



LAW campaign

# "The more laws, the less justice": When it comes to women

SAIRA RAHMAN KHAN

THE more laws, the less justice' is a quotation from the famous Roman Senator, Marcus Tullius Cicero. What Cicero was saying was, basically, that one cannot keep making laws to fit every component of society and rule every act society does. Piling up laws only makes governance more rigid. You cannot have a law for everything. I find that this is presently the case in Bangladesh, where there are too many laws, where the amendment of a few would have sufficed because the 'rush order' manner in which such laws have been drafted and passed has caused some serious flaws in them, which can lead to mischief and confusion. To date Bangladesh has several criminal laws specifically aimed at curbing violence against women. A large majority of the problems such laws address are already contained in the Penal Code of 1860. However, the plethora of laws is, of course, not the only reason why there is less justice for women in Bangladesh. Why do we need so many laws? Are they for the protection of the people or have they been drafted with high-priced 'consultants' in order to appease the international community as part of their projects? Are they really capable of curbing violence against women?

The Penal Code of 1860 relied upon in the criminal justice system in Bangladesh today is a relic from the colonial times, which has been amended from time to time. It addresses such 'violence against women' related issues such as: causing miscarriage; hurt and grievous hurt; assault; kidnapping; wrongful confinement; murder; throwing of corrosive substance; rape; false marriage; insult and annoyance to name a few. However, in recent times, laws such as the Nari o Shishu Nirjaton Doman Ain 2000 (Amended in 2003) and the Acid Crime Control Act of 2002 have taken up several of these issues and added more stringent punishments, including capital punish-

ment. Not only that, there are two laws regarding the issue of acid violence the Acid Crime Control Act of 2002 and the Acid Control Act of 2002. The necessity of two laws on the issue is, quite frankly, unnecessary. If the Penal Code can carry off a multitude of crimes in one single tome, why not acid-related laws? Even more recently, the Parliament passed a Domestic Violence Act, to add to the government's show of justice for its women citizens.

As regards definitions and interpretations, there are several flaws in the new laws. Here I will highlight just a few. The Acid Crime Control Act 2002 has managed to compartmentalise the female anatomy and provides for separate sentences depending on which part of the body has been affected. I find that very demeaning for the affected woman. I have worked with survivors of acid violence for over a year and have seen the havoc such violence can wreck on the body and mind, regardless of which body part has been affected. Having separate punishments depending on whether the acid has burnt the face or arms or legs or genital area does not seem right. Medical evidence determines the gravity of the offence and how serious the harm is. That ought to be the indicator for punishment. 'Acid' is not clearly defined in the Penal Code of 1860 or in the Act of 2000, but is defined in the Acid Control Act of 2002. So if the substance is found to be 'acid' the crime will be tried under the Act of 2002, if it is a 'corrosive or burning substance' it will be tried under the Act of 2000 and the Penal Code of 1860 will be obscured. To add to the confusion, there are also two separate Tribunals under the two Acts and even the two acid laws of 2002 have different interpretations of 'acid'. So, is acid not a corrosive and burning substance? Again, section 9 of the Act of 2000 (as amended in 2003) provides that if death is caused due to rape or acts committed after rape, the punishment is death or life imprisonment. The prosecution has to prove two crimes here rape



and murder and that the latter was a consequence of the former. Under the Penal Code, the two crimes can be argued separately and there are separate punishments, but there is only one punishment under the Act of 2002, making the charges more difficult to prove and leaving the judges with no space to use equity.

The news laws contain harsher punishments than those found in the Penal Code of 1860 12 offences are punishable with up to the death sentence in the Act of 2000 and three in the Acid Crime Control Act of 2002. In contrast, the Penal Code of 1860, which has more than 500 sections, carries a death penalty for only eight crimes. The death sentence is no longer an effective deterrent. So, how necessary are these laws if they cannot contain the violence? Would it not have been easier to amend the Penal Code, as has been done before? Again, if the Nari O Shishu Nirjaton Doman Ain 2000 (Amended in 2003)

contains provisions relating to acid violence, then why have another Acid Crime Control Act 2002? If the Penal Code and the Suppression of Immoral Traffic Act 1933 condemn trafficking and prostitution, then why is it repeated in the Act of 2000? It will come to no surprise if the Parliament passes another law specifically on the topic of 'eve teasing' even though the Penal Code of 1860 and other laws have provisions for such actions! The different definitions and punishments contained in the laws for a single offence make it difficult for both the victim and the judge to get and dispense justice in an effective, equitable manner. Women's rights organisations have lobbied for new laws to protect women and curb violence, but it is clear here that there is not actual meeting of the minds. If there was, there would be one single, new law on issues of violence against women covering every possible issue

including domestic violence. This would have been amended and evolved as new problems arose. Furthermore, such women's organisations deal with aspects of violence against women and all their interests have been reflected in the laws they have lobbied for. However, one glaring issue has totally been ignored by them. Why have they not found it necessary to have yet another law for the protection of victims and witnesses? Instead of the practice of 'oiling an oily head' (excuse the translation), this really is one law that is urgently necessary in Bangladesh, and not just for women victims and witnesses.

However, it is not just the multitude of laws that is hindering the system but also the archaic language that needs some serious re-structuring. One of the courses that I teach at law school is 'Criminal Law' that encompasses several laws, including, of course, the Penal Code of 1860, the Suppression of Immoral Traffic Act 1933, the Nari-o-Shishu Nirjaton Doman Ain 2000 and the Acid laws of 2002. I have always had enthusiastic students who take great interest in solving problems and are very vocal about the injustices they see around them. However, they are stumped when they come across Victorian phrases such as 'to insult the modesty of a woman' and 'gratifying unnatural lust'. Even when I explain the phrases, several of my students turn a very 'modest' shade of red! Such phrases are the language of the Penal Code, drafted in the 19th century, where women's ankles were not a topic of polite discussion. However, the Penal Code also boldly declares 'rape' to be an offence and also contains the words 'adultery', and surprisingly 'carnal intercourse' albeit under the section dealing with 'unnatural offences'. So what to make of such phrases? How are they defined? When will the 'modesty' of a woman be insulted? Do all women have the same ideas or practices of 'modesty'? In this dangerous era of 'sexual harassment', 'modesty' seems to be totally disre-

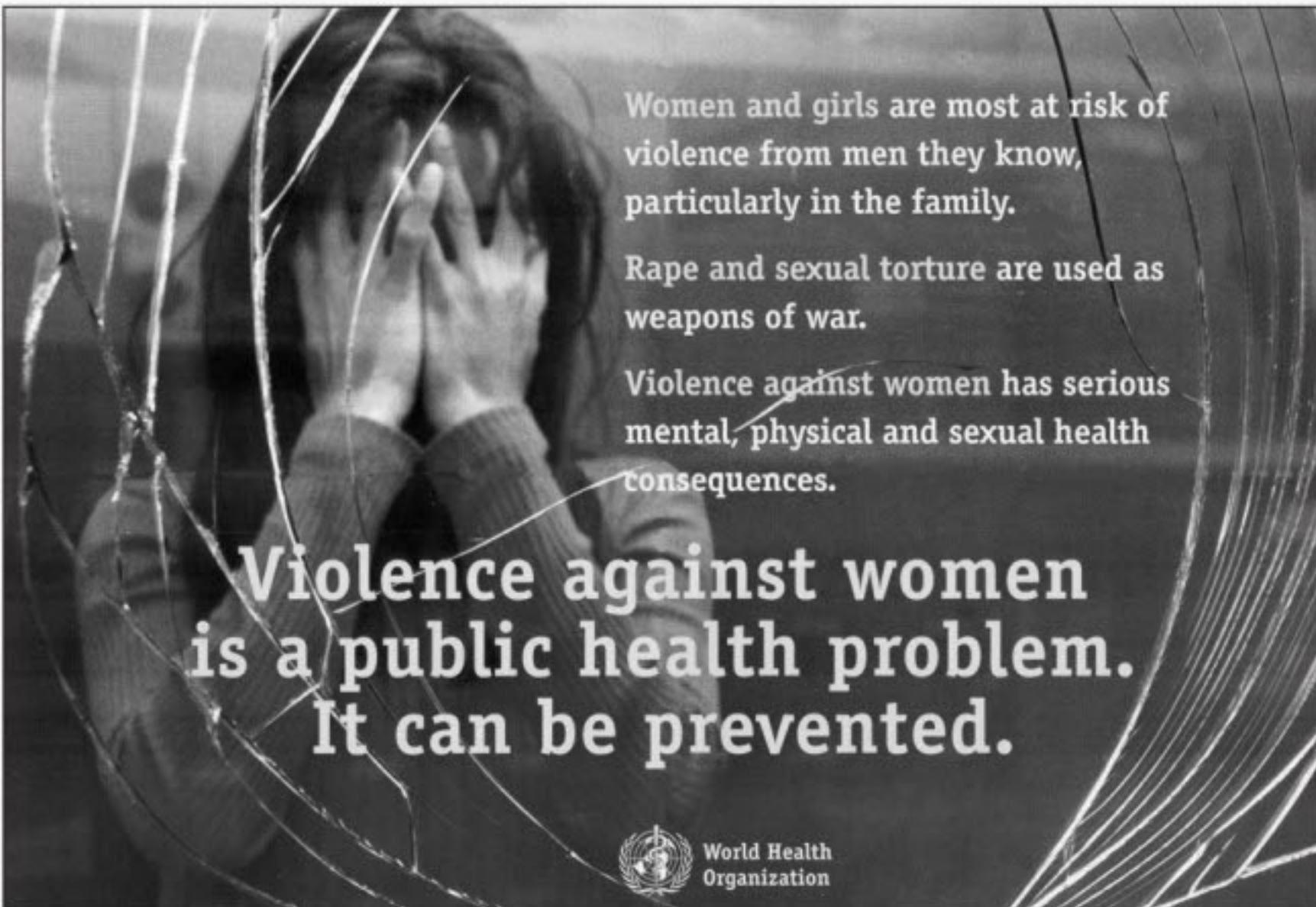
garded. It does not matter how 'modest' a girl or woman is. Unfortunately, the phrase 'insult to her modesty' has been copied into the new, 'modern' laws protecting women and children from violence. At this day and age, where issues of sexual harassment and rape and sexual violence are discussed with open honesty all over the world, why do the drafters of such laws still hide behind such ambiguous, long-forgotten phrases?

One may argue that the laws are covering every possible aspect of violence against women and victims will find it easier to get justice if they seek relief under such laws. However, as has also been argued, not only are there some serious flaws in the present laws protecting women, but also that these laws, too, do not seem to be working to control the violence. It is a common consensus that both the lack of understanding the law and the lack of implementation of the law are reasons that are seriously hampering justice. Even if we ignore the flaws in the prevalent laws and focus on the lack of implementation, we will see that it is possibly one of the main causes for the continuation of violence against women. Why is the law not implemented properly? Corruption; poor investigation; lack of evidence; poor preservation of evidence and reluctance of the police to handle domestic violence issues are some of the reasons. Others include the obvious ambiguity in the language of the new laws, ignorance of the law, the inability to go to the police station to complain due to threats by the perpetrator; inability to continue court appearance due to financial or social reasons; and inefficient legal representation. So despite there being more than enough laws for the punishment of various forms of violence against women, here too we see that even though there are more laws (for women), there is still less justice for very different reasons!

The writer is Associate Professor, School of Law, BRAC University.

FACT file

## Violence against women: Facts and figures

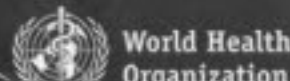


Women and girls are most at risk of violence from men they know, particularly in the family.

Rape and sexual torture are used as weapons of war.

Violence against women has serious mental, physical and sexual health consequences.

Violence against women is a public health problem. It can be prevented.



VIOLENCE against women and girls is one of the most widespread violations of human rights. It can include physical, sexual, psychological and economic abuse, and it cuts across boundaries of age, race, culture, wealth and geography. It takes place in the home, on the streets, in schools, the workplace, in farm fields, refugee camps, during conflicts and crises. It has many manifestations from the most universally prevalent forms of domestic and sexual violence, to harmful practices, abuse during pregnancy, so-called honour killings and other types of femicide.

Based on country data available, up to 70 per cent of women experience physical or sexual violence from men in their lifetime. A World Health Organization study of 24,000 women in ten countries found that the prevalence of physical and/or sexual violence by a partner varied from 15 per cent in urban Japan to 71 per cent in rural Ethiopia, with most areas being in the 3060 percent range.

Violence against women and girls has far-reaching consequences, harming families and communities. Gender-based violence not only violates human rights, but also hampers productivity, reduces human capital and undermines economic growth. Countries have made some progress in addressing violence against women and girls. According to the UN Secretary-

General's 2006 In-Depth Study on All Forms of Violence against Women, 89 countries had some legislation on domestic violence, and a growing number of countries had instituted national plans of action. Marital rape is a prosecutable offence in at least 104 States, and 90 countries have laws on sexual harassment. However, in too many countries gaps remain.

In 2008, UN Secretary-General Ban Ki-moon launched his campaign UNiTE to End Violence against Women to draw international attention at the highest level to the issue. Say NO UNiTE is designed to support social mobilization to drive actions and accountability, in contribution to the UNiTE campaign.

Did you know?

- Up to 70 percent of women and girls will be beaten, coerced into sex or otherwise abused in their lifetime.
- Rape and domestic violence are a higher risk for women aged 15 to 44 than cancer, traffic accidents or malaria.
- Violence against women has become a weapon of war. In Rwanda, up to half a million women were raped during the 1994 genocide.
- 140 million women and girls alive today have undergone female genital mutilation.
- It is estimated that 5,000 women are

victims of so-called "honour killings" every year.

- The economic costs of violence against women are considerable. In the United States, the costs of medical care and productivity loss due to intimate partner violence exceed US\$5.8 billion per year.

Facts and figures

Violence against women and girls is a problem of pandemic proportions. Based on country data available, up to 70 per cent of women experience physical or sexual violence from men in their lifetime the majority by husbands, intimate partners or someone they know.

Among women aged between 15 and 44, acts of violence cause more death and disability than cancer, malaria, traffic accidents and war combined. Perhaps the most pervasive human rights violation that we know today, violence against women devastates lives, fractures communities, and stalls development. It takes many forms and occurs in many places domestic violence in the home, sexual abuse of girls in schools, sexual harassment at work, rape by husbands or strangers, in refugee camps or as a tactic of war.

Femicide - the murder of women because they are women

- In the United States, one-third of women murdered each year are killed by intimate partners.
- In South Africa, a woman is killed every 6 hours by an intimate partner.
- In India, 22 women were killed each day in dowry-related murders in 2007.
- In Guatemala, two women are murdered, on average, each day.

Trafficking

- Women and girls comprise 80 percent of the estimated 800,000 people trafficked annually, with the majority (79 percent) trafficked for sexual exploitation.

Harmful practices

- Approximately 100 to 140 million girls and women in the world have experienced female genital mutilation/cutting, with more than 3 million girls in Africa annually at risk of the practice.
- Over 60 million girls worldwide are child brides, married before the age of 18, primarily in South Asia (31.1 million) and Sub-Saharan Africa (14.1 million).

Sexual violence against women and girls

- An estimated 150 million girls under 18 suffered some form of sexual violence in 2002 alone.
- As many as 1 in 4 women experience physical and/or sexual violence during pregnancy which increases the likelihood of having a miscarriage, stillbirth and abortion. Up to 53 percent of women physically abused by their intimate partners are being kicked or punched in the abdomen.
- In Sao Paulo, Brazil, a woman is assaulted every 15 seconds.
- In Ecuador, adolescent girls reporting sexual violence in school identified teachers as the perpetrator in 37 per cent of cases.

Rape as a method of warfare

- Approximately 250,000 to 500,000 women and girls were raped in the 1994 Rwandan genocide.
- In eastern Democratic Republic of Congo, at least 200,000 cases of sexual violence, mostly involving women and girls, have been documented since 1996, though the actual numbers are considered to be much higher.

Cost of violence against women

- Domestic violence alone cost approximately US\$1.16 billion in Canada and US\$5.8 billion in the United States. In Australia, violence against women and children costs an estimated US\$11.38 billion per year.
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Sexual harassment

- Between 40 and 50 per cent of women in European Union countries experience unwanted sexual advancements, physical contact or other forms of sexual harassment at their workplace.
- In the United States, 83 per cent of girls aged 12 to 16 experienced some form of sexual harassment in public schools.

Source: saynotoviolence.org

FOR YOUR information

### Support the Treaty for the Rights of Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

Summary of Treaty Provisions

Despite the use of language such as "mandates," "requires," and "obligates," the treaty grants no enforcement authority to the United Nations or any other body. It requires only a periodic report and review process. Countries also can express "reservations, understandings and declarations" where domestic laws diverge from the Treaty. U.S. federal and state laws generally comply with the Treaty for the Rights of Women, which is also compatible with the U.S. Constitution, except where noted in the reservations, understandings, and declarations.

**Article 1:** Defines discrimination against women as any "distinction, exclusion, or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of marital status, on the basis of equality between men and women, of human rights or fundamental freedoms in the political, economic, social, cultural, civil, or any other field."

**Article 2:** Mandates countries to condemn discrimination in all its forms and to ensure a legal framework, including all laws, policies, and practices that provide protection against discrimination and embody the principle of equality.

**Article 3:** Requires that countries take action in all fields civil, political, economic, social, and cultural to guarantee women's human rights.

**Article 4:** Permits countries to take "temporary special measures" to accelerate equality.

**Article 5:** Declares the need to take appropriate measures to modify cultural patterns of conduct as well as the need for family education to recognise the social function of motherhood and the common responsibility for raising children.

**Article 6:** Obligates countries to take measures to suppress trafficking in women and the exploitation of prostitution of women.

**Article 7:** Mandates countries to end discrimination against women in political and public life and to ensure women's equal rights to vote, to be eligible for election, to participate in the formulation of policy, to hold office, and to participate in associations and non-governmental organizations in these arenas.

**Article 8:** Requires action to allow women to represent their governments internationally on an equal basis with men.

The Convention provides the basis for realising equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life -- including the right to vote and to stand for election -- as well as education, health and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms. The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

-Compiled by Law Desk.