

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

# **THE LAW COMMISSION**

*-SUBJECT-*

**A FINAL REPORT ON THE PROPOSED LAW OF DOMESTIC  
VIOLANCE ALONG WITH A DRAFT BILL NAMELY, THE  
DOMESTIC VIOLANCE ACT, 200...**

**OFFICE OF THE LAW COMMISSION**

OLD HIGH COURT BUILDING  
DHAKA-1000

**DECEMBER 29, 2005**

## **Introduction**

1. 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 is not confined to married couples only, but extends to cover other couples who are jointly living together. It may also cover men and women other than husbands and wives, such as parents, brothers, sisters or co-tenants, domestic servants etc. Domestic violence may also be caused to young girls who may become victims of sexual assault within the family. Male or female domestic servants may also become objects 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 stratas 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.

2. Domestic violence in Bangladesh is not a rarity, but phenomenal in prevalence. The newspapers profusely publish the occurrences relating to domestic violence. Women are reported to be physically tortured, sexually assaulted, psychologically injured and mentally humiliated within their homes by their husbands or by other members of the family. Wife battering is a common affair in both upper and lower social classes, especially among the disadvantaged classes. Physical injury is mostly done to a woman for realization of illegally demanded dowry. A trifling matter of family dispute also results in assault which may range from bruising to death. Women are subjected to battering and other abuse causing a higher level of anxiety and depression. Domestic violence proves hazardous for members of the family because the persons who come forward to intervene during such violence run the risk of being hurt or killed by the offending person. In Bangladesh the children are seen to be subject of domestic violence. Children in family, where the wife is abused, run the risk of being injured or killed by the abuser, if they become involved in an incident of violence.

Wife assault is one of the factors of child abuse. Children from homes, where there is domestic violence against the wife, suffer significantly from behavioural problem and lack greater social competency. The street children disclose the incidence of marital violence in their family where domestic violence usually takes place. The children sometimes take the side of their

mothers for which they are also assaulted by their fathers and as a result the children are found to suffer psychologically and emotionally. It is found that children whose mothers are abused by their fathers go on to repeat the similar behaviour when they themselves establish their families. As such, child abuse is frequently experienced as a learnt behaviour from the families of origin where domestic violence always takes place.

**3.** Domestic violence in Bangladesh takes many forms. The women and girls experience physical assault, sexual coercion, humiliation and emotional and psychological torture. Physical assault consists of punching the face or body of females. Sexual abuse comprises of intentional bodily contact of the sensitive parts of a girl or woman and sexual torture. Emotional and psychological torture consist of depriving the women of sleep or forcing her to do things against her will and threats to herself or her children or her relation. Violence against women and girls in Bangladesh is committed at random and with impunity. Cruelty by way of persistent denial of food, insisting on perverse sexual conduct, constantly locking a woman in the house, denying the women access to children, physical violence, confining women at home disallowing her normal social association, abusing children in presence of the mother for causing mental torture to her, denying the paternity of the children with the intention of causing mental pain upon the mother, threatening divorce unless dowry is given, etc are the various manifestations of domestic violence.

**4.** There are various reasons for which domestic violence occur in Bangladesh. An ordinary or even educated woman of Bangladesh feels ashamed for disclosure of behavior by her husband. They think that disclosure will bring dishonour to the family. Some of the women who are subjected to domestic violence feel that even if they disclose about the torture made upon them, that would not improve matters. It is also experienced by some women that disclosure of the tortures being made upon them would be fruitless because the persons listening to the same would be powerless to do anything fruitful in changing the behaviour of their husbands. On the contrary, their painful stories will be a subject matter of amusement amongst the social butterflies of all social classes.

**5.** Various women's organizations in Bangladesh have taken up the responsibility of working for the advancement of the 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.

Different organizations working for women demand that women should be allowed to tell their humiliating experiences without being blamed or feeling ashamed. They urge that the society should listen to their sorrows, misfortunes, troubles, violences and take appropriate action for their necessary protection from the ongoing violence. They also urge to be treated at all times with respect so that they may be made to feel comfortable in leading their lives. The women agencies have been urging the Government by holding meetings and seminars for introducing strict legislation in respect of domestic violence which has grown into a big and serious social problem in Bangladesh.

**6.** Within the last twenty years, there has been rapid progress in UK, USA and other developed countries to find out ways and means for protection of women against domestic violence. Many women's organizations have been working unitedly to empower women to meet male violence within their relationships. Common principles and goals were identified in order to advance a coherent response to the problem of domestic violence. There has been research, studies and mobilization of public opinion with regard to domestic violence. Appropriate action for combating domestic violence was suggested by many women's organizations.

**7.** The growing problem of domestic violence has been considered to be of such magnitude as to require the introduction of a new legislation. The complexity of domestic violence requires multiple strategies compatible with the conditions and resources of the country under consideration. In the commonwealth countries, most of the societies recognized the problem of domestic violence as a serious issue accompanied by a clear manifestation of a resolution to act against the abuse of domestic violence and to deal effectively and appropriately with both the abuser and the abused. It is felt that women must have ensured access to legal remedies according to their desires. Their access to law must be simple and cheap. In the context of Bangladesh, it is felt that having regard to the widely prevalent abuses of women who generally have not easy access to the ordinary existing court system, there should be some innovative legislation based upon the realities of our own infrastructure and logistics, however deficient they may be.

**8.** Along with other Commonwealth countries, domestic violence has been a cause of concern in New Zealand, which has passed an Act entitled Domestic Violence Act, 1995. Domestic violence has been defined in the said Act as a relationship in relation to a person meaning violence against

that person by any other person with whom that person is in a domestic relationship. Violence is of three types namely, physical abuse, sexual abuse and psychological abuse. The Act empowered the court to make certain orders to protect the victim of domestic violence. The Act has also provided speedy, inexpensive and simple procedures for dispensation of justice relating to the offence of domestic violence. Appropriate programs have been provided for the victims of domestic violence under the Act for stopping or preventing domestic violence. The said Act appears to be comprehensive and exhaustive in dealing with the problem of domestic violence. Unfortunately, this law cannot be a role model for us, because both the maladies and machineries for remedy are vastly different in our two countries.

9. We have considered the relevant laws of several countries including Malaysia. The connotation of the problem has not been uniform everywhere nor the procedures for its redress. Evidently the local experience and conditions have provided the basis for making necessary provisions both for preventive and curative measures and more importantly laying down the extent of the subject and procedural strategies for their implementation.

### **Recommendation**

In view of our discussions above, we recommend that a separate new law providing for the protection of the victims of domestic violence be enacted.

For convenience and ready reference we enclose herewith a draft Bill as annexure A.

(Dr. M. Enamul Hoque)  
Member-2

(Justice Md. Sirajul Islam)  
Member-1

(Justice Mustafa Kamal)  
Chairman

**A proposed Bill  
For  
Enactment of a new law  
Relating to Domestic Violence  
Bill No..... 200...**

Whereas it is expedient to make a new law providing for legal protection to victims of domestic violence for trial and punishment of some offenders and for matters connected thereto: -

It is hereby enacted as follows:

**Chapter I**

**1. Short title, extent and commencement.** - This Act may be called as the Domestic Violence Act, 200....

(2) It shall extend to the whole of Bangladesh.

(3) It shall come into force with effect from a date as the Government may, by notification in the Official Gazette, appoint.

**2. Interpretation.** -In this Act, unless the context otherwise requires;-

(a) “applicant” means -

(i) a person who is a victim and who applies for an order under this Act on his or her own behalf;

(ii) a person who is a victim and on whose behalf an application is made by any other person for an order under this Act.

(b) “child” means a person below the age of eighteen years who is living as a member of a family or engaged as domestic servant by any member of the family, with or without remuneration or salary.

(c) “court” means the Family Court established under section 4 of Family Court Ordinance, 1985.

(d) “domestic violence” has the meaning set out in section 3 of this Act.

(e) “enforcement officer” means a police officer not below the rank of sub-inspector or a welfare officer of the Department of Social Welfare appointed by the Government for the purpose of this Act.

(f) “family” for the purposes of this Act means and includes a spouse including his/her child, adult children including handicapped adult, adopted son or daughter and their respective spouse, parent, grandparent, sibling, sibling’s spouse, child, any domestic servant of any sex or age or any other person whether related or not by blood or marriage living in the same or shared household as a regular or intermittent inhabitant thereof.

(g) “handicapped adult” means a person who is wholly or partially handicapped, incapacitated or infirm, by reason of physical or mental disability or ill health or old age and who is living as a member of the family.

(h) “interim protection order” means an order of limited duration made on an application by an applicant without notice to the member or members of the family complained against.

(i) “offence of domestic violence” means commission of any act under section 3 of this Act.

(j) “prescribed” means prescribed by rules made under this Act.

(k) “protection order” means an order made under section 6, read with sections 7 and 8 of this Act.

(l) “protected person” means an applicant for whose protection a protection order is made under this Act.

(m) “safe place or shelter” means any home or institution maintained or managed by the Department of Social Welfare of the Government or by any other agency or voluntary organization approved by the Ministry of

Social Welfare for the purposes of this Act or any other suitable place the owner or occupier of which is willing to receive the victim.

(n) “shared residence,” means the premises at which the parties are, or have been, living together as members of the same household, with or without common cooking.

(o) “victim” means a sufferer of domestic violence.

## Chapter-II

3. **Meaning of domestic violence.** - In this Act, “domestic violence” means the commission of any or more than one of the following acts by any member of the family, excluding a child or handicapped adult, against any other member of the family: -

(a) Physical abuse-

- (i) assaulting including beating any member of the family for any reason whatsoever, whether the assault leads to any injury or not;
- (ii) damaging the physical beauty of a spouse by torture;
- (iii) indecently abusing, beating and maltreating the wife by the husband on being drunk;
- (iv) torturing the wife by the husband being influenced by others;
- (v) maltreatment, misbehavior, torture or assault upon a domestic servant by any member of the family.

(b) Sexual abuse-

- (i) compelling the wife to cohabit with any body other than the husband;
- (ii) forcibly marrying a religiously prohibited woman or establishing illicit sexual connection with such woman voluntarily or otherwise;
- (iii) any kind of sexual abuse including sexual harassment of a member of the family.



(c) Psychological abuse-

- (i) intimidation, harassment, denial of food or drink for adequate sustenance, denial of salary or expenses, threat of physical or psychological abuse by any member of the family to the other or others;
- (ii) inducing or compelling a spouse to commit attempted suicide through continued oppression by any member of the family;
- (iii) blaming a spouse of immorality without any rational basis;
- (iv) threatening to divorce a wife on demand of dowry by the husband;
- (v) baselessly blaming or imputing insanity, or citing barrenness of a spouse with the intention to marry again or to get a male member of the family married again;
- (vi) bringing false allegation upon the character of a female member by any member of the family;
- (vii) keeping a female member of the family disconnected with her father, mother, child, sibling and other relatives;
- (viii) threatening to get a male member of the family remarried by the other member or members of the family on the ground of the female spouse giving repeated birth to female children;
- (ix) disallowing the children to see their father or mother during their separate living, being divorced or otherwise;
- (x) torturing the parents or any other member of the family by the husband being instigated by the wife;
- (xi) confining or detaining the victim against the will of the victim;
- (xii) causing mischief or destruction or removal of the victim's property or personal belongings or documents and papers relating thereto.

**4. Interim Protection Order.** - The Court may, on a petition of complaint by an applicant, during the pendency of investigation relating to the commission of an offence of domestic violence, issue an interim

protection order prohibiting ad interim the person complained against in the petition of complaint from committing against the applicant and/or his or her spouse or child or a handicapped adult or any other member of the family, any further domestic violence of any description specified in the order.

**5. Notice.** - After receipt of a petition of complaint from an applicant complaining of domestic violence, the Court shall, with or without issuing an interim protection order, issue a notice upon the person complained against calling upon him to show cause within seven days of receipt of the notice as to why a protection order shall not be made against him or her for committing an act or acts of domestic violence as alleged in the petition of complaint.

**6. Protection order.** - (1) The Court may, after hearing the parties, issue a protection order for a period not exceeding twelve months restraining the person complained against from committing further domestic violence of any description specified in the order against the applicant, his or her spouse, child, handicapped adult or domestic servant, as the case may be. The interim protection order, if issued earlier in the case, shall cease to exist, after the passing of the protection order.

(2) The Court in making a protection order under sub-section (1) of this section may include an order directing the person complained against not to incite any other person to commit violence against the person or property of the protected person.

**7. Order that may be included in a Protection Order.** - (1) A protection order issued under section 6 may, where the Court is satisfied on a balance of circumstances that it is necessary for the protection, personal safety and financial need of the applicant, include therewith any one or more of the following orders:

- (a) granting either for the entire period of the protection order or until arrangements are made under clause (b) of this sub-section the right of exclusive occupation to the protected person of the shared residence or a specified part of it by excluding the offender against whom the order is made from residing or visiting the shared residence or specified part thereof, or

- (b) directing the enforcement officer to make an adequate arrangement of a safe shelter or safe place for the applicant and/or his spouse, child and domestic servant during the subsistence of the protection order if the continuous stay of the protected person at the shared residence is considered by the Court to be not safe for the protected person, or
- (c) prohibiting or restraining the offender against whom the order is made from entering into the place or portion of residence of the protected person or a shared residence or safe shelter or safe place, as the case may be, or from entering any protected person's place of employment, business, profession or vocation or educational institution or other institution which the protected person ordinarily visits or from making personal contact or contact using intermediaries with any protected person other than in the presence of an enforcement officer, or such other person as may be specified in the order, or
- (d) requiring the offender against whom the order is made to permit any protected person to enter the offender's residence, shared or not, accompanied by an enforcement officer for the purpose of collecting the protected person's personal belongings which include passport, bank account documents, savings certificate and other investment papers and documents, personal income tax documents, educational and professional records, documents and certificates, jewellery, cash money, mobile phone, household goods and valuables of any description, or
- (e) restraining the offender against whom the order is made from making any written or telephone or mobile or email or SMS communication with the protected person and specifying the limited circumstances in which such communication is permitted, or
- (f) directing the offender against whom the order is made, if he or she is the bread earner of the protected person, to pay such amount of money to the protected person for his or her maintenance during the period of the protection order as the Court may determine taking into account the social status of the parties, pecuniary circumstances of the offender and the legitimate needs of the protected person and also determining the period and the place where such amount is to be deposited, or

- (g) requiring the offender against whom the order is made to permit any protected person and/ or his/ her child/ children to have the continued use and expenses of a vehicle which has previously been ordinarily used by the protected person, or
- (h) the giving of any such direction as is necessary for and incidental to the proper carrying into effect of any order made under any of the foregoing clauses.

(2) If a right to exclusive occupation of a shared residence or any part thereof is granted to the protected person under clause (1) of sub-section (1) of this section, such order shall not affect any title or interest that the offender against whom the order is made or any other person might have in the said premises.

(3) The Court shall not make an order excluding the person against whom the order is made from the whole of a shared residence that is solely owned by him unless it is satisfied that there is no other way to secure the personal safety of any protected person for the time being, and such order where made shall be-

- (a) revoked if a suitable safe shelter or safe place or alternative residence is found for the protected person; or
- (b) revoked or modified upon the Court being otherwise satisfied that it is no longer necessary to continue the order for securing the personal safety of the protected person.

**8. Making or renewing protection order upon its contravention. -** Where an offender against whom a protection order has been made contravenes that order or a part of that order, the Court may renew the protection order by passing a new protection order for a further period not exceeding twelve months commencing from the expiry of the original protection order.

**9. Contravention of renewed protection order.-** (1) Any offender who wilfully contravenes the renewed protection order or any provision thereof shall be guilty of an offence of domestic violence and shall, on conviction after hearing by the Court, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding Taka ten thousand or both.

(2) Any offender who is convicted for a second or subsequent contravention of a protection order shall be guilty of a further offence of domestic violence and shall be punished with imprisonment that may extend to twelve months and shall also be liable to fine not exceeding Take twenty thousand.

**10. Compensation.** - (1) Where a victim of domestic violence suffers personal injury or damage to property or financial loss or trauma or psychological damage as a result of domestic violence, the applicant may file a claim for compensation either along with the petition of complaint or separately within six months of final ascertainment of damages and the Court hearing the claim for compensation may pass a decree against the offender and/or his accomplice, after hearing the parties, such compensation in respect of the injury or damage or loss as it deems just and reasonable.

(2) A claim for compensation, if filed among with the petition of complaint, will entail no court fees, but if filed separately, will be filed with a fixed court fee of taka ten.

(3) The Court hearing the claim for such compensation may take into consideration the following facts:-

- (a) the pain and suffering of the victim and the nature and extent of the physical or mental injury suffered;
- (b) the cost of medical treatment for such injury;
- (c) temporary, semi-permanent or permanent effect of such injury;
- (d) any loss of earnings, present and prospective, arising there from;
- (e) the amount or value of the property taken or destroyed or damaged;
- (f) necessary and reasonable expenses already incurred by or on behalf of the victim;
- (g) the social status and financial circumstances of both the victim and the offender.

**11. Counseling.** - (1) The Court may, in any proceeding relating to domestic violence, only when it is satisfied from the facts revealed in the

petition of complaint, that instead of or in addition to issuing a protection order, one or more of the following orders may be made, then it can make one or more of the following orders: -

- (a) refer the parties to a conciliatory body;
- (b) refer one or more of the parties to a rehabilitation therapy, psychotherapy or other suitable therapeutic body or bodies with such terms of reference as it adjudges proper in the circumstances of the case.

(2) When considering any question relating to the making of an order under sub-section (1) the Court may, whenever it is practicable, take the advice of a social welfare officer or some other professional expert in the field of domestic violence of the Court's choice.

(3) In this section "conciliatory body" includes bodies providing counseling services set up under this Act by the Department of Social Welfare of the Government of Bangladesh or such other non-governmental counselling institutions as are approved by the said Department, for purposes of this section.

**12. Jurisdiction and power.-** For the purpose of this Act the Judge of the family court shall be deemed to be a Magistrate of the first class and shall have all the powers of such Magistrate under the Code of Criminal Procedure, 1898 (Act v of 1898), and the Judge may convict and sentence the offender under section 9 (1) and 9 (2) of this Act and may issue warrant for arresting the convict. The Judge may also pass a decree for compensation of any amount, irrespective of the pecuniary jurisdiction of the family courts.

**13. Appeal.-**(1) Any party to the proceedings under this Act or any other person prejudicially affected by an order of conviction and sentence under section 9 (1) and 9 (2) and by a decree for compensation under section 10 of this Act may file an appeal to the District and Sessions Judge against the aforesaid orders.

(2) The appeal shall be filed within fifteen days from the date of passing of the order appealed against.

(3) A fixed Court fee of taka fifty shall be payable to file an appeal against a decree of compensation upto taka one lac and a fixed Court fee of taka five hundred shall be payable to file an appeal against a decree of compensation above taka one lac.

(4) The District and Sessions Judge may himself hear the appeal or transfer the case to any other Sessions Judge for disposal of the appeal. The appeal shall be heard and disposed of within six months from the date of receipt of the appeal and shall not be transferred for more than once, except for reason of the absence or vacancy of the transferee Judge.

**14. Filing of complaint.** - (1) A petition of complaint relating to the commission of an offence of domestic violence and for compensation under this Act may be filed in any district where-

- (a) the applicant resides, or
- (b) the offender resides, or
- (c) any of the alleged violence or occasion for claiming compensation occurred, or
- (d) the victim temporarily resides.

(2) The Court shall hear and dispose of the petition of complaint and the claim for compensation on a priority basis.

**15. Complaints on behalf of a child or handicapped adult.** - In the case of a child or a handicapped adult or a domestic servant, a guardian, or relation or any other person or any enforcement officer may file such complaint and/or a claim for compensation.

**16. When interim order may be sought.**- An interim protection order may be sought in the petition of complaint pending investigations by the enforcement officer into the petition of complaint relating to the commission of an offence of domestic violence.

**17. Record of complaint and orders.** - A record of all complaints filed pursuant to this Act and all protection orders and interim protection orders made by the Court under this Act shall be maintained in the Court. The record shall contain:-

- (a) the names, gender and relationship of the parties;
- (b) the domestic violence alleged, any weapon used in the offence, any personal injury resulting therefrom and any medical treatment required to be given as a result of the offence; and
- (c) the effective date and terms of each order made.

**18. Proof of service of protection order.-** (1) The administrative officer of the Court in which protection order or interim protection order is made shall, within twenty four hours of issuance of the order, forward a copy of the order to the officer in charge of the police station where the address of the offender is given in the petition of complaint. The police officer concerned shall file a proof of service to the administrative officer of the Court within three days of the receipt of the order.

### **Chapter III**

**19. Information on offences relating to domestic violence. -** (1) Any person who has reason to believe that an offence of domestic violence is being or has been committed may give information in respect thereof to an enforcement officer.

(2) No person who gives any such information in good faith shall incur any liability for defamation, slander or otherwise in respect of giving of such information.

**20. Duties of enforcement officer.-** (1) On receipt of such information the enforcement officer shall perform the following duties.-

- (a) assist a victim of domestic violence to file a petition of complaint;
- (b) provide or arrange transportation for the victim to an alternative residence or safe place or shelter if such transportation or alternative residence or safe place or shelter is required;
- (c) provide or arrange transportation for the victim to the nearest hospital or medical facility for treatment of injury if such treatment is needed.



- (d) explain to the victim the rights to protection against domestic violence;
- (e) accompany the victim to the victim's residence or shared residence or previous residence to collect his or her personal belongings.

**21. Power to make rules.** - The Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

