

VIOLENCE AGAINST WOMEN: IDEOLOGIES IN LAW AND SOCIETY

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INTRODUCTION

Violence against women whereby their lives, liberty and security are sharply curtailed has become a source of grave concern in the country. Violence against women has been broadly defined as any act “involving the use of force/coercion with an intent of perpetuation/promotion of hierarchical gender relations in all social structures.”¹ Although violence is often regarded as synonymous with physical harm, the above definition indicates that violence also include sexual and psychological aggression. Ideally, therefore, any discussion on gender violence is incomplete unless it encompasses a wide category of oppression suffered by women at different levels. Thus, it may be said that violence against women connotes any act, whether in private or in public, that is likely to result in physical, sexual, psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty.

Women are subjected to various forms of violence on account of their gender, which invariably relegate them to a subordinate position in the socio-economic, legal and cultural contexts of the country. The complexities of gender relations that encourage male privilege over females most often lend social legitimacy to the use of violence against women in order to secure their submission to male authority. The conspicuous rise in violence against women may be attributed to traditional gender stereotyping which enables men to control and repress the sexuality of women. Augmented by customary and religious dogma, poverty,

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¹ Jahan, Roushan, Hidden Danger. Women and Family Violence in Bangladesh, Dhaka, 1994, citing Asia Pacific Forum on Women, Law and Development (APWLD), My Rights, Who Controls? Asia Pacific Women's Issues, Law and Development Process, Kuala Lumpur, 1990, at p.7.

unemployment, migration and debt crises greatly contribute to the devaluation of women.

In the circumstances, it is only right to be concerned about prevalent ideologies that effectively reinforce and maintain the gender hierarchy within the social system. While the development of women is one of the primary objectives of the Government of Bangladesh, progress in the removal of disparities in areas of health, education and employment opportunities has been limited. Women's rights have time and again been compromised by their vulnerability to violence and insecurity, which actively reduce their potential for development. This is accentuated by a legal system that institutionalises male dominance over women in almost every sphere. Laws appear not only inadequate to protect women but also contain many provisions that fortify social values, which discriminate against women. Although the Constitution of Bangladesh guarantees equality before law and equal protection of law for all citizens, the principle is often severely curtailed in respect of women's rights. Consequently women continue to be subjected to violence, harassment and degradation.

The present paper explores the victimisation of the Bangladeshi woman and examines prevalent ideological and normative attitudes within the social fabric in respect of men's rights and privileges and women's corresponding duties and obligations. The paper also examines the role of law, which in many cases proves impotent in protecting women from violence.

UNDERSTANDING GENDER RELATIONS

In order to understand how gender roles are conceived and enacted, it is necessary to explore the traditional and cultural constructions of femininity and masculinity, which play an important part in determining the implications of the perceived differences between the lives of men and women in the country.

The predominant force in the social organisation is patriarchy. Patriarchy in this context means that every avenue of power and authority within the society is entirely in male hands. Patriarchy places the male, who is in control of all property rights, at the head of a given household. Since descent is traced patrilinearly, the male child, as the chief and only perpetuator of the line, alone bears the distinction of being the father's real successors and of upholding the family name and honour. Conscious of her inferior status the girl child imbibes the essential virtues of 'ideal Bengali womanhood', namely, patience, obedience, endurance and sacrifice

from a very early age. Thus,

Femininity requires a woman to share the same characteristics laudable in obedient and efficient servants, well adapted and resigned to their inferior position. Masculinity, maleness, on the other hand is supposed to be distinguished by qualities that are the absolute opposite, the qualities of a master, of strength, determination, initiative and boldness.²

Perpetuated by patriarchy, gender differentials are evident in areas of social norms, health, education and legal rights. Therefore, socially, customarily and legally males in the family are given preference in all matters over females.

Therefore, cultural prescriptions contribute significantly to the designation of certain roles as appropriate for women and others as suitable for men. Patriarchy, as an ideology, sets out basic standards and a model for women in the family and society to which they are expected and encouraged to conform. Traditionally, women are dominated by fathers, husbands and sons in the home, and by other men in the public space. Male domination therefore, assumes different forms at different times and at different levels of the society, which serves to reinforce women's oppression in the political, economic and social structures.

Central to the understanding of gender relations is the segregation between women and men into private and public spaces. Male domination helps entrench unequal gender relations and validates a gender identity that perpetuates female inferiority and male superiority. This identity is significant as it prescribes the kind of behaviour that is socially appropriate for men and women. Composed of a wide range of customary practices, religious codes and social beliefs, the dichotomy between the private and the public sees some events as 'personal' and 'shameful', particularly when they concern women. Physical segregation between the sexes is effected by isolating women from outsiders and imposing on them extreme standards of female modesty. This is achieved through the institution of *purdah*, the literal meaning of which is 'curtain'.³ However, the institution of *purdah* includes a wide range of cultural practices, chief among which is the avoidance of interaction between women and men outside certain well-

² El Saadawi, Nawal, The Hidden Face of Eve. Women in the Arab World, London, 1980, at p.79.

³ Rozario, Santi, Purity and Communal Boundaries. Women and Social Change in a Bangladeshi Village, London, 1992, at p.88.

defined categories. Female seclusion is commonly enforced either by confining women in separate spaces or private spheres, i.e. the home or by the use of veils to cover their faces. Apart from averting accidental meetings between men and women this practice also compels women to remain dependent on males.

Measures of *purdah* are considered essential in order to protect the chastity of the female since sexual purity is an overriding consideration at marriage. The practice of *purdah*, therefore, reflects a concern with a woman's sexual vulnerability⁴ and the consequent need to protect her from possible violation or sexually motivated assault from non-family males. Although a common Bengali saying goes states that 'chastity is a woman's best ornament', no mention is made of the need to protect the sexual purity of men. It is observed that

The honour or chastity of a girl is likened to a matchstick that can only burn once and then is over. Once a girl has lost her virginity, therefore, she has irrevocably lost her honour, and can never retrieve it. On the contrary, his chastity can be burnt a hundred, nay a thousand times, but he will never lose his honour or consume it.⁵

As a girl child leaves behind her first years and enters into puberty, the attitude of parents and guardians regarding boys and girls continues to diverge. The girl is withdrawn from free interaction with the external world, and in particular with males. Greater limits are placed on the freedom of the female child in terms of association, communication and contact. This also results in withdrawing the girl child from school where segregation of the sexes is difficult to maintain, particularly in the rural context.

Parents of the girl child, in anticipation of marriage of their daughter, proceed to restrict the female child to the small coterie of family members and kinsmen. Since marriage for the girl is the ultimate goal in life, her family zealously protects her from any possibility of losing the virtues that have been so meticulously instilled in her. Thus,

the imposition of chastity norms, the continual anxiety surrounding the

⁴ Vatak, Sylvia, "Purdah Revisited: A Comparison of Hindu and Muslim Interpretations of the Cultural Meaning of Purdah in South Asia" in Papanek, Hanna and Minault, Gail (eds.), Separate Worlds. Studies of Purdah in South Asia, New Delhi, 1982, pp.54-78, at p.59.

⁵ Supra note 2, at p.79

subject of woman's sexual misconduct or suspicion thereof can be interpreted as the most effective way by which kin groups protect their 'investments' and guarantee the kind of marriage for their daughters and sisters that will reflect favourably upon their own status and position.⁶

The system of *purdah* is, therefore, related to the maintenance of moral standards as specified by the society.⁷ These moral standards are so deeply ingrained, particularly in the rural society, that it is not only the males who have definite ideas about the behaviour of women but also women themselves. Women derive comfort from this symbolic shelter (seclusion) afforded by males, both against the supposed dangers of the unsegregated world and from strong impulses like sex and aggression. The practice of *purdah*, therefore, entails much more than physical restriction of females. It is the internalisation of values of shyness, timidity, honour and shame.⁸

CULTURAL LEGITIMATION AND VIOLENCE

In most societies violence results from a combination of forces including poverty, ignorance and a slack penal system. Yet the most enduring enemies of a woman's dignity and security are cultural forces that preserve male domination and female subjugation in the name of venerable tradition.⁹ In such cases the practice of some violence is accepted, normalised and even legitimised to the extent where its occurrence is not even recognised let alone acknowledged.

Male domination not only protects the power and privilege of males but also validates a gender hierarchy which prescribes socially acceptable roles and behaviour for men and women. The link between masculinity

⁶ Youssef, Nadia H., "The Status and Fertility Patterns of Muslim Women" in Beck, Lois and Keddie, Nikki (eds.), Women in the Muslim World, Harvard, Cambridge et al., 1978, pp.66-99, at p.94.

⁷ Papanek, Hanna, "Purdah: Separate Worlds and Symbolic Shelter" in Papanek and Minault (eds.), supra note 4, pp.3-53, at p.7.

⁸ Feldman, Shelley and McCarthy, Florence, "Conditions Influencing Rural and Urban Women's Participation in the Labour Force" in Seely, Clinton B. (ed.), Women, Politics and Literature in Bengal, South Asia Series, Occasional Paper No.10, Asia Studies Centre, Michigan State University, 1981, pp.19-30, at p.26.

⁹ Bunch, Charlotte, "The Intolerable Status Quo: Violence Against Women and Girls" in The Progress of Nations, UNICEF, 1997, pp.41-45, at p.43.

and power is evident in the cultural construction of gender. The process of interpreting masculinity in terms of power confirms the dominance of men over anything non-masculine. Violence has been recognised as a predominantly male phenomenon which is used by men to maintain and reinforce their control over women. It is said that male violence towards women results from possessiveness, jealousy and a sense of the right to punish 'their' women for any transgression. Although the capacity to protect and provide for the family is, in many cultures, linked to the male identity, the social construction of masculinity is premised on the assumption that masculinity and power are linked to aggression and violence.¹⁰

Violence against women proceeds from the prevalent normative ideology that controls power relations between men and women in both the public (male) and the private (female) spheres. This, in essence, stereotypes and devalues the functions of women simply because they are performed within the privacy of the homes. The socially ascribed gender roles enforce the isolation of women and heighten their vulnerability to violence. Male aggression and female acquiescence and acceptance of such aggression forms part of the culture because the very identities of the male and the female legitimise such behaviour.

Fortified by religious sanctions the very structure of a household permits physical chastisement of its women, i.e. dependants, by men, i.e. their guardians. It is recognised that male privilege legitimises a gender hierarchy within the family and the community, which vindicate female subordination and the use of violence against women. Consequently the so-called protectors of women have the privilege of routinely beating, torturing and assaulting them in ways, which often lead to death.

This situation is augmented by the global culture that holds women responsible for keeping the family together; cultural norms subscribe to a sense of guilt in women if they do anything that is likely to challenge male authority in the family which may eventually lead to the breaking up of the family.¹¹

¹⁰ Alder, Christine, "Violence, Gender and Social Change", 32 (1992) International Social Science Journal, pp.267-276, at p.269.

¹¹ Dairium, Shanti, "Overview of Selected Strategies Related to Some Forms of Violence Against Women," in Background Paper at the Regional Meeting on Ending Violence Against Women and Girls in South Asia,

A woman is not only the object of pleasure for her male custodian but also the repository of male honour and status in society. The principal measures of securing *izzat* are based on female modesty and the control of their sexuality and the protection of male honour. In the circumstances, even where the woman is a victim of a sex crime, it is not her predicament that is important, rather it is the assault on the male honour that requires to be avenged. In a patriarchal situation sexuality of women is qualified in two ways: women are, on the one hand, sexually aggressive and on the other, vulnerable.

These notions operate mainly across the body of the woman in terms of a double edged passivity; one, in which her unpredictable, volcanic sexuality, seemingly inert but capable of erupting under non-supervision, make her suspect any sexual transgression, and second, in which her vulnerability makes her an easy target so that she must forever guard herself and be guarded, or face the consequences.¹²

Women therefore, are regarded as sex objects who are required to be kept apart in order to protect men from their charms and at the same time, seen as being susceptible to sexual assaults, thereby, needing protection themselves. Despite women's inherent passivity, they are held responsible for sexual transgressions over which they have no real control.

Statistics suggest that excess mortality among women and girls contribute to a negative ratio in Bangladesh. Excess mortality and morbidity among women and girls are the result of maltreatment, neglect and systematic discrimination. A special report by the Bangladesh Bureau of Statistics in 1993 reveal that death due to unnatural causes, i.e. suicide, murder, drowning, burning, accidents, poisoning and so on, was almost three times higher for women than death due to pregnancy related causes. This predicated the understanding that such unnatural deaths may have been induced by violence that has never come to light. Since the male is considered omnipotent in society there is a pronounced tendency for women not only to accept such treatment but to conceal its occurrence in order to protect the male ego and family honour.

Having very little access to material resources women lack autonomy and decision making power. This often precipitates their subordination

October 21-24,1997, Kathmandu, Nepal, p.3.

¹² Zia, Afiya Shehrbano, Sex Crime in the Islamic Context. Rape, Class and Gender in Pakistan, Lahore, 1994, p.19.

within the family and wider community. Women's empowerment is restricted by the continuing social, cultural, religious and traditional values that perpetrate patriarchal attitudes through family norms as well as laws and policies. Poverty and lack of power make women completely dependent on the support and whims of men. Consequently sex-role stereotyping maintains the dominance of the male over the female which effectively manipulates and suppresses women's individuality, mobility and sexuality.

PROPENSITIES IN GENDER VIOLENCE

DOWRY VIOLENCE

The practice of dowry is a major scourge that afflicts the Bangladeshi woman. Although the customary practice of dowry has serious implications in the lives of the people in the contemporary society, its ramifications tend to be particularly harsh on women. Although Hindu ideology sees dowry as a 'gift' the prevailing practice of dowry is more like a 'demand' and is indeed termed as such. Despite the fact that dowry is not an Islamic practice, the system appears to have made its way into the contemporary Bangladeshi society soon after the country gained independence in 1971. Although geographical proximity with India and Hindu cultural influences are often deemed responsible for the development of the dowry system, other socio-cultural factors may well precipitate the practice. Where, for example, women are traditionally regarded as 'belonging' to some male in the family and carry a price on their heads, it is only natural for them to be 'owned' after an appropriate price is tendered. Failure to provide the desired price results in violence against the women which ranges from the threat of divorce and abandonment to physical acts of beating or even murder. Violence for non-payment of dowry, either by the husband or his kin, frequently occur within the privacy of their homes and as such are largely regarded as private family matters which are of no concern to others.

FAMILY VIOLENCE

The issue of family violence remains the most under-reported and unreported crime. Although family violence includes child abuse, aggression and physical punishment by male authority, marital violence, often resulting from non-payment of dowry, is one aspect of family violence that has serious implications. Cases of marital violence are labelled

as purely 'domestic' and as such do not merit kin assistance let alone police intervention. The social construction of masculinity compels women into passive acceptance of physical violence by the husband as legitimate discipline.

Various factors combine to reinforce violence within the family. Amongst them, the most significant aspects include (i) the universal acceptance of male dominance including the right to physically punish wives; (ii) the inherent reverence of the family as an institution; (iii) the prevalent social notion of the centrality of marriage in a woman's marriage; (iv) the prevalent bias that regards violence as peripheral and (v) the fear of social censure and loss of face.¹³

RAPE AND SEXUAL ABUSE

Violence against women is most often sexual in nature where the male plays an interchangeable role of the protector and the predator. This is directly related to the ideological construction of femininity that views women as 'property' of men. While on the one hand, man is essentially the protector of the sexuality of his female dependent, on the other hand, his manliness is apparently tested by his own sexual conquests of women 'belonging' to other men. Rape and sexual abuse are manifestations of the most heinous form of crimes against womanhood which effectively undermine women's empowerment. While in many cases sexual violence leads to exploitation and murder of women, in yet others, it reduces the victims' self esteem and sense of worth.

Although rape is usually committed on young women, minor girls are increasingly falling prey to such violence in both the rural as well as urban areas. Information regarding the age of the victim varies resulting in inconsistencies in police records and those of activists and researchers. For instance, it was pointed out by Islam and Begum¹⁴ that while official records at the DIG's office in 1984 indicated that 75% of the rape victims were adults, their own research revealed that 35% of the victims were below 15 years of age. There is a clear need therefore, to adopt uniform measures in maintaining records in order to facilitate a better understanding of the actual extent of the problem.

¹³ Jahan, Roushan, *Ibid*, 1994, p.20.

¹⁴ Islam, Shamima and Begum, Jakia, Women: Victims of Violence 1975-1984, Dhaka, 1985, at p.23.

Rape in Custody

The issue of custodial rape, i.e. rape of women in police custody has assumed alarming proportions lately. Although there is no legal provision for 'safe custody' in jails, Magistrates, on occasion, are compelled to send victims of rape, prostitution or trafficking to jail in the absence of any viable alternative. The temporary arrangement is termed as a safe custody. However, exactly how 'safe' is the 'safe custody' has been a matter of great debate lately as many women have been found to have become victims of violence within this so-called 'safe custody'. The cases of Yasmeen and Seema¹⁵ bear testimony of the gross violations of human securities when women supposedly in the safety of law enforcing agency were raped while in their custody. Both girls were killed in the process. Police atrocities have reached such heights that more and more people prefer to remain silent rather than complain to the police. It was aptly pointed out in a local daily that

the behavioural pattern of police in recent times, particularly in the case of sexual harassment, suggests that it is not just a case of accepted inefficiency stemming from a pay scale that is ridiculously low at the lower tiers but also an increasingly felt absence of moral imagination--so vitally important in the case of people committed to the cause of public

¹⁵ Yasmeen, a 14 year old girl, was raped and killed by three policemen in Dinajpur in August 1995. While Yasmeen was waiting at the bus stand on her way home a police van arrived and offered her a lift. When her body was later discovered by the local people, the police claimed that Yasmeen had jumped off the van. It took a considerable length of time to initiate proceedings against the accused in this case revealing thereby an institutional acceptance of violence against women.

Seema, a 17 year-old girl, was raped by police officers on 10th October 1996 while she was in police custody in Raujan, Chittagong. She was apprehended by a police patrol while eloping with a garment co-worker and was brought to the police station for interrogation. The Officer in Charge left the station after locking her up and on his arrival the next morning he found Seema lying unconscious, her clothes in a disarray. On regaining consciousness in a local hospital Seema claimed that some policemen entered after the Officer in Charge left and forced her to drink a glass of water. She lost consciousness after that. She suspected that she had been raped in her unconscious state.

service.¹⁶

Since the offenders are supposed to uphold the law their liability is hardly acknowledged and charges are generally not brought. At the most they may be transferred elsewhere to avoid prosecution.

SEXUAL EXPLOITATION OF WOMEN

Women are increasingly falling prey to traffickers who lure them away with promises of jobs, food and clothing. Suffering from deprivation, these women become unwitting victims of sexual exploitation, sale and illegal trafficking across borders. The most distressing aspect of sale and trafficking of women and children is prostitution. As with other commodities, prostitution adheres to a price mechanism in which youth raises the price where the rules of sale agreement, being hardly stringent, allow the sale of women and children into slavery for a very nominal sum.

SUICIDE

Suicide is often a measure of escape for women from abusive family conditions. Suicide rates are particularly high amongst victims of dowry violence. When extortions continue well after marriage women often resort to taking their own lives in an attempt to escape the torment that follows the non-payment of dowry. Victims of rape also often commit suicide to avert the shame and dishonour brought about by their victimisation. A woman's *izzat* (honour) is tied to that of the family, particularly the men, and any transgression on the chastity of the women seriously tarnish the image of their protectors.

Since suicide is prohibited in Islam, families of suicide victims often conceal the cause of death in order to avoid social and religious ostracism. Such cases are not reported and are not maintained in the police records. Consequently, suicide cases, though common, receive scant publicity apart from scattered reporting.

ACID THROWING

Throwing acid is yet another horrific form of cruelty against women. This is largely used as a mechanism of wreaking vengeance against women for various reasons, which may range from refusal to provide dowry to marry

¹⁶ Chandra Shekhar Das, *The Daily Star*, 18 February, 1997.

an ardent admirer. The agony suffered by the victims is beyond reasonable comprehension which not only results in the physical damage and deformity of the victim, but also causes immeasurable misery and mental trauma for the rest of their lives.

WOMEN AND THE LAW: SOCIAL POLICY AGAINST VIOLENCE

Initiatives in the formulation of social policy on women through legislation were taken up since the British rule in the Indian subcontinent when certain customs such as *sati* and female infanticide were abolished in recognition of the need to protect women from oppression. Some of the laws since have been amended and new laws introduced to suit the transitional socio-economic conditions. Amongst them some of those, which deal specifically with aspects of gender violence are discussed in brief:

THE PENAL CODE 1860

The Penal Code provides punitive measures against kidnapping and abducting a minor. Penalties are also available against trafficking of girls for the purpose of prostitution. Rape is punishable with imprisonment and fine.

THE SUPPRESSION OF IMMORAL TRAFFIC ACT 1933

This Act provides penalties for the detention of any female under the age of 18 years for prostitution in brothels. The Act also provides punishment for causing or encouraging or abetting the seduction or prostitution of any girl.

THE CHILDREN'S ACT 1974

The Act incorporates a strong welfare component and provides measures for the protection and safety of the child. It provides punishment for keeping or allowing a child under 4 years in a brothel and encouraging any person other than the husband to indulge in sexual intercourse with a girl under 16 years. The Act also penalises anyone who secures a child ostensibly for employment in a factory but in fact exploits and exposes a child to seduction, sodomy, prostitution or other immoral conditions.

THE DOWRY PROHIBITION ACT 1980

The escalation of the practice of dowry demands as part of a marriage transaction led to the enactment of a law prohibiting both the giving and the taking of dowry and prescribes punishment for those involved in the practice. The Act in essence was enacted to arrest violence against women, which invariably followed the non-payment of dowry.

REPRESSION AGAINST WOMEN AND CHILDREN (SPECIAL PROVISION) ACT 1995

This Act, now repealed, imposed stricter punishments including life imprisonment and death sentence to curb gender violence. 10 death sentences are prescribed in only 12 sections of the Act. The Act imposed penalties including death sentence, rigorous imprisonment up to 10 years, life imprisonment and fine on any person for rape, for causing a woman to have illicit intercourse with any person or to engage in prostitution and other immoral activities. The Act also prescribed strict measures to restrict dowry related violence, violence through the use of corrosive substances and so on.

NARI O SHISHU NIRJATON DOMON (BISHESH BIDHAN) AIN 2000

This new Act has superseded the Act of 1995 and addresses several new aspects of violence by incorporating measures against crimes like sexual harassment and child sexual abuse. The Act contains stringent punishments, including death penalty in certain cases, for acid throwing, trafficking, kidnapping, rape, sexual oppression, wilfully causing physical deformities and so on. The Act also applies to attempt to rape and imposes strict penalties including death in case of rape in police custody. It also prohibits the media from publishing the identity of victims of violence.

THE TENSION BETWEEN LAW AND PRACTICE

Although law plays a crucial part in ensuring the rights of women, its role in legitimising and sustaining women's subordination in the family and wider society is even more critical. Many laws are actually hostile to women and discriminate against them. Although the concern of the Government over gender violence is manifested through prompt enactment of laws, they lack the mechanism that is necessary to challenge the basic gender inequality that underlies the institution of violence. In fact the law too

institutionalises male dominance over women in every sphere. This refers not only to the inadequacy of the law to protect women but also to many discriminatory legal provisions that reinforce the social devaluation of women. This is particularly relevant in the area of personal laws regarding marriage, divorce, inheritance, guardianship of children, which tend to discriminate against women. Unequal gender relations are manifested in the law in several other key areas which include labour laws denying women access to economic resources or the autonomy of choice regarding the right to work, laws relating to immigration which restrict women's freedom of movement and so on. The texts of these various laws, when analysed, reveal normative values that encourage the dependency of women on men in almost every sphere. The situation is augmented further by prejudicial enforcement of laws by police, gender biased judgements in courts, ignorance of the law and the law making process by women who are unaware of the rights they possess under law.

UNCLEAR LEGAL TEXTS

Lack of clarity and ambiguity of expressions in legal texts lead to protracted controversies, which result in denial of protection to women. While protective legislation specifies only certain forms of aggression such as causing death, grievous hurt, rape and so on and imposes stiff penalties, they are confined in their dimension and fail to identify other diverse forms of violence that affect women. Consequently, such acts do not merit any remedy, as they do not fall within the purview of the relevant Acts enacted to combat gender violence. For example, wife battering, incest, sexual harassment at work and on the streets, psychological torture and so on are not addressed in relevant laws. The laws are also silent on violence resulting from *fatwas* or religious injunctions at trials by *shalish*, which is a traditional method of alternative dispute resolution. The interests of women are often compromised at trials by *shalish* which generally operate under the guidance of village elders (male). While *shalish* members were traditionally called upon to mediate over family or land disputes, they are increasingly becoming involved in trying and convicting women of adultery and sentencing them to flogging, stoning or even death. Although these trials have their positive side they often contradict the constitutional guarantees of protection from cruel, inhuman and degrading treatment.

IMPROPER INVESTIGATION

The prevalence of severe punishments in legislation often result in more acquittals than convictions. There is a marked disinclination of the judiciary to mete out exemplary punishments against persons accused of violence against women despite the strict measures laid out in relevant Acts. Statistics demonstrate the trend in acquittals and convictions in cases registered by the police for cruelty to women in 1996:

Year	Crime	No. of Cases	No. of Chargesheets	No. of Convictions	No. of Acquittals
1996	Rape	1363	692	9	28
1996	Torture	1595	766	8	27
1996	Dowry	511	241	2	7
1996	Trafficking	104	33	0	1

Source: Police Headquarters, February 1997.

It is clear from the above table that while the number of acquittals was 28 for rape, 27 for physical torture, 7 for dowry and 1 for trafficking out of a total of 692, 766, 241 and 33 charge-sheeted cases respectively, the corresponding number of convictions was negligible (the remaining cases being pending in court).

The lack of convictions or the prevalence of acquittals may be attributed to ineffective and improper investigation. A number of lapses appear during the process of investigation which effectively destroys the credibility of cases. For example, statements of material witnesses are almost never recorded at the relevant time. The delay in recording the statements of witnesses results in loss of credibility. Moreover, relevant witnesses by not accompanying the police at the relevant time and spot further compound the difficulties. In cases of rape police are found not to examine and evaluate the marks on victims properly. In many cases, the apparel of rape victims are not seized and specimen not collected from the spot of the crime. The non-appearance of medical experts to corroborate their reports tips the prosecution in favour of the accused. Post mortems being frequently conducted by non-professionals often produce erroneous results in which case the judgement of the court may go in favour of the accused.

It is essential in a criminal case to specifically single out the accused. Since there is no provision for test identification parades perpetrators cannot be singled out by victims or witnesses. In case of violence within

the family, say for dowry, it is common for victims to charge the entire family instead of specifying the actual offender. While this is understandable in the given scenario where a woman often faces combined violence by husband and in-laws, it is not acceptable in the courts of law where she is required to specifically identify her attacker. Failure to single out perpetrators results in quick acquittals of the accused.

IGNORANCE OF LAWS

Apart from the procedural drawbacks and ambiguities in the law, one of the principal causes of failure of law may be the ignorance or unacceptability of that law on account of the stiff challenge presented by religious and cultural norms. Moreover, most of the crimes that are committed against women have become institutionalised to the extent where they are condoned not only by the society and institutions that are supposed to curb them but also by the victims themselves.¹⁷ For instance, it is often perceived that victims of dowry demands in turn frequently resort to demanding dowries during their own sons' marriages. Similarly, wife beating is deemed, by both men and women, to be the prerogative of the husband, at whose feet supposedly lies the heaven of wives. Therefore, where local customs outweigh the respect for law and norm becomes firmly entrenched within the social web, it must become increasingly difficult to prevent gender violence and punish the perpetrators.

DIFFICULTIES IN ACCESSING THE JUSTICE SYSTEM

The other major difficulty in law enforcement lies in women's limited access to the courts. Impoverishment and the absence of economic freedom hinder women whose rights have been infringed from seeking legal redress. There being no centralised source of services for oppressed women, they have no idea where to go or whom to contact in cases of emergency. Moreover, the legal process, as it exists, is time consuming and expensive and involves court proceedings that are cumbersome and lengthy. Consequently women, who are not in a position to pay lawyer's and court fees and other incidental expenses, are discouraged from enforcing their rights in courts. Women are outside the ambit of the legal system partly because they have no idea what it offers them and partly

¹⁷ Saxena, Shobha, Crimes Against Women and Protective Laws, New Delhi, 1995, at p.319.

because the legal system, being paternalistic, does not offer them much. For example, if an abused woman chooses to leave her husband, she does so at the risk of losing her foothold in the society. Given the fact that she lacks access to economic resources and means of livelihood the safe choice for her is to continue to live in the abusive conditions.

COMPLICATED COURT PROCEDURES

Since cases of violence require the application of laws of evidence they may involve queries of delicate and intimate nature which most women in the given social and cultural setting find difficult to respond to. The defence lawyers often indulge in unnecessary character analyses of the victims without concentrating on the actual context. Victims, in the process, suppress real evidence. Consequently conviction becomes difficult in the absence of supportive evidence. The situation is further complicated as the prevalent system nearly always places the burden on the woman victim to prove that she did not actually consent to the act of violence, for example, rape. Patriarchal dominance at the institutional level is perceived when the survivor of rape is blamed for her own victimisation. It has been rightly pointed out that

in...focusing attention on the victim instead of the perpetrator, the patriarchal approach offers only further subordination...the woman is told that she would not have been victimised had she dressed differently, had she not been in an acceptable location or at an inappropriate time, or had she been in the company of a man instead of alone. The women who internalise such patriarchal messages may accept this mode of victimisation and feel guilt and self reproach after being raped.¹⁸

This results in secondary victimisation of the rape victim.

Apart from the difficulties in arranging a timely medical examination and production of witnesses, a rape victim is also often compelled to conceal the crime to escape social ostracism. Threats by perpetrators force women litigants to drop their cases. Given the poverty level and the general bias against women it is hard for a rape victim to conclusively establish her case.

Further, the intrinsic mechanisms for pressing charges against perpetrators of violence are beyond the comprehension of the simple

¹⁸ Crapo, Righley H., "Human Sexuality and Gender. A Course Study," in 14:4 (1991) Women's Studies Int. Forum, pp.321-331, at p.327.

minded poor people. Measures for the suppression of violence against women are generally fragmentary and in direct contrast to the interests of the victims themselves to the extent of being inherently discriminatory against women. For example, devoid of adequate legal protection, victims of rape or trafficking often find themselves in jails instead of the perpetrators. There is also a marked reluctance among the law enforcing agencies to assist women in distress. It is common for the police to trivialise women's problems and there is a general disinclination to investigate incidents of violence on the apparent absence of sufficient grounds for intervention. As such complaints by women often go unrecorded and evidence becomes hard to establish. Arrests of male suspects despite formal identification by female victims are rare and where offenders come from an influential background, inaction on the part of law enforcing agency is even more evident. Thus, the chances of obtaining a proper judgement are thin.

Apart from being expensive, time-consuming and complicated, the legal process is also paternalistic in its approach and tends to personalise women's problems in keeping with popular social demands that exhort women to suffer in silence. As such judicial decisions have traditionally tended to weigh against the woman by giving the man the 'benefit of doubt'. In *Most. Jobura Begum v Dr. M.Haque*¹⁹, for instance, where Johura Begum filed a suit under the Dowry Prohibition Act 1980 against her husband on a charge of dowry demand, the Sessions Court acquitted the husband on an appeal of 'benefit of doubt' as the time stipulated by law for such law suits appeared to have lapsed when the case was filed. There are other instances, which demonstrate the tendency of the judiciary to acquit people accused of violence on grounds such as 'insufficient evidence'.²⁰

¹⁹ Complaint Case No. 639(a) of 1982.

²⁰ The following unreported cases illustrate how perpetrators of violence are acquitted by the courts of law on account of, what is popularly termed as, 'insufficient evidence'. The cases have been collected from an unpublished Ph.D. thesis by Dr. Nusrat Ameen, 1997, Keeping the Wife at the End of a Stick. Law and Wife Abuse in Bangladesh, University of East London, U.K., pp.244-45.

Illustration 1: In the case of *Md.Tarek v Shermin Farah Shahin* [unreported case no. 6/96 under the Repression Against women and Children (Special Provision) Act 1995], the petitioner Shermin filed a

Legislation alone cannot guarantee proper implementation of the laws. The judiciary plays a crucial role in ensuring people's rights and privileges; however, rampant corruption amongst the concerned authorities impedes the impartial dispensation of justice. The Bangladesh experience suggests that corruption within the judiciary converts justice into a saleable commodity. As such the socially and politically more influential and moneyed invariably have better access to the justice system. Women devoid of financial autonomy find themselves at odds with the situation. Therefore, women in order to be heard, would either have to have enough money to 'buy' justice or organise themselves and develop the ability and strength to shake the very foundation of the state and more importantly of the police and judicial system.

case under Sections 11 and 14 of the Repression Act 1995 against her husband for torturing and abusing her for dowry. Shermin married Tarek on 10/7/76 and had two daughters by him. Tarek subsequently took another wife and both of them took to beating Shermin in front of the children. Unable to withstand the torture Shermin left for her sister's house on 28/7/95. Tarek and his second wife went over to Shermin's sister's house and beat her mercilessly on 8/8/95. Shermin filed a complaint at the police station where the investigating officer found no trace of torture. When the case was sent to court Shermin's daughters were asked whether they had witnessed their father torturing their mother. Although the daughters at first answered in the affirmative, they later denied the allegation. In the circumstances, the court ruled that since evidence of torture was 'insufficient' the accused could be released and the case withdrawn.

Illustration 2: In the case of *State v Abdul Aziz* [unreported case no.21/96 under Repression Against Women and Children (Special Provision) Act 1995] a 13 year old girl, Shilpi, was kidnapped by Abdul Aziz and his friends, Harun and others. She was later forced to sign a marriage contract and raped. A case was filed under Sections 9(b) and 6(1) against Abdul Aziz and his friends. They were separately found guilty under Sections 6(1), 9(b) and 14 of the Repression Act 1995: The learned judge found the accused Aziz and Harun guilty under Section 9(b) and sentenced them to 7 years imprisonment and Tk.1000 fine and in default, imprisonment for one more year. The accused Aziz was also found guilty under Section 6(1) and was sentenced to life imprisonment. While the two sentences against Aziz were to run concurrently, the other accused, friends of Aziz, were not found guilty under Sections 9(b) and 14 and were acquitted for want of sufficient evidence.

In summing up, it may be said that laws reinforce women's oppression at different levels. Functioning both as legitimiser and regulator, law plays a critical role in maintaining sexual stratification and in shaping the inferior status of women in society.²¹

CONCLUSION

There is nothing sacrosanct about gender violence. It is a social construct of power that can be altered. However, since the practice has become so deeply entrenched, the `effort to dismantle the social structures that tolerate it, or patently refuse even to see it, will require creativity, patience and action on many fronts'.²²

There is no dearth of laws ensuring the human securities of women. Apart from having domestic legislation to ensure women's rights and privileges, Bangladesh has also ratified international human rights instruments related to women and children, namely, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Despite the state's will to abide by the spirit of these conventions, very little has been done to actually promote the rights of women and children and to secure their protection from oppression. While greater law enforcement is certainly required, protective legislation are not enough unless they address the fundamental causes of gender violence. Good laws, in themselves, cannot bring about justice. Laws, in order to be effective, must be realistic and enforceable. While laws have been approached as a solution to the problem of gender discrimination, the complexities involved have not been adequately gauged. Given the socio-economic scenario laws also have their limits in addressing violations against women. In the circumstances, sustained activism is essential to ensure the application of laws to gain justice for women. It is necessary to develop a broader understanding of women's rights in order that they may be efficaciously applied. It has been rightly pointed out that

Lobbying for more rights without a deeper understanding of the limits and possibilities of law creates a false expectation that the law can transform women's lives...We need to take a different look at the rights

²¹ Hasan, Fatima Rashid, "Limits and Possibilities of Law and Legal Literacy. Experience of Bangladesh Women", Economic and Political Weekly, October 29, 1994, pp.69-76, at p.69.

²² Bunch, Charlotte, 1997, *op.cit.*, p.42.

discourse, understand how it is linked to broader political struggle and the purpose it serves for mobilising women. We need to develop a more comprehensive understanding of rights that exposes the limits of rights in struggles for social transformation.²³

The problem of violence against women will not simply disappear with the imposition of severe punishments enshrined in elaborate legal enactment but by changing deep-rooted perceptions that regard women as inferior to men and therefore, dispensable. There is need to break the silence that is premised on 'fear of reprisal, censorship of sexual issues, the shame and blame of those violated, unquestioning acceptance of tradition and the stronghold of male dominion'.²⁴ This can be achieved through a systematic campaign, involving every segment of the society including the judicial system, governmental and non-governmental agencies, politicians, religious leaders, the media, the educational system and all members of the civil society, in raising the profile of gender violence. There must be a concerted action amongst all concerned to eradicate this unholy practice. It must be understood and appreciated that there is immediate need to bring about a social transformation urgently that will resolve the politics of gender- based violence for once and for all.

²³ Hasan, 1994, *op.cit.*, p.70.

²⁴ Bunch, Charlotte, 1997, *ibid.*, p.42.