

## Law and Our Rights

# The Suppression of Violence Against Women and Children Bill A Deadly Cocktail

by Ahmed Ziauddin

**The government, in this Bill, should have set up a Criminal Injuries Compensation Fund, to compensate the victims of crime, not the way as has been proposed, where a victim will be compensated by the perpetrator, but, the criminal could very well be poor and not in a position to pay; or, intentionally avoid paying compensation. Instead, the victims should receive automatic compensation from the government fund, regardless of the perpetrators capacity or willingness to pay; and the criminal be fined and compelled to pay the cost and compensation, as determined by the Court, to such Compensation Fund.**

## New government- New Law

Crimes are and has always been a political issue, which is reflected in governmental actions. Back in 1980, the BNP government enacted the Dowry Prohibition Act, 1980 making acceptance and giving of dowry illegal. So much noise was made about the enactment that as if the 'curse' of dowry had been eliminated. In reality, the law had no real impact, either in terms of modifying social attitude or reducing violence related to dowry.

While in power, Ershad issued the Cruelty to Women (Deterrent Punishment) Ordinance, 1983 and subsequently, the Cruelty to Women (Deterrent Punishment) (Amendment) Act, 1988 and specified crimes against women like : trafficking, rape, causing death during rape etc, until a new government stepped in.

In 1995, the government of Khaleda Zia re-packaged the laws under the Women and Children Repression (Special Provisions) Act, 1995 which, amongst others, repealed the Cruelty to Women (Deterrent Punishment) Act, 1988, set up Special Tribunals, fixed deadlines for investigations, introduced non granting of bail during investigation, trial in absentia, death penalty for rape, death caused by rape, gang rape, death caused by torture for dowry, trafficking in children etc.

The present Bill, Suppression of Violence against Women and Children, which proposes to repeal the Cruelty to Women and Children (Special Prohibitions) Act, 1995, has been the latest attempt of the Awami League to address the same concerns. However, the government opted for "new" laws solution for the old problems, without properly establishing efficacy of the earlier laws and certainly without proper examination whether the absence of law, or insufficient punishment, had been at the root cause of endemic violent incidents against women and children.

**Two in One:** The government in the Bill proposes not only the crimes aimed at women and children but for punishment for creating disruption" etc. For example, Section 14 provides punishment to set fire of government property. Section 15 for extortion of money. Section 16 in interfering in tenders: reminiscent to the law, the suppression of Terrorist Activi-

ties Act, 1992.

The Suppression of Terrorist Activities Act was introduced in November 1992 to remain effective for 2 years. The present Prime Minister, then as opposition leader, mounted an effective campaign from the day of its adoption in Parliament by boycotting the session. She strongly argued, not without substance, that the Act is an oppressive law intended targets being the opposition political activists and that the Act violates Constitutional freedoms.

If Section 2 of the Suppression of Terrorist Activities Act, which defined "terrorist activity" is looked at, the provisions of the present Bill appears identical. Section 2 listed terrorist activity as one:

(a) by use of illegal force or creation of terror

(i) to exhort or acquire tolls, assistance or money or property in any other form from any person or

institution; (ii) to create an obstruction on the highways, waterways or air routes..

(iii) to damage or destroy any movable or immovable property belonging to the government or any government institution, any institution established, constituted or created by law, or any company, firm or non-government organisation or organisation of any individual;

(d) to seize or forcibly take any money, jewellery or valuables or any property or vehicle from any person;

(e) to indecently harass any adolescent girl, or minor girl, or adult woman on the streets, in vehicles, in educational institutions or their environs or in any public place;

(f) to create fear, terror or discipline or an anarchic situation, by the display of force, whether premeditated or sudden, in any place, residential home, shop, market, road, vehicle or destination;

(g) to create obstacles or to prevent the scale, acceptance or submission of commercial tenders or to illegally force the acceptance thereof any person;

The Act provided uniform punishment, minimum being five years of imprisonment or maximum, death sentence, unspecified amount of fine and allowed the Court to order any person convicted of a terrorist offence to pay compensation to their victim (Section 4).

In reality, the law was extensively used against the opposi-

tion activists and human rights organisations joined hands with the opposition to demand its repeal and largely because of ensuing pressure, the government could not extend the Act's lease of life.

The same fears have been expressed about the inclusion of some terrorist types of offences in the proposed law of the Suppression of Violence against Women and Children. It seems, the government, quite dubiously, intends to sneak in otherwise controversial crimes, which it opposed earlier, in the guise of a popular measure. This indicates, how, even the government utilises (or exploits) women and children for political purposes. It is easy to start political campaign against a repressive anti-terrorism law than the law to suppress violence against women and children.

**Missed opportunity**

What the bill should have proposed was a set of comprehensive laws against gender violence in all forms and violence against children. For this purpose, overhauling of definition of a number of crimes were essential, in addition to providing new definitions. The age old definition of rape should have been modified to recognise other forms of violations, invasive or otherwise. The Bill fails to recognise sexual assault, harassment, gratification etc, pervasive in the society.

The Bill should have been a progressive one, which would be hard on criminals by producing results, but at the same time, instituting effective procedures, in pre-trial investigation, prosecution, rules of evidence etc, sensitive to women and children.

For example, the Bill proposes that if a child is born as a result of rape, the person or persons committing the rape shall, according to the amount fixed and in the manner decided by the Tribunal, provide maintenance allowance for the child to his or her legal guardian and shall continue paying such sums, in case of a son, until he reaches 21 years of age and in case of a daughter, until marriage [Section 9(6)].

The provision of maintenance of child born as a result of rape is commendable, but, the most effective deterrent would be to change the "law of inheritance" to consider such a child a "legitimate heir" and entitled to "inherit" the perpetrators property, provided, the victim women chooses to continue the pregnancy.

The government, in this Bill, should have set up a Criminal Injuries Compensation Fund, to compensate the victims of crime, not the way as has been proposed, where a victim will be compensated by the perpetrator, but, the criminal could very well be poor and not in a position to pay; or, intentionally avoid paying compensation. Instead, the victims should receive automatic compensation from the government fund, regardless of the perpetrators capacity or willingness to pay; and the criminal be fined and compelled to pay the cost and compensation, as determined by the Court, to such Compensation Fund.

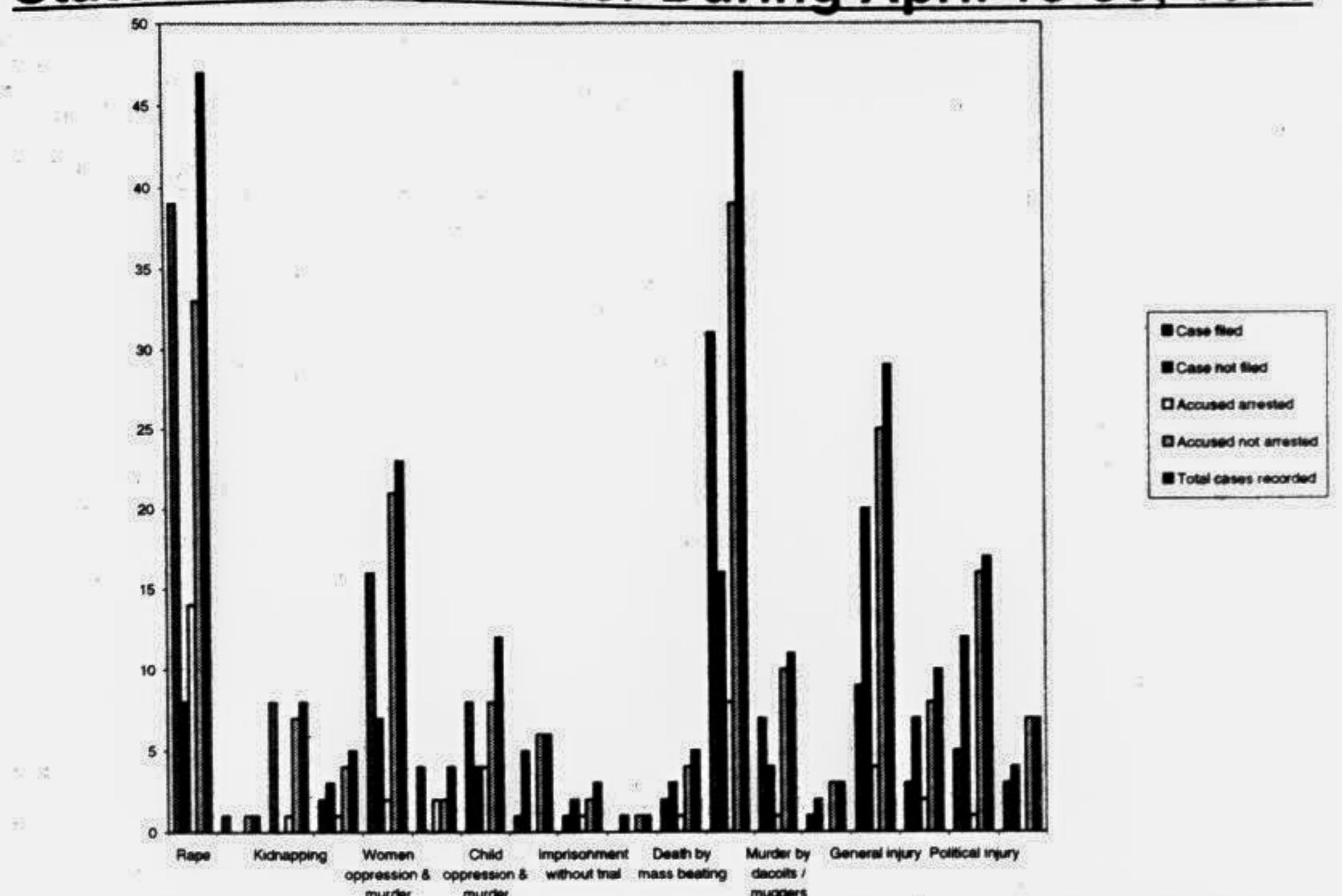
There are also concerns about the fairness of the system proposed in the Bill regarding the rights of the accused. The provisions of bail, the right of cross-examination etc are important foundation of fair trial, which this Bill has ignored.

The test of every legislation is, its effectiveness and how much it establishes or reinforces the principle of rule of law. Judged accordingly, the Suppression of Violence against Women and Children Bill, 1998 will merely camouflage the issues.

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## LAW WATCH

### State of Law and Order During April 15-30, 1998



Courtesy : Information & Documentation Centre, Advocacy Programme, GSS

### Lawai's Arrest Warrant Case

### LHC Rejects Explanation of EB Official as Improper

THE Lahore High Court on Friday rejected as being improper Ehtesab Bureau's explanation on the issue of former President of the Muslim Commercial Bank Hussain Lawai's arrest warrants. The Court also issued notices to the Bureau and others in a fresh contempt of Court petition filed by Lawai. The Court resumed hearing of contempt of court proceedings against Ehtesab Bureau on a petition filed by Lawai alleging that Ehtesab Bureau issued his international arrest warrants in violation of the Lahore High Court's Orders to the contrary. The Lahore High Court had directed the Ehtesab Bureau not to arrest Lawai's on a writ seeking quashment of criminal case registered against him at Karachi.

The court gave seven more days to Ehtesab Bureau's Senator, Saif-ur-Rehman for a written explanation on the issue observing that the explanation by an official of the Bureau was contrary to the Court's orders and could invite contempt of court proceedings. The bench comprised Justice Malik Mohammad Qayyum, Justice Asif Jan and Justice Mian Saeed-Ur-Rehman Farrukh.

Expressing dissatisfaction over the explanation the bench observed that the same was apparently not credible having been signed by an officer of the Bureau, Shahid Raja. "Under what authority the Bureau official sends the explanation", asked the bench.

Pointing out that the explanation was extended in the form of a letter by the official, the Court inquired from the Deputy At-

torney General (DAG) Khawaja Saeed Zafar present in the court room, "Is this the way to present an explanation in the Court?". The bench said this was a serious matter, which comes within the preview of the contempt of court.

This explanation should have been sent by the Ehtesab Bureau Chief, Senator Saif-ur-Rehman and the conduct of official of the Bureau comes within the preview of contempt of court", observed the bench.

In the written explanation by Ehtesab Bureau official it has been maintained that the Lawai's international arrest warrants were issued before the order of the Lahore High Court restraining his arrest. "This is a matter between the High Court and the Australian government and Ehtesab Bureau is not linked with the warrants for Lawai's arrest", the explanation maintains, according to the NNI correspondent. The explanation also denied issuance of any arrest warrants on August 22 last year.

"You give an impression to the world through press that hurdles are being created in the process of accountability by the High Courts, but when the government itself does nothing what can high court do about it" observed the bench addressing the DAG and Ehtesab Bureau representative during the hearing.

The bench observed that the court could issue summons for Hussain Lawai to appear before it if the government could extend an assur-

Courtesy: Associated Press of Bangladesh (APB)

Local Government, Rural Development and Cooperatives (LGRD) Minister Zillur Rahman yesterday urged the engineers to work unitedly with their talent, experience and sincerity for building a hunger and poverty-free Sonar Bangla as dreamt by father of the nation Bangabandhu Sheikh Mujibur Rahman, reports BSS.

He was speaking as the chief guest at the working session-2 of the "fifty years of the engineering profession in Bangladesh" organised by the Institution of Engineers, Bangladesh (IEB), Engr Nurul Huda, Vice president IEB, presided over the function.

Zillur Rahman said the Ministry of Local Government has taken up a broad-based infrastructural development programme for the three hill districts at a cost of Taka 460 crore.

There is no alternative to developing the rural infrastructure for upgrading the living standard of the rural people, he said adding, the present gov-

ernment is working with all efforts to construct and maintain roads, culverts and bridges in the rural areas and thus strengthen the rural economic activities.

Four technical papers were presented in the session. Quamrul Islam Siddique, chief engineer of the Local Government Engineering Department

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