



LAW campaign

DOMESTIC VIOLENCE

Law is "Essential" but not "Sufficient"



SADRUL HASAN MAZUMDER

DOMESTIC Violence [Protection & Prevention] Law 2010 has been passed by the National Parliament, which has met the long cherished demand of the women movement and definitely will forward the progress of the nation there by, which will be regarded as the land mark achievement in the history of women development in the country. We all congratulated ourselves in particular to those who have been relentlessly contributed in the process of drafting the Bill being a member of the Citizen's Coalition against Domestic Violence [CIDV], where the members' organisations have put their every effort and translate their experiences in formulating the law. Special thanks to Dr. Shirin Sharmin Chowdhury, Honourable State Minister, Ministry of Women and Children Affairs who has picked the proposed draft in government

machinery for review and taking necessary actions perhaps one of few where the voices of the citizen's in general and women in particular were reflected and we must thank our development partners who extended their technical support in this endeavour. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force. The law is a combination of both the criminal and civil in nature where all the protection orders to be made under the law will be of Civil in nature and disobeying of such protection order will be treated as Criminal Offence for which punishment has been suggested in the law. Bangladesh has a good number of laws conducive to the rights of women but why the demand was such subversive and was raised from the grass roots to the national level? The demand raised from organizations like ASK, BNWLA, BLAST and others who have long track records of providing

legal support that they do not have appropriate legal instrument to interpret the sufferings of most of the women facing at domestic arena into legal framework and the society at large do not recognise such daily facts as offence at all. The saddest part of the existing legal instruments is that women have to wait to be brutally murdered or tortured or injured certified by a registered doctor to get justice, without which complaints of torture/violence are not taken into cognizance, which actually has compelled the demand to bring the required changes in the legal arrangement so that in one hand domestic violence can be addressed according to the intensity of the committed offense and prohibiting misuse of that arrangement in other hand.

Dr. Tamanna Huq aged about 28 died at her husband's house on August 29, 2009 only after three years of her marriage. Her in-laws tried to prove that she committed suicide but her parents and relatives were certain that she was murdered.

Mafruda Haque Sutapa a final year student of Mass Communication & Journalism Department under Dhaka University was found dead hanging with the window grill at her husband's house on September 20, 2009. Her in-laws stated to the police that she committed suicide. But her family sources claimed that she was murdered. She was married to Mr. Imrul just one year and three months back. It was claimed by her family members and relatives that she has been physically and mentally tortured by her husband and in laws since marriage on the demand of dowry.

Sonia Sultana, twenty nine years old Development Activist was found dead in hanging on May 08, 2009 at her husband's house. In the primary investigation it has been mentioned that it's a normal dead incidence but the family sources claimed that she was murdered as there were several spots of injury on her body. Unfortunately to mention few of many incidences that takes place

each and every day implicate that violence against women still remain as the deadly fact in our society where women are persecuted by close associates like husbands and relatives at domestic level at large. Such incidences like many others remain unreported indicate that women are not safe at the place where they are supposed to be the safest. Domestic violence is the most unrecognised form of violence and a very pervasive, serious social malady in every cluster of the society whether rich or poor, literate or illiterate, developed or underdeveloped. Media has been playing an important role in covering the incidences of violence against women, which reportedly concentrate on severe incidences like murder, suicide, rape etc. firstly because incidences of domestic violence were not recognized by laws of the land but we have got this law and now it is the time for action.

Salient feature of the law

Meaning of Domestic Violence: Article-3
Domestic violence means abuse in physical, psychological, economical and sexual nature against one person by any other person with whom that person is, or has been, in family relationship, irrespective of the physical location where that act takes place.

Protected Persons

- Any woman or children who is or has been at risk of being subjected to domestic violence.
- Any victim who is or has been a family relationship with the respondent.
- Any handicapped adult who is or has been subjected to domestic violence. any person can file a complaint on their behalf.

Against whom can a complaint be filed?

- Any adult person who has been in a family relationship with the victim
- Relatives of the husband or male partner including his male and female relatives.

Forum of relief: Article 4, 5 & 6

- For the purpose of this Act after receiving a complaint a Police Officer, Enforcement Officer or Service Providers shall inform the victim about the availability of the services including medical and legal aid services.
- Upon receiving complaint the first class Magistrate shall grant an interim Protection Order or any other order under this Act.
- Multiplicity of forum reliefs can be sought in other legal proceedings such as petition for divorce, maintenance.

Compensation Order: Article-16

The Court may pass a decree of compensation ascertainment of victim's injury or damage or loss as a result of domestic violence.

Temporary Custody Order: Article-17

At any stage of hearing of the application for a protection order or for any other relief under this Act, a temporary custody of children of the victim will grant to the victim or the applicant.

Appeal: Article-28

Any party to the proceedings under this Act may file an appeal.

Consequences of breach of Protection Order: Article 30 & 31

- Breach of protection order deemed to be a punishable Offence-cognizable and bail able.
- First contravenes: imprisonment six months or fine up to taka ten thousand or both or engaging in a service benefiting to the community for a period
- Subsequent contravention- imprisonment up to twenty four months and fine up to taka one lac or both or engaging in a service benefiting to the community for a period.

Punishment for false complaint: Article-32

Conviction up to twelve months imprisonment and also be liable to fine up to Tk 50,000 or both.

Power to make rules: Article 36

The Government shall make rules for the purpose of carrying into

effect the provisions of this Act.

In addition to the law we need to device social programmes against domestic violence having interventions to change social attitude and beliefs that legitimate male violence and essence of male superiority, which may include reforms in education system, having incentive to enhance the moral quality during the tender age. Consideration for involvement of culturally diverged group into social awareness programs is a must, where customary practices of indigenous groups should be well understood.

To ensure proper enforcement of the law immediate initiatives needed to board creating a social safety net based on community participation that includes supports like counseling and legal aid as protective measures. As long as the question of victim witness protection is involved, to deal with incidences of domestic violence, in particular to execute the Residence Order stipulated in Article 15 of the said law there is no alternative of community intervention - the efficiency of the community based legal institutions should be enhanced and public confidence into the Local Justice System should be restored.

In addition to that integral services for identifying the possible victims and enhancing local government initiatives designed to developing their capacity are must so that they can handle such victims within their own capacity and jurisdiction. Although the Police have little intervention according to the law but they need to be trained on mechanism of protecting gender-base violence including techniques of firsthand management of the possible victims - their attitude towards women should be changed at large. Available services through the Victims Support Centers and the One Stop Crisis Center should be extended up to Upazilla level and the quality of services rendered by these institutions should be ensured conforming the Minimum Standard of Care and Universal Human Rights Standards.

Following the Article 8 of the Domestic Violence [Protection & Prevention] Law 2010, the Enforcement Officer will arrange shelter for the aggrieved person. In such cases of providing shelter support to the aggrieved women and children, the traditional shelter services provided by both NGOs and the Government must be changed following the Women Refuge Model. Because in the traditional way the women remain confined, their right to mobility and living a free life are destroyed keeping the perpetrators free, which also contradicts with the Article 3(b)(c) of the said law. Experiences show that such confinement for a certain period in the name of shelter creates threat to Social Integration Program, while initiatives are being taken to integrate the survivors to the mainstream of the society. Rather the Women Refuge Model enables the survivors to stay in a relatively free life and allow the survivor to do her work having Protection Order under the law. The law has created unprecedented spaces for women in recognising their Right to Shelter as mentioned in the Article 15 of the newly passed law.

For immediate start the government required funding, we have got the law but during the current fiscal year there is no specific allocation for supporting the "GET READY" activities for the implementation of the law. In such a situation Government and the non-government agencies should maximise the usages of available funding from the development partners so that we can make the preparation quite smoother and more effective. We further congratulate the government for enacting the Domestic Violence [Protection & Prevention] Law 2010, which requires urgent and immediate response for its implementation. Let us join the crusade in challenging Domestic Violence to the next door and help the survivors in getting support. Let us safeguard misuse of the law.

The writer is the National Coordinator-Election Program, The Asia Foundation [Views reflected are of the author not of Asia Foundation].

LAW interview

Legal education must be brought out of the four walls

Professor Dr. Mizanur Rahman, Chairman of the National Human Rights Commission, is an outspoken academic and activist for the cause of promotion and protection of human rights. Originally a Professor with expertise in International Law at the Department of Law, University of Dhaka has pioneered in the human rights education in Bangladesh and beyond through his innovative Human Rights Summer School model of legal learning, a two-week course for university law students. This year the programme would have its 11th event in December which is being organised under the auspices of the Empowerment Through Law of the Common People (ELCOP), a training and advocacy organization initiated by Dr. Rahman himself. Recently, Dr. Rahman has been honoured with the "Professor N. R. Madhava Menon Best Law Teacher in the SAARC Region Award 2010". **Dr. Uttam Kumar Das** has talked with him on various issues of legal education and human rights.



Uttam Kumar Das (UKD): What is your view on the legal education in Bangladesh?

Dr. Mizanur Rahman (MR): The legal education in Bangladesh is a disoriented one. There is no concrete perspective for the sector. There is no coordination of activities- who is doing what and why with regard to the legal and judicial education and training in the country. Many rivulets of legal education and gaps among their standards have put a challenge to the rule of law itself. We are failing to produce qualified lawyers and judges in terms of their legal knowledge and analytical and others skills in a competitive scenario in the global or regional context. Though it has been a vital sector given the contribution to the rule of law, democracy and access to justice, however, unfortunately, no body takes the issue of legal and judicial education seriously. Whereas our neighbouring countries including Nepal have been producing global-standard law graduates who are competing trans-nationally.

UKD: What consequences do you foresee in the given scenario?

MR: If we can't take immediate steps to

halt this downgrading trend of legal education immediately, it would be a disastrous situation for the country. Unfortunately, after 40 years of the liberation of the country we could not initiate a standard legal education.

We have failed to set up a people-friendly vision in the existing legal education as well. It, with few exceptions, hardly has clinical and practical component. The existing system is also obsolete and archaic in nature. For example, no one can say when the curriculum of the LL.B. programme now under the National University was prepared or modified. The private law colleges, home for part-time students and teachers, alike private universities turned into business centres in producing so-called law graduates. The law programmes both at the public and private universities have problems with regard to timeliness of the curriculum, application of course, teaching methodology, examination system, skills and expertise of the respective faculty members, research and publications and other resources available for a standard academic atmosphere.

UKD: What is the impact on the judiciary?

MR: One of our former Chief Justices had observed that a disaster has been going on in our judiciary. This is contributed by lack of qualified lawyers.

It has turned into a vicious circle. Though we are getting a huge number of law graduates and lawyers enrolled each year, however, a handful of them are qualified in terms of proper legal knowledge and skills. That is why we are getting a huge number of under-qualified lawyers in the bars. The same is also happening with the bench. Fortunately, there are few activist lawyers and judges; they are very small in number to change the whole scenario. One activist judge can't make a sound judicial system what we need. Without a sound legal education we can't expect a sound legal or judicial system as well. We have to come out of the mindset of the colonial judicial system as early as possible.

UKD: What is the reason for this failure?

MR: No body thinks about this; no government has thought to take up the issue. There has been no initiative either from public and private sector to reform,

regulate and standardise the legal education. That's why under-qualified and non-qualified teachers and graduates have been dominating like their counterparts in the legal profession and judiciary. One can easily understand what they are to contribute to ensure people's access to justice. It has been a frustrating scenario.

There are hardly any qualified and globally-competitive graduates from our law schools in practicing International Business Law or Trade Law among some other modern area of practice. That's why as a nation we are failing to meet the global trends and competitions in those sectors.

However, there has been an elite class among lawyers here educated in the west. They are not actually from the mainstream lawyers here; they do maintain coteries of themselves. Handfuls of them are controlling practices related to global finance and transactions here.

UKD: How do you see a remedy from this situation?

MR: The government has to take note of the situation. There should be National Legal Education Policy and Comprehensive Action Plan in this

regard. We also need standard setting national legal institutions to facilitate study and research on various branches of legal and justice education. Human Rights should be an integral part of the legal education. We can follow the model of the National Law School of India University and Kathmandu School of Law.

UKD: What about the legal education in the Education Policy?

MR: The Kudrat-e-Khuda Commission has a stake of eight pages on the legal education. The latest Education Policy dedicated only half page on the issue which very neglectfully covers an important sector. This reflects our national position and standpoint on the legal education.

UKD: What about the role of Bangladesh Bar Council?

MR: The Bar Council has miserably been failing in this regard. It seems that it has opened a sluiced gate to all to be lawyers (Advocates). Since, the Council is authorised to admit new lawyers (Advocates) and issue licenses; it has a regulatory role and immense opportunity to advocate for a standard and qualitative legal education. The Council should standardise its examination system for enrolling new lawyers as well. Also, it should make effective the monitoring role over law schools. And finally, the Council should go beyond political considerations with regard to promoting and advocating for a standard setting in the legal education system. Earlier, the Bar Council, under the leadership of Barrister M. Amir-ul Islam, had introduced few skill development training programmes for lawyers, which included Bar Vocation Courses (BVC) and Continuing Legal Education Programme (CLEP). Those programmes had been stopped for unknown reasons during the last caretaker government.

The Bar Associations have also a role to play in this regard. They should be vigilant

about professional standard, skills and etiquette. They should develop and maintain a strict Code of Conduct for their members and fight for upholding the canon of the profession and justice.

UKD: So, what are your overall recommendations?

MR: The legal education has to be standardised to compete with in the globalised world. The legal education must be brought out of the four walls; it has to be made practical and be brought to the problems of the people and society. For example, in studying land law one has to go to the villages, and has to talk to the peasants, landlords, and sharecroppers. To study criminal law, we need to know the situation and psyche of the victims, accused persons, and society as a whole. In the present system, law courses are being taught without their practical aspects. That's why law graduates do not feel comfortable when they start to do practice. Its like one is learning how to swim without getting in to water. Therefore, in practice one found him or herself unable to swim in the huge ocean of practical lives and legal complexities. Legal ethics and ethical lawyering should also be a focus point of legal curricula. The law teachers are to be properly equipped with knowledge, teaching techniques, research etc. Continuing Legal Education should be introduced for teachers alongside lawyers and judges.

UKD: Would you please share your feelings being the "Best Law Teacher in the SAARC Region"?

MR: I see it as recognition of joint efforts of what we are doing here with regard to legal and human rights education. I would take it as encouragement for all of us for more works to do. And we need concerted efforts of all concerned to achieve the goal of an egalitarian society.

The interviewer is an Advocate in the Supreme Court of Bangladesh. He is also the Deputy Director at the South Asian Institute of Advanced Legal and Human Rights Studies (SAILS), Dhaka.