



## INTERNATIONAL WOMAN'S DAY 2008

INVESTING IN WOMAN AND GIRLS

## HUMAN RIGHTS monitor

## CEDAW AND BANGLADESH

## Awareness necessary to promote women's rights

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18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it. Bangladesh is one of the 185 countries which signed their commitments to the convention. On the 6th of November 1984, Bangladesh ratified CEDAW with reservations on Articles 2, 13.1(a), 16.1(c) and (f) on the basis of religious sentiments. While the government feels that these provisions conflict with religious Islamic laws, women feel these reservations violate upon the protection and promotion of their rights. Women's organizations have demanded withdrawal of all reservations and full implementation of the Convention.

The Convention was the conclusion of more than thirty years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor the situation of women and to promote women's rights. The Commission's work has been instrumental in bringing to light all the areas in which women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which CEDAW is the central and most comprehensive document. It has 30 articles and 3 basic principles.

## Overall achievement

We strive to achieve women-secure environment in Bangladesh. In the mean time some works have been done by the Government of Bangladesh with support of some development organizations. We can mention some special areas where we achieved positive result like, women employment, women capacity building, increased women literacy rate, enlarged awareness among the women on different social issues and women participation in decision making. It is not significant but we have started. The UNDP Gender Development Index (GDI) for 2004 ranked Bangladesh 110 among 144 countries, an increase of 13 positions since 1999. This improvement reflects a

closing of the gap between men and women in key indicators such as life expectancy.

A significant gender disparity persists in both income and human poverty, especially at the lower end of income distribution. Overall Bangladesh's performance with regard to achieving gender equality and women's empowerment (MDG 4) remains mixed. There has been a narrowing of the gender gap in most social MDG indicators in general and in the education sector in particular, where, as a result of targeted government policies, female enrolment rates in primary and secondary schools exceeds those for males. However, in other areas such as economic and political participation and adult literacy, much still remains to be done to ensure the rights to survival, livelihood and participation.

Government of Bangladesh also took some legal initiatives such as:

- creating Directorate on Women's Affairs in 1984, enacting Family Courts Law in 1985, enacting Muslim Family Laws (Amendment) Ordinance in 1992, declaring compulsory primary education for women in 1992, declaring full-free schooling up to class-VIII in 1993, declaring food for education in 1993-94, providing stipends to girl students from class-VIII to class-X in 1994-97, enacting the Special Tribunal Act in 1995, allowing women to contest in direct election in three reserved seats in the Union Parishad in 1997, undertaking the National Plan of Action on Women Advancement on the basis of CEDAW and the Beijing Platform for Action (BPPA) in 1998, enacting the Women and Children Repression Prevention Act in 2000, enacting the Acid Crime Prevention Act and the Acid Control Act in 2002.

A unified effort is more effective than several isolated approaches. This the women learned after proving the success of their advocacy efforts. They were successful in urging the government to withdraw its reservation on Articles 13 (a) and 16.1 (f). The other provisions remain the top priority of women's organizations and NGOs in their lobbying and advocacy activities. Women have begun to be vigilant and participative in political decision-making. The government's action to consult with women's

groups and activists for the preparation of the country report on CEDAW and the integration of CEDAW in domestic legislation proves that women's voices can no longer be ignored. This involvement in the law reform process is by far a great achievement for women. Finally, the effort has united the women and other NGOs in articulating the promotion of women's equal rights.

## Challenges of implementation

Even though Bangladesh ratified the Convention as early as November 1984, no significant steps have been taken to incorporate the obligations under the Convention into national legislation. No systematic steps have been taken for extensive awareness and action programmes to create an enabling environment for the advance of CEDAW. On the other hand some barrier decreased CEDAW implementation, such as arsenic contamination in rural areas, child marriages, lack of women employment at policy making level, maternity leave is not recognized at private sector specially garments sector, no good intention to withdraw reservation on articles 2, and 16.1 (c) of CEDAW, violence against women, existing child marriage and polygamy. We think that the three significant areas of systematic discrimination against women are threatening CEDAW progress need concentration more.

Obstacles to Eliminating Discrimination: Continued reservations to Article 2, which constitutes the core principle of equality and non-discrimination, are an obstacle to eliminating discriminatory national laws and public policy. This Article is not inconsistent with the guarantees given in the Constitution of the People's Republic of Bangladesh; the principle of equality is there in the National Policy for Advancement of Women, and the Interim Poverty Reduction Strategy Programme. Withdrawal of reservations to Article 2 is an essential condition for the elimination of discriminatory laws and policies.

Citizenship Rights: Our second concern is that two outdated laws, The Bangladesh Citizenship Act, 1951 and The Bangladesh Citizenship (Temporary Provisions) Order 1972, deprive women

of equal rights in citizenship. The prescription that the right of citizenship be passed on to children from "father and grandfather" is clearly inconsistent with constitutional guarantees of equality in Article 28(1 & 2). Although Article 6 of the Constitution states that citizenship will be determined and regulated by law, but its intention cannot be to create different classes of citizenship. These laws are also inconsistent with Bangladesh's ratification of Article 9 of CEDAW.

Security of Employment: Migrant women workers work in insecure and unsafe conditions. In 1998, the government placed a ban on the employment overseas of women domestic workers. This has violated the freedom of movement of women and affected their economic status. It might also have led to trafficking and therefore could not be consistent with Article 6.

## Monitoring and reporting

The implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women. The Committee's mandate and the administration of the treaty are defined in Articles 17 to 30 of the Convention. The Committee is composed of 23 experts nominated by their governments and elected by the State parties as individuals "of high moral standing and competence in the field covered by the Convention".

At least every four years, the State parties are expected to submit a national report to the Committee, indicating the measures they have adopted to give effect to the provisions of the Convention. During its annual session, the Committee members discuss these reports with the government representatives and explore with them areas for further action by the specific country. The Committee also makes general recommendations to the State parties on matters concerning the elimination of discrimination against women. All through fulfilling its reporting obligations to CEDAW, the Government of Bangladesh (GOB) has submitted an initial report and second, third and fourth periodic reports. Bangladesh of late submitted its fifth periodical report to the CEDAW Committee. The report highlighted some achievements in some

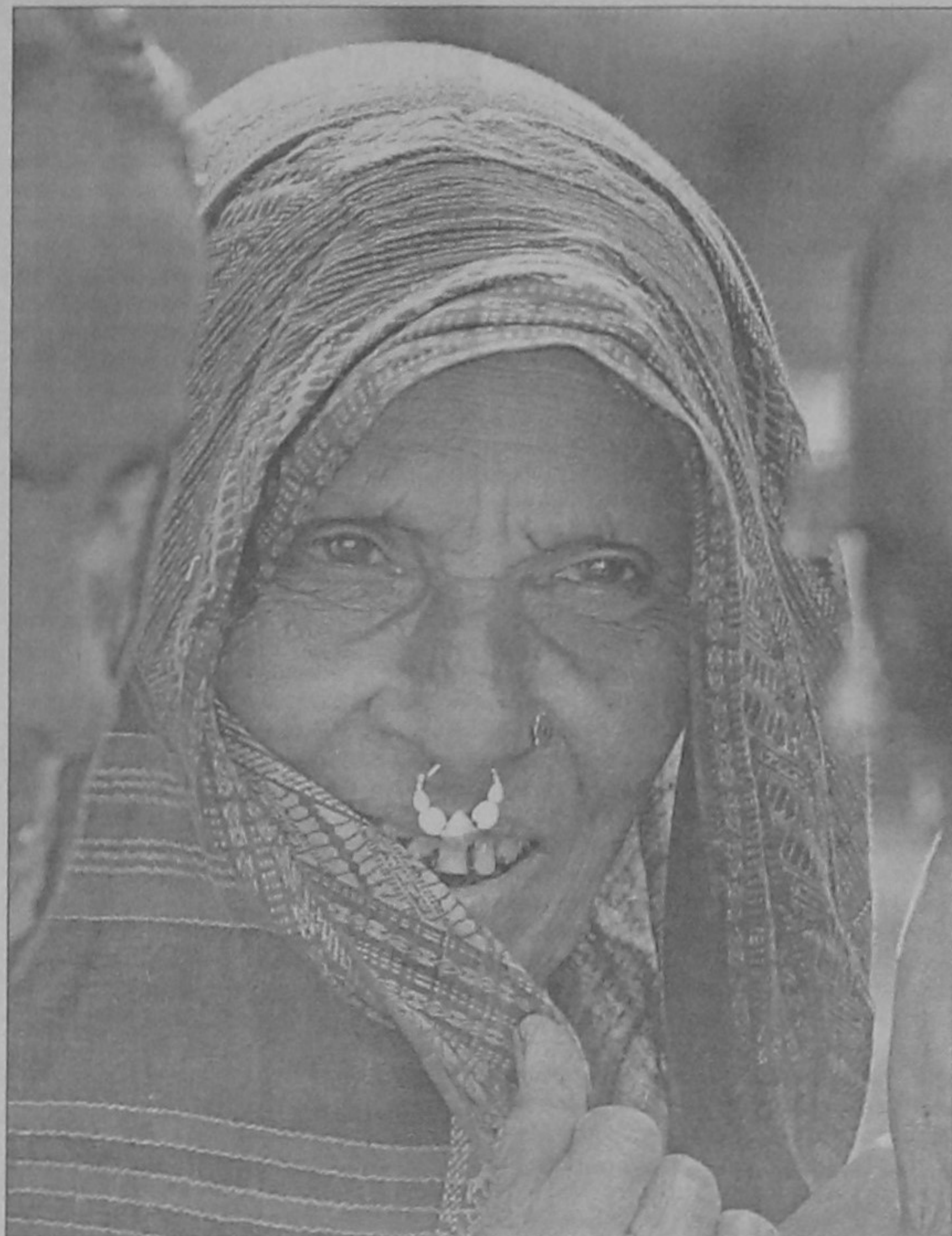


PHOTO: SK ENAMUL HAQ

areas like empowerment of women in the local government, full free studentship and scholarships for girls, four months maternity leave for women in government jobs, violence against women etc.

## Recommendations

- Withdrawal of reservation to articles 2 and 16.1(c) from CEDAW as early as possible.
- Increased awareness raising programme among the people about the Convention on the Elimination of

All Forms of Discrimination against Women

- Reform child marriage law in current country context
- Needed gender and development training for Government official specially police, administration, and judiciary cadre.
- Electronic media can increase CEDAW issues in their different programmes like Spot, Drama, Talk show, News, Debate, and Magazine for awareness raising of people.
- Print media have also capacity to

promote women rights issues that's why newspaper editors can allocate a page for women everyday. Independent Women's Rights Commission be constituted to monitor compliance with equality provisions, and results of measures to eliminate discriminatory laws, policies and practices.

- The government set up a task force which would propose appropriate legal amendments, within a stipulated time frame, to make laws consistent with the provisions of CEDAW and the Constitution.

- To combat violence against women the most effective avenue can be the country's law as the Constitution of the country grants equal rights to women.

- Approach of implementers of law needs to be changed. They are to understand that violence against women is a 'public' matter as it halts the overall economic development of the country.

- Bangladesh needs to urgently design schemes for compensation, insurance or safety nets for women workers.

We have been working for the last 24 years for promoting and protecting women's rights. We are didn't achieve lot of things but we have started our journey to reach our destination. We confident, today or tomorrow we can see women are respected by the other sex. It is very important to ensure women's rights. Today, 8th March is International Women Day.

Every year we celebrate it with due respect. We arrange lots of programmes for ensuring our participation in international women's day. We give speech in discussion sessions that we should respect our women, women participation is very important, women empowerment is necessary, etc. After passing off 8th March we forgot everything of also our commitment to expedite CEDAW implementation. Today is the high time, this year we won't forget anything, and we remember it 365 days of the year. It should be our commitment as well as our dream and expectation.

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## RIGHTS investigation

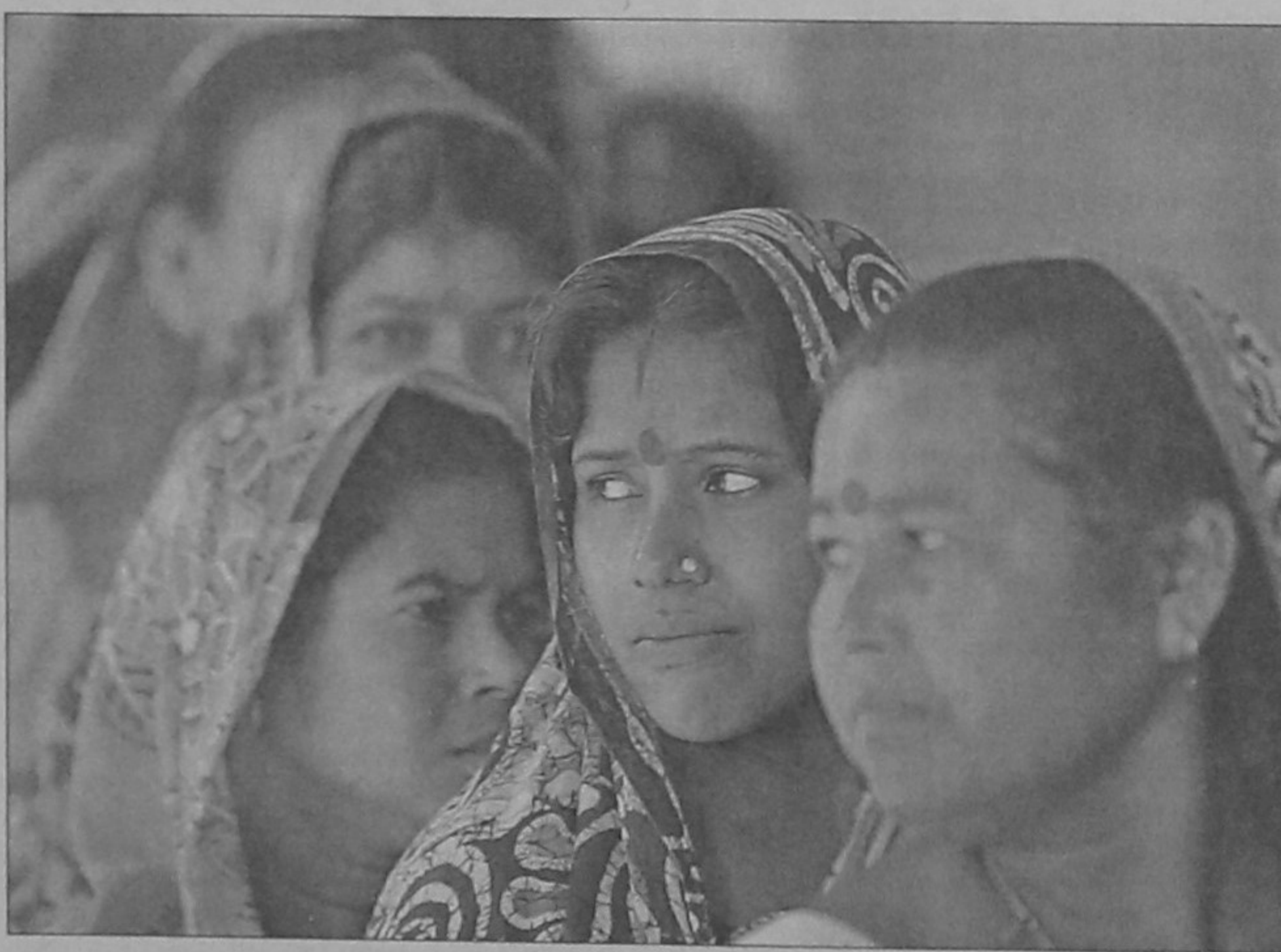
## Hindu personal law: Is it pro-women?

ADVOCATE ELYUS RAHMAN

**I**n Bangladesh, Muslim personal law such as marriage, inheritance etc. is enforceable through the regular court system but other religious personal laws cannot be enforced. The Family Courts under Family Law Ordinance 1985 are the courts of first instance for personal status cases of all religious communities, although different religious communities are governed by their own personal laws. Hinduism/Sanatan is the second largest religious affiliation in Bangladesh, covering 10.5 percent of the population as of 2001 census. Hindu women's rights are in general overlooked in case of marriage, divorce, maintenance, inheritance etc. After 1947 old Hindu law prevailed and Dayabhaga system of Hindu law remained in East Pakistan, and remained same also after the emergence of Bangladesh.

**Marriage:** In the Hindu religion, marriage is a religious duty, not a contract. In Bangladesh, Hindu marriage follows no legal proceedings rather social customs. Besides, Hindu marriage rituals or formalities vary from caste to caste. Family Court Ordinance, 1985 aims at resolving legal disputes related to dissolution of marriage, restitution of conjugal relation, dower, maintenance, and guardianship and custody of children. A Hindu woman can seek help from the ordinance only when the marriage is solemnised by Special Marriage Act 1872 and registered. It is amazing that there is no specific Hindu marriage law or no marriage registration system for Hindu people in Bangladesh. But, nowadays to legalise the marriage a Hindu couple can seek help from the court. The couple may notarise their marriage in front of two witnesses (one of the witnesses may be the priest who solemnised the marriage but it is not mandatory) like in Muslim marriage. After that the marriage will be registered. Problems arise when the parties from different religions would like to marry each other without changing their religion. Special Marriage Act 1872 is the preliminary solution of the problem but in case of determining inheritance of their successors it is really an impossible task as no domestic law can resolve the problem.

**Divorce:** No system of divorce is available in Hindu law. According to Dayabhaga law divorce is not possible except on a very limited ground of chastity of wife. But, what would happen if the husband is of immoral character? Section 10 of the Divorce Act 1869 empowers the wife to present petition to the district court or to the High Court division for the dissolution of her marriage on some reasonable grounds. Then, it is a question why not the Hindu women exercise their rights? Are all Hindu marriages not recognised by Bangladesh law? All of their marriages are void? **Inheritance:** Only five classes of women inherit according to Dayabhaga School of Hindu law. They are according to preference: wife, daughter,



mother, father's mother, father's father's mother. But these women inherit only when living, that is they are owners with limited rights and on their death the property would pass to the nearest male heir of the deceased male owner and not to the heirs of the female heirs. The woman or women inheriting when living can sell the property only for limited legal necessity.

**Practice in India:** After the partition of India in 1947 Hindu law was changed in India. In 1955, new Marriage Act was enacted in India whereby marriage system has totally been changed and polygamy given an end. Divorce system was also introduced. Section 13(1) of Hindu Marriage Act 1955 declares the right of divorce to both the parties on some grounds. In 1956, by the enactment of the The Hindu Succession Act 1956, one law was enacted for all the Hindus of India. Sons and daughters were given equal share on the demise of their father or mother while wife or husband was due for one third share. In 1991, the Indian Succession Act 1925 was amended. The amendment eliminates this discrimination against women and provides that both daughters and sons will receive equal shares in the property of both a female and male intestate.

**Constitutional guarantee:** Article 19 (1) (2) of Bangladesh constitution states:

"Equality of opportunity  
(1) The State shall endeavour to ensure equality of opportunity to all citizens.  
(2) The State shall adopt effective measures to remove social and economic inequality between man and woman and to ensure the equitable distribution of wealth among citizens, and of

opportunities in order to attain a uniform level of economic development throughout the Republic."

An analysis of the relevant text of the constitution shows that the guarantees of equal rights between men and women do not extend to the private sector (i.e., the inheritance of parental property and matters concerning the family). UNCEDAW: UNCEDAW is considered as the ultimate protection of women internationally but Bangladesh Government reserved Articles 2 & 16(1)(c) of UNCEDAW. It is noted that it is signed in 1984 and till now the government declines to withdraw the reservation. It is mentionable that already 25 Islamic countries assented to all sections of UNCEDAW including the sections-2 and 16.

## Concluding remark

The government can proclaim an ordinance regarding the registration of the existing Hindu marriages with the support of the local government like birth registration side by side sophisticated the Muslim Family Law Ordinance to be supportive to the other religious community. It will be a remarkable act and will put an end to the applications of religious personal laws. I think it is high time to withdraw the reservation for the full implementation of the international instrument and it is also necessary to change the domestic laws as a complement. A unitary personal law codification is very much necessary.

The writer is human rights defender.

## LAW week

## Contempt of court, Anti-Money-Laundering Ordinance, 2008 ordinance okayed

The cabinet approved in principle the much-talked about Contempt of Court Ordinance to clarify the definition of contempt, enhance accountability of judges and reduce chances of future arbitrary rulings. The council of advisers also approved in principle the long-awaited Anti-Money-Laundering Ordinance, 2008, an ordinance to make the Bangladesh Telegraph and Telephone Board (BTTB) a private company, and an ordinance to establish a public university in Rangpur.

"The contempt of court ordinance has been designed to ensure people's rights as it will enable the press to hold the courts and judges accountable and it is for everyone's benefit," said the Chief Adviser's Press Secretary in a press briefing after the weekly cabinet meeting. The ordinance, once promulgated after vetting by the law ministry, would replace the Contempt of Court Act 1926. "Any wilful act, statement or expression through words or signs which is interpreted to violate or undermine a verdict, decree, order, writ or warrant issued by a court will be considered a contempt of court," Fahim said. It will also consider any obstruction of justice, slander or libel of a court and personal criticism of a judge while performing judicial functions as contempt of court.

A contempt of court would be punishable by six months' imprisonment or a Tk 20,000 fine. The ordinance allows the press to comment and publish "normal" court proceedings and functions or seek disciplinary proceedings against any judge as long as it is done in "good faith" and through "restrained language". A judge's alleged corruption or incompetence and their extra-judicial activities outside their judicial functions can also be reported, according to the ordinance.

A judgement can also be criticised as long as it is "constructive". The Anti-Money Laundering Ordinance would enable the government to simplify the process to confiscate and recover assets funnelled out of the country.

Under the rule, the state or the central bank could seek help from countries or agencies to investigate and recover assets through memorandums of understanding (MoU), contracts and conventions with governments or organisations.

This would ensure Bangladeshi court orders to attach or freeze assets would be carried out by the corresponding countries and vice versa. "As a result, recovering smuggled money will become much easier," the ordinance reads.

According to intelligence agency sources, massive amounts of money have been siphoned off overseas which the caretaker government has been trying to recover since it took over last year. In the absence of an anti-money laundering act, the government could not sign deals to start recovering assets from other countries.

The ordinance allows the Bangladesh Bank to fine courier services, microcredit institutions, NGOs, and share and security brokers, if they violate 17 "predicate offences" comprising the ordinance rules. "The company in violation, its owners, directors, manager, secretary or other officials and employees will be considered violators of the ordinance," the draft ordinance reads. The list of predicate offences in the ordinance includes corruption and bribery, forgery of currencies and documents, extortion, cheating, dealing in illegal arms and drugs, smuggling, abduction for ransom, murder, sexual harassment, smuggling of local and foreign currencies and human trafficking. -*The Daily Star, March, 02, 2008.*

## Jail authorities asked to explain failure to produce 3 accused

A Dhaka court issued a show cause notice asking the jail authorities to explain why they failed to produce three accused before it yesterday in connection with the case for making an attempt on former premier Sheikh Hasina's life in August, 1989. Speedy Trial Tribunal-4 Judge Mohammad Israil Hossain passed the order after the jail authorities failed to produce detained Lt Col (dismissed) Syed Faruk Rahman, Lt Maj (ret'd) Bazul Huda and Mohammad Shahjahan before the court. The court fixed March 6 for

the next hearing and directed the jail authorities to produce six detainees including Faruk, Huda and Shahjahan on the scheduled date. Three other arrestees—George Miah, Gohar Sarwar and Freedom Sohel—were produced before the court during yesterday's hearing. Of the other accused, Mizanur Rahman, Humayun Kabir, Khondaker Amirul Islam and Gazi Imam Hossain were present. The court had issued arrest warrant against Lt Col (ret'd) Abdur Rashid, Zafar Ahmed, Nazmul Maksud, Humayun Kabir (2) and Rezaul Islam who are on the run. -*The Daily Star, March, 02, 2008.*

## Info on public interest ensured in RTI

All organisations registered under the law of the land will be bound to provide citizens with information on matters of public interest once the right to information act, now in its draft form, comes into force. The individuals aggrieved for not getting information or for being supplied with incorrect information can first appeal with heads of the organisations and, if not satisfied, can go to the proposed information commission that will be based in the capital. Draft of the act, to be titled Right to Information Ordinance, 2008, has already been sent to the chief adviser for his opinion, said sources.

The government will soon hold a roundtable discussion to have stakeholders' opinions and incorporate those in the final draft before sending it for the cabinet's approval.

Following Chief Adviser Fakhruddin Ahmed's commitment to enacting the law, an eight-member committee headed by the Information ministry's Joint Secretary (development) Kamal Uddin Ahmed was commissioned to draft the law. Besides the right to information laws of India, Pakistan and Sri Lanka, the committee analysed the drafts made by the Law Commission and Manusher Jonno Foundation, an NGO working to promote human rights and good governance. The committee comprising experts from different fields has included in the draft a number of provisions similar to those in the Indian act since socio-economic circumstances of these two countries match closely.

Under the proposed act, every organisation will have an officer designated to provide information sought by the people. "Not only the government offices, those including NGOs, trusts and corporate houses like Asia Energy who are registered under any law of the country will have to provide people the information they need," a member of the committee told *The Daily Star* in return for anonymity. Asked if the political parties too would be brought within the ambit of the law, he said, "We cannot do that at this moment since they are not registered under any law." But once the political organisations are registered they will have to do the same, he added.

If an information officer refuses to provide information, or if they dilly-dally or supply incorrect information, the aggrieved person can lodge a complaint with head of the organisation concerned. Veering from the law commission's proposal for setting up district tribunals to deal with the complaints by those who would be deprived of remedies at the organisation level, the committee has proposed instituting an information commission headquartered in Dhaka to settle such cases.

Anyone found guilty of refusing to provide information or of giving misinformation can be awarded imprisonment up to three months and fined Tk 25,000. The information commission, which will be one of its kind, will have three members including its chief to be an expert in law, administration and information. -*The Daily Star, March, 04, 2008.*

## Corresponding with the Law Desk

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