

VIOLENCE IN THE HOME : BREAKING THE CYCLE IN BANGLADESH

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Introduction

Every marriage ordinarily involves a transplant. A girl born and brought up in her natural family when given in marriage, has to leave the natural setting and come into a new family. Of the couple, particularly the wife requires to be adapted in the new family with the interests of its members through so much care and tolerance. However, breaking the cycle of marital connections is not rare in Bangladesh. The purpose of the paper is to delve into realities of marital breaking and in so doing, it will aim at married women's vulnerability of family violence bringing out legal shortcomings for remedies possible under the traditional as well as statutory laws in Bangladesh.

Family violence why and what for

When a girl is transplanted from her natural setting into an alien family, the care expected is bound to be more than in the case of a plant. When a tender plant is shifted from the place of origin to new setting, great care is taken to ensure that the new soil is suitable and not far different from the soil where the plant had hitherto been growing, care is taken to ensure that there is not much variation of the temperature, watering facility is assured. Plant has life but the girl has a more developed one. Human emotions are unknown to the plant life. In the growing years in natural setting the girl; now a bride has formed her own habits, gathered her own impressions, developed her own aptitudes and got used to a way of life. In the new setting some of these have to be accepted and some to be surrendered.

This process of adaptation is not and cannot be one sided. When the bride is received in the new family she must have the feeling of

welcome and affection, grace and generosity, attachment and consideration that she may receive in the family of the husband, she will get into new mould, the mould would last for her life. She has to get used to a new act of relationship – one type with her husband, another with the parents-in-law, a different one with the younger ones in the family. For this she would require loving guidance. The elders in the family, including the mother-in-law are expected to show her the way. The husband has to stand as mountain of support ready to protect her and espouse her cause where she is on the right and equally ready to cover her either by pulling her up or protecting her willingly taking the responsibility on to himself when she is at fault. The process has to be a mutual one and there to be exhibition of co-operation and willingness from every side. Otherwise, how would the transplant succeed.

However, this transplant often fails, especially in a country like Bangladesh where women are vulnerable to exploitation, oppression and physical violence from men in a society where tradition and law sanction women's subjugation to men in all spheres of life. And therefore, violence becomes an obvious factor in a family. We live, as we always have done, in a violent society, of which the family is a true microcosm. Indeed, more violence takes place within the family than in the outside world.¹ In developing countries evidence exists from most part of the Commonwealth, that domestic violence is a serious and widespread problem. In Canada, based on statistics from doctors, lawyers, social workers and police records, it has been estimated that one woman in ten is abused by her partner, while studies from the United States suggest that the figure is more likely to be one in six.² This abuse may either be physical or psychological.

1. Jahan, Roushan : "Family Violence and Bangladeshis Women : Some Observations", in Akhanda Latifa and Jahan, Roushan (ed.) *Women for Women*, 4(1983).

Rosa, Kumudhini: Bangladesh. In *Women of South Asia*. 9,10,11 (1995).

2. *Confronting Violence : A Manual for Commonwealth Action*. Women and Development Programme. Commonwealth Secretariat. London (15 May, 1987).

It is certain that actual incidence of family violence will never be fully quantified, as such violence occurs within the privacy of the home and, often, for reasons which include shame and humiliation, a victim is unprepared to complain about her situation. Even communities deny the problem, fearing that an admission of its existence will amount to an assault on the integrity of family, and few official records are kept. Current method of estimating the number of spousal assaults are questionable. The statistics are based on reported incidents of abuse obtained from police, doctors, welfare agencies.

Statistics from these sources show that family violence does exist, but they are notorious for under representing the problem. Victims are often reluctant to report the violence; they may feel ashamed of being assaulted by their husbands, they may be afraid, they may have a sense of family loyalty. Nevertheless, when women do report the abuse, the statistics may be lost because the official fails to record the incident or records it in a way that is meaningless for research purposes.³ Criminal statistics although could be a major source of comprehensive data on violence against women in home, frequently fail to indicate the sex of the victim and of the assailant and rarely record the relationship between the two. In these circumstances, it is impossible to distinguish wife assault from any other assault and thus for statistical purposes, wife abuse becomes invisible. Self-reporting surveys also present problems. Women who have been abused may prefer to keep the face to themselves. When they do respond, they may overestimate or, more commonly underestimate the amount of violence they have suffered.⁴ In Bangladesh murders of wives by husbands accounts for 50% of all murders. In 1992, UNIFEM produced a factsheet on gender violence summarising statistical evidence on the incidence of wife abuse

3. Miranda, Davies: *Women and Violence*. Zed Books Ltd. London and New Jersey. 2-4 (1994).

4. *Id.* at 4.

world-wide. This revealed that wife abuse is common in Bangladesh, Barbados, Chile, Colombia, Costa Rica, Guatemala, India, Kenya, Norway and Sri Lanka.⁵

Nevertheless, despite the fact that the problem of quantification of this offence can never be accurate, it must be acknowledged that violence is part of the dynamics of many family situations. The research that does exist, which stems mainly from the developed Commonwealth, indicates that women are murdered, sexually assaulted, threatened and humiliated within their own homes by men to whom they have committed themselves and that *this is not uncommon or unusual behaviour*.⁶

Wife as a victim of violence:

It is assumed that, practice of wife beating or wife abuse is particularly hard to tackle because many traditional and transitional cultures have a blind spot about this issue⁷. It remains hidden and invisible, not necessarily in the sense that it is covered up by victims and ignored by society, but in the sense that people believe that a man has the right to control his wife, to be the head of the family, the 'boss'. Evidence of this can be found in all patriarchal society. In Bangladesh, the male dominance of women has been reinforced by religious sanctions favoring men, that is, polygamy; men's right to divorce unilaterally; the husband's right to guardianship and also right to mild physical chastisement; the son's right to inherit a double share of that of a daughter and so on.

A woman's first and worst experience of violence thus often begins within the family, while the family continues to be the strongest basic unit which determines a woman's life. The other areas where she encounters violence is within the society at large; her workplace, the community and the state. These are reflected in the

5. *Id.*

6. *Supra* note 2, at 12.

7. *Miranda*, *supra* note 3.

form of sexual violence, social and economic discrimination through child marriage, dowry, polygamy, unequal wages, custodial rape and violence, and violence prevalent during armed conflict including terrorism.

The law supports and is supported by patriarchal order. As such the legal position of women reflected and still reflects sexual inequality⁸. The link between violence towards women and sexual inequality finds support in recent cross cultural research on family violence. In a study of 90 small-scale societies world-wide Levinson (1989) found that violence between family members is rare or non-existent in 16 of them⁹.

More specifically, the legal remedies available to battered women have been slow in coming, are limited in scope and cumbersome to operate. The legal resolutions which have been made available at various times have been constrained by a number of factors :

- i) The weak economic position of women affected,
- ii) The reluctance of police to become involved in marital disputes,
- iii) The problem of providing protection against husbands seeking 'revenge',
- iv) a lack of alternative accommodation and assisting agencies e.g. doctors, social service departments who have tended to emphasis 'reconciliation' and 'compromise' rather than separation and divorce. Battered women have been and still are a forgotten statistics and according to Dobash and Dobash (1977), as quoted by Bankowski,

"Despite overwhelming evidence that crimes of violence occur disproportionately in the home, there exists a considerable

8. Bankowski, Zenon and Geoff Mungham: *Essays in Law and Society* (London, 1980).

9. Buzawa, Eve S. And Carl G. Buzawa: *Domestic Violence; The Criminal Justice Response*. (London,1990).

reluctance to define such acts as criminal, to legislate against such acts, and most of all, to enforce the laws which do exist."

Within the family unit, in British society, there is a socially determined and acceptable hierarchy. In social, economic and political terms the power and authority is now and always been vested in the man-patriarchy; indeed insists upon this.

Women are one of the casualties of a patriarchal society, and in discussing family violence we would be wise not to forget that women are battered not because of factors peculiar to the family, but because they are in some sense victims of a society in which inequalities are deep-rooted. As observed by Dobash and Dobash (1977), women are not victims because of various structural and stress factors, they are battered because their subordinate status has made them the '*appropriate*' victims of family violence.

This inequality is rampant in a developing country like Bangladesh. In Bangladesh, the practice of Purdah is segregating women and sanctioning strict gender-based division of labour, have made women especially subsevient and economically dependent on their male relatives . The country-wide poverty and scarcity of resources further limit women's access to opportunities for economic independence from families. Divorce and criminal proceedings, the only recourses open to married women suffering from violence, are thus, nonviable options for the majority of them, especially the poor and uneducated ones. Until recently, Bangladeshi legal system, based on the Common Law, deferred to religious personal laws in family matters, thereby doing little to diminish married women's vulnerability to family violence. Moreover, family matters are held by custom to be private and while Muslim marriage is not sacramental, relatives and friends always advise the woman to try to endure abuse and save a troubled marriage. Moreover, all these factors kept the incidence and seriousness of spouse abuse or family violence a seldom discussed and rarely acknowledged problem in Bangladesh. The above mentioned social, cultural and economic factors

combined compel Bangladeshi women to play the role of silent victims of violence.

Legal Provisions against Family Violence:

In Bangladesh, women possess rights under the Constitution and under the law. The Constitution promulgated in 1972 has granted equal rights to both men and women, forbidden discrimination against women [Article 27, 28 (1), 31 and 32]. But in fact, the lacuna in law as well as the social customs, ignorance, misinterpretation of religious and the various socio-economic factors are the main obstacles for the women to be beneficiaries of the existing laws. Moreover, the Convention on the Elimination of All Forms of Discrimination Against Women, 1984 which added emphasis to improve the legal status of women all over the world has been adopted in Bangladesh; but with few reservations owing to the Muslim Personal Law.

Polygamy:

Research shows that family violence is often led by offences related to marriage. The offences relating to marriage is dealt under sections 493 to 498 of penal code. Polygamy has become one of the most burning issue of the times. Supporters of this institution believe that polygamy is sanctioned by the Quran, and therefore it cannot be restricted by any human legislation. This misconception renders the wives vulnerable to a situation where husbands are deserting them alongwith the children and this number is increasing day by day. Legislation, however, tried to minimise this abuse by introducing in section 6 sub-section 1 of Muslim Family Law Ordinance, 1961, that,

"no man during the subsistence of an existing marriage shall except with the previous permjssion in writing of the Arbitration Council, contract marriage, nor shall any such marriage contracted without such permission be registered under this Act."

If he fails to oblige with the said Act, he is liable to a fine or imprisonment, and to the repayment of dowry to his previous wife

[MFLO, section 6(5)]. In addition, any of his wives may claim maintenance or demand a divorce on ground of inequitable treatment (MFLO, sections 9 & 13 respectively). However, a polygamous marriage contracted without the necessary permission remains valid; this coupled with the man's right to unilateral divorce, forces many women to silently suffer the humiliation and indignity of such a relationship, given that the only alternative is destitution.

Sometimes the women are prey of cruel husbands who threaten divorcing them if they do not give consent—this is a common wife abuse in Bangladesh.¹⁰ Aleya, a housewife aged 25 of Bagherhat was beaten by her husband for not giving her consent for the second marriage and consequently died (July 2, 1990, Dainik Sangbad).

Divorce:

In Bangladesh, a woman can seek divorce from her husband under the dissolution of Muslim Marriage Law of 1939, amended in 1961, whereby, she can seek divorce on several grounds including that of physical and mental abuse by the husband. However, this right can be exercised only where the wife has been given the power of divorce (*Talaq-e-Towfiz*) at the time of marriage.

The legal system thus allows a wife who is subject to violence by her husband even if such violence does not amount to physical ill-treatment, to dissolve her marriage through divorce.

Similarly, a Christian woman has the right to dissolve her marriage and judicial separation on the ground of cruelty by the husband. Unfortunately, in Bangladesh a Hindu woman does not possess the right of divorce on the ground of cruelty, she can only claim the right of separate residence from the husband temporarily.

10 Munir, Shaheen Akhter : Violence Against Women : Legal Provisions and Its Implications. Report of the Workshop on Platform of Action. 1-3, December 1994. Bangladesh National Preparatory Committee Towards Beijing NGO Forum '95 (Dhaka July, 1995).

Child Marriage:

The system of child marriage is another factor which contributes to wife abuse. Although the government has amended The Child Marriage Restraint Act of 1929 in the year 1983 and raised the minimum age for a girl to get married from 16 to 18 years, breach of which is punishable; research shows that minor girls are still being married off by their guardians. However, this legal provision is not implemented and no case has so far been filed against the guardians. On the other hand, the guardians are taking the plea of the Holy Quran that a girl who attains the age of puberty (that starts from 9 years) can get married. But this concept is a misinterpretation as Quran has only indicated that a girl's reproductive system starts through gaining puberty.

Thus, child marriage is a common feature in rural areas of Bangladesh. The main reason for this is mostly poverty. The sooner the guardians can get the girl (child) into marriage the better because the amount of dowry would be less. With the burden of poverty, the poor parents are also burdened with the fear of social violence, such as child abuse, molestation, rape, kidnapping, forceful sexual relation, etc.

Provision of Criminal Law:

Except for the sexual offences, the Bangladesh Penal Code does not draw a distinction between violence against women and men. Furthermore, the Penal Code does not have any specific provision penalising violence in the family. Therefore, the only offences which the criminal process acts to meet the definition are : assault, hurt, grievous hurt and murder etc.

Wife Abuse:

Evidence exists to indicate that wife abuse occurs at all levels of society, no evidence suggest that the conduct is distributed equally among all groups in society. For example, there is some evidence to

suggest that rural women are at greater risk than urban women, a survey undertaken in Bangladesh revealing that women are victimized more in the villages than in the urban centers¹¹ and it well may be that there is more wife abuse in families with lower incomes or where the husbands has received less education. However, despite variations that may exist, all research has produced the key result that violence against wives is prevalent throughout the economic and social structure and appears to have no cultural barriers. All that can be said is that there is no typical victim of abuse and no typical perpetrator, except in so far as the victim is, overwhelmingly, female and the perpetrator male.

Wife abuse is thus a common phenomenon, especially in the rural areas of Bangladesh. However research indicates that, wives are not coming forward to take action against their husbands owing to the lacuna in legal remedies. As it can be seen that, according to the Bangladesh Penal Code the term 'assault' does not specifically indicate wife abuse.

The murder cases which are resulting from beating often escape penalty. This is so either because of lack of evidence, or for non-trial as the husband remains absconded (45 DLR 1993, p75 : The Detective, May, 1984, pp 131-135).

Dowry Related Violence And Law:

The concept of dowry in Bangladesh probably originated from an ancient Hindu custom, an approved marriage among Hindus has always been considered to be a *kanyadaan* i. e. gift of the daughter. According to *Dharmashastra* (code of religion) the meritorious act of *kanyadaan* is not complete till the bridegroom is given *varadakhshina* in the form of cash or kind. This was out of love and affection and in the honour of the bridegroom. The quantum varied in accordance with the financial position of the bridegroom. The quantum varied in

¹¹ . Snamim, Case Study from Bangladesh (Dhaka, 1987).

accordance with the financial position of the bride's father. Similarly, articles were given to the bride which constituted *stridhan* i. e. property of the bride. These were meant to provide financial security to the couple in adverse circumstance. However, no compulsion whatsoever was exercised by the bridegroom and his family to obtain *varadakhshina* and *stridhan*. In course of time, these two aspects of Hindu marriage assumed the name of dowry.¹²

The social interpretation of dowry today is that, whatever is presented under demand, compulsion or social pressure as consideration for the marriage can be said to be dowry. The concept of dowry has not only spread rapidly among the Hindus but also to other communities in the sub-continent.

Dowry as defined in Bangladesh by the Dowry Prohibition Act of 1980 means any property or 'valuable security' given or agreed to be given either directly or indirectly.

a) by one party to a marriage to the other party to the marriage; or

b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person; at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mohar in the case of persons to whom the Muslim Personal Law (Shariat) applies. Dower is one of the essential part of Muslim marriage which the wife is entitled to receive from the husband in consideration of marriage.¹³

Muslim Law does not make any provision for payment of dowry. But social custom, imported mainly from the Hindus and getting nourishment from the dependence of women on men and the attitude of men towards women, has firmly established the institution of dowry amongst the Muslims also. The nature of the dowry shows

12. Anjum, Javed : 13 Delhi Law Review. 179-183, (1991) and Shrinivasan Parvati : The Menace of Dowry, in Raj Sebesti L. (ed.) Quest for Gender Justice, 91 (1991).

13. Muila, D. F. : Principles of Mohammadan Law, 277 (17 ed.).

that it is a present to the son-in-law rather than to the daughter. So firmly established is this institution in the society that there are instances of husbands divorcing their wives simply because the father-in-law would not or did not pay the promised dowry.¹⁴

The practice of dowry, therefore, has to be looked at in the context of marriage.

A set of values connected with marriage appears to have aided dowry to assume its present form. Dowry usually refers to property that a woman receives from her parents and other kin as a part of her marriage settlement. An implicit and explicit element of coercion has gradually crept into the social transaction of dowry. Thus, dowry as a social phenomenon has aroused much public concern in Bangladesh, specially due to its compulsions and harmful effects.

Dowry deaths and violence against women because of dowry demands has become an everyday affair (Shamim, 1986). To check these crimes the Government of Bangladesh enacted The Dowry Prohibition Act of 1980. The Cruelty to Women (Deterrent Punishment) Ordinance of 1983 was promulgated to provide for deterrent punishment for all types of cruelty to women and for matters connected therewith.

The lacuna in these two laws proved it to be ineffective in providing any legal remedy to the aggrieved. The latter law only increased the punishment by providing death penalty to the husband or his relations if the woman dies or grievously injured for demanding dowry; leaving the defect in the definition of dowry of the former law.¹⁵

The government recently passed another law with deterrent punishment to eradicate violence against women as the previous

14 . Ahmed Sufia and Jahanara Chowdhury : Women's Legal Status in Bangladesh. In the Situation of Women in Bangladesh. Women for Women : A Research Study Group 309 (Dhaka, 1979).

15 . See for details in Abu Bakar Khandaker : The Dowry Prohibition Act, 1980 and Cruelty to Women (Deterrent Punishment) Ordinance, 1983. 2-40 (Dhaka, 1991).

laws proved to be insufficient. This law was passed in the Parliament and received the consent of the Honourable President in July 16th, 1995. This law may be called Repression Against Women and Children (Special Procedure) Act, 1995. Section 4 of this Act provides punishment of death penalty to a person whoever causes death to any woman or child using poisonous or corrosive substance. Section 5 further makes any offence causing hurt or grievous hurt using poisonous or corrosive substance to any part of the body of a woman or child with a penalty of minimum 7 years imprisonment to maximum death penalty. It is to be noted here that, the Act does not specify the term 'woman' with 'wife'-thus including women of all category. The Act also covers the offence of dowry. Section 10 and 11 deals with dowry related offences and provides maximum penalty of death for dowry deaths. After this Act came into effect, the Cruelty to Women (Deterrent Punishment) Ordinance of 1983 has been repealed; but all cases pending under the Cruelty to Women (Deterrent Punishment) Ordinance, 1983 and the appeals shall be dealt with under same Ordinance as if it has not been repealed.¹⁶ However, it is to be noted here that, although the government has from time to time enacted several laws for establishing women's right, it has failed to take notice of the most frequent and common offence directed towards women—and that is wife abuse! Unfortunately, there is no specific law to tackle this evil.

Provision of Civil Law:

The Civil Law in Bangladesh is somewhat silent in providing relief in cases of wife abuse. There are no specific provision under which women victims of spousal violence can resort to. The only remedy open to them in case of abuse is to seek divorce under the Dissolution of Muslim Marriage Law of 1939. Whereby a Muslim woman can seek divorce on the grounds of physical or mental cruelty

16 . See for details Bangladesh Gazette Noification (17 July 1995).

by the husband. Divorce, thus being the ultimatum. Thus under the mentioned law the wife can pray for divorce in the court under several causes; physical or mental torture being one of them.

However, as discussed earlier this right can be exercised only where the wife has been given the power of divorce (*Talaq-e-Towfiz*). Case studies in the City Corporation in Dhaka shows that, most of the divorce are enforced under the Muslim Family Law Ordinance of 1961 (Ordinance 8) Section 7 (1) and by invoking the Kabinnama whereby the wives are entitled to divorce by delegated power given by the husband.

Besides physical abuse, the most common abuse is desertion by the husband and non-maintenance of the wife by him. Here it is to mention that, the law holds a husband bound to maintain his wife so long the wife remains faithful to him and obeys his reasonable orders. If the wife refuses her self to her husband or otherwise wilfully fails in her marital obligations she has no right to claim maintenance from the husband.

If any solvent husband neglects or fails to pay maintenance to his wife or legitimate or illegitimate children, the criminal court also holds him liable under the criminal law (Section 488 of Criminal Procedure Code of 1898); subject to the proof of such neglect or refusal and order payment of subsistence allowance not less than Taka 400 per month. In case of non-payment of the above amount the court may sentence the husband to fine or jail for a month.

According to Section 9 of the Family Courts Ordinance, 1985 (XVIII of 1985), a wife is entitled to maintenance; although no limit has been specified by the Arbitration Council to be paid as maintenance. The expression 'adequately' conveys the standard of living to which the wife may be accustomed. The word 'equitable' connotes that in the event of co-wives, the maintenance shall be paid to each wife according to the standard to which each of them is accustomed and also her social status.¹⁷

17. Chowdhury Obaidul Huq : Hand Book of Muslim Family Laws, 79-82 (DLR, 1993).

But the social milieu and cumbersome court procedures make it difficult for the wife to have maintenance through the court or the arbitration council. The reluctance of women to go to court is reflected in the field research of Sobhan and Roy.¹⁸ The women in Roy's research confirmed this by admitting that wife beating is the norm in married life. The women had no desire to understand the cause of the beatings. Since their husbands assured them food, clothing and shelter they felt it unnecessary to complain about their predicament.

However the facts remain that this remedy under the Family Court remains open only to Muslim women ignoring the other religion. Selina Begum filed a claim for maintenance under the Criminal Procedure Code having been deserted by her husband following his second marriage, and her refusal to accept the return of the dowry. Her husband argued that she could not resort to the remedy under the Criminal Procedure Code following the establishment of the Family Courts Act, which had been invested with exclusive jurisdiction to hear, *inter alia*, maintenance matters. The court held in his favour stating that women are no longer entitled to a choice of remedy for maintenance (Abdul Khaleque vs. Selina Begum, DLR 1990, p 450). These courts are only concerned with family disputes under Muslim Law. Ironically, making the more effective statutory remedy open to non-Muslims leaving only the civil remedy in the Family Court open to a Muslim woman.¹⁹

The law, it may be re-emphasised, does not exist in a vacuum. A social atmosphere must be created in which the disadvantaged could restore their faith in the society's sense of justice and that their rights are of concern to the society. The defence of their rights by the due

18. Sobhan, Salma and Kamal Sultana : The Status of Legal Aid Services to Women in Bangladesh (Dhaka, July 1992).

Roy Rita Das : Battered Spouse Syndrome. (Dhaka, September, 1992).

19. Hossain Sara: Equality in the Home; Women's Rights and Personal Laws in South Asia, in Rebecca J. Cook (ed.) Humm Right, of Women : National and International Perspectives 482 (Philadelphia, 1995).

process of the law would not appear to them to be unattainable fantasy. In practice, women—owing to their ignorance of law and their general powerless position, pre-determined by their socio-cultural circumstances—are not in a position to get protection from the law even when protection is available. It was felt in research by Sobhan that, there is a certain reluctance to seek judicial relief in marital violence. A woman was brought to the researcher by a social worker. Her body was bruised and swollen. Beating was a regular feature in her 2/3 years of marriage. The day she was brought to the researcher, she could not speak properly as she was stamped on by her husband on that very day. This was the first time she had spoken to a third person about her husband's behaviour. She was given medical assistance and told to rest. She refused to stay and said she would return the next day. The next day her friend called to say that she had decided not to take court action as this would lower her family's prestige. To her the family "honour" was more precious than her life.

In this regard, few recommendations may be suggested; the foremost requirement is to make women and children aware of their social and legal rights, to bring amendments in the existing laws (Family Laws/Penal Code which are discriminatory), establish an independent Family Court and enforce Uniform Family Code.

Conclusion:

Reality to violence in the home causing breaking of cycles is that so long there will be no attitudinal change of males or females there will be no environment for women to be free from exploitation. To all intents and purposes, a legal regime with special treatment to women's rights should prevail unless and until they are self-conscious of remedies against infringers of their rights. Otherwise, wives cannot get rid of being victim of family violence. Law must be enforced to its entirety for peace and order at all level and thereby making women in Bangladesh self-oriented to their rights against violence in the family.