

LAW OPINION

Absence of legal regime to apply treaties

In Bangladesh, there is no constitutional or statutory provision as regards the ratification of treaties, nor has the Constitution mentioned any clear provision for treaty implementation.



MAZHARUL ISLAM

THE position of Bangladesh, in relation to the domestic application of international law, is characterised by the ambiguity of constitutional and statutory provision. The judges and the lawyers are reluctant to refer to international instruments owing to the lack of willingness to know about international law. There are two main provisions (articles 25 and 145A) in the Constitution of the People's Republic of Bangladesh regarding international law and relations.

The provision of article 145A provides for one kind of obligation to present the treaty before the parliament only for discussion; and again if an international treaty relates to the question of national security, that treaty will be discussed in the secret session of the parliament. However, this article does not define the phrase 'secret session' anywhere in the constitution. This seems to be an

incomplete provision of the constitution, raising more issues and creating more problem than it solves. So far, only one treaty titled the Ganga Water Sharing Treaty, 1966 placed before the parliament in 1997 for discussion and debates by the members of the parliament.

In practice, the higher courts give effect to the domestic law and not to the instruments of international law, where there is a clear and specific domestic legislation on the disputed issue. In *Bangladesh and others v Sombon Asavhan* [1977], the Supreme Court of Bangladesh applied the provisions of the Bangladesh Territorial Waters and Maritime Zones Act of 1974, instead of applying the existing norms of international law. In the case of *Saiful Islam Dildar v Bangladesh and Others* [1998], the petitioner argued that the right of self-determination, as jus cogens of international law, has become universally accepted customary norm. This principle is binding upon all nations, and hence, extradition of a foreign accused (in

this case Mr. Anup Chetia, the General Secretary of UILFA-India) would violate article 25 of the Constitution. Rejecting the petitioner's contention the court observed that the purpose of extradition of Mr. Chetia to Indian authority is to base its international relations by maintaining the principle of respect for national sovereignty, equality and non interference of international affairs of other countries under article 25(1) of the Constitution.

In the cases of *Chaudhury and Kendra v Bangladesh* [2008] and *BNWLA v Government of Bangladesh and Others* [2009], the Supreme Court held that the courts in Bangladesh cannot enforce treaties, even if ratified by the state, unless these were incorporated in the municipal laws.

Regarding the application of international instruments, in the case of *BNWLA v Government of Bangladesh and Others* [2001], the Supreme Court declared that when there is a gap in municipal law in addressing any issue, the court may take recourse to the international conventions and

protocols until the national legislature enacts laws in this regard. However, in the case of *Bangladesh and Others v Hasiana* [2008], the Supreme Court further strengthened by saying that the courts would not enforce international human rights treaties, even if ratified by Bangladesh, unless these are incorporated into municipal laws, but they would have looked into the core instrument while interpreting the provisions of the Constitution to determine the rights of life, liberty and others.

In Bangladesh, there is no constitutional or statutory provision as regards the ratification of treaties, nor has the Constitution mentioned any clear provision for treaty implementation. In a research article, Sheikh Hafizur Rahman Karzon, an associate professor of law at the University of Dhaka, rightly pointed out that international treaties signed and ratified by the Government of Bangladesh would require implementing legislation or constitutional amendment to apply them within its domestic jurisdiction, if: a) it involves alteration of the existing law; b) confers new powers to the executive; c) imposes financial obligation to the citizens; d) affects the right of citizens; and e) involves alienation or cession of any part of the territory of Bangladesh.

To determine the status of international law under the Constitution of Bangladesh, in a recent famous case of *Chief Prosecutor v Abdul Quader Molla* [2013], Chief Justice Mr. Surendra Kumar Sinha pointed out that article 152 of the Constitution, which has given the following interpretation, that the violation of international law does not have any coercive sanction in Bangladesh. So, international law cannot be applied by a domestic tribunal if those are inconsistent with an Act of Parliament or prior judicial decisions of final authority.

Therefore, there is no constitutional or statutory binding provision on the status of the treaty and international law in our legal system, nor is there any procedure as to how these would be implemented in our domestic jurisdiction. How smoothly international instruments would be applied in our legal system, is a question of utmost national interest. It needs to be realised that our state institutions and individuals have both rights and obligations under international law. Hence, this necessitates drawing a clear picture for regulatory regime in regard to the application of international law in Bangladesh.

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YOUR ADVOCATE



This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.

Query:
Greetings and Salutations! My friend's mother was involved in a business. She was very rich and afforded several personal credit cards. But 5 years ago she suddenly became bankrupt. Now she has huge debts on her shoulder and incapable to pay. But the bank's debt collectors are harassing and threatening her day and night over telephone. They even threatened me (though I wasn't related). That's why I'm asking you several questions given below,

1. Does a bank has permission from the government to harass their clients to collect credit card overdue in Bangladesh?
 2. Does a bank has permission from the government of Bangladesh to issue an arrest warrant without notifying the client for credit card overdue?
 3. Can a client take legal steps against these coerce behaviors from the debt collectors in Bangladesh?
- Shawon Hussain
Dhaka

Response
Thank you for your query. It is important to clarify at the very outset that no form of harassment is legally permitted. I understand that your friend's mother owes the Bank the outstanding amounts from the credit card loans/expenditure. The Bank, therefore, has a valid and lawful claim against her for such amount along with interest accrued on the overdue.

The Card Issuer Bank must act within the legal parameter for such recovery. In most of the cases, credit cards are issued by the Card Issuer Bank's without obtaining any security from the Customer.

However, in majority of the cases, the Issuer Bank receives cheques covering the credit amount from the customer and may try to recover the overdue by encashing the cheque. If the cheque is dishonoured, the Bank can take criminal action under the Negotiable Instrument (NI) Act, 1881. But, action under NI Act has some specific procedural requirement prior to commencing a case and as such a

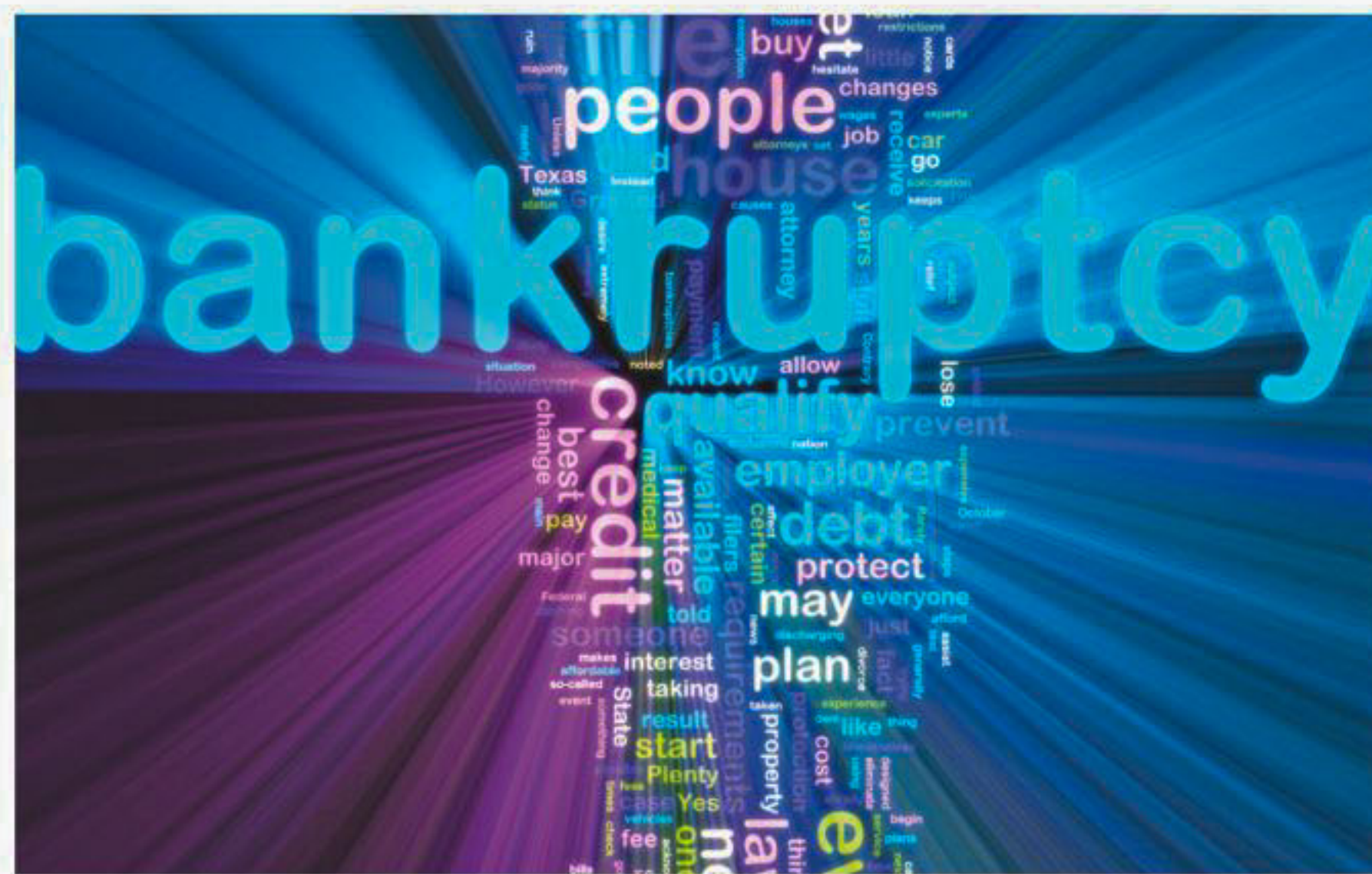
Rin suit and the overdue amounts do not commensurate. Some of the Card Issuer Banks resort to improper and informal mechanisms of recovery of money. It is also clear from your situation that the Card Issuer Bank has adopted the means of harassment with a view to recover money.

The central banks' guideline, namely, 'Guidelines of Credit Card Operations of

station and is kept under the supervision of the Officer-in-Charge (OC) of the police station. Your GD shall mention elaborately all incidents of harassment, coercion and threats undergone by you and your friend's mother, including what have been said or done during such instances. The OC shall then inquire into the matter and take appropriate legal steps. Alternatively, you may file an Ejarah (complain) before the police station to commence a criminal case for harassment. Further or alternatively, you may lodge complain to the Bangladesh Bank: See: [https://www.bb.org.bd/complainbox/complainbox.php]

As stated above legal claim cannot be recovered through illegal means and as such you and/or your friend's mother can always recourse to law for the harassment towards you. On the other hand, please bear in mind that though the Card Issuer Bank has indulged into illegality in an attempt to recover the lawfully entitled amount, the card defaulter is legally bound to repay the outstanding amount. Therefore, it is strongly advised to make sincere effort to replay the outstanding amount at the earliest to avoid complexity of facing legal cases as well as to cap the interest of the accrued amount from increasing further. The card-holder shall meet the bank officials and request them to reschedule so that the outstanding amount can be repaid in certain installments. Most of the banks are very reluctant to reschedule credit card dues. Nevertheless, attempts can always be made.

FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.



warrant cannot be issued by the court at the first instance. You may find the following link interesting to know more about NI Act cases: <http://www.thedailystar.net/law-our-rights/cheque-dishonour-72010>

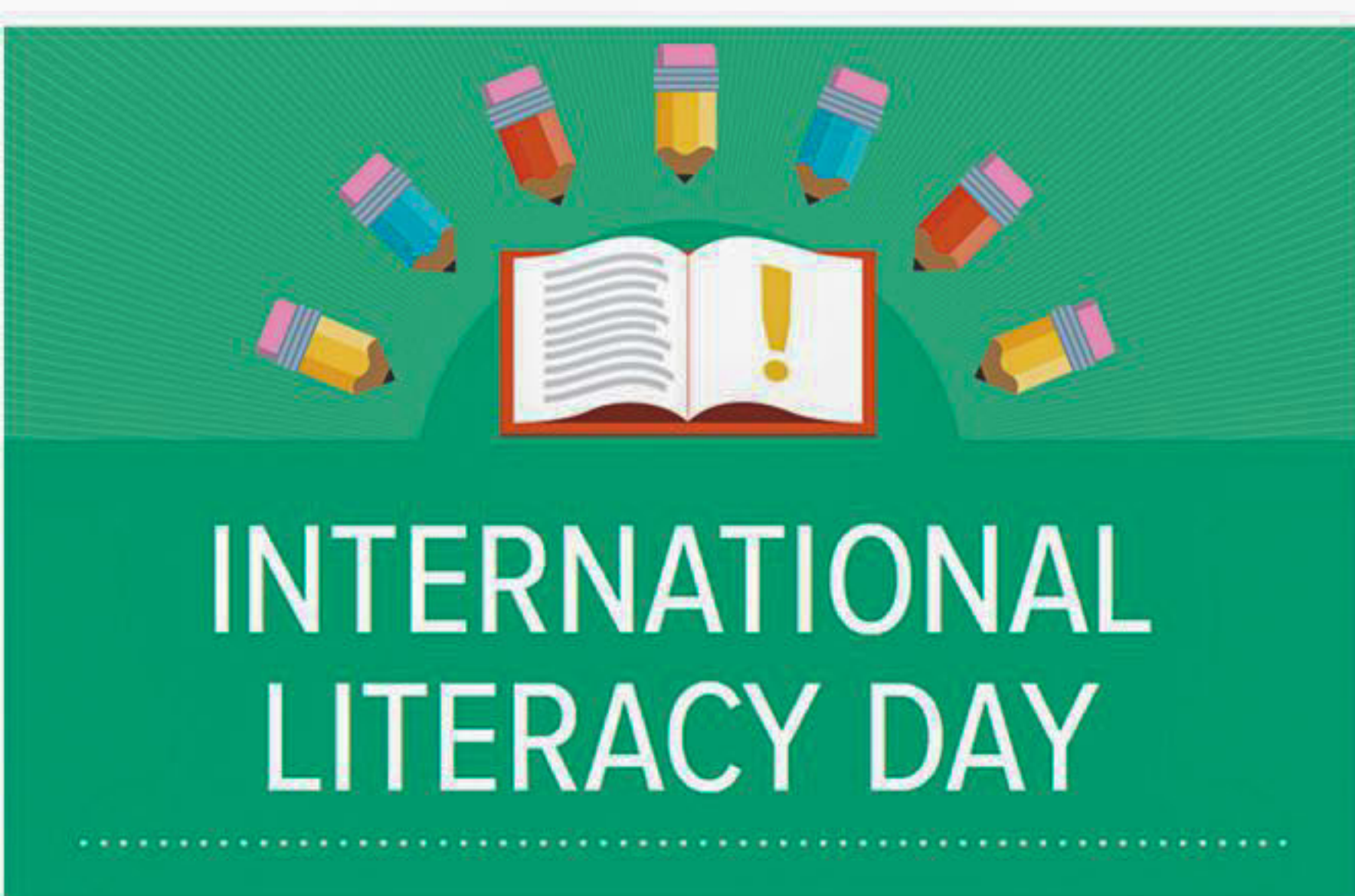
The Bank may alternatively commence civil procedure for recovery of overdue amount through the Artha Rin Adalat. However, in most of the situations, the cost involved in proceeding with an Artha

Banks' clause 13(iii) has very clearly and specifically mentions "Any verbal or physical harassment or threats to the Customers, their family members, references or friends shall not be resorted in the recovery process."

You may consider the possibility of lodging a GD (General Diary) to your local police station regarding the threats. A GD is received by the Duty officer or Service Delivery Officer of the police

LAW NEWS

"Literacy and sustainable societies"



INTERNATIONAL LITERACY DAY

BEING one of the fundamental human rights and the foundations for lifelong learning, literacy is considered to be a key driver for sustainable

development. Literacy skills are the prerequisite for the learning of a broader set of knowledge, skills, attitudes and values, required for creating sustainable societies. At the same time,

progress in areas of sustainable development, such as health and agriculture, serves as an enabling factor in the promotion of literacy and literate environments. Like previous years, UNESCO is globally celebrating International Literacy Day 2015 on September 8. The theme of International Literacy Day 2015 is 'Literacy and Sustainable Societies'.

This year's celebration of International Literacy Day is dedicated to exploring critical links and synergy between literacy and the future Sustainable Development Goals (SDGs) which will be adopted during the 70th session of the United Nations General Assembly in September 2015.

This event marks the 50th anniversary of the World Congress of Ministers of Education on the Eradication of Illiteracy (Islamic Republic of Iran, 1965), which made the Tehran recommendation on the proclamation of the International Literacy Day and advanced the notion of

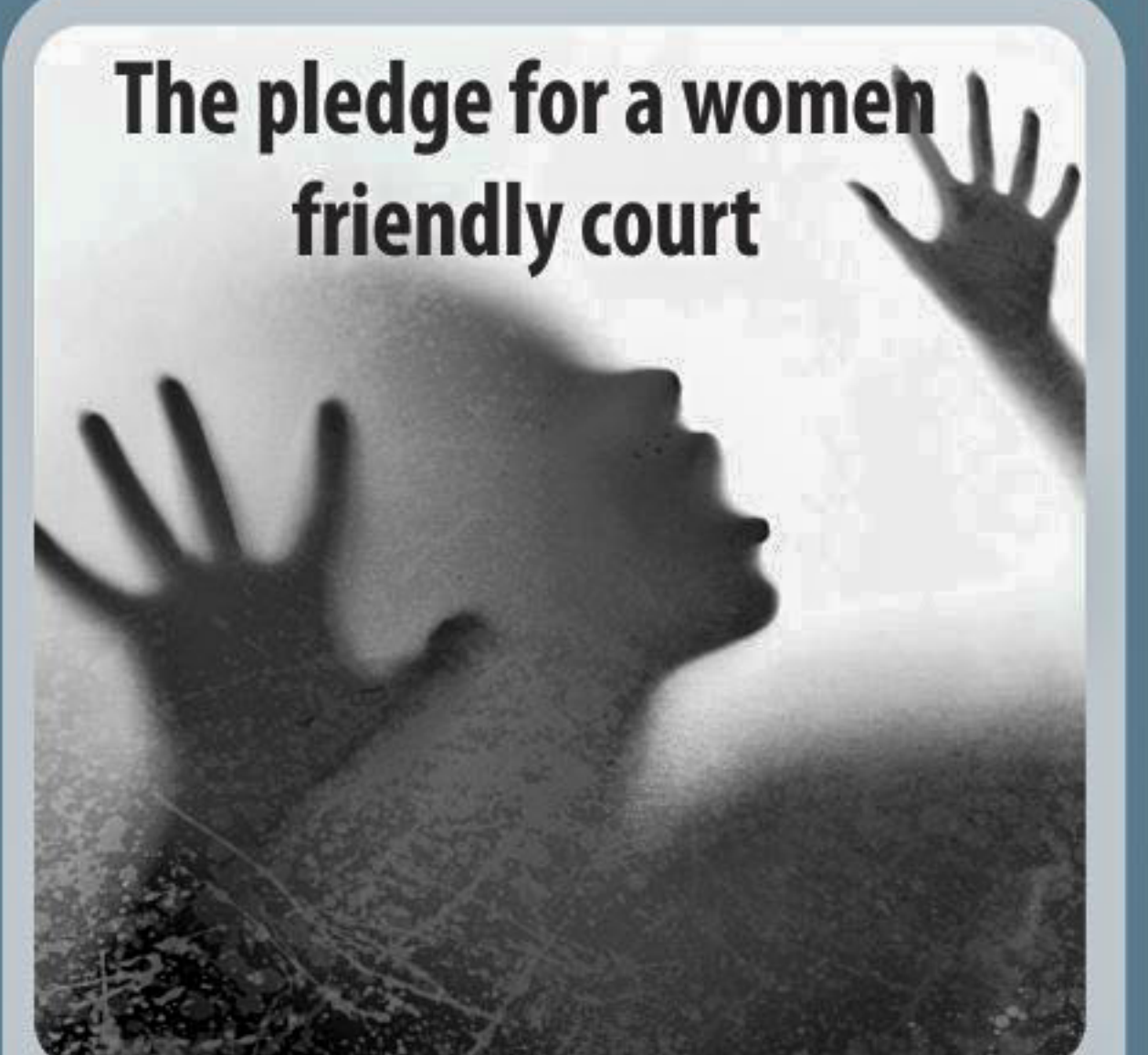
functional literacy.

To observe the day, a special event has been organized at UNESCO Headquarters in the presence of the Director-General of UNESCO. It intends to prepare the ground for literacy action in the post-2015 era, in particular: a) key issues to be addressed in light of the Education 2030 Framework for Action discussed at the World Education Forum 2015 (Incheon, Republic of Korea, 19-22 May 2015) for adoption at the 38th session of UNESCO's General Conference, b) monitoring of literacy progress, and c) effective global coordination to ensure sustained and coordinated efforts for literacy.

International Literacy Day 2015 is being celebrated worldwide, bringing together governments, multi-and bilateral organizations, NGOs, the private sectors, communities, teachers, learners and experts.

COMPLIED BY LAW DESK (SOURCE: UNESCO.ORG)

LAW LETTER



The rate of violence against women is increasing year after year. According to Report of Bangladesh Mahila Parishad more than 4,500 women and children were subjected to rape, acid attack, physical torture, suicide and other forms of violence in 2014 alone. The report showed at least 939 women were raped and 99 killed while 431 and 236 were tortured and killed respectively because of dowry (*The Daily Star*, January 03, 2015). This is happening because of lack of proper implementation of our existing laws, delay and acute weaknesses in our judicial system.

In the aftermath of rape, the victim faces further persecution. She is being victimized during the investigation, preparation of medical report, hearing, examination, cross-examination. Facing all these makes her only vulnerable. In this regard, the Government should set up a victim friendly court. For instance in West Bengal Province, India, has already set up a Court to deal with the crimes against women in 2013. [Report BBC Online, January 24, 2013].

According to medical practitioners, victim is to be examined within 24 hours of the incident; otherwise the likelihood of tracing injury decreases considerably. Therefore, the Government should establish Community Clinics comprising of female staff in every Union Parishad.

As per Women & Children Repression Prevention Act 2000, an aggrieved party may appeal to the High Court Division within 60 days from the date of passing verdict (section 28). But there is no provision of time limit to adjudicate the appeal. Most of the cases in our Apex Court takes huge time e.g. *State v Sukur Ali* [2004] 9 BLC (HCD) 238 was started in 2001 but final verdict came in 2010.

In our judicial system the burden of proof lies with the prosecution. It seems unjust that the victim now has to prove how she was raped, when and by whom she was brutally tortured. Moreover, in most of the cases, the victims are found to be poor and can't afford an efficient lawyer. It is high time to come out from this practice. The alleged man should be the one to prove that he is innocent. It is to be mentioned that some civil law countries like France and Italy abides by this principle.

Another important aspect is that our Evidence Act, 1872 allows an accused to question the character of the victim to defend himself during trial [Section 155 (4)]. This section rather comes to the victim as double blow. Indian government has already amended the provision following a recent incident where the victim died of heart attack in a court, as counsels of the accused were raising question about her character. Recently the Law Commission has decided to prepare a draft proposal for the new Evidence Act (*The Daily Star*, May 28, 2015). However the Government should immediately repeal it so that the perpetrator can't avail the advantage of this draconian section.

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