



HUMAN RIGHTS advocacy



DOMESTIC VIOLENCE CASES

State obligation to act with due diligence

SHAFIQUR RAHMAN KHAN

DOMESTIC violence is one of the biggest human rights violations that affect women all over the world regardless of their color, nationality, or age. This problem has reached such a degree that women appear to be more at risk of facing violence inside of the home by a husband or partner, than outside by strangers. However, the traditional view that the State cannot be held responsible for acts of violence inflicted by private actors has been the major impediment to the implementation of legislation that seeks to protect women from such violence. This writing aims to challenge this view and examines the legal reasoning which demonstrates that the responsibility to protect women from domestic violence lies with the State itself.

Legal nature of domestic violence against women

- When? Every day
- Who? Women throughout the world
- What? Face violence
- Where? In the home
- Why? Generally, because governments and the community ignore their responsibility to prevent this violence.

This briefly gives a simple description of the worldwide problem of domestic violence faced by women from all nationalities, cultures and races. Violence against women is not only restricted to violence inflicted by strangers. Indeed, women are more often at risk of facing violence perpetrated by those with whom they live. In fact, women are frequently battered, sexually abused and psychologically injured by persons with whom they should enjoy the closest trust.

Domestic violence is a pattern of behavior that may include physical, emotional, economic and sexual violence; its purpose is to establish power and control over an intimate partner, such as the wife or girlfriend, through fear and intimidation. Unfortunately, as it has been noted in the article of Andrew Byrnes, "this maltreatment has gone

largely unpunished, unremarked and has even been tacitly, if not explicitly, condoned." The failure to investigate and expose the true extent of violence allows governments and the community more generally to ignore their responsibilities.

Domestic violence poses a dilemma not only in law but in the human psyche as well: inherent in domestic violence is the dichotomy between love and hate. It is within the boundaries of an ostensibly loving relationship that violence manifests itself. Moreover, home is often associated to security, comfort, protection and love. It is the belief that home is automatically a safe place that is invoked as a common justification to deny the huge domestic violence problem that women are facing. The 'cynical' side of domestic violence is the fact that it usually takes place in secret and the sufferings of the victims happen in silence. The psychological consequences of domestic violence can even be more harmful than the physical pain itself: it can really destroy a woman's self-esteem, confidence and the capacity for resistance, because domestic violence is degrading and humiliating. It can push the battered woman to live under the black cloud of constant terror and shame. It can obliterate the personality in such a way that it becomes a serious assault on human dignity which is a core concept of human rights law. Domestic violence dehumanises women, it can reduce them to passivity and submission. In this context, it is at home that the application of human rights should begin.

General Recommendation No. 12 of the CEDAW Committee requires States to give statistical information on violence against women. Not all acts of violence against women are reported, and this makes it hard to get clear statistics regarding the number of women subject to violence. However, statistical work reveals that the number of gender-based violence victims exceeds victims of war. It is only very recently that few NGOs of Bangladesh had statistics regarding domestic violence against women but, still no official statistics has been produced or made in public. The lack of data



at the national level has been a big obstacle for the development of policies, strategies and programs in this field. The numbers (published by NGOs) are shocking and reveal the grim reality of violence against women happening behind closed doors.

On the general basis, it can be noticed that violence by husbands is the most common form of violence in the lives of married women, much more than assault by strangers and acquaintances. The research also reveals that women who have been exposed to physical violence often have experienced this violence in severe levels. Furthermore, it shows that violence against women is mostly a hidden problem, because half of the women experiencing violence had not talked about it with anybody before being interviewed in the context of the statistical research. This shows that domestic violence is one of the most common crimes, but it is also one of the most hidden ones.

of the human rights champions. The National Survey conducted by the Swedish Government (published in 2001) reveals a shockingly high prevalence of violence against women.

State obligation

- Who? States
- Where? Throughout the world
- What? Should remedy to domestic violence
- Why? Because it is urgent
- When? Now!

This simplistic way of questioning emphasises that the responsibility to ensure accountability and to guard against impunity lies with the State, not with the victim. For Bangladesh, as for many other countries, women's rights are not given priority. It is with the pressure of different human rights instruments, the CEDAW monitoring process and women's rights organisations that national legislative changes have been realised.

The advocacy against domestic violence can be based on numerous human rights treaties, both general and specific to women's rights. However, the lack of a special convention on violence against women remains a problem. In the Inter-American system, the Convention 'Belem do Para' on the eradication of violence against women specifically details state obligations in respect of domestic violence. The Council of Europe has not yet adopted any human rights instrument affirming and elaborating on the human rights of women.

The issue of domestic violence needs to be taken seriously and treated in its context rather than as an isolated problem detached from its causes and consequences for human rights of women. It should be analysed and evaluated in the context of gender inequality and also torture or inhuman and degrading treatment in order to underscore its gravity.

Furthermore, domestic violence is a time consuming issue and it cannot be solved in one day due to the various deeply rooted challenges that impede the development of women's rights. The

economic and social disparities between men and women constitute a major obstacle that should be overcome in the light of the understanding that without the full implementation of economic and social rights, the civil and political rights will keep being an illusion.

At the national level, cultural myths have a negative impact regarding the eradication of the problem. In that regard, the CEDAW process does important cultural work since it encourages States to adopt the international women rights standards and to undertake effective measures aiming the effective implementation of the norms.

Also, there is no question that the crimes of domestic violence are often more complex and more difficult than other crimes, because they happen in silence behind closed doors. This should demand greater diligence by the authorities, rather than less. The traditional dichotomisation between the private and public spheres should be eradicated both regarding the legislation and the attitudes of the police and judges.

Reflecting thoughts

It should finally be accepted that the state inaction regarding domestic violence, its refusal to deal with the problem seriously and its reluctance to prosecute and punish male perpetrators fosters the victimisation of women. States like Bangladesh should therefore act with exemplary due diligence with respect to the prevention, protection, punishment and reparation of such acts. For the case of Bangladesh, the recent legislative changes and the different campaigns that have been initiated prove that the State is willing to make efforts with the purpose of eliminating domestic violence from the quotidian life of women in general. But the major difficulty comes from the fact that domestic violence is one of the numerous human rights violations that Bangladesh has to solve.

The writer is a Faculty Member of the Department of Law, Jagannath University, Dhaka.

HUMAN RIGHTS analysis



INTERNATIONAL WOMEN'S DAY

Right to equality and equal opportunity

BARRISTER HARUN UR RASHID

INTERNATIONAL Women's Day on 8 March was observed around the world including in Bangladesh. Different organizations in the country marked the day with various colourful programmes with a call for women and men to work together to end all forms of discrimination against women. Seminars, discussions and human chain were organised on this important day and the theme of the day was "Equal Rights, Equal Opportunities: Progress For All".

This date was commemorated at the United Nations and was designated in many countries as a national holiday.

Women of all continents can look back with some satisfaction that they who were once marginalised from the mainstream of society have come out a long way from that position on the basis of equality and justice.

In Bangladesh, the appointments of Ms. Matia Chowdhury as Food Minister, Advocate. Sahara Khatun as Home Minister, Dr. Dipu Moni as Foreign Minister, Ms. Sajeda Chowdhury as the Deputy Leader of the House, Begum Monnujan Sufian as State Minister of Labour and Employment, Shirin Sharmin as State Minister of Women and Children Affairs, and Ms. Segufta Yasmin as one of the Whips of the ruling party are a dra-

matic way of breaking tradition by Prime Minister Sheikh Hasina. In Bangladesh the Leader of the Opposition is Begum Khaleda Zia, a former Prime Minister.

Furthermore, the introduction of women as the Vice-President in the Upazilla Parishad has galvanised women in asserting their rights through ballots. It is one of the mechanisms to empower women and empowerment generates innovation, improvisation and creativity. Women high court judges, civil servants, women judicial magistrates, women police, women lawyers and women politicians are found in Bangladesh, although they are small in number. For example, out of 4,419 civil servants only 673 are women, according to the establishment ministry. There is only one woman DIG of police and four female additional DIGs in police force.

It is reported that all female police contingent will be sent to the UN peace-keeping mission. Women's economic participation has shown uneven but steady progress with gender differentials in wages falling in many instances. Significant progress has also been made in terms of increases in female literacy and life expectancy rates, and reduction in mortality rates in the country.

A growing number of women are also succeeding in the use of new and innovative technologies, especially information technologies, and empowering themselves through effective participation in national machineries and non-governmental organizations (NGOs). For example Grameen bank, Brac and other micro-financial institutions have empowered many women in the countryside of Bangladesh and they are no more solely dependent on income of husbands or male members of the family. For realization of full rights equal to men, it will take time and the above instances in Bangladesh are a good way to start with for participation of women in public life.

Challenges The Bangladesh Constitution in its Article

10 provides that steps shall be taken to ensure participation of women in all spheres of public life. Article 19 provides equal opportunity to all men and women citizens and Article 28 forbids discrimination on the basis of gender. But there are many formidable challenges for women. Women are still grossly under-represented in the decision-making process and have restricted access to productive resources and social support systems. Discrimination starts for girls at home. Many parents give extra attention to boys than girls. Girls are made to feel inferior to their brothers in getting privileges. Unless this attitude is changed at homes, real progress for women's equal rights cannot be made. Furthermore, men's attitude towards women needs to be changed and the society must make its efforts directed towards men to accept that nothing is wrong if girls are to be in many instances are treated with equal rights with boys.

There are many laws to protect women from violence but implementation is very weak. It is noted that implementation of such laws depends on the level of national economic prosperity, education, social awareness and an enlightened attitude of local people and law enforcing authorities. Emergence of religious orthodoxy or conservatism has been a major obstacle to equality of women in the country. They want women to continue their traditional duties of house-work and raising children.

Often it is found that although women earn money such as garment workers in the country, empowerment eludes them because men take all the major decisions in the family in the male-dominated traditional society. Poverty remains the single most debilitating factor in getting basic human rights for women. Women experience the major brunt of the economic crisis and they fall back on the informal sector for economic survival. The women in poverty continue to suffer from economic hardship and social exclusion. Extreme poverty leads a large

number of women in the country into social despair unless the authorities devise social safety net for the poor.

Women's empowerment

Women must be empowered in public life. Empowerment of women in the economic and social fields constitutes one of the fundamental objectives of all development efforts in a country. In Bangladesh Grameen Bank and BRAC have demonstrated that women micro-credit receivers are financially more responsible than men-folk in paying their dues and getting more returns from the micro-credit.

Women's empowerment has many aspects. Education is an essential element. A good quality education, designed on the basis of women and girls' immediate and strategic needs, builds women's capacities and prepares them to seize opportunities in the public and private domains. Empowerment of women is crucial to change some of the societal attitudes and behaviours that discriminate against girls and women. Educating women and girls is therefore directly linked to their empowerment and to the full enjoyment of their rights in society.

With the changing demographic structure of the region and increase in the proportion of older persons, especially older women, the need for appropriate policies and systems to provide economic and social support will be an important issue. Promoting the greater participation of women in decision-making will continue to be a formidable challenge. The task of social and economic empowerment of women therefore remains a priority area of concern for the countries of the region.

SAARC's role

Trafficking in women and children, with all its attendant social ills, and violence against women, has remained a major cause for concern in the SAARC region. The problems of economic and social support for ageing populations, espe-

cially older women, loom as an emerging challenge. An increasing number of women are being trafficked for abuse and exploitation and forced labour, with growing incidents of violence against women. Many migrant women face the bleak prospects of unemployment when they return home. SAARC (South Asian Association for Regional Cooperation) has been engaged with the issue of gender-equality and to bring women in the mainstream development. During 1990s a regional plan was adopted identifying areas of concern and goals for women. Several short-term activities like workshops, training courses were held in the areas of women and environment, women and education, women and employment and women in agriculture.

Conclusion

Equality of women in society has a long way to go. So long old mind-set is not changed in a male-dominated society, equal opportunities for women will fall short. The AL-led government led by Sheikh Hasina came with the AL manifesto "Charter of Change" and on the International Women's Day, the Prime Minister has committed to update and make the National Women Development Policy effective and to eradicate gender discrimination from Bangladesh by 2021. The Prime Minister also thought that women should have equal right to property. It is hoped that women's equality with men in all public spheres will not only get a boost from the Women Development Policy but it will encourage the private sectors to do the same. Finally, the two concepts-women's rights and peace- have been interlinked because promotion of women's rights promotes peace. In other words, peace prevails in society when women's rights are established and protected as those with men.

The writer is former Bangladesh Ambassador to the UN, Geneva.

