

**Migration Review Tribunal  
AUSTRALIA**

**MRT RESEARCH RESPONSE**

**Research Response Number:** BGD34330  
**Country:** Bangladesh  
**Date:** 27 February 2009

Keywords: Bangladesh – Adoption – Child Custody

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**Questions**

- 1. Were there any laws for formal adoption in Bangladesh in 1973?**
- 2. RRT research response BGD31681 indicates that the existing adoption laws were repealed in 1982 and were not replaced. This indicates that there may have been formal laws in place before then. What were these laws and what steps did the parties need to take to have a valid adoption?**
- 3. If there was no formal adoption in 1973, would customary adoption have allowed for paternal uncles to adopt their deceased brother's children?**
- 4. If so what evidence did the parties need to produce?**

**RESPONSE**

- 1. Were there any laws for formal adoption in Bangladesh in 1973?**
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Previous *MRT Research Response BGD31681* of 30 April 2007 refers to a 2003 report by the United Nations Committee on the Rights of the Child, which states that “[s]ince the repeal of the Bangladesh Abandoned Children (Special Provisions) Order 1972 in 1982 there is no civil law governing adoption, although individuals can apply for guardianship of either the person or the property of a child under the Guardians and Wards Act 1890”. The same report also notes that “[t]he institution of adoption does not exist under Muslim law” (United Nations Committee on the Rights of the Child 2003, ‘Committee on the Rights of the Child: Consideration of Reports Submitted by States Parties – Bangladesh’, 14 March [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/crc.c.65.add.22.en?opendocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/crc.c.65.add.22.en?opendocument) – Accessed 2 March 2007 – Attachment 12; MRT Country Research 2007, *MRT Research Response BGD31681*, 17 April – Attachment 13).

A 2007 paper by Nayanika Mookherjee, a lecturer at the Department of Sociology at the University of Lancaster, provides information on adoption law in Bangladesh. The paper indicates that the *Bangladesh Abandoned Children (Special Provisions) Order, 1972* was promulgated as part of a broader program designed to deal with the issue of children, known as “war-babies”, conceived or born as the product of the rape of Bangladeshi women by Pakistani soldiers and Bengali collaborators during the Bangladesh independence struggle in 1971. The article notes that this legislation was in conflict with “prevalent Muslim personal law and Shariat law, which forbids adoption”. The article indicates that many of these children were adopted out to Western countries, including the UK, the US, Sweden,

Switzerland, Norway, the Netherlands and Belgium, as part of a government effort to socially “rehabilitate” their mothers:

With the end of the liberation war, Bangladesh was faced with the staggering number of 3 million dead and 200,000 women raped (out of a population of 75 million) by the Pakistani army and *razakars* (local Bengali collaborators) in a span of 9 months. The way the government of independent Bangladesh dealt with the history of rape during the war, however, was unprecedented. Instead of shrouding the issue of rape in silence (though it was framed through euphemisms of ‘inhuman torture’, which I address later), the newly formed Bangladeshi government eulogized the raped women as *birangonas* (‘war-heroines’) in their attempt to rehabilitate them and reduce social ostracism (*Purbodesh*, 1971). A *Punorbashon* Centre and Board were set up in 1972 and charged with the specific duties of rendering relief and rehabilitation to war-affected women. *Punorbashon* in Bengali means ‘rehabilitation’, that is, providing a new life to the raped women within idioms of ‘reformation’ and betterment. This rehabilitation was made possible by ensuring that the women who had become pregnant as a result of rape had access to abortion or were able to put their children up for international adoption. At the same time, the government attempted to ‘marry off’ the ‘war-heroines’ or provided them with vocational training so that they could secure jobs.

... In contrast to the prevalent Muslim personal law and Shariat law, which forbids adoption, the Inter-Country Adoption Law (Habiba, 1997) and the Bangladesh Abandoned Children (Special Provision) Order were passed hastily on 23 October 1972 to facilitate the adoption process. At least 15 children had been adopted (to Toronto, Canada) prior to the passage of this law, by July 1972 (*Bangladesh Observer*, 1972). Throughout 1972, children were adopted and sent to the UK, the US, Sweden, Switzerland, Norway, the Netherlands and Belgium. Various orphanages like Khelaghor and the SOS Children’s Villages Project, which was established in Dhaka at this juncture to facilitate caring for abandoned children, continue to operate to the present day. Under this law, people interested in adopting abandoned children applied to the director of social welfare, who took the final decision on their behalf (Mookherjee, Nayanika 2007, ‘Available Motherhood: Legal technologies, “state of exception”, and the dekinning of “war-babies” in Bangladesh’, *Childhood*, Vol. 14, No. 3, pp. 341-342, 347 – Attachment 1).

The same source indicates that the 1972 law providing for adoption in Bangladesh was subsequently repealed in 1982, amid concerns over the welfare and upbringing of the children who had been adopted out under the legislation. In its place, an older law, the *Guardian and Wards Act 1890*, was re-instated; this law is more consistent with Muslim family law in that it provides for guardianship, rather than adoption, of orphaned or abandoned children:

The Adoption Law was, however, repealed by Ordinance No. 5 in 1982. The Islamicist party Jamaat-e-Islami opposed the Law on grounds that it believed that these children were being converted to Christianity or being used for child pornography and prostitution in the Netherlands and Thailand (pers. comm., Sigma Huda, a human rights lawyer; Chowdhury and Shamim, 1994: 6, 25). With the 1982 repeal of the law, a 19th-century colonial law known as the *Guardian and Wards Act 1890* was reinstated with an amendment that prohibits foreigners from being appointed guardians of minors who are citizens of Bangladesh. The aim was to ensure adoption of children by Bangladeshis instead of foreigners. The process of appointing a guardian was also deemed to be consistent with Muslim personal law and by birth the child belonged to the latter (Chowdhury and Shamim, 1994: 25). Henceforth, religious laws would predominate over secular laws in the case of acquiring guardianship (instead of adoption) of a child (Mookherjee, Nayanika 2007, ‘Available Motherhood: Legal technologies, “state of exception”, and the dekinning of “war-babies” in Bangladesh’, *Childhood*, Vol. 14, No. 3, pp. 347-348 – Attachment 1).

A copy of the *Bangladesh Abandoned Children (Special Provisions) Order, 1972* was not located in the sources consulted. A copy of the *Bangladesh Abandoned Children (Special Provisions) (Repeal) Ordinance, 1982* was located; see Attachment 2 (*Bangladesh Abandoned Children (Special Provisions) (Repeal) Ordinance, 1982*, Laws of Bangladesh website, 7 June [http://bdlaws.gov.bd/pdf/621\\_.pdf](http://bdlaws.gov.bd/pdf/621_.pdf) – Accessed 26 February 2009 – Attachment 2).

In the absence of a copy of the *Bangladesh Abandoned Children (Special Provisions) Order, 1972*, the 2007 paper by Nayanika Mookherjee provides useful background on the operation of this law, emphasizing its exceptional nature and role in managing the issue of “war-babies”, as well as its conflict with extant Muslim family law:

According to Chowdhury and Shamim (1994: 5–6), ‘the Adoption Law was enacted in order to provide socioeconomic protection to numerous orphans, abandoned children and so-called “war-babies”’. The order legitimized the adoption of abandoned children, a practice that contradicted the prevalent Muslim personal law. The law defined abandoned children as those who were ‘deserted or unclaimed or born out of wedlock’ and authorized the government to appoint ‘statutory guardians’ – a person or authority entrusted with the care and custody of the person of an abandoned child. However, no mention was made about the adoptee’s right of inheritance. Inheritance under Muslim personal law in Bangladesh is primarily determined by ‘blood’, which would prevent the adopted child from inheriting any property from his adoptive parents unless they specifically bequeathed it to him. Apparently, the government was only interested in ‘providing substitute homes for the unfortunate children’ (Chowdhury and Shamim, 1994: 6).

...Whereas the wombs of women in their first months of pregnancy could be ‘cleansed’ through abortion, in the case of advanced pregnancies, women’s wombs could only be made clean only by making the babies, once born, unavailable to the emotions of motherhood. The womb of the Bengali woman was made accessible not only by emptying it of the baby through birth, but also by ensuring an emotional effacement. Thus, the women were kept away from their babies, the latter being further removed from Bangladesh through international adoption.

...Necessity as the originary source of law also operated in a non-legal framework in the context of adoption of children. To social worker Maleka Khan, abortion and adoption were both necessary to ‘protect women from motherhood and return them to society’. It is this protection that ensures that the *birangonas* could be married off and be instituted in motherhood within legitimate heterosexual alliances guaranteed under the umbrella of the new nation. The ‘illegitimate’ presence of the children threatened the women’s availability for legal marriage alliances and motherhoods. The logistical issues of separating the children from the women and freeing the women from the children became significant. Although the prevalent Muslim personal law and Shariat law forbade adoption, this law was suspended during this postwar state of exception. Instead, children born as a result of wartime rapes were immediately put up for international adoption even before it was ‘legalized’ (Mookherjee, Nayanika 2007, ‘Available Motherhood: Legal technologies, “state of exception”, and the dekinning of “war-babies” in Bangladesh’, *Childhood*, Vol. 14, No. 3, pp. 347, 348, 349 – Attachment 1).

An article published in 1994 in the *International Journal of Law and the Family* by Savitri Goonesekere provides a similar gloss on the purpose and operation of the *Bangladesh Abandoned Children (Special Provisions) Order, 1972*. The article also briefly describes the basic procedures for adoption under the order:

Bangladesh also permits adoption under the Guardianship Act 1890, and this procedure is used as in India for inter-country adoption. **An ‘Abandoned Children’s Order’ promulgated in 1972 permitted a child to be declared ‘abandoned’ by the Director of Social Welfare, so that a custody order could be made in this officer’s favour. This was a response to the need to provide foster care for children born to victims of violence in war [researcher’s emphasis].** Since the Director could delegate custody the regulation was subsequently used for inter-country adoption. However, the Government subsequently prohibited this procedure for foreign adoption in response to objections to a child’s alienation from an Islamic environment (Goonesekere, Savitri 1994, ‘The Best Interests of the Child: A South-Asian Perspective’, *International Journal of Law and the Family*, vol. 8, pp. 138 – Attachment 3).

The 2007 paper by Nayanika Mookherjee provides further information on the operation of the *Bangladesh Abandoned Children (Special Provisions) Order, 1972*, indicating that the legislation, like the *Guardian and Wards Act 1890* which replaced it, operated to bring abandoned children or orphans under the scope of the *Bengal Vagrancy Act 1943*:

What is significant to note in the case of the 1972 law relating to adoption, its repeal and the implementation of the Guardian and Wards Act, is that children’s place under the state was in both cases brought under the legal jurisdiction of the existent colonial Bengal Vagrancy Act 1943. Under this Act, the vagrant is defined as:

A person not being of European extraction found asking for alms in any public place or wandering about or remaining in any public place in such condition or manner as makes it likely that such person exists by asking for alms (Bengal Vagrancy Act, 1943: 2)

In 1972, the adoption of ‘war-babies’ was administered under the aegis of this Act and the Department of Vagrancy and Social Welfare. To date, this act remains in place, unmodified, and continues to be pivotal to how the state regulates and controls the child in Bangladesh (Mookherjee, Nayanika 2007, ‘Available Motherhood: Legal technologies, “state of exception”, and the dekinning of “war-babies” in Bangladesh’, *Childhood*, Vol. 14, No. 3, p. 348 – Attachment 1).

For a copy of the *Bengal Vagrancy Act*, see Attachment 4 (*The Vagrancy Act, 1943*, Laws of Bangladesh website [http://bdlaws.gov.bd/print\\_sections\\_all.php?id=199](http://bdlaws.gov.bd/print_sections_all.php?id=199) – Accessed 26 February 2009 – Attachment 4).

No further information was located on the specific procedures required for adoption under the *Bangladesh Abandoned Children (Special Provisions) Order, 1972*, which operated in Bangladesh from 1972 to 1982. It may be of interest to note a report by the Department of Foreign Affairs and Trade from May 2007. While this report was prepared in response to a request for information on adoption in 1980 (during the period of operation of the *Bangladesh Abandoned Children (Special Provisions) Order, 1972*), the response refers instead to the steps required to effect an assumption of legal guardianship under the *Guardians and Wards Act, 1890*. The questions and response are reproduced below in full:

QUESTIONS: [09/05/07]

Q.1. What was required for a non-formal (customary/religious) adoption during 1980 in Bangladesh?

RESPONSES: [31/05/07]

R.1. In response to reftel's request for information on adoption rules in Bangladesh, post has consulted with several legal sources including Save the Children UK, Ain O Shalish Kendro – a renowned local NGO working on human rights and legal issues. We can provide following information on the issue of adoption in Bangladesh as raised in reftel:

Actual adoption of children is not permitted under existing Bangladesh law. However, Bangladesh law does permit its own citizens to apply for guardianship of children under the purview of Guardianship and Wards Act. There are some cases of 'informal adoption' mostly in rural areas, but this does not have any legal basis.

Under Bangladesh law, the 1982 Guardianship and Wards Amendments Ordinances prohibit granting guardianship of Bangladeshi children to non-Bangladeshi parents. Further, these restrictions have limited adoption of Bangladeshi children to only a few each year and mostly in cases of orphans.

Requirements of obtaining legal guardianship:

- i) Biological parent must sign an irrevocable release of the child before a Notary Public or local Magistrate in Bangladesh
- ii) An application for legal guardianship must be made to the Family Court. In Bangladesh the Family Court has sole jurisdiction over family matters. The Bangladesh government does not approve adoption agencies or attorneys.
- iii) A 'No Objection Certificate' must be obtained from the Bangladesh Ministry of Home Affairs.
- iv) The 'No Objection Certificate' and 'legal guardianship' documents should be presented to the Bangladesh Passport Office for the child's passport. Prospective adopting parents should be listed as the legal guardians in the child's passport.
- v) Prospective adoptive parents must be at least 18 years old and provide proof of Bangladeshi citizenship. There is no age limit for the children being adopted (DIMA Country Information Service 2007, *Country Information Report No. 07/47 – Bangladesh: Bangladeshi Adoption Laws*, (sourced from DFAT advice of 31 May 2007), 1 June – Attachment 5).

A copy of the text of the of the *The Guardians And Wards Act, 1890* was located on the Laws of Bangladesh website; see Attachment 6 (*The Guardians And Wards Act, 1890*, Laws of Bangladesh website [http://bdlaws.gov.bd/print\\_sections\\_all.php?id=64](http://bdlaws.gov.bd/print_sections_all.php?id=64) – Accessed 24 February 2009 – Attachment 6).

**3. If there was no formal adoption in 1973, would customary adoption have allowed for paternal uncles to adopt their deceased brother's children?**

**4. If so what evidence did the parties need to produce?**

Several sources were located which indicate that under the principles of Muslim personal law as practiced in Bangladesh, mothers have limited rights of custody over their minor children, and it would be common for a senior male paternal relative to assume guardianship of a minor child over the age of seven whose father is deceased, even if the mother is still living. A 2007 paper published on the UNICEF website provides a summary of Muslim practice in Bangladesh concerning children whose fathers are deceased. This source only refers to the appointment of a legal guardian by a Court in the event of the death of both parents:

The international definition of an orphan is a child (under 18 years) that has lost both parents. However, in Bangladesh, in accordance with Muslim tradition, it is the presence or absence of the father that determines the social status of the child. Therefore if the father dies or abandons the child, he or she is considered to be an orphan (*etim*), and is passed into the guardianship of another elder man, such as an older brother. Other members of the extended family normally also assume responsibility for the care and upbringing of the child. On the other hand, if the mother dies, the child may stay with the father and a new stepmother or with grandparents, maternal aunt and uncle or paternal uncles. However, this child is not considered to be an orphan. If both parents die or abandon the child, the Court may appoint a legal guardian under the Powers of the Children Act 1974. Normally he or she would come under the care of the maternal grandparents or uncles when possible (Nasreen, Mahbuba & Tate, Sean 2007, 'Social Inclusion: Gender And Equity In Education Swaps in South Asia – Bangladesh case study', UNICEF website, p.37 [http://www.unicef.org/rosa/Unicef\\_Rosa\(Bangladesh\\_cash\\_study\).pdf](http://www.unicef.org/rosa/Unicef_Rosa(Bangladesh_cash_study).pdf) – Accessed 24 February 2009 – Attachment 7).

A chapter on Bangladesh in a 2005 report on women's reproductive rights, published on the Centre for Reproductive Rights website, provides the following summary of Muslim personal law in Bangladesh, indicating that in the case of male children, a mother's custody rights end when their son turns seven, and that in the event of the death of a child's father, the paternal grandfather assumes custody:

*Laws governing Muslims*

Under Muslim personal law, mothers may retain custody of their daughters until they reach puberty, and of their sons until they reach seven years of age. The father-in-law of a widow assumes custody of her children, and a widow must seek permission from a court to dispose of her minor children's property. Muslim personal law does not recognize the concept of adoption as widely understood in most societies (Center for Reproductive Rights 2004, 'Bangladesh' in *Women of the World: Laws and Policies Affecting Their Reproductive Lives – South Asia*, Centre for Reproductive Rights website [http://www.crlp.org/pdf/pdf\\_wowsa\\_bangladesh.pdf](http://www.crlp.org/pdf/pdf_wowsa_bangladesh.pdf) – Accessed 12 October 2005 – Attachment 8).

A UNICEF report from 2005 makes the following incidental comment on the situation regarding child custody in Bangladesh:

Where religion or custom provides the basis for guardianship decisions, the best interests of the child and the principle of family preservation are not always respected. In Bangladesh, for example, a child whose father dies or abandons the family is considered to be an orphan, and guardianship passes to another elder man, such as the grandfather or elder brother. Such arrangements may potentially result in the unnecessary separation of a child from his or her mother ('UNICEF Submission to the Committee on the Rights of the Child Day of General Discussion on "Children without Parental Care"' 2005, Child Rights Information Network website, 16 September [http://www.crin.org/docs/resources/treaties/crc.40/GDD\\_2005\\_UNICEF.doc](http://www.crin.org/docs/resources/treaties/crc.40/GDD_2005_UNICEF.doc) – Accessed 24 February 2009 – Attachment 9).

A 2008 article by Md. Alamgir of children's rights NGO the Bangladesh Shishu Adhikar Forum (BSAF), published by the *Daily Star*, indicates that adoption practices in Bangladesh are "irrevocably linked to religious affiliation", and that while full adoption is not permitted, effective adoption of orphans may be practiced extra-legally in some cases:

Adoption in Bangladesh is irrevocably linked to religious affiliation. Since there is no secular law regarding adoption in Bangladesh, so the dominant religion in the country has guidance upon the issue and this greatly decides how orphaned and abandoned children are received in the society. Many times religious institutions, government's shelter homes and other non-government organizations' shelter homes undoubtedly provide a lot of support both financial and emotional to the orphans and street children within their own jurisdiction. But these supports in many cases do not help the orphans and street children in mainstreaming into the society.

### **Bangladesh perspective**

Although Bangladeshi law does not allow for full adoption of Bangladeshi children, but it is widely practiced and accepted in our society. Adoption of orphan/helpless child is a very popular and moral practice amongst our people. By adopting orphan/helpless child, people consider them as their own child. And very often they declare the orphan as their own son/daughter and pass onto them their investments including inheritance.

In Bangladesh, adoption happens in two forms: intra and inter. People do adopt children from their own relatives or community. As Islam is the predominant religion in the country, the law is also meticulously inclined by Quranic principles. While Muslim law prohibits adopting children, the Hindu law recognises adoption to continue one's genealogy, name and inheritance. There are some instances where it is seen that the foreigners are adopting Bangladeshi children without any recourse to law (Alamgir, Md. 2008, 'Towards a just adoption law', *The Daily Star*, 15 March

<http://www.thedailystar.net/law/2008/03/03/campaign.htm> – Accessed 24 February 2009 – Attachment 10).

The same article also provides a discussion of child custody practices in the Muslim community in Bangladesh, indicating that adoption as commonly understood in the West is not practiced, and that custody of a child more closely resembles a guardianship or fostering arrangement, which does not entail a full transposition of kinship relationships:

### **Adoption in Islam**

Adoption in the technical sense is not allowed in Muslim Shariah law. The Qur'an gives specific rules about the legal relationship between a child and his/her adoptive family. The child's biological family is never hidden; their ties to the child are never severed.

...The guardian/child relationship has specific rules under Islamic law, which renders the relationship a bit different from what is common adoption practice today. The Islamic term for what is commonly called adoption is kafala, which comes from a word that means "to feed." In essence, it describes more of a foster-parent relationship. Some of the rules in Islam surrounding this relationship are:

\* An adopted child retains his or her own biological family name (surname) and does not change his or her name to match that of the adoptive family.

\* An adopted child inherits from his or her biological parents, not automatically from the adoptive parents.

\* When the child is grown, members of the adoptive family are not considered blood relatives, and are therefore not muhrim to him or her. "Muhrim" refers to a specific legal relationship that regulates marriage and other aspects of life. Essentially, members of the adoptive family would not be permissible as possible marriage partners, and rules of modesty exist between the grown child and adoptive family members of the opposite sex.

\* If the child is provided with property/wealth from the biological family, adoptive parents are commanded to take care and not inter-mingle that property/wealth with their own. They serve merely as trustees.

These Islamic rules emphasize to the adoptive family that they are not taking the place of the biological family – they are trustees and caretakers of someone else’s child. Their role is very clearly defined, but nevertheless very valued and important (Alamgir, Md. 2008, ‘Towards a just adoption law’, *The Daily Star*, 15 March <http://www.thedailystar.net/law/2008/03/03/campaign.htm> – Accessed 24 February 2009 – Attachment 10).

The 2008 *Daily Star* article by Md. Alamgir also provides information to suggest that that these custodial practices, informed by Islamic law, may be implemented at a community-level without state intervention:

It is also important to note that in Islam, the extended family network is vast and very strong. It is rare for a child to be completely orphaned, without a single family member to care for him or her. Islam places a great emphasis on the ties of kinship – a completely abandoned child is practically unheard of. Islamic law would place an emphasis on locating a relative to care for the child, before allowing someone outside of the family, much less the community or country, to adopt and remove the child from his or her familial, cultural, and religious roots (Alamgir, Md. 2008, ‘Towards a just adoption law’, *The Daily Star*, 15 March <http://www.thedailystar.net/law/2008/03/03/campaign.htm> – Accessed 24 February 2009 – Attachment 10).

Specific information was not located in the sources consulted as to whether the assumption of guardianship by male paternal relatives of a child whose father is deceased according to customary Muslim family law in Bangladesh in 1973 would be accompanied by any documentary evidence.

Basic background information was located on the interaction of Muslim family law and civil family law in Bangladesh. A draft background brief on the Bangladesh legal system, published on the Emory University law school website provides information on Islamic law in Bangladesh, indicating that the Hanafi school of *fiqh*, or Islamic jurisprudence, is predominant in Bangladesh, and that while some elements of Islamic law have been passed into civil law, others have not. The brief refers to several pieces of legislation which were implemented in Bangladesh after 1973, including the *Guardians and Wards Act 1890*, and the *Family Courts Act 1985*, which provides for the application of religious family law through the Bangladesh Family Court system:

Islamic family law is applied through the regular court system. The judiciary is organised at two levels, with subordinate courts and a Supreme Court with Appellate and High Court Divisions. The Family Courts are the courts of first instance for personal status cases of all religious communities, although different religious communities are governed by their own personal status laws. The jurisdiction and functions of these courts are governed by the Family Courts Act 1985. Jurisdiction is limited to civil suits, and any criminal offences that arise in the context of civil cases come under the jurisdiction of Criminal or Magistrates Courts.

...**Schools of Fiqh:** The Hanafi school is the predominant madhhab in Bangladesh. There are also Hindu and Christian minorities.



**...Court System:** The judiciary is organised at two levels, with subordinate courts and a Supreme Court with Appellate and High Court Divisions. The Family Courts Ordinance 1985 governs the application of the personal laws of all Bangladeshis through the state judiciary by the creation of Family Courts. The Family Courts have jurisdiction over personal status cases of all communities, though religious minorities are governed by their own personal laws. The Family Courts are convened in Assistant Judges Courts and have special procedures and reduced formalities. The Family Courts may hear suits *in camera* at the request of both parties, and the court fees are nominal, but lawyers and notaries fees considerably increase the costs associated with going to court. Under the terms of the Ordinance, Family Courts have exclusive jurisdiction to try and dispose of suits relating to the dissolution of marriage, the restitution of conjugal rights, dower, maintenance, and guardianship and custody.

...As elsewhere in South Asia, much of the Muslim personal law is unlegislated, the basis for the law being classical Hanafi *fiqh* except where this has been amended by legislation.

...The Muslim Personal Law (*Shariat*) Application Act 1937 continues to govern the application of Muslim family law in Bangladesh (The pre-independence legislation that replaced this Act in 1962 only applied to West Pakistan.) According to the Act, Bangladeshis are subject to local custom and usage in matters relating to wills, legacies or adoption, unless a person declares his or her express preference for being governed by Islamic law. Thus, estates may validly devolve in proportions favouring women under customary law.

...Custody continues to be governed by the Guardians and Wards Act 1890 in Bangladesh. The Act stipulates that the courts are to be guided by the personal law to which the minor is subject. The courts are also directed to consider the age, gender and religion of the minor and the character and capacity of the proposed guardian, as well as considering the minors own opinion if s/he is old enough to form an intelligent preference. For Muslims, the general rule is that the divorced mother is entitled to custody over male children until the age of 7 (classical Hanafi position) and over female children until puberty. Under the legislation, if the minor is very young or is a female, the courts are directed to give preference to the mother. In all cases, the interests of the ward are paramount ('Bangladesh: Legal Profile' 2002, Emory Law School website <http://www.w.law.emory.edu/IFL/legal/bangladesh.htm>, Accessed 1 November 2006 – Attachment 11).

## List of Sources Consulted

### Internet Sources:

#### **Search Engines**

Google <http://www.google.com/>

Hakia search engine <http://www.hakia.com/>

Ingenta Connect <http://www.ingentaconnect.com/>

Informaworld <http://www.informaworld.com/>

#### **Region Specific Links**

New Age website <http://www.newagebd.com/>

The Daily Star website <http://www.thedailystar.net/>

Banglapedia website <http://banglapedia.org/>

Odhikar website <http://www.odhikar.org/>

Ain O Salish Kendra website <http://www.askbd.org/index.php>

Drishtipat website <http://www.drishtipat.org/>

## **United Nations**

UNHCR Refworld website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>

## **Adoption/Children's Rights websites**

Child Rights Information Network website <http://www.crin.org/>

Bangladesh Shishu Adhikar Forum website <http://www.bsafchild.org/profile.php>

## **Government Organisations**

Immigration and Refugee Board of Canada website [http://www.irb-cisr.gc.ca/en/index\\_e.htm](http://www.irb-cisr.gc.ca/en/index_e.htm)

Bangladesh Government Law website <http://bdlaws.gov.bd/>

## **Legal Websites**

WashLaw Legal Research website <http://www.washlaw.edu/forint/index.html>

Emory Law website <http://www.law.emory.edu/index.php?id=2554>

World Legal Information Institute website <http://www.worldlii.org/>

Law Library of Congress website <http://www.loc.gov/law/>

Bangladesh Law Commission website <http://www.lawcommissionbangladesh.org/>

Lexadin website <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxweban.htm>

## Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

## **List of Attachments**

1. Mookherjee, Nayanika 2007, 'Available Motherhood: Legal Technologies, "state of exception", and the dekinning of "war-babies" in Bangladesh', *Childhood*, Vol. 14, No. 3, pp. 339-354.)
2. *Bangladesh Abandoned Children (Special Provisions) (Repeal) Ordinance, 1982*, Laws of Bangladesh website, 7 June [http://bdlaws.gov.bd/pdf/621\\_\\_\\_\\_.pdf](http://bdlaws.gov.bd/pdf/621____.pdf) – Accessed 26 February 2009.)
3. Goonesekere, Savitri 1994, 'The Best Interests of the Child: A South-Asian Perspective', *International Journal of Law and the Family*, Vol. 8, pp. 117-149. (RRT General Papers 24111)
4. *The Vagrancy Act, 1943*, Laws of Bangladesh website, 25 October [http://bdlaws.gov.bd/print\\_sections\\_all.php?id=199](http://bdlaws.gov.bd/print_sections_all.php?id=199) – Accessed 26 February 2009.
5. DIMA Country Information Service 2007, *Country Information Report No. 07/47 – Bangladesh: Bangladeshi Adoption Laws*, (sourced from DFAT advice of 31 May 2007), 1 June. (CISNET Bangladesh CX178498)

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