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Empowering the Public: Internal and External Dimensions

From the *Alternatives Desk*

THE public has been systematically disempowered in this part of the world, not only by governmental rules and regulations and the power of the police but also and more importantly and this in recent times by the sheer sophistication of firearms and its frequent use by a section of the public itself. The latter includes people of dubious nature and connections, ranging from mastans, terrorists, thugs, and chadabaj to armed cadres of political parties. In the old days, a variant of the latter did roam around in the midst of the public, but their power were mainly backed by strong fists or at the most a kitchen knife. Gone are those days!

The state of public insecurity is now radically different. In Bangladesh and (I believe) in the whole of South Asia the broad range of the dubious people mentioned above are no less armed and militarized than the government's own law enforcing agencies. Indeed, some of these elements have come to possess not only variations of small but sophisticated armaments but also are heavily armed, more heavily than the police. Uncontrolled proliferation of such arms has only made them more affordable. A recent survey has found that the so-called "Saddam" pistol can be purchased at Taka 40,000-50,000, Chinese Rifle Taka 80,000, the so-called 303 "kata" Rifle Taka 25,000, .32 revolver Taka 15,000-22,000 and the list goes on and on. What number of unarmed public can face and resist the power of the dubious armed public? Not many, I am afraid.

This only tends to suggest the complexity of the issue, indeed, to a point where it is difficult to envision the empowerment of the public without taking into account the sophistication of firearms and its easy availability in the midst of the public. On this issue the domestic or internal is linked to the external or international, more precisely, to those countries where such arms are produced in plenty, like USA, Russia, France, UK, China, Germany and Italy. Unless efforts are made to control and discontinue the production of such arms, there is little chance of them being stopped in the consuming countries, including Bangladesh. Put differently, the empowerment of the public requires the disempowerment of the means at the disposal of the dubious public. And this can only take place when the arms producing countries resist the temptation of easy profits and stop producing such arms. An **International Non-proliferation Small Arms Treaty** can be a good beginning in this direction.

I am aware that the critics would dub this as a long shot and say that this is unachievable in the short term! Such criticism, however, would hold if public empowerment were limited to the above task. No leaves should be kept turned in the equally important task of **depolicing the public** by way of ridding the state of all SPAs and PSAs or, for that matter, by organizing Neighbourhood or Muhallah Watch programs in the cities and countryside. Let the task of empowering the public be multi-focal and multi-layered.

Power, Public Safety and Women

by Sharmina Nasrin

IN recent years the rising incidence of violation of human rights has been a major concern in Bangladesh. The state of things continue to worsen. The State has a responsibility. But the irony is that the State itself with its different organs together with criminalised politicians and politicised criminals sometimes abuse power to infringe the rights of weaker and powerless section of the society. Instead of using the power for ensuring public safety and security, it is being abused and exploited, the victims are women in most cases. In a society characterised by inequality and poverty, violence becomes the means of asserting power.

Violence against women is nothing new. It is an outcome of the patriarchal form of the family and society which expresses itself through superior rights, privileges, authority and power assigned to the male sex. Prevailing custom, religion and culture that reflect the tradition of patriarchy have sanctioned subordination, discrimination and even violence against women in both private and public lives. A woman's subordinated position in the family and society and the resultant violations of her human rights are also reflected in the formal institutional attitudes towards women. This social and cultural inheritance in turn interacts with the operation of macroeconomic and political forces, which also act against the interest of women.

The origins of crime against women lie in the fact that they do not have the power to strike back and they are treated as inferiors not just in this country but all over the world.

Women comprise about one half of the population in Bangladesh. Bangladesh's politics has witnessed commendable emergence of its womenfolk to the leadership echelons, with two of them being at the helm of state affairs. There are Acts and institutional promises regarding equal opportunities for women, campaigns and movements to ensure women's human rights. The Government is also committed to the international Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Despite all these, women are treated as virtual second-class citizens and are subjected to widespread social and gender discrimination. The negative practices of power by the people, organisations or even by the laws of the land entrusted with the responsibility of providing public safety, limit the opportunities for women in education, empowerment, and integration into the mainstream of national development. In this respect matriarchy both by people in power and people backed by power pose a great threat to women safety causing a rise in violence against women.

The trend in incidences of oppression and physical violence in the country has shown that although overall incidence of violence has increased over the years, violence against women has increased at a much higher rate. From domestic violence to dowry-related, acid-throwing, rape, gang rape and fatwa, there has been an increase in all forms of violence against women in Bangladesh. The table below illustrates the point:

Table-1: Violence against women, 1996-1999						
Nature of violence	1996 incidence	1997 incidence	Increase (96-97)	1998	Increase	1999 incidence
Rape	262	753	65%	1425	47%	1238
Acid Burn	27	130	79%	138	6%	153
Dowry Related Violence	77	177	56%	239	25%	253
Domestic Violence	55	234	76%	273	14%	330

Source: Compiled by Ain O Salish Kendra from 8 daily newspapers.

Different forms of atrocities and abuse of power against women:

Womenfolk in the country are subjected to violence and abuse of power almost in every sphere of social life. The forms of violence are:

1. Family or domestic violence
2. Violence at social level
3. Legal aspect

Domestic violence
Violence against women in this sphere is most rampant. But it is ignored on grounds of family privacy or community norms. The status of Bangladeshi women is characteristically marked by dependence on men. She is assigned a position of inferiority, subjugation and seclusion in relation to men. In this context, she is expected to possess the qualities of obedience, patience, endurance and sacrifice failing which she is liable to reaction amounting to any degree of violence. On the other hand, within the sphere of marriage and family, men have the monopoly over the means of coercion and direct violence. Husband demand dowries and even burn their wives.

Domestic violence also includes torture by husbands and in-laws, abandonment, divorce, oppression of domestic workers and in case of domestic or dowry related violence, the relationship of power between men and women is licensed by a customary acceptance of gender discrimination and tolerance of violence.

Violence at society level

Abuse of power and violence against women in the society is alarmingly on the rise. Despite women's empowerment, increased access to education and even participation in the political process, minimum security for women is not present in her work place or in public life. Women are victims of sexual harassment, acid-burn in our country. The barbarous act of assaulting a woman on Dhaka University campus on December 31st night is a naked example of degradation social values and is indicative of social insecurity of women. The incidences of rape committed in Jahangir Nagar University by the leaders of the student front of the ruling party demonstrate how power is abused against women.

Assault of the weak by the strong in the form of eve teasing, rape etc. are the manifestations of the male attitudes which treat women as objects up for grabs. There are male inspired myths that rape is essentially an exercise of power, an act of contempt perpetrated on those who can't retaliate. The crime is a product of the power relations that governs society.

Despite specific provisions in the Penal Code and other special laws the incidences of acid throwing are on the rise. Violence against women may be

the result of lawlessness or impunity of perpetrators. But investigations by human rights and women rights organisations suggest that violence against women is the symptom of gendered power and control.

Even empowerment of women is not giving adequate security to women. For example in the first five months of 1999, at least four female members of Union Parishad were raped by their male colleagues in Maulavibazar, Noakhali, Jessore and Kishoreganj. The male counterparts have challenged the women leadership through expressing their power in the ugly form of sex harassment.

Women workers are exploited in Ready Made Garment (RMG) sector where they comprise about 90 per cent of the workforce.

The Status of Women and the Law

The Constitution of the country articulates a social justice paradigm, which ensures equal status to male and female. Article 27 declares that "all citizens are equal before law and entitled to equal protection of law."

Article 28 is much more specific regarding the status of women. The first three clauses of the article read thus:

1. The State shall not discriminate against any citizen on grounds only of...sex.
2. Women shall have equal rights with men in all spheres of the State and public life.
3. No citizen shall, on grounds only of sex, be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort or admission to any educational institution.

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ity, restriction or condition with regard to access to any place of public entertainment or resort or admission to any educational institution.

Article 28(4) also provides for making special arrangement in favour of women for their advancement. Article 9 and 10 of the constitution provides for the empowerment of women. Yet discriminatory laws are found.

Under personal laws of Muslims and Hindus, women do not enjoy equal rights with men. Under Muslim Family Law of Inheritance, a son gets double than what a daughter gets from his ancestral property. Muslim personal law contradicts with the provision of Evidence Act and gives women half weight as witnesses. Under Hindu Law of Inheritance women are deprived of the rights to inherit property from their husband. A Unified Family Code is the demand of the time, which will give men and women the equal status as far as their family affairs are concerned.

Special laws have been enacted to fight the atrocities against women and children. These are:

1. Women and Child Repression (Special Provision) Act, 1995 (repealed)
2. Women and Child Repression (Special Provision) Act, 2000
3. Dowry Prohibition Act, 1980 amended in 1986
4. The Family Courts Ordinance, 1985
5. The Muslim Marriage and Divorce Registration Act of 1974

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Violence in thoroughfare: Vulnerable public.

Public Safety Act (Special Provision) 2000

Necessity or a Sense of False Security

by Sharif Atiqur Rahman

THE Public Safety Act (Special Provision) 2000 has become the most controversial Act of recent times in Bangladesh. Both the position and opposition parties have presented arguments for and against the PSA. Public opinion has been divided on this Act as many doubt whether this Act would ensure safety and security of the people at all. This write-up is about the concerns and observations raised by the people on the said Act.

Controversial Issues of the Public Safety Act

The write-up identifies the following areas of the Public Safety (Special Provision) Act 2000 as controversial.

Lack of Transparency in Formulating the Bill

The bill was brought in as a supplementary agenda on a Thursday, a Private Members day, which is not according to general practice. Customarily a government bill is never presented on a private members day; it is reserved for members, on their individual capacity, to move bills.

On the same day, the bill was sent to the Parliamentary Standing Committee on Home Ministry, whose session was called on a 24 hours notice which was quite unusual.

The Committee approved the bill in spite of a 'note of dissent' by the opposition. Normally when there is such a 'note of dissent', the report of the Standing Committee contains the full explanation of the reasons for such a dissent. But in another deviation from the norm, the report only contained a brief mention of it without any explanation.

An important law like the PSA, which was at the centre of all sorts of controversy and attention, was presented and passed in the Jatiya Sangsad just within two working days. This rushed upon passage through the parliament raises question about the transparency of the law.

The bill was passed in the parliament in the absence of the majority of the members. Only 136 out of 330 were present. Among those 136, only 4 were from the opposition.

Necessity of the PSA

It was argued on part of those opposing the bill that there was no necessity to enact such a 'tough law'. There are plethora of laws existing in Bangladesh, which are sufficient to curb crime and terrorism from the society. Instead of creating new law, the amendment of the Penal Code and Criminal Procedure Code, making the police department and criminal justice system corruption free and free from political influence are desirable. Enactment of tough laws to combat crime is almost synonymous with failure of governance. Whenever a government fails or is failing to improve the 'law and order' situation, it takes recourse to 'tough laws' to camouflage its failure, without realising that this camouflage ultimately compounds the problems of governance.

It was also argued that much power for the application of the PSA lies with the police. The corruption and inefficiency of the police force in exercising its power and responsibilities is a well-known fact. Far from becoming a people's force, the police have turned out to be a force of the ruling party. When the law enforcing agencies are corrupt and not free from external influences, it is meaningless to empower those agencies with any 'tough law'.

Political opponents of the present regime and various human rights groups fear that, like previous similar Acts, the PSA would do nothing other than suppressing the voice of the dissidents. This they fear, will happen in the name of 'public security' and public bashing will become routine work with the help of corrupt administration, bad governance, and political criminalisation.

On the other hand, those supporting the Act opined that the existing laws of the country are not adequate to combat the crimes of 21st century. The Penal code was formulated in 1860 and the Criminal Procedure Code in 1898. Such old laws are inadequate to tackle the current situation. Besides, the government on numerous occasions, affirmed that the PSA will not be abused or used

with political motive; the Act will only deal with specific offences like hijacking, extortion, tender collection, smashing cars, damaging properties, impeding the movement of transports, abduction, demanding and realising ransom, creating panic, instituting false case etc.

Classifying the PSA Bill as a Money Bill

The most controversial issue related to the PSA is whether classifying the PSA Bill as a 'money bill' is right or wrong.

The explanation for classifying the PSA as a 'money bill' has been that since the implementation of the provisions of the bill will entail spending money from the public account of the Republic to set up new special tribunals for ensuring speedy trials of the eight categories of heinous crimes, therefore this is categorised as a Money Bill. But this is a weak explanation as there is no legislation which does not involve government expenditures. Therefore all those Bills cannot be termed as Money Bills.

Taking the relevant articles of the constitution and rules of procedure of the Jatiya Sangsad into consideration, it is clear that the provisions concerning Money bills deal with the annual budget and matters related to it that may subsequently arise. To use this loophole to pass a bill which deals with our fundamental freedoms is nothing less than considering the people fools, the Constitution as nothing more than a scrap of paper, and the President, who has to assent to it, as nothing more than a robot.

It is alleged from those who are opposing the bill that the government has knowingly and wilfully classified the PSA Bill as a money bill to expedite the legislative process and to limit the options available to the President to have the bill amended by returning it to the parliament for reconsideration. This kind of attitude rises question about the true intention of the law. When the government does not even want the President to offer his considered opinion on a question of law, apprehensions about authoritarian rule may not be unfounded.

The government defended its position by saying that the President himself termed the bill as a money bill in his note to the Cabinet Secretary and after the bill was passed in the parliament it was certified as a money bill by the Speaker of the Jatiya Sangsad. A further controversy was raised when an unsigned fax message from the Press Secretary of the Bangladesh Government stated that it was wrong to believe that the President has termed the bill as a money bill. Later in a statement Law & Parliamentary Affairs Minister Mr. Abdul Matin Khasru reaffirmed the government's position and termed the issue whether it is a money bill or not, as a 'dead issue'.

Time Frame for Investigation of Crime

Under this Act, the investigations need to be completed within thirty days. But the investigation department of police is not a separate department. This time period appears rather too short a period for it to do justice to the investigation procedure.

On the other hand, the proverb says - 'Justice delayed, justice denied'. It has been observed that the existing laws are not suitable enough to give justice within a short period of time. Millions of cases are re-

mained pending in different courts of the country for years. Criminals are availing this opportunity to continue their anti social activities. Under these circumstances a law was needed to ensure justice promptly. Besides, though the PSA initially allows only thirty days for investigation, it has the provision to allow as much as seventy five days for investigation if the tribunal feels necessary. This surely gives enough time to conduct a complete investigation.

Acceptance of Uncorroborated Testimony as Evidence

The PSA provides for uncorroborated testimony of a witness recorded outside the court to be treated as evidence, if such a witness cannot be present during trial. It is apprehended that acceptance of such testimony without cross-examination will lead to the destruction of a foundational pillar of criminal justice system. The amendment to section 14 of the PSA brought about on April 5, adds that the tribunal will not punish any accused based on such testimony alone.

Denial of Bail during the Investigation

The PSA (without the amendments) treats certain specific crimes as non-bailable offences and restricts the power of the tribunals and even the Appellate Court (High Court Division of the Supreme Court) to grant bails. This has been inserted in the Act as the provision of bail has often been misused.

But according to some law specialists this goes against the normal practice of Criminal Procedure Code and will eventually violate fundamental human rights of the under-trial prisoners. Mandatory denial of bail of an accused who may not be convicted in the subsequent trial, is tantamount to imposition of imprisonment on an innocent person. The President also objected to the above provision.

Accordingly an amendment was brought to the PSA giving the appellate court the power to consider a bail petition after examining the gravity of the offence, related documents and evidences.

The Public Safety Act 2000 and the Bangladesh Penal Code

In a bid to justify enactment of the controversial PSA, Home Minister Mr. Mohammad Nasim claimed in the Jatiya Sangsad on January 27 this year that the country's existing laws have proved inadequate to curb serious crimes as these are not clearly defined in existing laws.

In a study conducted by the legal research wing of the Bangladesh Legal Aid and Services Trust (BLAST), which was later published in a national English daily, it was found that contrary to the government's claims, most of the crimes under the PSA are actually covered by the existing laws. In certain cases, the existing laws are more stringent in terms of punishment to be meted out to a criminal. In case of other crimes some amendments to the existing provisions of the Bangladesh Penal Code (BPC), especially in terms of clearly defining crimes and specifying punishments, would have certainly served the government's pronounced purpose.

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Victims of violence: Growing grief.