

RIGHTS WATCH

Preventing domestic violence against women

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VIOLENCE against women is a common phenomenon worldwide, which occurs both inside and outside the home. Domestic Violence (DV) is a form of violence that may occur against any family member at home. However, data suggest that women and children are the primary victims of DV. According to UN Women, 35 percent of women worldwide have experienced DV by an intimate partner, and some national studies show that up to 70 percent of women (nationally) are the victims of DV. According to a report from Bangladesh Bureau 2015, 80% of women are victims of DV.

Two of the leading causes of DV are the patriarchal culture and gender inequality permeating different spheres



being implemented for women is the National Women Development Policy 2011; and only a part of that policy is dedicated to violence against women, including DV.

Bangladesh has excellent support services in both government and non-government sectors. This includes shelter homes (government and non-government), victim support centres, apart from general police activity, One Stop Crisis Centre, and a national helpline. However, all these support services are scattered, lacking coordination, and the number is far too low compared to the population. In addition, because of a lack of publicity, general people are not aware of these services either. These departments are also not properly aware of their responsibilities, as provided by the DV legislation, because of lack of training. Therefore, women are not getting fully benefitted by neither the support services, nor the legislation.

The vice of DV has increased manifold amid the coronavirus pandemic. In response to the COVID-19 epidemic, many countries adopted 'state-wide lockdown'. Bangladesh was not an exception. According to a recent report of Action Aid Bangladesh, during such lockdown period, worldwide violence against women, especially domestic violence, has increased extensively: such as in 2020 the increase is in Italy 59%, in Nigeria 700%, in Palestine 700% and in Bangladesh 983% compared to 2019. In addition, in Bangladesh, sexual and domestic violence has increased tenfold, and a 345% increase in cases of physical violence against women in Bangladesh has been seen. According to Ain-O-Salish Kendra, 235 women were murdered by their husbands and husbands' families within the first nine months of 2020. In a survey by Manusher Jonno Foundation

4,705 women and children were found to have reported the incidence of DV in April 2020.

To respond to this situation, the UN urged governments to ensure legal services, safe shelters, and support phone lines for DV victims. Some countries developed some innovative practices; for instance, France has set up communication/warning booths at groceries and pharmacies to alert the authorities. In USA, the National Domestic Violence Hotline offered service via online texting. Italy has introduced an app which allows a survivor to ask for help instead of making a phone call.

In this regard, Bangladesh acknowledged that GBV would increase. But no special measures have been taken by Bangladesh to face these emergencies. Government and NGOs have groups to work on this matter. Still, there is lack of implementing schemes for the DV law. Advocate Kamrun Nahar, a member of Naripokkho, mentioned that People are not aware of the DV Act, service providers are very reluctant, and enforcement officers are not available. Even women are trapped within violent households, unable to escape because of lockdown, and go to alternative shelters.

It is time for Bangladesh to come forward to reduce DV incidents in everyday life and in any emergency situation, like the current one. Bangladesh has to formulate a specific DV policy, create structured support services, and implement laws properly. Most importantly, it is immensely important to acknowledge the patriarchal culture and state of gender inequality in the country and to take steps to tackle the same effectively.

THE WRITER IS ADVOCATE AND EXPERT - FAMILY AND DOMESTIC VIOLENCE.

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of the society. These exist across every institution, including State. Family as a unit of society and state, manifests the curse in the form of DV. Thus women's subordinate position in the society gets reflected in the family through the subordination of women to men. A child learns from the family and is influenced by the environment surrounding them. Therefore, male children learn how to act violently from their father, whereas female children learn to tolerate the same from their mother; in both instances, following their basic role model. This pattern of learning expands from the family back to the community, society, and State. Thus, a community attitude is developed where individual acts in the community are performed according to the established norms and traditions.

Bangladesh does not have a structured approach to tackle DV. Some NGOs are working to change the society's attitude; however, in absence of integrated state-run measures, the steps taken by the NGOs rarely seem to be of help. Bangladesh has a specific law: The Domestic Violence (Prevention and Protection) Act 2010 (DV Act), however, without a specific policy dedicated to DV. In Bangladesh, the policy that is currently

RIGHTS ADVOCACY

DELAY IN CRIMINAL PROCEEDINGS HCD upholds the right of the accused to speedy trial

LAW DESK

ON April, 2019, a Bangla newspaper published a report regarding a '100-year old' woman who had been wandering the court for 18 years in search of justice in a case against her under the Arms Act 1878. The newspaper was brought to the attention of the court by Advocate Md. Ashrafal Alam who filed an application under section 561A of the Code of Criminal Procedure 1898 for the quashment of the proceedings. In its judgment dated 30 October 2019, the High Court Division quashed the proceedings.

Section 561A of the Code confers upon the High Court Division the inherent power to make any orders to prevent the abuse of the process of the court and secure the ends of justice. The advocate on behalf of the applicant submitted before court that the Investigating Officer in the case had died and the only co-accused was also proved to be dead. In such circumstances, the prosecution failed to conclude the case and repeatedly failed to bring witnesses before the courts. The accused, Rabeya Khatun, had been present throughout all proceedings. Based on such premises, the advocate submitted that the delay by the prosecution amount to abuse of process of the courts and the accused's constitutional right to a speedy trial (as guaranteed under Article 35) has been violated and thus, the proceedings should be quashed.

In deciding the case, the HCD perused both national and foreign cases. It likened the guarantee of speedy trial under the Constitution to the Sixth Amendment rights of the US Constitution. As such, it referred to the case of *Mac Barker Vs. John Wingo (1971) 407 US 514* where the court identified four factors that shall be examined to determine whether the right to speedy trial has been violated. These are: length of delay, the reasons given by the prosecution regarding the delay, the responsibility of the accused for asserting his rights and prejudice towards the accused. The HCD also evaluated cases of similar instance before Indian courts where right to speedy trial was examined in the light of Article 21 of the Indian Constitution.

The HCD also determined that applications for quashment



under section 561A on grounds of delay have been upheld in many cases. However, it noted that the concept of speedy trial is relative in nature and must be examined on a case-by-case basis. Other factors such as 'the nature of offence, the number of accused, the number of witnesses, the work-load in the particular Court, means of communication and several other circumstances' should also be borne in mind. The HCD stressed that trial must be 'swift but deliberate' and there may be instances where despite the best efforts of the prosecution, delay or presence of the witnesses cannot be ensured.

In the light of the above discussion, the Court decided that even if the delay was not a deliberate attempt by the prosecution, the negligence is undeniable as it failed to notify the court of the subsequent death of the IO and the co-accused and also failed to produce witnesses. As such, this was a clear violation of the accused's rights and she had been 'subjected to prolonged agony, worry, expenses, disturbance to her occupation and peace and also harassment' for over 17 years.

LAW OPINION

ON DRAFTING THE CLAUSES OF A CONTRACT

BARRISTER ZAKIUL HUQ ROBIN

AFTER the rebound of the economy in Bangladesh, now the businesses are gaining momentum. In the law firms of Bangladesh, we are witnessing an increase of contract making to pursue different kinds of business. Since most kind of contracts are concerned with economic exchanges, the terms and conditions of a contract must inevitably be economic in their purpose. This article sheds light on different types of clauses that parties should consider while making any sort of contract.

An *integration clause*, i.e. entire agreement clause ensures that there are no representations, warranties, terms or conditions between the parties other than those set out in the contract. This clause is essential for any post-contract dispute where a party of the contract desires to rely on any dealings or agreements between the parties entered into before or after the execution of the said contract, to be used to vary or interpret its provisions.

In most of the contracts, time is of essence. Keeping that in mind a *time is of the essence clause* should be inserted to provide that, in relation to certain events, time is of essence. This would ensure the performance of the contract on time and this way, deadlines, if there are any, shall be strictly observed, lest the contract should be terminated.

Sometimes, to keep pace with the ongoing practical difficulties, a contract may need to be amended. It calls for an *amendment clause* stating that the contract may be amended only in writing and must be agreed to by the parties or authorised representatives of both parties. The clause may also include the limitations of amendment. This is sometimes essential in order to firmly limit the scope of bringing any fundamental change to the contract.

Apart from the fundamental breach of a contract, there can be other circumstances for which a contract may need to be terminated. Hence, depending on the nature of a contract, a *termination clause* may be incorporated to identify under what circumstances the parties can terminate the agreement and the procedures for termination. It is also customary to include a *survival clause* (such as stating warranty) to specifically provide for the survival of an obligation after the termination of the contract.

It is unlikely to have any dispute regarding applicable law in a contract if both parties of the contract reside in the same territory unless the parties decide otherwise. However, a *governing law clause* is very important in case of international contracts involving cross-border parties. This clause specifically states the applicable law(s) with which the contract shall be governed. Absence of such a clause may create complexity regarding many compliance issues to carry out the performance of the contract.



Moreover, this clause plays a vital role to resolve any post-contract dispute, which may arise between the parties. Although this clause often provides clear advantages to the parties, there must also be a rational reason for the specified choice of law.

Furthermore, *alternative dispute resolution clauses* can assure the parties that their disputes will be resolved through cost-effective and speedier processes of arbitration or mediation rather than by litigation. With ADR clauses, the parties can agree on whether the arbitration will be binding or non-binding; how the arbitration provision is to be triggered; the place of arbitration; governing law of arbitration proceedings; and the selection of the arbitrators. Such a clause leaves all the tools of flexibility in the hands of the parties involved.

Modern contracts always contain a *force majeure clause*. This clause dissolves the parties of individual contractual obligations provided there is a supervening event that is unforeseen and not within the control of either party. Particularly, the aim of this provision is to exempt the parties from carrying out their individual obligations under the contract and incur consequential liabilities, when a force majeure event occurs.

A *remedies clause* in a contract may provide the remedies that are beyond the generally available ones in case of a breach. Such a clause may also expressly state that the remedies shall be available in addition to, and not in substitution for, those generally available under the governing law.

A *currency clause* comes into play when negotiating an international agreement. Inclusion of this clause ensures the currency in which money owed under the contract is to be paid. This clause must also specify a conversion date mutually agreed by the parties for avoiding any future disagreement at the time of payment.

Before embarking on a contract, the intended parties should always be aware of the aforementioned issues so as to avoid any unwarranted situations, which may cause severe consequential losses.

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LAW LETTER

Exploitative tourism and indigenous people's right to land

MRO community from Bandarban now faces daunting challenges of loss of ancestral land and forced urbanisation. People of this community are protesting the construction of a five-star hotel and tourist spot namely, "Marriott Hotel and Amusement Park" in the Chimbuk area of Bandarban. Protesters have claimed that the private company Sikder Group along with a welfare organisation, is orchestrating the encroachment of around 800-1000 acres of land. Such initiative would directly jeopardise six villages of the Mro community, leaving around 10,000 *jhum* farmers landless and unemployed.

In the CHT areas, tourism centers have been built without the consent of indigenous peoples on their ancestral lands. Land grabbing explicitly violates their civil and political rights and the principle of free, prior, and informed consent. The UN Declaration on the Rights of Indigenous Peoples (2007) in its Article 10 explicitly lays out that indigenous people shall not be ejected from their lands. Moreover, Article 26(1) of the Declaration specifies that indigenous people have the right to the lands, territories, and resources which they have traditionally possessed.

The right to property is a fundamental right in Bangladesh as embodied in Article 42(1) of the Constitution. It asserts that every citizen is entitled to acquire, hold, transfer, or otherwise dispose of property, without being compulsorily acquired or nationalised or requisitioned save by authority of law. No one, under any circumstances, shall be deprived of this right.

In 2015 alone, 5,216 acres of Indigenous land was grabbed by new settlers, private corporations, and welfare organisations. Approximately 65,000 Indigenous people have been internally displaced in this region. The laws governing land rights of indigenous people in the plains are contained in the State Acquisition and Tenancy Act, 1950 and in the

CHT, is contained in the CHT Regulation, 1900 and many other laws enacted in the period ensuing the CHT Accord, 1997. Though the Government claims that 48 out of 72 provisions of the CHT Accord have been implemented, the truth is that the figure stands at 25 only. Besides, indigenous people have custom based title rights, and the customary laws are not recognised in the existing legislation. Considering the customary right, there can be no khas land or state-owned land in the Chittagong Hill Districts (CHD), because they are owned by the indigenous people. The land administration system is also different in each Upazilla which causes ambiguity in terms of comprehending the laws and regulations.

In a relevant case of *Awas Tingni Community vs. Nicaragua*, the Inter-American Court of Human Rights held that Nicaragua had breached the right to judicial protection and the right to property of the community. To determine property right, the Court looked to the Constitution of Nicaragua which recognised communal property rights. As a remedy, the Court required Nicaragua to adopt measures to create an effective mechanism for demarcation and titling of the indigenous communities' territory, in compliance with their customary laws.

To put an end to their woes, ensuring co-operation among the three state organs as well as the accountability of the District Council should be taken into account. Establishing a uniform land administration system, recognition of customary laws, and proper implementation of the existing laws is needed. The luxury resorts and picnic spots in CHT that we indulge ourselves in glee comes at the price of displacement of indigenous communities. Local government has turned a deaf ear to their plight, this issue now calls for action from the Government.

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