

THE NEW MILLENNIUM: LEGISLATION AND PRECEDENTS RELATING TO WOMEN IN BANGLADESH

Dr. Shahnaz Huda

Introduction:

The new millennium saw the enactment of several new laws related to women as well as the pronouncement of judicial decisions affecting women in Bangladesh. The laws and precedents relate to a variety of issues, both civil and criminal. This article discusses and critiques some of the innovations and changes made by such statutory enactments as well as the interpretation of laws by the judiciary during the period between January 2000 and June 2002. The present article focuses on some of the most important changes made in the new millennium relating to women. The discussion is however not exhaustive and does not cover the Acts in their entirety or deal with all the reported cases.

Violence Against Women:

Nari O Shishu Nirjatan Daman Ain, 2000¹

The most significant legislation of the year 2000 was the law relating to the issue of violence against women and children. The escalation of violent acts committed against women (and children) saw the enactment in the new millennium of the Woman and Child Repression Prevention Act of 2000 (Nari O Shishu Nirjatan Daman Ain of 2000)². This law followed the footsteps of similar laws enacted earlier to protect women against different types of violent acts e.g. the Cruelty to Women Deterrent Punishment Ordinance of 1985³ and the Woman and

¹ Act No. VIII of 2000; Bangladesh Gazette; Dated 14 February 2000.

² The majority of the Acts discussed here have been enacted in Bangla and no official Bangla version exists. The English titles used are mine as are the translations of the Sections. For reference of laws see Khan, Borhan Uddin et al (2002). *Encyclopedic Compendium of the Law of Bangladesh*; BLAST, Dhaka.

³ Act No. LX of 1983 repealed by Section 29 of the Nari O Shishu Nirjatan Daman Ain, 1995.

Child Repression (Special Provision) Act of 1995 [(Nari O Shishu Nirjaton (Bishesh Bidhan) Ain, 1995)]⁴. The justification behind the enactment of yet another law to combat gender violence was the need for even more severe laws. In the year preceding the enactment of the new law, i.e. 1999, the number of incidents of violence against women reached alarming proportions. 2198 cases of violence of various types were reported among which there were 1238 cases of rape, 253 dowry related cases of violence and 153 acid attacks.⁵ 618 of the victims were murdered. The Act was therefore based on the reasoning that:

'it was timely and necessary to deal with offences committed against women and children harshly'⁶.

Whether the above purposes were achieved is debatable and the justification and success of the new enactment has been questioned.

Section 26 of the Act of 2000 lays down that for the trial of offences under the Act every district town will have a Tribunal which shall be known as the Nari O Shishu Nirjatan Daman Tribunal (hereafter referred to as the Woman and Child Repression Prevention Tribunal). All offences under the Act of 2000 are to be tried by these Tribunals. If required the government may constitute more than one Tribunal in one district. Each Tribunal will have one Judge and the government will employ District or Sessions Judge to act as Judge of such tribunal. If necessary the government may employ any District or Sessions Judge to act as Judge of the Tribunal in addition to his other duties. District or Session Judge includes additional District or Sessions Judge. Unless otherwise provided in the Act, the provisions of the Criminal Procedure Code, 1898

⁴ Act 18 of 1995 repealed by section 34(2) of the Nari O Shishu Nirjatan Daman Ain of 2000.
⁵ ASK (2000). Human Rights in Bangladesh 1999; Ain o Shalish Kendra (ASK), Dhaka at p.80.
⁶ Report of the Standing Committee of the Ministry of Law, Justice and Parliamentary Affairs on the examination of the Nari O Shishu Nirjatan Daman Bill 2000; 29 January, 2000; Bangladesh Jatiyo Sangshad.

(Cr.P.C.)⁷ shall apply regarding the institution of the complaint, investigation and trial and the Tribunal shall for all purposes be considered to be a Sessions Court and shall have the same authority (Section 25).

The Repression Prevention Act of 2000 aimed at several changes intended to make the law regarding violence against women and children more effective and stringent. The Act of 2000 imposes the death penalty for several offences which include murder or attempt to commit murder or for causing grievous injury of certain nature specified by the Act by the throwing of corrosive substances like acid (Section 4); for trafficking (Section 5); kidnapping for ransom (Section 8), for death caused due to dowry (Section 1); rape and gang rape (Section 9). The law provides for the provision of compensation of victims of violence—a new concept introduced for the first time by this Act. The provision of maintenance for children born out of rape is another innovation.

The new Act also provides for departmental punishment of investigating officers for negligence or intentional mistakes. Since the tendency to harass people had been a major problem under previous enactments, the Repression Prevention Act of 2000 also provides for trial and punishment by the Tribunal in cases of harassment of innocent persons through the institution of false cases under the Act (Section 17). For speedy trial of cases under the Act, a limit of 180 days has been imposed. Previously the Act of 1995 had set the time limit at 120 days. All offences under the Act are declared to be cognizable and non-bailable (Section 19). In case of non-completion of trial, the Act provides for bail of the accused unless there are suitable reasons not giving bail which must be mentioned [Section 20(4)]. In a case instituted under the previous Act of 1995, the High Court held that the accused may be granted bail if the trial cannot be concluded within the time scheduled and the trial is

⁷ Act No.V of 1898.

'delayed inordinately without sufficient reasons'.⁸ Although Section 34 of the Act of 2000 has repealed the Act of 1995, Sec. 34(2) contains the proviso that cases initiated under the previous Act and for which proceeding is continuing will be deemed to fall under the jurisdiction of the Tribunal formed under the Act of 2000 and any appeals against any order, judgment or punishment shall lie before any court of appropriate jurisdiction as if such Act had not been repealed.

Section 14 imposes a ban on the media from identifying the woman and child victims of violence. It imposes a punishment of maximum two years and one lakh taka or both for non-compliance of the above Section. This provision has its pros and cons. The media often proves to be a powerful catalyst behind the conviction of offenders and often focuses the attention of the public upon various forms of oppression and thereby makes those responsible more accountable — a case in point is the murder of Yasmeen⁹ by law enforcing agents. Then again the tendency to sensationalise and obtain cheap publicity has in many cases led to further victimisation of the victims and in that sense the above provision seems proper. On one hand therefore, the media is needed to raise public consciousness about atrocities committed in the family and outside while on the other, there are allegations regarding the tone and style of many reports and the accusation about sensationalisation and making money out of peoples 'pain and shame'.¹⁰ Naripakkha suggest that the opinion of the victim should be given priority and this should have been mentioned the act. ¹¹Whether this is practically possible is of course another question.

Safe Custody:

⁸ Sohel vs. The State 5MLR (2000) (HC) 380.

⁹ 15 year old Yasmeen of Dinajpur was raped and murdered by the Police in 1995. Widespread publicity through the media resulted in the conviction of those involved.

¹⁰ See Jahan, Roushan (1994). Hidden Danger-Women and Family Violence in Bangladesh; Women ForWomen, Dhaka at p. 27-28.

¹¹ Naripakkha (2000). Nari o Shishu Daman Ain, 2000---Akti Porjalochana.

The contentious issue of 'safe custody' has been much debated'. A large number of women are sent into what is euphemistically known as safe or protective custody by order of the Court. The number of cases of abuse while in such custody has been subject of much concern. Many of these cases have hit the headlines and question have arisen regarding the impunity of the police and other law enforcing organs of the State machinery. Various forms of repression within custody including rape and murder are reported.

In the case of Rokeya Kabir (Mrs.) vs. Government of Bangladesh and others¹² the Court opined that:

Keeping a victim minor girl in safe custody/judicial custody has no express provision of law in support thereof but there are series of judicial decisions of our apex court which lay the strong legal basis of judicial custody of minor victim as a matter of long practice in our legal system.

In this case it was also held that since the question of safe custody does not involve community interest, so a member of the Public who is not a person aggrieved has no locus standi and cannot invoke writ jurisdiction. The Women and Child Repression Act of 2000 contains provisions related to safe custody. Section 31 states:

During the continuance of the trial of any offence under this Act, if the Tribunal considers it necessary that any woman or child should be kept in safe custody, it may order such woman or child to be kept, in any place outside the prison, specified by the government for this purpose, under governmental supervision or in the custody of any person or organisation.

The Repression Prevention Act of 2000 therefore gave statutory

¹² 5 MLR (2000) (HC) 58.

recognition to the concept of safe custody and tried to protect women from abuses committed while in the custody of law enforcing agencies. However, the section does not deal with cases where a woman or child may, ostensibly for her protection, be placed in the custody of the police even before the case is brought before the Tribunal e.g. immediately upon the commission of the crime. Again, the Tribunal has been given the authority to determine where it is 'safe' for the woman (or child). The woman's right to decide where she would be safe has not been given consideration.

Rape:

The offence of rape is considered to be the most heinous of crimes. The number of such crimes committed against women and children has reached horrendous proportions and forms. During the period of January 2000 to June 2002, 637 rapes were reported in the media.¹³ 95 of the victims were killed while 3 of them committed suicide, 104 were grievously hurt and one victim was burnt.¹⁴ The Repression Prevention Act of 2000 deals with the offence of rape and imposes severe penalties. Section 9 deals with punishment for rape, gang rape as well as injury or death caused as a result of rape. For the offence of rape, the perpetrator will be sentenced to rigorous life imprisonment with additional fine. For death caused by rape or incidental to rape, the accused may be sentenced to death or rigorous life imprisonment and will be required to pay fine up to the limit of one lakh taka. In the case of death or injury caused as a consequence of gang rape, each of the perpetrators will be sentenced to death or rigorous imprisonment with the requirement of additional fine up to the limit of one lakh taka. In the case of attempt to cause injury or death after rape, the accused will be punished with the sentence of life imprisonment with fine. For attempt to rape, the penalty fixed

¹³ Data compiled by Children and Women Studies (CWCS) from six national and four local daily newspapers.

¹⁴ Ibid.

by the act is rigorous imprisonment for seven to ten years with additional fine.

Marital rape: The explanation to section 9 reiterates the age of consent as fourteen years and sets under-fourteen as the age at which the sexual act will be construed as statutory rape even when the girl consents. The concept of marital rape remains confined to girls under the age of fourteen which is the age of consent according to the Penal Code, 1860¹⁵. Even if the husband forcibly has intercourse with his wife who is above the age of fourteen it will not be considered as rape. Following from this, if a husband causes the death of his wife in this situation, the Act of 2000 will not be attracted and the offence will be tried under the Penal Code. Another aspect is that the inconsistency between the legal age of marriage (which is eighteen years) and the age of consent continues. Marriage under the minimum legal age is still considered to be legally valid. Thus a thirteen year old girl may be legally married but her husband may be guilty of rape under the Act. The question of age of the girl/woman continues to be extremely significant.

For the first time the question of who is to be responsible for the maintenance of a child conceived as a result of rape is dealt with. Section 13 states:

Irrespective of anything contained in any other act, if any child is born as consequence of rape--

- a) the rapist will be responsible for the maintenance of the child;
- b) after the birth of the child, the tribunal shall determine who will be the custodian of the child and the amount to be paid by the rapist to such custodian for the purpose of maintenance of the child.
- c) unless such child is disabled such sum shall be payable

¹⁵ Act No.XLV of 1860.

in case of a son until the age of 21 years and in the case of a daughter until her marriage and in case of a disabled child until such child becomes capable of maintaining himself or herself.

This section has been criticised for being illogical and impractical. There are several objections to this section, the most pertinent of which seems to be the fact that it foresees a connection between the victim and the rapist for life which is 'illogical and inhuman'.¹⁶ The section also does not address the question of legitimacy of the child neither does it deal with cases of gang rape in which case it will be impossible to determine the paternity of the child.¹⁷ In view of the fact that there exists no easily available scientific method (for example DNA testing) in Bangladesh to determine paternity it may lead to harassment of innocent persons. Ain o Salish Kendra notes that even though there is an increase in the filing of rape complaints, women and their families are greatly intimidated by the fear of social stigma and the process they will have to follow to obtain justice and it is true that :

The insensitive and abusive attitude of lawyers and court officials seems no less violent than the rape itself.¹⁸

Despite enactment of the new law these intrinsic flaws and attitudes continue to exist.

Dowry:

The system of dowry as a type of socially enforced marriage payment has become widespread. This system affects the woman and her family detrimentally because of the coercive aspect attached to it. The Dowry Prohibition Act of 1980¹⁹ prohibits the taking or giving of dowry. Many types of abuse

¹⁶ *Op.cit.* Naripakkha (2000) at p.36.

¹⁷ *Ibid.*

¹⁸ *Op.cit.* ASK (2000) at p. 86.

¹⁹ Act No. XXXV of 1980; Bangladesh Gazette; Dated 26 December 1980.

are attributed to dowry demands and this includes violence of a grievous nature and sometimes murder. The Repression Prevention Act of 2000 defines dowry as:

Money, goods or other property given or promised directly or indirectly by the brides side to the groom or his father, mother or any other person from the bridegrooms side at the time of marriage or before or during the continuance of the marriage as consideration or condition of the marriage and any such money, goods, or property demanded from the bride or the bride's side by the groom, his father or mother or any other person from the groom's side [Section 2(j)].

The issue of dowry violence has been addressed in this Act. Section 11 lays down the penalty for causing death etc. for dowry. The Section states:

If any woman's husband or husband's father, mother, guardian, relation or any person acting for the husband, causes the death of that woman for dowry or attempts to cause death or injures such woman or attempts to cause such injury the husband, husband's father, guardian, relation or person shall:

- a) for causing death be punishable by the death penalty or for attempt to cause death by life imprisonment and in both cases shall be liable to pay additional fine.
- b) for causing injury shall be punishable by rigorous life imprisonment or for attempt to cause injury be punishable by rigorous imprisonment up to the term of maximum fourteen years but not less than five years and in both cases be liable to additional fine.

Several decisions of the Courts reported in the various law digests relate to cases instituted before 2000 and under the Act of 1995 but decided afterwards and may be relevant in future

cases as precedent of persuasive authority even though the law itself has been repealed. In the case of Abdul Matleb Howladar Vs. The State²⁰ under Section 10(1) of the Nari-O-Shishu (Bishes Bidhan) Ain, 1995, the Appellate Court put the onus upon the husband to explain his wife's murder:

Husband when living with wife in the same house has to explain as to how his wife was murdered. Failure to offer satisfactory explanation points to the guilt of the accused husband.

When the inmates of the house of the accused do not come to support the prosecution case, circumstantial evidence can well be relied upon to base the conviction. It was further held that in case of murder of wife for dowry sentence of death is the appropriate sentence.²¹

In some cases, in order to bring an offence within the stringent law of 2000, the allegation of dowry demands or death or injury caused as a result of dowry is made.

This is due to the fact that even where it is proved that the husband murdered his wife in the absence of cogent proof that the murder was committed for dowry the special laws relating to violence against women will not be attracted - the offence of murder will come under section 302 of the Penal Code.²²

Domestic violence: Wife Battering:

The Act of 2000 continues like earlier laws to ignore domestic violence as an offence by itself although spousal violence in the form of wife battering is undeniably rampant in Bangladesh. Domestic violence in Bangladesh is still regarded as a family or private matter rather than a crime.

In our country, especially in the villages, beating the

²⁰ 5 MLR (2000) (AD) 362.

²¹ *Ibid.*

²² See *State vs. Abul Kalam* 5 BLC 230.

wife by the husband on flimsy pretext is a common day affair. Normally, such beating is to chastise the wife for unbecoming behaviour. Such beating becomes excessive -when the wife provokes (sic) the husband. ²⁴

The husband's violence seems to be predicated on the wife's behaviour. According to Jahan the acceptance of physical violence committed by the husband as a legitimate disciplinary method causes the wife to suffer such violence without much protest and publicity....²⁵

In case of violence which is domestic in nature the victim has to rely on the Penal Code. In many cases such offences are trivialized by the police and are often construed to belong to the private sphere of life where the male family member is all powerful. In many cases even where a grievous injury is caused to the woman she cannot take recourse to the Act of 2000 since such violence in order to fall within the scope of the Act of 2000 must be related to dowry demands or other offences under the Act of 2000.

Sexual Abuse and Sexual Harassment:

The Act uses and defines the terms sexual abuse and sexual harassment for the first time. Section 10(1) states that if any male, in order to satisfy his carnal desires, touches the sexual or any other organs of any woman or child with any organ of his body or with any other object, his action will amount to sexual abuse and for this offence he may suffer rigorous imprisonment for any period between three to ten years and be required to pay additional fine. This section presumably is meant to deal with child abuse and such other cases.

Sexual harassment as an act of violence has been for the first time been acknowledged in legal terms. Even though there were some laws relating to offences constituting harassment against:

²³ Abdul Khaleque vs. The State 13 BLD (HCD)401.

²⁴ Op.cit. Jahan (1994). at. p.21.

females, the Repression Prevention Act of 2000 has for the first time used the term sexual harassment in the Bangladeshi context. Section 10(2) of the law states:

If any male, trying to illegally satisfy his carnal desires, abuses the modesty of any woman or makes any indecent gesture, his act shall be deemed to be sexual harassment and for this such male will be punished by rigorous imprisonment for a term which may extend up to seven years but shall not be less than two years and shall additionally also be liable to fine.

The definition contained in the Act falls short of encompassing the various modes that harassment may take place.²⁶ Various women's organizations were consulted before the enactment of the law of 2000. It has been claimed that for the first time in the history of Bangladesh, people's participation in the law making process has been ensured through consultation with members and leaders of various organizations representing concerned persons and stakeholders²⁷. The Shammilito Nari Samaj had suggested the following definition of sexual harassment:

If any person, by any gesture or sign or by any obscene comment either verbally or on the telephone, annoys any woman, he will be liable to be punished with rigorous imprisonment which may extend up to ten years but shall not be less than five years and shall also be liable to fine to the maximum of ten thousand Takas.²⁸

On an examination of the above it seems that in Section 10(1) the offence of sexual abuse may be committed against both

²⁶ See Huda, Shahnaz (2001). Report on Sexual Harassment in Bangladesh, Working paper for the ILO (unpublished), Dhaka.

²⁷ Statement of purpose and causes, Nari Shishu Nirjaton Daman Bill, 2000.

²⁸ Proposed Draft of the Sammilito Nari Samaj on the Nari O Shishu Nirjatan (Bill), 1998; June 1998.

women and children but in the case of harassment [Section 10(2)], the Act is confined to only women and this means that harassment of any female under the age of fourteen is not covered. However, harassment of school girls of all ages is widespread and frequent all over Bangladesh.

Acid volence:

Acid Oporad Daman Ain 2002²⁹ and Acid Niontron Ain- 2002³⁰

Acid throwing has become another method of perpetrating violence against women in Bangladesh, which may be said to be uniquely Asian in its origin. Acid, which leaves permanent scars on the victims, is easily available in Bangladesh.

The reasons for attacks committed by the throwing of acid are varied. They may include revenge and retaliation, political enmity, family feuds and property disputes, rejection of offers of marriage or love, refusing to have physical relations, failure to fulfill dowry demands and so forth.

A new provision was inserted in the Penal Code dealing with such crimes.³²

Section 4 of the Repression Prevention Act of 2000 deals with crimes committed with corrosive and other substances. Two new acts were enacted in the year 2002 to deal with Acid crimes: Acid Oporad Daman Ain, 2002 (Acid Crimes Prevention Act of 2002) and Acid Niontron Ain, 2002 (Acid Control Act, 2002).

The Acid Oporad Daman Ain (Acid Crime Prevention Act) was enacted for the purpose of dealing with acid crimes harshly. It is to take precedence over other laws (Section 30). The Act applies to all victims of acid attacks-male and female so it is

²⁹ Act No. 2 of 2002; Bangladesh Gazette, dated 17 March 2002.

³⁰ Act No. 1 of 2002; Bangladesh Gazette, dated 17 March 2002.

³¹ Op.cit. Odhikar (2001) at p 98.

³² Section 326 (A).

more comprehensive than the Repression Prevention Act in that sense. Section 4 of the Woman and Children Repression Prevention Act, 2000 deals with such crimes under the heading of crimes committed by corrosive, poisonous and acidic substances. The Act of 2002 contains 30 Sections dealing with various aspects of the punishment, trial of offences committed by acid throwing. It provides for death penalty or rigorous life imprisonment for death caused by acid attacks and imposes in addition fine up to the limit of one lakh taka (Section 4). For severe injury caused by acid, such as complete or partial privation of sight or hearing, disfigurement of face, genitals or breasts, the punishment is death or rigorous life imprisonment with additional fine (Section 5). For disfigurement or destruction of any member, joint or portion of the body or for injury to any other part of the body the punishment is rigorous imprisonment which may extend to fourteen years but shall not be below seven years with fine to the amount of fifty thousand taka. The Act also punishes the very act of throwing acid even if no physical, mental or other harm is caused. In such case, the offender will be punished with rigorous imprisonment ranging from three to seven years with additional fine of fifty thousand takas (Section 6). The punishments under the Acid Crimes Prevention Act are almost the same as those provided for in the Woman and Child Repression Prevention Act of 2000. However in the latter Act, attempt to cause death by acid throwing is made punishable, along with the act of causing death itself, with death or life imprisonment. The Acid Crimes Prevention Act of 2002 does not mention the attempt to cause death as being punishable so presumably if anyone throws acid with the intention of causing death and no harm results the offender will be punished with the relatively less severe punishment prescribed under Section 6.

The Act of 2002 also provides for compensation of victims (Section 9). All the offences under the Act are to be non-bailable, non-compoundable and cognizable (Section 14). It

also contains provisions regarding trial procedures, investigation of offences, and negligence of investigating officers, medical examination and so forth. The Act of 2002 sets up an Acid Crimes Prevention Tribunal and all offences under the Act are to be tried by this Tribunal. Appeals against any order, judgment or punishment imposed by the Tribunal must be made to the High Court within 60 days. Section 28 also contains the provision for safe custody for any person during the continuance of the trial and specifies that such custody shall be outside the prison and by order of the Tribunal.

There may be some confusion as to which Act will cover injury or death caused by acid since the Penal Code of 1860, the Women and Child Repression Prevention Act of 2000 as well as the above mentioned law of 2002 all deals with such offence. However since the Acid Prevention Act is a special law³³ it will take precedence over other laws.

Acid Niontron Ain, 2002:

The Acid Niontron Ain or the Acid Control Act of 2002 was enacted to control the import, production, transport, sale and production of acid; to stop the misuse of acid as a corrosive flammable substance and for the treatment, rehabilitation and legal aid of persons harmed by acid. It sets up a National Acid Control Council with the Home Minister as Chairman and the Minister in charge of the Ministry of Women and Children Affairs as Co-Chairman (Section 4). The other members include, amongst others, the Secretaries of different Ministries, Chairperson of the Jatiyo Manila Sangshad, and a woman M.P. nominated by the Speaker. Every district is to have a District Committee under the National Council (Section 7). The Act provides for the setting up, by the Government, of a Center for the Rehabilitation of persons harmed or injured by acid. The Government will be the licensing authority for the import and production of acid while at the district level the District

33.A "special law" is a law applicable to a particular subject. (Section 41 of the Penal Code. . .)

Commissioner will be the authority responsible for the control of sale, production, transport, use of acid (Section 16). The official empowered by the government in this regard, if satisfied that any shop selling acid or vehicular transportation of acid should be temporarily closed or stopped may order such closure or stoppage for a period of up to fifteen days (Section 18). The licensing authority may also, by written order, temporarily suspend the license of any person if it is apparent that such person has failed to follow or has broken any condition of the license (Section 20).

The various sections of the Act contain provisions regarding the issuing of warrants, search, search without warrant, arrests, seizure of acid and other goods and documents etc. The intention of the Act is to control the illegal use and availability of acid.

Legal Aid:

The Legal Aid Act of 2000 - Aingoto Shayaota Pradan Ain 2000³⁴:

To ensure access to justice to those who for lack of financial means, or those who are without assets and who are unable to access the law and obtain justice the Act to provide legal aid was enacted. Section 2(a) mentions that legal aid includes aid for obtaining legal advice, fees for lawyer and costs of the case and all other assistance in any court including the Supreme Court. The Act provided for the setting up of a National Legal Aid Committee with its main office in Dhaka. The Managing Board will be responsible for the administration and running of the Committees and its members will include, among others, the Chairperson of the Jatiyo Mahila Sangstha, three members nominated by the government of any non governmental organization engaged in legal and human rights which has operation in all districts. [Section 6 (i) and (j)] as well as three

³⁴ Act No. VI of 2000. Bangladesh Gazette, dated 26 January 2000.

members nominated by the government of women's organizations which have operations in all districts. Section 9 states that all districts are to have a District Committee and amongst the members of such Committee will be included the District Women and Children Affairs officer if present, the Chairman of the Jatiyo Mahila Shangstha and one nominated member of such Sangstha. The District Committee will be chaired by the District and Sessions Judge. All requests or applications for legal aid shall be made before the Board or District Committee wherever appropriate. If the District Committee refuses any request or application for legal aid, the person seeking such aid may appeal to the Board within 60 days and the decision of the Board in this matter shall be final (Section 16). One criticism which may be made is that there is an apprehension that the Board which is the main authority as well as the Appellate body, is mainly constituted of persons who are for all purposes political appointees which may bias the process of selection of suitable legal aid receivers. More members of the civil society should have been included.

Legal aid may be sought under the act for both civil and criminal matters. Civil matters include family matters including those under the Family Courts Ordinance, 1985. Criminal matters such as dowry cases, child marriages, offences under the Penal Code or the Repression Act of 2000, Special Powers Act of 1974 may all come within the purview of the Legal Aid Act. Women who are seeking justice in such matters, i.e. plaintiffs or complainants, as well as those who are defendants or accused in any case may apply for legal aid.³⁵

The intentions behind the enactment of Legal Aid Act are undeniable laudable. However the question as to whether the Act is being able to achieve its purpose of helping indigent persons of better accessing the law remains questionable. Under Section 9(h) and (m) the President of the District Bar

35 See Nariphakkha; Aingoto Shayayota Pradan Ain, 2000—Legal Aid, 1991

Association will be a member of the District Committee while the elected general secretary of the Bar Association shall act as Member-Secretary of the Legal Aid District Committee.

In order to achieve the purposes for which the Legal Aid Act was enacted there needs to be greater publicity and awareness raising efforts. Few members of that portion of the population the Act intends to assist are aware of its existence. The greater involvement of the Bar Association of every District may fulfil this purpose to a certain extent since the lawyers themselves are more closely in contact with persons seeking justice but unable to access the law due to various constraints. Following from this the District Court should have an office for dealing with legal aid cases. The failure of the laws relating to legal aid is obvious if one examines data available. In the year 1996 it was known that not even 10% of the funds made available to district committees was utilized, mostly due to obstructive bureaucratic procedures set up for accessing this fund by poor litigants.³⁶ Unofficial estimates between 1997³⁷ to 2001 show that in the last eight years only about 800 cases have come under the legal aid scheme.³⁸ At the end of each financial year a huge sum of money, earmarked as legal aid, is returned to the exchequer as unspent. Since it is impossible, in the context of Bangladesh, that people do not require legal aid, the scenario obviously points to loopholes within the process.

Local Government:

The inclusion of women in the different tiers of the local government as a way towards including women in the process of governance has been perceived as a method of achieving women's empowerment. By virtue of the Local Government

³⁶ Human Rights in Bangladesh 1996: A Report by Ain O Salish Kendra, Bangladesh Legal Aid and Services Trust and Odhikar; University Press Limited, Dhaka at p.79.

³⁷ The Resolution of the Law, Justice and Parliamentary Affairs Ministry dated 19 March 1997, S.R.O. No.74-Law/1997 dealing with legal aid was repealed by Section 26 of the Legal Aid Act of 2000.

³⁸ Personal Interview with Dr. Shadeen Malik.

(Union Parishad) (Second Amendment) Act³⁹ of 1997 direct election on the basis of adult franchise to three reserved seats for women members was introduced in the lower tiers of administration.

A woman can also be elected to the nine general seats of the Union Parishad. It has been said that the Union Parishad election of 1997 was a milestone in the history of women's political rights in Bangladesh.⁴⁰ However the quality of participation remained minimal and the elected women of the Union Parishad, both from the reserved and general seats could not enjoy and exercise any significant power. In 2000 the Zila Parishad Ain⁴¹ (the District Council Act). was enacted. Under the Act of 2000, every District is to have a Parishad or Council which would be a body corporate with perpetual succession, capable of suing and being sued (Section 3). The Act makes provision for the first time for five reserved seats for women as members of the Zila Parishad [Section 4(3)]. The Chairman as well as the male and female members shall be elected by a Voters Panel or Electoral College. This Panel/College shall comprise of the Mayor and Commissioners of the City Corporation where included in the District; the Chairman of the Upzila Parishad; the Chairman and Commissioners of the Pourashava and the Chairman and members of the Union Parishad (Section 17). The activities of the Zila Parishad may pertain to a variety of affairs related to the District, including educational, cultural, social welfare and economic activities.

Family matters:

By virtue of the Family Courts Ordinance enacted in 1985, all matters concerning dissolution of marriage, restitution of conjugal rights, dower, maintenance and guardianship and

39 Act No. XX of 1997; Bangladesh Gazette dated 8 September 1997; 50 DLR 1998 (BS) pp.2-3.

40 Husain, Professor Shawkat Ara and Siddiqi, Professor Najma (2002). "Women's Political Rights: Bangladesh Perspective" in State of Human Rights in Bangladesh: Women's Perspective; Women For Women; Dhaka p. 121-122.

41 Act No. XIX of 2000; Bangladesh Gazette; Dated 6 July 2000; 52 DLR (BS) pp.53-54.

custody of children are properly within the exclusive jurisdiction of the Family Court. An appeal against any judgment, decree or order of the Family Court will lie to the District Judge (Section 17) which is therefore the Family Appellate Court. There is no scope for overstepping this jurisdiction and going to the Higher Court Division in appeal or otherwise against any decision of the Family Court except for the transfer (upon application or of its own accord) and stay of suits and appeals (Section 25). Thus Revision Petition under Section 115 of the Code of Civil Procedure is not maintainable where there is scope for presenting an appeal before the District Judge. ⁴²It was further held that the District Judge i.e. the Family Appellate Court cannot exercise power in sending the suit back on remand to the Family Court for disposal and it can only decide the appeal keeping its authority within the four walls of the Ordinance itself.⁴³

In the case of *Kowsar Chowdhury vs. Latifa Sultana* ⁴⁴ the High Court Division of the Supreme Court of Bangladesh held in favour of a woman suing for additional maintenance. The Court held:

Where a magistrate has exercised his maximum power in granting maintenance in a previous case that case cannot be treated as a pending case, thereby barring a suit in the family Court for a claim for enhanced maintenance due to changed circumstance.

Thus although the jurisdiction of the Criminal Court to award maintenance under Section 488 of the Cr.P.C. been ousted after the coming into force of the Family Courts Ordinance⁴⁵, the above decision clarifies the position of a woman who has already gotten relief earlier relief under the Cr.P.C. and wishes

⁴² *Atiqur Rahman (Md.) vs. Ainunnahar* 52 DLR (2000)453.

⁴³ *Ibid.*

⁴⁴ 22 BLD (HCD) (2002)241.

⁴⁵ *Pochon Rissi Das vs. Khuku Rani Das and Others* 1998 50 DLR 47.

⁴⁶ *Maksuda Akhter vs. Md. Serajul Islam* 5 MLR (2000)(HC)276.

to go to the Family Court for enhancement of the amount of maintenance.

The Family Court Ordinance, 1985 is a special law for dealing effectively with certain family matters.⁴⁶ Section 16(3B) provides for imprisoning the judgment debtor for three months for failure to pay decretal money. It was held by the High Court that when the court allowed installments of the decretal amount to be paid by the judgment-debtor on his own seeking, he is bound to pay the same and:

In case of failure of payment of decretal money the judgment debtor is liable to suffer imprisonment for default of each installment.⁴⁷

Conclusion:

In Bangladesh economic, psychological, cultural and social issues combine together to accentuate the vulnerability of women. Such vulnerability continues to exist so that most laws aimed at curbing violence against women, as well as empowering and protecting women, fall a long way short of their expected goals. Again, many of the laws enacted seem to be inconsistent and unclear. For example, confusion may be created in cases where the same offence is dealt with in several existing laws. Acid crimes come under the Acid Crimes Prevention Act of 2002, but the provisions of the Penal Code, 1860 as well as the Woman and Child Repression Prevention Act of 2000 regarding the same offence has not been omitted and this may create confusion as to which Court or Tribunal or which law the case should be instituted under. Even though as special law these take priority, and the laws themselves state this, the confusion persists and ought to have been clarified. The same problem may arise in the case of rape which is covered by both the Code and the Act of 2000.

⁴⁷ Ibid

The age of the girl child/woman is extremely important in various cases of criminal liability as well as civil issues such as custody and guardianship. However, great confusion and ignorance regarding age is common in Bangladesh. The Birth and Deaths and Marriages Registration Act of 1886⁴⁸ provides for birth registration at different levels. But only a small percentage of the population registers births. An UNICEF survey found that only three per cent of the children of the respondents had been registered.⁴⁹ The absence of any reliable evidence as to a child's age poses fundamental problems for the enforcement of different laws. ⁵⁰It is obvious that the present system is inefficient and obsolete. The Government needs to take this matter into serious consideration.

The vulnerability of women in Bangladesh and their inability to access the legal system is directly connected to their socio-economic status. Although women have made significant strides in employment outside the home, such employment is still confined within specific sectors. Even within these, women are discriminated against. Despite constitutional and other legal guarantees of non-discrimination, discrimination as regards wages and types of work continues to exist and no substantive steps have been taken to address such issues.

Although the enactment of new laws to protect women may be based on good intentions, the fact remains that even now many woman continue to be unable to access the legal system for various socio-religious, economic, cultural and other reasons. It is still difficult for a woman to walk in, unaccompanied, to a police station. And since contact with the police is generally the first stage in their search for justice, many women are discouraged from taking recourse to the law. For the many cases reported in the media there are hundreds, which go unreported or unpunished. The main aim of punishments i.e.

⁴⁸ Act No. VI of 1886 -- amended several times.

⁴⁹ UNICEF (1997). Children of Bangladesh and their Rights; UNICEF Bangladesh Dhaka at p.52.

⁵⁰ Ibid.

that of deterrence, seems to have failed as is obvious from the ever-growing numbers of violent acts committed against women. Prevention rather than punishment should be emphasized since it is very little consolation to the victim who has suffered horrendous acts of violence that the perpetrator may face punishment. In their struggle for justice, individuals feel traumatized by an archaic system of justice and unfriendly law enforcement.⁵¹ Women's access to the legal system therefore remains impeded. Despite efforts to make the system work more efficiently:

Access to justice continues to remain a time-consuming, lengthy, complicated and expensive undertaking: These factors, coupled with inefficient sometimes corrupt practices particularly at the lower level have seriously compromised the human rights situation in the country.⁵²

Political and other corruption have become almost institutionalized and to such an extent that a woman faces challenges in every step, whether it is to seek legal aid or to discharge duties as local government official. Based on newspaper reports published in the *Janakantha* of 17th May, 1999, ASK reports that four female Union Parishad members were sexually assaulted, raped and gang raped.⁵³ The fate of politically disempowered women can only be imagined. It is not enough that token numbers of women are included in the process of governance; whether it is as nominated members of the Parliament or as members of the Union or Zila Parishad. The empowerment of women must become a reality. Violence against women is closely associated with the preservation of male supremacy in society:

51 *Op.cit.* ASK (2000) at p. 80.

52 *Op.cit.* Human Rights in Bangladesh 1996 at p. 79.

53 *Op.cit.* ASK (2000) at p.94.

54 Tambiah, Yasmin (1986). Sri Lanka: Violence and Exploitation; in Empowerment and the law— strategies of Third World Women: Schuler, Margaret (Editor); 154

...the inferior status accorded to her by patriarchy is often exacerbated by other oppressive forces. Hence, women must create a multi-faceted struggle to achieve freedom dignity, independence and autonomy.⁵⁴

Discriminations regarding family matters persist and no initiatives have been taken to reform or change personal laws, which are opposed to the human rights of women. As in many other Third World countries, in Bangladesh also a pattern of legally sanctioned and sometimes constitutionally guaranteed subordination of women is practiced.⁵⁵ The most obvious areas of law which require attention, whether for the purpose of reform or proper enforcement, are labour laws, personal and civil laws. The different types of discrimination and human rights abuses women in Bangladesh face continue, because the society is essentially patriarchal and subordination of women is the norm. This concept of socially sanctioned patriarchal domination cannot be changed by the enactment of newer and newer laws. Bangladeshi women can only become empowered if they are given the ability to utilize the law through legal awareness, education and personal security and safety and if the laws are enforced impartially and efficiently. Women's rights need substantive enforcement not only normative guarantees contained in the law books.

⁵⁵ Schuler, Margaret (1986). Introduction to Empowerment and the Law ---Strategies of Third World Women; Schuler, Margaret (Editor); OEF International, Washington at p.3.