

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. \_\_\_\_\_ OF 2011.

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Public Interest Litigation (PIL)

AND

IN THE MATTER

1. Human Rights and Peace for Bangladesh  
(HRPB) Represented by its Secretary Advocate  
Asaduzzaman Siddiqui, Hall No. 2, Supreme

Court Bar Association Bhaban, Dhaka,  
Bangladesh.

2. Advocate Sarwar Ahad Chowdhury,  
Organizing Secretary, Human Rights and Peace  
for Bangladesh (HRPB) of 3/14 Bashbari Bosila  
Road, Mohammadpur, P.S.: Mohammadpur,  
Dhaka.

..... Petitioners.

-V E R S U S-

1. Bangladesh represented by the Secretary  
Ministry of Home Affairs, Bangladesh  
Secretariat, P.S.: Ramna, District: Dhaka.

2. The Inspector General of Police (IGP)  
Police Bhaban, Phulbaria, P.S.; Ramna, District-  
Dhaka.

3. The Deputy Commissioner  
Moulavibazar, District- Moulavibazar,  
Bangladesh.

4. The Police Super, Moulavibazar, District-  
Moulavibazar, Bangladesh.

5. The Officer in Charge (O.C.), Moulavibazar  
Sadar Thana, District- Moulavibazar,  
Bangladesh.

6. Moulavi Faizul, Secretary, Borokapan Jame  
Masjid, village- Borokapan, U.P. Ekatuna, P.S.  
Moulavibazar Sadar Thana, District-  
Moulavibazar.

7. Azad Mia, of village- Borokapan, U.P.  
Ekatuna, P.S. Moulavibazar Sadar Thana,  
District-Moulavibazar.

8. Nanu Mia, Borokapan Jame Masjid,  
village- Borokapan, U.P. Ekatuna, P.S.  
Moulavibazar Sadar Thana, District-  
Moulavibazar.

9. Askor Mia of village- Borokapan, U.P.  
Ekatuna, P.S. Moulavibazar Sadar Thana,  
District-Moulavibazar.

.....Respondents.

AND

IN THE MATTER OF:

For a direction to take legal action against the  
persons who forced for hilla marriage and to  
take necessary steps to stop activities against  
the provision of law by the fatwabaz at the  
village of Borokapan, U.P. Ekatuna, P.S.

Moulavibazar Sadar Thana, District-  
Moulavibazar.

To,

Mr. Justice A.B.M. Khairul Haque, the Hon'ble Chief Justice of  
Bangladesh and the companion Judges of the Hon'ble Supreme Court.

The humble Petition of the Petitioner above named most  
respectfully;-

**S H E W E T H:**

1. That the organization Human Rights And Peace For Bangladesh (HRPB) is a non profitable registered organization and the objects of the organization are to uphold the human rights of the citizen, to establish rule of law, to work for the poor people, to give legal support to the helpless people, and to build up awareness amongst the people about their rights etc. That the petitioners are the members of the organization

and engaged in promoting and defending human rights, working to establish rule of law and supporting the victims of human rights violations.

2. The petitioners being conscious citizen and respectable member of the Bar is seeking direction For a direction upon the respondents to ensure rule of law and to take necessary steps to against the law violators. The petitioners seek to bring this application by invoking Article 102 of the Constitution as public interest litigation in order to establish rule of law.

3. That the respondent No. 1 is Bangladesh, represented by the Secretary Ministry of Home Affairs, Bangladesh Secretariat, P.S.: Ramna, District: Dhaka. Respondent no. 2 is The Inspector General of Police (IGP) Police Bhaban, Phulbaria, P.S.; Ramna, District- Dhaka. Respondent no 3 is The Deputy Commissioner Moulavibazar, District- Moulavibazar, Bangladesh. Respondent no. 4 is The Police Super,

Moulavibazar, District- Moulavibazar, Bangladesh. Respondent no. 5 is The Officer in Charge (O.C.), Moulavibazar Sadar Thana, District- Moulavibazar, Bangladesh. Respondent no. 6 is Moulavi Faizul, Secretary, Borokapan Jame Masjid, village- Borokapan, U.P. Ekatuna, P.S. Moulavibazar Sadar Thana, District-Moulavibazar. Respondent no. 7 is Azad Mia, of village- Borokapan, U.P. Ekatuna, P.S. Moulavibazar Sadar Thana, District-Moulavibazar. Respondent no. 8 is Nanu Mia, Borokapan Jame Masjid, village- Borokapan, U.P. Ekatuna, P.S. Moulavibazar Sadar Thana, District-Moulavibazar. Respondent no. 9 is Askor Mia of village- Borokapan, U.P. Ekatuna, P.S. Moulavibazar Sadar Thana, District-Moulavibazar. That the addresses of the Petitioners and the Respondents given above are correct for the purpose of service of notices.

4. That it is stated here that the Respondents No. 5 is serving under the respondents no. 4 . He is the chief of the law enforcing agency of

Moulavibazar District. Some peoples living within the jurisdiction of the Respondents No. 4 are causing threat to helpless people and bound them to get hilla marriage violating the provision of law and as it involves great public importance, so this petition may be treated as public interest litigation.

5. That it is stated here that Human Rights And Peace For Bangladesh (HRPB) is an organization working on different issues and many public interest litigations have been filed by them. In many cases the Hon'ble High Court Division has passed judgment such as i) VAT collection from the patient declared illegal, ii) directed to constitute civil vacation court during civil vacation in every December in subordinate court, iii) directed not to set up any cattle hat on the street in Dhaka City during Eid-UI-Azha and removing all slaughtering materials within 24 hours with a hygienic manner, iv) directed to form an inquiry commission about murder/rape /persecution/torture committed immediate after parliament election of



2001 upon the then opposition supporter and minorities, v) directed to set up food court in every city in order to prevent food adulteration, vi) directed to form an “Earthquake Preparedness And Awareness Committee” and collected the necessary earthquake rescue equipments as per their recommendation, vii) directed to protect river Buriganga, Balu, Turag and Shitalakha and to stop encroachment in the rivers as well as directed to remove all the structure from inside the rivers and etc. Many others cases are pending before the Hon’ble High Court Division. The organization is always bearing all the cost of the cases by it’s own fund which is raised by the donation of the members. The organization received no fund from abroad or from any citizen of the country except the lawyer members. Due to present high volume of cases it is not possible to bear the cost of the cases filed before the Hon’ble High Court Division as public interest litigation. Under these circumstances it is necessary to exempt the cost of the cases filed by the organization as public interest litigation.

Hence a direction may be given to the office to register the application as a writ petition and also notices may be served at the cost of office.

6. That it is stated here that the respondent are the experienced public servant and very much aware of the rules and instructions of the law.

More over the issues of fatwa are always reporting in media, so it is not out of the knowledge of the respondents. Under these circumstances in such a public interest issues which is always in the notice of the respondents, is not necessary to bring his notice again by way of sending any legal notice.

7. That it is stated here that it is in the interest of the petitioners and for the benefit of the citizens of the country and in order to establish the provision of law, the petitioners move this public interest Litigation (PIL) before this Hon'ble court.

8. That it is stated here that a news was published in the daily News Papers on 10.02.2011 stating the headline that “ ফতোয়াবাজদের হুমকিতে পালিয়ে বেড়াচ্ছে দম্পতি.” . The petitioners read the news and then feel very much aggrieved about the hilla marriage by force violating the provision of the Muslim law. It was also reported that in case of some unlawful divorce the women were forced to get hilla marriage and fatwa is giving in this regard by some fatwabaz. Though the land of the law do not permit such kinds of hilla marriage but due to illegal fatwa given by the un-authorized persons, it is continuing at the area repeatedly.

Copy of the paper cutting is annexed here with

and marked as **‘ANNEXURE-A.’**

9. That it is stated here that the practice of Fatwa against the existing law and failure of the authorities to take any action against them or to prevent or punish the perpetrators of Fatwa results in the violation of

existing applicable laws, human rights. It is contrary to the laws of Bangladesh and against the Constitution.

10. That it is stated here that the Fatwa in respect of hilla marriage as the Facts and circumstances reported in news paper resulted in inhuman, having no authority under the law to force a married woman to marry another person against her wish.

11. That it is stated here that in Bangladesh, laws relating to the dissolution of a Muslim marriage and the re-marriage after the dissolution are codified in the Muslim Family Laws Ordinance 1961, which takes effect notwithstanding any law, custom and usage. The provision of Section 7 of the Muslim Family Laws Ordinance, 1961, are as follows:-

৭) তালাক- (১) কোন ব্যক্তি তাঁর স্ত্রীকে তালাক দিতে চাইলে যে কোন প্রকারের তালাকে, তালাক উচ্চারণ করার পরপরই তাঁর এরূপ করার বিষয়ে চেয়ারম্যানকে লিখিত নোটিশ দেবেন এবং স্ত্রীকে এর একটি অনুলিপি সরবরাহ করবেন।

(২) কেউ (১) উপধারার বিধান লঙ্ঘন করলে তিনি এক বছর পর্যন্ত যে কোন মেয়াদের বিনাশ্রম কারাদন্ডে অথবা (দশহাজার টাকা) পর্যন্ত জরিমানায়, অথবা এতদুভয় দন্ডে দন্ডনীয় হবেন।

(৩) (৫) উপধারার বিধান অনুসারে প্রকাশ্যে বা অন্য কোনভাবে কোন তালাক আগে প্রত্যাহার করা না হয়ে থাকলে, (১) উপধারা মোতাবেক চেয়ারম্যানের কাছে নোটিশ প্রদানের তারিখ থেকে নব্বই দিন অতিক্রান্ত না হওয়া পর্যন্ত কার্যকর হবে না।

(৪) চেয়ারম্যান (১) উপধারা মোতাবেক নোটিশ প্রাপ্তির তিরিশ দিনের মধ্যে পঞ্চদ্বয়ের মধ্যে পুনর্মিলন ঘটানোর উদ্দেশ্যে একটি সালিশী পরিষদ গঠন করবেন এবং সালিশী পরিষদ পুনর্মিলন ঘটানোর জন্য প্রয়োজনীয় সব ধরনের পদক্ষেপ গ্রহণ করবেন।

(৫) তালাক ঘোষনার সময় স্ত্রী গর্ভবতী থাকলে, (৬) উপ-ধারায় বর্ণিত সময়কাল বা

গর্ভাবস্থা, যেটি পরের শেষ হয়, অতিক্রান্ত না হওয়া পর্যন্ত তালাক কার্যকর হবে না।

(৬) অত্র ধারা অনুযায়ী কার্যকর তালাক দ্বারা যে স্ত্রীর বিয়ে সমাপ্ত হয়েছে, সে বিয়ের

সমাপ্তি তৃতীয় বারের মত এভাবে কার্যকর না হয়ে থাকলে, তৃতীয় কোন ব্যক্তির সাথে

মধ্যবর্তী বিয়ে ছাড়া তাঁর পূর্ব স্বামীর সঙ্গে পুনর্বার বিয়েতে কোন বাধা থাকবে না।

12. That it is submitted here that the facts as reported in the news paper, the marriage had not been dissolved. Even if it was taken that the marriage was dissolved, even then law permit for remarry without an intervening marriage with a third person except third time. These acts are not only derogatory to the Constitution and therefore void but also discloses commission of further criminal offences by forcing a lawfully married women to marry another person against her wish. Hence the fatwa in question is wrong.

13. That it is submitted here that as per the provision of talaq- any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the chairman notice in writing of his having done so, and shall supply a copy thereof to the wife. More over a talaq unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under subsection (1) is delivered to the Chairman. So facts as reported in the news paper there was no talaq between the parties but forced to get hilla marriage is totally illegal and against the sprit of law. The persons who gave fatwa for such kinds of hilla marriage, they are liable to be prosecuted under the law. The law enforcing agency has failed to do their job as vested upon them, hence a direction may be given upon them to take necessary steps against the violators of the law .

14. That it is submitted here that the persons who forced to get hilla marriage are liable to be punished under section 508 and 506 of the Bangladesh penal code. More over as per Article 21 of the constitution of the Peoples Republic Of Bangladesh duty of every citizen and public servant is to obey the constitution and law.

15. That it is submitted here that the duty and responsibility vested upon the law enforcing agency to protect the citizen of the country from unlawful activities. The respondents are also duty bound to obey the provisions of law. It is the duty of a police officer to investigate the case where offence committed against the existing provision of law . But they have failed to perform the duties and responsibility as per the constitution.

16. That being aggrieved by and dissatisfied with the inaction of the respondents and having no other equally efficacious remedy the



petitioners beg to move your Lordships on the following amongst others;-

### **GROUND S**

- I. For that the duty and responsibility vested upon the law enforcing agency to protect citizen from the unlawful activities. The respondents are also duty bound to obey the provision of law. It is the duty of a police officer to investigate the case where provision of law has been violated. But they have failed to perform the duties and responsibility as per the law. Hence direction may be given upon the respondents to take legal action against the violators of the law.
  
- II. For that the persons who forced to get hilla marriage are liable to be punished under section 508 and 506 of the Bangladesh penal

code. More over as per Article 21 of the constitution of the Peoples Republic Of Bangladesh duty of every citizen and public servant is to observe the constitution and law but failed it by the respondents. Hence a direction may be given upon the Respondent.

III. For that the facts as reported in the news paper there was no talaq between the parties but forced to get hilla marriage, is totally illegal and against the sprit of law. The persons who gave fatwa for such kinds of hilla marriage, they are liable to be prosecuted under the law. The law enforcing agency has failed to do their job as vested upon them, hence a direction may be given upon them to take necessary steps against the violators of the law .

IV. For that the practice of Fatwa against the existing law and failure of the authorities to take any action against them or to prevent or

punish the perpetrators of Fatwa results in the violation of existing applicable laws, human rights. It is contrary to the laws of Bangladesh and against the Constitution.

Wherefore it is most humbly prayed that your Lordships would graciously be pleased to issue: -

a) Direct the office to register this application as a Writ Petition.

b) A Rule Nisi calling upon the Respondents to show cause as to why the Respondents should not be directed to take legal action against the law violators and why a

direction should not be given upon the respondents to initiate legal proceeding against the respondent no 6-9 under section 508/511 of the penal code.

c) Pending hearing of the rule direct the respondent 3 and 4 to ensure the steps for rehabilitation of Koisar Mia and his wife Rabea Khatun of village Borokapon, U.P. Ekatuna of Molavibazar Sadar Thana, District- Moulavibazar, in their living house and to arrange safety of them, within 48 hours and to file affidavit in compliance thereof within 7 days.

d) Pending hearing of the rule direct the respondent no. 6 to 9 to appear in person On

24.02.2011 at 10.30 am before this court and respondent no. 5 is directed to ensure the presence of the respondent no. 6-9.

e) Direct the office to serve the notice upon the respondents at the cost of office.

f) Pass such other and further order or orders as may seem fit and proper to Your Lordships.

g) After hearing the parties make the Rule absolute.

h) Make the Rule absolute upon hearing the cause if any shown by the Respondent.

And for this act of kindness your petitioner as in duty bound shall ever pray.

**Name of the Applicants-**

1. Advocate Asaduzzaman Siddiqui.....
2. Advocate Sarwar Ahad Choudhury.....

Submitted By;-

Manzill Murshid  
গব্বরজ তগব্বিতম`  
Advocate  
Supreme Court of Bangladesh.

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. ....OF 2011.

IN THE MATTER OF:

Adv. Asaduzzaman Siddiqui and another

.....Petitioners.

-V E R S U S-

1. Bangladesh and others.

.....Respondents.

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4.	BACK SHEET		

Manzill Murshid,  
মনজিল মোরসেদ  
Advocate  
For the Petitioners.

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. \_\_\_\_\_ OF 2011.

IN THE MATTER OF:

Adv. Asaduzzaman Siddiqui and another.

.....Petitioners.

-V E R S U S-

1. Bangladesh and another.

.....Respondents.

Manzill Murshid  
মনজিল মোরসেদ  
Advocate  
For the Petitioners



IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO.....OF 2011.

IN THE MATTER OF:

Adv. Asaduzzaman Siddiqui and another

.

.....Petitioners.

**-V E R S U S-**

Bangladesh and others.

.....Respondents.

To,  
The Learned Attorney General  
The Peoples Republic of Bangladesh

Dear Sir,

Please take notice that an application under Article 102 of the constitution, will be filed and moved before this Court, a copy of which is enclosed herewith for your kind information.

Regards-

Manzill Murshid  
মনজিল মোরসেদ  
Advocate  
Supreme Court of Bangladesh

