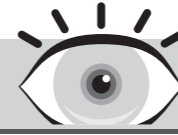


LAWvision



RIGHTcolumn



Gender violence in South Asia

SAIRA RAHMAN

WOMEN all across the globe have come to recognise gender violence as a symptom of unequal power between men and women. Gender norms are determined by social and cultural norms demarking what they think are appropriate places for women and men. Such norms perpetuate gender hierarchies, which are entwined in the foundations of the structures of family and community and restrict decision-making and access to resources, leading to a multitude of other restrictions and social taboos. Social interpretations of the 'man's place' and 'male privilege' are used to justify such restrictions on women and also to justify violence against women.

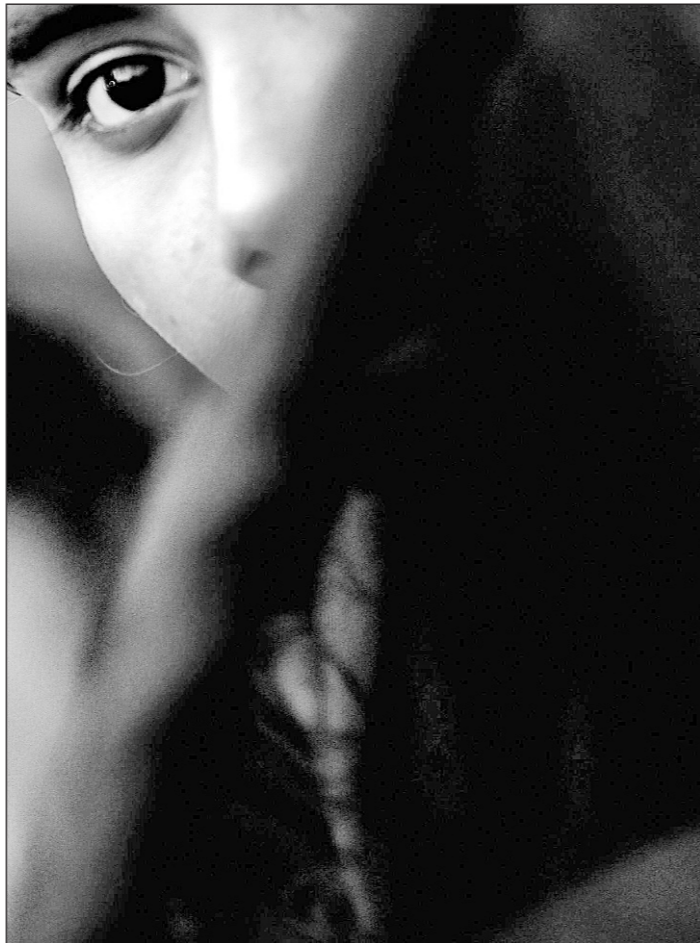
In South Asian countries, the culture of patriarchy is deeply entrenched, making a strong foundation for gender biases. In this region, gender biases are perpetrated not only by men, but also by women as part of the social order. A complicated web of social, cultural and economic factors trap women and girls in its meshes, rendering them vulnerable to various forms of violence. These factors, coupled with rigidly defined and enforced gender norms create a vicious cycle of deprivation, low self-esteem and discrimination against women.

Women and children are generally undervalued in South Asia. There are even laws which put 'women and lunatics' in one class. Discrimination against women in many families in South Asia begins even before birth with sex-selective abortions. The preference for sons is still strong, while daughters are considered an economic liability. Once the girl child is born, she faces discrimination in the areas of nutrition, health care and eventually in the area of education. Even though women in South Asia all suffer from various forms of gender-based violence and discrimination, are socially disadvantaged and are given a low status in society, they are not a homogeneous category. Social and cultural norms in various countries in the region create slight differences. For example, while an upper caste urban Hindu woman in India and a rural Muslim woman in Bangladesh may both suffer from domestic violence, the factors that contribute to the violence may vary. This may be the same for women of the same nationality, but from different economic levels.

However, some things remain homogenous. According to the 1996 Human Development Report for South Asia, 'several factors that transcend class, religion, culture and locality affect the lives of all South Asian women. These include responsibility for housework and childcare, vulnerability to domestic violence and the economic vulnerability that reflects women's unequal legal and social status.' The report goes on to mention that these commonalities are based upon a shared history of colonialism and religious, cultural, economic and political structures shaped by a strong patriarchal values that deny women power.

In South Asia, British colonisers used communalism as a ploy for their policy of divide and rule. Hindus and Muslims were divided along religious lines for political gain. Historically, women have been treated as war booty and have been humiliated, raped and abused by invading armies and warring factions. The history of the Partition of the subcontinent is no stranger to this. It is rife with accounts of women being raped out of revenge by each religious community against the other. The same history is repeated in Bangladesh's war for independence, where many Hindu women were raped and assaulted by the Pakistani army. The more recent carnage in Gujarat, where scores of Muslim girls and women were raped and sexually assaulted by Hindus is another instance of how women become symbols of community shame and honour.

This sort of religious fanaticism both by those of the Muslim and Hindu faith are hotbeds for the recruitment of young men and adolescents to sustain the movement, creating a continuous chain of violence. However, India, Pakistan and Bangladesh are not the only sufferers of such violence. In the Kingdom of Nepal, the Maoist movement has also had an impact on



women. Looting, extortion, harassment, torture, seizure of homes and land, rape, kidnapping effect women both physically and mentally.

Women's movements and organisations for 'the betterment' of women have existed for over 100 years. In the subcontinent, such small organisations can be traced back as far as the late 1800's. In modern times, in the growing gloom of violence against women, many strong women's movements have grown and spread across the sub continent in a strong bond of sisterhood, especially in the area of trafficking and migration. However, even though the women's movements are growing, there has been little change in social attitudes and traditions towards women. Women in Pakistan have yet to be rid of the curse of 'honour killings', in India, brides are burnt in secret, Dalit women are abused as caste culture reigns strong and in Bangladesh acid violence victimises more than 300 women every year. It is true that women's movements have brought about amendments in the law and the introduction of new laws and that women now take active part in government affairs and women lead many human rights organisations. Such women play an important part in ensuring that women and their demands are made visible and heard.

However, women's entry into the market and public domain is fiercely challenged and women who dominate South Asian governments almost always reach the top wearing the badge or bearing the legacy of deceased

male relatives. Women still lack access to resources and justice and lack of information about legal remedies, coupled with poverty, fear and a social system that insists that issues like domestic violence and rape must not be aired in public, further inhibit the process to safeguard women's human rights.

So much for the NGOs. How about the governments of South Asia? Some instances of violence are country-specific. For example, the curse of karo kari or honour killings plagues Pakistan, acid violence is most widespread in Bangladesh that in the other countries of the region, the problem of caste is found in India and Nepal. However, the governments of the region are trying to deal with the issue of violence against women and create mechanisms for the advancement of women. Bangladesh, Nepal and Pakistan have separate Ministries for this issue, like the Ministry for Women and Children Affairs of the Government of Bangladesh, created in 1978. The Ministry of Human Resource Development of the Government has a Department of Women and Child Development. Furthermore, all have policies and activities geared towards the development of women, especially in the areas of health and education.

Some of the countries have a National Human Rights Commission where cases of violence against women are also dealt with. Unfortunately, despite the setting up of exclusive ministries and department cells and despite the laws and the legal system and the setting up of family courts and special tribunals, it is a common fact all over south Asia that violence against women has had no significant drop. The main reason for this is lack of implementation of the laws due to various reasons, including corruption - and the disinterest of the governments. Furthermore, most of the government officers who work in these specialised departments are not trained or sensitised in how to approach the issue and have little idea of the concept of gender and development. According to a 1994 study on judicial attitudes to women in India, 48% of judges agreed that it is justifiable for a man to slap his wife on certain occasions, 74% endorsed the view that preservation of family should be the primary concern for women even when there is violence within the marriage.

Advocacy for legal reforms, implementation of the law and other related issues have always been on the agenda of human rights organisations, especially women's rights organisations. To date, many grass-roots level women know that there are laws to protect them from various forms of violence, but when the issue becomes a domestic one, culture, tradition and family bar the way for any attempts to seek justice. Economy is also a factor, coupled with the fear of becoming an unwanted burden in a father's or brother's home. Reporting of violence against women has increased and spans the region and several relevant regional meetings are held every year on the issue. What more can the NGOs do, short of running the government?

Changing the way people think is central to addressing gender based violence. Policies and laws cannot be implemented unless there is community support. Emphasis needs to be made that the issue of violence against women needs to be tackled by both men and women and that the media should refrain from sensationalism and stereotyping. Media is vital to create awareness right to the grass roots level and a sensitive media is a powerful tool.

The bottom line, however, is that gender violence cannot be dealt with unless one also addresses the fundamental issues of basic health, education, nutrition and livelihood, all of which play a role to reduce the risk of violence. Women in the region now work just as hard as the men and are an integral part of the development of the countries. In all, gender violence in South Asia needs to be given much more attention to than what the governments are currently giving the issue.

The writer is Associate Professor, School of Law, BRAC University.

Sex traders: Stigmatised sections of the society

SULTANA RAZIA

To provide an opportunity to discuss the plight of women and children involved in sex trade with the objective of raising awareness and formulating a set of recommendations an international conference on "Establishing Human Rights, Protecting the Stigmatized: Women in Sex Trade, their Children and the Exploited Minors" were held in city (02-04May 2005). A human rights report on sex workers and their children in Bangladesh was launched on that occasion. The programme was organised by Terre des hommes Italia in association with Aparajeyo Bangladesh and Jagarani Chakra.



Participation from the policymakers to civil societies strengthen the objectives of the conference and their valued opinion echoed the urgency to change our attitude towards them.

The Honourable Minister of Law, Justice and Parliament Affairs, Barrister Moudud Ahmed acknowledged the role of the Government in facilitating the challenges relating to changing attitudes at a local level. Moreover he also joined the common chorus calling for change and the acknowledgement of the will to do so.

The conference had the privilege of enjoying the participation of a large number of brothel and floating sex workers and transgenders.

In our country there are 14 brothels and 4192 women and children in sex trade and among them 1492 children work as sex worker.

From a survey conducted in Jamalpur and Jessore it was found that in 40.9% case trafficking is the reason behind involving in the profession.

In a recent research of Terre des hommes Italia narrated that sex workers started to come to this profession below the age of 18 and the young workers have to work as bonded labour, popularly known as Chukri. They were in the most vulnerable condition. They were treated as slaves sometimes and had no human rights. They had to confine themselves to the brothel and they could not enjoy even the right to freedom.

Sex workers do not enjoy fundamental rights and the status of the transgenders is even more vulnerable. Moreover they are not treated as citizens and cannot even vote. None of the sex workers are allowed to travel outside the country because passports are not issued to them.

Police plays an important role in the brothel. The names of the sex workers are registered in the local police stations and police exploit them most of the times.

The sufferings of the floating sex workers are more than those who are in brothels. Using the section 54, of the Criminal Procedure Code and some other sections of Dhaka Metropolitan Police ordinance police arrest them and in exchange of money they freed themselves. Though as a profession their income is more than others but after distribution of money to the local pimps, police and sometimes their owners have little in their hands.

The social status of sex workers in Bengali society is considered so low, that it was said that they were not allowed to wear shoes or sandals outside the brothel. Even death fails to end their misery. Regardless of whether prostitute is Hindu, Muslim or Christian, she is denied basic funeral rites.

Recommendations

- The conference was finalised set of recommendations. These are:
- Persons in sex-work should be treated as human beings and accorded all human rights as citizens of Bangladesh
 - The word 'pottila' should be erased from documents and official languages
 - Vabagure Ashray Kendra (Vagrant centres) should not be used for sex-workers as they are abused in such centres (kendras).
 - Capacity building of all stakeholders should be done by the national networks of sex-workers with implementing NGOs.
 - Capacity building and counselling of sex workers should also be undertaken to help sex-workers to negotiate with mainstream
 - Government resolution to stop violence by the police should be issued by the authorities
 - Specific retirement schemes for older sex-workers should be undertaken to stop the women from using young girls as their retirement plan
 - Burial rights and 'janaga'(rituals) should be accorded to all sex workers
 - Mothers' name should be legally valid as fathers' name
 - Sex-workers' children should have equal rights for admission in government and public schools
 - Health officials should be directed by the government resolution to issue letters to all sex-workers for free and equal treatment at the government facilities
 - There should be specific reservation seats (quota) for children of sex-workers in government facilities

Bangladeshi laws are enough and adequate for the protection of sex workers but the problem is our poor enforcement mechanism.

In a recent ruling, the Bangladesh High Court said: "The right to livelihood of sex workers is enforceable as a fundamental right." The judgement was welcomed by human rights activists and lawyers and it made Bangladesh one of the few Islamic countries which do not ban prostitution. But the decision is now pending in the Supreme Court.

- In this trade children are being used are treated as bonded labour.
- To avoid underage children in brothels-
 - Criminalise brothel owners for using
 - Criminalise client for using
 - Require medical certificate for proof of age
 - To protect minors from exploitation-
 - Provide uniform age of protection of 18
 - To amend 1933 Act by substitution of 'sex worker' for word 'prostitute'
- To overcome the situation awareness- rising is the main thing. It is certainly a positive step that from 2004, birth and death registration act was introduced and mass awareness program should be launched on this regard.

It was also recommended in the conference to establish a taskforce between Ministry of Law and Home Ministry for a set of instructions to be implemented at local level: Sex workers and their children have enforceable fundamental rights under constitution i.e., right to education, right to citizenship, right to movement, right to livelihood, freedom from any kind of exploitation... And these all rights are guaranteed by the constitution.

From Law Desk.

LAW alter views



Contempt of court or contempt of judge? An American perspective

ASHOK K. KARMAKER, ESQ.



VERY common in common law countries is respect for court and judges. But courts in civil law countries such France, Germany and many others judges are mere officials like other officials of different branches of the government. Judges do not command extra or higher respects than other officials. Judges are not court, but a part of the court as government is not the state but a part of it. Obviously judges comprise the most vital part of the judiciary.

America has its own legacy of legal system from common law family. In America judges are the most respected people as it is true with the British. But here judges seem to be less sensitive and afraid of maintaining their own dignity from the hands of the media, press and others. Other than in case of disobeying the order of the court and certain inappropriate behaviours in the court room nobody can hear of any issuing of any contempt of court rule. That does not mean nobody criticise the judges and their decisions but truth is that judges are more tolerant about that. Here judges are being criti-

cised more often than not. Remember Democratic Presidential candidate Al Gore's conceding speech began with the words, inter alia, that though he "strongly disagreed" with the decision of the Supreme Court's decisions he "accepted" that. Surely, the Supreme Court of the USA did not sit next day to issue a contempt of court rule against this brilliant man.

The question arises are the judges of the Supreme Court of America so dumb that they could not dare protecting their dignity from the hands of a defeated presidential candidate? No the Court did not do a favor to him, rather did the right thing doing that because they took the oath of protecting the constitution. Protecting constitution comes first before their so-called self dignity. Protecting the constitution and constitutional right of free speech and freedom of thought and press freedom are much more important than shielding the American judges from criticism. Who did recognise that at first? Obviously, the learned judges of America themselves. They know that their dignity is better protected when they do not criminally abuse and misuse their power that the constitution bestowed on them and confided with them. That's why they are so respected.

And it should not escape our notice that the term refers to "contempt of court" not "contempt of judge". The contempt of court has been defined as [T]he deliberate obstruction of a court's proceedings by refusing to obey a court order or by interfering with court procedures. As I said before judges are not synonymous with court. An individual judge can do wrong but not the whole judiciary. In America judges do not falsely think that they themselves are the court, but they are part of it. Court comprises of judges, lawyers, jurists, juries, staff and, above all, general people.

In America some people admire the decisions of the courts when others admonish, when some commend others condemn. A democratic society and institution does take both commendation and condemnation equally. Say for example, many conservatives who opposed the disconnecting the tube from Terri Schiavo, who died on Thursday March 31, 2005, condemned the decision of the judges as "judicial homicide" and some politicians like Republican leader Tom DeLay commented that "judiciary has gone too far" in this case and he opined that legislature should see that in future. No court, no judge came forward with any contempt proceedings, not the parents of the judges.

Even judges themselves are not happy with the notion of court's interference in every matter. Justice Scalia, who is seen as replacement for the current Chief Justice in case he becomes unable to perform his

duties, condemns this notions saying, "If you think aficionados of a living Constitution want to bring you flexibility, think again... [W]hy in the world would you have it interpreted by nine lawyers?"

Under the constitution only person who is immune from being sued for any criminal activity is the President. But look here too, the President enjoys that immunity as long as he retains the Presidency but not after that. That means as soon as he relinquishes power as the President he must stand trial for such criminal activity done during or before his presidency. Noteworthy, even during his presidency the President does not enjoy any immunity from criticism. Anyone can criticise him for his activity and no one can be held liable committing contempt. If so is the case with the first person of the country no other person, whoever he/she is, cannot shield himself/herself behind the screen to avoid public scrutiny. Higher the position higher the responsibility.

Even in such a society many jurists and academics are there who would not like the judges holding so much power. They are called departmentalists. The departmentalists view that

While the Supreme Court has the power to decide constitutional questions, the other branches of government have that power too. As long as the other branches do not disregard a specific order from the court, they have no obligation to accept what the Supreme Court says... The departmentalists' most famous manifesto is Abraham Lincoln's First Inaugural Address. Lincoln acknowledged that the parties to the Dred Scott case had to comply with the court's ruling. But he insisted that the ruling had no effect beyond that. The other branches could adopt, and act on, a different view of what the Constitution said about slavery. Lincoln's administration treated blacks as citizens, even though the Supreme Court had held that they were not, and Lincoln brought about the abolition of slavery in the District of Columbia and in the territories, even though Dred Scott had ruled that the federal government lacked that power.

The departmentalists consider that the courts have not done the right thing all the time in history-[f]or every Brown v. Board of Education declaring segregation unconstitutional, there is a Dred Scott decision expanding the constitutional protection of slavery, or a Lochner decision striking down important regulatory or welfare legislation."

Under the constitution of the USA only the President enjoys immunity from being prosecuted criminally. That means anyone; even judges of the Supreme Court of USA can be prosecuted for any offence they are being accused of. What happens if a judge is being accused of

any crime first, like any other democracies, they will step down until and unless they are being declared innocent. Why? Because judges are being held in high esteem and a standard much higher than others. Therefore, any issue that might cast shadow of doubt on their integrity would certainly compromise their ability, in the eyes of public, to perform their duties efficiently. It is so because the courts are to ensure not only justice is being done but also to show that

It might sound unbelievable that the USA has only nine judges in its Supreme Court. And it is any one's guess how difficult it could be to ascend to that position and what a respect to retain the same. But they are not beyond criticism. One of the judges is Honourable Clarence Thomas. This judge has been lambasted as a "handkerchief-head," a "chicken-and-biscuit-eating Uncle Tom," "a little creep," and a "youngest, crudest justice". But we are yet to hear any contempt proceedings drawn against any of those name callers. Thanks to American democracy.

The author is a US Attorney practising in New York.

