2}$ '' weapons used: Blunt weapon. Age of hurts: 12-15 hours back. Nature of hurt: simple in nature. Advise; 1st aid is given to the patient and she is advised to take rest at home.”

Having considered the news report, the statement of the victim, her mother and the report submitted by the Deputy Commissioner, we are of the opinion that in fact, extra-judicial punishment was inflicted on the victim in the name of execution of Fatwa.

From the incidents detailed in all the Writ Petitions, a picture clearly emerges that primarily poor and vulnerable women and men in rural areas across the country have been subjected to whipping, lashing and beating in imposition and execution of certain penalties, by private individuals acting without any authority of law. Apart from the status of Fatwas which is pending decision in the Appellate Division, imposition and execution of punishment by private persons is foreign to our system of administration of criminal justice and those who indulge in it are themselves guilty of various offences as pronouncement and execution of such penalties all clearly result in the commission of crimes punishable under various laws including the Penal Code, 1860 and the Nari-O-Shishu Nirjaton Domon Ain, 2000. The respondents and all citizens have clear obligations under the law to prevent the commission of crimes. Such obligations with regard to local government officials are elaborately set out in the Union Parishads Ordinance, 1983. In addition, the Ordinance sets out the powers and functions of the Union Parishads in particular to maintain law and order and preventing the commission of crimes as well as the powers and functions of the

Government in issuing directions and standing orders as necessary for the purpose of the Ordinance in particular in sections 30, 32, 38, 61 and 62 as well as the schedules thereto.

Imposition and execution of extra-judicial penalties including those in the name of execution of Fatwa is bereft of any legal pedigree and has no sanction in laws of the land.

Article 31 of the Constitution states:

“Right to protection of law. To enjoy the protection of law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.”

This article in fundamental rights chapter makes it explicitly clear that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. The incidents stated in the body of the judgment amply prove that the victims were not treated in accordance with law and that the punishments were imposed upon them in violation of Article 31 of the Constitution.

Article 27 of the Constitution provides that all citizens are equal before law and are entitled to equal protection of law.

Sub-Articles (1) and (2) Article 28 of the Constitution state that the State shall not discriminate against any citizen on grounds only of religion,

race, caste, sex or place of birth and that women shall have equal rights with men in all spheres of the State and of public life.

Sub-Article (3) of Article 28 of the Constitution provides that no citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.

Sub-Article (1) of Article 35 of the Constitution provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor shall be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence. (emphasis is ours)

Sub-Article (5) of Article 35 of the Constitution states that no person shall be subjected to torture or cruel, inhuman or degrading punishment or treatment.

The incidents detailed in the Writ Petitions also involve violation of Articles 27, 28 and 35 inasmuch as they amount to discrimination against women, who are overwhelmingly the subject of such extra-judicial penalties and who are systematically denied recourse to law or legal protection and to protection from cruel or degrading or inhuman treatment or punishment.

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.

Further, various courts and persons are empowered to undertake alternative dispute resolution, rather than adjudication, for example through arbitration or conciliation. Under the Code of Civil Procedure the parties may in a mediation proceeding select as mediator a person who is not a judge and under the Family Courts Act the Court may arrange a pre-trial hearing. The Muslim Family Laws Ordinance allows setting up of an Arbitration Council, the Chairman of the Council being the Chairman of the respective local government body. Further, under the Local Government (Union Parishad) Act the Parishad is empowered to deal with resolution of family disputes. In addition, traditional dispute resolution processes through the salish for resolution of *inter alia* family disputes take place, but imposition of penalties, such as caning, whipping etc. or fine in such salish by a private person is bereft of any legal authority and is illegal.

In the formal Courts, or in the context of alternative or traditional dispute resolution processes, there is no scope for the application of any

version of ‘shariat’ to the incidents in question, or the nature of the penalties, given that there are specific statutory provisions in this regard.

In Bangladesh, the Muslim Personal Law (Shariat) Application Act, 1937 provides that Shariat Law may be applied to certain specified issues as mentioned in section 2 which does not include criminal law. This Act also does not recognize ‘fatwa’ as law. Section 2 of the Act is quoted below:

Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and waqfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the muslim Personal Law (Shariat).

The issues included in section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 are applicable subject to the provisions of the Muslim Family Law Ordinance, 1961 and the Muslim Marriages and Divorces (Registration) Act, 1974.

The procedure relating to Muslim marriages and divorces is specifically prescribed in the Muslim Marriages and Divorces (Registration) Act, 1974. There is no such provision in the Act, 1974 where a private person such as Mufti, Moulana or Imam is given power to administer/execute marriages or divorces on behalf of the concerned

authority as per the rules prescribed. In addition, Muslim marriage is a simple contract and even religious ceremony is not essential.

The failure of the State to take any systematic action to address such incidents of imposition and execution of extra judicial penalties involves a breach of its obligations under the Constitution and international law to ensure the right to freedom from cruel, inhuman and degrading treatment or punishment.

The International Legal Prohibition of Torture or Other Ill-Treatment is binding on Bangladesh.

- a) Bangladesh has an obligation under international law to prevent, prohibit and punish torture and other cruel, inhuman or degrading treatment or punishment. This obligation is contained in a number of international treaties binding on Bangladesh. The universally recognized prohibition of torture or other ill-treatment is also a basic principle of customary international law.
- b) Article 7 of the International Covenant on Civil and Political Rights (ICCPR) provides that, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” This provision enshrines an absolute proscription, which cannot be limited in any circumstances, and from which no derogation is possible.
- c) Moreover, Articles 2 and 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) outline that States must prevent acts of

torture and other ill-treatment. Article 2(2) of the Convention provides that “no exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.” The UN Committee Against Torture has affirmed that the prohibition of such conduct is absolute and non-derogable.

- d) The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) does not explicitly refer to the prohibition of torture and other ill-treatment. Nonetheless, the Committee on the Elimination of Discrimination against Women has held that violence against women “impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law.
- e) The Human Rights Committee in its General Comment No. 7 has stressed that the prohibition on torture and other ill-treatment, “must extend to corporal punishment.”

It is important to note that the Courts of Bangladesh will not enforce those Covenants as treaties and conventions, even if ratified by the State as they are not part of the *corpus juris* of the State unless those are incorporated in the municipal legislation. But the court can look into these conventions and covenants as an aid to interpretation of the provisions of Part III of the Constitution particularly to determine the rights implicit in the rights like the right to life and the right to liberty, but not enumerated in the Constitution.

In the case of H.M. Ershad v. Bangladesh, 2001 BLD (AD) 69, it was held: “The national courts should not straightway ignore the international obligations which a country undertakes. If the domestic laws are not clear enough or there is nothing therein the national courts should draw upon the principles incorporated in the international instruments.” In the case of *Apparel Export Promotion Council v. Chopra, AIR 1999 SC 625* it was held, “In cases involving violation of human rights, the courts must for ever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field.”

Article 25 occurring in Part II (Fundamental Principles of State Policy) of the Constitution states, amongst others, that the State shall base its international relations on the principles of respect for international law and the principles enunciated in the United Nations Charter.

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 (Tawba) 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.

As stated earlier failure of the State to take any systematic action to prevent such incidents of imposition and execution of extra-judicial penalties involve a breach of its obligations under the Constitution and international law to ensure the right to freedom from cruel, inhuman and degrading treatment or punishment.

Referring to professor Muhammed Khalid Masud, Editor of Legal Islamic Interpretations: Muftis and Their Fatwas (Edited by Muhammad Khalid Masud, Brinkley Messick, and David S. Powers. Cambridge, Mass: Harvard University Press, 1996), Ms. Sara Hossain quotes a few lines as under:

“A fatwa is an opinion; only an expert can give it. A fatwa, even if by an expert is not a decree; it is not binding on the court or the state. The Mufti has no authority to punish or impose punishment. Punishment cannot be imposed privately without lawful authority. The state can ban a fatwa that leads to violence and fitna”.

She then submits that issuance of Fatwa contradicting the existing law of Bangladesh is not only illegal but also impermissible.

In this connection, we would like to mention that the question of validity of issuance of Fatwa is now pending before the Appellate Division in a Civil Appeal. Therefore, we refrain from making any comment about this question. We are concerned with the question of imposition of extra-judicial punishments including those in the name of execution of Fatwa and we have already addressed the question.

It a matter of great concern that even many educated people are not aware of their rights and obligations under the Constitution and of the rule of law. In order to overcome the situation, it is the duty of the Government incorporate versions types of articles and educational materials in the syllabus of school, college and university level and particularly in madrasa level highlighting the supremacy of the Constitution and the rule of law and discouraging imposition of extra-judicial punishment in any form including those in the name of execution of Islamic Sharia/Fatwa.

Considering the facts, circumstances and material on record we find substance in the instant Rules. In order to follow up the implementation of the directions of the judgment, these Rules shall be treated as continuing mandamus.

In the result, all the Rules are made absolute and the imposition of extra-judicial punishments including those in the name of execution of Fatwa is declared to be without lawful authority having no legal effect with the following directions:

- (i) The persons responsible for imposition of extra-judicial punishments and the abettor(s) shall be held responsible

under the relevant sections of the Penal Code and other laws of law applicable in the regard.

- (ii) The law enforcing agencies and the Union Parishads and the Pourashavas across the country shall take preventive measures so that extra-judicial punishments including in the name of execution of fatwa do not happen in their concerned areas. If such an occurrence happens in their concerned area, they shall take appropriate legal steps for prosecution of the offender(s).
- (iii) The Government in the Ministry of Local Government shall intimate the law enforcing agencies, all the Union Parishads and the Pourashavas across the country that imposition of extra-judicial punishment is beyond the Constitution and is punishable under the law. The Government shall take appropriate steps for creating awareness amongst people that imposition of extra-judicial punishment is impermissible in law and is, in fact, a crime.
- (iv) The Government in the Ministry of Education is directed to incorporate various types of articles and educational materials in the syllabus in School, College and University level and particularly in Madrasha level highlighting the supremacy of the Constitution and the Rule of law and discouraging imposition of extra-judicial punishment of any form in the name of execution of Islamic Sharia/Fatwa.

There is no order as to costs.

Before parting with the record we would like to record a note of appreciation for Mr. Md. Salahuddin Dolon, Ms. Sara Hossain, Mr. Mahbub Shafique and Mr. Razik-Al-Jalil, the learned Deputy Attorney General for their able assistance in disposing of the Writ Petitions.

Let a copy of the judgment be communicated to the Ministry of Local Government and Rural Development, the Ministry of Home Affairs, Ministry of Women and Children's Affairs and the Inspector General of police by a special messenger of the Court at the costs of the office.

Gobinda Chandra Tagore, J

I agree.