

## **Criminalization of Domestic Violence under International Human Rights Instruments: A Bangladesh Perspective**

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### **Introduction**

Domestic violence is also known in many alternative names, such as family violence, domestic abuse, spousal abuse or intimate partner violence, can be broadly defined as a pattern of abusive behaviors by one or both partners in an intimate relationship such as marriage, dating, family friends or cohabitation.<sup>1</sup> Domestic violence usually involves the infliction of bodily injury accompanied by verbal threats and harassment, emotional abuse or the destruction of property as means of coercion, control, revenge or punishment, on a person whom the abuser is involved in an intimate relationship. It has many forms and all forms of domestic violence have one purpose i.e. to gain and maintain control over the victim. Domestic violence is globally recognized as a social problem. It is present in every country; the only variation is the pattern and trends that exists in different countries and regions. Violence in the home or domestic sphere is socially very sensitive issue and more so in our country where we have special feeling for it that is 'Family Honour'.<sup>2</sup> Home is a place where individuals seek love, safety, security and shelter. But evidence shows that it is a place that imperils lives and breeds some of the most drastic forms of violence. Domestic violence in most cases violence perpetrated

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<sup>1</sup> [http://en.Wikipedia.org/wiki/Domestic\\_Violence](http://en.Wikipedia.org/wiki/Domestic_Violence)

<sup>2</sup> D.Pulla Rao, Women Rights Vs Violence Against Women in India: An Analysis, Vol. 2(2), 2006, at p103.

by men against women, although women can also be violent, but their actions account for a very small percentage of domestic violence.<sup>3</sup> It is also confirmed by several studies that women's violence towards intimate male partner is often in self-defense, although the reverse is not totally absent.

Domestic violence primarily affects women and diminishes women's dignity and sense of self-worth. In recent years international human rights instruments and institutions acknowledged domestic violence as a violation of human rights and a major issue for women's human rights. During the past 30 years, the development of social science and criminal justice fields, domestic violence is not only viewed as a social problem, but a criminal justice problem. The criminalization of domestic violence refers to efforts to address the issue through the passage and enforcement of criminal and civil laws.<sup>4</sup> Through criminalization of domestic violence many states started to give emphasis on this problem. In Bangladesh domestic violence against women and children is a serious problem. Although children suffer from such harm this article mainly attempts to focus on women who suffers extreme forms of domestic violence and scope of criminal justice interventions based on international human rights instruments and national legislation to combat violence against them. In this paper I have been reviewed a number of publications and other available reports on domestic violence in Bangladesh as deemed appropriate.

## **2. Definition of Domestic Violence**

Historically domestic violence was treated before as a private family matter that need not involve the government or criminal justice intervention. In the 1960's, the society began giving attention to violence within families. What historically was a

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<sup>3</sup> Domestic Violence Against women And Girls, 6 Innocenti Digest(2000) at p.3

<sup>4</sup> Fran S. Danis, The Criminalization of Domestic Violence:What social Workers Need to Know; Social Work, Vol. 48(2), 2003, at p237.

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private matter became an appropriate target for state intervention by the women's movement of the 1970's, particularly within feminism and women's rights, as concern about wives being beaten by their husbands.<sup>5</sup> Now domestic violence against women is viewed as a violation of women's human rights. The term 'Domestic violence' includes violence by an intimate partner and other family members. Domestic violence is usually worded broadly to encompass a pattern of behaviors used by people who abuse their intimate partners, including physical, sexual and emotional abuse. However, from the criminal justice perspective, domestic abuse is more narrowly defined as "an act by a member of a family or household against another member that is intended to result in physical harm, bodily injury, assault or threat that reasonably places the member in fear of imminent physical harm".<sup>6</sup> The U.S Office on Violence Against Women defines domestic violence as a "pattern of abusive behavior in any relationship that is used by one party to gain or maintain power and control over another intimate partner". One of the most progressive definitions of domestic violence appears in the South African Domestic Violence Act of 1998. The Act defines domestic violence as:

(a) physical abuse; (b) sexual abuse; (c) emotional, verbal and psychological abuse; (d) economic abuse; (e) intimidation; (f) harassment; (g) stalking; (h) damage to property; (i) entry into the complainants residence without consent, where the parties do not share the same residence; or (j) any other controlling or abusive behavior towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant".<sup>7</sup>

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<sup>5</sup> [http://en.Wikipedia.org/wiki/Domestic\\_Violence](http://en.Wikipedia.org/wiki/Domestic_Violence)

<sup>6</sup> Texas Department of Public Safety, 1998, p 47

<sup>7</sup> Bonita C. Meyersfeld, *Reconceptualizing Domestic Violence in International Law*, Albany Law Review, Vol. 67, p378 available at: <http://www.Albanylawreview.org/archives/67/2pdf>.

In Bangladesh domestic violence has been defined by the Domestic Violence (Prevention and Protection) Act, 2010,<sup>8</sup> as physical torture, mental torture, and sexual torture and economic loss by any member of the family who has domestic relationship with the victim.

### 3. Causes of Domestic Violence

Domestic violence is in most cases perpetrated by men against women. There is no single factor to occur violence against women. Various factors are account for it, all of them manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women.<sup>9</sup> In Bangladesh following factors are contributing to domestic violence:

**3.1. Social and Cultural Reason:** Social and cultural mechanisms by which women are forced into a subordinate position compared with men legitimize violence. In many cases domestic violence against women are often tolerated because of the lower status of women in the family, the workplace, the community and the society. The implicit indifference of society in matters of domestic violence perpetuates the notion that domestic violence and male domination in the family is acceptable. While men take advantage of this right to exert authority, women's tolerance of domestic violence further entrenches domestic violence into the fabric of daily life in Bangladesh. The social context in which Bangladeshi women are raised, as part of a patriarchal society, are from an early age, taught to be submissive, tolerant, and self-sacrificing. Furthermore, the social belief that a woman's place is in her husband's home is also deeply rooted in women's self-view and self-worth. These social values make it extremely difficult for

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<sup>8</sup> Unofficial English Version of “Paribarik Shahingshta( Pratirodh O Shorokha) Ain, 2010.

<sup>9</sup> Stated in the UN Declaration on Elimination of Violence Against Women

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women to assert themselves and speak out against domestic violence. In cases of marital and family conflict, society generally places the blame on the wife and holds her exclusively responsible for failing to build a strong foundation in the family.<sup>10</sup> Moreover, the religious traditions also sanction violence against women. Consequently, women think that it is right for their men to resort to some degree of violence and in the name of family honor they wrap the violence and tolerate it which increases domestic violence against women.

**3.2. Economic Condition:** Economic conditions subordinate women. In Bangladesh, where women who are most dependent on their husband for economic well being rarely find fewer options and fewer resources as alternatives without staying with their husbands. In some cases a woman who returns to her paternal home and find shelter with her parents or families but in most cases, such woman is looked down upon by the family and society or lack their support. Usually these obstacles which woman victims of domestic violence facing discourage them to leave their perpetrators but to tolerate which hides domestic violence and make the best of their tragic situation.

**3.3. Stress:** Stresses sometimes cause domestic violence against women. In Bangladesh, most of the people are poor and stresses are increased within these people due to poverty and other such problems that beget violence between the spouses. Since husband fears losing honor and respect from his wife exert violence on her to maintain control.

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<sup>10</sup> Violence against women : A statistical overview, challenges and gaps in data collection and methodology and approaches for overcoming them, presented at Expert Group Meeting, Organised by:UN Division for the Advancement of Women, 11-14 April, 2005, Geneva ,Switzerland. Expert paper prepared by:Sharmeen A. Farouk, Bangladesh National Women Lawyers Association (BNWLA)

**3.4. Lack of Legal Remedy:** Lack of proper legal protection is responsible for increasing the rate of domestic violence against women. Investigations by Human Rights Watch have found that in case of domestic violence, law enforcement officials frequently reinforce the batterers' attempts to control and demean their victims, even though several countries have laws that condemn domestic violence. However, when committed against a woman in an intimate relationship, these attacks are more often tolerated as the norms than prosecuted as crimes. In many places, those who commit domestic violence are prosecuted less vigorously and punished more leniently than perpetrators of similarly violent crimes against strangers.<sup>11</sup>

**3.5. Patriarchal social values:** In Bangladesh, where patriarchal social values are prevalent, from childhood boys grown up on the belief that they are superior to girls and they are also treated differently. Witnessing domestic violence and experiencing this during childhood put children at risk. Moreover, these children learnt violence as a means of resolving conflict, maintaining control and asserting manhood on woman.

#### **4. Effects of Domestic Violence**

Domestic violence against women leads some fatal consequences. These are:

##### **4.1. Denial of Human Rights**

Perhaps the first and foremost consequence of domestic violence against women is the denial of the fundamental human rights that are enshrined in different international human rights instruments such as, Universal Declaration of Human Rights(UDHR), the

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<sup>11</sup> The Human Rights Watch Global Report on Women's Human Rights, New York, 1995.

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Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, and The United Nations Convention on the Elimination of Violence Against Women, 1993 which focused on violence against women. Except these instruments the Constitution of Bangladesh also guarantees some human rights provisions as fundamental rights.

### **4.2. Physical and mental consequences**

Women who are survived by domestic violence suffer serious physical and mental health consequences. The word 'survive' is used to mean that in many cases victimized women embrace unusual death for domestic violence. Physical health consequences include many forms such as, unwanted pregnancy, miscarriage, gynecological problems and permanent disabilities also. On the other hand, amongst mental consequences depression, stresses, fear, anxiety, low self-esteem are seen. The most commonly referenced mental effect of domestic violence is Post-Traumatic Stress Disorder (PTSD). PTSD is characterized by flashbacks, intrusive images, exaggerated startle response, nightmares and avoidance of triggers that are associated with the abuse.<sup>12</sup> It is needed to mention that sometimes these physical and mental tortures lead the victims to commit suicide.

### **4.3. Financial Effects**

Since women are mostly dependent for their financial resources on their male inmates. In many cases, victims of domestic violence suffer severe financial crisis when they leave their perpetrator. Often such kind of women do not get any assistance from their paternal family or from the society to find any graceful

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<sup>12</sup> Supra Note 1.

employment according to her education, skill etc. to support herself or children. Sometimes lack of financial resources lead the victims of domestic violence to shelter less and poverty. Economic independence of women can sometimes help to some extent escape from such abusive relationship.

#### **4. 4. Impact on Children**

Domestic violence has great impact on children. Children who have witnessed domestic violence or have been abused suffer serious physical or mental problems. Such type of children learns violence as a means of resolving conflict and exerts manhood to maintain power.

#### **5. Need to Criminalizing Domestic Violence**

It is needed to mention that women are often in great danger in the place where they are likely to be safest i.e. within their families. In most cases, those who are victimized by domestic violence not only suffer physically and mentally but their human rights also denied. There is an argument for or against criminalization of domestic violence. We like to believe that families are the foundations on which our society is built. However, behind the closed doors, many families are torn apart by violence. The privacy that protects the family can also hide the pain, suffering and terror of violence against women. If we look from the perspective of the proponents of the criminal justice approach that point to the symbolic power of the law and argue that arrest, prosecution and conviction, with punishment is a process that carries the clear condemnation of society for the conduct of the abuser and acknowledges his personal responsibility for the activity. Research conducted by the Minneapolis Police Department in the US,<sup>13</sup> has shown that 19 percent of those involved in mediation and 24

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<sup>13</sup> The Minneapolis Domestic Violence Experiment.

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percent of those ordered to leave their matrimonial homes repeated the assault, but only 10 percent of those who were arrested indulged in further violence.<sup>14</sup> So there is an increasing belief that special laws should be enacted, having special remedies and procedures. But the problem that arises with regard to legislation is to allow prosecution of men who beat their spouses even if the latter, under pressure, want to withdraw their claims.<sup>15</sup>

It is often argued that criminal law usually provides an unsatisfactory remedy for domestic violence. Very often, police leave the scene of a domestic dispute without intervening and therefore leaving the battered woman in a dangerous and sometimes, even fatal situation. The abused women always do not want their husbands to be arrested, prosecuted and thus thrown into jail. The reason is that in case the husbands are imprisoned, the wives, who are usually financially dependant on their husbands, would face a severely diminished standard of living or even an economic life at or below the official threshold of poverty. Also they are unwilling to cooperate with the police because of feelings of disloyalty or because prosecution and possible conviction will ruin any chance of reconciliation. The victims are often less concerned with punishment and deterrence imposed by the criminal law. Instead they seek to use the law for other goals, for instance, to get counseling help for their husbands, to guarantee their own safety, to survive economically, to protect their children, et cetera. They may also see the threat of prosecution as a means of terminating the relationship and escaping the violence.<sup>16</sup>

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<sup>14</sup> Supra Note 3, p 11

<sup>15</sup> Ibid;

<sup>16</sup> Domestic Violence Should be Criminalized, available at: [http: www. Jasononline .com/Law](http://www.Jasononline.com/Law)

Also, the victims are worried about their reputation as the incident would probably be reported on the newspapers if the case goes to the court. The family pressure against disclosure was brought to bear on the victim. Victims in some middle-class families are even more reluctant to call the police in order to preserve their appearances and they doubt that legal action would have negative impact on the batterers' job or community standing.<sup>17</sup>

There are suggestions that the criminal justice system in prosecution may not be effective. Studies have shown that even when arrests are made, very few domestic violence cases actually make it through prosecution and the court process and result in conviction of the batterers. Sometimes the implementation of policies to control domestic violence competes with other crime and violence problems, unfortunately, these cases, especially the non-injury or low-injury ones, do not always receive a higher priority than other crimes. Even, domestic violence cases are also assigned low priority when heard in the court when compared with other violence involving strangers<sup>18</sup>.

So whatever be the arguments against criminalization of domestic violence, it is submitted that enactment of legislation for domestic violence will be more effective to solve the problem. Specific legislation and its proper implementation will check the other evil minded male intimate partner in the society from committing violence in the home. Otherwise women have to suffer serious forms of violence for decades believing that this is the salient requirement for the marital institution or intimate relationship into which they entered.

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

## **6. Protection against Domestic Violence and International Legal Standards**

In the past, human right protection on domestic violence was narrowly interpreted-state was responsible only for the violations it perpetrated. State's inaction to prevent and punish violations was not viewed as a failure in its duty to protect human rights. Domestic violence was considered outside the purview of state responsibility. But over the time, domestic violence constitutes the violation of human rights and the notion of state responsibility under international law has now developed to recognize that it has also an obligation to apply human rights law to 'private' conduct such as domestic violence. Radika Coomaraswamy<sup>19</sup> explained three ways: due diligence, equal protection and torture to understand domestic violence as a human rights violation and states are obliged to protect human rights violation.

First, due diligence, was articulated in 1992 by the Committee on the Elimination of Discrimination Against Women in General Recommendation 19, in which it confirmed that "states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

Second, equal protection, states are required under international law to provide all citizens with equal protection of law. If a state fails to provide individuals who are harmed by intimate partner with the same protections it provides to those harmed by strangers, it has failed to live up to this obligation.

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<sup>19</sup> United Nations Special Rapporteur on Violence Against Women was appointed in 1994.

Third, domestic violence as a form of torture should be dealt with accordingly. It is argued that domestic violence involves the very four critical elements that constitute torture: (a) it causes severe physical and/ or mental pain; it is (b) intentionally inflicted, (c) for specified purposes and (d) with some form of official involvement, whether active or passive. This argument calls for domestic violence to be understood and treated as a form of torture.<sup>20</sup> These three approaches frame most strategies to end domestic violence.

Different international instruments obliged governments to guarantee equality before the law for all its citizens, without regard to sex. Article 1 of The Universal Declaration of Human Rights, 1948 states that “all human beings are born free and equal in dignity and rights” and without any discrimination is entitled to enjoy various rights articulated in the declaration. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were also adopted in 1966 as legally binding instruments to ensure and give legal protection of the rights proclaimed in the Universal Declaration.

The ICCPR prohibits sex discrimination in three different Articles. These are:

Article 2(1) of the ICCPR provides that each state party undertakes “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex.....”

Article 3 of the ICCPR states equal enjoyment of all civil and political rights for men and women.

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<sup>20</sup> Supra Note 3, p 10.

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Article 26 of the ICCPR affirms that “ all persons are equal before the law and are entitled without any discrimination to the equal protection of the law” and provides that “in this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex....”

In addition to above mentioned Articles, ICCPR, also contains some Articles prohibiting violence that implicate domestic violence. Article 6(1) affirms that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.

Article 7 provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Article 9(1) states that “Everyone has the right to liberty and security of person”. While the ICCPR does not explicitly refer to private violence, including domestic violence, the broad language in the above provisions clearly can encompass such abuse. State parties are obliged to combat domestic violence by virtue of having undertaken “to respect and to ensure” the rights recognized in the Covenant.<sup>21</sup>

There has been remarkable development of international law regarding violence against women. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979. Article 2 of CEDAW Convention also prohibits sex discrimination by requiring State Parties “to pursue a

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<sup>21</sup> Debasree Lahiri, Legal Control of Domestic Violence in India in Perspective of International Human Rights Instruments, p 451, Issues in Human Rights (2010), Atlantic Publishers & Distributors (P) Ltd., New Delhi-110002.

policy of eliminating discrimination...[and] to ensure that public authorities and institutions shall act in conformity with this obligation". While gender-based is not specifically mentioned in the CEDAW Convention, in 1992 the Committee on CEDAW adopted General Recommendation 19, addressing violence against women<sup>22</sup> which states that "it is a form of discrimination that inhibits a women's ability to enjoy rights and freedoms on a basis of equality with men"<sup>23</sup> and Optional Protocol to CEDAW<sup>24</sup> created the structure of women's rights where it is adopted that ratifying states recognize the authority of the Committee to receive and consider complaints from individuals or groups within that State's jurisdiction.<sup>25</sup>

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 defines in Article 1 "torture" as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining information or a confession, punishment, intimidation or coercion, or for any reason based on discrimination of any kind". Since domestic violence is a violation of woman's rights, torture on women as a form of violence should be dealt with other human rights instrument.

The first international human rights instruments which exclusively deal with violence against women is Vienna Declaration on the Elimination of Violence against Women and Programme of

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<sup>22</sup> See General Recommendation 19: Violence Against Women, Committee on the Elimination of Discrimination Against Women, 11<sup>th</sup> Sess., U.N. Doc.A/47/38(1992).

<sup>23</sup> Ibid.

<sup>24</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 54/4, U.N. GAOR, 54<sup>th</sup> Sess., Supp. No. 49, at 4, U.N.Doc. A/54/49 (1999).

<sup>25</sup> Supra Note 7, p 393.

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Action<sup>26</sup> which was adopted at United Nations World Conference on Human Rights. “Violence against women” is defined by the U.N Declaration on the Elimination of Violence against Women as:

“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

This definition helped to focus international attention on domestic violence. This definition encompasses, *inter alia*, “...physical, sexual or psychological violence occurring in the family and in the general community, including battering, sexual abuse of children, dowry-related violence, rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence, violence related to exploitation, trafficking in women, forced prostitution, and violence perpetrated or condoned by state”. The Beijing Declaration and Platform for Action also verify that domestic violence is in fact violation of women’s human rights.

Another significant step was taken in 1994. The Commission on Human Right appointed the first United Nations Special Rapporteur on Violence against Women, to investigate the extent of violence against women throughout the world. The Special Rapporteur’s first report contained a remarkable condemnation of the profligacy of domestic violence worldwide<sup>27</sup> and holding governments accountable for violence against women. The Fourth World Conference on Women in Beijing(1995) included elimination of all forms of violence against women as one of its twelve strategic objectives. In June 2000, the UN General

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<sup>26</sup> U.N. Doc. A/Conf.157/24 (1993).

<sup>27</sup> Supra Note 7, p 394.

Assembly reviewed the implementation of the Beijing Platform (Beijing + 5) and reaffirmed governments commitment to work for the realization of women's rights. In recent years, many states are making legislation to criminalize domestic violence and to combat it in the light of international human rights law. It is to be admitted that despite all of these global initiatives, progress in the achievement of women's rights is very slow world-wide.

### **7. Protection against Domestic Violence and the Law of Bangladesh**

Bangladesh, as a party to the different International Human Rights Instruments such as, the UDHR, 1948, ICCPR, 1966 etc. where the state has undertaken an obligation to give due regard to the international Conventions and ensure civil and political rights to all its citizens without any kind of discrimination. It has also ratified different international Conventions such as, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979 with reservations of Articles 2 and 16.1(c) and its Optional Protocol declaring that it would not undertake the obligations arising out of Articles 8 and 9 of the Protocol, and the Beijing Platform for Action (PAF) in 1995.

By ratifying CEDAW Convention the government of Bangladesh has undertaken the responsibility to enforce and ensure the implementation of the rights mentioned in the Convention. To this end, government of Bangladesh has adopted proactive policies and programmes for women's advancement and accordingly it has formulated National policies on Women under National Action Plan (NAP) in 1997 to address the extent of women's Human Rights by giving priority of intervention against violence against women. As the result of governments efforts toward women's advancement in recent years, though women are getting more involved in the workplace, in the developments programmes and

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so on, nevertheless, their status in the family, workplace, community and society have not much improved.

It is important to mention that apart from these above mentioned international Conventions, the Constitution of Bangladesh also guarantees of gender equality in Article 28(2) which states that “Women shall have equal rights with men in all spheres of the State and of public life”. Despite Constitutional guarantees of gender equality, other legislative and affirmative actions could not improve much the status of women of Bangladesh. Till present, women are subject to discrimination and there is a rising trend of violence against them, wherever it is- in the family, workplace, society. Recent incidents found from the news reports show that some forms of family violence against women are so savage that will defeat all the barbarous forms of violence of the primitive society. The reason behind it is that on the one hand, the Constitution of Bangladesh states that women have equal footing with the men in all spheres of public life, and on the other hand, the personal laws which are prevalent are unequal to women. So, a great disparity is noticed that state ensures non-discrimination in public spheres only but it is not guaranteed in personal or private sphere. That is why, notwithstanding of the Constitutional guarantee violence against women persists because of social, cultural, religious and patriarchal values and attitudes.

It should be noted that apart from constitutional guarantees the Government of Bangladesh has from time to time legislated or amended several laws to harmonize national legislation with the consistency of international commitments for the protection of the rights of women and elimination of violence against women. For example, The Dowry Prohibition Act (1980), The Cruelty to Women (Deterrent Punishment) Ordinance (1983), The Prevention of Women and Child Repression Act (2000),<sup>28</sup> to protect women

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<sup>28</sup> Unofficial English Version of “Nari O Shishu Nirjatan Daman Ain, 2000

from gender-based abuse and negligence in the family and society but enforcement and implementation of these Acts are not satisfactory. Although domestic violence, particularly violence perpetrated by husbands, is the most common violence against women in Bangladesh, the laws mentioned above do not address domestic violence that do not result in injury. Moreover, enforcing and implementing the existing laws, Acts, and agreements even for severe violence have proven to be challenging.<sup>29</sup>

But it is matter of hope that for the first time Bangladesh has made a specific law criminalizing domestic violence. Recently, as a signatory state of the CEDAW Convention the Government of Bangladesh passed The Domestic Violence (Prevention and Protection) Act, 2010. The aim of this Act is to protect women and children from widespread physical, mental, sexual and other forms of domestic violence. This Act consists of 37 sections. Section 3 of the Act provides definition of ‘Domestic Violence’ including all types of violence resorted to women in the home. In this section four types of violence has been included as domestic violence i.e., physical torture, mental torture, sexual torture and economic loss by any member of the family who has domestic relationship with the victim.

‘Physical torture’ according to the Act means any action that causes or likely to cause damage to the life, health, security or any organ of the body of a woman or child, forcing any individual to commit an offence or any provocation for doing so will constitute domestic violence.

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<sup>29</sup> Heidi Bart Johnson and Ruchira Tabassum Naved, Spousal Violence in Bangladesh: A Call for Public –health Response, *Journal of Health, population And Nutrition*, 2008; 26( 3) p.366-377 ICDDR,B., available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2740706>

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‘Mental torture’ includes any verbal abuse, insult, humiliation, neglect, intimidation or making any utterances that may cause mental injury, harassment or interferences in individual’s freedom of movement and opinion by any member of the family constitutes domestic violence.

Under the Act ‘Sexual torture’ means any conduct of a sexual nature that injures the modesty, honour and reputation of the aggrieved person. The Act also says that any action that may cause economic loss to any member of the family will constitute domestic violence.

Section 4 of the Act empowers a police officer, being informed in any manner about a domestic violence, to make the victim aware she could get redresses, including legal aid and medical treatment. Section 5 provides that the government will have to appoint an enforcement officer for every upazila, police station, district and metropolitan area to ensure enforcement of the law.

Section 6 of the Act states that the enforcement officer will monitor domestic violence in the area under his or her jurisdiction and if any domestic violence is reported, the officer will inform the officer-in-charge of the police station concerned, apply to the court concerned seeking protection of the victim and arrange medical examination and treatment of the victim.

Section 7 of the Act stipulates that rights organisations and non-governmental organisations campaigning for protection of women and children’s rights will be considered as service organisations in order to ensure enforcement of the law. The service organisations will be entrusted with recording any incident of domestic violence and to report to the court and police station concerned and ensuring safe custody of the victim at a safe home.

According to Section 13 the Act, any petition seeking protection of a victim can be filed with the court of judicial magistrate or

metropolitan magistrate concerned by the victim or the enforcement officer. If the court is satisfied that a domestic violence has been committed or there is a possibility of such violence, it will order the accused person/s to ensure protection of the victim and issue a notice asking the perpetrator to explain in seven days why he should not be ordered to ensure permanent protection of the victim.

Section 30 of the Act states that if a person fails to comply with court orders to ensure protection of the victim, s/he will be punished with imprisonment for six months or with a fine of Taka 10,000 or with both. For any recurrence of the offence, the perpetrator will be punished with imprisonment for two years or with a fine of Taka 1 lakh or with both.

Section 32 of the Act provides that for filing false cases, the punishment will be one year in jail or a fine of Tk 50,000, or both.

### **Conclusion**

From the above discussions it is revealed that the observations of different international human rights instruments and existing laws of the state that restrictively prohibit domestic violence against women, albeit it is still being occurred. So, mere enactment of legislation alone does not ensure women's right against domestic violence; it will not also rapidly change women's actual situation. The government of Bangladesh has from time to time enacted or amended several Acts to safeguard the women's legal right or to improve their status. However, these laws are hardly enforced properly or improve their condition. So what are needed are that specific legislation and its effective enforcement by concerned authorities and proper implementation of government policy to reduce domestic violence, then hopefully the situation will get changed. In other words, economic emancipation of women at all

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level will reduce the domestic violence and a mechanism should be developed to monitor the situation even at the rural areas.

Since women are the most vulnerable group in the society, so they need special care in the existing legal system also. Now specific law has been made so, its proper implementation will bring the success. Above all, radical change of attitudes toward women is needed between the members of the family, society, community and above all the citizens of the country. Creating wide awareness, self-respect, mutual respect, co-operation between men and women may reduce this. Since families are the foundations of the society so, no civilized society, which does not protect or ensure its women's enough security in the home, can stand firmly or develop. Apart from these, women have to come forward breaking their silence and they should be free to unveil the domestic violence without concealing, fearing of injury of family honour in the society. Similarly, relatives, other family members of the victims, friends, neighbours and members of the society have to show more progressive attitude towards them to support mentally, socially and economically for the restoration of their dignity. Last but not the least, women's equal access to every sphere such as, education, employment and other civil rights will help to eliminate domestic violence.