



## COI QUERY

Country of Origin	Bangladesh
Main subject	<b>Punishment for debt and protection against usury</b>
Question(s)	<ol style="list-style-type: none"><li><b>1. Forms of punishment for debtors who fail to repay creditors, as outlined in the Bengalese Law</b></li><li><b>2. Provisions against the usury crime in the Bengalese Law</b></li><li><b>3. Information on cases where unaccomplished money obligations in favour of creditors, have exposed debtors to any form of punishment/ill-treatment</b></li></ol>
Date of completion	<b>2 October 2018</b>
Query Code	<b>Q118</b>
Contributing EU+ COI units (if applicable)	

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## COI QUERY RESPONSE

### 1. Forms of punishment for debtors who fail to repay creditors, as outlined in the Bengalese Law

The following laws have been checked on the forms of punishment concerning the failure of debt settlement: The Usurious Loan Act, 1918; The Code of Civil Procedure, 1908; The Agricultural Debtors Act, 1936; The Money-lenders Act, 1940; and The Money Court Loan Act, 2003. Neither of these laws contain specific legal provisions concerning forms of punishment for debtors who fail to repay creditors<sup>1</sup>.

Nevertheless, The Bangladesh Debt Settlement Act, 1989 (also known as *Rin Salisi Ain*, 1989), which was made to protect farmers from falling into indebtedness to moneylenders, contains the following provision:

'23. Punishment. -

(1) If any person -

- (a) violates any provision of this Act;
  - (b) disobeys any order of the Board;
  - (c) knowingly delivers any written or oral false statement or supplies false facts to the Board or to any appeal authority;
  - (d) deliberately presents forged documents to the Board or to any appeal authority;
  - (e) speaks out or witnesses presenting himself by the name of somebody else,
- he shall be punishable with up to three years of labour in jail, or with a fine up to 10.000 Taka, or with both punishments.

(2) No person may be accused under this section without the prior approval of the Zila administrator<sup>2</sup>.

Furthermore, The Penal Code, 1860, contains a section concerning 'Dishonestly or fraudulently preventing debt being available for creditors':

'422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both<sup>3</sup>.

### 2. Provision against the usury crime in the Bengalese Law

Among all sources consulted and within the timeframe allocated to respond to this Query, no specific provision against the usury crime in the Bengalese law could be traced. The following laws have been

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<sup>1</sup> Government of The People's republic of Bangladesh, *The Laws of Bangladesh*, 31 May 2018, ([url](#))

<sup>2</sup> Government of The People's republic of Bangladesh, *The Bangladesh Debt Settlement Act, 1989*, (English translation) n.d., ([url](#))

<sup>3</sup> Government of The People's republic of Bangladesh, *The Penal Code, 1860*, 31 May 2018, ([url](#))



checked: The Penal Code, 1860; The Usurious Loan Act, 1918; The Code of Civil Procedure, 1908; The Agricultural Debtors Act, 1936; The Money-lenders Act, 1940; The Bangladesh Debt Settlement Act, 1989; and The Money Court Loan Act, 2003<sup>4</sup>.

Nevertheless, several laws contain provisions which protects the debtor against usury crime practices.

Section 3(2) of The Usurious Loan Act 1918 considers that interest itself may be sufficient evidence that the transaction is substantially unfair:

'(2) (a) In this section "excessive" means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

(b) In considering whether interest is excessive under this section, the Court shall take into account any amount charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated and the total advantage which may reasonably be taken to have been expected from the transaction.

(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

Explanation – Interest may of itself be sufficient evidence that the transaction was substantially unfair.<sup>5</sup>

Furthermore, Section 30(1) of The Money-Lenders Act, 1940, has some limitations to the amount and rate of interest recoverable:

'30. Notwithstanding anything contained in any law for the time being in force, or in any agreement,

(1) no borrower shall be liable to pay after the commencement of this Act-

(a) any sum in respect of principal and interest which together with any amount already paid or included in any decree in respect of a loan exceeds twice the principal of the original loan,

<sup>4</sup> Government of The People's Republic of Bangladesh, *The Laws of Bangladesh*, 31 May 2018, ([url](#))

<sup>5</sup> Government of The People's Republic of Bangladesh, *The Usurious Loan Act, 1918*, 22 March 1918, ([url](#))



(b) on account of interest outstanding on the date up to which such liability is computed, a sum greater than the principal outstanding on such date,

(c) interest at a rate per annum exceeding in the case of-

(i) unsecured loans, ten per centum simple,

(ii) secured loans, eight per centum simple,

whether such loan was advanced or such amount was paid or such decree was passed or such interest accrued before or after the commencement of this Act<sup>6</sup>.

Finally, The Bangladesh Debt Settlement Act, 1989, was created to protect farmers from falling into indebtedness to moneylenders. The law contains several provisions, like section 6 to 11, against usury crime practices<sup>7</sup>.

#### **Information on cases where unaccomplished money obligations in favour of creditors, have exposed debtors to any form of punishment/ill-treatment**

In her study on micro borrowers in Bangladesh, Vickers distinguishes eight types of lenders: *mahajon* (moneylenders who lend for profit), NGOs, credit unions, *shomitis* (private organisations that offer loans to member and non-members, often higher interests rates than NGOs), banks, government department lenders, *haolats* (interest-free loans between friends, neighbours or family members that bear the implied obligation to reciprocate at some time in the future), and shopkeepers who supply goods on credit. While 'a *mahajon* may call for a *shalish* [A village court of village elders or local politicians who make a final decision] if the borrower does not repay on time', a NGO can take a case to a (formal) court. Although Vickers came across several examples of cases during her own research, she 'did not find the symptom of court cases or *shalish* referred to in the microfinance literature as part of any definitions of over-indebtedness'<sup>8</sup>.

Although, section 12 of the Money Loan Court Act 2003 (also known as *Artha Rin Adalat Ain*, 2003) empowers banks and non-banking financial institutions the possibility to file a loan recovery suit<sup>9</sup>, they are reluctant to take legal action.

In their article 'Group Lending, Joint Liability, and Social Capital: Insights From the Indian Microfinance Crisis', Haldar and Stiglitz stated that it is not very likely that banks in Bangladesh will undertake 'formal legal sanctions to recover loans' due to costly bureaucratic procedures. According to them, 'the threat of punishment via the state legal system may often appear empty in the context of a

<sup>6</sup> Government of The Republic of Bangladesh, *The Money-Lenders Act, 1940*, 1 August 1940, ([url](#))

<sup>7</sup> Government of The People's republic of Bangladesh, *The Bangladesh Debt Settlement Act, 1989*, (English translation) n.d., ([url](#))

<sup>8</sup> Vickers, N., *Drifting into debt?: Exploring Household-Over indebtedness amongst Salaried Microborrowers in Bangladesh*, 2017, ([url](#)), pp.viii, 42, 51

<sup>9</sup> The FutureLaw Initiative, *The Ultimate Guide to get back your lent money in Bangladesh*, 30 April 2017, ([url](#))



country like Bangladesh— where the costs and complexities associated with loan recovery by formal means are so great that the threat is, effectively, an empty one<sup>10</sup>.

In the same article a legal expert in Bangladesh explained:

‘The threat of social and financial sanction on which microfinance organizations operate is far more real than the formal sanction of law courts. Even in the absence of an explicit contract, local forces are used to make sure that people comply. A lot of contractual relations in Bangladesh don’t work because the threat of being taken to court is meaningless. The sense of impunity is quite high and there is very little sense of redress<sup>11</sup>.

In the light of the above, loan recovery will most probably happen via other (informal) sanctions than formal court procedures. For example, ‘many traditional moneylenders use violence and threats to enforce repayment<sup>12</sup>. Furthermore, sources report that debt collectors of microfinance organisations, like the Grameen bank<sup>13</sup>, has also harassed borrowers<sup>14</sup>, and there have been even allegations of physical assaults<sup>15</sup>.

Although not a form of direct punishment, failure of repaying debts can led to the vicious circle of loaning from other moneylenders, losing homesteads and agricultural land<sup>16</sup>, bondage<sup>17</sup>, or in the most extreme case by the sale of organs<sup>18</sup>. Sometimes the debtors ‘went into hiding to escape wrath of usurers<sup>19</sup>. There are also reports that people committed suicide after being harassed by debt collectors<sup>20</sup>.

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<sup>10</sup> Haldar, A. & Stiglitz, J.E., *Group Lending, Joint Liability, and Social Capital: Insights From the Indian Microfinance Crisis*, in: *Politics & Society 2016*, Vol. 44(4), pp. 459–497, ([url](#)), p.474

<sup>11</sup> Haldar, A. & Stiglitz, J.E., *Group Lending, Joint Liability, and Social Capital: Insights From the Indian Microfinance Crisis*, in: *Politics & Society 2016*, Vol. 44(4), pp. 459–497, ([url](#)), p.492

<sup>12</sup> EASO, *Country of Origin Report – Bangladesh Country Overview*, December 2017, ([url](#)), p.77

<sup>13</sup> ‘Grameen Bank was founded in 1983 with the goal of helping the impoverished in Bangladesh, by providing small loans without requiring collateral. For more info, see <http://www.grameen.com/>

<sup>14</sup> Al Jazeera, *Grameen Bank: a debt trap for the poor?*, 20 October 2017, ([url](#))

<sup>15</sup> BBC, *Microcredit 'death trap' for Bangladesh's poor*, 3 November 2010, ([url](#))

<sup>16</sup> BBC, *The Bangladesh poor selling organs to pay debts*, 28 October 2013, ([url](#)); Daily Star (The), *Vicious traps of loan sharks*, 9 July 2012, ([url](#))

<sup>17</sup> IRIN, *The modern face of slavery*, 7 August 2009, ([url](#))

<sup>18</sup> BBC, *The Bangladesh poor selling organs to pay debts*, 28 October 2013, ([url](#))

<sup>19</sup> Daily Star (The), *Vicious traps of loan sharks*, 9 July 2012, ([url](#))

<sup>20</sup> Al Jazeera, *Being kicked out of Bangladesh's Grameen Bank*, 14 September 2012, ([url](#)); Daily Star, *A country of famished farmers*, 4 May 2018, ([url](#)); Dhaka Tribune, *Woman commits suicide after NGO loan harassment*, 9 August 2017, ([url](#));



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