

LAW VISION

# Sexual offences against women: looking beyond the statutes

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THE society of Bangladesh has been particularly unsafe for women because of the rising rate of crimes against women in all spheres. According to Ain o Salish Kendro, 128 women were raped, 12 were killed after being raped, 26 were attempted to be raped and 2 committed suicide after rape in the month of January and February in 2019.

Bangladesh passed a special law in 2000 to control and combat crimes against women and children. After 20 years of the enactment, the question still remains as to how effective the existing legal framework in fact is, to do so. Strict positivistic legal philosophy tends to take a top-down approach; the

realities to interpret the law. The judge needs to interpret the social conscience to give effect to the law. Therefore, the sociological school of law always insists on liberal interpretation. The judicial proceeding in Bangladesh does not follow the liberal interpretation as much as the sociological school of law suggests. Cardozo wanted a relaxation in applying the rule of precedent where the application of previous decisions would clearly be inconsistent with the sense of justice or the social welfare. Bangladesh follows the common law system and Article 111 of the Constitution of Bangladesh says that the law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division

compliance is very low. As long as the culture of non-compliance with law persists our culture, the crimes against women and children cannot but increase. Therefore, not only the violation of Nari o Sishu Nirjaton Daman Ain 2000, but

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also the violation of every other law is significant. All instances of deviation have to be taken into consideration in order to bring a law-abiding community to reality.

Law is only an element of the society. Eugen Ehrlich, an Austrian thinker, said that the positive law cannot be understood apart from the social norms of the living law. The living law is the inner order of association that is the law in practice in the society, as opposed to the law enforced by the state. He identified the living law with the law which dominates societal life, even though it has not been posited in legal propositions. At present, as well as at any other time, the centre of gravity of legal development lies not in legislation, nor in juristic science, in judicial decision, but in society itself. Recently, Modhumita Pandey, Professor in Criminology at Sheffield Hallam University, UK, interviewed hundred convicted rapists in Tihar jail, New Delhi, India and has identified some main reasons behind sexual violence. She found out that the domination of men in the society, social stereotypes against women and a persisting pattern of patriarchy and misogyny exists in different spheres of societal life. These living practices are associated with the mind of people of Bangladesh. They are mightier than the existing law to influence the human actions and thoughts. Therefore the culture of crimes against women and children is deeprooted in our society and needs to be addressed.

THE WRITERS ARE ADVOCATE, DHAKA JUDGE COURT AND RESEARCHER RESPECTIVELY.

sociological school of thought, on the other hand, does otherwise. However, beyond statute-based laws, there are issues which directly have bearing on such offences. Discussion focusing on statutory laws as divorced from societal realities does not really hold good.

Cardozo, an American judge and sociological jurist, emphasised the necessity of judicial alertness to social realities. He gave a keen and comprehensive analysis of the judicial process. He said that the consideration of social policies loom large in the art of adjudication. In other words, the societal factors have been the

of the Supreme Court shall be binding on all courts subordinate to it. Hence, the scope for liberal interpretation of statutory laws is very limited in Bangladesh. Therefore, the law of evidence related to the admissibility of evidence and the presumption of immoral character of prosecutrix under section 155(4), definition of rape under penal code have not been interpreted to give an effect to the present context of Bangladesh.

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PEOPLE'S VOICE

# LEGAL AID AND THE CROSS-CUTTING GOALS OF SDGs

THE entire concept of Sustainable Development Goals is dedicated to the promotion of peaceful and inclusive societies for sustainable development. And legal aid aspires to help and indeed possesses the inherent knack to help SDGs get realised. SDGs are generally perceived as goals that have the potential of bolstering a wide range of economic, social and cultural rights. However, there are certain Goals (for instance, Goal nos. 5, 10, 16) that prima facie speak the language of civil and political rights. Access to justice, gender equality and reduction of inequality in general mostly have bearing on protecting a wide range of civil and political rights.

An interesting area that these Goals touch upon (almost unknowingly so) are the indivisibility, interrelatedness as well as interdependence of and between civil and political and economic social and cultural rights. Elimination of poverty, hunger, gender inequality, lack of access to health and education while reducing consumption of our planet's resources and ensuring the establishment of stable, accountable institutions are so connected with one another that one can rarely be achieved without the others by side and finally it is only a holistic approach that can help. Likewise this interrelatedness, each one of these goals too are invariably connected with all the other SDGs. All the SDGs together form an amorphous body of targets and access to justice as well as equality play the role of circumscribing an area for other goals to work by. Because without ensuring equality to pave the way for an inclusive society, achievement of any of the goals is nothing but a day dream.

Legal aid basically targets the community of the society which has lesser access to the formal channels of justice. From that perspective, legal aid empowers the most vulnerable section of the society and thereby works relentlessly in furtherance of the essence and spirit of a number of cross-cutting Goals of SDGs. Mostly what legal aid targets through targeting the vulnerable community with regard to their having access to justice, is Goal no. 16. The final wording of Goal no. 16 came as (following a series of OWG meetings in July 2014) 'access to justice' instead of the previously thought of words 'rule of law'. Even though access to justice is narrower in its ambit than rule of law, it is the access that can in fact be brought in action through rule of law and legal aid can play the most effective role in this regard.

When access to justice becomes a privilege and not a right, available only to the upper strata of the

society, it works against the spirit of an inclusive society that SDGs aim at establishing and furthermore, it works in a way that in effect keeps the vicious cycle of poverty in place by keeping the poor away from justice. Without legal aid, those living in poverty become more susceptible to facing hurdles and threats of exclusion from the public sphere and from their rights guaranteed by law as well as the Constitution. Therefore facilitation for ensuring adequate access to legal aid can literally reduce their likelihood of becoming and remaining in the vicious cycle of poverty and the snares of inequality.

It is not only the poor people that need legal assistance; it is also the women and children, who happen to be the most vulnerable among the vulnerables in a number of societies. Women and children need affirmative actions and moreso, they need access to justice for them to get their voices heard and to come out of the periphery of exclusion. Matrimonial conflicts give birth to conflict-ridden families and thereby contribute to a conflict-prone society in general at large. Matrimonial conflicts in patriarchal settings also pave way for domestic violence, cruelty towards women and children. The people who fall victims to these sort of conflicts, need the society by their side to get off of them and to get a sense of inclusion in the society.

The infliction of physical and psychological harm, financial constraints, insecurity that marital discords endow women with, breed a sense of everlasting trauma that bars them from claiming equality in general. Legal aid ensure that those women who cannot otherwise afford legal advice or representation by a lawyer in a court of law get a scheme of assistance with regard to their legal issues in a multidimensional way when the needs and crises arise. This assistance can pave the way for realisation for the goal of gender equality and reduction of inequality.

Implementation is a particularly high hurdle for SDGs because of the very many institutions that stand in its way and the players of different roles within the continuum. Amongst all these hurdles the one scheme that really seems to peep through and provide a ray of hope is legal aid, at least in terms of ensuring people's access to justice. It is generally hoped that with the passage of time, as we move forward, we certainly will get to know more about where the hurdles lie and we may then take nascent yet better as well as adequate steps towards inclusivity in the society (ies) across the world.

FROM LAW DESK

FOR YOUR INFORMATION

# Climate action for peace

THE International Day of Peace was established in 1981 by the United Nations General Assembly. Each year, the International Day of Peace is observed around the world on 21 September.

The theme for the international day for peace in 2019 is 'Climate Action for Peace'. This year's theme focuses on the importance of combatting climate change as a way to protect and promote peace throughout the world. Climate change poses a substantial threat to international peace and security. Natural disasters displace three times as many people as conflicts, forcing millions to leave their homes and seek safety elsewhere. The salinisation of water and crops is endangering food security, the impact of which is dangerous to public health. Moreover, the growing tensions over resources are leading to growing tension between different countries.

On 23 September, the United Nations will organise a Climate Action Summit with concrete and realistic plans to accelerate actions for the implementation of the Paris Agreement. The Summit will focus on the sectors that create the most emissions and the areas where building resilience could make the biggest difference. It will also provide leaders and partners with the opportunity to demonstrate real climate action and showcase their plans of action.

In the lead up to the International Day of Peace on 21 September, the United Nations calls upon all to take action to tackle climate change. Every human is part of the solution - from turning off the lights to taking public transport, to organizing an awareness raising campaign in your community.



RIGHT WATCH

# Copyright protection for healthy meme culture

SAKHAWAT SAJJAT SEJAN

THE term 'meme' is self-explanatory. They are mostly seen as photos, Gifs (Graphics Interchange Format), illustrations, videos or movie excerpts with humorous texts. Memes can also be termed as virally transmitted cultural symbols and social ideas. Whether these images or excerpts used in memes violate the rights of original artists or not requires attention.

To know this, you may search your favorite meme excerpt's original photo in Google. If the photo does not fall under 'Creative Commons License', then it is protected by copyrights. You must give credit to the author before making anything out of this photo. Through this license, the author gives right to share, use and make something out of this. And these rights are given only for non-commercial purposes. This clearly depicts that, even if someone uses a photo, he must not use it for commercial purposes. Apart from that, meme can be considered as 'derivative work' in strict legal sense.

According to copyright law, the owner has the sole authority to create a derivative work. In our country this right of derivative work can be rested, if the content is used for 'fair use' i.e. for educational purposes, private research, criticism, review or for reporting public events (in Newspaper or TV) under section 72(1) of The Copyright Act-2000. But if the person who is making the meme makes direct or indirect revenue out of it, harms the intent of original work, there comes the purview of copyright violation under section 71 of the said Act. These criteria were also settled in the famous 'Socially Awkward Penguin Case' in 2015. This meme was highly circulated over internet by 'Geek-sisters'. The photo was actually captured

by National Geographic photographer George F. Mobley for 'Getty Images'. Geek-sisters had to pay 785.40 Pounds for the illegal use of the image. Warner Bros faced litigation for copyright infringement by using the popular 'Nyan Cat' and 'Keyboard Cat' image in the game named 'Scribblenauts'. They paid a huge amount of compensation to Charles Schmidt and Christopher Orlando Torres (Charles Schmidt and Christopher Orlando Torres V. Warner Bros Entertainment, CV 13-02824).

Alongside this, memes often violate the privacy of a person or, through nascent



steps, further racial discrimination. We see the famous websites i.e. Reddit, Tumblr, 9Gag, Know Your Meme etc. instigating racial micro-aggression by their meme contents. A study named 'Computer in Human Behavior' by Dr. Williams has showed that, almost all of the Facebook users excluding the black races are biased to racist memes. And another alarming thing is that in making memes, use of pictures of persons without his/her permission have increased. If someone is earning revenue by utilising the template,

picture or video that is an 'artistic work' of someone else, the artist is entitled to revenue or compensation in terms of copyright violation under section 2(36) The Copy Right Act.

To strengthen this message, European Union has come up with the EU Directives for Copyright. Article 13 of the Directives prescribes that, Facebook and other social Media sites have to maintain strong surveillance on any content is uploaded online in order to ensure the protection of copyright. The content creators and concerned sharing services will have to assist in removing unauthorized content.

Till now Bangladesh has not witnessed any precedent of 'meme-o-logic' litigation. But meme culture is booming in Bangladesh. Uncontrolled production of memes and other contents have been flooding social media every now and then. Nobody gives a moment's thought about copyright violation before making or circulating these memes. Section 14(1) of The Copyright Act is blatantly violated in many of these cases as they are produced, reproduced, published and republished without the authorisation of original author.

But, technologically, it will be impossible for our country to regulate these activities as there are thousands of memes generated everyday unless a policy similar to that of EU is adopted. Memes that violate right to privacy, instigate racism and communal differences need to be surveilled closely. Lastly, the meme creators should give credit to the original authors as a part of moral and legal obligation for the sake of helping healthy meme culture flourish.

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