

HUMAN RIGHTS advocacy

Some home truths

SHOHANA SHABNAM

IT'S been great to hear that the Law Commission has taken initiative to draft a bill on domestic violence, great to know that domestic violence will be formally recognised in law. Till date dowry is the only recognised domestic violence in our country. So, finally the huge vacuum in law that was felt and voiced by women's movement has found a ground to work on. Already the Law Commission has sought for human rights NGOs views on the issue and this surely is a very positive step on their part.

What we mean by domestic violence?

The first thing that came to mind while writing this article is what actually we mean by domestic violence or to be precise what actually strikes the public mind. I think the most common idea that strikes our mind (we have frequently come across visual display of it in news papers) is picture of a woman, a distorted figure burned, choked, hanged to death. The reason for her death is unquestioningly dowry as will be cried by media, police and families of the victim. What is missing from the picture is the long story...a history of violence she had to endure to come

able to get free. If your autonomy has been eroded consistently over time, the idea of taking such a step becomes monumental. The effects of battering can bear many of the same psychological hallmarks as those experienced by hostages.

In our context the societal perceptions are added pressure for a woman to leave or sought for legal or other recourses. This article is not a comprehensive write up on domestic violence nor will it try to list down the types of violence that can come under its periphery. It's a mere attempt to hit some home truths. The truths that domestic violence is not merely a physical threat, but also a threat to the psychological and emotional wellbeing. It is aided by society and even state plays a vital role by maintaining a distance from the 'private sphere', not acknowledging the fact that private sphere can be equally if not more threatening to a woman life, liberty, security and decision making. Let's not also forget children. In many instance children become the victims of violence, psychologically and emotionally disturbed, caught in the middle of domestic turmoil for custody, maintenance.



to this point...death. Not acknowledging that the process that led to her death involves various factors like power imbalance between men and women, societal perceptions like "women should be controlled by men" or "she should not leave her husbands home", the invisible pressure to endure all sufferings and lack of access to resources.

The propaganda around dowry and dowry deaths kept us well away from the home truths that husbands don't kill or use violence against wives for dowry only. Causes can vary from refusing to cook to being humiliated in front of friends, inability to control kids, nagging and simply for nothing. However, we hardly come across police or media reports of domestic violence when the woman is still alive.

As rightly pointed out by Helena Kennedy in her article The Illusion of Inclusion- Women in the Law in 1996 New Zealand Law Conference, "Battered women remain in abusive relationships, not only because alternatives are thin on the ground for women with children and few resources, but because of shame, self-blaming, loss of self-esteem and fear of reprisals. Their abusers take on proportions, which are larger than life so that women believe they will never be

There is law...there is no law

Most of the cases of deaths of women where the main accused is the husband or his family are definitely reported as dowry deaths, whereas in fact there may not be such demands of dowry.

The problem of reporting domestic violence cases as dowry lies in the limitation of law. I remember number of women coming to a legal aid organisation demanding that dowry case be filed because of their husbands beatings. When asked whether dowry demands were made, they would answer 'well, no, but he always beats me up'. They will eventually mention the law enacted for them Nari-shishu Ain - they will call it. When explained that unless there is dowry involved they cannot file a case under the Suppression of Violence Against Women and Children Act, 2000, they would always find it absurd and would ask "then what's the point of having a separate law to suppress violence against women and children, if that law fails to address the severe violence and fear I had to endure everyday".

"Is claiming money more severe than beating me to death". As her husband didn't beat her up for dowry, so there is no case under Nari-shishu Ain. But there is the Penal Code; I would rather call it the father of all criminal laws. Charges can be filed under the Penal Code for simple to grievous injury. But the series of questions from battered women would be, "will police take my case, will judge punish my husband, what if he gets out on bail and come to kill me. What if he serves his sentence and then come back to kill me. What if police/judge drops the case as I was not injured enough to come under the schedule of Penal Code". A million question, fear, ifs & buts will haunt those who want an answer. There will be none. As we know that there is law, but also there is no law.

In the end it will come down to the Nari shishu Ain, as there is no other effective recourse people will opt for filing a dowry case. Eventually, as dowry couldn't be proved perpetrators of violence go unpunished. What is not understood is that domestic violence is not measured by the number of blows or the gravity of injury but the fear and imbalance of power engendered by them.



Think about them

Laws are made for the benefit of people, to protect rights. So the primary concern should be what is the best way to ensure that legislation will be effective to control, reduce violence and give recourse to the victim. Procedures should be made to fit that criterion. In domestic violence cases protection and preventive measures should be the prime concern rather than deterrent punishment. Even in developed countries like the United Kingdom 20% of deaths of women are caused by their husbands or partners as mentioned by Helena Kennedy in her article The Illusion of Inclusion- Women in the Law. Ensuring security safety and wellbeing of the victim should be focused and injunction, counselling, protection and other supportive mechanisms should be introduced in domestic violence cases. So that the accused persons have close proximity with the victim in terms of relationship and the chances of being stalked or endure further violence is also very high.

The issue of domestic violence is a very sensitive area that demands special handling. In my view the formal justice system, specifically the criminal justice system is not yet prepared to accommodate the complexities of a domestic violence case or have the sensitivity within the formal system to deal such case. So, there must be social mechanisms in place. And as recommended by Ain O Salish Kendra (ASK) a Legal Aid and Human Rights NGO, that there should be a monitoring system under the auspices of the Ministry of Social Welfare.

Does law works as a stick to stop domestic violence

In one hand law definitely holds the societal perception of right and wrong. It acts like mirrors where what should be the guiding principles of our life is reflected. But on the other hand a law if not carefully enacted for societal changes will end up being an ornamental instrument that may give us a pseudo satisfaction of having a good law for women, but ultimately will fail to reach out to the monumental problem of domestic violence.

Now what to do then. I can write down a number of points that needs to be done, but the thing is the practice of seeing law in isolation and taking it as the sole life saver in a society driven by many complexities is one limitation that must be dealt with. Liberating women seems to be the in thing in the recent world. Lets hope this one will not be an eyewash in the name of women. Sometimes it's better to change the practices and attitudes first rather than fighting for quick amendments in imperfect laws. For when a law is passed in parliament it's very difficult to change it afterwards, we wouldn't want to be part of the process that made an imperfect law, do we? It's better to wait, assess our learnings and then work for a law that will take into consideration the manifold complexities of domestic violence.

Shohana Shabnam is a legal researcher. Sources: Ain O Salish Kendra

LAW vision

Will US give veto over the wall?

DR. LIAQUAT ALI KHAN

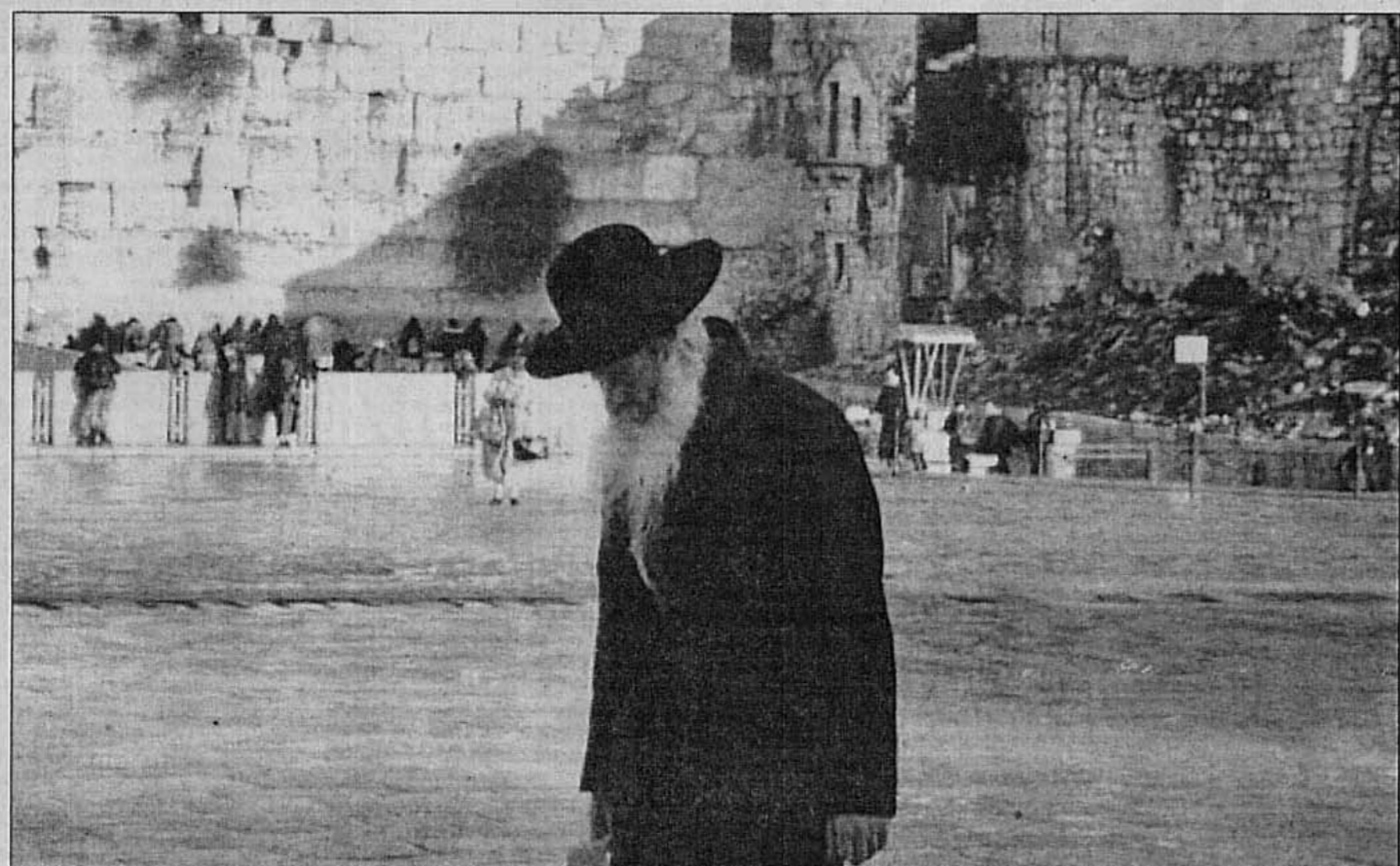
A threat to the rule of law is in the making. Before long, the United Nations Security Council would be moved to force Israel to dismantle the wall. Hoisting its veto, the United States would block the move. And the world would conclude -- once again and rightly so -- that the US cares little about international law and the World Court.

In an unprecedented ruling, the World Court has declared that the separation wall Israel is building in occupied Palestine is contrary to international law, and must be dismantled. The Court further demanded that Israel make reparation to all persons whose homes, businesses, and farms were destroyed and confiscated for building the wall. Most importantly, the Court asked the Security Council "to take action to bring to an end the illegal situation resulting from the construction of the wall."

This explicit entreatment to the Security Council to enforce the ruling of the World Court raises high stakes for the international legal system. For if the Council fails to take action, the Court will lose credibility, even the rationale for its existence. True, the Court's decisions have been ignored before. But before, it was the loser state, and not a UN organ, that refused to comply with the judgment. And most often, the non-compliant state held a veto in the Security Council. The world tolerated this anomaly of non-compliance as a special privilege of permanent members of the Security Council.

This time, far from having a veto, the loser state (Israel) is not even a member of the Security Council. Furthermore, the Court's call for compliance is made directly to the Security Council, the UN organ specially empowered to "give effect to the judgment." And the call is clear. It mandates that the wall be dismantled and victims be compensated. Rarely is such a perfect textbook case deferred to the Security

To pave the way for a US veto, however, the pro-Israel lobby has begun to undermine the Court's credibility. One well-known law academic has called the World Court a 'Kangaroo' and 'bigoted' court, advising Israel to defy its judgment and finish building the wall.



Council, leaving for it no other option but to enforce the Court's judgment.

To pave the way for a US veto, however, the pro-Israel lobby has begun to undermine the Court's credibility. One well-known law academic has called the World Court a 'Kangaroo' and 'bigoted' court, advising Israel to defy its judgment and finish building the wall. Others

are trashing the United Nations for referring this case to the Court. Prime Minister Sharon, the unyielding architect of the wall, remains determined, undeterred by the Court's ruling, to fulfill his dream of expanding Israel beyond its lawful borders.

Despite attacks on the Court's authority, the truth remains that its judgment against the wall is

founded on a remarkable degree of judicial consensus. Fourteen judges of diverse cultures and nationalities, including the ones from China, Russia, France, and the United Kingdom--the four veto-holding members of the Security Council--favoured the Court's decision on demolishing the wall. The sole dissenter on key issues, including the one calling the Security Council

to enforce the judgment, was the American judge, whose dissent contradicts the very basics of international law that he, as a law professor, has ably taught to generations of law students in the United States.

The dissent will carry little weight in Security Council deliberations. China, France, and Russia, along with most non-permanent members, would support a resolution for

enforcement of the judgment. Even the United Kingdom, whose government has ceased to think independently and routinely follows the White House, might not betray the verdict of its own judge on the Court who voted in favor of every issue, with no exception.

Should the US refrain from using its veto, a unanimous Security Council is available to pass a resolution giving effect to the Court's judgment.

But surely, the US would unlikely favour a resolution that compels Israel to comply with the Court's judgment -- not in the election year when both presidential candidates are boogie dancing to please millions of pro-Israel voters. Campaigning on the same side of the wall, both candidates would argue that the Court has decided a "political case" and not a legal case, and that the Court's decision, if implemented, would interfere with the Peace Process that the Security Council had previously endorsed. Few voters would know that the World Court has specifically addressed these arguments, and rejected them all. To win pro-Israel voters, the Bush Administration would veto the resolution, and John Kerry would seal his lips to save any unintended slips of the tongue.

Come what may, international effects of the US veto will be grave. When the wall is completed, Israel would have grabbed more than 16% of West Bank; around 500,000 Palestinians would have lost their homes, businesses, and agricultural holdings; and more than 300,000 Israeli settlers would have dug deeper in the Palestinian territory. With all this, the Muslim world would find more reasons to hate America, and terrorists more reasons to kill. Even many Israelis would detest the perpetuation of injustice, as would the fourteen judges of the World Court. And the peoples of the world would say that the US commitment to international law and human rights is empty.

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HUMAN RIGHTS analysis

Children with different abilities

OLI MD. ABDULLAH CHOWDHURY

A good number of people of total population in our country are physically or mentally disabled and unless we involve them in the total process of development, sustainable development can't be achieved. Some of them have become physically crippled either congenitally or as result of disease or being a victim of accident, or due to improper or maltreatment or for any other reasons became physically incapacitated or mentally imbalance. Their rights are often ignored though the constitution of People's Republic of Bangladesh ensures equal rights for all citizens.

Children with different abilities (the new term is being used in stead of 'disability') are in a more vulnerable situation. Though Bangladesh is one of the earliest signatory of UN Convention on the Rights of the Child (UNCRC), very little has been done so far to establish the rights of the children with different abilities.

However, UNCRC is based on four key principles-

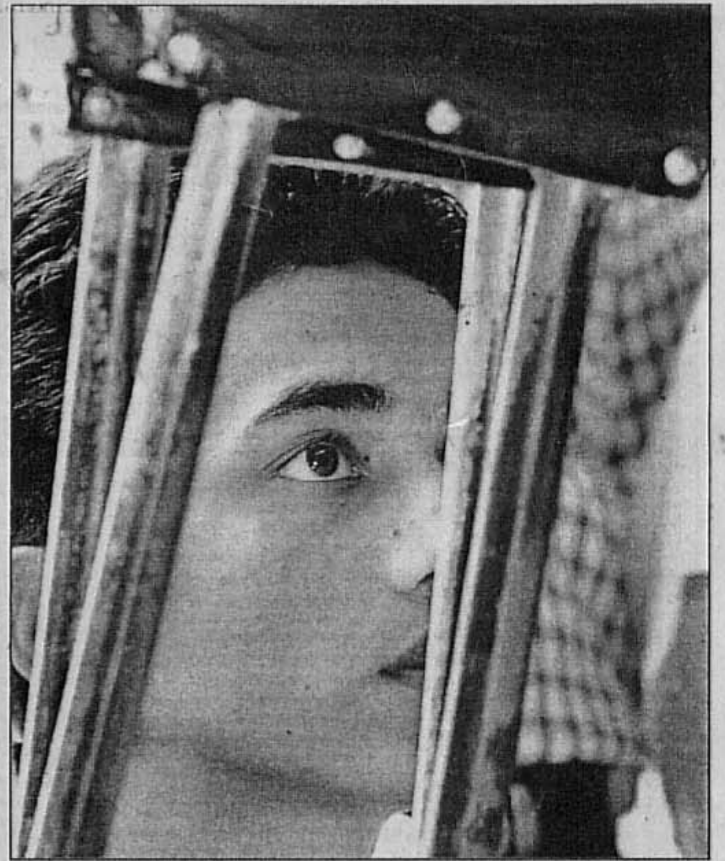
- Non-discrimination
- Best Interest of the Child
- Survival & Development
- Participation

Children with different abilities are discriminated in the family, school, community and above all in the society. Their best interest is seldom considered and as a result their survival and development are greatly hampered. They often do not have the right to participate at all.

Accountability, inalienability and indivisibility are the principles of human rights. Children with different abilities are also human beings and Universal Declaration of Human Rights (UDHR) is also equally applicable to them also, nevertheless. They are entitled to those rights set forth in the human rights conventions with all other human beings.

Article 4 of UNCRC also sings in the same tune with the UDHR principle of accountability. It states, States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation. As Bangladesh ratified UNCRC, government is accountable to the people, UN and obviously children for the implementation of rights.

People with different abilities are principally divided into five categories. They are, (1) Visually Impaired (2) Physically Handicapped (3) Persons having Hearing Impairment (4) Persons with Speech Impairment (5) Persons with Mental Disabilities. Bangladesh Persons with Disability Welfare Act also included person with multiple disabilities as some persons have more than one type of disability. Apart from this, Co-ordination Committee could declare any other type of impairment to be defined as disability as per the



welfare act.

Again, the major limitation of this act is that children are not the prime focus of this act. Children have some special needs and children with different abilities should enjoy their rights fully with other children. Their agenda should be included in further enactment of law and UNCRC provides the guideline.

"States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community"- as stated in the Article 23(1) of UNCRC. While considering children with different abilities, state party should ensure dignity, self-reliance and participation. It is not an act of charity; rather they are entitled to these rights.

Moreover, children with different abilities don't have a proper access to education. Inclusive education system should be adopted in our educational system. An archaic methodology is practised in Bangladesh that children with different abilities go to different school made for them. Thus, they are excluded from mainstream children. UNCRC provides a scope for international co-operation and government should sought international co-operation if needed for the mainstreaming of children with different abilities.

Furthermore, some children become physically handicapped in our country due to the lack of access to the health facilities. "States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health" if the government could implement as stated in Article 24 of UNCRC, some sorts of disabilities could be prevented in the childhood.

Not only children with different abilities, but also persons with different abilities find difficulties in moving as our roads and highways are not friendly enough to them. Service centers and offices both public and private seldom offer a safe moving condition for persons with disabilities. Teachers should be trained on teaching for children with different abilities to make school friendly for children with special needs.

Again, government is going to finalize National Plan of Action (NPA) for children. For the first time, children are being consulted for formulating NPA. Issues of children with different abilities must be incorporated in NPA as they are one of the largest groups among vulnerable children.

To recapitulate, children with different abilities are one of the most vulnerable groups of children in our society. Often, they are not paid enough attention in the family even. Fellow children also don't want to mix with them for existing social taboo. This condition must be improved and children with different abilities should be developed in a condition, which ensure dignity, self-reliance and participation.

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