

Law and Our Rights

Violence Against Women

To Resist is Our Constitutional Obligation

by A H Monjurul Kabir

Some 160 years ago the world launched a successful campaign against slavery. But long after slavery was abolished in most of the world, many societies still treat women like chattel, in this case their shackles are poverty, economic dependence, lack of education, adverse social practices, inequality in the eyes of law, limited political power, limited access to fertility control etc. And if we really want to break these shackles, we must all help to lead a spirited campaign against discrimination and violence against women like the campaign which had been initiated some 160 years ago against slavery.

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Bangladesh: The Delta of Violence Against Women?

As already mentioned violence against women is a global phenomenon. It exists in Bangladesh as in other countries of the globe. The common dominating factors responsible

'latwa' is an anathema. It is an instrument of exploitation disguised in religious garb. It is targeted against the most vulnerable members of society to achieve social, political and economic advantage and has roots in the policies and practices of political elite who seek gain through the patronizing of anti-social, anti-development forces. Furthermore, the practice of Fatwa is not sanctioned by the law and, therefore, the sentences of death, the sen-

II. Sexual violence
III. Psychological violence
IV. Vicarious violence, i.e., violence directed against something/person held dear by the victim.

All these various forms of violence may take place in private and public area, committed by the members of the family or strangers. The following forms of violence are areas of critical concern.

• Domestic/spousal violence;
• Violence against women at the workplace;
• Trafficking in women and forced prostitution;
• Rape, molestation and sexual harassment.

Another notable feature of violence against women that deserves special attention is the active participation of the law-enforcers e.g. the police in various heinous acts of violence against women. Continual rape and death in police custody and willful extension of institutional support to the accused offenders for mere peculiar sense of belongingness stigmatize the whole scenario. The tragic death of Yasmin of Dinajpur reminds us how uncivilized the police system we have. Instead of providing security, she (Yasmin), a 13 year old girl was brutally raped and killed by three policemen. And the frequency of such brutality has been increased to a considerable state.

Following the gruesome death of Seema Chowdhury in so called 'safe custody', the much talked issue of safety of women and children in safe custody has stirred up widely in the public. The validity of judicial custody or in other words safe custody has been seriously questioned in the civil society. It is regrettable that thought there is no provision of safe custody in jail code, the Magistrate with their undefined discretionary power place women and children in safe custody. Safety of women and children is being challenged, as we see women and children in 'safe custody' have to face innumerable hostile and adverse situations where they easily become victims of different range of abuse and harassment. To be precise, the whole practice of 'safe-custody' is inhumane and

total violation of human rights. The courts allow such safe custody of women although women were the worst victims of the law enforcing agencies.

The government servants belonging to almost all concerned departments and agencies clearly lacks in gender sensitization. The sheer mal bias in the thoughts and action of the government personnels makes women vulnerable in many ways. The honourable discharge on July 13, 1997 of four policemen charged with the rape of Seema Chowdhury once again amply pointed out the inherent flaws of the justice delivery system and lack of gender sensitization. Again the Parliamentary Committee Report on the mysterious death of Seema Chowdhury crystallizes

the absence of gender sensitization among the members of parliament. The extreme indifferent attitude shown in the report in dealing with Seema's case greatly shocked many who expected a humane approach from the Parliamentary Committee comprising people's representatives. Nobody in the police, court or the parliament raise the point that fundamental rights and the constitution was violated in Seema's case. Without a lawful ground, nobody can take anyone into custody.

The presence/representation and participation of the Government of Bangladesh (GOB) in various world forum and conferences have been in the sharp rise since last decade. But the proportion of realization of international consensus, commitments and obligations is frustrating. The good wishes echoed in the Beijing Declaration has not yet been reflected in the millions of houses of rural and urban Bangladesh. As a consequence of this utter failure both on the part of government and the NGOs the frequency of incidents of violence against women has got an

alarming momentum.

Agenda for Action

Many people have been working for quite a long time in Bangladesh to address the acute problem of violence against women. This regional meeting on ending violence against women and girls in South Asia is another example of the type of commitment necessary. But again words and rhetorics are not enough. Let us use this opportunity to come up with concrete time bound actions that we can take now. The following steps can be taken on an urgent basis.

*1. The Government of Bangladesh (GOB) is one of the signatories of the Convention on the Elimination of All Forms of Discrimination Against Women's (CEDAW). The publication of simplified and catchy version of the CEDAW is a crucial step in the dissemination, awareness building and advocacy of the rights of women. Such simplified version should be widely circulated and propagated among the mass.

The young community like Law Watch can play a vital role in this regard. In curbing violence against women and creating mass awareness, various socio-cultural youth organization can contribute significantly.

*2 Now-a-days the individual and institutional morality of the forces responsible for maintaining law and order e.g., Police, Ansar, BDR etc. are on the verge of continual deterioration and to some extent collapse.

Unfortunately the members of the disciplinary forces involve themselves in violence against women. Regular brainstorming session is a must for the forces to change their present behavioural attitude towards women. The curricula and the manual of the foundation training of different law-enforcers need wide reform and planned change. Adequate copies of the Constitution of Bangladesh CEDAW, CRC (Convention on the Rights of the Child) and Universal Declaration of Human Rights (UDHR) must be supplied to each of the thana all over the country. A weekly briefing session on those documents should be organised to ensure their proper utilization.

To be continued

The writer is the Secretary General of Law Watch. This was one of the background papers of the Regional Meeting on Ending Violence Against Women and Girl Child in South Asia held in Kathmandu, Nepal from 21st October to 25th October 1997.



Rape-1997 (January - June):

Age Criteria	0-5	6-10	11-15	16-20	21-25	26-30	31+	not mentioned	Total	%	no of cases filed
Rape	1	38	38	18	7	2		15	119	31.32	70
Death after rape		1	1						2	0.53	
Attempted rape			8	3	3	1		20	35	9.21	15
Gang rape	7	45	43	16	6	5		49	171	45.00	113
Death after gang rape		1	3	2		1			7	1.84	5
Police rape								2	3	0.79	5
Attempted rape by police			1	1				2	4	1.05	
Death (after attempted rape by police)											
Perpetrator not mentioned		3	4	3	2			8	20	5.26	13
Death (after rape)								3	4	1.05	4
Death (after rape (assumption of police))	1	1	3	2	1	2		5	15	3.95	5
Total	1	51	102	71	31	11	7	101	380	100	225

• Raped by a Navy Soldier

• Suicide after rape

Note: Out of 380, 15 women were raped in 1996. But the cases reported in January 1997.

Source: Alker Kagoj, Bhorer Kagoj, Sangbad, Ittefaq, Janakantha, Dinkal, Banglabazar Patrika and Daily Star.

Courtesy: Ain O Salish Kendra.

boundaries.

In many parts of the world, in the name of tradition, male dominance and female subjugation are defended and preserved as a part of cultural heritage. Wife beating, for example, considered part of natural order in many societies. In Bangladesh, to our utter surprise, may, often the complaints of wife beating are raised against the educated and progressive minded people, who are always vocal against violence and discrimination against women in various societal gathering.

Tradition also encourages considerably the practice of dowry death, in which a woman is killed because she is unable to meet her in-laws' demands for dowry. Like dowry death, 'Son-preference' is another insidious force directed against particularly in South Asia. In fact from the day of their birth, girls are devalued and degraded, trapped in what the late UNICEF Executive Director James P Grant poignantly termed 'the apartheid of gender'.

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against are their unequal status in the family and society, marginalization inadequate access to resources etc. Forms of violence against women can range from mental torture to physical one: rape, acid-throwing, kidnapping and trafficking, wife beating etc. Some alarming forms of such torture.

'Fatwa' is another perverted mode of violence against women. In Bangladesh, today, considered from a strict Islamic point of view, the practice of

tences and acts of whipping and stoning (The saga of Noorjahan can be remembered passed by some rural mullahs with the silent approval of the rural elite are criminal offenses in the eyes of law. It is a matter of great concern and shame that even ahead of the 21st century the flow of fatwa is not stopped rather it is increasing.

Violence against women generally takes in the following forms:

I. Physical violence

Mass Rape is Genocide

Bangladesh Genocide Examined

by Ahmed Ziauddin

However, if history is any indication, no one in Turkey was punished for the rape of Armenian women in 1915, none has so far been in Bangladesh for the mass rape in 1971 or some 20,000 Bosnian Muslim women victims in 1992 are still waiting for justice. Why? Is it because rape is a gender specified act?

pursuit of the 'perfect' society.
Relationship between rape and genocide

There are more views than one relating to the nature of relationship between rape and genocide. One view is, rape is a private act, and as such, has with no political link. It is 'simply incidental to genocide, as to the war' and 'is the result of pent-up sexual desire.' However, such individualistic explanation cannot be sustained, because, 'in ancient genocide, rape and enslavement of women was the rule, not the spontaneous actions of individuals.' Secondly, rape as individual's desire cannot explain 'collective rituals of degradation that often accompany rape.'

The other explanation is found in male versus female dichotomy in that rape 'is the result of male's desire to control women through fear.' It is 'nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear.' But again, this approach ignores the fact that in genocide, only one group of women, not all other group of women, are the victims of rape.

The other view specifically refers to the political nature of rape. It maintains that rape in genocide is carried out with a political purpose to intimidate, humiliate and degrade the women and others by her suffering. Its purpose is to terrorise members of the victim group. It is also an 'attempt by the perpetrators to force pregnancy upon women of the group.'

Rape: by command or sanction?

The next question for determination is whether rapes committed in genocide are by command or by permission. By command it means the orders are usually handed down from above. In other circumstances, commands may not necessarily be explicit but 'embedded in tradition and common expectation.' For example, at a time when genocide was synonymous with war and with the Mongols,

'fate of women was understood to be that of rape and enslavement rather than death.' No explicit command was necessary as the 'standing rules' about how the 'booty' of the defeated group, was to be divided.

Rape in genocide entails where those who decide to commit genocide set the process of destroying a group in whole or in part, to the men and material to carry it out, and issue general directives about such things as the need to 'cleanse' the territory of the ethnic, racial, or religious groups chosen for destruction. The rest left to the commanders on the ground who implement the general directives. The higher authority simply do not interfere, instead, they encourage it, approve it since rape helps to achieve the goal and that 'there are no incentives for the authorities to prohibit mass rape within the context of genocide.'

Rape, a genocidal policy

Whether the rape in genocide is commanded or sanctioned, it becomes a policy of genocide. Even if it is difficult to determine 'a single pattern of mass rape' or if the patterns of rape are varied, still it forms the part of the policy of genocidal rape. The leaders of the perpetrator group shoulder full legal and moral responsibilities for the rapes, more so, when the leadership fail to condemn the rapes or do not inflict punishment rather deny acts of rape.

Objectives of rape in genocide

The perpetrators aim varies according to the nature of genocide. In earlier period, when war was inseparable from genocide, rape was widespread and routine. In retributive genocide, 'the likelihood is either that women will be killed at the outset or raped and then killed' instead of enslavement. In utilitarian genocide, in conflicts between indigenous peoples and settlers, rape occurs but 'is more individualistic than systematic.' Genocides that arise out of ethnic or racial conflict, the object 'is primarily to create terror in an at-

tempt to cause members of the group to flee or become so demoralised that they are unable to resist the genocide.'

In genocide, rape often becomes a reward to soldiers for jobs nicely done or to desensitize those engaged in genocide. The object also is to 'destroy the moral identity of the victims, reducing them, and, by extension, the group from which they come, to an object, powerless object.' Humiliation and degradation of the victims, are two other objectives. The perpetrators are after destroying the victim's humanity by subjecting members of the group to various rituals of degradation. Closely followed by the perpetrators attempt to force pregnancy on women in order to inflict continuing pain, humiliation and shame on the women and their group.

Bangladesh genocide

To understand rapes committed during 1971 genocide in Bangladesh, the facts have to be established first. One fact is certain that the rapes were widespread. A reputed American genocide scholar reckons 200,000 rape victims and 25,000 resulting pregnancies, though, the popular and widely held local estimate is, at least 300,000 women suffered. New York Times on 30 January, 1972 reported quoting Bangladesh officials the figure of 200,000. International Commission of Jurist's investigation confirms that 'very many accounts agree is the wholesale rape of women and young girls by Pakistan soldiers. The variations in numbers, however, do not alter basis of rape in genocide nor do diminish legal consequences or moral responsibilities.'

The rapes carried out by the Pakistani army and their allies were systematic to humiliate the Bengali people, who were making strong demands for autonomy from Pakistan. 'Women, both Muslim and Hindu, were taken from their homes, the fields, or the streets and subjected to individual and group rape. Many were taken to military brothels, where they were made to mimic the traditional roles of women as housekeepers and sexual object,

In desperation some of the women resisted by using their long braids to hand themselves.'

The rapes were also an attempt to stifle Bengali nationalism by diluting the population with children fathered by Pakistanis; it was intended to dominate the Bengalis. Rapes by the Pakistanis cannot be explained by male's expression over women because the victims were all Bengali women and non-Bengali women were not attacked.

In Bangladesh, the rapes resulted from orders that came from the top military brass as a part of Pakistan's genocidal policy. The consistent pattern of rape that took place simultaneously all over the country and repeated over same fashion over time, demonstrates that the orders in fact came down from high-ups. Further, as the International Commission of Jurist's 1972 report contains, 'The officers turned a blind eye to this savagery, and when challenged denied that it occurred. In many cases the officers themselves kept young girls locked up to serve their pleasure' proves that the rapes were commanded and sanctioned as well.

Pakistanis also intended to change biological and social heritage of the Bengalis as many women were held in detention camp for a long period to prevent termination of pregnancies to ensure birth of the child so that biological line is altered.

The children too were violated by the Pakistanis. Though, it is not known what percentage of rape victims were children or young teenagers, but, according to an estimate, about twenty per cent of those raped, and many of whom became pregnant, were between the ages of twelve to sixteen. The raped child often were rejected by her own family as a source of shame and many of them committed suicide. This 'infliction of hurt and continuing pain is an important goal of such genocidal rape.'

Mass rape in Bangladesh was genocide

The final question is the legal status of rapes in genocide.

In national legal norms, rape has criminal consequences. However, in genocidal situations, effects are still unclear. International community now recognises mass rape as a war crime but not genocide.

The Convention on the Prevention and Punishment of Genocide, adopted by the General Assembly of the United Nations on 9 December, 1948 and in Bangladesh, the International Crimes (Tribunals) Act, 1973 provide the definition of genocide.

Bangladesh law says: 'Genocide: meaning and including any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group, such as: (i) killing members of the group; (ii) causing serious bodily or mental harm to members of the group; (iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (iv) imposing measures intended to prevent births within the group; (v) forcibly transferring children of the group to another group.'

Pakistanis, in committing mass rape in Bangladesh, calculated and intentionally, caused serious bodily and mental harm, and attempted to inflict upon victims condition that brought its physical destruction, and through forcible impregnation, and the killing of the males, attempted to interfere with the birth. The purpose of inflicting continuing pain, creating terror through rape etc. put together clearly demonstrates the intention of the Pakistanis, that they were up to destroy Bengalis as a group, at least in part, which is simply an act of genocide.

Thus, the perpetrators of mass rape in Bangladesh can be brought to justice under the International Crimes (Tribunals) Act, 1973 for committing genocide, also they remain liable under the Genocide Convention and the international community are obliged to exercise jurisdiction over them.

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The writer is a researcher at Brussels Catholic University and for this write-up, greatly indebted to Professors Smith and Fine.

LAW WATCH

Legislators Urged to Establish the Office of Ombudsman

by Amina Rahman Chowdhury

RECENTLY Legislative Advocacy and Participation of the Society (LAPS) Project urged all Members of Parliament (MPs) to take necessary steps on an urgent basis to introduce the office of ombudsman. In a letter sent to MPs belonging to all political parties, Dr. Borhan Uddin Khan, coordinator of the LAPS Project underscored the need for establishing this constitutional institution with a view to combatting the growing trend and practices of Maladministration. It may be mentioned here that the concerned piece of legislation, The Ombudsman Act (Act no. XV of 1980), was passed by the Jatiya Sanghad in 1980. But unfortunately the Act has not yet been brought into force and the office of ombudsman has not been established though more than 17 years had passed since the passing of the Ombudsman Act.

Laws in Bangladesh do not very often reflect people's expectations and aspiration. One of the reasons may be that opinion of the civil society is hardly reflected in the law making process. But the participation of the civil society in the law making is an essential prerequisite of the democratic process. The rule of law and democratic participation in the decision making process are surely not confined to awareness of laws and rights alone, but presupposes active and meaningful involvement in the law making process itself.

The participation of the society in the law making process is an essential pre-requisite of the process of democratisation of the society. Such participation 'reflects popular expectation, enhances acceptability of the law when it is enacted, facilitates awareness of and about law as well as rights and obligation enshrined in the laws.'

'strengthens and empowers civil society. Since the official process of law making does not provide any space for airing of views of those who are both directly and indirectly affected by legislation, Bangladesh Legal Aid and Services Trust (BLAST) with the joint collaboration of Ain O Salish Kendra (ASK) and Madaripur Legal Aid Association (MLAA) ventured to undertake programmes and activities to provide with the society the venue to express its opinions and views about various legislations, either existing or proposed. LAPS is the outcome of that venture.