



Combating violence against women

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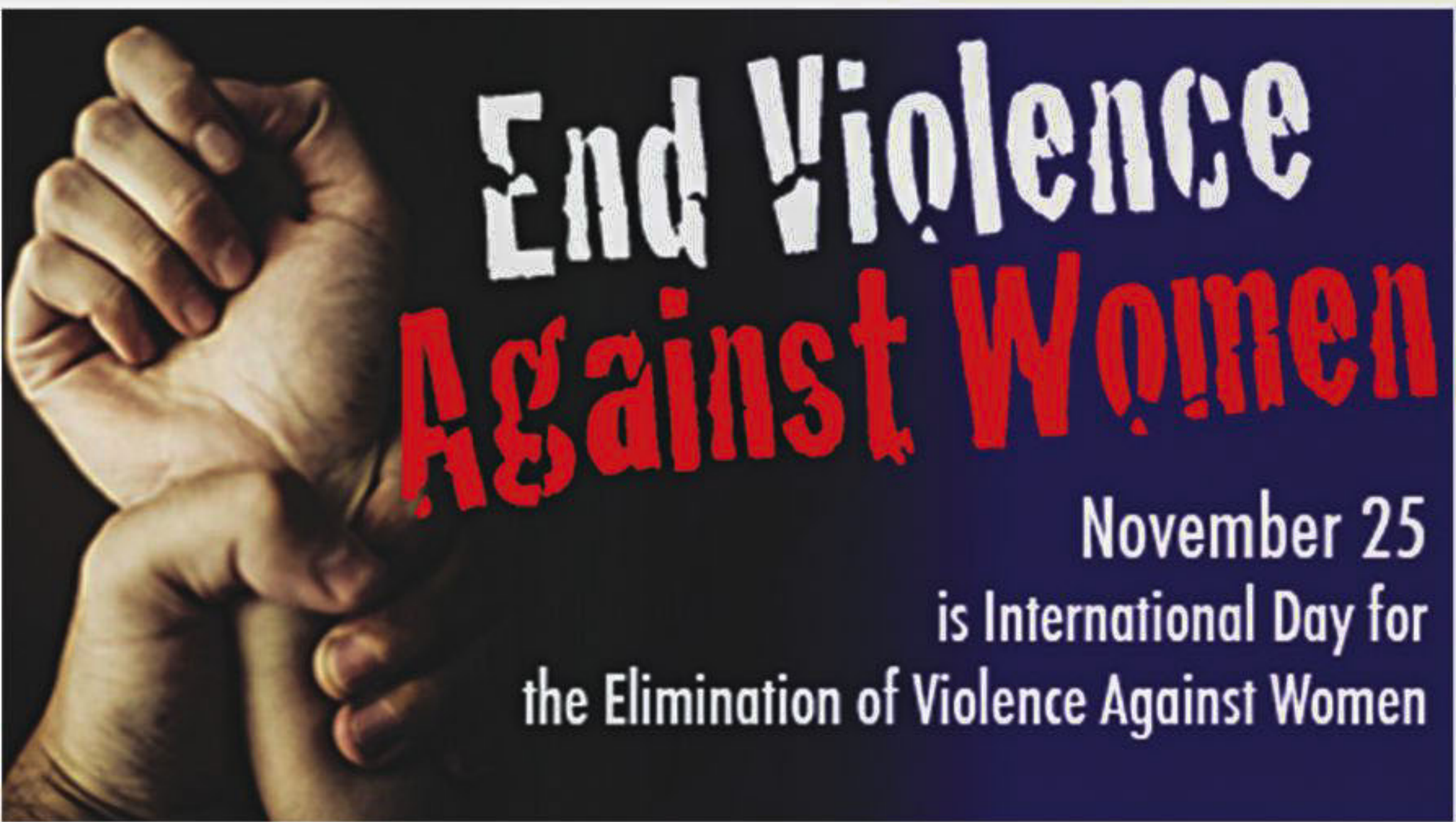
DESPITE our commitment to equal protection for male and female in our constitution (Article 27, 28) and international human rights treaties like Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT), violence against women (VAW) is quite high in our society. Being vulnerable in a patriarchal society like ours women face myriad types of violence. Apart from general provisions of penal laws, few special laws were enacted which offer host of legal remedies for

offences involving VAW. Exploring writ jurisdiction under Article 102 for enforcement of human rights of women is also available in the High Court Division of the Supreme Court. In particular, Penal Code (XIV of 1860) contains provisions that defined hurt, other tortures, abduction, murder, defamation etc. as punishable offences. Criminal courts of different tiers designated in Schedule II of the Code of Criminal Procedure 1898 are the fora to try such offences. Further, Suppression of repression against women & children (Act VIII of 2000) was enacted to combat and prevent the violence against women and children and it provided for stringent punishments for committing

offences relating to dowry, murder, rape etc. The tribunals established under the Act are fora to deal with the issues relating to VAW. Dowry prohibition (Act XXXV of 1980) prohibits giving, taking, demanding dowry at the time of marriage and thereafter. Domestic violence (prevention and protection) (Act LIV of 2010) also provides for exhaustive provisions in dealing with issues relating to domestic violence. Likewise, Suppression of Human Trafficking Act 2011, Suppression of Acid Crimes Act 2000 also deal with the heinous and cruel forms of VAW. Legal Aid Act 2000 offers legal aid facilities for the disenfranchised including victims of VAW. In Bangladesh, officially reported crimes involving violence against women and girls are only the tip of the iceberg as many such crimes go unnoticed and unreported to the machinery of law due to plethora of reasons. Perhaps fear of further retaliation, illiteracy, mind set to take it as fate, patriarchy, commitment to the family and children, lack of awareness and self-respect, cumbersome legal formalities, economic dependence and many other social barriers are responsible for not setting the law in motion even the offence is committed. Though a victim in general lodge a complaint or first information report, in essence she has no right excepting to be witness. Though few special laws provides for bit of protection to the victim of VAW in paper, in practice she is considered to be virtual nobody in our justice system. It may be mentioned here that in a police case (GR case) it is the duty of the police (prose-

cution) to produce the witnesses whereas complainant herself is responsible for presenting her witnesses in complaint case (CR case). Police are not enthusiastic in producing witnesses and paucity of deposition of medical officer and investigating officer is a common scenario in criminal courts. Further, a victim gives or is compelled to furnish obliging evidence in favour of the accused who generally happened to be her male partner following some local compromise. In some grave offences like murder, rape, trafficking, abduction the victims/witnesses seldom feel in-secured for giving testimony against hardened criminals. Consequently, the offenders escape the dragnet of law, though violence against women has been committed. Apart from series of loopholes apparent in legal proceedings, defective and delayed investigation also buries the enthusiasm of the victims of VAW. There is no denying that victims of VAW have to undergo unbearable hurdles through investigation and trial. For instance, question of custody of victim, recording of her statements of victim, medical examination of victim by male doctors, unsavoury & humiliating question in cross-examination, absence of victim protection law, high litigation costs, pressure of the natal family and in-laws to reach a compromise, timeless adjournments, long delay in disposing of cases are few challenges she faces in litigation. In most cases, there is no effective pre-trial meeting between the prosecutor and the victim/ witnesses which put the witnesses at bay during trial. Furthermore, very low conviction rate

in cases involving VAW is a perennial problems the courts are facing. The compensation provision of the Criminal Procedure Code 1898 too is of little help for the victims of VAW. According to section 545, when a monetary fine is imposed as the sole or an additional punishment, the court may, at its discretion, direct all or part be paid to the victim. However, if there is an acquittal or if the offender cannot be apprehended, there is no opportunity for victim compensation. Provisions for recovery of loss or compensation from offenders through the criminal justice process have been incorporated in few special statutes including Act VIII of 2000. Regrettably, this judicial discretion is rarely exercised by the judges. It may be specifically pointed out that violence in the form of non-physical sexual harassment, incest, deserting of women, spousal rape etc. still remain beyond the ambit of criminal laws. Though few special legislations offer a host of remedies involving VAW, law alone cannot guarantee the dignity and honour to women nor can punishment to the tormentors. However, consciousness of the victim, pro-active and compassionate role of the prosecution, the investigating agency, legal aid office and local elected representatives and obviously attitude and perception of judges are crucial for the efficacy of the legal regime against violence against women.



FOR YOUR INFORMATION

LAW NEWS

Children are the fundamental building block

AS countries around the world celebrate the 25th anniversary of the adoption of the Convention on the Rights of the Child on November 20, the United Nations family hailed the landmark treaty as a powerful human rights tool, while taking stock of the long-standing disparities that must be addressed to propel actions for the well-being of all children into the future.

the UN Millennium Development Goals (MDGs) quickly approaching, Mr. Kutesa stressed that it is equally important to ensure mobilisation of the resources that will be required to implement a "truly transformative" development agenda that puts the welfare of all people, especially children, at the forefront.

preventable causes. "The health and the soul and the intelligence of a society are measured by how the human rights of its youngest - its smallest children - are recognised everywhere," Mr. Lake stressed.

Children's Day
Let us lift up the children we love today.
Let us lift up the children we've met.
Let us lift up the promise in each small heart of the children we don't know yet.
Let us lift up the children with families.
Let us lift up the children alone.
Let us lift up the children with voices strong before all of the children are grown.
Let us lift up the children who work in fields and the children at school and play.
Let us lift our world's children together.
Let us lift up all children.
I pray.
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Ivan Šimonović, UN Assistant Secretary-General for Human Rights, said that while children have access to a better standard of life today, great inequalities still persist around the world. "This is a time to recommit to the vision of the Convention and to its full implementation," he said. "It is also a time to bring children and their rights more centrally into our peace, security and development goals. Our future in these areas depends on our children and on our respect for their rights," he added.

The Convention on the Rights of the Child was adopted by the General Assembly on 20 November 1989 and to date has been ratified by 194 countries, making it the most widely ratified international human rights treaty. Its adoption marked the first time that children were explicitly recognized as having specific rights.

The Executive Director of the UN Children's Fund (UNICEF), Anthony Lake, highlighted that while millions more children are surviving past their fifth birthday, life is not better for some 17,000 children under five who will die today, mostly due to

SOURCE: UN.ORG.

South Asians for human rights protection

SOUTH Asians for Human Rights (SAHR), a regional human rights organisation, meeting at Kathmandu from 26-27 November 2014, is committed to promoting and protecting human rights, peace, democracy and justice in all countries of this region. We believe that the situation of human rights and the threat to peace, secularism and democracy are of serious concern to the regional civil society.

While the freedom of press remains threatened, the independence of the media is also seriously compromised by the increasing influence and control of vested interests including the corporate sector resulting in self-censorship. Even as gross human rights violations occur in the region, absolute impunity prevails. Institutions of accountability have failed to deliver justice to victims of human rights

ing of human rights defenders. We urge our governments to use SAARC as a forum to resolve their disputes and make collective efforts to alleviate the sufferings of the people. Unjustified restrictions on visa and lack of adequate means of communication within the region have hampered connectivity and people to people contact. SAARC summits must promptly address and remedy the situation.

In particular the growing impoverishment and inequality and its grievous impact on Dalit's, women and indigenous population are a consequence of the adoption of flawed models for economic growth. The region is fraught with conflicts where security is diminishing and governments' militaristic response, far from resolving these conflicts, is undermining the rule of law and increasing human insecurity. A serious challenge to democracy in the region is the ascendance of religious extremism, intolerance and the tendency towards majoritarianism. Pluralism and diversity which are the hallmark of this region are under threat from such groups, which often enjoy overt or covert patronage from state entities. Women's rights, freedoms and autonomy are the first to be targeted by extremist groups.

Recent years have seen deterioration in the respect for people's fundamental rights, in particular, freedom of assembly and association, freedom of expression and the right to protest. Despite adverse circumstances human rights defenders and peoples movements in the region continue to strive for the respect for human dignity, equality, liberty and for deepening democracy and securing justice. Instead of acknowledging and encouraging their role governments in the region are imposing legal and other restrictions on the work and function-



We call upon the people of South Asia to continue their struggles in the face of difficult circumstances and to aspire towards the creation of a strong regional civil society that can work together towards a South Asia free from conflicts, discrimination, poverty and exclusion.

SOUTH ASIANS FOR HUMAN RIGHTS (SAHR).



Reconciling conflict of rights in defamation law discourse

MOHAMMAD NAYEEM FIROZ

AT law, the notion of 'Defamation' is defined both as a civil wrong and a criminal offence in the legal regime of various states. A person can either be sued for compensation by the affected person or be criminally prosecuted by the state. Arguably the notion of criminal defamation is viewed as legally unfounded as it stipulates a disproportionate punishment and has a ruthless effect on freedom of expression. Importing the statutory definition of defamation via the body of the Penal Code, 1860 we study in the sec.499 that whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation or such person, is said, except in the excepted cases, to defame that person.

In real-time defamation prosecutions the accuser usually argues that the contents of any report published in any given printed publication in relation to him is not only false, baseless and concocted but also scandalous, disgraceful and defamatory which lowered her social and professional status in the estimation of the people of her environs. Hence, the persons creating defamatory statement should be charged with the offence of defamation they have committed be it actively or by way of abetment. It is alleged that along with the principal accused i.e. the writer, the publisher of the said printed publication is also responsible for defamatory matter published in such paper whether he knows the contents of such writing or not. Moreover, in such a case generally the editor of the printed publication is bound to take due care and caution before a libelous statement goes for final publication under the supervision of his pen. Therefore, all the personnel concerned with the said

publication are equally liable for publishing such imputation as contained in the alleged writing intending to harm the reputation of the person alleged to be defamed. Criminal defamation laws are somewhat complicated from the point of view of freedom of expression and allied rights. They can lead to the imposition of harsh sanctions, such as a prison sentence, suspension of the freedom of expression or a heavy fine. This is not to say that prosecution for defamation should not be discouraged; but in accordance with the essential test, the means used to discourage it should be carefully targeted, to prevent the dampening of legitimate criticism. In some instances it is seen that affluent or politically powerful individual and corporations have instituted defamation cases, even where they have no prospect of success, to try to prevent media criticism of their questioned dealings. For defamation claims the exacting remedy will vary between jurisdictions but possible options include the right to bring a case for abuse of civil court's process and/or the

availability of a procedural mechanism to strike out the claim early on in the proceedings unless the plaintiff can exhibit some probability of success in proving his case. It is widely recognised that the making of certain statements which the author is under duty to make, or has a specific interest in making has been protected unless it has been done maliciously. The contemporaneous international trend for defamation law discourse is to interpret the scope of this protection broadly, given the particular importance of freedom of expression on these occasions. The law of defamation reflects the conflict of two fundamental rights: the right to freedom of expression, and the right to reputation. The rules of defamation law are intended to mediate between these two rights. The defamation law discourse flows from the analysis of the rights in issue; the value underlying the right to reputation that has most resonance is human dignity, while the

value that is most pertinent to freedom of expression in this context is the argument that free speech is integral to democracy. The argument from democracy emphasises that speech on matters of public interest should receive greater protection than private speech. In particular, the presumptions that defamatory allegations are false and have caused damage, the principle of strict liability to primary publishers and negligence liability to secondary publishers, and the availability of punitive damages, should not survive constitutional inspection. The quantum of damages and costs rules, and the remedies available in defamation cases, should also be reformed to reflect the significance of dignity to the claimant, and the free speech interest of the public in receiving true information on matters of public interest and public policy.

The law of defamation reflects the conflict of two fundamental rights: the right to freedom of expression, including freedom of the media, and the right to reputation.

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