

LAW OPINION



Can Domestic Violence Act protect Rumanas?

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PROFESSOR Rumana Monzur was brutally tortured to blindness by her closest and most loving associate on earth her husband, in a place where she was supposed to be the safest her home. The incident dramatically came to public domain after seven days which was the latest torture she had been facing since her marriage which has multisided reality. Domestic violence is not lonely true for Rumana rather a common phenomenon in the fate of millions of women across the Globe including Bangladesh which is highly prevalent and most unrecognized form of violence and a very pervasive, serious social malady. Comparative and available literature suggests many-sided realities that cause violence against women in general and domestic violence in particular. Mentionable amongst others are loss of control in argument, power and control (Dominance), ego clash, extra marital affairs, extended family problems, poverty, growing up in violence & abuse, sexual displeasure/mistrust, alcoholism, less charm due to old relation which are driven by cultural, economic, legal and political factors. But the question is "why RUMANAs remain silent?" and "how to raise awareness?" so that they protest against such violence from the beginning.

So called fabrics of the society has given violence against women such an extent that many of the survivors feel that they are at fault. Many of those who perpetrate violence feel justified by strong societal messages saying that rape, battering, sexual harassment, child abuse, and other forms of violence are acceptable. This is why, in many cases, both the victim and perpetrator are often unaware that what is going on is indeed abuse. It is often because of social paradigms that even physical abuse is being denied by the victim thinking as her partner's right 'GIFTED' by the social institution called 'MARRIAGE'. Incidences reported all around have been found as a fashion as if such behaviour heightens the value of being a man in the society. Interestingly it prevails both in the affluent and lower class of the

society, the difference is that when it happens in the slum we notice quickly as the women come out of their homes shouting but in the affluent class of the society we notice only when RUMANAs commit suicide or they are brutally murdered or tortured to blindness. In consideration from the rights perspective these forms of violence clearly goes against the national, regional and international legislations, policies, treaties and conventions which limits their mobility; right to resources, education, choice, access to justice, decision making process; freedom of expression etc. While more and more women talked to each other, it became apparent that violence against women occurs on a massive scale; that no woman is immune; and that family, friends, and public institutions have been cruelly insensitive about it where most of these sad stories remain unreported.

Silence has become the strategy for coping violence against women, which pose a serious threat in designing social programmes for addressing violence against women and girl child in general and domestic violence in particular. So called social prestige also found as one of the inherent causes of such silent violence against women and in most cases woman has to face indecent questions like, "What did you do to make your husband angry?" We have got the Domestic Violence Act, which aims at protecting a woman who has already faced violence at home so that such incidences will not recur. In a society where people at large continue to believe that domestic violence is a private matter between a couple, rather than an offence that requires a strong, swift and integrated response to resolve just not to ensure that the incidence that already has

taken place will not recur but also to reassure that women will remain safe at the place where they are supposed to be the safest. This requires massive social awareness including support services as short term intervention and introducing moral education as long term intervention.

Women rights activists and organisations have celebrated "16 Days of Activism"

nism so that all required services can be made available to every single woman remain at risk today - to bring them out of the cycle of violence right now.

Unequal arrangement for women in Bangladesh maintained by the Constitution reflects gender-based discrimination in mainstream society. At domestic level, during marriages and separations, for example, women's right to choice is governed by the personal laws that give more importance to social obligation than personal choice which brings undesirable consequences in the lives of many women and their children but the Domestic Violence Act solely has little to contribute to reverse the scenario. The Compensation [Section-16: The Court may pass a decree of compensation ascertainment of victim's injury or damage or loss as a result of domestic violence] that can be sought under the Domestic Violence Act has operational difficulties in determining the intensity and severity of violence and thereby the incurred cost due to such inhuman acts or behaviour. Although there are studies and researches [by CPD, BIDS & CARE Bangladesh] to determine the cost of violence against women but the techniques and methodologies followed still remain in doubt as to whether such techniques are well designed and articulated to tap the actual sufferings and quantify the substantive monetary losses. The studies also failed to measure the social cost of violence that clouds the dignity of women at their workplace, to their children and in the society at large. Let me not raise the issue of psychological consequences which again the greatest challenge firstly to understand the climax women usually experience in violence circumstances and secondly drawing any device of measuring the cost of damages

thereby. Domestic Incidence Report (DIR) - the unique invention of tracing the nature and severity of domestic violence prescribed in the Act [Section-11(2) of DV Act] is a highly technical and sensitive tool which required training of all concerned for its proper usage which is the fundamental to formulate prayer seeking Interim Protection Order [Section-13(1) of DV Act] and articulating arguments to mature as Permanent Protection Order [Section-14 of DV Act].

Members of the Citizens' Initiative against Domestic Violence (CiDV) had relentlessly contributed in the process of formulating the draft Bill which finally had been passed almost a year ago following least discussions and debates in the Parliament like many other important laws resulting inadequate budgetary allocation and immediate preparations for the "Get Ready" activities to ensure effective enforcement of the said Act. Congratulations and thanks to all individual members and organisations having excellent track record of fighting violence against women who are also contributing in formulating the Rules of Procedure and the government should take each of their arguments into cognizance and adopting the Rules of Procedures at the shortest possible time, please! Reminding that some important salient sections of the DV Act are so unique which may create confusion in the first instance for example, [Section -31 of DV Act] which enables engaging the perpetrator in social services so that his family will not further be victimized as he is the only earning person in the family, I would suggest operational coordination among the concerned Ministries under the leadership of the Social Welfare Ministry to enforce the order to be passed by the Honorable Court. These sections were articulated following series of thoughtful discussions based on practical experiences without which such a welfare Act may not benefit the survivors but rather be misused

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Concluding part will be published next week.

LAW ANALYSIS



State of maritime laws in Bangladesh

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THE establishment and development of maritime legal system is vital for every maritime nation in the present global context. Due to the complexity of maritime operations and the various legal issues involved therewith, the legal system of a country needs to equip itself to the challenges of the sector. Therefore, it is necessary that the national maritime laws are given special consideration under any legal system. National maritime laws tend to cover a vast array of legal matters. Although maritime laws are purely domestic, it does have significant impact at international level. It is a body of law with roots in public international law, civil law, international commerce, international agreement and the laws of nations. It is a branch of the law central to the economic life of a country. Therefore, every nation should consider the importance of formulating a distinct legislative framework for regulating its maritime activities.

Historically, Bangladesh has been a seafaring nation. Over 90 per cent of its trade is transported by sea. Bangladesh currently possesses few laws governing shipping or maritime affairs. There are also a number of rules and regulations affecting this field. The maritime sector is governed by the Bills of Lading Act 1856, the Carriage of Goods by Sea Act 1925, the Merchant Shipping Ordinance 1983, the Marine Fisheries Ordinance 1983, the Ports Act 1908, the Customs Act 1969 and other general statutes along with the general principles of law such as the law of torts and public and private international law etc. These laws are however, inadequate to meet the ever-rising demand of Bangladesh's fast expanding economic and trade relations with foreign countries and developments in the shipping industry.

Additionally, there are many areas in the sector where there are no laws at all. For example, there is no law on maritime priority, marine insurance, marine pollution, collision, salvage, towage etc. Due to the absence of legislation on many issues, Bangladesh tends to follow English enactments by judicial reference. For example, the Maritime Conventions Act, 1911 is an enabling legislation of England giving statutory

effect to the provisions of the Collision Convention 1910 and the Brussels Salvage Convention 1910. Though Bangladesh did not ratify the conventions of 1910 yet, but courts of Bangladesh had followed the principles under the English enactment. The High Court Division of the Supreme Court of Bangladesh in



Owners M.L. Madina vs.. Owner Jalamoni (1978) 30 DLR 149 applied the principle of the Act giving recognition to the applicability of the Act in admiralty jurisdiction. The Appellate Division of the Supreme Court in Bangladesh Inland Water Transport Corporation vs. M/s. Seres Shipping Corporated World Trade Centre (1984) 36 DLR (AD) 82 concurred with the finding of High Court Division as to the applicability of Act.

The same approach has been followed in case of marine insurance also. In absence of any legislation relating to Marine Insurance, the courts had followed the principles of English Law, and English decisions based on such principles as well as the provisions of the UK Marine Insurance Act, 1906. The Appellate Division in Sadharan Bima Corporation Vs. Bengal Liners Ltd. 16 BLD (AD) 186 held: "In determining issues of marine insurance in general and the issue of unrepaired dam-

age in particular, uptil now, there is no law on marine insurance in the statute book in Bangladesh. Yet, in respect of marine insurance in general the Court of Bangladesh follows the general principles of contract and English law and practice, which are held in high esteem even by the American Courts."

This being the state of maritime laws of our country, a sound system of maritime law appears not only to be appropriate but also necessary. There is a tendency, understandable given our colonial past, to judge and examine the national maritime laws from an exclusively English or Imperial historical perspective. The nature and development of maritime law of Bangladesh must, however, be assessed and approached by reference to Bangladesh as a fully independent nation. Bangladesh should have a clear and strong national admiralty and maritime legislative arrangements of its own.

The formulation of a maritime law, as a part of Bangladesh's legislation is an important and urgent task for safeguarding Bangladesh's right in ocean shipping and foreign trade. The process of making the new regime of maritime laws of Bangladesh should involve the legal practitioners, scholars, judges, arbitrators, governments, shipowning interests, cargo interests, unions, insurers, brokers, seafarers, pilots and all who work in the maritime industry. The new maritime legislations should define and regulate the entire maritime relationship i.e. the activities and relationship arising from and in connection with sea borne trade, such as the control of vessels, competence and duties of master and crews, liability for collision of vessels, limitation of shipowner's liability, salvage and assistance, marine insurance, pollution, settlement of maritime disputes, maritime liens etc. In this context, adoption of a maritime code in the light of experience of China may be considered. Whatever be the format of the new initiative, foreign maritime laws and international legislations and practice must be taken into consideration and carefully examined so that Bangladesh can profit from foreign experience and avoid conflicts of law with other jurisdictions, bearing in mind international usage and practice. Above all, the law should be beneficial to the maritime industry of Bangladesh.

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LAW NEWS



Indigenous groups face land-grabbing in north



NORTHERN Bangladesh's mostly Hindu indigenous people are still coming under land-grabbing pressure from the country's predominantly Bengali Muslim population, say activists.

"There is a process through which the indigenous population is being deprived of their land rights," Mizanur Rahman, chairman of Bangladesh's government-appointed National Human Rights Commission (NHRC), told IRIN.

"There is a problem of land-grabbing of Santals [a northern indigenous group] and other people in the name of development, social forestation - to plant trees on their land for the overall benefit of society. It is later sold as 'khas' land [public land]," he said.

Mesbah Kamal, secretary-general of the National Coalition for Indigenous People (NCIP), says 75 groups distinct from ethnic Bengalis are still found in Bangladesh. Collectively, they are referred to as Adivasis.

But ethnic Bengalis make up 99 percent of the country's over 140 million people, making minorities vulnerable to land-grabbing by Bengalis, say activists.

A 2009 book entitled Life and Land of Adivashis (Adivasis) by the Human Development Research Centre (HDRC), a Bangladeshi NGO, found that dispossession of land among northern indigenous tribes was "extensive".

The book says 65 percent of the indigenous Santal community based in the north has experienced dispossession of land - in total, 818sqkm of land valued at nearly US\$900 million has been forcibly grabbed from northern indigenous tribes.

Such loss of land has had grave repercussions for the indigenous population, most of whom are rural and derive their income from the land, activists say.

Source: IRIN Asia.