

LAW AND THE STATE'S RESPONSE TOWARDS VIOLENCE AGAINST WOMEN

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The issue of violence against women in Bangladesh is not a new one. Women of Bangladesh are victims of disparity, discrimination and exploitation. This discrimination stems from the fact that gender has a camouflaging role, where human rights of women can not be exercised in full. Some laws are gender biased and discriminatory to women's human rights. The imbalance in these laws clearly points that it is male gendered, e.g. the unilateral right of divorce of husband. The increasing crime rate and violence against women indicate the interrelatedness of the various manifestations of gender discrimination. In this regard it is worthy to note that a very recent study by the World Bank shows that the countries that adopt measures to protect women's right and reduce gender gaps have less corruption and faster growth than other countries.

Nevertheless, the Government of People's Republic of Bangladesh is committed to uphold the rights of women and eliminate discrimination against women. In this respect Bangladesh is a party to several international conventions protecting women's rights and eliminating discrimination against them. However, the provisions of conventions are yet to be incorporated in the domestic legislation. Nevertheless, both the Constitution of Bangladesh and several special laws guarantee equal rights and protection of women against violence.

It is, however, needs to be noticed that enforcement of these laws haven't been encouragingly effective in the past few years. An alarming increase in crime against women and female children has caused serious concern. Reports on eight national dailies compiled by Ain-O-Shalish Kendra show that the number of reported incidents of violence against women had increased from 628 in 1995 to 1,533 in 1997. This, as reported by the media in August 1998, is evidence of the ineffectiveness

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of law in dealing with women's oppression.¹ Odhikar recorded a total of 83 deaths due to dowry demands in 1998. In comparison, there were 66 cases of domestic violence and death due to dowry demands in 1997.² It also recorded 842 cases of rape and 10 custodial rape during January to December 1999. Odhikar also recorded 96 dowry deaths in 1999 alone.³ Thus, the alarming increase in crime against women needs serious attention. The women's cell on violence against women monitors violence but in some cases are not empowered to take action against the accused, e.g., *fatwa* givers, episodes like Noorjahan is being repeated time and again. In Narayangonj, according to the daily *Prothom Alo* (a leading newspaper), Rashida had allowed a young man, a resident of the adjacent village, to wait for her husband inside her room. That was enough for the *fatwa* givers to convict her of immorality. In public, she was whipped 20 times for her 'offence'.

Violence against women may include murder of women/wives, wife abuse, acid burn, rape/rape in custody, *fatwa* related violence, trafficking, kidnapping, abduction, wrongful detention, police violence and so forth. Generally, police are reluctant to take cases of violence against women. Even where women go to police station to file a case they are confronted with total indifference, or coldness of the police personnel who are usually male. Moreover, if the complaint is for wife abuse she is treated more callously. Police attitude to violence against women is another determining factor in questionable implementation of the law.

I found in my fieldwork⁴ that most husband-wife assault cases which are reported are not entered into police records, rather they are sent to welfare agencies. However, even when they are entered it is hard to differentiate the offences. Official statistics in Bangladesh showed 275 cases of violence against women in ten years between 1985-1995 whereas, within one year of my fieldwork in 1996-97, I interviewed 100 abused wives. Moreover, it is to be noted that the

¹ The Daily Star, 24 August, 1998.

² The Daily Star, April 11, 1999.

³ The Daily Star, January 2, 2000.

⁴ Ameen, Nusrat, Keeping a Wife at the End of a Stick: Law and Wife Abuse in Bangladesh, Unpublished Ph.D. thesis, University of East London, Essex, 1997.

reported 275 cases also include 'stranger' violence against women like murder, rape, trafficking.

As elsewhere, women are abused behind closed doors. There are remarkably few estimates of the extent of the problem. Moreover, there has not been the required political will to fund a large-scale incidence and prevalence study. There has never been a national random incidence study in Bangladesh in terms either of the number of relationships affected or the frequency of violent attacks in each case, let alone other aspects of abuse.

It is certain that actual incidence of family violence will never be fully quantified, as such violence occurs within the privacy of the home and, often for reasons which include shame and humiliation, a victim is unprepared to complain about her situation, fearing that an admission of abuse will amount to an assault on the integrity of the family, and few official records are kept.

PROBLEM OF STATISTICAL ESTIMATES

Statistics from various sources show that figures on wife abuse are notorious for under-representing the problem.⁵ Nevertheless, I found in my fieldwork that *when* women do report the abuse, the statistics may be lost because the official fails to record the incident or records it in a way that is meaningless for research purposes. Although criminal statistics could be a major source of comprehensive data on violence against women in home, they frequently fail to indicate the sex of the victim and of the assailant and rarely record the relationship between the two. In these circumstances, it is impossible to distinguish wife assault from any other assault and thus for official statistical purposes, wife abuse becomes invisible.

Nevertheless, despite the fact that the problem of quantification of this offence can never be accurate, it must be acknowledged that violence is part of the dynamics of many family situations. The research that does exist, which stems mainly from the developed Commonwealth, indicates that women are murdered, sexually assaulted, threatened and humiliated within their own homes by men to whom they have committed themselves and that 'this is not uncommon or unusual behaviour'.⁶

⁵ Supra note 4.

⁶ Commonwealth Secretariat, May, 1987.

In the Bangladeshi context, it is likely that wife abuse is the most common but least reported crime.⁷ The victims are reluctant to report as they feel that in the absence of a strong provision in law and the legal system to deal with such crime, they would be subjected to more harassment.⁸ It is estimated that murder of wives by husbands accounts for 50% of all murders.⁹ In 1992, UNIFEM produced a fact-sheet on gender violence summarising statistical evidence on the incidence of wife abuse world-wide. This revealed that wife-battering is common in Bangladesh, Barbados, Chile, Colombia, Costa Rica, Guatemala, India, Kenya, Norway and Sri Lanka.¹⁰

PUBLIC AND PRIVATE DICHOTOMY

The systematic influence which the community members/helping professions (for example, lawyers, police, agency officers, doctors) have had on the characterisation of wife abuse is significant in dealing with the problem and especially within the legal system. These characterisations are embedded in practices that ignore the experience of battered women, thus making the issue invisible. Because of the values imprinted in the social institutions these professions portray a contradictory picture of abused wives, often shifting the blame to the victim, seeing it as essentially a '*private matter*'.

Various social practices, religious beliefs as well as state policies, operate to treat some incidents or events as 'personal', 'shameful' and not to be spoken of in public. The public/private dichotomy also operate to uphold the family honour. It is not a coincidence that most of these incidents concern women. Thus, a wife may think that if her husband beats her, it is her personal problem - after all religious codes seem to give men a certain right over their spouse. The common Bengali proverb saying that woman's heaven lies under her husband's feet indicates the social acceptability of such a premise while state

⁷ Shamim, Ishrat, Case Study on Violence in the Family: A Report, mimeo, Dhaka University, Dhaka, 1987.

⁸ Bhuiya, Rabia, Aspect of Violence, Dhaka, 1991.

⁹ Davies, Miranda, "The Hidden Problem: Domestic Violence; Understanding the Problem" in United Nations Resource Manual Strategies for Confronting Domestic Violence, In Women and Violence, London and New Jersey, 1994, at p.4.

¹⁰ Id.

policies support the fact by treating men as primary bread-earners and considering women's income as being essentially supplementary in a male-headed household.

However, when these 'personal' instances do find their way out into the public sphere it is either because there was some extreme repressive acts inflicted or because women have voiced some protest against it. In such conditions society takes on a camouflaging role by trying to keep these incidents, as far as possible, at a personal level (for example, *fatwa*).

The public character of wife abuse is placed in an insignificant status through the infiltration of the helping professions. The politicisation that brings to the fore issues of legal responsibility, and which underscore the political nature of the abuse, is obscured and ultimately shot down. T. Don as quoted from Ofei-Aboagye thus observes that,

Women battering is a crime and a social problem, not a private affair. Therefore all levels of government and society must share the responsibility to eliminate it.¹¹

However, at every level the implementation of the *law* is fettered by the attitude of those involved in the legal system, there is a reluctance to intervene in the family unit, a reluctance that again reflects the ideologies of the sanctity and the privacy of the family.

Our laws are far more involved with 'stranger' violence against women, for example, murder, rape or trafficking. On the other hand, it is silent in the case of wife abuse (except grave dowry offences) which is perhaps the most evident and prevalent form of oppression against women. The reluctance of law to give wife abuse due recognition can be surmised as: "*we saw the wood and missed out the trees. That is, we were so concerned about the most graver forms of women's oppression we missed out the most common form of violence*".

Thus in spite of guaranteed equal rights by legislation, the implementation of laws granting rights to women has been so slow and haphazard that socially, economically and politically women lag far behind men. Bangladeshi women thus, can be described as second class citizens in a society where though in theory, the law ensures equality and women are considered to be on a par with their male counterparts,

¹¹ Ofei-Aboagye, Rosemary Ofeibe, "Domestic Violence in Ghana: Some Initial Questions" in Fineman, M. and Mikitiute, R. (eds), The Public Nature of private Violence, Routledge, 1994, pp 261-285 at p.270.

in reality, as a group, men remain powerful and thrive at the expense of the women.

In regard to the legal status of women in Bangladesh the World Bank (1990) argues that while women are guaranteed to be of “almost equal status” to men under the law, a “patriarchal interpretation” of the law by society is common.¹² Jahan points that many aspects of the Bangladeshi legal system reflect the continuing dominance of patriarchal attitudes in society. For example, the lack of effective agencies to provide intervention or support for women’s legal rights, differential treatment of women in divorce, (that is if a wife wishes to file for divorce, she must testify in court, while a husband can simply petition the local Union Council) are evidence of this attitude.¹³

The weakness of law lies in the fact that both substantive and procedural law is not gender-neutral. The laws governing women’s private lives are discriminatory. They not only discriminate against women of the same community against men, for example, women have either delegated right of divorce or that the court has to be satisfied on their behalf that the husbands should release them of the marriage contract; they do the same between women from different communities too, for example, a Hindu women does not even have the right to divorce in Bangladesh.

Therefore, even the fullest application or implementation of these laws will not deliver equal justice to women. The procedures to be followed in the court process are complicated and often systematically and inherently discriminating to women and make it extremely difficult for women to enjoy the fruit. Because of the prevalent patriarchal attitude towards women, in most cases complaints are not recorded, evidence is hard to produce or establish, there is a very slim chance of obtaining proper judgement, and there is almost no guarantee of execution of judgement or enjoyment of rights. A study of the Family

¹² Lewis, David J. Going it Alone: Female-Headed Households, Rights and Resources in Rural Bangladesh, Centre for Development Studies, University of Bath, Occasional Paper 01/93, Bath, 1993.

¹³ Jahan, Roushan, “Hidden Wounds, Visible Scars; Violence Against Women in Bangladesh”, in Aggarwal, Bina (ed), Structure of Patriarchy: State, Community and Household in Modern Asia, New Delhi, 1988, pp. 199-223.

Court in Dhaka shows that husbands are rarely imprisoned or fined for their violent deeds.¹⁴

Moreover, in the absence or scarcity of shelters to provide women assistance, Magistrates arbitrarily order for women and children to be kept in 'safe custody' in jails.

THE RELEVANT LAWS

THE SUPPRESSION OF IMMORAL TRAFFIC ACT, 1933

The Suppression of Immoral Traffic Act, 1933 has often been criticised on account of its effort to prevent the traffic in women rather than curb prostitution but in reality prostitution and illegal trafficking are two sides of the same coin. The Act provides penalties for the detention of any female under the age of 18 years for the prostitution in brothels. The Act also provides punishment for causing or encouraging or abetting the seduction or prostitution of any girl (sections 8-12).

THE CHILDREN'S ACT, 1974

This Act provides for protection of children. Section 41 of the Act states that whoever allows a child to reside in or frequently to go to a brothel, shall be punished with imprisonment and /or fine. The Act also penalises any person other than her husband to have sexual intercourse with a girl who is under sixteen years of age. The Act further impose penalties for employment of a child in a factory, other employment or exploits the child or expose the child to the risk of seduction, prostitution or other immoral conditions.

CRIMINAL LAW

Criminal law which can be seen to specifically provide safeguard against crime on women are in the Penal Code (Act XLV of 1860) are: kidnapping/abduction (u/s 359-368), wrongful restraint/confinement (u/s 339-344), slavery/forced labour (u/s 370-374), causing miscarriage etc (u/s 312-318), hurt (u/s 319,326,328), criminal force/assault (u/s 349-352,354-358) etc.

CRIMINAL LAW RELATING TO PHYSICAL HARM

Criminal law regarding physical harm is quite specific in the Penal Code of Bangladesh, for example, the remedies against assaults and

¹⁴ Supra note, 4.

murders are clearly expressed in the law. The interpretation of the judiciary is relevant to understand the impact of any legislation. One of the most important factors to be considered by anyone wishing to examine the effectiveness of any piece of legislation is the criteria which judges bring to bear on their decision-making process.

As regards murder of wives or assault the criteria is influenced by patriarchy which subordinates women to an inferior position and thereby condones wife abuse and also emphasises the privacy and autonomy of the family. Therefore, as far as wife abuse is concerned, it appears that beliefs surrounding the family, property, the material status of wife abuse and existing structural inequality between sexes play a central role in determining the redress available to abused wives. The relevance of these considerations becomes apparent from the examination of the interpretation and implementation of cases on wife abuse and also from the assessment of police response to such offences.

However, the more severe offences like the murder are specified in Penal Code, under section 302 and 304. However, in murder cases which result from beating by husbands, they often seem to escape punishment. Judges' willingness to treat wife killing as less serious than other killing is often reflected in judgements. As will be seen, judges' opinions often are shaped by the patriarchal value of family relations which sanctions wife beating. The case of *Abdul Khaleque vs The State*, is a common picture of wife beating resulting in death:

Prosecution case, in short, is that the accused appellant married victim Rahima Khatoon about one and a half years before the occurrence without the consent of her parents. Since then she was residing in her husband's house with his first wife. On 12.8.1986, victim Rahima was assaulted by her husband. On the next day the victim's maternal uncle heard that the victim had died, taking poison. An unnatural death case was registered. Several wounds were found on medical examination. A case was filed under the Penal Code.¹⁵

In the meantime, the accused absconded. He surrendered on 12.11.1986. The learned judge held:

In our country specially in the villages beating the wife by the husband on flimsy pretext is a common day affair. Normally such beating is to chastise the wife for unbecoming behaviour. Such beating becomes excessive when the wife provokes the husband. We do not

¹⁵ 45 (1993) DLR (HCD) 75.

know what was the reason for beating victim Rahima, as there is nothing on record about the same. But from the facts proved it is clear that victim Rahima did not die immediately after the assault by her husband and died more than 12 hours after such assault..... But facts remain that victim Rahima died following the assault on her.

In the circumstances, accused appellant is not guilty of murder under section 302 of the Penal Code but of culpable homicide not amounting to murder under section 304 Part I of the Code. It was further argued that absconson of the accused appellant was with his guilty mind and is sufficient to hold him guilty beyond reasonable doubt along with other circumstances proved against him in this case.¹⁶

Even though wife abuse was proved beyond doubt in this case, the explicit narration by the learned judge making *wife beating a normal habit* of the husbands made it less likely to be treated as murder deserving the highest punishment. Generally, assaults on wives by husbands do not attract criminal liability. However, only when assault leads to murder, it is then viewed as an offence which is punishable.

However, in the following two cases the accused were actually convicted of murder which resulted from beating of wives by their husbands: *Kh. Ehteshamuddin Ahmed Iqbal vs Bangladesh and others*.¹⁷ and *State vs Munir Hussain Suruj and others*,¹⁸ the court found that the accused husbands guilty of murdering their wife and sentenced to death which were confirmed the High Court Division.

Reported cases are only “the tip of the iceberg”. All these cases give a general picture of how the criminal law deals with offences relating to women especially those which are committed by husband against the wife. They show that some husbands are finally punished after the most extreme abuse. However, the general picture remain one in which penalties under the criminal law are imposed only relatively rarely.

CRIMINAL OFFENCES RELATING TO MARRIAGE

In my fieldwork on wife abuse¹⁹ I found women being deceived by their husbands in many different ways. There were women being deceived by falsely representing to be married to them and by

¹⁶ Ibid., at p. 85.

¹⁷ BSCR, 1980, p239.

¹⁸ Title Suit no. 121, 1985.

¹⁹ Supra, note 4.

abandoning them later. There were several cases where the husbands committed adultery.

i) Cohabitation caused by a man deceitfully making the woman to believe that she was lawfully married, is an offence under section 493 of the Penal Code. I have found in my fieldwork women being deceived by men by a wrongful belief that they are married to them when actually they are not, for example, by holding a Quran and taking an oath to pretend a lawful marriage. The women on their part believe them out of sheer respect for the Quran. Ignorance and illiteracy are also reasons for such belief. For example, in the case of *Lukus Miah vs The State*²⁰ where such facts arose, the court, however, held that the victim did not have any reason to believe that she was not lawfully married to the accused appellant. It was stated that the victim of the alleged cohabitation knew that there was no marriage between her and the accused and that the latter had only promised to marry her on some future date. Such conduct did not come within the mischief of section 493 of the Penal Code. The courts are more concerned with the technicality of law than the harmful impact on the victim.

ii) Adultery is also common in a marriage. However, the law on adultery in the Penal Code (section 497) is peculiar. According to section 497, adultery is an offence committed by a man against a husband in respect of his wife. A woman cannot be accused under this Code nor is it an offence committed by a married man who has sexual intercourse with an unmarried woman, or with a widow, or even with a married woman whose husband consents to it.

Moreover, to prove adultery, the prosecution must not only prove that the accused had sexual intercourse with someone else's wife but also that the act was done without the husband's consent or connivance.

RAPE IN MARRIAGE AND SEXUAL HARASSMENT

In spite of penal sanctions against rape it remains a common form of violence against women. Rape cases are often mediated by community elders by either making the accused marry the victim and/or pay compensation irrespective of the consequences. Investigation and filing of charges remains problematic because of the inefficient procedures used by police for investigation and for medical tests.

²⁰ 43 (1991) DLR (HCD) 230.

Under our laws, a man can not legally “rape” his wife unless she is below 13 years of age. Even when the husband and wife are separated, a sexual assault by the husband may qualify as a sexual offence, but not rape. As Section 376 of the Penal Code states:

Whoever commits rape shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age [now sixteen years by Repression to Women and Children (Special Provision) Act of 1995], in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

There is no specific law dealing with sexual harassment although sexual harassment is increasingly becoming common in the wake of womens’ joining the formal sector as workers, particularly in the garment sector. The Penal Code however, touches somewhat slightly on this issue. Section 354 states that a person will face penalty if he assaults or uses criminal force intending to or knowing it to be likely to outrage the modesty of a woman. Section 509 states that whoever intending to insult the modesty of any woman, by uttering any word, making any gesture, or exhibiting any objects shall be punishable with simple imprisonment which may extend to one year or with fine or both. Nevertheless, to control and reduce sexual harassment any company or establishment may have its own code of conduct to punish the offender, for example, by suspension, discharge, or dismissal according to the gravity of the offence.

CIVIL LAW

DIVORCE

There are no specific civil law provisions to which victims of violence or wife abuse can resort to. The only remedy open to them in case of abuse is to seek a divorce under the Dissolution of Muslim Marriage Law of 1939, whereby a Muslim woman can seek divorce on several grounds including physical or mental cruelty by the husband (section 2viii). However, this right can be exercised only where the wife has been given the power of divorce (*Talaq-e-Toufiz*). The wives abused by their husbands, finding no alternative, are forced to seek divorce. Case studies of the City Corporation in Dhaka show that most of the divorces occur in this way [under the Muslim Family Law Ordinance of 1961,

section 7(1)] and by invoking the *Kabinnama* whereby the wives are entitled to divorce by the delegated power given by the husband.

Similarly, a Christian woman has the right to dissolve her marriage and judicial separation on the ground of cruelty by the husband. Unfortunately, a Hindu woman does not possess the right of divorce on the ground of cruelty, she can only claim the right of separate residence from the husband temporarily.

POLYGAMY

The verse of *Quran* dealing with polygamy reads:

If you fear that you will not act justly towards the orphans, marry such women who seem good in your eyes, one, two, three, or four; but if ye fear that ye shall not act equitably, then only one;... this will make justice on your part.²¹

In the same context the *Quran* adds:

And ye will not have it all in your power to treat your wives alike, even though you would fain do so.²²

If we examine these *Quranic* verses, we shall find that these verses do not point to polygamy. They clearly point to monogamy. The *Quran* permits a person to have a maximum of four wives provided he can treat them alike. But the second verse clearly says that it is not in the power of a man to treat his wives alike. Equal treatment to co-wives in food, clothing, lodging and affection is simply not possible. In the words of Ameer Ali,

The conditions under which polygamy is permitted are so difficult of compliance that they amount to its virtual prohibition.²³

In this regard Muslim Family Law Ordinance of 1961 (MFLO) plays a vital role by imposing some limitations on polygamy. Section 6 (1) of the MFLO, 1961 states that,

No man during the subsistence of an existing marriage shall except with the previous permission in writing of the Arbitration Council, contract marriage, nor shall any such marriage contracted without such permission be registered under this Act.

²¹ The Holy *Quran*, Sura IV, verse 3.

²² *Ibid.*, verse 129.

²³ Ali, Ameer, *Mohammadan Law*, 6th Edition, at p.188.

If he fails to comply, he is liable to a fine or imprisonment, and to the repayment of dower to his previous wife [MFLO, section 6(5)]. In addition, any of his wives may claim maintenance or demand a divorce on grounds of inequitable treatment (MFLO, sections 9, 13 respectively). However, a polygamous marriage contracted without the necessary permission remains valid; this, coupled with the man's right to unilateral divorce and the fact that maintenance is not available to divorced women, forces many women to silently suffer the humiliation and indignity of such a relationship, given that the only alternative is destitution.

The law regarding polygamy should be scrutinized. The husbands contracting second marriage do not feel the necessity of seeking permission from the Arbitration Council and Council in most cases also ignores the issue. In many cases identities are forged and so wives cannot seek redress. It is also difficult to get the copy of the *nikahnama* of the second marriage for proceeding against the marriage. To solve such problems, the Chairman of the Council or the Union Parishad should be made accountable for registration of marriage. The jail term for not seeking permission for second marriage should be extended. Most importantly, it is time to think of prohibiting polygamy in Bangladesh, like Turkey.

NON-MAINTENANCE

Besides physical abuse, the most common abuse is desertion by the husband and non-maintenance of the wife by him. The law states that a husband is bound to maintain his wife so long the wife remains faithful to him and obeys his reasonable orders. If the wife refuses herself to her husband or otherwise wilfully fails in her marital obligations she has no right to claim maintenance from her husband (MFLO, section 9).

If any solvent husband neglects or fails to pay maintenance to his wife or legitimate or illegitimate children, he is guilty of an offence under section 488 of the Criminal Procedure Code of 1898. The court may also order payment of a subsistence allowance not less than *Taka* 400 per month. In case of non-payment of the above amount the court may sentence the husband to a fine or to jail for a month.

A divorced Muslim woman is also entitled to maintenance allowance from her husband till the expiry of the period of *iddat*.²⁴ Section 9 of the Muslim Family Law Ordinance of 1961 prescribes the legal procedures through which the wife can claim her maintenance allowances. It states

If any husband fails to maintain his wife adequately or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives may in addition to seeking any other legal remedy available apply to the chairman of union council to determine the matter, and the arbitration council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

CHILD MARRIAGE

The system of child marriage is another factor which contributes to wife abuse. Although the government amended The Child Marriage Restraint Act of 1929 (in 1984) and raised the minimum age for a girl to get married from 16 to 18 years, breach of which is punishable, research shows that minor girls are still being married off by their guardians. This legal provision is not implemented and no case has so far been filed against the guardians. On the other hand, guardians are taking the plea of the Holy *Quran* that a girl who attains the age of puberty can get married, although this is a misinterpretation as the *Quran* has only indicated that a girl's reproductive capacity starts at puberty.

SPECIAL LAWS ON VIOLENCE AGAINST WOMEN

DOWRY PROHIBITION ACT, 1980

The Dowry Prohibition Act was enacted and passed in 1980.²⁵ The provisions of the Act is very concise in form having only 9 sections. (Later section 6 was repealed by Ordinance LXIV of 1984). Section 1 of the Act describes the commencement and application of the Act. The Act prohibits giving or taking dowry (section 2), the offence being punishable under sections 3 and 4 of the Act. It deals with the offence of giving, taking or abetment thereof or demanding of dowry in marriage

²⁴ Very recently in 1999 the Appellate Division of the Supreme Court of Bangladesh had set aside the decision of High Court in the case of *Hefzur Rahman vs Shamsun Nahar and others* 47 (1995) DLR 54 ???? and the law is now settled that post divorce maintenance is not allowed and that a divorced wife is only entitled to maintenance upto *iddat* period.

²⁵ Published in Bangladesh Extraordinary Gazette, dated 26th December, 1980.

by either parties at or before or after the marriage as consideration for such marriage.

The judges in the Appellate Division of the Supreme Court have now ensured in the case of *Abul Basher Howlader vs State and Another*.²⁶ that, not only the taking or giving of dowry or abetment thereof before or at the time of marriage is made an offence but also the demand thereof after the marriage. Thereafter, in a recent case of *Salam Mollick Md. vs. State*²⁷, it was ".....settled that if dowry is demanded after the marriage then also the offence under section 4 will be committed..." despite the fact that plea was taken that no offence was committed in the light of the said section. In this case the couple was married on 24.10.87 and dowry of *taka* 50,000 was demanded on 25.1.91. The wife was abused and was sent to her parents along with her minor daughter and was refused to be taken back unless the demand was met. It was held that the demand amounted to dowry demand and thereafter the accused were found guilty accordingly.

CRUELTY TO WOMEN (DETERRENT PUNISHMENT) ORDINANCE, 1983

The Cruelty to Women (Deterrent Punishment) Ordinance, 1983, has been repealed by the Government of Bangladesh after the passing of the Act in 1995, namely, Repression Against Women and Children (Special Provision) Act, 1995. The former Ordinance is dealt with by the Special Tribunal while the recent Act of 1995 is dealt by the Special Court of Sessions. As there was no Parliament in the country at that time because of imposition of Martial Law and as there arose the necessity for some immediate and specific law, this Ordinance was promulgated.

²⁸

The Cruelty to Women (Deterrent Punishment) Ordinance, 1983 provides deterrent punishment for the offence of cruelty to women which were triable by the Special Tribunals created by the Special Powers Act, 1974. It punished a person with imprisonment for life or provides the death penalty for kidnapping or abducting women, trafficking in women and attempting to cause death for demanding dowry (section 6) or for committing rape (section 7,8). It seems that it

²⁶ 46 (1994) DLR (AD) 169.

²⁷ 48 (1996) DLR 329.

²⁸ Khandakar, Abu Bakar, The Dowry Prohibition Act of 1980 and Cruelty to Women (Deterrent Punishment) Ordinance of 1983, Dhaka, 1991, at p 45.

cannot be analysed for lack of data whether this deterrent punishment had actually been of any help to reduce crimes against women. However, the case law reveals that dowry complainants were keen to apply the Ordinance than the Dowry Prohibition Act, 1980 in order to give a more severe punishment to the accused.

REPRESSION AGAINST WOMEN AND CHILDREN (SPECIAL PROVISION) ACT, 1995

The increasing crime rate against women in the country gave rise to grave concern in the government. Despite enacting several laws to safeguard women's rights which failed to curtail the rate of cruelty to women the government felt that a new law should be framed. This Act mainly lays down more severe punishment for the perpetrators of the following offences, namely:

- i) causing death or grievous hurt to any child or woman by means of poisonous or corrosive substances (sections 4 & 5).
- ii) rape (sections 6 & 7).
- iii) trafficking in women and children (sections 8 & 12).
- iv) kidnapping or abduction of women (sections 9).
- v) causing death or grievous hurt for dowry (sections 10 & 11).

This Act overrides all other existing laws in this area. The Cruelty to Women (Deterrent Punishment) Ordinance, 1983 was repealed after this Act came into operation. Section 4 of the present Act is almost a replica of section 326A of the Penal Code (acid throwing), which was a new insertion into the Code by Ordinance no. LXIX of 1984. This insertion was essential at that time to control the growing crime of this nature. This insertion may be a positive approach towards the solution of the rapidly growing offence of acid-throwing. Section 4 of the Repression against Women and Children (Special Provision) Act, 1995 lays down that, whoever uses a poisonous or corrosive substance to cause death to a woman or child shall be punished with death. Section 5 of the same Act prescribes the penalty for causing grievous hurt by means of poisonous or corrosive substances. For causing a) damage to eye-sight, b) disfiguration of the head or face, c) damage to hearing, d) damage to any part of the body, e) disfiguration of any part of the body, different types of penalties have been provided. The penalties may include: rigorous imprisonment for a maximum 14 years (which cannot be less than 7 years) and a fine or imprisonment for life and fine

according to the nature of the offence. In case of permanent disfiguration of the head or face or total or permanent damage of eyesight, the person may be punished with death penalty.

Section 6 of the Act corresponds with section 376 of the Penal Code and also section 8 of the Cruelty to Women (Deterrent Punishment) Ordinance of 1983. The Penal Code provided imprisonment for life or with imprisonment of either description for a term which may extend to 10 years and also fine. The Cruelty to Women (Deterrent Punishment) Ordinance, 1983 also lays down severe punishment and section 8 of the Ordinance increased the punishment to the death penalty for committing murder or causing death after committing or attempting rape. The Repression Against Women and Children (Special Provision) Act, 1995, provides for the death penalty in case of causing death to any child or woman while committing the offence, whether by a single person or through gang rape.

Section 2(f) of the Repression Against Women and Children (Special Provision) Act, 1995 and section 2 of the Dowry Prohibition Act, 1980 are similar regarding the definition of dowry. However, the difference lies in the penalty provided in them. Both Acts penalise the offence of giving, taking and demanding dowry. The Dowry Prohibition Act, 1980 provides imprisonment of one year or fine which may extend up to 5000 *taka* or both (section 2 of Ordinance No. 26 Of 1986 enhanced the punishment). The 1995 Act lays down that, a) for causing death for dowry the offender shall be punished with death penalty, b) for attempting to cause death for dowry, the offender shall be punished with imprisonment for life and c) for causing grievous hurt for dowry the offender shall be punished with imprisonment for 14 years which cannot be less than 5 years and also liable to fine. Nevertheless, previously the Cruelty to Women (Deterrent Punishment) Ordinance, 1983 also provided severe penalties for dowry offences. Section 6 of this Ordinance provided the death penalty, transportation for life or rigorous imprisonment for a term which may extend to 14 years and also fine for such offences.

It may be appreciated that the new legislation lays down heavy penalties for attempting to cause death or grievous hurt for dowry. But it may be noted also that the Cruelty to Women (Deterrent Punishment) Ordinance, 1983 did not make the offence punishable if there was no allegation of attempt to cause death or grievous hurt while demanding

dowry,²⁹ so, causing simple hurt or psychological harm did not attract the provision of the Ordinance of 1983.³⁰ The above observation also applies in the new legislation of 1995, which does not punish the offence of causing simple hurt or psychological harm in demanding dowry.

One pertinent point to note is that, out of 511 sections in the Penal Code, 9 sections provide the death penalty, namely, section 121, 132, 194, 302, 303, 305, 307, 326A, and 396 whereas, 10 death penalties are prescribed by the 12 sections of the Repression Against Women and Children (Special Provision) Act of 1995. Considering the increase of violence against women it is doubtful whether capital punishment is worthy in curbing this evil.

WOMEN AND CHILDREN REPRESSION CONTROL ACT, 2000

Very recently a new law namely, The Women and Children Repression Control Act 2000 has been passed which replaced The Repression Against Women and Children (Special Provision) Act of 1995. On the face of increasing violence this new Act has been formulated to prevent such violence with stern punitive measures.

The Act is almost similar with the 1995 Act with few amendments regarding penalties. The positive aspects of the new law are, for example, is that the Act provides pecuniary compensation to the victims from the proceeds of the fines awarded or if necessary, by confiscating movable and immovable property of the convict (section 15). The child born following a rape will be the responsibility of the offender (section 13). The provision for camera trial and non-publication of the victim's identity (section 14) are good steps taken by the government. Moreover, relaxation of bail provision, removal of mandatory death penalty are positive approaches taken and considered.

However, the provision of child maintenance as a result of rape is a mere farce because it is doubtful whether the offender will bear the responsibility of the child until he becomes an adult or until the girl is married. Can a country where post divorce maintenance is not legal and even maintenance by husband itself is questionable; ensure the responsibility of an offender to maintain a child following a rape?

²⁹ *Firoza Begum vs Harmuz Ali and another*, 8 (1988) BLD 122.

³⁰ *Dr. Atikur Rahman vs The State*, 14 (1994) BLD 303.

Therefore, it is argued that if the State is made responsible for the child born out of rape then it may ensure the maintenance. Furthermore, where State becomes liable, it will ensure that law and order is maintained better. The provision of safe custody in the present Act should also be scrutinised in the light of human rights. As the Constitution guarantees personal liberty, there should not be any provision in any law infringing such rights. The present Act, in section 31, makes it mandatory for the tribunals to direct the women/children victims to safe custody. This should be amended and women should be given liberty to choose whether to go for safe custody or not. However, the Act provides that, where a woman is raped in custody, the custodian will be subject to imprisonment of not more than 10 years or not less than 5 years and fine up to 10,000 taka if he is found guilty (section 9 sub-section 5).

CONCLUSION

The law can not exist in a social vacuum. A social atmosphere must be created in which the disadvantaged could restore their faith in the society's sense of justice and that their rights are of concern to the society. The defence of their rights by the due process of the law should not appear to them to be an unattainable fantasy. In practice, women – owing to their ignorance of law and their general powerless position, pre-determined by their socio-cultural circumstances – are not in a position to get protection from the law even when protection is available.

Violence against women is a gender based phenomenon which occurs in all spheres of private and public life, starting in the family to the workplace, the community and international and national conflicts situations. The forms of violence as seen may include physical /psychological violence in the home, sexual harassment in the workplace, forced prostitution and trafficking, and sexual slavery.

Where the social, political and economic conditions are not favourable to women and the legal system is complex, the social structure is class biased and the economic poverty and rate of illiteracy is alarming, women often fail to avail the protection of law. Government and non-government organisations in this regard can play a key role to uphold women's rights and combat violence against women.

Awareness raising campaigns at national and regional levels through the educational systems, community organisations, mass media, legal aid can be encouraged. It is very important to establish women's studies as a serious and legitimate field of study, public interest litigation (PIL) should aim to safeguard women's rights.

The problems of Family Court should be looked into with due diligence. For example, although the court fee is nominal under this Ordinance but there is no limit for fees of a lawyer which at times become impossible for the poor to bear.

Enacting new laws is not sufficient but to implement them is the real task. What could all these special law do for Rashida, a victim of fatwa mentioned in the beginning of the paper? The incident proves that unless the existing law is effectively enforced, violence against women on one pretext or the other would go on. Secondly, it shows that despite resistance the *fatwa* pronouncements are still rooted in society. Thirdly, the most crucial message that Rashida's incident bears is the society's refusal to empower women. Rashida used to run the family as her husband was psychologically unstable, which people like the *fatwabaaz*, found difficult to accept. Rashida had no way of saving herself from the wrath of these male dictators. Unless the hand of law intervene and provide exemplary punishment to the perpetrators, women's rights will remain in book only and a far dream.