



LAW opinion

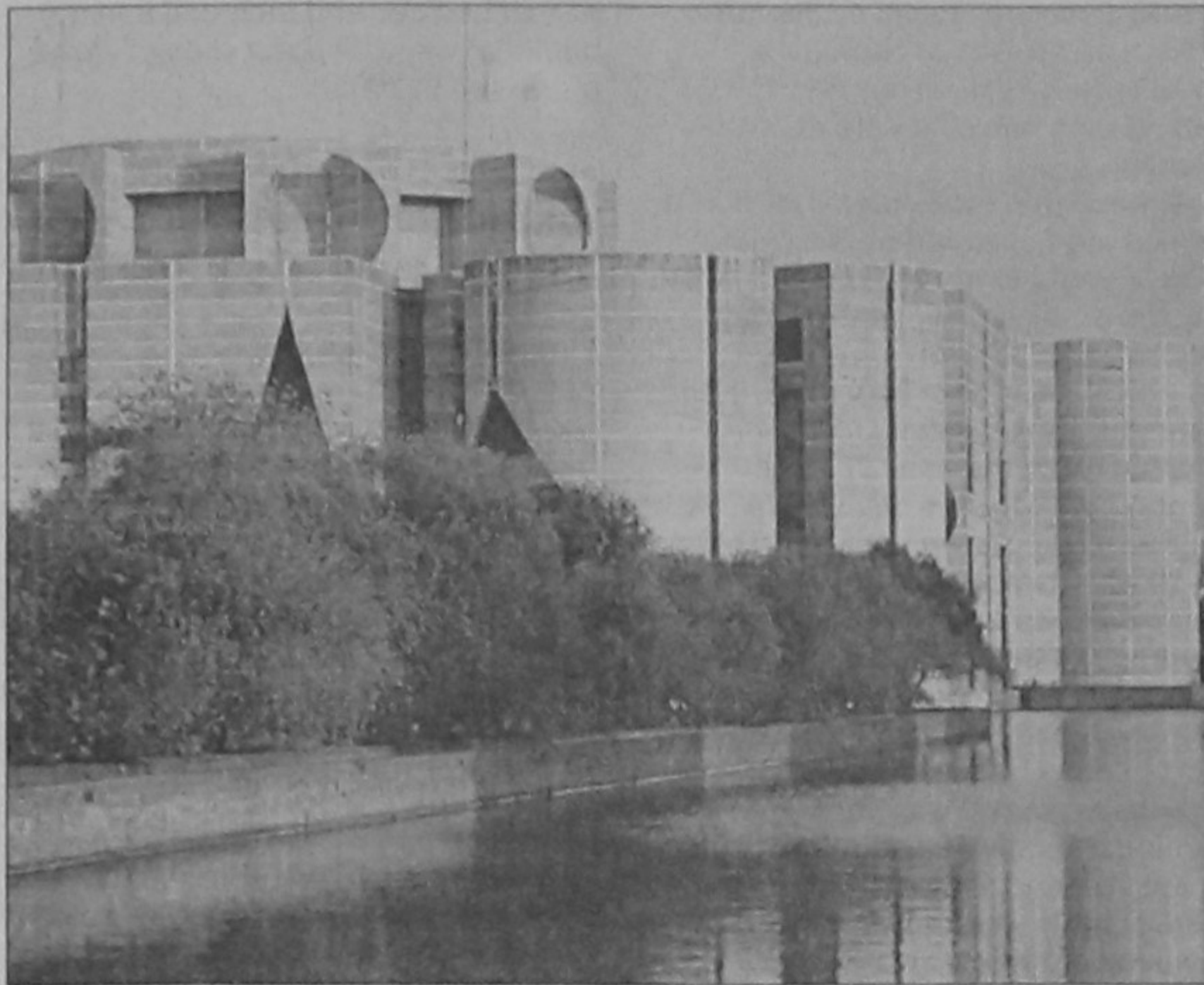
Contempt of Parliament: A critical analysis

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THE Parliamentary Standing Committee on Public Undertakings recently sent notice to the former chief of ACC L.G. (Retd) Hasan Mashhud Chowdhury, incumbent Acting ACC Chairman M Habibur Rahman, incumbent Commissioner Abul Hasan Manzur Mannan and former ACC Secretary Delwar Hossain (now land secretary) to be present at its meeting and also asked two incumbent commissioners to send all necessary documents including the Commission's latest annual report, audit report, and reports on its activities, and on problems it faces in discharging its duties.

However, upon receiving the notice all ACC bosses replied to the committee that they would not appear before it as the notice was sent beyond the jurisdiction of the committee and that they are only accountable to the President of the Republic. Since they were absent, on 12th April, 2009 the Committee accused them for contempt of parliament. The committee asked them to come up with satisfactory explanation for not appearing before it within a week. The Chairman of the committee Mohiuddin Khan Alamgir also vaunted that 'the offenders' might end up in jail or be fined for 'contempt of the house' in case of their failure to do so. This unexpected and unheard of a type of politico-legal move by a standing committee of the parliament requires some explanation of contempt of parliament and its extent and limit.

There is no doubt that the ACC is a public undertaking and statutory commission although not a constitutional commission. As a statutory commission and as its affairs are being run on public purse, it is very much within the controlling jurisdiction of the parliamentary committee on public undertakings. However, this accountability of public bodies to the parliamentary committees are political in nature and penalty, if any, to be imposed for irregularities or corrup-



tion in those bodies will be imposed also politically by way of order for returning the public money or putting the things right which went wrong, or reimbursing any affected body, or imposing a censure or at the very extreme situation removing the concerned minister by a vote of censure. Contempt of parliament, although a politico-legal sanction in nature, has little to do with political accountability of public bodies with parliamentary committees. And if this rarely used unhappy device is used in the name of accountability, it will certainly leave a very chaotic signal for the development of political accountability of public institutions.

Although the word 'contempt of parliament' is not uncommon, the possibility of its use in the history of Bangladesh parliament is going to be the first ever one. However, the modern parliaments under written constitutions do not possess as much power to impose punishment for contempt of parliament as the United

Kingdom parliament do. A clear instruction is given by the Indian Supreme Court in a 'reference case'.

Contempt of parliament and Indian Supreme Court

An interesting question of the privileges of the legislature and the powers of the High Court arose in Uttar Pradesh. One Keshava Singh was sentenced by the Speaker of the Legislative Assembly of U.P. for committing contempt of the House on March 14, 1964. The sentence was of imprisonment for seven days. On March 19 Advocate Solomon on behalf of Keshava Singh moved to the High Court for a writ of habeas corpus. The court passed an interim bail order releasing Keshava Singh pending full hearing of the petition on merits. On this, the House passed a resolution that Keshava Singh, Advocate Solomon and the two judges of the High Court issuing the bail order had committed contempt of the House and

that they be brought before the House. The two judges moved a petition under Article 226 (equivalent to Article 102 of the Constitution of Bangladesh) in the High Court challenging the resolution of the House as it violated the provisions of Article 211. A full Bench of 28 Judges of the Allahabad High court ordered a stay of the implementation of the resolution. The House thereon withdrew the warrant of arrest against the two Judges, but they were asked to appear before the House to explain why the House should not proceed against them for contempt. The High Court again granted an order of stay of implementation of this resolution.

Thus a grand conflict between the Legislature and the Judiciary arose in India. In the circumstances the President of India made a reference to the Supreme Court of India under Article 143 (Re: Special Reference, AIR 1965 SC 745). The Court speaking through the Chief Justice Gajendragadkar explained that the House of Commons enjoys the privilege of committing a person for contempt because it is a superior court of record in the UK and not just a legislature. The Parliament and State Legislatures in India are not courts of record. Hence they cannot enjoy these powers which are enjoyed by the House of Commons. Moreover, in India the Constitution has provided for judicial review and has granted certain fundamental rights. The order of the Legislature to commit a person for contempt cannot be conclusive. The order can be challenged before the High Court. From the above discussion some important observations may be made:

Observations

First, parliamentary standing or permanent committees are defenders of representative democracy; they provide check and ensure accountability of public bodies, undertakings, corporations and institutions particularly of those which provide public services and utilities like gas, oil, electricity, water, sewerage etc and operate under the directives of different ministries.

Parliamentary committees have strong power to send for any document and call for any person associated with these bodies expending public money. Although this is the ordinary norm of the activities of parliamentary committees, the true environment of this political accountability has never developed in this country. As a result most of the people are somewhat dismayed seeing this type of summon and threat of contempt by a parliamentary committee, given that there have been so many corruptions and misdeeds in public sectors by ministers and politicians and these committees have done nothing effective in 38 years history of this independent nation.

Second, the usual procedure of parliamentary committees is that if there is any allegation or if the committee thinks fit, it may ask the appropriate authorities to send for all necessary documents with regard to any irregularity. On examination of papers if it appears that there has been corruption or maladministration, the committee may then summon the accounts officer or the secretary or, if needed, the ex-chief of the institution or even any minister, serving or retired to give his statement on the affairs of alleged irregularity. After completion of such procedural work the committee shall submit a report to the house of the parliament. The house, on the basis of such report, will decide next course of action. However, as I indicated above, that action usually is not contempt of parliament as enforcing accountability by committee system is mounted typically against a public body and not against an individual as a form of retaliation. The spirit of ensuring responsibility of government bodies through parliamentary committees is political in nature. However, the way the committee on public undertakings has summoned the ex-chief of the ACC with all necessary papers seems based on sort of vengeance.

Third, Mohiuddin Khan Alamgir, the chairman of the Parliamentary Committee on Public Undertakings who piloted the

summoning of himself as a convicted person in a graft case filed by the ACC against him. The ACC did not convict him; he was convicted by the court; ACC just filed the case against him which is its routine work. If the ACC has done anything wrong in filing cases, judicial remedies are available as provided in laws. First, for false and baseless allegation against anyone there are remedies in both the ACC Act and also in the Penal Code; second, if any of the officers of ACC, while prosecuting or filing a case, has done anything in bad faith, the ACC Act itself provides for remedies against those officers; third, if a convicted person is set free in any criminal case by the higher court, this does not mean that the very allegation filed by the ACC or prosecutor is out and out false as he may be released or set free on a technical ground which has little to do with the filing of allegation; fourth, it cannot be said that all cases filed by the ACC are politically motivated. This is why the Appellate Division itself has declared the validity of some graft cases and directed to continue trial proceeding against some important politicians. Thus, summoning directly all the bosses of the ACC and without resorting to any of these forums as mentioned above sound like a leapfrogging over judicial tiers.

Concluding remarks

The Rules of Parliament is completely silent about the term 'contempt of parliament' and its procedure. If the parliament is to use this tool, it has to invoke its inherent jurisdiction and the house may, on the basis of report of a standing committee, pass resolution of imprisonment or fine against some persons for contempt of it. However, it has to bear in mind that this parliamentary power is neither conclusive nor supreme. As the Constitution of the country is written and the balance of power is maintained by the Supreme Court under the doctrine of judicial review, the ultimate say will come from the Supreme Court as to the true nature, limit and extent of this power of parliament.

The author is a practicing advocate in the Supreme Court.

LAW letter

NGOs in preventing marginalisation of sex workers

ACCORDING to different sources there are around 150,000 women in Bangladesh who are involved in the profession of sex work. These sex workers are considered one of the most marginalised groups in the country and NGOs are providing different types of services for prevention of their marginalisation.

There are four types of sex workers in Bangladesh, which are categorized based on their work place. They are brothel based, street based, hotel based and residence based. However, they often change their work place and migrate to other work places. It means, brothel based sex workers sometimes change brothels, street based sex workers sometimes enter into brothels, hotel and residence based sex workers change hotels and residences. Sometimes, they do the job in both hotels and residences.

Normally sex workers do not take the job as a profession. Different causes force them to enter this profession. The main cause is 'poverty'. Other causes include trafficking, exploitation, unemployment, drug addiction etc. In most cases, the women are abused or exploited or trafficked by their family

members or by persons close to their families. Once someone enters this profession, she cannot return to normal life. Society, even their family members, becomes reluctant to accept them in their families.

Our legal system does not expressly prohibit women to take sex work as a profession. They come to this profession by making an affidavit. However, it does not ensure their rights as a human being. Sex workers are denied of the rights of food, clothing, shelter, health, education etc. They do not have the rights of free movement, their access to health services are also limited. Their children face problems in getting admission to schools. They are not even allowed to go through the appropriate burial process. If the persons involved in burial process are informed about the profession of sex workers, they, in most cases, do not cooperate.

NGOs are providing different types of rights based services to prevent marginalisation of sex workers. These services are provided with the objective to increase awareness of community people on the issue of rights of sex workers to develop their capacity to initiate and participate in community

development activities and also to increase their access to health, education and other basic services.

The efforts of NGOs to prevent sex workers from being marginalised achieved success in some cases. These successes include formation of a number of self-help groups and organizations which can prepare own work plan for their sustainable development, alternative livelihood and job placement, participation of sex workers in dialogues and meetings to demand their rights, their ability to communicate with people in the local administration and to raise voice against violation of their rights, their participation in community development activities and organization of rallies and other programs on different occasions etc. Now there are committees in many places which involve people from different walks of society to prevent the violation of rights of sex workers. However, there are some challenges too in the works of NGOs, which are -

- Government officials do not recognize the profession of sex workers.
- Managers involved in sex work businesses i.e. hotel or residence managers, sardarnis, gharwalis etc. sometimes do not cooperate NGOs due to fear of losing their hidden interest.
- Pressure from political persons and religious groups or leaders etc. at local levels.
- The employers still do not have a positive attitude towards employment of sex workers in their work places.
- Father's name is necessary for admission of children in schools. But Sex Workers can not easily give the name of the father of their children.
- Unstable political situation is not in favour of raising the issue of sex workers.
- Frequent change of people in the local administration in places where project activities are being implemented.
- There are self-help groups and organizations of sex workers but those organizations or groups do not have sufficient funds for implementation of their organizational activities.
- Lack of monitoring of activities of sex workers after rehabilitation. After

rehabilitation through job placement, they often frequently change their jobs and it is very difficult to monitor as they do not provide their new address.

As the NGOs have been working for a long time on the issue and have created a ground for themselves, there are already many advantages for NGOs in their work for prevention of marginalisation of sex workers. These advantages include infrastructural set up for rights based activities, access to print and electronic media for advocacy, adequate IEC/development communication materials and sensitised officials at local administration.

NGOs now look forward to reduce the gaps in their activities for sex workers. In this work NGOs have some very specific points to look into to overcome the problems of sex workers such as they are considered as citizens, even they are registered as sex workers in the voter list, but they are not getting government facilities like other citizens of the country, police are to protect them but in fact police are using their power to harass them, government shelter homes are to ensure their social and physical safety, but it is reported that in shelter homes they are physically and sexually abused.

Now it is time to take new endeavours such as cross-border initiatives to stop trafficking, district level committees for rehabilitation of sex workers, regular discussion and dialogues, TV Talk Shows and TV spots for sensitisation of community people on the issue of sex workers, network of employers for job placement or alternative livelihood, motivation for law enforcement agencies and police department officials to ensure speedy handling of cases of sex workers, prevention of young generation from spending time with sex workers and creation of family amusement facilities even at district levels, process for easy admission of children of sex workers in schools and introducing the system of recognising mother as children's guardian in school admission etc.

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RIGHTS corner

Afghanistan: New law threatens women's freedom

Shia personal law should be repealed or amended to protect rights

The government of

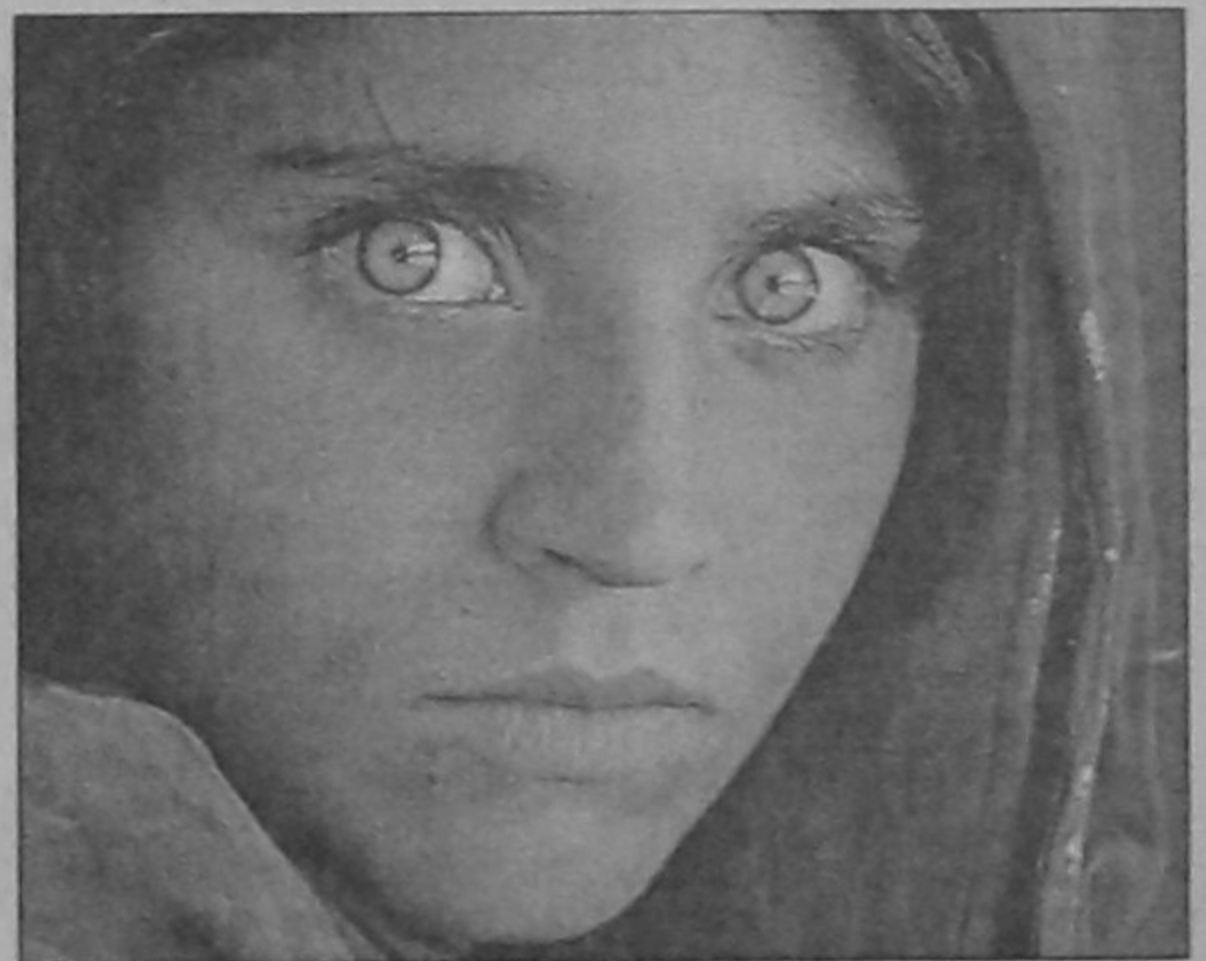
Afghanistan should listen to the Afghan women who are planning to hold a protest on April 15, 2009, at great personal risk, and repeal or reform the Shia Personal Status law, Human Rights Watch said. The new law regulates marriage, divorce, and inheritance for the country's Shia population. It includes provisions that require a woman to ask permission to leave the house except on urgent business, a duty to "make herself up" or "dress up" for her husband when demanded, and a duty not to refuse sex when her husband wants it.

"President Karzai should not sacrifice women for short-term political deal-making," said Brad Adams, Asia director at Human Rights Watch. "He is playing with fire. How will he be able to refuse demands for similar discriminatory laws from other communities?"

Women in parliament complained that the law was rushed through with the help of several prominent Shia leaders. Despite calls from women's rights advocates not to sign the law, President Hamid Karzai signed it in an apparent attempt to garner political support from powerful political factions in Afghanistan. The provisions of the Shia Personal Status Law directly contradict the Afghan constitution, which bans any kind of discrimination and distinction between citizens of Afghanistan. Article 22 states that men and women "have equal rights and duties before the law." The law also contravenes the Convention on the Elimination of All Forms of Discrimination against Women, to which Afghanistan is a state party.

"All that Afghan women want is to be free, this is what we are demonstrating for," one Afghan activist helping to organize the protest told Human Rights Watch. "This law is ridiculous, women cannot believe it is real. It tries to take away our freedoms, so we have to speak out against it."

While Karzai has asked the Ministry of Justice to review the law, Human Rights Watch is concerned that the review will not be inde-



pendent because those leading the process in the Ministry of Justice are from a conservative Shia background. Human Rights Watch welcomed the strong concerns about the law expressed by many other governments, including the US, the UK, France, Italy, and Canada, as well as NATO, but said that they need to keep the pressure on to make the necessary changes in the law and ensure the rights of women more generally.

"The Afghan government has made commitments to protect women's rights," said Adams. "The government needs to act on that commitment and repeal or amend a law that so disastrously infringes on their basic freedoms."

Many activists who have spoken out against the law have received threats. The fears of women activists have been compounded by the killing this week of a prominent women's rights campaigner and local councillor, Sitara Achakzai, who was shot dead in Kandahar after receiving death threats. Civil society activists have told Human Rights Watch that the government's handling of the Shia law leaves them even more concerned about plans by the Karzai government to enter into talks with the Taliban.

"Any deals with the Taliban and other fundamentalist groups should not be at the expense of women's rights," said Adams. "What small gains that have been won by women in Afghanistan must not be up for negotiation."

Source: Human Rights Watch.

