ISSN: 2226-3128

Violence against Women in Bangladesh: An examination of the effectiveness of existing legal provisions & suggested reforms

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Abstract: Violence against women is a common phenomenon in Bangladesh, particularly amongst the poorer sections of the population. The prime reasons for this are: the shortcomings and ineffectiveness of laws, women's inability to access legal proceedings, the traditional and cultural negative views about women's rights, the absence of an accountable and transparent government and the expensive and time consuming judicial process. This article critically examines laws regarding women's legal rights in national and international instruments. It also explores the ways laws have been structured and enforced in Bangladesh, and how law can be an effective means of women's pursuit of rights. In so doing, the article analyses a range of legislations and policies of national and international instruments. The article ends with a number of specific recommendations for ensuring women's rights through strengthening the law enforcement mechanisms in Bangladesh.

Key-Words: Women, Violence, Legal right, Law, Lacunae, implementation mechanism, Reforms.

Introduction

Violence against Women (VAW) is a common phenomenon throughout the world and Bangladesh is no exception in this regard. Gender inequality is deeply embedded in the structure of the patriarchal society of Bangladesh. Male dominance and female subordination are the basic tenets of our social structure. The torture and abuse of women is rooted in a global culture that denies women equal rights with men [1]. In fact, the social and cultural norms that deny women equal rights with men make women more vulnerable to physical, sexual and mental abuse. The common thread is the denial of basic human rights to individual simply because they are women. It is mentioned in the preamble of the United Nations Declaration on the Elimination of Violence against Woman (1993)[2] that- "violence against woman is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of their full advancement...".

Component

The article actively suggests implementing existing legislation through bringing desirable reforms and ensuring greater transparency and accountability from

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government, judiciary and law enforcement machinery in order to eliminate violence against women. The major themes of the article are: i) identification of major causes of violence and the recommendations for improving the existing condition ii)prohibition of violence by amending existing laws; iii)the need for sufficient legal protection for the victims through enactment of new laws; iv) the establishment of specific institutions of support service for the victims of abuse;

Methodology

The present article has been written by using qualitative method. All the data and information used here are from secondary sources such as journal articles, national and international documents, case laws, local newspapers, focus group discussion and interview.

Definition of "Violence against Woman" and key concepts

There is no universally accepted definition of violence against women. The United Nations Declaration on the Elimination of Violence against Women (1993) defines 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 refers to the gender-based roots of violence, recognizing that "violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men." This definition of violence includes both the physical and psychological harm done towards women, and it includes acts in both private and public life. The Declaration defines violence against women as encompassing, but not limited to, three areas: violence occurring in the family, within the general community and violence perpetrated or condoned by the State [3].

Factors contributing to Violence Against Women

The socio-economic and cultural factors which have contributed to the increased vulnerability of women and violence against them are- a) A growing tendency towards acceptance of violence in the society, mainly due to certain socio-political factors. b) The unquestioning acceptance of patriarchal gender ideology and gender relations in all social structure including family, community and the state. c) Increasing poverty and adverse conditions brought about by changing socio- economic processes. d) Society's basic reluctance to drastically change patriarchal laws and policies which perpetuate male dominance over women [4].

Besides, increasing use of violence in the public arena contribute to the violence against women in different ways. The modes through which violence is exposed in public areas are: a) easier access to fire arms, acids and other lethal weapons.

b) Increasing exposure to violence through popular readings, theatres, films and television shows mostly modelled on foreign materials, increase in the number of unemployed youths desperate for jobs, hiring and protection of armed cadres by political parties d) corruption and collusion among the members of law enforcement agencies, criminal justice personnel and the power holders.

Moreover, the Bangladeshi legal system has also done little to diminish women's vulnerability to violence which I have discussed in details in later part of this article. In many instances of rape, molestation, abduction, sexual harassment and other gender related offences legal loopholes deprive women from seeking justice. The scarcity of effective agencies offering supportive intervention and the excessive expenses and long-time involved in litigation also prevent women, especially the poor and uneducated ones from seeking redress through criminal proceedings [5].

National and International Instruments to prevent Violence Against Women

According to Article 27of the Constitution of Bangladesh "All citizens are equal before law and are entitled to equal protection of law"; Article 28 (1), "The State shall not discriminate against any citizen on grounds only for religion, race, caste, sex or place of birth"; and Article 28 (2), "Women shall have equal rights with men in all spheres of the State and of public life". Article 31 provides right to be treated in accordance with law. Furthermore, in Part III Article-32 of the Constitution contains right to life and personal liberty and in Article-39 provides right to freedom of thought, conscience and speech that are equally applicable for women. Fundamental Principles of State Policy contained in Part II of the Constitution also provides in Article-10 for Participation of Women in National Life to the following effect - "Steps shall be taken to ensure participation of women in all spheres of national life"[6]. In Article 17, the provision of Free and Compulsory education for all has been pledged. In Article 19, the principle of equality of opportunity has been depicted to the following effect-1) The State shall endeavour to ensure equality of opportunity to all citizens, 2) The State shall adopt effective measures to remove social and economic inequality between man and woman and to ensure the equitable distribution of wealth among citizens of and throughout the Republic.3) Opportunities in order to attain a uniform level of economic development.

The World Conference on Human Rights in Vienna (1993) accepted that the rights of women and girls are "an inalienable, integral and indivisible part of universal human rights." The United Nations General Assembly, in December 1993, adopted the Declaration on the Elimination of Violence against Women. It is the first international human rights instrument to deal exclusively with violence against women, a ground breaking document that became the basis for many other parallel processes. In 1994, the Commission on Human Rights appointed the first UN Special Reporter on Violence against Women, entrusting her with the task of analysing and documenting the phenomenon, and holding governments accountable for violations 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, and listed concrete actions to be taken by governments, the United Nations, international and nongovernmental organizations. Under the new Optional Protocol to CEDAW, adopted by the UN General Assembly in October 1999, ratifying States recognize the authority of the Committee to receive and consider complaints from individuals or groups within that State's jurisdiction [7]. On the basis of such complaints, the Committee can then conduct confidential investigations and issue urgent requests for a government to take action to protect victims from harm, bringing the Convention into line with other human rights instruments such as the Convention against Torture.

Different kinds of violence and the existing laws in Bangladesh

Violence against women takes different manifestations. The government of Bangladesh thus have enacted various important legislations to protect the interest of the women. These legislations can broadly be divided into two categories. Legislations on criminal matters and legislations on civil matters. Both types are important from the women's rights perspective as both civil and criminal legislations complement each other to create a rule based society and reduce the violence and repression against women.

i) Law relating to criminal matters to protect violence against women

The manifestation of violence against women takes various forms and creates social unrest in Bangladesh. Brutal attacks on women have become widespread across the country. Currently, various forms of violence may be prosecuted under The Penal Code 1860, The Women and Children Repression Prevention Act 2003, The Dowry Prohibition Act1980, and Cruelty to Women Ordinance 1984. The offences which can be prosecuted under these laws are described below:

Dowry- Dowry related deaths are a common phenomenon in Bangladesh. It usually occurs when bride or bride's family is failed to provide money, goods or any property promised to the bridegroom, father, mother or any person at the time of marriage as a consideration of marriage. Such deaths of women are usually caused by the persons who are socially powerful and can save them, i.e. their husband or in-laws. The Women and Children Repression Prevention Act, 2000 and the *Dowry Prohibition Act 1980* clearly provide that dowry is an illegal and punishable offence for which punishment may be imposed. The *Dowry Prohibition Act of 1980* prohibits the taking or giving of dowry.

Rape- Rape is probably one of the most common forms of violence against women in Bangladesh to date. But only recently, The Women and Children Repression Prevention Act 2003 defines the terms sexual abuse and sexual harassment for the first time. Women and Children Repression Prevention Act, 2000 deal with the offence of rape and provides severe penalties. Section 9

deals with punishment for rape, gang rape as well as injury or death caused as a result of rape. Most remarkable amendment is made regarding the destiny of a child born out of rape. Under this amendment, a child born out of rape will be kept under the care of the mother and will be known after his/her mother or father or both.

Acid Violence: In Bangladesh acid violence is a dreadful and vindictive form of crime which is committed mostly against women. Section 4 of the Acid Crime Prevention Act, 2002 prescribes that acid violence is a punishable offence for which death penalty and rigorous imprisonment may be imposed. The Acid Crimes Prevention Act, 2002 contains provisions regarding trial procedures, investigation of offences and negligence of investigating officers, medical examination and so forth.

Prostitution and trafficking: Trafficking in women and young girls includes all acts involved in capture and acquisition of girls and women for trade and transport with the intent to sale, exchange or use for such purpose as prostitution, sexual abuse, forced labour and slavery. The suppression of immoral traffic Act, 1933 provides penalty for detaining girls under 18 in a place where prostitution is carried on. The Constitution of Bangladesh prohibits forced and compulsory labour (Article 34). In addition, The Penal Code, 1860 (Sections 372, 373, and 466A), The Suppression of Immoral Traffic Act, 1933 (Sections 4, 7, 8, 9 and 10) and the Repression of Violence against Women and Children Act, 2000 (Articles 5 and 6) clearly provide that trafficking is an illegal and punishable offence for which capital punishment may be imposed as the maximum punishment.

Domestic violence: Till recent the prevailing perception was that violence cannot take place between intimate family members but the reality is quite opposite. A huge number of reported and unreported domestic violence is taking place in Bangladesh. To stop such kinds of domestic violence a new law has been passed namely (The Domestic Violence Protection and Prevention Act, 2010). This law states that 'Domestic Violence' means abuse in physical, psychological, economical and sexual nature against one person by any other person with whom that person is or has been in family relationship, irrespective of the physical location where that act takes place.

Eve- teasing: According to Encyclopaedia definition, "eve teasing is a euphemism used in India and sometimes Pakistan and Bangladesh for public sexual harassment, street harassment or molestation of women by men. According to Article 76 of the Dhaka Metropolitan Police Ordinance 1976, 'anyone making verbal abuse to a woman anywhere in the street or at any public place, is punishable with imprisonment for a term which may extend to one year, or with fine which may extend to 2,000 taka or with both.'

A new provision has been added under Article 9(ka) of the Women and Children Repression Prevention Act(2003) which says, if a woman is forced to commit

suicide as a direct consequence of somebody's wilful dishonour/ sexual harassment/assault, and then the guilty person will be liable to a maximum of ten years and a minimum of five years of imprisonment,.

Fatwa

Fatwa is a religious injunction and a deadly weapon for repression of women in particular used by religious fundamentalists that has negative consequences inducing women to commit suicide. Surprisingly however, no new law prohibiting or intending to control Fatwa has been introduced.

ii) Law relating to civil matters to protect violence against women

There are also several important civil legislations which protect the interest of the women and help reducing violence and vulnerabilities of women against repression. The few specific laws, which have been enacted by the government specially keeping in mind the interest of the women are: The Child Marriage Restraint Act of 1984 (amendment), The Muslim Family Laws Ordinance of 1961; The Muslim Marriage and Divorce Registration Act of 1974 and 1975 and The Family Court Ordinance of 1985 and 1989 (amended). The salient features of these legislations are described below:

The Child Marriage Restraint Act 1984 (amended) sets a marriageable age limit for both female and male. The age is 18 years for female and 21 years for male. Marriage below such age is punishable for the guardians of the parties concerned. The age limits not only ensure safe birth of a child from a mature physique, but it also ensures the right of a child to education, play and free time.

Muslim Family Laws Ordinance of 1961 provides some restricted facilities for women. The husband must give notice of Talaq to the wife through proper channel for breakdown of a marriage. He must take permission of the wife before a second marriage. Polygamy is curtailed by this Ordinance. The muslim wife can also exercise the right to divorce her husband known as Talaq-e-Tafwid. This is also ensured under this ordinance.

The Family Court Ordinance of 1985 and 1989 (amended) There shall be a family court exercising five types of jurisdiction namely divorce ,dower ,maintenance ,custody and guardianship and restitution of conjugal rights laws . The litigants are mostly women who come with their rights to this court of law and are mostly awarded positively.

The Civil Procedure Code of 1908, as amended by CPC (Amendment) Act, 1999 deals with matters of civil nature. In section 56 of Civil Procedure Code, Prohibition of arrest or detention of women in execution of decree for money is also in favour of woman whichindirectlygive safeguards regarding physical integrity.

The Birth and Death Registration Act 2004: This act is being used to prevert early marriage reducing trafficking, ensuring that all children are enrolled in school at the right age, protect underage children from working and ensure special treatment for children in juvenile justice system.

The Muslim Marriage and Divorce Registration Act of 1974 and 1975: A divorce is required to be registered under Section 6 of The Muslim Marriage and Dissolution of Marriage (Registration) Act, 1974 as well as under section 5 of The Muslim Family Laws Ordinance of 1961. Punishment is provided for contravention of these provisions.

Lacunae in the existing legal and administrative framework

The existing laws have a lot of lacunae due to duplicity of legislations. Confusion may be created in cases where the same offence is dealt in several existing laws. Acid crimes come under the *Acid Crimes Prevention Act 2002*, but the provisions of the *Penal Code 1860* as well as the *Woman and Child Repression Prevention Act of 2000* regarding the same offence has not been omitted and this may create confusion as to which Court or Tribunal or which law the case should be instituted under. The absence of a specific law to deal with it thus often results in a misuse of law [8].

Even though the special law takes priority over general law, and the laws themselves state this, the confusion persists and ought to have been clarified. The same problem may arise in the case of rape which is covered by both the Penal Code and the *Woman and Children Repression Prevention Act of 2000*.

Women and children repression prevention Act 2000: The Women and Children Repression Prevention Act 2000 had been originated based on the gaps of Dowry Prohibition Act 1980, the cruelty to Women Ordinance 1983, Women and Children Repression Prevention Act 1995 and was passed in response to the escalating problem of violence against women and children. Although the Women and Children Repression Act contains very harsh punishments but there are some loopholes in the existing Act which obstructs to bring the perpetrators under justice. Firstly, there are some inherent problems in this Act as far as definitions and clarity for example; the definition of 'rape' is not clearly mentioned. Secondly, the punishments are so severe, for example the death penalty for dowry related violence which either victim does not wish to file cases or later drop the cases. Thirdly, assault and battery within marriage (unless du's to torture for dowry) is not dealt with in the Women and Children Repression Act 2000. The law prohibits rape and physical spousal abuse, but it makes no specific provision for spousal rape as crime. Also it is difficult for women to prove verbal and mental abuse, even physical torture, unless grievous hurt is involved. However, the law was further amended in 2003 for including the provisions of sexual abuse, dowry & other offences. The limitations of the law are still prevalent. Though sections 5 and6 deal with trafficking, The Women and Children Repression Prevention Act did not contain any definition of the offence as a result demarcation line between trafficking and illegal migration cannot be drawn and therefore many perpetrators of trafficking remained out of punishment. The terms "burning, dangerous and poisonous substances" were used in sub sections (2), (3) and (4) of The Women and Children Repression Prevention Act, 2000but these "burning, dangerous and poisonous substances" were neither defined nor classified which ultimately created problems. In many cases, it has been found that a woman or children frequently reported in case of

domestic worker, is burnt by hot water or hot utensils and because of the obscurity in the provisions of these sub-sections the perpetrator cannot be punished, as a result many cases remain unreported[9]. Therefore initiatives should be taken to define and classify the substances to be included within "burning, dangerous and poisonous substances". The concept of eve-teasing is absent in this law though the offence is occurring in an alarming rate. The Prevention of Repression against Women and Children Act which has been amended a couple of times is also silent about *Fatwa* and does not address it as a punishable offence [10].

Penal Code, **1860**: Many acts are considered to be domestic violence, for example beating, assault, hurt, forced confinement are also criminal offences under penal code but the law enforcement agencies are often very reluctant to treat such acts as criminal offences when they occur within the domestic sphere, where both the victim and the perpetrator are members of the same familyⁱ

Domestic Violence (Protection and Prevention Act) 2010: Recently a new law has been drafted on domestic violence named Domestic Violence (Protection and Prevention Act), 2010 but it has a lot of lacunae. Actually what constitutes domestic violence is not mentioned in this law. The current law does not offer protection to those who are separated or divorced. The definition of domestic violence excludes some important aspects of such violence, like economic abuse, marital rape and forced marriage. No time is mentioned for investigation and trial

Acid crime control Act, 2002: Though this law has been enacted to prevent acid crime, but due to proper implementation mechanism this type of crime is increasing in Bangladesh day by day. The mechanisms prevalent to regulate importation and sale of the acid used in these attacks are inadequate.

Recommendation

Islam has placed women in an honourable place. But the grim reality is that women are perceived and groomed to assume roles and responsibilities invented exclusively for them by their male counterparts. The inequality that women face in nearly all aspects of life is legitimized and reinforced by the existing socioeconomic culture and the state system [11]. Against this backdrop, we have to change the perception that law will be the only way out to resolve the dispute rather than to change the social, cultural, moral and religious outlook. We have enough laws but the laws are not sufficient. Due to the ineffective provisions, passive role of law enforcement agencies and defective justice delivery system, we cannot ensure the rights of women. Needless to say, the government and law enforcement agencies together with human rights organization should come up with an action plan to do mass mobilization and to develop the public awareness to eradicate the violence occurred against women.

I. The personal laws based on religious customs regarding women's unequal position and status in the family especially in case of marriage, divorce, maintenance, custody and inheritance should be

abolished and proper initiative should be taken for enacting uniform family code. The government should take initiatives for introducing the articles of CEDAW in all existing laws and policies of the country through which women's equality in every sphere of public life can be ensured and which will also ensure the dignity of women. Besides, specific amount of money should be allocated in the national budget for ensuring overall development and equal partnership of women in order to establish gender equality.

- II. The jurisdiction of family court should be extended to address disputes so as to provide an efficacious forum for adjudication of family disputes. Women and Children Repression Tribunal should be established in every district as there is huge backlog of cases in almost all the districts of Bangladesh.
- III. Police must accept and lodge complaints against perpetrators, preserve evidence properly and work independently. Those who fail to do must be accountable and investigated by an independent authority. Procedures for collecting and safeguarding evidence should be modernized. Several modern forensic labs should be established throughout the country. At present, there are few forensic labs in Dhaka which have also acute shortage of skilled manpower and because of the shortage of skilled technician's vital evidence of important cases are destroyed.
- IV. Judiciary must be strengthened and victims and witnesses should get proper support. In this respect, Witness Protection Act should be enacted [12].
- V. Provide appropriate support including advocacy for those experiencing abuse in gaining protection and in dealing with court process. Legal aid program to women should be strengthened. For example, legal aid clinics or law centres may be established for helping the victim. These clinics provide basic legal knowledge about their legal right by lawyers and law students.
- VI. Establishing marriage counseling centers at the municipality, union parishad and ward level which will prevent from escalating future violence against women. Public information and education programmes can change attitudes concerning the roles and status of women [13].
- VII. The government should endeavor to include a chapter on family laws and gender in the social science curriculum of secondary and higher secondary levels so that the young generation has a better gender orientation which in turn would empower women to negotiate their rights and entitlements. Besides, the Government can also initiate awareness programmes to help eliminate social and religious prejudices so as to develop respectful attitude towards women. To be effective such programme our religious communities must get involved to stop violence.

- VIII. To stop acid throwing, strong monitoring systems should be ensured in case of selling and buying acid and the existing Act relating to acid control should be amended in this respect.
- IX. Women should be made aware of option of asking for "in camera trials" and this should be properly implemented. It will protect the privacy of women and they will be more willing to provide important evidence [14].
- X. Corroboration procedures should be amended to avoid having to call too many witnesses e.g. the written testimonies given by the doctors should be sufficient as absence of witnesses often frustrates the result of the trial.
- XI. The partnership between government and NGOs should be strengthened and has to be co-ordinated as currently there is no proper mechanism through which the government can harness the network of NGOs to implement different programs relating to women's issues. Mass print and electric media campaign to be ensured by both of these institutions in order to create social awareness of violence against women, such as to stop fatwa related offence [15].
- XII. Organize workshops, seminars and meeting to sensitize law-enforcing agencies, judicial administration, lawyers, health practitioners and all men and women at the local and regional levels [16].
- XIII. Encourage community responsibility regarding violence .Rehabilitation centers must be increased in numbers to assist these victims to get help and be employed in the future.
- XIV. Need to form an independent women and children right commission as a safeguard for protecting and maintaining the constitutional provisions.

Concluding Remarks

Issues pertaining primarily to women, such as violence against women, still continue to struggle for recognition in Bangladesh. However, developments over the last few decades have provided women with the basic mechanisms through which their rights under various national and international instruments can be enforced. As a progressive developing nation, Bangladesh is pledged bound to protect the interest of women as well as under compulsion to enact the necessary legislations to prevent all kinds of violence against women. In this connection Bangladesh parliament has also enacted several women friendly legislations. But these laws cannot be applied to protect the interest of the women due to weakness in legislative drafting and administrative bottlenecks. Clearly, the need of the hour is to fill the lacunae of the existing laws and to properly implement those laws. In sum, this article has argued that there is still scope for the government and other development organizations to improve the women's condition through taking time bound steps.

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