

DISCLAIMER: This document was produced in 2005 and is a summary of the laws of Bangladesh that appertain to international parental child abduction, contact and relocation as they were at that time. **reunite** International Child Abduction Centre cannot vouch for the accuracy of this information for use in litigation and it is not intended to provide case specific advice.

## **BANGLADESH**

### **Overview**

Bangladesh gained independence from Pakistan in 1971 and therefore shares with Pakistan the legislation promulgated prior to 1971, such as the 1890 Guardian and Wards Act and the Muslim Family Law Ordinance of 1961. Since independence legal reform in Bangladesh has been influenced to a certain extent by Indian reforms and has not undergone Islamisation to the extent that Pakistani legislation has. The Constitution is the supreme source of law, taking precedence over domestic and international law.

Article 2 of the Constitution, as amended in 1988, establishes Islam as the religion of the State. The majority of the citizens of Bangladesh are Hanafi Muslims. There are also significant communities of Christians and Hindus.

### **Court Structure**

The Bangladeshi court system is divided into two levels. These are the Subordinate Courts and the Supreme Court, both of which hear civil and criminal cases. The Subordinate Courts operate at district level and are the courts of first instance. They are divided into separate civil and criminal courts. There are specialized tribunals, for example for labour and tax issues and there is also a Family Court. The Family Court has jurisdiction over personal status matters, which are governed by a person's religious affiliation. These courts are governed by the Family Courts Ordinance of 1985.

The second level is the Supreme Court, which is divided into two sections. These are the High Court and the Appellate Court. The High Court has original jurisdiction and also reviews cases from the Subordinate Courts. The Appellate Court has jurisdiction to hear appeals of judgments of the High Court. The rulings of the Appellate Court are binding.

### **Filiation**

If a child is born within a valid marriage legal kinship is established with the parents and their families.

Non-Muslim Bangladeshis are permitted to adopt, however adoption is not recognised under Islamic law.

### **Custody**

The Family Courts Ordinance of 1985 states that the mother usually has the most right to the custody of her young children, unless she marries someone not related to the children within the prohibited degree of relationship, moves her place of residence a distance away from the father, neglects the children, or leads an immoral life. If the mother is disqualified from exercising custody the right to custody of the children passes to the mother's mother, followed by the father's mother, a full sister, a uterine sister, a consanguine sister, a full sister's daughter, a uterine sister's daughter, a consanguine sister's daughter, maternal aunts, and finally paternal aunts. If a foreign mother is awarded custody she may be able to return to her country with the child.

The normal period of custody lasts until a male child reaches the age of seven and a female child until she reaches puberty, at such time the custody of the children passes to the father. The child's preference may guide a decision if the child is considered old enough to form an intelligent preference. When ruling on custody the judge will take into account the welfare, education and religion of the child. The principle established by Article 17 of the Guardian and Wards Act that the best interest of the child is paramount has provided the courts with flexibility in awarding custody. This has enabled courts to depart from the rules of the Hanafi school of Islamic law on custody and extend the mother's custody in some cases, for example in *Md. Abu Baker Siddique v. S.M.A. Bakar & oths* (38 DLR (AD) 1986).

### **Guardianship**

The father is the natural and legal guardian of the person and property of his minor children.

### **Access**

Both parents have the right to have contact with their children.

### **Non-Muslim Family Law**

The Guardian and Wards Act is applicable to all Bangladeshi nationals. This Act states that custody should be decided according to the best interests of the child in accordance with his or her personal law.

### **Nationality**

Bangladeshi nationality is passed from father to child.

### **Leaving the Jurisdiction**

A minor may be prevented from travelling if they do not possess the correct travel documents, but checking this is not routine.

### **International Law**

Bangladesh signed the UN Convention on the Rights of the Child in 1990 with reservations against articles 14(1) and 21.

### **Child Abduction**

Abduction by a parent is not a crime specifically dealt with in Bangladeshi legislation, however according to Article 25 of the Guardian and Wards Act if a child is removed from his or her place of custody a court order can be sought to have the child returned. If a child is retained illegally by the mother or the father a writ of habeas corpus can be issued for the return of the child. Kidnap is an offence according to Article 362 of the Penal Code.

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