

## HUMAN RIGHTS advocacy



# Justice delayed is justice denied

## Women and violence in Bangladesh



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LAWs are made with the intention to reduce crime against women. This view has been endorsed in the judgment of Justice Badrul Haque in the case of Amin vs. Bangladesh. The honourable judge observed, "A woman who has been raped undergoes two crises, one the rape and the other the subsequent investigation and trial. A victim of a sex crime has to undergo certain tribulations. These begin with treatment by the police and continue through a male dominated criminal justice". In Bangladesh 50% of all murders are of women by their partners, 68% never told anyone about being beaten? Many women do not report it. The lack of proper reporting is not only because of the inadequacy of government officials but also because women themselves are reluctant to report crimes against them for fear of repeated violence, honour or loss of face of their families and for the fear that they will be turned out of their matrimonial home. However, when a wife decides to seek a divorce, she often reports such violence.

A recent research by Dr. Nusrat Ameen stated that the official statistics do not give us a full picture of the incidence of violence against women. This vacuum can only be filled by further research on the issue.

The Cruelty to Women (Deterrent Punishment) Ordinance of 1982 was replaced by the Repression against Women and Children (special enactment), Act xviii of 1995. This Act has provided death penalty for ten crimes against women and children (under sections 4, 5(b), 5(d), 6(1)-(4), 7, 10(1) and 12). The crimes affecting women and children include causing death by corrosive substance, causing permanent damage of the body by corrosive substance, for rape, for rape with murder, for rape with attempt to murder, for group rape, for group rape with murder, for dowry death and for trafficking of children.

The Repression of Women and Children (special enactment), Act xviii of 1995 has been amended by the Act in 2003. The new Act made changes mainly with the intention to minimise the huge number of pending cases and to expedite disposal of cases without inordinate delay. A limit of 120 days was provided in the Act of 1995 this limit was extended up to 180 days for giving enough time for trial of cases under the Act of 2000.

Broad outlines of the sections of the amended Act of 2003 below will highlight the Criminal Procedure for crime against women: Nari O Shishu Domon Ain of 2003, Section -18: Investigation of an Offence:

1. Irrespective of any law in the Criminal Procedure Code investigation of any offence under this Act

a. when the accused person is caught red handed by the police or by any other person and has deposited him to the police, the investigation must be finished within 15 working days from the date when the accused was caught.

b. when the accused person is not caught red handed, his investigation will be completed within 60 working days from the First Information Report (FIR) or otherwise by the related officer or any other Officer with the power or from the date of the order given by the Tribunal.

2. If the investigation is not completed within the time fixed by sub-section (1), the Investigation Officer will complete the investigation by additional 30 days by submitting the cause of delay by writing, and give a reasoning for the cause to his Controlling Officer by writing or otherwise, the written report has to be submitted to the Tribunal which gave the order.

3. If the investigation is not completed

within the time fixed by sub-section (2), the investigation officer will complete the investigation within 24 hours stating the reason for delay to the Controlling Officer or, the written report stating the reason for delay have to be submitted to the Tribunal which gave the order.

After the acknowledgment that the report was not completed under Sub-section (3), the Controlling Officer or the Tribunal which gave the order, can hand-over the investigation to another Investigating Officer and in this way when the investigation is transferred to the Investigation Officer-When the accused person is caught -red handed by the police or by any other person and has deposited him to the police the investigation must finish within 7 working days from the date when the accused was caught or in other cases he must complete the investigation within 30 working days.

5. If the investigation is not completed within the time fixed by sub-section (4), the investigation officer will state the reasons for delay to the Controlling Officer or, give a written statement stating the reason for delay which has to be submitted to the Tribunal which gave the order within 24 hours.

6. If the investigation is not completed within the time limit then after verifying the written report -of the Investigation Officer, the Controlling Officer or otherwise the Tribunal, which ordered the investigation, has to decide whether the Investigating Officer is responsible for not giving the report of investigation within the time limit, then it will be notified that the responsible person is an unqualified and had done misconduct and this un-qualification and misconduct will be written in his yearly confidential report and in a particular case he will be accused as per service rules.

7. If the Tribunal is satisfied after verifying the investigation report that the person who is regarded as accused is required to be taken as witness, the Tribunal can order the person to be a witness instead of accused. 8. After concluding the evidence of the witnesses, if the Tribunal finds that the Investigation Officer under this Act, in the investigation report is trying to save the accused person or without examining a valuable witness or falsely finding no proof to determine the crime the accused person is made witness instead of accused then the aforesaid Investigation Officer will be charged for his act or will be regarded as an unqualified person doing misconduct and will be charged for the un-qualification and misconduct by the Tribunal by giving order to the Controlling Officer of that Investigating Officer to take legal action against him. 9. The Tribunal can change the Investigation Officer and order the Controlling Officer to appoint another Investigation Officer when any petition is given to the Tribunal or on the basis of any information.

Nari O Shishu Domon Ain of 2003, Section -20. The procedures of the Trial: All offences under this Act will be tried by the Tribunal of Nari O Shishu Nirjatan Domon Ain under section 25. When a case is started in the Tribunal it will continue continuously in every working day until the trial is completed. The Tribunal must finish the procedure of trial by 180 days from the date of submission to it. If the trial is not done by that time limit, then the Tribunal can bail the accused person and if the accused person is not given bail then the cause of not giving bail have to be written down by the Tribunal.

Women and Children Nirjatan Domon Tribunal:-

1. Under this Act for the trial of offences there will be a Tribunal in each district and if needed, the Government can make more than one Tribunals; these Tribunals shall be known as the Nari O Shishu Nirjatan Domon Tribunal.



2. There will be a judge in the Tribunal and the Government will appoint the above judge of the Tribunal from the District and Sessions judges of the Government.

3. The Government if required will appoint any District and Sessions Judge as additional Judge of the said Tribunals.

4. In this Act, District Judge and Sessions Judge will be named as Additional District Judge and Additional Sessions Judge.

Nari O Shishu Domon Ain of 2003, Section 28 Appeal: By taking order from the Tribunal, the accused party can appeal to the High Court Division within 60 days of the judgment or detention. During investigation of the case, if the Tribunal is of the opinion that any woman or child needs to be kept in safe custody, it may order that such woman or child be taken out of the prison and kept in safe custody home designated by the government or in consideration by the Tribunal be handed over to any organisation or person in this regard under section 31 of the Act of 2000. For privacy of the victims section 14 provides a restriction on the media from identifying the woman and child victims of violence. It provides a punishment of maximum two years and one lakh taka or both for non-compliance of the section. This provision is needed for the protection of the victim from the clutches of the violators and again if it is not publicised the case is sometimes not accounted for.

### Different kinds of violence and the law

Offences against women have taken modern aggravated forms, which were more or less absent in the past, as for example acid throwing or murder for dowry. Crimes against women have risen after independence. The causes for the increase are similar to the increase of dowry; in many cases, dowry itself is the cause. Women in Bangladesh are facing not only aggravated forms of conventional crimes but also new types of crimes.

**Dowry:** The dowry system is not recognised in the religion or the law of the Muslim societies but has spread into it. Conversely, Islamic law provides dowry to enhance the status of women. Why should Muslim women, who are supposed to be protected by dowry, become victims of dowry? While recent scholars have admitted the fact that dowry has spread to the Muslim communities, they have largely ignored the position of Muslim women within this discourse.

Dowry deaths are a common phenomenon in South Asia. These deaths of women are usually caused by the same persons who are legally and socially

enjoined to protect them, i.e. their husband or in-laws.

The Dowry Prohibition Act of 1980 prohibits the taking or giving of dowry. The Repression Against Women and Children Prevention Act of 2000 Defines Dowry as: Money, goods or other property given or promised directly or indirectly by the bride side to the groom or his father, mother or any other person from the bridegrooms side at the time of marriage as consideration or condition of the marriage and any such money, goods or property demanded from the bride or the bride's side by the groom, his father or mother or any person from the groom's side [Section 2(j)].

The Repression of Women and Children Prevention Act of 2000 Section 11 States:

If any woman's husband or husband's father, mother, guardian, relation or any person acting for the husband, causes the death of that woman for dowry or attempts to cause death or injures such woman for dowry or attempts to cause such injury the husband or husband's father, guardian, relation or any person shall:

a. For causing death be punishable by death penalty or for attempt to cause death by life imprisonment and in both cases shall be liable to pay additional fine;

b. For causing injury shall be punishable by rigorous life imprisonment or for attempt to cause injury be punishable by rigorous imprisonment up to the term of maximum fourteen years but not less than five years and in both cases be liable to additional fine.

**Rape/Sexual Assault:** Rape is probably one of the most common forms of violence against women in Bangladesh to date. Usually money and muscle are the reasons why the crime goes unpunished.

In most of the investigations conducted by Odhikar, the victim's family was too poor and ignorant of the law to seek legal recourse. In one case, the victim's father, a rickshaw puller, told Odhikar that he did not know the lawyer's name, but knew what he looked like. In another case, the lawyer has been demanding payments for every court appearance while asking the court for more time. Rape in Bangladesh is a punishable offence. 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 own wife is not under twelve years of age in which case he shall be punished with imprisonment for life or with imprison-

ment of either descriptions for a term which may extend to ten years, and shall also be liable to fine..." Rape is also committed by law enforcement officials. All these cases are not reported due to intimidation by the perpetrators and also due to the fear of social stigma. Of all the cases of rape in police custody brought to light so far, very few of the offenders have been held accountable. One reason for this could be the fact that members of the police carry out investigations regarding crimes allegedly committed by their own colleagues.

Thirteen women were raped by members of the law enforcement agencies in the year 2000, the youngest being a girl of six who was raped by a police constable in Panchagarh.

Women and Children Repression Prevention Act of 2000 deal with the offence of rape and provides severe penalties. Section 9 deals with punishment for rape, gang rape as well as injury or death caused as a result of rape. For the offence of rape, the perpetrator will be sentenced to rigorous life imprisonment with additional fine. For death caused by rape or incidental to rape, the accused may be sentenced to death or rigorous imprisonment and will be required to pay fine up to the limit of taka one lakh. In the case of death or injury caused as a consequence of gang rape, each of the perpetrators will be sentenced to death or rigorous imprisonment with the requirement of additional fine up to the limit of taka one lakh. In the case of attempt to cause injury or death after rape, the accused will be punished with the sentence of life imprisonment with fine. For attempt to rape, the penalty fixed by the Act is rigorous imprisonment or seven to ten years with additional fine.

On June 16th, 2003, an amendment bill of the Women and Children Repression Prevention Act, 2000 was placed in Parliament to clarify definitions of certain offences and reducing punishment to stop the abuse of law. The bill was passed by the Parliament on 13th July, 2003. Under the new Act, the definition of a child has been raised from 14 years to 16 years. Moreover, where a woman commits suicide for fear of losing her chastity due to the willful act of a person, then that person will be accused as a provocateur and will be punished for the offence with imprisonment of five to ten years.

Most remarkable amendment is regarding the destiny of a child born out of rape. Under the amendment, a child born out of rape will be kept under the care of the mother and will be known after his/her mother or father or both. After the State will be responsible for the child until s/he attains the age of 21 years and, in case of a girl, until she gets married. The State will realise the money for bringing up the child from the rapist. The Act provided that the opinion of the rape victim has to be taken if the need for camera trial arises or if the victim has to be taken under safe custody.

Section 13 States: Irrespective of anything contained in any other act, if any child is born as consequence of rape-

a. The rapist will be responsible for the maintenance of the child

b. After the birth of the child, the tribunal shall determine who will be the custodian of the child and the amount to be paid by the rapist to such custodian for the purpose of maintenance of the child.

c. Unless such child is disabled such sum shall be payable in case of a son until the age of 21 years and in the case of a daughter until her marriage and in case of a disabled child until such child becomes capable of maintaining himself or herself.

Section 376 of the Penal Code mandates two years imprisonment, or fine, or both, for the rape of a woman by her husband. Section 342, however, requires that a woman undergo a medical

examination immediately after rape, which in practice minimizes the possibility of a conviction being made.

The Women and Children Repression Prevention Act of 2003 (Nari O Shishu Nirjatan Domon Ain of 2003) The Act uses and defines the terms sexual abuse and sexual harassment for the first time. Section 10 states that if any male, in order to satisfy his carnal desires, touches the sexual or any other organs of any woman or child with any organ of his body or with any other object, his action will amount to sexual abuse or abuses the modesty of any woman or makes any indecent gesture, his act shall be deemed to be sexual harassment and for this such male will be punished by rigorous imprisonment for a term which may extend up to ten years but shall not be less than three years and shall additionally also be liable to fine.

Confusion may be created in cases where the same offence is dealt with in several existing laws. Acid crimes come under the Acid Crimes Prevention Act 2002, but the provisions of the Penal Code 1860 as well as the Woman and Child Repression Prevention Act of 2000 regarding the same offence has not been omitted and this may create confusion as to which Court or Tribunal or which law the case should be instituted under. Even though as special law these take priority, and the laws themselves state this, the confusion persists and ought to have been clarified. The same problem may arise in the case of rape which is covered by both the Code and the Act of 2000.

### Acid Violence:

In Bangladesh acid violence is a dreadful and vindictive form of crime which is committed mostly against women. It is a major subject of national concern and is being reported frequently by media throughout the year. Acid violence is a terror which must not be adhered in any civilised society. Before independence acid violence was almost unknown in Bangladesh. Section 4 of the Acid Crime Act, 2002 prescribes death penalty or rigorous imprisonment for life including fine taka not more than one lakh if any body causes death or makes an attempt to cause death to any child or woman by using any burning substance, e.g., acid, import, production, storage, sale or usage of acid without a license is a punishable offence. But the mechanisms prevalent to regulate importation, preparation and sale of the acid used in these attacks are inadequate. However, the Acid Control Act, 2002, provides for the formation of a national council to control the selling use, production, import, transportation and storing of acid.

The Acid Crimes Prevention Act 2002 contains provisions regarding trial procedures, investigation of offences and negligence of investigating officers, medical examination and so forth. The Acid Crimes Prevention Act 2002 sets up an Acid Crimes Prevention Tribunal and all offences under the Act are to be tried by this Tribunal. Appeals against any order, judgment or punishment imposed by the Tribunal must be made to the High Court within 60 days. Section 28 also contains the provision for safe custody for any person during the continuance of the trial and specifies that such custody shall be outside the prison and by order of the Tribunal.

Multi-Sectoral Programme on

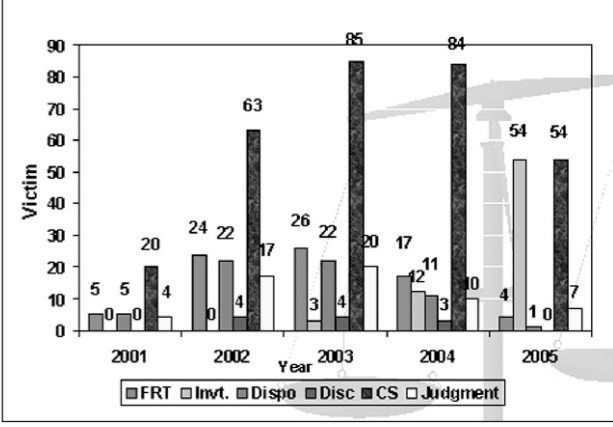
### Violence Against Women

There is a multi-sectoral project on violence against women which includes five ministries including the Women and Children Affairs (MOWCA) which works with the objective to eradicate or at best reduce crime against women. The major activities include the establishment of six One Stop Crisis Centers (OCC) for victims of violence that will provide medical, legal and social services; upgrading of forensic facilities with DNA profiling; information campaigns; training plans for police, lawyers, judiciary and medical personnel.

The Objectives of this programme are: improved public services such as health, police assistance, criminal justice and social services (counselling, rehabilitation) for the women victims of violence, increased public awareness on all forms of VAW, etc.

Activity OCC-BNWL joint legal support program: This is a flow description how BNWL works at the activity level under the OCC program. The activities of the BNWL Lawyers can be categorised as follows: Once a patient get admitted under the OCC centre the lawyers of BNWL take the history of the survivors and the incident, which are being registered instantly. Consulting with the duty doctor about the severity of the incident and injury the respective lawyers talk to the police officer in duty. On the basis of the information collected from the responsible officials the

Statement of Court Cases from 2001 to 2005



Lawyers decide to file a GD or FIR with the consent of the survivors. This the lawyers went for a legal counselling to let the survivors understand that she may get legal support.

**Ensuring legal support:** After filing the case the lawyer collect a copy of the FIR and *Vokalatnama* having sign from the survivors and in the office they have to prepare the order sheet and enter into the register. If the judgment comes against the Survivors, then according to the process the lawyers appeal against the judgment to Higher Court.

### Conclusion

Violence against women is increasing and indicates generally that the amount of different crimes against women is so high that the time has come to introduce measures to eradicate them. Clearly, the need of the hour is to protect women from violence through the law. The whole issue of violence against women did not project the flaws in the criminal justice system or what else we require, to make the system effective giving proper justice to women as justice delayed is justice denied.

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## RIGHT column

### Women human rights defenders

WOMEN Human Rights Defenders around the world, women are promoting human rights as advocates, social workers, nurses, counselors, grassroots activists, journalists, teachers, and lawyers. Their activism is vital as they effectively advance the rights of all people by challenging inequality and repression. As women taking a leading role in human rights promotion they challenge traditional gen-

der roles in patriarchal societies. As a result, women human rights defenders are sometimes more vulnerable to hostility and reprisals than their male colleagues.

They are targeted because of their gender and because of their work on women's rights by government agents; non-state actors, such as organised crime rings, extremist religious groups, and paramilitary groups; community mem-



bers, including religious leaders; and family members. Speaking out against abuses of women's rights, they often challenge ingrained cultural beliefs and attitudes about the role of women in their societies. Because the changing role of women is often highly contested within societies, when women take action to defend their rights, they

may be perceived as a threat to social stability and the status quo.

As a result, women human rights defenders are subjected to gender-specific threats and attacks that include: Sexual harassment and violence, including rape, specific forms of torture, including forced psychiatric treatment, physical abuse, including beatings, disfigurement, and murder, threats of divorce or disownment, discrimination, including by male human rights defenders,

verbal abuse, including use of the term "feminist" in a derogatory sense, sexuality baiting; attacking a woman defender's reputation by using the most pejorative labels available, which may include "lesbian" or "whore"

But the devastating impact of verbal abuse and threats should not be minimised.

Another form of gender-specific intimidation includes the targeting of women activists' children and families as a way to

exert additional pressure to stop their human rights work. Lesbian and gay rights activists may face particularly harsh treatment. In September 2004, Fannyann Eddy, a lesbian rights activist in Sierra Leone, was brutally raped and murdered in her office; police have not classified the attack as a hate crime.

In some countries, the human rights and women's movement have difficulty accepting lesbian activists, leaving them exception-

ally vulnerable to attack.

In addition, women human rights defenders are not immune to the threats their male colleagues face, and the impact of these attacks can be greater for women defenders.

For example, after receiving death threats, women defenders have described greater difficulty relocating to safer environments due to their familial responsibilities.

Source: Human Rights First.

