



International Standards for Women's Rights

The Government of Bangladesh's (GOB) reservations to the Convention are incompatible with its obligations under international and domestic law and also violate constitutional guarantees of equality. It is therefore concluded that either (a) GOB is under an obligation to withdraw its reservations to the Convention or (b) GOB has ratified the Convention unreservedly. Thus, the GOB is under an obligation to implement domestic legislation, where necessary, giving force to its obligations under the Convention to ensure women's rights in Bangladesh in all spheres of life.

A Bangladesh's Reservations

The text of GOB's reservations is as follows: "The government of the People's Republic of Bangladesh does not consider as binding upon itself the provisions of articles 2, 13 (a) and 16.1 (c) and (f) as they conflict with Sharia law based on the Holy Quran and Sunna."

At the time of ratification, Mexico, Sweden and the FRG denounced Bangladesh's reservation on the grounds that they are incompatible with the objects and purposes of the Convention. Mexico's objection to the reservation is as follows:

"In the light of Article 28, paragraph 2, of the Convention itself, those reservations should be considered invalid as being incompatible with the object and purpose of the Convention."

"Indeed, those reservations if implemented, would inevitably result in discrimination against women by reason of their sex, contrary to the entire intent of the Convention. The principles of equality between men and women and of non-discrimination on the basis of sex are enshrined in the second preambular paragraph and in Article 1, paragraph 3, of the Charter of the United Nations — and Bangladesh has accepted the obligations contained therein — as well as in other internationally recognized instruments."

B. Permissibility

It can be argued that the GOB's reservations to the Convention are invalid on the following grounds:

Incompatibility with the objects and purposes of the treaty

According to Article 28 (2) of the Convention and Article 19 of the Vienna Convention on the Law of Treaties 1969, any reservation which is incompatible with the objects and purposes of the treaty is invalid. The main object and purpose of the Convention is to eliminate all forms of discrimination

The UN Convention on Elimination of All Forms of Discrimination against Women, popularly known as UNCEDAW is a landmark document for women because it provides a comprehensive and universal obligation on States to eliminate discrimination in all spheres of life. States Parties to UNCEDAW are required to introduce domestic legislation and policy measures to bring about gender equality. States entering reservations are expected to justify their decision in terms of their commitment to the goal of equality. Today over 116 countries have ratified UNCEDAW. In 1984 Bangladesh ratified UNCEDAW with reservations to clauses 2, 13 (a) and 16.1 (c) & (f).

State progress in achieving this goal is monitored through regular government reports to the UN Committee on the Elimination of Discrimination against Women. The GOB submitted reports to the committee in 1986 and 1990. Another report was due in 1993.

There is little public awareness in Bangladesh about the importance of UNCEDAW as an instrument for implementing gender equality. Considering the importance of objective monitoring over 40 organisations initiated an alternative report on the constraints to equality created by the government's reservations and the measures taken to eliminate discrimination.

The following section has been excerpted from the Alternative Report on Implementation of UN Convention on Elimination of all forms of discrimination against Women in Bangladesh, submitted to the UN Committee in Vienna.



against women. The reservations to Article 2 would appear to negate the GOB's obligations to implement the Convention, and are, therefore, invalid as being incompatible with the object and purposes of the Convention.

contained in the UN Charter, the Universal Declaration of Human Rights and other international instruments. The reservations are, therefore, incompatible with the GOB's obligations under international law to guarantee equality between men and women and are invalid.

Obligation to perform international obligations in good faith

It is a principle of international law that "every treaty is binding upon the parties to it and must be performed in good faith" (Art. 26, Vienna Convention on the Law of Treaties, 1969). The GOB's reservations are so wide and general in their scope that they act as obstacles to performing the obligations recognised in the Convention.

Vagueness and Ambiguity The GOB's reservations are framed in extremely wide and general terms and do not provide adequate legal justification for its failure to respect the primary object of the Convention, to eliminate discrimination against women:

(a) Bangladesh's reservations are justified on the grounds of conformity with the Sharia, which determines the legal relations of all Muslims in the private sphere. The reservations, however, fail to justify with sufficient particularity the specific grounds on which Sharia constitutes an insuperable obstacle to implementing these provisions. It is unclear why Art 2 of 13 (a) should be considered to be violative of Sharia. As regards Art 16.1 and rights within the family, the GOB has effected significant reforms through both its judicial and legislative organs which indicate that it does not consider the Sharia as immutable.

(b) The text of the reservation is ambiguous with regard to the scope of its application. It could

be argued either that the reservations are absolute, that is because they are in conflict with Sharia, or that they apply only to the extent that they are in conflict with Sharia. Bangladesh has a sizeable non-Muslim population, to whom Sharia law is not applicable. On one reading, the reservation applies to and denies equal rights in the family to all women, including non-Muslims who are not governed by the Sharia — an untenable conclusion. Alternatively, the reservation only applies to and restricts the family rights of Muslim women, while allowing the full protection of the Convention only to non-Muslim women — an equally untenable conclusion.

C. Bangladesh's Obligations under the Convention

As the GOB's reservations are impermissible in international law, it should be taken to have ratified the Convention unreservedly and to be bound by all its provisions.

Alternatively, if any ambiguity remains, an advisory opinion could be sought from the International Court of Justice to clarify the status of GOB's reservation.

Under Article 24 of the Convention, the GOB has an obligation "to adopt all necessary measures at the national level aimed at achieving the full realisation of the rights recognised in the present Convention." It can therefore proceed to bring its domestic laws into line with its international obligations to guarantee the equality of men and women and non-discrimination against women. A number of significant judicial and legislative interventions have been made to conform to changing social conditions. (In Bangladesh, with the enactment of the Muslim Family Laws Ordinance (1961), amendments were introduced to the conditions for divorce, inheritance, etc., which may not have conformed with the traditional convention of the Sharia.) All laws other than personal laws are based on civil not religious law. There is no justification for retaining personal laws based on religious interpretations if they violate the principle of equality.

The main argument in favour of full ratification of the Convention is that all laws are made for the greater interest of the people, and the withdrawal of reservations to Articles 2, 13 (a) and 16.1 (c) and (f) would be in the interest of the principle of equality, and of 50% of the population.

Convention on the Elimination of All Forms of Discrimination against Women

On 18 December, 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly. It became an international treaty on 3 September, 1981 after the twentieth country had ratified it.

Bringing the female half of humanity into the focus of human rights concerns, the Convention establishes not only an international bill of rights for women but also an agenda for action by countries to guarantee those rights.

Governments are committed to:

- creating conditions within which women can exercise and employ basic rights and freedoms.
- affirmative action for women until parity with men is achieved.
- abolishing all forms of slavery and prostitution of women.

ensuring equal rights to choose a spouse, name or occupation; marry and divorce; own, buy, sell and administer property; share parenting, regardless of marital status; and choose the number and spacing of their children, including adoption or guardianship. In addition, governments are committed to establishing a minimum age for marriage and to ensuring that all marriages are entered into freely, by mutual consent.

States which have ratified or acceded to the Convention

(102 as of 1 June, 1990)
Developed regions (32)
Australia, Austria, Belgium, Bulgaria, Belorussian Soviet Socialist Republic, Canada, Cyprus, Czechoslovakia, Denmark, Finland,



Let it never happen again.

- securing women's right to vote, stand for election and hold public or political office.
- providing equal opportunity for women to represent their countries internationally.
- allowing women the right to change or retain their nationality and that of their children, regardless of marital status.
- ensuring girls' and women's equal access to quality education in all subjects and at all levels, including continuing and vocational programmes for women.
- ensuring equal employment opportunities, promotion, vocational training, job security benefits and equal pay for work of equal value. In addition, they must ensure that women who are married, pregnant or have children have the right to work and the right to maternity leave and other benefits; they must also ensure that child care is available and that pregnant women are protected from work that may be hazardous to their health.
- providing adequate health services, including family planning where necessary, and prenatal and post-natal care, including nutrition for pregnant and lactating mothers.
- ensuring access to financial credit and family benefits, and the right to participate in recreational, cultural and athletic activities.
- giving special attention to all the provisions of the Convention to women living in rural

France, German Democratic Republic, Germany, Federal Republic of, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, New Zealand, Norway, Poland, Portugal, Romania, Spain, Sweden, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Yugoslavia

Africa (28)
Angola, Burkina Faso, Cape Verde, Congo, Egypt, Equatorial Guinea, Ethiopia, Gabon, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritius, Nigeria, Rwanda, Senegal, Sierra Leone, Togo, Tunisia, United Republic of Tanzania, Uganda, Zaire, Zambia

Latin America and the Caribbean (30)
Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St Kitts and Nevis, St Lucia, St Vincent, Trinidad and Tobago, Uruguay, Venezuela

Asia and the Pacific (12)
Bangladesh, Bhutan, China, Indonesia, Iraq, Lao Peoples Democratic Republic, Philippines, Republic of Korea, Mongolia, Sri Lanka, Thailand, Vietnam

Norplant users in Gazaria

How are They now?

by Shima Das Shimu

NORPLANT trial is being conducted in eight villages under Gazaria thana in Dhaka district. Gazaria is one of the seven centers from where the trial is being conducted. In 1990, UBINIG conducted a study on 41 users under Norplant trial. In 1993 a follow up visit was made to see the conditions of the norplant users. This brief reporting is based on our recent visit to two villages — Srinagar and Sonakandi in Gazaria.

Josna Begum

I met Josna Begum in the year 1990 in the village of Gazaria thana. She had the norplant in her arms for two years at that time. She was acting as a promoter of norplant and was very much engaged in persuading her fellow village women to take the method. She was paid for these activities, which made her more enthusiastic about the method. When I was mentioning about the problems associated with norplant she was not at all in agreement with me.

This time I met her again in August 1993. She could recognise me immediately. She came forward and said, "Apa I did not value your words last time. But now I am a sufferer of this method. I understand fully what you said."

"You see, I was always bringing new clients to the health centre, she added. The doctors never told me that this method could be a problem. I sincerely believed their words."

Josna continued, as if she was waiting to see me again. "I was attacked by tetanus, my hands were bending, I was taken to a different hospital for treatment. After I was cured my husband wanted me to take out the norplant from my arm. But the doctor did not agree. He

said, you are alright now, why do you want to remove it? My husband insisted and finally the doctor removed it."

Josna took the norplant at the age of 30 years. For one year and seven months after the insertion of norplant she had no menstruation. Then for three months she had regular menstruation. But after three months her menstruation never occurred again. It did not come back even after the removal of the method.

Anwara had norplant in-

serted in her arm for one year when I first met her in 1990. At that time I found her very ill. She was suffering from severe bleeding. During a month she used to bleed for 25 days. She could not do any household chores. She started facing bleeding problems immediately after the insertion. She also had itching problem all over her body. She lost weight. Anwara also went to the hospital for removal. The doctors had to be persuaded hard for the removal. Anwara is still suffering from

itching, leukorea, nausea and a lot of other side-effects.

Hosne Ara Begum

Hosne Ara has a norplant in her arm for last four years. She wants to remove it, as she cannot tolerate the health problems. But every time she goes to the center the doctors rebuke her and send her back. She feels that her hand and arm is becoming weak and numb.

Khorsheda Begum

Khorsheda has norplant in her arm for last 4 years. She is a wage labour in paddy husking workshop. But now a days she remains sick most of the time, therefore, cannot do any hard work. Her family is poor and is now being deprived of her income. This has already caused unhappiness in the family relationship. Once her sister-in-law took her to the center and requested the doctor to remove the method from her arm. But the doctor was so angry and rebuked her sister-in-law for advocating on her behalf. They never went back to the doctor again.

Norplant is still being inserted in the arms of women under this center. The situation has changed slightly. The family planning workers are not able to persuade women as easily as they could do before because of the side-effects suffered by other women in the same villages. The doctors though are responding to the request for removal but, yet it takes lots of persuasion from the clients. The removal rate is significant. Out of 18 women we met in Srinagar, seven have already removed.

However, the women remarked: "May be doctors did not know how to remove the method, now they have learnt it."

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War against Rape

A rape victims is generally reluctant to report the crime because of her fear of the rapist's vindictiveness, of social censure, her own sense of shame and the negligence of law enforcement agencies. In order to pursue charges of rape, women victims need legal and social support. This is well illustrated by the following case, in which fictitious names have been used to maintain anonymity.

Last April a young 13 year old garment worker was raped by an elderly neighbour in a city bastic. Aleya lived with her parents and a brother. Her father was a day labourer and earned Tk 500 per month. As she was a friend of the neighbour's daughter she went over to stay with her, during her mother's visit to the village. During the night the neighbour allegedly raped her. He forced himself on her in the next few nights and frightened her into silence. It was only a few months later when her family recognised her pregnancy symptoms, that the brother filed a case against the neighbour under section 376 of the Bangladesh Penal Code.

Four days later the accused was taken into jail custody. After his release on bail, he started threatening the neighbours, on the strength of his association with a well known pir. The landlord and a few neighbours, as disciples of the pir, were unwilling to intervene. The former refused to terminate his lease, and the latter were not afraid to give evidence.

Because his threats were likely to affect the trial, an application for cancellation of his bail was filed, but this was rejected by the Magistrate. The brother then filed a GD at the thana. It was not until four months later that the police charge sheeted the accused.

In the meantime Aleya was admitted to a woman's shelter for her security. While here she underwent a miscarriage and had to be rushed to hospital. The accused then offered to marry the victim as if this was a generous compensation for his crime. A coercive marriage between the criminal and the victim, though grotesque to visualise, is commonly accepted as a solution.

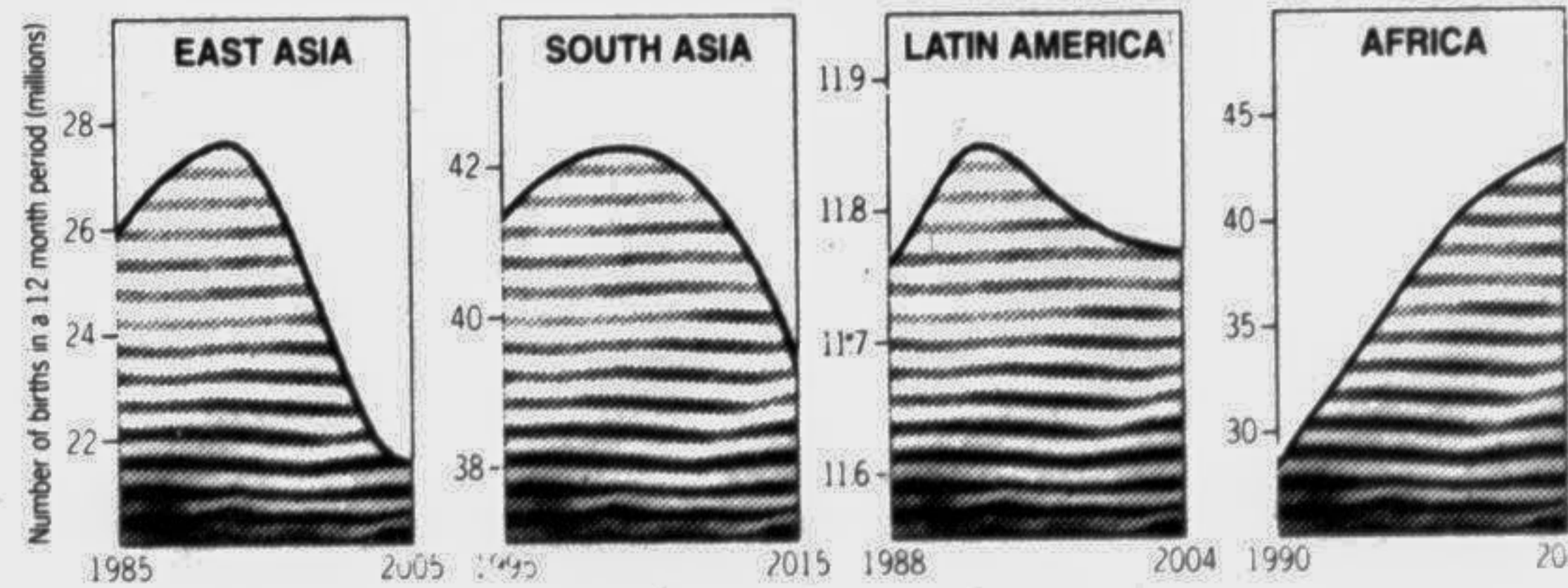
Living in a shelter, Aleya has been separated from her family and prevented from working. On the other hand the accused is free to move around, while his lawyer keeps postponing the hearings on one excuse or another.

Filing a case against rape has been an important precedent for the basic women, but sluggish judicial action and the accused's capacity to intimidate the victim's family are likely to deter their resolve for justice. In this case, as well as in others, the victims and her family needs solidarity and counselling in their war against rape.

— AIN O SALISH KENDRA

Births: the turning point

The world is approaching a significant turning point. Except in Africa, the annual number of births is reaching a peak after decades of rapid growth. Once births begin to decline, further investment in health and education can increase the proportion of people reached.



Source: State of the Children, 1993, UNICEF