

# Domestic Violence against Women in Bangladesh: A Critical Analysis from Social Legal Perspective

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## Abstract

Violence is not a very unfamiliar scenario of a third world country like Bangladesh. Domestic violence is also very much familiar in this country. But very especially the main victims of this violence are women. Because of the socio-economic situation most of the women are helpless of this type of developing countries. Most of the people believe that only financial condition and lack of education are only liable for the domestic violence against the women. I strongly believe that this is one of the reason but not the only reason. A lot of rich and literate women are also victimized for this violence. So it will be really foolish work to say economic conditions or illiteracy is the main reasons for this violence. The renowned teacher of Dhaka University named Rumana Manjur was also the victim of this violence. So it is easy to say that the mentality of our society is liable for this type of violence. The main purpose of this article is not make criticism for this but to identify the actual reasons behind this. To find out the laws about this crime and loopholes of the application of this.

**Keywords:** Categories of violence, Constitutional rights, Protection, Legislation.

## 1. Introduction

Domestic violence may be defined as violence perpetrated by a man upon a woman and vice versa in course of leading a domestic life. Domestic violence in Bangladesh is not rarity but phenomenal prevalence. Women are reported to be physically tortured, sexually assaulted, psychologically injured and mentally humiliated within their homes by their husband or other members of the family. Physical injury is mostly due to women for realization of illegally demanded dowry in Bangladesh, the children are seen to be subject of domestic violence. Domestic violence is experienced more or less in almost all countries in one form or another and considered as a Serious Social problem. It is found to exist in almost all stratus of social classes, cultures, social status and ethnic background victims of domestic violence in the under developed countries are mostly found to be wives who are economically disadvantaged. Various women's organization in Bangladesh have taken up the responsibility of working for advancement of women folk. A very loud demand has been and is being made by them for stopping domestic violence against women. They urge security and safety for the women. Most of the women experience domestic violence at the hands of an intimate partner or family member in her lifetime. Acid burning, dowry deaths are very common in this context. To combat against this violation, the present law should be implemented. However despite the deployment of strong laws to deal with the problem DVAW is increasing. Social awareness raising efforts need to be introduced. Educational programs should focus on patriarchal social norms that perpetuate DV. Increased research on Domestic violence can also contribute in addressing the problem identifying crucial factors of interventions.

## AIMS & OBJECTIVE

### Aims:

The main aim of this research is to explore the cause, impact and ways of root out the domestic violence.

### Objectives:

- 1) Critically review the different forms domestic violence in Bangladesh.
- 2) To find out the link between the social culture and domestic violence.
- 3) To propose different approaches in the eye of law and social awareness for remove domestic's violence.
- 4) To. Find out underlying factors for the violation of the right of women in Bangladesh.
- 5) To give some recommendation for preventing violation of women rights.

## Research Question

- 1) What are the actual reasons behind the domestic violence?
- 2) What are the determinants for domestic's violence?
- 3) How to root out the domestic violence in BD?

## Limitation of the Research:

- 1) The main significant limitation of this study is limited time frame.
- 2) Up-to-date data regarding violence against children is not available.

- 3) Unavailability of the data regarding accurate number of women, men and children.
- 4) Difficulties are getting access.

#### **Significance of the Research:**

The study is the great importance; the study will help to know about the rights of women under Bangladesh frame work. In our society women are deprived in various sectors such as domestic and working level which always remain silence. It will help the policy makers, legislation and research to development of the right of women. Moreover, it will open wide opportunities for other researchers concerned with the arena. This research may be helpful for the students of law to enrich their knowledge.

#### **Literature Review:**

The literature review will be based on both secondary and primary sources which data will collect through existing laws, acts and ordinance's will use as primary sources: books ,journal and other published works have been adopted as secondary sources. The basic data has been collected from the administrative sources, legislative laws and historical events. By focusing effort's on critical issues of authority concern and the victim person concern are the important sources or data collection.

#### **Methodology:**

The methodology study is given below: This report is written primarily by taking help of the secondary source such as news, feature, reports published is different national and local daily newspapers, and we also used data compiled by national NGO's such as Ain-o-Salish Kendra (Ask). However, these data in tabular are redrawn by present authors. Additionally, available published research reports and articles are taken in to consideration while developing arguments and analysis of different dimension of domestic violence .authors own an observation are also incorporated while analyzing the nature and causes the problems .After the collection of Data ,the collected data will be tabulated on the master table to analysis with help of table ,graphs and charts etc .After the analysis , the data will be interpreted according to the analysis .Then the recommendation will be make at the end of report .

### **2.1 Categories of violence against women**

#### **Family Violence:**

The definition of family violence used in the present study emphasized violence by any Member of the family. While defining family violence, the term 'domestic violence' was consciously avoided, as technically this would also include violence by domestic help or non-family members living with the family. Family violence here included child abuse, sibling abuse, parent abuse, in-law abuse, perpetrated by both male and female Aggressors on female and male victims.

#### **Acid Assaults:**

Acid assaults are another prevalent form of violence that may well be a phenomenon unique to Bangladesh (there are anecdotal reports of a few cases of such assaults from other parts of the world). The first documented case of acid attack occurred in 1983 in Sylhet (Naripokkho Acid Log, 1997). Acid attacks usually occur when men want to take revenge for the refusal of proposals for sex or marriage, or when demands for dowry are not met or when there is a political clash. However men are also sometimes subject to acid attacks.

#### **Rape and sexual violence:**

According to Section 375 of the Bangladesh Penal Code, rape occurs when a man has intercourse with a woman of any age without her consent. Many instances of gang rape are also reported as well as rape followed by murder. Rape may occur in different form: marital rape, rape in armed conflicts, rape of women refugees, statutory rape, gang rape, and jackrolling or "recreational rape". Sexual assault or abuse is any type of sexual activity that a person does not agree to, including:

- Rape or attempted rape
- Touching body or making touch someone else
- Incent or sexual contact with a child
- Someone watching or photography in sexual situations
- Someone exposing his or her body.

**Incidents of Rape :( 2008-2010)**

Nature	Age (In years)				Total	Case filed
	(18 and below)	(19-24)	25 and above	Age not reported		
Attempt to rape	27	3	(9)	(71)	110	55
Single rape	366	44	35	402	847	444
Gang rape	106	44	42	312	504	279
Total	499	91	86	785	1461	778
Rape followed by murder	76	22	23	96	217	92
Suicide due to rape	8	4	2	6	20	8

REDRAWN FROM AIN O SALISH KENDRA (ASK) DOCUMENTATION UNIT, 2011

**Custodial Violence**

Custodial violence refers to violence that is directed towards anybody placed under State custody. State custody refers to government agents, such as the police or military personnel, other law enforcing agencies, as well as different shelters and vagrant homes run by the state machineries Custodial violence is indifferent to the nature of the alleged criminal activity under which women are apprehended. Women are vulnerable to abuse whether accused of petty theft, inappropriate sexual behavior or affiliation with a “wanted” criminal. The nature of the abuse ranges from physical or verbal harassment and humiliation to sexual and physical torture. There is a rule of not arresting women after sunset. However, often police misuse the Section 541 especially after sunset to arrest women and keep them in police custody.

**Murder and Suicide**

Both women and men are victims of murder at the hands of strangers as well as known People including family members. Women are often murdered by their closest relatives such as husband, brother, son and in-law as consequence of family quarrel, demand for land, polygamy, husbands extra-marital affair or remarriage, demands for dowry, failure to give birth to children especially a son. In many cases, women commit suicide when they cannot bear the pain of physical and mental torture as a consequence of rape, religion based community violence such as fatwa, dowry demands and abandonment. Both of these forms of violence violate the first clause of the Universal Declaration of Human Rights – the human right to life

**Community Violence**

Community violence occurs when community members collectively perpetrate violence on individuals of the same community. It is the outcome of a “community” decision to punish one of their members.

**Trafficking in women**

Trafficking of women and children is a significant problem in developing countries around the globe and particularly in south Asia.

In the absence of social protection economic security and legal support ,an alarming number of women and children from the poor ,marginalized section of community become easy victims of trafficking Bangladeshi women and children are trafficked both within the country and internationally .The never ending demand for the women and children make trafficking highly profitable business. Victims of Trafficking are generally trafficked for forced prostitution, but sometimes also for other purposes such as organ transplants and slave labor.

**Victimization by Fatwa:**

According to Islamic teaching, Fatwa is a religious edict based on Islamic principles pronounced by a religious scholar. In Bangladesh this notion has been totally misconceived and is used by Half-Educated Village mullahs, who actually are not scholars in Islam. These Mullahs through the informal Village Justice System(Salish) punish women for so-called anti-social or immoral Activities. In almost, all the cases women are bought before the Salish simply for their involvement in extra-marital affairs, marrying a man from different religion, giving birth to a child before marriage, complications due to oral divorce pronounced to a woman by her husband and so on. Although these punishments are not legal parse because the mullahs exert considerable autonomy and power in the rural areas, the punishment is generally carried out against the helpless women. Peoples lack of knowledge about the law and religion, poor education and absence of social awareness are the key factors which allow fatwa to be issues.

### Number of fatwa: 2010-2013

Year	2010	2011	2012	2013
No. of incidents	23	17	12	06
Cases file	15	11	07	02

\*\*Resource center, BNWLA

### Torture by Husband:

Wife beating is the most commonly occurring Act of domestic violence Bangladesh. In Bangladesh it is common knowledge that husband exert their authority and physically assault wives for even minor mistakes such as unsatisfactory meal, an untidy room, a conversation with another man or any act of disagreement. Men have been socially conditioned to genuinely believe in their own superiority. From childhood they are treated differently from their sisters. They grow to believe that they are more valuable and more deserving than women that their opinions and views should have more weight than any woman's. In This way, men are able to delude themselves into believing that abuse of their wives amounts to a religious duty and they are completely justified in their actions.

### Dowry related Violence:

The practice of dowry demand (joutuk) is not deeply rooted in Bengali Muslim tradition but has emerged as a major social evil in recent years. Generally, dowry means the property that the bride's family gives to the groom or his family upon marriage. In Bangladesh law, dowry has been given an extended meaning. Whatever is presented whether before or after marriage under demand, Compulsion or pressure as consideration for the marriage can be said to be dowry. Rising Unemployment has contributed to the phenomenon as more and more young men are unable to find employment ,their families use marriage and dowry demand as a source of income, prospective grooms and their families demand large sums of money or property from the would be brides family as a pre-condition to the marriage agreement. Although dowry demand is illegal the practice persists in the rural communities. For example, .the women has acid throw on her face, in burnt, severely beaten and in some even murdered.

### Case Reference:

Parvin was kidnapped by Nuzrul Islam. After a few days, Nazrul Islam and his family torturing her both mentally and physically for dowry.Parvin father was not alive and her mother was not rich but nonetheless managed to raise Tk.40, 000.Parvin husband and in-laws were not satisfied with the amount and continued torturing her with 50,000.On September 2014,Nuzrul Islam with the assistance from his sister's husband throttled parvin to death and hang her from the ceiling for the make it look like a case of suicide. Bangladesh Mahilaparished assisted in the prosecution of the trial in flavor of the complainant. Nazrul Islam was sentenced to imprisonment for life .However; it was not possible to arrest him. It was rumored that he had absconded to India.

### High-risk pregnancy

For the most part, married women in Bangladesh are not aware of their own sexual and re-productive rights, and have only limited control over their own bodies. A Women's freedom of choice regarding sexual intercourse, birth control, Pregnancy, pre-natal care and abortion is restriction by the collaborative decision-making of her husband and his family. In this situation, the husband is the aggressor and the wife merely a passive participant. Similarly, A wife personal convictions on birth control and family planning are irrelevant in decision- making. Only 5% of the re-productive aged women access existing health care facilities. In fact, 37%of all death of re-productive aged women is due to maternity related issues In Bangladesh, three women die every hour because of maternal related complexities and nine million whose lives have been saved following maternity related complications continue to suffer from other long-term diseases.

### Pornography

Another concern highlighted in the special reporters report is "Pornography" which is represents a form of violation against women that "glamorizes the degradation and maltreatment of women and asserts their subordinate function as mere receptacles for male lust."

### Eve-teasing

Eve-teasing is a great concern today in the discussion of the violation against women in Bangladesh .Eve-teasing is not new problem in Bangladesh .However ,recently it's a magnitude has increased and it has become a big crisis for the country .Nowadays ,it is dealt with seriously by different types of professionals, especially social activities and academics. The term "Eve-teasing" is an activity where the girls are teased by the boys .It means ,when a boy or a group of boys try to disturb a girl or girls by yelling ,showing, sexual gesture and instrument ,Obstructing, Offering bad proposal etc.

### Harassment at work places

Whether out of choice or out of compulsion, most of the women who are involved in the work place in all vital sectors of country's economy may fall in the unorganized sectors. They are ill-paid but don't leave the job due to

increasing unemployment. This need for survival drives to rape situations. Harassment at work place is all pervasive. Women from all backgrounds are attacked each year at work. Among women, murder is the leading cause of death from a work place injury. Sometimes Women are attacked during a robbery. Usually, though women are hurt by someone they know, like a co-workers, customer, client or patient. Sometimes attacks are the result of domestic the violation that spills over into the workplace.

### **Same sex Relationships**

Domestic violence occurs in same-sex relationships. Gay and lesbian relations has been identified as a risk factors for abuse in certain populations. In an effort to be more inclusive, many organizations have made an effort to use –neutral terms when referring to perpetrator ship and victim hood. Historically, domestic violence has been as a heterosexual family issue and little interest has been directed at violence same-sex relations. It has not been until recently, as the gay rights movement has brought the issues of gay and lesbian people into public attention, when research has been conducted on same relationships. A 1999 analysis of nineteen studies of partner abuse concluded that “research suggests that lesbians and gay men are just as likely to abuse their partners in homosexual relationships.”

## **2.2 Immediate Causes of Violence**

### **Lack of Self-defense**

Women are not socialized to protect themselves and despite an active feminist movement in the country they are not physically trained to protect themselves.

### **Lack of Education**

Women in our society are not only economically dependent on male but they do not have much control over their lives. Lack of education makes women more vulnerable. Though studies show that years of schooling is inversely associated with prevalence of violence, however, no statement could be made how and why education or years of schooling has a role in reducing violence (Hadi,1997, Roy, 1996, Khan et al, 1998). It could be assumed that greater years of schooling may provide women with an opportunity to gain knowledge and information which they often lack and as a result become more vulnerable.

### **Lack of Economic Independence and Income**

Lack of independent income forces many women to stay in violent relationships. The Labor force statistics show that not as many women as men are employed. Their ownership of assets or property is generally much lower. Their inheritance rights to family assets are discriminatory. As a result most women do not have an independent or significant income.

### **Lack of Security for Women**

Although cultural barriers for women entering the public arena and joining the workforce are being challenged (in garments factories, small businesses through microcredit schemes and positive discrimination in State agencies) very few institutions are letting “private” or women friendly issues enter into the public arena. There is lack of security for women travelling to and from their workplaces, no transport facilities are provided for women at night. However, very few institutions are consciously women friendly – very few provide childcare, flexible hours for working mothers, adequate toilet facilities, or maternity/paternity leave for new parents.

## **2.3 Underlying Causes**

### **Poverty**

General or overall economic causes of family violence are considered to be increasing landlessness, pauperization, unemployment which have increased the stress and tension in, male-female relations in the poor households and give rise to desertion, divorce and violence. There exists a debate on whether participation in credit based development intervention maybe reduce the violation against women. However, existing literature shows that getting involved in credit program and bringing cash home may create tensions within the household and precipitate domestic the violation.<sup>2i</sup>

## **2.4 Culture and Tradition:**

### **Child Marriage**

This practice continues to be widespread despite the existence of the Child Marriage Restraint Act since 1983. A girl child is deemed as a burden to poor parents. In the marriage market the younger the bride, lesser the dowry demand. Parents’ fear for their daughters’ security, especially when she is an adolescent and capable of conceiving a child out of wedlock, becomes a reason for marrying them off early. When a young single girl becomes pregnant not only does she stand to be condemned by her community (in some cases she becomes the subject of fatwa’s), her parents and family are also punished with social isolation and shaming. Cultural stigmatization of sex outside of marriage actually puts the family honors at stake. All these reasons make it impracticable to enforce the legal provision against child marriage.

### **Case study:**

Fatima, a representative of the victim of early marriage: Fatima Akter was daughter of Islam who was a farmer, When her age was 12 her father arranged a marriage for her in 2011 .She did not understand about her husband, father in law or mother in law but she could not protest against her fathers will .After two year latter she became sick and at least she had given up husband house for her illness. As a result now her sorrows have no bounds.

### **Socialization Processes**

Girls and boys are brought up through discriminatory socialization processes that result in an unequal power relationship in their adulthood. This socialization process also makes women helpless, deprived and disfranchised as a group. On the other hand abuse of wives was not really considered as crimes as appeared from discussion with men during Rapid Assessment Study on violence (Naripokkho, 1998a). Other causes of marital violence or more specifically wife beating include non-fulfillment of traditional gender role of women, sexual maladjustment or non-communication about sex, interference of in-laws as perceived by couples (ibid). Moreover women's lives are perceived to be less valuable and they are disempowered in family relationships. Social and cultural mechanisms through customs, rites, literature and art, promote male dominance and gender role segregation. Society also protects and even encourages men to establish their dominance through violence against women.

### **2.5 Women's subordination**

The basic cause of violence against women, reinforced by other factors such as religion and culture, is their subordination compared to men. Violence is a means of reinforcing this subordination. The General Assembly Resolution 48/104 states "violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of their full advancement, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men"

### **Rights of Victim and Remedies of statute laws**

#### **3.1 Right to reside in the shared home:**

The victim shall have every right to reside in the shared residence due to family relationship.

#### **3.2 Application to court:**

- 1) A victim or on her behalf ,a police officer ,an enforcement officer ,A Service provider or any other person ,can apply to get remedy according to the provisions of this act.
- 2) Every application under sub- section (1) shall be submitted in such form as may be prescribed by the rule.
- 3) The court, shall fix up the date of hearing the victim within 7 working days after receiving the application under sub-section(1).

#### **3.3 Interim Protection Order and Issuances of Notice:**

- 1) The court, upon receipt of an application under section 11,if satisfied by examining the documents submitted thereto that there is prima facie that the respondent has committed or abetting to commit domestic violence ,then an ex-parte interim protection order may be issued against the respondent and simultaneously a show cause notice to the respondent to reply within 7 working days why permanent protection order shall not be issue against high court.
- 2) The notice may be issued by registered post, process server ,law enforcing agencies or by any other ways prescribed by the rules .

#### **3.4 Protection order:**

The court ,after giving the parties to opportunity of being heard ,satisfied that domestic violence has taken place or is likely to take place, issue a protection order in favor of the victim and issue order restraining the respondent committing following acts, namely:

- a) From committing any act of domestic violence;
- b) Aiding or abetting in the commission of any acts of domestic violence;
- c) Prohibiting or restraining from entering any protected persons place of employment, business, or educational institution or other institution which the protected person ordinarily visits;
- d) Prohibiting or restraining from making any personal ,written ,telephone, mobile phone ,email ,or any other form of communication with the protected person;
- e) Prohibiting from causing violence to the dependents of the victim or any relatives or any person who gives assistance to the victim from domestic violence;
- f) Any other act that may be cited in the protection order.

### 3.5 Residence Order:

- 1) The court, on the basis of applicant may issue following residence orders, namely:
  - a) Restraining the respondent from residing or visiting the shared residence or specified part thereof where the victim resides;
  - b) Restraining the respondent from dispossessing or in any other manner disturbing the possession of the victim from the shared household;
  - c) Directing the enforcement officer to make arrangement for a safe shelter or safe place for the victim and her child ,if the victim so consent to her placement in such alternative arrangement ,during the existence of the protection order and if the continuous stay of the protected person at the hared residence is considered by the court to be mot safe for the protected person;
  - d) Order against the respondent to permit any protected person to have the continued use and expenses of a vehicle which has previously been ordinarily used by the protected person.
- 2) If a right to exclusive occupation of a shared residence or any part thereof is granted to the protected person. Such order shall not affect any title or interest that the respondent against whom the order is made;
- 3) The court may impose any additional conditional or pass any other direction which it may deem reasonably necessary or incidental to protect or to provide for the safety to the victim or her child or any member of the family.
- 4) The court may require the respondent to execute the bond, with or without sureties, that neither he/she nor any of his/her family members will commit any further acts of domestic violence.
- 5) While passing an order sub-section
  - I. sub-section
  - II. or sub-section
  - III. The court may also pass a written order directing order directing the officer in charge of the nearest police station to give protection to the victim or her child/children .
- 6) The court may direct the respondent to return to the possession of the victim any immovable property ,her stridhan or dower or alimony or any other marital property and movable assets ,valuables ,documents ,certificates and any other property or valuable security to which she is entitled.

### 3.6 Compensation order:

- 1) If there is any personal injury or financial loss or trauma or psychological damage or damage to movable or immovable or any possibility of such damage or loss as a result of domestic violence, she may file a claim for compensation either along with the application under section 11 or separately later on.
- 2) The court shall disposed of the application submitted under sub-section (1) within 6 (six) months of it's receive.
- 3) The court may pass an order against the respondent for the maintenance of the victim as well as her children, if any, which is adequate, reasonable and consistent with the standard of living of the victim.
- 4) The court may an order of lump sum payment or monthly payments of maintenance, if it deems fit.
- 5) The court shall send a copy of the compensation order made under this section to the concern parties and to the officer in charge of the police station within local limits of whose jurisdictions the respondent ordinarily resides or stay.
- 6) If the respondent is an employee of government, non-government, semi-government or an autonomous organization, then a copy of the compensation order shall be sent to the higher authority of the respondent.
- 7) The compensation imposed under this section may be realized according to the provisions of the public Demands Recovery Act, 1913(Bengal Act iii of 1913).

### 3.7 Custody orders:

Notwithstanding anything contained in any other law for the time being in force, the court may, at any stage of hearing of the application for a protection order or for any other relief under this act grant order for temporary custody of any child ,or to any applicant in favor of the victim and if ,necessary ,the arrangement for any visit to such child or children by the respondent.

### 3.8 Duties and responsibilities of Police Officer :

A Police Officer, who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him or her, shall inform the victim-

Of her right to make an application for obtaining a relief by way of any orders under this Act;

- a) of the availability of medical services;
- b) of the availability of services of the Enforcement Officers;
- c) where applicable, of her right to free legal services under the Legal Aid

- d) Act, 2000 (Act 6 of 2000); of her right to file a complaint under any other existing law; and
- e) other duties and responsibilities prescribed by the government in this behalf.

### 3.9 Appointment of Enforcement Officer

- (1) For the purpose of this Act, the Government shall, by notification in the official gazette, appoint one or more Enforcement Officers in each upazila, thana, district or in a metropolitan area and shall also notify the area or areas within which an Enforcement Officer shall exercise the powers and functions conferred on him or her by or under this Act.
- (2) The terms and conditions of service of the Enforcement Officer shall be such as may be prescribed rule.

### 3.10 Duties and responsibilities of Enforcement Officer:

1. The Duties and Responsibilities of Enforcement Officer shall be as follows:-

- a) To assist the court in discharge of its functions under this Act;
  - b) to provide report to the court regarding domestic violence;
  - c) to forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction the domestic violence is alleged to have been committed;
  - d) to make an application to the Court, if the victim so desires, claiming relief for issuance of a protection order;
  - e) to take necessary steps so that the victim is provided legal aid under the Legal Aid Act 2000 (Act 6 of 2000), and make available the application form along with other facilities free of cost;
  - f) to maintain a list of all legal aid and human rights organization or psycho-social counseling services, shelter homes and medical facilities within the jurisdiction of the Court;
  - g) to refer the victim to a safe shelter home if the victim so requires and forward a copy of a report of having lodged the victim in a shelter home to the police station and the Court having jurisdiction in the area where the shelter home is situated;
  - h) to refer the victim for medical examination if required and forward a copy of the medical report to the police station and the Court having jurisdiction in the area where the domestic violence is alleged to have taken place;
  - i) to ensure that the order for compensation is executed; and
  - j) To perform such other duties as may be prescribed by rules.
- (1) The Enforcement Officer shall be under the supervision of the Court, and shall perform the duties and responsibilities imposed on him/her by the Government or by the Court under this Act.

### Analysis of protection against domestic violence:

As the Bangladesh Government is committed to prevent violence against women .It has taken multiple steps to ensure that the human rights of women are respected and protected .That's why legislation has been enacted to prevent violence and discrimination against women with a special emphasis to break away .

From tradition of treating women as property .Therefore, the constitution of Bangladesh protects women's rights to life and safety by including provision in article 27,28,31 and 32 .Accordingly ,the government of Bangladesh has undertaken series of steps ,and measures designed to reduce violence against women through amendment and enactment of the penal code 1860 ,the code of criminal procedure 1898 ,The Acid control Act 2000,The Acid crime prevention Act 2002 . The child marriage restraints Act 1929, the dowry Prohibition Act 1980, National Human Rights Act 2009, the prevention of repression of women and children Act 2000. The Cruelty to women Ordinance 1983 .All contain provision punishing those are dare to commit any sort of violence against women .Here ,it becomes pertinent to mention that the main focus of these acts is the enhancement of punishment rather than prevention strategies:

### 4.1 Special Courts:

There are Special Courts established under the Women and Children Oppression act to try the offences like:

- i. death and grievous hurt by erosive, poisonous or corrosive Substance,
- ii. Rape,
- iii. Dowry (death and grievous),
- iv. Trafficking and
- v. Kidnapping and abduction. The 2000 Act provides for setting up of special courts one in each district. So far ten of these have been set up. If required the Government can establish Special Courts in any other place by gazette notification. The Special Court consists of District and Session Judge and Additional District and Session Judge. The Government may, if necessary, appoint a District and Session Judge as Judge of the Special Court in addition to his/her normal duties.



#### **4.2 Special Tribunals:**

These courts are set up under a special status called the Special Powers Act 1974. In 1983 there was another ordinance as mentioned before, to control oppression and violence against women called "Cruelty to Women (Deterrent Punishment) Ordinance". Under this Ordinance offences like kidnapping, trafficking, dowry death and torture, rape etc. are being tried in special tribunal courts governed by the Special Powers Act 1974. These courts have the power to give death sentences, which should be confirmed by the High Court Division of the Supreme Court.

#### **4.3 Village Courts:**

The village courts are established under the Village Court Ordinance of 1976 to deal with few civil and criminal matters including specific complaints of polygamy, divorce, maintenance etc. For criminal matters this court deals with minor physical assault and some other minor criminal matters (MWCA and RED, 1997b). In case of criminal and civil issues, the elected UP Chairman as an Ex-officio chairman Judge of the village court conducts the trial like other any formal court. A village Court shall consist of a Chairman and two members to be nominated in the prescribed manner, by each of the parties to the dispute.

#### **4.4 Institutional Support Services**

##### **The National Council for Women's Development (NCWD):**

A 44 member National Council for Women's Development has been established in 1995, which is a national mechanism for women's advancement. It consists of Ministers and Secretaries from several line Ministries, public representatives and eminent individuals with the Prime Minister as Head of the Council. This council has undertaken the problem of violence as one of its areas of specific intervention. It is mandated to formulate laws and rules to establish women's legal rights, their development and the prevention of oppression against women (MWCA, 1997, MWCA-GOB, 1997). The responsibilities of NCWD are as follows:

- To ensure women's participation in socio-economic development work, the Council will formulate rules and regulations for the development work of different Ministries, divisions and other agencies and coordinate them;
- The council will formulate laws and regulations to ensure women's legal rights and development and to prevent of oppression against women;
- The Council will also take measures to preserve women's interests in all areas in which women are active and ensure their participation and advancement (MWCAGOB, 1997).

##### **Inter-ministerial Advisory Committee:**

The Government has also set up an Inter-ministerial Advisory Committee, chaired by the State Minister of Women and Children's Affairs for the Prevention of Repression against Women and Children. Secretaries of several ministries including Home, Law, Health, Information and Local Government are members. The Committee also includes chairperson of BJMS and several members of the Parliament as members. The main function of the committee is to review the cases of violence against women received through Department of Women's Affairs field offices, assess the cases that were disposed of and the reasons for those not being disposed of. The Advisory Committee meets every two months (Naripokkho, 1998a, *ibid.*, Jahan and Islam, 1997).

#### **4.5 NariNirjatanProtirodh Cell – Under the Department of Women and Children Affairs:**

The Department of Women and Children's Affairs under the Ministry of Women and Children Affairs runs a cell called "NariNirjatanProtirodh Cell" headed by a joint Secretary to monitor and deal with instances of violence against women at the National level. The cell also provides legal assistance to abused women through counseling services. Moreover, the cell collects information on cases of violence from the newspapers and refers them to the Deputy Commissioners for taking legal actions. The cell also receives direct applications from aggrieved persons (*ibid.*). Recently the Department of Women Affairs have published a book named "Women's Support Activities Project Report 1997" by compiling the data of last 1995-97 and other information.

#### **4.6 Committees at the District and Thana Level to prevent Violence Against women:**

To prevent violence against women at the district and thana level, committees have been set up by the Department of Women and Children's Affairs in every district and thana under the chairmanship of the Deputy Commissioner and the Thana Nirbahi Officer respectively and the Women's Affairs Officer is the Member Secretary. These committees receive various cases and complaints. Upon receiving complaints, the main responsibility of Thana committees is to take necessary steps to settle complaints through mediation provide counseling and assist with legal proceedings. The Thana committees refer the cases to the district committee which cannot be resolved by it and by district committee to the Director, Women's Affairs Division. Each committee within its jurisdiction adopts measures to resist violence, strives to convert anti-dowry campaigns into

a national movement and collect statistics on the instances of violence. The Deputy Commissioner is responsible to furnish monthly reports on violence in the district including the thanas to the Women's Affairs Division, which will in turn report to the council.

## **International instrument respecting women rights against domestic violence**

### **5.1 UN Treaties on Domestic Violence**

Domestic violence is recognized in international law as a violation of human rights. Although early international treaties only provided protection against domestic violence implicitly, in the 1990's domestic violence began to receive more explicit attention with the passage of the General Comment No. 19 by the Committee on the Elimination of Discrimination Against Women (1992) and the Declaration of Elimination of Violence Against Women (1993). The past two decades have also seen numerous resolutions from the UN General Assembly on violence against women, including one that specifically addressed domestic violence. This section will review the international treaties and resolutions impacting domestic violence, with a focus on three primary ways that domestic violence violates human rights: as a violation of basic freedoms such as the right to life and security of person, as a violation of the right to equality, and as a violation of the prohibition against torture.

### **5.2 The Right to Life, Liberty and Security of Person**

Although early human rights law enacted by the United Nations did not specially mention violence against women, it is still relevant to domestic violence. In 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly.[1] Although this document was not originally binding on member states, it has received such wide acceptance as an outline of foundational human rights principles that it has been recognized as a binding expression of customary law and an authoritative

### **5.3 The Right to Equality and Freedom from Discrimination**

Like the earlier human rights instruments, the main text of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), entered into force in 1981, did not explicitly include language on violence against women or domestic violence. However, CEDAW's primary focus, in which State Parties agree to "condemn discrimination against women in all its forms," was interpreted as covering violence against women. As described by RashidaManjoo, the current UN Special Rapporteur on Violence against Women, "States must acknowledge that violence against women is not the root problem, but that violence occurs because other forms of discrimination are allowed to flourish" This view of violence against women as the most extreme manifestation on a continuum of discrimination led the Committee on the Elimination of All Forms of Discrimination against Women, the monitoring body of CEDAW, to adopt General Recommendation Number 19. This recommendation explicitly included gender-based violence as a form of discrimination covered by CEDAW, saying:

The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

Recommendation 19 also specifically addressed domestic violence as a form of discrimination against women, stating:

Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

In 1999, the General Assembly adopted the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women. The Optional Protocol created two procedures to monitor compliance with CEDAW. First, it established a communications procedure for individual women, or groups of women, to submit claims of violations of CEDAW after exhausting domestic remedies. Second, the Optional Protocol created an inquiry procedure which enables the Committee to investigate situations of "grave or systematic violations" of women's rights. The decisions for such communications and inquiries are published on the UN Women website. Both procedures can only be used in cases where the State is a party to the Convention and the Optional Protocol. Currently 104 countries are parties to the Optional Protocol.

#### **5.4 The Right to Be Free from Torture**

CEDAW Recommendation 19 also states that violence against women is a violation of the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, as protected by UDHR Article 5 and ICCPR Article 7. In recent years, the view has been affirmed by the Committee Against Torture, which is the monitoring body of the Convention Against Torture (CAT). The Convention Against Torture, which has been ratified by 151 states, strictly prohibits torture of any kind, with torture defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted” for purposes such as obtaining information, punishment, intimidation or coercion, or any reason based on discrimination. Although such acts generally must be inflicted by a public official, the State can also be responsible if it acquiesces to the act. In clarifying State responsibility for torture by non-state actors, the Committee specifically cited “States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking” as a violation of CAT. In reviewing country compliance with CAT, the Committee and the Special Reporter on Torture routinely request information on the prevalence of domestic violence in a country. In particular, concern about torture in the form of domestic violence has been raised in recent Committee review for Bosnia and Herzegovina, Turkey, Azerbaijan, Moldova, and many others.

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#### **Development of women rights in Bangladesh**

Bangladesh is a parliament democracy, with broad powers exercised by the Prime Minister Sheikh Hasina, leader of the Awami League, was Prime Minister until parliament’s term of office expired in mid-July. A caretaker government was installed in accordance with constitution procedures. Bangladesh is very poor country, occasionally beset by natural disasters that further hamper development the economic growth rate during the last fiscal year was approximately 6 percent. Slightly more than half of all children are chronically malnourished. Approximately 65 percent of the work force is involved in agriculture, which accounts for one-fourth of the gross domestic product. According to Sultana Kamal, a former adviser to the government and now head of the Centre for Law and Arbitration, a legal aid non-governmental organization (NGO), the NWDP failed to mention anything about the UN Convention on the Elimination of all Forms of Discrimination against Women, the uniform family code, or the equal right of women to inherit property. Women in different religions get different shares of properties – equal in some religions and less in others. Our demand was to formulate a uniform family code giving women equal rights. The issue was not made clear in the policies.

#### **6.1 Participation in Political Parties:**

The actual number of women members in different political parties,. Although there are only a few women in leadership positions, their numbers have increased over the last two decades. There is limited female involvement in party hierarchical structures.. Once placed in the position of leadership, they were able to generate their own dynamics and momentum to lead their parties through difficult times. . In occupying the role of a leader in public life, they have perhaps contributed to liberalizing values in a predominantly Muslim culture where traditionally men had exclusive prerogative in politics. They played a crucial role toward democratization and brought about a certain degree of continuity into the political process. They have a strong potential to be positive role models for women of all ages in Bangladesh, provided they demonstrate a commitment to gender equity by involving more women in their parties and in government.

#### **6.2 Electoral Process:**

Although women do not hold key positions during the electoral process, they render significant contributions during election campaigns by taking part in organizing public meetings, processions, and rallies. Women leaders and party workers engage in the task of mobilizing and canvassing voters, particularly women, for their party candidates. By making special arrangements such as separate election booths for women, and females presiding as polling officers, the turnout rate of women voters has increased. During the general elections of 1991 and 1996, and local level elections in 1993 and 1997, the level of enthusiasm among women to exercise their voting rights was very encouraging. Because of the special arrangements and security measures taken by the Government, there were few disturbances and the presence of women in polling centers was significant.

### **6.3 Participation in Local Government:**

Women were first elected to local bodies in 1973. The Union Parish ad Election of 1997 is a milestone in the history of political empowerment of women in Bangladesh. The Government of Bangladesh enacted a law for direct elections to reserve seats for women in local level elections. In 1997 through an Act, the Government reserved three seats for women in the union parish ad where women members are elected from each of the three respective wards. Apart from the reserved seats women can also contest for any of the general seats. Previously, the process of selection of the women representatives was on the basis of nominations and/or indirect election. Around 12,828 women were elected as members in the 1997 local level elections. A total of 20 and 110 women were elected as chairpersons and members, respectively, for general seats. The Government has already issued different executive orders to ensure women members' participation in various decision-making committees.

### **6.4 Participation in Cabinet and Public Services:**

Although two women Prime Ministers have headed the Government during the last six years and the leaders of the opposition in Parliament were also women, this does not reflect the gender composition of participation and decision making at the highest policy level. At the ministerial level, women's representation has never risen above 3 percent.

Before 1996, women were never given full responsibility over any important ministry. Apart from being Prime Minister, others were state or deputy ministers responsible for insignificant ministries such as Culture, Social Welfare, and Women. Currently one woman Minister, who had become a Member of Parliament in 1991 and 1996 through direct elections, is responsible for a ministry, i.e., Agriculture. Another woman minister is responsible for the Ministry of Forest and Environment.

### **6.5 Women Rights Endured By the Constitution of Bangladesh**

#### **Constitutional status of women:**

Women have some rights recognized by the Bangladesh constitution.

#### **(i) Participation of women in national Life:**

Article: 10

Steps shall be taken to ensure participation of women in all sphere of national Life.

#### **(ii) Social security to widows:**

Article: 15(d):

Under the heading of Fundamental Principles of State Policy, states that where the state accepts a fundamental responsibility towards raising the standard of living of the people, it specifically undertakes responsibility for providing social security to inter alia, widows.

#### **(iii) Equal opportunity for all citizens:**

Article: 19(1). Sub-section 2

Equal opportunity for all citizens was ensured by *Article 19(1). Sub-section 2* of the same Article required the state to take effective measures to remove socio-economic discrimination.

#### **(iv) Free and compulsory Education:**

Article: 17

*The State shall adopt effective measures for the purpose of:*

- a) Establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law;
- b) Relating education to the needs of society and producing properly trained and motivated citizen's to serve those needs;
- c) Removing illiteracy within such time as may be determined by law.

#### **(v) Public health and morality:**

Article: 18

- 1) The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health.
- 2) The State shall adopt effective measures to prevent prostitution and gambling.

The Third section of the Bangladesh Constitution contained provisions for fundamental rights. Rights and opportunities for women (or rights relevant to them) are the following:

**Article 27:** Equality of all citizens before law and equal protection under law.

**Article 28(1):** No discrimination on grounds only of religion, race, caste, sex or place of birth.

**Article 28(2):** Equal opportunity for men and women in all spheres of state and public life.

**Article 28(3):** No discrimination on grounds only of religion race, caste, sex or place of birth in providing access to any place of public entertainment or resort, or admission to any educational institution.

**Article 29(1):** equal opportunity for all citizens in respect of employment or office in the service of the Republic.  
**Article 65(3):** Women are free to contest election from any constituency. But originally 15 seats were reserved for women; the number has been raised to 30 and thereafter 45 in 2004.

**(vi) Equality before law:**

Article: 27

All citizens are equal before law and are entitled to equal protection of law.

**(vii) Discrimination on grounds of religion, etc.**

Article: 28

- 1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.
- 2) Women shall have equal rights with men in all spheres of the State and of public life.
- 3) No citizen shall on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.
- 4) Nothing in this article shall prevent the State from making special provision in favor of women or children or for the advancement of any backward section of Citizens.

**(viii) Inequality of opportunity in public employment:**

Article: 29

- 1) There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.
- 2) No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic.
- 3) Nothing in this article shall prevent the State from:
  - a) Making special provision in favor of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic.
  - b) Giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination.
  - c) Reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.

**(ix) Establishment of Parliament:**

Article: 65

Until the dissolution of Parliament occurring next after the expiration of the period of ten years beginning from the date of the first meeting of the Parliament next after the Parliament in existence at the time of commencement of the Constitution (Tenth Amendment) Act, 1990, there shall be reserved thirty seats exclusively for women members, who shall be elected according to law by the members aforesaid: Provided that nothing in this clause shall prevent a woman from being elected to any of the seats provided for in clause (2)].

The Constitution of Bangladesh made provision for reserved seats for women in the context of women's backwardness and disadvantageous situation. Originally 15 for ten years as per the constitution of 1972, an amendment in 1978 increased this number of women's reserved seats to 30, and extended the period of reservation to fifteen years. The system was however, interrupted in December 1987. Consequently, there was no provision for reserved women's seats in the 1988 parliamentary election. But, pressed by the strident demands of some women's organizations, the system was reinstated through the tenth Amendment in 1990 reserving 30 seats for 10 years from the date of the first meeting of the next parliament. This limit has expired in 2000. Thereafter, in 14th Amendment of the constitution in 2004 the provision of women's seats in parliament increase up to 45 seats.

The Constitution of Bangladesh gives equal right to women to enter any employment or office in the civil service. The Constitution not only ensures equality of sexes but also acknowledges the necessity of remedying the existing unequal representation by reserving certain percentage of civil service posts for the women.

The constitution prohibits discrimination against women on grounds of their religion, caste, or place of birth. The constitution incorporates the principle of special representation of women in local self-governing bodies. In line with this provision, three women members are elected to each of the Union Councils and Municipal Councils of the country.

The constitution of the People's Republic of Bangladesh is the ultimate source of the fundamental rights enjoyed by men and women. However, the day to day life of the people is governed by two sets of laws: civil and personal. The civil laws cover the rights of women under the constitution; the personal laws cover the family life.

The Constitution of Bangladesh guarantees equal rights of men and women in all spheres of the state and public life enabling the state to take affirmative actions towards this end. *Article 19* of the Constitution

recognizes political rights of women by clearly enunciating that no discrimination on the basis of sex shall be permitted.

*Article 27* categorically states that all citizens are equal before the law and are entitled to equal protection by the law. *Article 28* permits the state to make 'special provisions in favor of women or children or for the advancement of any backward section of citizens'.

These provisions in the constitution are believed to have provided adequate guarantee for women's rights in Bangladesh.

### **6.6 Women's Rights under the Family Laws:**

The General law consists of civil and criminal laws, which are governed respectively by the code of civil procedure of 1908, the penal code of 1860 and the criminal procedure code of 1898. The personal or family laws under the general law but mostly are governed by the civil law: the matters which directly affect women such as marriage, divorce, dower, maintenance, guardianship, custody, inheritance of conjugal rights are separately governed by each religious community "religious personal" system. For example, take marriage. Muslim parties, says, Pereira, are regulated by, among others, the Muslim Family Ordinance 1961 or the Muslim Marriages and Divorce (Registration) Act 1974. The existence of separate laws for each community means that the kind of justice meted out to a woman is determined by the religious community she belongs to. Most of these laws are antiquated and originated from patriarchal mindsets and therefore do little to change the status of women from helpless, inferior citizens.

### **Reported case study**

#### **Case Reference: 1**

*Md. khutubuddinjaigirdar. Nurjahan begum 25 DLR (1973)21*

#### **Facts of the case:**

The case of the wife that her life being made miserable by the cruelty of her husband, she offered to dissolve the marriage. The husband accepted the offer on condition that she should not claim dower for him. The husband signed a divorce paper and it was registered accordingly. After some days, the husband filed a suit claiming the restitution of conjugal rights and seeking an injunction. The court ordered the wife to restrain her from remarrying at least the disposal of the suit. Ultimately the suit was decreed in husband's favor. The wife appealed and the appeal was dismissed. But the Appellate court directed her not to re-marry until a valid divorce. Then, the wife exercised her right of Talaq-e-tawfuz and sent a notice to the Arbitration Council. The husband opposed the move and claimed that he was forced to divorce his wife under duress and that the alleged exercise of Talaq-e-tawfuz was a move imposed by the father of his wife upon her. Actually her father was trying to give her in marriage elsewhere. At the stage, Nurjahan Begum filed a suit in the court of subordinate judge claiming a declaration that her marriage with Kutubuddinjahagidar has been dissolved as a result of her exercise of delegated divorce. Alternative prayer on her part was if the court finds the marriage still subsisting, then a decree of dissolution of marriage should be granted. The trial court rejected her prayer and held that it was barred by res-judicata. Against that decision, the wife appealed to the court of the Additional District Judge. The court of District Judge, through reserved findings of the trial court on the issues of Delegated divorce and res-judicata, allowed a decree for the dissolution of marriage (khula) in exercise of the power of a Quazi in terminating the marriage bond between parties. Against the judgment the husband appealed to the High Court Division.

#### **Submission of the parties:**

Mr. Abbussalam appearing on behalf of the appealed Kutubuddinjahagidar argued that while the wife herself did not pray for khula the court of Additional Judge was not justified in allowing dissolution in the form of Khula. Mr. M. H. Khandker appearing on behalf of respondent, on the other hand, argued that since the wife has made a clear case of cruelty, the marriage could be dissolved under section 2(viii)(a) of dissolution of Muslim Act 1939.

#### **Decision of the Court:**

The court comprising AM Sayem J. Bhattacharya J. (judgment by DC Bhattacharya) accepted the contention of the wife. Relying on *Khurshid Bibi v. Baboo Muhammad Amin* 19 DLR 9 (SC) 56=PLD 1967(SC) 57, the court held:

In a claim for khula the wife's claim of divorce must be based on the wife's willingness to restore the benefits received by her in consideration of the marriage. No such claim of right of khula was averred any part of the present plaint nor was there any mention of the wife's willingness to give back the benefits received by her from the husband. Rather at one stage of her deposition, she asserted her right to dower... it is clear from the recitals in the plaint that the wife was claiming the right of divorce, in her alternative prayer, on the ground of cruelty of conduct.

#### **The court's conclusion:**

Hence the court came to the conclusion that in the said circumstances it was the clear duty of the said court not to abandon the plaintiff's own case and make out a new case for her in its stead. The court rather preferred to

sustain the decree of dissolution on the force of the dissolution of Marriage Act 1939:” on the findings (regarding cruelty etc.) Arrived at, the decree for dissolution of marriage is sustainable on the basis of the provision of the dissolution of Muslim Marriage Act.

**Case Reference: 2**

**Hosne Ara Begum v. Alhaj Md Rezaul Karim 43 DLR (1995) 543**

**Fact of the Case:**

The wife was allegedly compelled to live in her father's house for consecutive 14 months. She filed a family suit for recovery of her maintenance of tk. 12,000/(1,000/-each month), maintenance of her child of tk. 28,000/- (14,000/-each), Tk. 3,000/- for third child, Tk. 10,000/-, medical expenses of Tk. 15,000/ for the clothing of her and her child, tk. 60,000/- of her unpaid dower and Tk. 80,000/- of her misappropriated ornaments. The suit was against her husband, father-in-law and sister-in-law. On the contrary the husband also filed a suit for restitution of conjugal rights. After hearing both the suits analogously the court decreed partially in favor of the wife and other parts of the claim were dismissed on the ground of the courts having no jurisdiction to allow the same case. The family court accepted the contention of the wife that she was tortured mentally and physically in her in-laws and therefore she had a reasonable apprehension that she might be killed had she returned there. The court, dismissed the suit of restitution of conjugal rights by the husband. The court did not find any proof that the husband went to his in-laws house to bring his wife back and that he had already paid the differed dower of his wife.

On the appeal of the husband, the court of appeal below (Additional District judge, Chittagong) set aside the decree and remanded it back. He denied that he ever ill-treated her or made her life miserable by cruel conduct. He denied that he had any intimacy or illicit connection with his cousin sister. It was further alleged by the defendant that the plaintiff was taken to her father's house. But since then she had been detained there. It was further alleged that the allegation of plaintiff's attaining puberty in Baisakh, was untrue and that the story of exercising the option of puberty also was false.

**The Lower Courts:**

The trial court accepted the defense and dismissed the suit. On appeal, the learned Subordinate Judge reversed that decision and decreed the suit holding that the plaintiff has been neglected. Then defendant had failed to provide her with maintenance for two years immediately preceding's the suit. He had also failed to perform his other marital obligations towards her. Against that decision this second appeal is lodged by the husband pashar Uddin.

Arguments of the parties: Advocate Mr. Syed Amjad Hossain appearing for the appellant husband argued that the right conferred on a married Muslim women to get decree for dissolution of her marriage on the ground of the husband's neglect or failure to provide maintenance for a period of two years is only available when the wife has attained puberty and not otherwise. It was also argued that the Dissolution of Muslim Marriages Act had not in any way abrogated it.

Decision of the Court: Guha J. rejected both arguments of Mr. Syed Amjad Hossain:

*Firstly*, in section 29(ii) of the Act it is not enacted that the ground is available to construe the statutory provisions by engrafting therein words to the effect that such women must have attained puberty, and especially when the language used is plain unambiguous.

*Secondly*, The act is considered is a consolidating and codifying statute so far as rights of women under Muslim law to get a decree for dissolution of her marriage is concerned.

**The end result:**

Apart from this age rule based arguments, the appellant also claimed that the allegation of non-maintenance for two years unsubstantial.

**But the court found:**

It is not denied here that the plaintiff is a Muslim married woman and that she had not been maintained by the defendant husband for more than two years and that is the findings of the lower appellate court; and so the plaintiff is entitled to succeed on the ground mentioned in section 2(ii) of the Dissolution of Muslim Marriages Act (VIII of 1939).

**Case Reference: 3**

**Shafiqul Islam v. State DLR 1998(HCD)700 Facts of the case:**

Zakiakhatun was married to a Navy Officer Shafiqul Islam. After the marriage Shafiqul Islam and others from his family started exerting pressure upon Zakia to bring dowry from her father's house. Zakia failing to comply with the demands, they started torturing her mentally. At one point she forced to leave for her father's house and since then shafiqulislam neither brought her back nor bothered to take care of her. After some days she received a notice of divorce and then Zakiakhatun filed a suit for restitution of conjugal rights in the family Court. At one point of the proceeding, the family Court adjourned the hearing to allow the parties to find out whether any reconciliation was possible. Then in the court premises, the husband claimed tk. 3,00,000/- for taking her back. Hence the wife filed a suit u/s of the Dowry prohibition Act. The husband then filed a criminal revision to

the court of sessions judge u/s 439A of the crpc, against the order of framing of charge in the case under Dowry prohibition Act .The learned session judge rejected the partition .Then the husband moved to the High court Division with a section 561A crpc petition for the quashment of the proceeding.

**Arguments of the parties:**

Mr. Advocate AmirulChowdhury appearing for the husband argued that even if the allegation of demand of Tk.3,00,000/- was true ,it could not come u/s 4 of the Dowry Prohibition Act 1980 because in the meantime the divorce was pronounced by the husband and 90 days reconciliation period was passed .There being no marital relationship ,the charge of dowry could not entertained at all .

**Decision of the court:**

While the argument of Mr. AmirullahChowdhury was not disputed ,the court comprising AKM Sadek J and K M Hasan J found the confusion regarding the date exactly when the notice was served .Moreover the court opinioned that since there was intervention by a civil court , there could not be a legal divorce at the time of the demand of tk. 3 lacs in the court premises .

Hence the court refused to exercise its 561A power to quash the suit. Explaining the purpose and requirement of notice under section 7of the Muslim family laws Ordinance, a Division Bench of High Court Division maintains that:

- I. Both under Muslim Personal Laws and the Muslim Family Laws Ordinance no particular mode for
- II. Pronouncement of divorce has been prescribed. a Muslim can pronounce a divorce either orally or in writing .The object of section is to prevent hasty dissolution of talaq pronounced by the husband unilaterally ,without an attempt to being made to bring out a reconciliation between the parties .It precludes a divorce or talaq from being effective for a period of 90days from the date of receipt of notice by the chairman .Consequently ,it could be said that the marital status of the parties will not in any way change during the period .The 90days reconciliation period is to from the date of receipt of notice by the chairman and not from the date when it was written .

**Findings and Recommendations**

If violence against women is caused by unequal poor relations between men and women.An important point to remember that unequal power relations between men and women are constantly adapting and responding to social, economic and political factors. There was long movement by civil society to enact a specific legislation on domestic violence .but ,there is no Enforcement in our society .All violence against women should be treated as offence and oppressed women will get legal protection .The women who are victims of Domestic violence were frightened to take legal action .The state has to ensure legal protection those who take legal action .Some recommendations presented in this study report aim to move us towards a desired world in which :

**The Recommendation should be Included:**

Recommendation at legal level domestic violence against Women:

- 1) Social awareness should be conducted for both women and men .
- 2) There should be enough educational program in all societies and cultures ,both women ,men and children.
- 3)Governments should ratify the relevant human rights treaties and conventions and translate these into national laws so that there is an appropriate framework to support VAW-actions.
- 3) Law enforcement and prosecution are necessary and prosecutions are necessary in order for the judicial system to combat violence against women (VAW).
- 4) Discriminatory laws for women should be received and reformed.
- 5) Advocacy is needed for a specific law on VAW.
- 6) Legal procedure should be simplified to make them accessible for illiterate women and Changing the attitude of male towards female .
- 7) Training and sensitization is needed at all levels of the judicial system. The state should ensure to provide free legal aid for poor women. Religious obligations should be maintained by all .
- 8) There are should be enough opportunities of employments and participation in political parties along with security and safety for women .More funds should be allocated to women's development in the country .
- 9) The health care department of government or ministry of health should develop a policy on the role of health care sector tacking violence against women (VAW).
- 10)Implement effective measures to guarantee to all Bangladeshis ,without distinction based on race ,colour ,descent ,or national or ethnic origin ,the right to security of person and protection by the state against violence or bodily harm (CERD)

**Conclusions**

The above discussion on violence against women in Bangladesh, particularly domestic violence, gives us a brief understanding of the problem. It is found that different types of violence against women are increasing. Recently eve-teasing has become a serious social problem in the country. In order to arrest this increasing trend of



violence against women, proper intervention strategies need to be undertaken. Existing laws regarding protection of women's rights should be enforced effectively. Law enforcing agencies need to handle the situation with sincerity, honesty and with strong Commitment without any hesitation and biasness. Awareness and capacity building among the women are also important. Under the existing social values and norms, males' attitude and behavior towards females need to be changed as well. In this regard relevant agencies of the Government, NGOs, researchers, lawyers, activists and media need to come forward and work together for advocacy and campaign against violence on women in Bangladesh. We know the term "*ubi jus ibi remedium*" that means where there is a right there is a remedy. So, we can say that every woman has a specific right under specific law of the state. In order to implement this law we had to be more conscious. Empowerment must be coupled with social transformation to address the systemic and structural causes of inequity and discrimination, which most often lead to violence against women.

#### **List of Abbreviation:**

ASK –Ain o Salish Kendra  
BMP-Bangladesh Mohila Parishad  
CEDAW-Convention on the elimination against women  
DV-Domestic violence  
ICCPR-International Convention on the civil and political rights  
ICESCR-International Convention on the Economic, Social and Cultural Rights  
NGO-Non-governmental Organization  
UDHR-Universal Declaration of Human Rights  
UN-United Nation  
VAW-Violence against Women  
WHO-World Health Organisation

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