

## **The Prevention of Women & Children Repression Act 2000: A Study of Implementation Process from 2003 to 2013**

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**ABSTRACT:** The issue of women and children are sophisticated in our legal system. There are some strict laws and regulations but they are not working in a satisfactory way. That is why this article attempts to find out what are successes and failure of the Act that governs the women and children repression in Bangladesh. This article examines the Prevention of Women and Children Repression Act 2000 and assesses whether the Act is effective to achieve its objectives. The article then analyzes the provisions contained in this Act and tries to remove its deficiencies.

**Keywords:** A The Prevention of Women and Children Repression Act 2000; rape; dowry; abduction; trafficking; sexual assault; ransom; media print; media electronic; offence by inflammatory substance; abetment; jurisdiction; cognizance; tribunal; custody; appeal; false case; investigation; under ss 144 and 145 of the Code of Criminal Procedure; constitution of tribunal and jurisdiction; trial and execution process; general observation; statistical studies of recent trends; success and failure of the Prevention of Women and Child Repression Act 2000.

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### **I. INTRODUCTION**

The Prevention of Women and Children Repression (Act XVIII of 1995) is a specialised law that passed into law and came into force on 17 July 1995. This law mainly deals with the violence's against women and children. The word 'woman' means, according to this Act, a woman of any age and 'child' means any person under the age of sixteen (Amended) [1]. 'Repression' means violence which includes all kinds of assaults to woman or child whether it could be physical or mental. It was introduced with great expectation to reduce and remove violence against women and children. Now the question is to what extent the expectation is fulfilled. From the very beginning the vision for which the Act was enacted was a failure. Because the Act was not reducing crimes relating to women and children, but rather accelerating crimes like rape, dowry related violence, domestic violence and so on. Section 29 of this Act provides for crimes relating to murder due to rape, dowry, abduction, mutilation, trafficking, etc, and also provides for punishment for its perpetrator in one part. Further, it deals with the constitution of the court, its procedure, jurisdiction, appeal procedures etc in another part. It has been amended twice to date; first in 2000 and then in 2003, and introduced some more precise provisions in a polished manner. A gross change occurred in the amendment of 2000 whereby it was extensively modified and enlarged. That is why the Act of 1995 does not fully comply with the provisions of the Act of 2000 word for word.

In the Act of 2000, there are 34 sections and they are divided into three parts. The first part includes short title, definition and supremacy of the Act, the second part is about punishments for perpetrators, and the third part is about trial, procedure, investigation, cognizance, jurisdiction, appeals etc. Dowry and rape come to the front with giant steps. So when anyone says the words "Prevention of Women and Children Repression", the image of dowry and rape comes first. That means these two crimes are now common crimes whereas the rest ones are crime but not so common under this Act.

## II. PUNISHMENT

This Act is mainly penal in nature. That is why ss. 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 17 and 30 deal with the punishments for the offences under this Act. The pictures of punishment are follows:

Section	Name of the offence	Imprisonment in different phase	Fine (if available) in different phase
S. 4	Offences caused by the inflammatory substances	3 years to death sentence	Tk.50, 000/= to 1 lakh.
S. 5	Trafficking in women, etc	10 years to death sentence	Not fixed
S. 6	Trafficking in children etc	Life imprisonment to death sentence	Not fixed
S. 7	Abduction of women and children etc	Life imprisonment not less than 14 years	Not fixed
S. 8	Realization of ransom	Life imprisonment or death sentence	Not fixed
S. 9	Rape, death caused by rape, etc	5 years to death sentence	1 lakh to up
S.9A	Abetment in committing suicide of women etc	5 years to 10 years	Not fixed
S. 10	Sexual assault etc	3 years to 10 years	Not fixed
S. 11	Causing death for dowry	1 years to death sentence	Not fixed
S. 12	Mutilations of the children for the purpose of begging etc	life imprisonment or death sentence	Not fixed
S. 14	Publication of the identity of the victim in media	2 years imprisonment	1 lakh
S. 17	Instituting false case etc	7 years imprisonment	Not fixed
S. 30	Abetment committing offence	Same punishment for the offence abetted	Not fixed

### **2.1 Constitution of tribunal and its jurisdiction**

The Act clearly defines that the perpetrators under this Act will be triable in a special tribunal which is established under this Act. This tribunal has exclusive jurisdiction to try the case under this Act. Section 26 of this Act clearly states that the tribunal is named as 'Prevention of Women and Children Repression Tribunal' and the judges of this tribunal should be qualified as the District Judge or the Sessions Judge. The District and the Sessions Judge also includes the Additional District and the Sessions Judges. Section 27 of this Act provides for the jurisdictions which tribunal can exercise. It directly states that tribunal can take cognizance of an offence reported in written by the police officer not below the rank of Sub-Inspector or any other persons especially empowered to do such report by the order of government. If there is any contrary to that the tribunal possesses the jurisdiction to reject the report with some exceptions. Reports will have to submit to the Supreme Court within 30 days and a copy of that report will have to submit to the superior authority that can take proper steps against the accused for not completing the case. If the party is aggrieved with the decision of this tribunal, there is provision of appeal under Ss 28 of this Act against the order or judgment to the High Court Division of the Supreme Court within 60 days of that order or judgment.

### **2.2 Trial and execution process**

The tribunal has to maintain certain rules or procedures in execution of its trial. Section 20 of this Act provides those procedures as follows:

- a. The trial of any offence will be under the Prevention of Women and Children Repression Tribunal constituted s 25.
- b. If the hearing begins in the tribunal, then without break that will run on every working day till the termination of judgment.
- c. The tribunal shall complete the proceeding within 180 days from the date of receipt of the case for trial.
- d. If the proceeding of the case is not completed within the said period, the tribunal may release the accused on bail and if the accused is not released on bail, then the tribunal will record the reasons.
- e. If the judge of the tribunal is transferred without finishing the trial, then the succeeding judge will try the case from what stage is left by his predecessor; however the examination taken by his predecessor is not necessary to take again.

Provided that the further examination is necessary for the interest of justice he may re-summon any such witness and may take the examination again.

- a. The tribunal may start the trial proceeding of the offences in camera under Ss 9 of this Act in response to any application or its own discretion.
- b. If any child is accused of committing offences under this Act, the provision of the Children Act 1974 should be followed as far as possible.
- c. The tribunal will take and consider the opinion of any woman or child for the welfare and protection of interest of that woman and child in case of giving orders to keep that woman or child in safe custody.

Apart from this, the tribunal will be taking cognizance of the offence according to provision referred to in s 19 and the offence to be investigated by following the rules mentioned in s 18 of this Act. The tribunal can dispose of a case in absence of the accused person, if there are reasonable grounds to believe that he is absconded himself so that he cannot be arrested or produce before the court for trial in order within the period of 30 days. The procedure for recovery of compensation is also introduced in this Act. The tribunal may direct the collector of the concerned district to make a list of both movable and immovable property of the accused and by attachment and selling in the auction; the received money has to be given to the victim in accordance s 16 of this Act. If the property is not available, it can be obtained from the future property which he or his successor will acquire under s 15 of this Act.

In case of passing death sentence, the tribunal shall follow the same procedure as stated in the Code of Criminal Procedure. If a tribunal passes death sentence, the record of the concerned case shall be submitted forthwith to the High Court Division in accordance with s 374 of the Code of Criminal Procedure 1898 and the sentence shall not be executed without the confirmation of the High Court Division.

### **2.3 Miscellaneous**

If any child is born as a result of rape, what would be its status? Section 13 of this Act provides that, the child will be kept under the case on superintendence of its mother or maternal relatives. That child will be entitled to be acquainted with or introduced by the identity of its father or mother or both. The government will bear the maintenance of that child till ability of maimed child. The government will collect the money for maintenance of the child from the rapist. Sections 22, 23, 24 and 25 of this Act declare respectively the power to taking statement at any place by Magistrate. Evidential values of chemical examiners and blood examiners etc. There are also provisions relating to safe custody, medical examination of the victim, power to make rules for carrying out the purpose of this Act in ss. 31, 32 and 33.

## **III. ASSESSMENT OF IMPLEMENTATION**

### **3.1 General observation**

When a body or a society is attacked by disease or offence/crime, both become unrest. Then to cure the disease we take antibiotics, whereas to cure crime we enact laws. When a body became free from disease, we say that medicine was just and when any society became able to prevent any crime by enacted law then we say that was properly implemented. For example, Ss 14 of the Prevention of Women and Children Repression Act 2000 provides for prohibition or restriction on publication of the identity of the raped or assaulted women or children in the news media or electronic media. That means law is able to prevent the crime and it proves its implementation. However, implementation depends on several things such as public awareness; application and enforcement of laws etc. Hence, public awareness plays vital role in implementation of any law. When any law accepted by public positively, those effects are very well.

For example, in recent years the ratio of acid burns of women reduced respectively which is commendable. Again when there is law but its application never been implemented. It can be exemplified by our "Environmental law" which is not properly implemented due to its inapplicability. Application and enforcement live quite near to each other. An unenforced law has no value. It is just a show piece which is decorated in the law book. Fine of 50 taka for smoking in public place is a valueless law. The law enforcement agency also violates this law in practice too. So, in order to implement a law, these criteria have to be fulfilled in regard to its success. Growing up of legal sense of public may also be helpful for this.

### **3.2 Case Studies**

This paper examines different law reports of recent years and tries to measure how far the Prevention of Women and Children Repression Act [1] has been implemented.

#### **Case (1)**

In the case of *Abdul Kalam Azad alias Ripon v. State*, citation required, it was observed that the appellant was sentenced to death for torture and murder of her wife *Mahmuda Sultan Mammi* on the demand of dowry. The Judgment was given on the principle that: "Even if there is no specific mention of demand of dowry but as the

trial court has observed on reading the writings in the diary in its entirety it cannot be said that the fact of torturing the victim for not meeting the demand of dowry was totally absent” and thus torture was well proved and demand of dowry was proved by the oral evidence of the prosecution witnesses. Thus appeal was dismissed.

**Case (2)**

In the case of *Abdul Mannan alias Mona miah v. State* [iii], it was observed that in order to convict one under s 10(1) of this Act, it must be proved that the death was caused of the non-payment of dowry. The demand and refusal of the demand and the consequent killing must from the same transaction.” In this case, the prosecution had hopelessly failed to connect the condemned prisoner with the demand of dowry. As a result, this death reference was rejected and Criminal Appeal No. 152 of 1995 was allowed the impugned Judgment and order of conviction and sentence were set aside and the condemned prisoner was found not guilty of the charges leveled against him. Consequently, he was acquitted of his charge.

**Case (3)**

In the case of *Zitu Ahsan Alias Apon v. State* [iv], it was observed that there was no any resistance or act of sexual intercourse. There was also no sign of violence as certificate issued by the doctor and all the witnesses categorically stated that there was marriage in between the victim girl and the appellatant. Therefore, it did not attract any ingredients of offence under s 9(1) of this Act [v]. Practicing fraud upon her, doing intercourse without her consent was absent and, therefore, we did not find that the court could justify itself in convicting and sentencing the appellatant in the instance case. It was not a case of rape which court had totally failed to appreciate in the judgment and order. As a result, it was set aside.

**Case (4)**

The case *Golam Murtuja s. State* [vi], was a criminal petition for Leave to Appeal No. 212 of 2003 observed by *Md. Ruhul Amin, Syed J.R. Mudassir Hussain and M.M Ruhul Amin* as:

In the absence of any other proof of commission of murder of the wife in other way and in the absence of any explanation coming from the side of the husband for the murder of his wife in his custody, and it being proved by evidence that the condemned prisoner demanded dowry some days before murder of his wife complied with the fact of his ascendance from the house on the night of the occurrence of murder, being proved, the petitioner was guilty of murdering his wife for dowry which was punishable under s 10 (1) of the Prevention of Women and Children Repression Act 1995.

**Case (5)**

In the case of *State v. Md. Halim Howlader* [vii] Maqbul Huq J and Md. Emdadul Haque Azad J came to decision on the point that there was no legal evidence on record to hold the accused demanded any dowry from the victim or from her relatives or that the accused assaulted the victim on the date of occurrence on demand of dowry. The tribunal also observed in its judgment that the victim at one stage of the assault by the accused became senseless and as such the accused with a view to saving him poured poison in her mouth. There was also no such evidence on record. This observation of the tribunal also appeared to be absolutely imaginary. The post-mortem report was not clear and it could not be said that the victim died as a result of injuries found on her person rather the opinion of the board that the death of the victim was due to combined effect of poisoning and injuries. As a result, the death reference was rejected and the order of conviction and sentence were set aside and he was acquitted of the charge leveled against him.

**Case (6)**

In the case of *State v. Moammel and others* [viii] the matter was confessional statement given by accused under s 24 of the Evidence Act 1972 and ss 6(4)/9 (c) and 6(4) (14) of this Act. Here Surendra Kumar Sinha J and M M Rahman Bhuiyan J observed that, considering the medical evidence along with Modi’s Medical Jurisprudence and Toxicology, there was no doubt that the victim had not been raped by the accused person before her death. The special tribunal convicted accused *Monsur, Mozam, Faruque and Monta* saying on the confessional statements made by *Mohammad Ali* and *Royal Ali* which was not sustainable in law. As a result, the court rejected the death reference and allowed the jail appeal. The judgment and order given by lower court was set aside and the accused were acquitted.

**Case (7)**

In the case of *State Vs Abul Kashem* [ix], there was no clinching evidence came forth that condemned prisoner trafficked victim *Rubel* to *Dubai* and sold him there for the purpose of being used as *Camel Jockey* in camel race. Taking into account the startling features, important aspects of prosecution case and evidence on record it could not be suggested that the prosecution had substantially proved the case beyond reasonable doubt.

So, the conviction alleged against *Abul Kashem* under ss 12 and 14 of this Act was not well proved. Thus, he was acquitted from the conviction and settled at liberty.

**Case (8)**

In *Md. Moynul Hoque and Md. Abdus Satter Vs The state*<sup>[x]</sup>, the leave petition arose from the sensational *Yasmin* murder case of Dinajpur. Here, Syed CJ R. Mudassir Hussain J, Mohammad Fazlul Karim J, and Amirul Kabir Chowdhury J gave their judgments on the following factors;;

In a police custodial death the custodian police has to explain satisfactorily the circumstance under which the victim died. There was neither evidence nor any circumstance appearing in support of such wild suggestion that the plea raised by the defense had no leg to stand. Thus, having no illegality of High Court Division of the judgment and order given the court found nothing to interfere and the petitions were accordingly dismissed.

This paper has examined Dhaka Law Report, Mumbai Law Report, Bangladesh Legal Decisions and Bangladesh Legal Chronicles all were reported from 2003 to 2013. There were about 276 judgments given under Prevention of Women and Childred Repression Act among them 221 Judgments were given by High Court Division and the rest of 55 judgments given by the Appellate Division from the whole judgments relating to punishment were 196 and judgments relating to procedure of courts under this Act were 80. More specifically, a short table is given below to understand all about this work.

SL. No	Subjects of dispute	Disposed Case	SL. No	Subjects of dispute	Disposed Case
a.	Rape	39	j.	Abetment	18
b.	Dowry	42	k.	Jurisdiction	14
c.	Abduction	26	l.	Cognizance	9
d.	Trafficking	13	m.	Tribunal	5
e.	Sexual Assault	13	n.	Custody	5
f.	Ransom	7	o.	Appeal	7
g.	Media Print	3	p.	False Case	24
h.	Media Electronic	3	q.	Investigation	6
i.	Offence by inflammatory substance	9	r.	Under ss 144 and 145 of the Code of Criminal Procedure	13

From the whole of this study it has been discovered that 55-77 % of allegations against the accused person were disproved. The above case studies reveal that it is proved that 98% of cases were women related. There are some rules which were abused and there are some offences which were not included in this Act.

**IV. PRACTICAL SCENARIO**

*Statistical studies of recent trends*

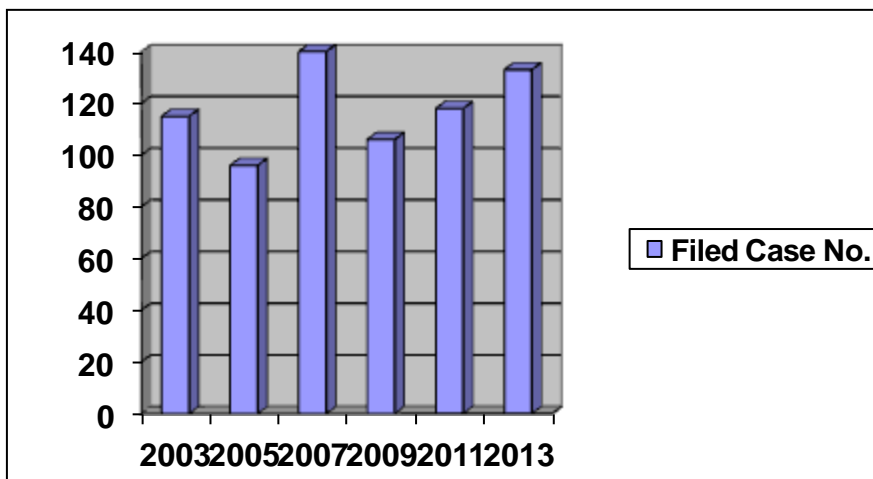
There is no doubt that the violence against women and children is common scenery in our society. Almost everywhere in our country it is happening. There may be many reasons why it is increasing tremendously which resulting jams of suits in police station and in the court as well. Thousands of cases are pending in the courts for years where there are provisions to dispose of suits within 180 days from its filing. Most of the violent crimes are relating to women because of having Children Act 1974. This Act mainly covers violence relating to women, namely dowry and rape. However, there are many instances of violence which are not included, which are follows:

- a. Domestic violence;
- b. Violence against domestic worker;
- c. Violence instigated by fatwa and other;
- d. Acid burns

Though there is a special law relating to acid burns named Acid Crime Control Act 2002, Most of the victims of it are women and crimes are under the Penal Code, 1860.

The practical scenery of this violence in recent years as follows

**Domestic Violence:**

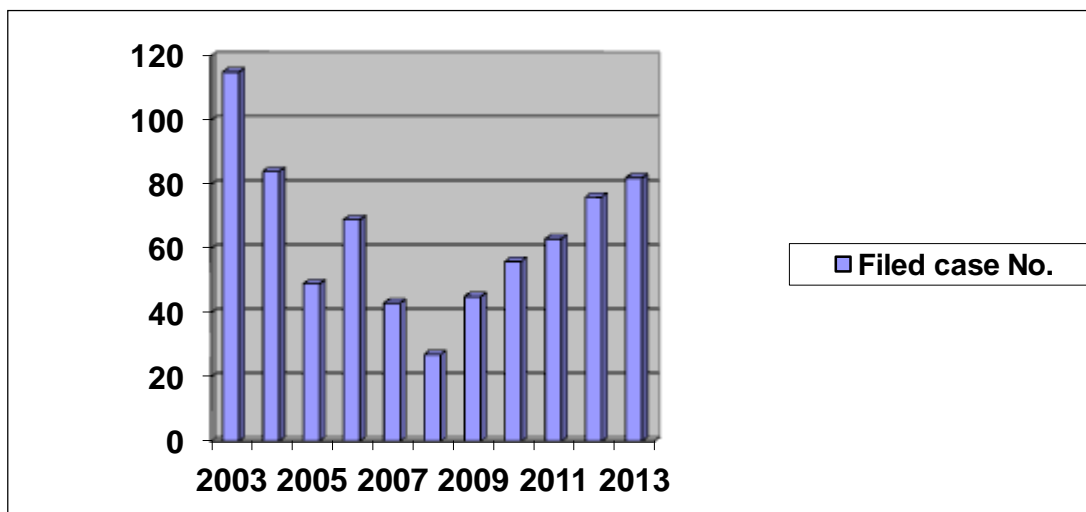


*Graph 1*

Data source: Ain o Salish Kendra (ASK) annual reports

In recent years, mainly from 2003 to 2013, it has been seen that there is a gradual increase of domestic violence in our country. In 2003, 118 cases were filed for such violence. Having no provisions in this Act all were filed under Penal Code 1860. In 2007 it reached the pick. From 2007 to 2013 it shows an alarming increase in domestic violence which all previous records. This violence occurs through broke torture by husband, torture by husbands family, torture by own relatives, murder by husband’s family member & murder by own relatives etc.

**Acid Burns:**

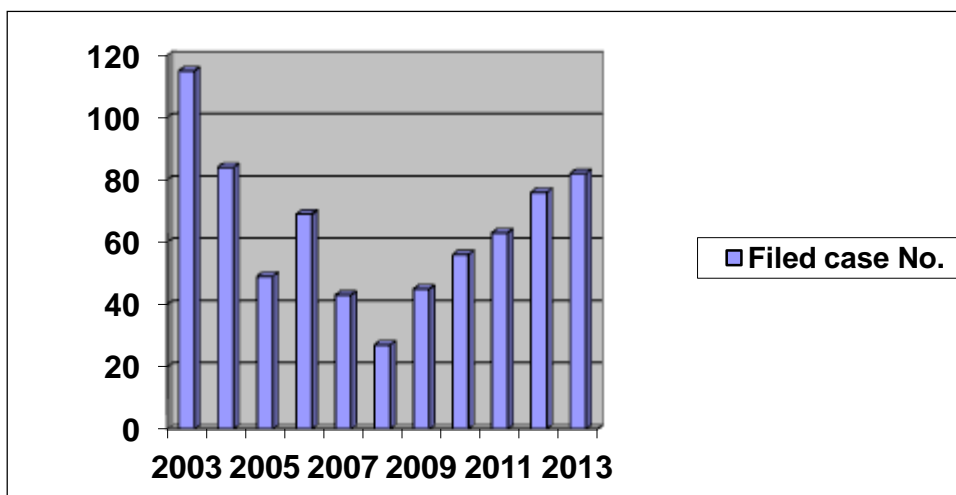


*Graph 2*

Data source: Ain o Salish Kendra (ASK) annual reports

The scenery of this violence is quite well. Criticisms, Advertisements through print and electronic media, public awareness, strictness of law and above all its proper and retributive punishments leads it to reducing position. That is why in 2003 it was 119 but in 2013 it turns into only 157. These violence happened due to causes are family dispute, refuse marriage proposal, enmity, refuse to pay dowry, refuse offer of love, land dispute, refuse sexual relationship and prevent of extra marital affairs.

**Dowry:**

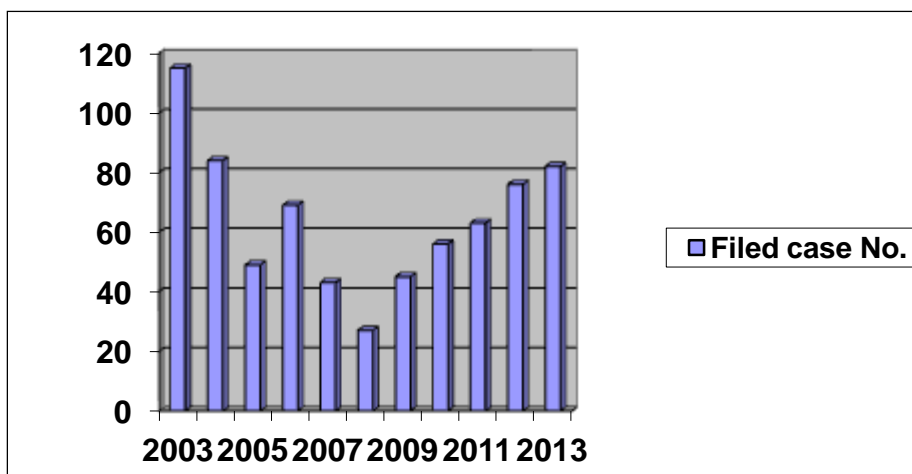


*Graph 3*

Data source: Ain o Salish Kendra (ASK) annual reports

Dowry is one of the most criticised topics in our country in recent years. As a result in 2005, 2007, 2009, 2011 and 2013 the statistics revealed a stable situation, whereas, in 2003 it reached the highest position. This violence is caused by tortures, namely physical torture, acid burn, divorce, separation and suicide.

**Rape:**

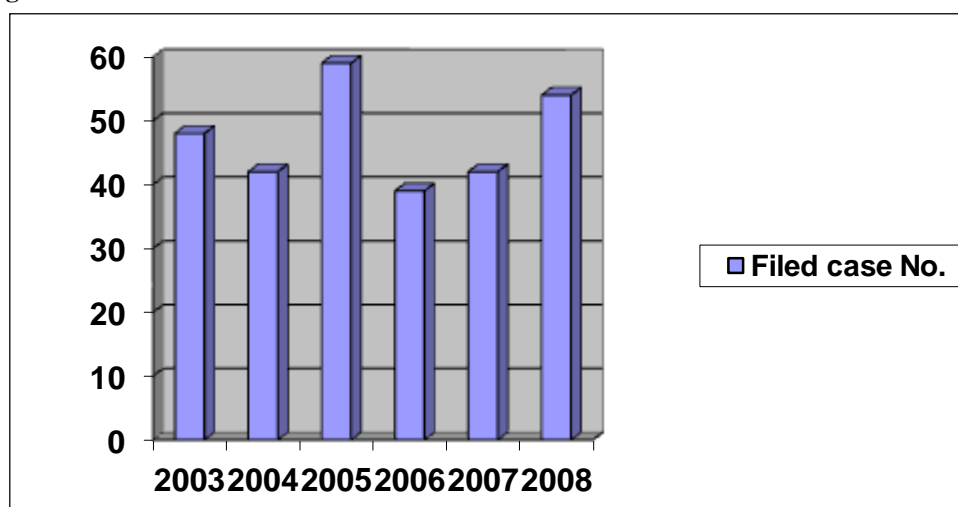


*Graph 4*

Data source: Ain o Salish Kendra (ASK) annual reports

One of the most hateful crimes and signs of inhumanity is rape. A contributive will and initiative from the public and law agency make it able to control. Strictness of its punishment also played an important role in that respect. In 2003 it was 644 but in 2013 reduced to 254 which is a good sign.

**Violence against Domestic worker**

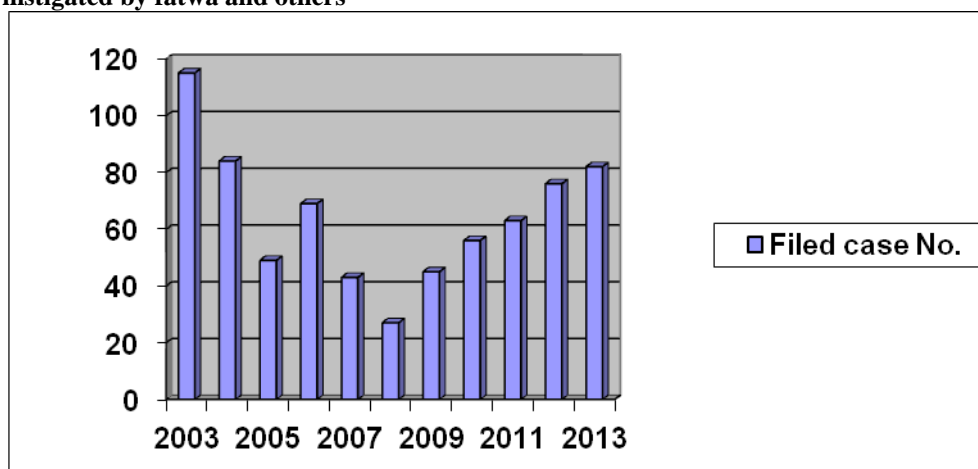


*Graph 5*

Data source: Ain o Salish Kendra (ASK) annual reports

Because of having no special law in that matter it became a sign of fear for its increasing trend. From the graph it can see that there is good variation through years and tending to grow up. In 2005, 2009 and 2013 it jumped up. This violence includes torture which involve physical torture, rape, death from physical torture, death form rape.

**Violence instigated by fatwa and others**



*Graph 6*

Data source: Ain o Salish Kendra (ASK) annual reports

The rate of this offence is very low but it should not be ignored. It mainly happens due to illiteracy and some social undue influence. The main causes for these kinds of violence are Love, premarital pregnancy, oral divorce, rape, false blaming, allegation of love, extra marital relationship and marriage not done by religious rituals etc. It does not mean that the number of cases filed determine the number of violence. Million of disputes relating to violence against woman settled through negotiation of family members indeed.

**V. SUCCESS AND FAILURE OF THE ACT**

Assessment of the success of Prevention of Women and Children Repression Act is quite a difficult one. In spite of having very good success it is not free from some failure. The main success of this Act is that it sets fear to the perpetrator against this violence. Now every where it is thought that there is a law for the help of victim women and children. The torturing husband and his relative now think before torture her. It is the success to establish fear to the mind of criminals. Another great success of this Act is that it became able to reduce the two great hateful crimes rape and dowry. Some other offences like abduction, trafficking, ransom, offences by inflammatory substance etc also reduced. Though these are going through the Penal Code all are violence



against women. The great failure of this law is it did not following speedy method of trial. Though there is provision to dispose of suits within the 180 days under section 20 of the Act from the date of the receipt of the case for trial. So every victim women and children do not getting relief from the harassment of police and court. Again from the study of law reports from 2003-2013 it was examined that most of the judgments were set aside by the higher court and the accused was acquitted. So it impliedly indicates the very presence of false cases. There is an ambiguity in this law.

## VI. CONCLUSION

The rules which are prevailing in the Prevention of Women and Children Repression Act is nothing but some amended punishments in comparison to the Penal Code 1860. Such as the offences for which there was simple imprisonment in penal code, it is amended to the death penalty and added fine in the present Act. The similarities of both are as follows.

Offences relating to violence against woman				
Name of Act	Causing death for dowry / murder	Woman and child trafficking	Rape / death caused from rape	Acid burns / death caused by inflammatory object
The Penal Code 1860	Sections 299, 300, 301 to 308	Sections 359 to 363, 366, 372, 373.	Sections 375, 376	Sections 326, 326 (A & B)
The Prevention of Women and Children Repression Act, 2000	Section 11	Sections 5, 6	Section 9	Section 4

So in order to make this Act successful, there needs some modifications, as all the offences relating to violence against women should take within the premise of this Act. Investigation of offences should be proper and just that there should never be any chance of false case. The method of speedy trial under Ss 20 should be strict. Section 33 of this Act should be used properly by equity and justice and all other amendments in time being necessity. Beside this, we also have to raise our consciousness, and responsibility to obey the rules. We should have respect for the women and children as well. That would be the success of this Act.

<sup>i</sup> Act No. XXX of 2003 of the Prevention of Women and Children Repression Act 2000

<sup>ii</sup> The Prevention of Women and Children Repression Act, 1995

<sup>iii</sup> 58 Dhaka Law Report (Appellate Division) (2006) 26

<sup>iv</sup> 58 Dhaka Law Report (2006) 91

<sup>v</sup> 59 Dhaka Law Report (2007) 528

<sup>vi</sup> Act No. viii of 2000

<sup>vii</sup> 24 Bangladesh Legal Decision (Appellate Division) 201

<sup>viii</sup> 9 Bangladesh Law Chronicle (2004) 163

<sup>ix</sup> 9 Bangladesh Law Chronicle (2004) 391

<sup>x</sup> 9 Mumbai Law Report (Appellate Division) 32

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