

The Nari O Shishu Nirjaton Domon Bill, 1998

As a women's activist organisation doing work on violence against women, women's rights and justice for women we would like to put forward some comments/recommendations on the proposed 'Nari O Shishu Nirjaton Domon Act 1998' (The suppression of oppression of women and children Act 1998). These comments are from the perspective of a woman's activist and research organisation, and are a result of a series of discussions and discussions from work in Naripokkho, and from ongoing research. As part of ongoing Naripokkho research on violence against women, a day long workshop was held with special judges and public prosecutors from the ten 'Nari O Shishu Nirjaton Domon' special courts, women district judges and representatives from the Ministry of Law, Justice and Parliamentary Affairs. The recommendations from these consultations are also incorporated.

Naripokkho would like to specially emphasise on the following general points regarding the 'Nari O Shishu Nirjaton Domon Bill, 1998':

Violence against women is a multi-faceted problem. The law is one avenue which can be taken to tackle violence against women. However, even when reviewing the law one should be aware that bringing about law reform is in itself inadequate without a complete overhauling of the criminal justice system. Issues such as widespread corruption, lack of accountability, abuse of power, lack of commitment, negligence of duty, inefficiency, lack of ethics, political interference, intimidation and obstruction by the powerful, procedural problems, difficulty of access by the poor, and lack of sensitive handling of cases, are the main reasons for obstruction of justice.

Ingrained cultural biases against women present in many members of the judiciary, medical services and court administration, and the stigma attached to victims of sexual offences, act as further obstacles to justice for women. Therefore emphasis must be placed on tackling these issues if any real progress is to be achieved. There is a need to provide for court mechanisms and procedures that are accountable and sensitive to the needs of women subjected to violence, in order to ensure the fair processing of cases.

We are concerned that matters related to anti-terrorism are included in the same Act as offences related to violence against women. Violence against women is a serious problem in Bangladesh and if one proposes to tackle this problem using such special Acts, then the effectiveness of the same will be greatly reduced by including this whole other area of anti-terrorism. We therefore demand that all provisions regarding terrorism and extortion be removed from the proposed Act.

It is the responsibility of the

state to see that justice is done after a cognizable offence has been committed. The crime should be viewed not only as an offence against a citizen, but as an offence against the state, as the laws of the state have been violated. In cases where a victim or victim's family is not able to or not willing to file or pursue a case, the state should ensure justice is done. A cognizable offence is a crime against the state and as such warrants the government taking responsibility for the welfare of its citizens. The primary responsibility for initiating prosecution should lie with the prosecuting authorities and not with women subjected to violence, or their families.

Naripokkho in principle does not support Capital Punishment, and questions its deterrent effect.

Strong punishments specified in the law may contribute to fewer convictions, as our ongoing research indicates. The accused persons often use threats and offer money to avoid conviction at all costs. In order for a judge to give a conviction with a severe punishment, there have to be strong witnesses, evidence and documents, which are lacking a lot of the time. Giving a range for punishment with a lower minimum sentence would mean fewer acquittals of guilty persons. Surety of punishment may have more of a deterrent effect than severity of punishment.

Murder of women, if not as a result of rape, acid throwing or dowry, does not come under this proposed Act, nor does sexual assault and molestation. Wife-abuse (simple and grievous hurt and death due to causes other than dowry) is also not included. So therefore this proposed Act is in no way comprehensive with regards to serious crimes against women. There should be proper deliberation of experts of whether it is more effective to modify the existing Penal code as regards to crimes against women, or whether it is better to have a comprehensive Act which covers all the major offences which are perpetrated against women.

Wife-abuse is a major problem, however this is not sufficiently included in this Act. The dowry-related clauses reflect a notion that wife-abuse etc. is mainly due to dowry. However we must address the fact that simple and grievous hurt and death of a woman by husband and family members can occur independent of dowry demands.

Rights of the accused must be respected, however heinous an offence has been committed. At the same time, the position of the survivor of the crime and her family should be taken into consideration when giving bail to the accused. Therefore bail should be given at the discretion of the judge.

Definitional and procedural problems make effective implementation of these laws difficult. Definitions for some of the offences outlined are not clear, for example — there could

At a recent meeting of representatives from regional committees of Doorbaar, a national network representing 242 women's organisations in Bangladesh, the reaction when talking about the criminal justice system was that of a total lack of confidence and belief in the law and the justice system. Many of those present, who have had first-hand experience of the criminal justice system themselves, felt there was no justice or law prevailing in this country. They expressed their outrage and feeling of frustration at the rampant corruption, intimidation by the powerful, and political interference, whereby the truth can be changed to a lie, and a lie can become the truth. They related many instances where innocent people have been framed in false cases, and where the guilty are still at large. The feeling that representatives of women from all over Bangladesh have is one of disgust, mistrust and frustration at the entire system. It is from this context that Naripokkho would like to put forward comments on the 1998 Bill; on the one hand realising the need for law reform, but at the same time realising that it is only a small step on the path to achieving justice for all.

Naripokkho is a women's activist organisation founded in 1983, working for the advancement of women's rights and entitlements and building resistance against violence, discrimination and injustice. Naripokkho is currently conducting a two year pilot study of Violence against Women in Bangladesh and a rapid assessment study of Violence against Women in Bangladesh. Sadaf Saaz Siddiqi, a member of Naripokkho, comments on the proposed Nari O Shishu Nirjaton Domon Ain, 1998.

be clearer explanation of the term 'attempt', where concerned. In discussions with judges and public prosecutors the issue of the lack of clear definitions, or problematic definitions has been raised. For example, many judges found the definition of 'dowry' problematic, and suggested that the words 'agreed to be given' be removed. The definition of an abettor was also not clear. We suggest that definitions of all the offences, and relevant procedures, be reviewed by legal experts.

This proposed Act mentions compensation to persons who are physically or mentally hurt. What will the guidelines be for determining and measuring mental hurt? Mental hurt is a complex phenomenon which manifests itself in different people in different ways. There is a risk of assuming a victim will behave in a certain way if mentally hurt. The danger is that there may be prejudice against behaviour which reflects coping strategies.

Other more specific points regarding the Bill are as follows:

There are some contradictions in the Bill regarding Rape. For example section 2.(e) of the 1998 Bill gives the definition of Rape as section 375 of the Penal Code. However, the explanation given in section 9.(2) states that if a man has sexual intercourse with a girl below the age of sixteen with or without her consent, it is regarded as Rape. This is in contradiction with the Penal Code definition 1. We suggest to add the section which was included in the 1995 Act, as follows: Provided that for the purpose of this Act, the word

'sixteen' shall be deemed to have been submitted in both the cases for the words 'fourteen' as referred to in the fifth sub-clause and the word 'thirteen' as referred to in the sub-clause entitled 'exception' of section 375.

Regarding the definition of rape: As the words in the definition given in the Penal Code does not specify penetration of penis into vagina, it can be interpreted to include rape by penetration of any object into the vagina, or rape by forced oral or anal sex. This expanded interpretation of rape is important to encompass these offences.

The rape of men by other men should also be addressed and made a criminal offence.

Sexual assault and sexual molestation are not included as offences in the 1998 Bill. These offences should be included in the Bill, with proper definitions and appropriate punishments.

The Bill states that raping a child or a woman is an offence. As the term 'child' is mentioned in the offence, this should include the rape of boys.

In the 1998 Bill it specifies which include proof of paternity, false allegations of forced marriage, or lifelong harassment of a woman by her attacker. In the current social context the child may be stigmatised as being a product of rape, as well as having the label of being illegitimate.

On the other hand there is the notion that rapist/s should bear responsibility for their actions. On balance at present it seems the disadvantages outweigh the advantages of introducing this law at present. There should therefore be in-depth deliberations regarding this issue. In addition, discussion of this issue provides an opportunity to do away with the ascription of illegitimacy to children born out of wedlock. All children should have equal status before the law and society.

From consultations with judges, it has become apparent that only having the option of a harsh punishment like the death sentence or life imprisonment makes it harder for justice to be served. Much of the time there is a lack of reliable

witnesses, lack of eyewitnesses (for example like in cases of rape by husband due to dowry), lack of proper investigation, lack of proper collection of evidence and lack of submission of proper reports by experts. Due to these 'factors', as well as inefficiency, lack of accountability, intimidation of witnesses and complainants and so on, judges have no option but to acquit the accused, many of whom are actually guilty.

This happens because the case against the accused person/s is often not strong enough to allow for a stiff punishment. The factors which weigh in favour of the strength of cases have to be seriously addressed. At the same time, according to many judges, if there was the option of a lesser sentence then even though many accused who are guilty may not receive a severe punishment, at least they would get some punishment for the crime instead of going scot-free.

At the Expert Group Meeting on State Interventions on Violence Against Women held in Dhaka 15-18 June 1997, organised by the Ministry of Women and Children Affairs and the Royal Danish Embassy, Mr Sankar Sen, Director General Investigation, National Human Rights Commission, India, stated that surety of punishment rather than severity of punishment may have more of an effect as a deterrent.

There is a suggestion that the offences of kidnapping should be made compoundable with the consent of the court. Some cases which are filed under this section are in reality cases of elopement. There is therefore

appropriate punishment, is because many women are in situations of great risk of grievous hurt or death, but often injuries apparent would be classified as simple hurt, and serious action may only be taken after a grievous hurt or death is committed even though the indications of risk to the victim are apparent for some time.

Any unlawful possession or supply of erosive, poisonous and corrosive substances should be criminalised.

There is provision in the 1998 Bill for fines to be collected from the offender/s and then given as compensation to the victim or victim's family.

We feel the system of effective collection of the fines and distribution of compensation has to be worked out well. Will the victim and her family receive the entire amount of the fine? What will happen if the fine cannot be realised? This is a complicated issue which requires further elaboration, clarification and procedural guidelines.

The court should have the option of other investigating authorities. These can include different branches of the police, or non-police investigators like magistrates.

There is provision in the Bill for departmental action or criminal case against police investigators if the evidence is tampered with or if the investigation is not conducted properly. This should not be confined to the police, but also include all people or persons in related institutions and agencies involved with the investigation.

For example, there should be

scope for taking disciplinary action against doctors who file a false forensic report or a non-conclusive report (where it should have been conclusive) or delay in handing over the report. However, the police should be aware of the possibility of threats to doctors which may affect their reports and the police should be able to take necessary action against them those concerned. Working doctors should also be given refresher training on medico-legal aspects so that the various test reports can be done properly.

Though it may be necessary to allow for more time for the investigation period and trial period of the case, there should also be emphasis on the reasons for delay and efforts should be made to rectify these. Reasons for delay during trial and investigation period include: lack of accountability, lack of commitment, inefficiency, lack of cooperation and coordination between relevant agencies and persons, corruption at all stages of the system, intimidation by powerful persons who do not want to see justice carried out, misuse and abuse of law, overload of cases, lack of proper logistic support, limited working time (holidays, number of hours of work in a day etc), limited number of judges and public prosecutors, and so on. Endless extension of time is not the solution. To make real progress the aforementioned issues have to be seriously addressed.

The Bill specifies that if the case is not completed within the time specified in the Bill, then the case will be closed and cannot be renewed. However as delays during the trial are not unusual, at the end of the stated time, the case should not automatically be closed so that it cannot be renewed. This decision may be given at the discretion of the court.

The Bill also states that if a woman who has been raped makes an application she may be granted a close-door (in camera) trial. We feel that in 'in camera' or closed trial should be a matter of course in all offences relating to rape and sexual assault. However, the woman should be allowed to have a female companion or supportive person with her. This is because it may be traumatic for a woman to be in close proximity of her attacker, with only a few others present (which may be mostly or all male persons). Such measures will facilitate the testimony of women subjected to violence, and protect their privacy.

We also feel that questions regarding past sexual history of the victim and the accused should not be allowed, except in the case of the accused where it has been linked to past criminal activity. However evidence of prior acts of violence, abuse, stalking etc., should be considered during court proceedings. In this connection, there should be a reviewing of the Evidence Act by legal experts.

A major problem faced is safety of witnesses. This issue should be given serious attention, as many witnesses are discouraged from coming forward or sticking to their original testimony due to intimidation and threats.

For witnesses that give false evidence, there should be provision for an immediate summary trial of these witnesses.

To strengthen the prosecution, there should be a separate public prosecutors cadre set up where appointment is unbiased. Many judges with whom we have talked complain that appointment of public prosecutors is not based on merit but by political appointment. The suggestions that are put forward by committees with the names of potential candidates are often ignored. This means that many public prosecutors are politically motivated and inefficient. This cadre can have an investigative component to help the prosecution build up a strong case on behalf of the state.

The judge should have the power to transfer cases if required. For example, in instances where cases are filed incorrectly, intentionally or by mistake, and instances where the type of the case changes. Many judges and lawyers with whom we have had discussions strongly suggest that judges should have the power to transfer cases (for example, a case incorrectly filed under this Act may be transferred to the relevant section under the Penal Code). In many circumstances, having to re-file cases (going through the whole process again from the start) delays justice and increases the physical, mental and economic strain on the complainants and their families. In addition it increases the workload and expense of the state. So in cases where appropriate, the judges should have this power to transfer.

The proposed Act has a provision for putting a woman or child in safe custody outside the jail. Safe custody should not be a place like a jail which curtails a woman's freedom and puts restraints on her movement. Safe custody should not be a place where a woman is insecure. A woman should be asked permission whether or not she wants to go and stay in safe custody, and should be placed in safe custody only if she consents to it.

The Bill states that a woman who is raped should be examined by the woman doctor on duty. Examination by a woman doctor is preferable but as in many places a woman doctor will not be available the woman should be examined by the doctor on duty. In order to ensure that rape examinations are carried out correctly and thoroughly, a simple forensic kit for rape examinations, as used in other countries, can be distributed by the government. These forensic kits are easy to use and ensure that no vital procedure and examination is left out of the examination of the rape victim. As minimal training is involved to use these forensic kits, doctors all over Bangladesh could use them.

There is a need to develop investigation procedures that do not degrade women subjected to violence and minimise intrusion, while maintaining standards for the collection of evidence. Finally we urge that there be public debate regarding this 1998 Bill. The document of this Bill should be made widely available for public debate and discussion. The state-owned media (radio and television) should facilitate this debate and discussion.

1. Rape has been defined in Section 375 of the Penal Code as follows:

"A man is said to commit rape who in except in the case hereinafter, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions: firstly, against her will, secondly, without her consent, thirdly, with her consent, when her consent has been obtained by putting her in fear of death, or of hurt, fourthly, with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married, fifthly, With or without her consent, when she is under fourteen years of age."

Explanation — Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception — Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age is not rape."

The forensic kit is being used by the Government of Malaysia, and Naripokkho has submitted a sample kit to Ministry of Women and Children Affairs in September 1996.

This is a summary of a detailed document which is the result of a series of discussion by the Naripokkho Membership.

Garfield



OTM DAVIS 6-20



JAMES BOND DRAWING BY HOAK

by Jim Davis



THE PHONE RINGS OUT. JAMES! YOU'LL BE STARRING IN BLUE MOVIE NEXT. I SHOULD'NT WONDER!

Bangabandhu's killers should not be spared, says K-S Nabi

Attorney General Barrister KS Nabi said that human rights and rule of law will be meaningless if the killers of Bangladesh's founding leader Bangabandhu Sheikh Mujibur Rahman are allowed to escape trial and given political shelter in different countries of the Commonwealth, reports UNB.

Addressing a three-day seminar on "Human Rights, Rule of Law and Freedom of Judiciary" in London Tuesday, the Attorney General urged the Commonwealth governments to hand over the killers of Bangabandhu to Bangladesh government to facilitate the trial.

The representatives attending the seminar extended support to Nabi's observation, said a press release of the Attorney General's office in Dhaka.

KS Nabi told the seminar that the government of Sheikh Hasina arranged open trial of the accused in the Sheikh Mujib murder case.

Khaleda visits injured JCD leader at DMCH

BNP Chairperson Begum Khaleda Zia yesterday visited the injured JCD leader Alamgir Hossain at Dhaka Medical College Hospital, reports UNB.

According to a party press release, the wrists of Alamgir were chopped off by 'Awami terrorists' near Bhangra Press at the city's Jurain on Monday night.

Begum Zia stayed beside Alamgir for some time and enquired about his treatment. She also consoled the mother of Alamgir and assured her of better treatment of her son.

Khaleda Zia was accompanied by Sadek Hossain Khoka MP.

Sarak Bhaban's 'Block C' foundation stone laid

Communications Minister Anwar Hossain yesterday laid foundation stone of 860-square-metre two-storey building of block 'C' of Sarak Bhaban in the capital, reports UNB.

The construction of the building, at a cost of Tk 1.30 crore, is expected to be completed by next November.

The existing accommodation problem in the Sarak Bhaban will be solved after the completion of construction work.

Weather

Rain with gusty wind forecast

Rain or thundershowers accompanied by temporary gusty wind may occur at many places over Dhaka, Barisal, Khulna, Chittagong and Sylhet divisions and at a few places over Rajshahi division with moderately heavy or heavy falls at places over Dhaka, Chittagong, Khulna, Barisal and Sylhet divisions during the next 12 hours till 6 pm today, reports UNB.

The Met Office predicted no appreciable change in day temperature over the country during the period.

The country's highest temperature 31.5 degree Celsius was recorded yesterday at Sylhet and Rangpur and the lowest 18.9 degree at Sandip.

The sun sets today at 6:40 pm and rises tomorrow at 5:11 am.

Dr Kasiruddin's anniversary of death tomorrow

The 27th death anniversary of shahheed Dr Kasiruddin Talukdar will be observed tomorrow, says a press release.

On this day in 1971 Dr Talukdar, a renowned physician of Bogra and MLC of undivided Bengal, was brutally murdered by the occupation army for treating the wounded freedom fighters of '71 Liberation War by opening a free clinic for them and leading the physicians procession during non-co-operation movement of March 71.

Death anniversary

The 2nd death anniversary of A M Nooruddin Ahmed, a senior advocate of Bangladesh Supreme Court and a Legal Adviser of Bangladesh T&T Board, will be observed tomorrow, says a press release.

To mark the occasion, a *milad mahfil* will be held after Asr prayers at his residence.

Relatives, friends and well-wishers of late Nooruddin Ahmed are requested to attend the *milad mahfil*.

Russian envoy meets Nurul Islam, DCC Mayor

Russian Ambassador to Bangladesh Yevgeniy Ivanov called on State Minister for Religious Affairs Moulana Mohammad Nurul Islam at his Secretariat office yesterday, reports UNB.

During the meeting, they discussed various issues relating to bilateral relations and mutual interests.

BSS adds: The Russian Ambassador to Dhaka also yesterday called on Dhaka City Mayor Mohammad Hanif at the latter's office in the city.

They discussed different issues including the development activities of Dhaka Metropolitan City.

'Emphasis should be given to update army'

The Chief of Army Staff Lieutenant General Muhammad Mustafizur Rahman, Bir Bikram, said special emphasis should be given to modernise and professionalise the army for adding more bite to its fighting elements, reports BSS.

General Mustafiz was delivering a lecture as the guest speaker to the student-officers of the defence services command and staff college at Mirpur on Sunday.

Shahabuddin, Hasina greet Azeri President, PM

President Justice Shahabuddin Ahmed yesterday congratulated President Heydar Aliyev Ogly Aliyev of Azerbaijan on the occasion of its independence day, reports UNB.

In a message sent to the Aliyev Justice Shahabuddin expressed the hope that the friendly relations between two countries will continue to develop in the years ahead for the mutual benefit of peoples of the two countries.

In a separate message to Azerbaijan Prime Minister Artur Rasizade on the same occasion, Bangladesh Prime Minister Sheikh Hasina conveyed her warmest greetings and warmest felicitation to the government and its people.

Hasina expressed her confidence that the existing bonds of friendship and cooperation between the two countries will be further strengthened in future.

Both President Justice Shahabuddin and Prime Minister Sheikh Hasina extended their best wishes for the personal health, happiness and long lives of President and Prime Minister of Azerbaijan as well as the progress and prosperity of the brotherly people of that country.

BNP chairperson condemns attack on Manabjabin

BNP Chairperson Begum Khaleda Zia strongly condemned the 'terrorist' attack on the office of Daily Manabjabin and assaulting its employees, reports UNB.

"I am very aggrieved following the attack on the newspaper," said the Leader of the Opposition in a statement yesterday.

Govt urged not to import Viagra before confirmation of its side effects

By Staff Correspondent

Teachers of the Faculty of Pharmacy of the Dhaka University (DU) have urged the government not to import Viagra, the newly marketed drug for impotency, before confirmation of its side effects, toxicity and other harmful consequences, says a press release.

The release signed by the dean of the faculty Prof Muniruddin Ahmed said that along with people of the country, the teachers of the Faculty of Pharmacy are perturbed of the news of probable import of Viagra.

Ex-AL MP hospitalised

Mohiuddin Ahmed, an ex-MP and president of Barisal District Awami League was admitted to Combined Military Hospital on Tuesday for prostate operation, reports BSS.

He is now staying at VIP Cabin No. 5 of CMH under the treatment of neurosurgeon Lt Col Harun-Ur-Rashid.

Sheraton's exciting lunch package Friday, Saturday

Dhaka Sheraton Hotel will be introducing an interesting and exciting lunch package every Friday and Saturday at the Bithika Restaurant that offers a fantastic discount on normal buffet lunch, says a press release.

This "Lunch Bonanza" starts from May 29, 1998 during which buffet lunch will be available at Taka 495 per person instead of regular Taka 600 per person and children below 12 years the price will be Taka 250 instead of regular Taka 425.

The buffet lunch will feature an array of international and exotic Far East Asian culinary delights. The most attractive feature of the Lunch Bonanza is free swimming from 2 pm till 5 pm and complimentary tea/coffee with cakes and pastries from 4.45 pm till 5 pm at the Sarobar Pool Cafe.