

Reflections on women and violence in 2000

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LIKE many women around the globe, women in Bangladesh have had to face violations to their human rights year after year. These acts of violence are both public and domestic - rape, acid throwing, fatwa, violence due to non-payment of dowry, etc. In Bangladesh, there are both social reasons and legal loopholes, which are the sources of violence towards women. The religious and cultural norms, discriminatory and defective laws, the denial of appropriate property rights and the failure of implementing international instruments relating to women's rights and other related factors have created a negative environment for women who are commonly perceived as burdens to their families - consequently rendering them vulnerable to various forms of violence and exploitation. The country has several enactments specifically protecting women's rights to life and safety and severely punishing offenders of crimes against women. The Penal Code, Criminal Procedure Code, Dowry Prohibition Act, etc. all contain provisions punishing those who dare commit any sort of crime against women. However, it is unfortunate to note the severe downward slope that the scale of implementation of laws has taken in the past few years. Nor has any measure been taken to strictly implement laws protecting women. Due to this, crimes perpetrated against women have increased. The Law Commission did make a suggestion that the present laws need to be amended and new provisions added, if necessary. However, this has gone unheeded by the government.

Violence against women

in the year 2000

There are many women's organisations that document various forms of violence against women. Odhikar, however, includes such incidences where they are part of the organisations human rights agenda - political repression and violence by law enforcing agents. The organisation is, however, also conducting a project involving the violation of women and children's rights and thus some incidences of acid throwing and rape have come to light. According to investigations carried out by the organisation under this project, one thing has come clearly to light - despite the laws protecting women's rights and punishing offenders of crimes against women, there is a continuous lack of implementation and a quantity of disinterest show by responsible government agencies.

Acid throwing

In 2000, Odhikar recorded (from reports of eight national daily papers) 186 incidences of acid throwing. In 1999, there were 178 such incidences reported and 101 in 1998. According to Odhikar's documentation, 33 of the victims in 2000 were between the ages of six and fifteen. In a majority of the cases the main reasons for the perpetration of such crime was jealousy, refusal of advances and revenge after an argument.

Rape

Rape is probably one of the most common forms of violence against women in Bangladesh to date. Unfortunately, despite the fact that in most of the cases the violator is known to the victim, nothing is done to bring the former to task. Usually money and muscle are the reasons why the crime goes unpunished. In most of the investigations con-

ducted by Odhikar, the victim's family were too poor and ignorant of the law to seek legal recourse. In one case, the victim's father, a rickshaw puller, told Odhikar that he 'did not know the lawyers name, but knew what he looked like.' In another incident, the lawyer has been demanding payments for every appearance and asking the court for more time. The mother of the victim in this case had no more money to give and is now at the mercy of the Bangladesh Mahila Parishad.

Case Study: On 18 November 2000, the daily papers reported the news of the rape incident of Nasima Khatun and her stepdaughter, Ozufa Shundori. The daughter was subsequently murdered. On 25 November, Odhikar went to Berbinni village in the district of Jhenaidaha to carry out an investigation into the incident.

When the investigators went to Berbinni village, at Horinakundu they could not find the mother, Nasima Khatun at home. Her father in law Abdur Bishwas informed Odhikar that she was undergoing treatment in the Jhenidaha Sadar Hospital and his son Monju Biswas, Nasima's husband, was in Jhenidaha Jail as an accused in a murder case. Moju Biswas's first wife Hajera Khatun committed suicide by taking poison, leaving two children Ozufa Shundori and Fuli. After the death of his first wife, Majnu Biswas married Nasima Khatun, daughter of Amir Uddin of the same village.

Three or four neighbours who wish to remain anonymous told Odhikar that on the night of 17 November 2000 at around ten o'clock, Nasima took Ozufa to the toilet, outside the house. At that time, a group of people gagged them and forcefully took them to the

Betel leaf borj (plantation) belonging to one Shamsul Islam, adjacent to the village. They raped both of them and murdered Ozufa.

2000 at around 6 am the day labourers who come from other villages to the borj to work, found Nasima on the ground senseless



The neighbouring women said they learnt of the incident from Nasima herself. They also said Nasima could recognise some of the rapists, including Moinuddin son of Jainuddin, Jainuddin's son in law Shamsuddin, Jahar Ali's son Kamal and Gahar Bishwas's son Mangal of the same village. They further said that on the morning of 18 November

and found Ozufa Shundori naked and dead. When they informed the owner of the said borj and others, people gathered there and sent Nasima to the Jhenidaha Sadar Hospital and Shamsul Islam informed police about the incident. Police came at the place of the incident at around 12pm and at around 2pm sent Ozufa's body to

Jhenidaha Sadar Hospital for autopsy. On 19 Nov 2000 at around 8 p.m. Ozufa was buried.

After the whole incident, a case was filed under the Penal Code only and no case was filed under the Prevention of the Suppression of Women and Children Act 2000, where filing the case under this Act would have been more appropriate. Nothing more can be said till the investigation is complete.

Rape by law enforcing agents

The protectors of society have become the violators, as members of the law enforcing agency police, army personnel, etc. continue to rape women and the state continues to do nothing in the way of punishment. Rape in police custody is a case of 'out of the frying pan and into the fire, and of all the cases brought to light so far, very few of the offenders have received their just deserts. One of the reasons for this could be the fact that it is the police who are carrying out investigations regarding crimes allegedly committed by their own colleagues. Furthermore, government investigation and inquiry commissions are set up which take months in producing a single report - which is then not disclosed to the demanding public. Thirteen women were raped by members of the law enforcing agency in the year 2000, the youngest being a girl of six who was raped by a police constable in Panchagar on 17 June.

Dowry violence

The demanding, giving and accepting of dowry is an offence under the laws of Bangladesh. The practice, however, still prevails in many sections of our society. One of the reasons for this persistence in

demanding dowry is the rising unemployment among young males, specially in rural Bangladesh.

Often, the bride's parents cannot contribute the whole amount of dowry at once and pay some of it at the wedding ceremony. Later on, the demand for the rest becomes intense, and it butts of the brutality which follows a delayed payment is the bride - now the wife. The issue of dowry is probably the most common source of domestic violence in rural Bangladesh, where not only the husband but his parents and relatives take part in reminding the wife that the remaining payment is still due. The incidents of murder or attempts to murder are regular items in the country's daily papers.

Although Odhikar does not regularly document dowry violence, it is part of one of the organisation's on-going projects.

Women in the political process

What about the participation of women in the reserved seats of parliament?

Reserved seats were introduced so that women could take part in policy planning. What participation? you may ask. We all know that the reserved seats for women are 'vote banks' and the thirty sets of ornaments have no opinion other than what their leader says. The provision for reserved seats is to come to an end in 2001. It will probably be a relief if these reserved seats are uprooted. What is needed is positive discrimination in respect of women's empowerment and access to actual power. Political parties should give one third of their total nominations to women candidates in the national elections.

The increase in crimes against women and acts of violence against

them raises serious questions regarding the effectiveness, transparency and accountability of those responsible for maintaining law and order in the country. It shows to what extent the law and order situation has deteriorated - especially in the case of the inhuman crime of rape perpetrated on children. It is also disturbing to note that even acts of violence against women, perpetrated by persons who are well known and thus identifiable, slip out of the grasp of the supposedly 'long arm of the law'.

The newly introduced Women and Children Repression (Special Provisions) Act 2000 is a small improvement on the Ordinance of the same name of 1995 - now repealed. It provides for stringent punishment for offenders and considers their offences non-bailable. What good will the introduction of new laws do, when the whole infrastructure is shaky with pockets of corruption and existing laws not implemented? We do not need new laws and must be more realistic and identify genuine violence to women which have no remedy or punishment yet. These can be included in the laws already in force. For example, there is yet to be a law against Domestic Violence and the crime is still seen more as a social norm than a legal matter. Provisions for this could be included in the prevalent law - the Penal Code. In order to improve the situation, the various state mechanisms need to tackle and amend the realities of indifferent police, corruption, criminalisation of politics and poor participation of women in policy making spheres and then rewrite and re-garnish the laws we already have.

Saira Rahman has prepared this report on behalf of Odhikar

'Campaign for People's Right to Know' What kind of freedom of information legislation do we need?

A. H. MONJURUL KABIR

ESTABLISHING 'People's Right to Know' requires concerted initiatives from all stakeholders. As mentioned in the last episode (Initiating 'Campaign for People's Right to Know') there are multi-pronged approaches, which can be pursued for achieving this. One of such is to enact a separate legislation, which give effect to the right to freedom of information. The other options may be supplementary to making separate right to information law. That is why there is a growing world-wide demand the national government must make a law which applies uniformly to the whole country and sets out a clear procedure for getting information.

The last thirty-seven years or so have seen the passage of freedom of information legislation in several countries beginning with the United States in 1966, Denmark and Norway in 1970, Australia and New Zealand in 1982, Canada in 1983, Greece in 1986, and Ireland in 1998. South Africa, the United Kingdom, and India are now seriously considering similar legislation of their own.

The law commission of Sri Lanka in its recent 'Report on Freedom of Information' unequivocally states: "Sri Lanka should currently adopt a regime that clearly defines what information is secret and establish guidelines in respect of the exercise of discretion by government officials for giving access to other information." It also proposes a model law titled 'Access to Official Information Act'. The Law Commission of Bangladesh should seriously consider of joining this global trend of suggesting formulation of a 'freedom of information (FOI)' legislation.

FOI legislation breaks with the often entrenched tradition of secrecy in several countries and, in doing so, helps empower the citizen vis-a-vis the state. Such legislation can be an effective and powerful aid to the process of economic development not just democracy. Enacting a new law to ensure people's access to information has become the demand of the day. At the same time we should not forget another very important aspect rightly mentioned by Shri Ajit Bhattacharjee in his article in the Hindustan Times, "... Laws and notification are not enough. Lacking public awareness and involvement, laws and rules have little impact. And without committed grassroots workers capable of arousing popular awareness, right to information may remain an academic achievement". Indeed experiences in various countries show that a recalcitrant civil service can undermine even the most progressive legislation. Promotional activities, are, therefore, an essential component of freedom of information regime.

International specialised NGOs are developing model principles based on international and regional law and standards, evolving state practice (as reflected, inter alia, in national laws and judgments of national courts) and the general principles of law recognised by the community of nations.

ARTICLE 19 - Global Campaign for Free Expression, developed a set of principles on freedom of expression legislation. Commonwealth Human Rights Initiative (CHRI), a Delhi based INGO also developed some principles.

Principles

Maximum disclosure

The principle of maximum disclosure establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances. The overriding goal of legislation should be to implement maximum disclosure in practice.

Limited scope of exceptions

Exceptions should be clearly and narrowly drawn and subject only to the restrictions allowed by the Constitution. In drafting the law, care must be taken to keep the exceptions within the limits prescribed by the Constitution.

The right of access to official/government-held information should be a wide right. The exceptions to the rule of giving information must be limited and specific. The law must not contain a long list of exceptions couched in terms general enough to ensure that all kinds of information can be refused taking the help of the law. A right to information does not need to disclose any specific need. If a person must show public purpose every time he seeks information, it would give unlimited discretion to public bodies to refuse information.

Modernisation of systems

The law should contain provisions for setting up specific systems for storing and disseminating information and upgrading the existing systems for enabling easy access. There must be specific provisions for priority-wise computerisation of government offices.

Allocation of funds

The law must contain a specific allocation of funds for the purpose of operationalising the right to information. Without this, the law will be a dead letter and will have no effect.

Accountability

A Right to Information law must lay down clearly the principle of accountability. That is, it must state specifically as to who is responsible for providing the information. Penalties should be imposed on officials, who delay, without

any just cause, the giving of information or refuse on unwarranted grounds.

Independent forum for appeals

The law should contain a simple and independent procedure for appeals from refusals to give information. The appellate forum should be an independent person or institution such as an Ombudsman.

Duty to inform

The law must cast a positive duty on public bodies to inform the public in case of certain projects and activities, which relate to the public. This envisages giving information without being

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is reasonable and does not act as a deterrent for asking information and does not end up debaring information from the disadvantaged groups who cannot afford the fees. The law must provide for waiver of fees in certain circumstances and for certain classes of people such as those living below the poverty line.

Methods of communication

The law must contain a specific directive for simplification of official language. Information-giving should be in a form, which can be easily understood by people. There must be a focus on traditional means of giving information. As of now, most information is contained in official gazettes and publications, which are usually unavailable and are of no use to the lay citizens, given the low literacy levels.

Time limit

The law must contain a provision for timely imparting of information. The concerned public officials should face a penalty in case the information is not given in time. The time limit should be reasonable and should not jeopardise a person's rights. Time limits should be set in order of urgency and accessibility. Information regarding a person's life and liberty should be made available forthwith or within the shortest possible time, say within 48 hours. Information which is available at hand should also be given in a shorter time.

Protection of privacy

The law must take into account the protection of an individual's privacy. Personal information held by the government must be exempt from disclosure. However, if disclosure in the public interest greatly outweighs the preservation of individual privacy, then disclosure should be allowed.

Application to private bodies

Although, strictly speaking, the Right to Information is for government-held information, the law must make it binding on private bodies to disclose certain kinds of information, which could affect the public health, etc. This is especially in view of increasing globalisation and incidents like the Bhopal Gas Leak in India, which claimed many lives and put to irreparable harm even future generations.

Protection of whistleblowers

Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing. The law should provide protection to public officials who release information on wrongdoing.

Publicity and training

The law should provide for a number of mechanisms to address the problem of a culture of secrecy within government. These should include a requirement that public bodies provide freedom of information training for their employees.

The law must contain a mandatory procedure for publicising its contents. Often, laws are passed without their knowledge percolating down with sufficient speed or impact and therefore fail to bring about the desired change in the systems.

The right to information law must also contain a strong aspect of training and orientation of public servants at all levels, in order to bring about an effective change in the culture.

Promoting the concept of open government

Informing the public of their rights and promoting a culture of openness within government are essential if the purposes of freedom of expression legislation are to be realised. The existence of a freedom of information law is important but mere existence is not enough. This is an area where the particular activities for promoting the concept of government, depend on factors such as the way the civil service is organised, key constraints to the free disclosure of information, literacy level and the degree of awareness of the general public.

For Bangladesh, this is indeed a critical challenge to overcome.

Source of Information: ARTICLE 19, Global Campaign for Free Expression; Commonwealth Human Rights Initiative (CHRI).

Anatomy of Parliament IV

Law-making process and the role of the people

THE law making process consists of various steps.

Although the Constitution of Bangladesh and the Parliamentary Rules of Procedure do not define 'law making process', they nevertheless articulate how laws are made.

The Constitution contains the fundamental aspects of law making while the Rules of Procedure provide more elaborate rules relating to law making.

People's Participation in the Law Making Process: An ideal law making process essentially requires people's participation. 'People's participation', in this regard, is meant to refer to the reflection of public opinion at every step of law making. In other words, people's participation in law making means that:

- the need for making laws is perceived by the people;
- the government takes initiatives in making laws responsive to people's needs;
- the proposed draft laws reflect public opinion;
- the framework of proposed

laws is open to criticism; and v. necessary amendments to proposed draft laws are made with due regard to public opinion.

Right of the People to Participate: The Constitution of Bangladesh is premised on the will of the people. Article 7(1) of the Constitution provides that all powers of the Republic belong to the people and that these powers will be exercised on behalf of the people. Moreover, Article 39 of the constitution guarantees every citizen the right to freedom of thought, conscience, expression and speech. Thus, as the depository of all powers of the Republic, the people have a right to take part in the law making process.

The Necessity of People's Participation: People's participation in the law making process is essential for various reasons:

It fulfils people's aspirations: Laws are often not commensurate with people's hopes and aspirations. This is due to the lack of people's meaningful participation in the law making process. If such participa-

tion could be ensured, the laws would serve to meet the needs of the people instead of causing despair and uncertainty.

It increases acceptability of laws: Active participation of people in law making process makes the laws more acceptable to them. There are laws in Bangladesh, which have not been well received by the masses simply because those laws lacked inputs from people.

It increases awareness of Laws: People's participation in law making enriches their knowledge of laws and helps them develop clear ideas about their rights, duties and privileges.

It establishes a strong civil society: While engaging in the process of law making different segments of the society have to exchange views amongst themselves. This facilitates the free expression of opinion and development of a strong civil society.

People's Participation by way of Petition in the Parliament: When a Bill is introduced in the Parliament and is subsequently published in

the official Gazette, a citizen may take part in the process of law making. He or she may do so by submitting a petition to the Committee on Petitions of the Parliament. However, no such petitions have been proffered so far, possibly due to the fact that very few people are aware of this provision.

Mode of Presenting Petitions in the Parliament: A petition may either be presented by a Member of Parliament or be forwarded to the Parliamentary Secretary who shall report it to the House. It should be mentioned that no debate on such report is permissible.

Authentication and Counter Signature of Petitions: Every petition shall contain the full name and address of the petitioner, which will have to be authenticated by his signature, and if illiterate, by way of a thumb impression. Every such petition shall be counter-signed by the Member of Parliament presenting the petition.

Form of Presentation of Petitions: While presenting the

Petition before the House, the Member of Parliament shall make a statement in the following manner:

"Sir, I beg to present a petition signed by..... petitioner(s) regarding.....".

Presentation of Petitions in the House: All petitions shall be addressed to the House after giving an intimation to the Parliamentary Secretary of the intention to present. Such petitions shall contain definite objects regarding the matter to which they relate.

Referral of Petitions to the Committee on Petitions: Every petition shall, after presentation by a Member or upon a report by the Parliamentary Secretary, be referred to the Committee on Petitions for consideration.

The Current Scenario of People's Participation: The current scenario of the law-making process could hardly be described as 'democratic'. The laws are promulgated with undue haste and without prior intimation to the public at large. Another reason for people's non-



participation in the law making process is their lack of knowledge of the scope of intervention in the process by approaching the Petition Committee. Furthermore, there is no awareness building exercise in terms of the relevant Rules of Procedure.

In order to reverse this frustrating state of affairs steps should be taken to identify the various stages of law making. Information on the status of a proposed law and the scope of people's participation has to be made available to both the public and the lawmakers. Democracy will

only take root and flourish if the law making process could be made people friendly.

Courtesy: Transparency International Bangladesh