

LAW DESK WEBINAR

# Challenges to women’s rights during pandemic

Bangladesh, along with rest of the world, has been facing unprecedented challenges due to the COVID-19 pandemic. This crisis in general the lockdown and restrictions associated with it, have had a gendered impact, affecting vulnerable women and girls disproportionately. Different forms of violence against women like dowry-related incidents, acid attacks, rape and others have significantly increased during this pandemic. In a statement issued on 6 April 2020, the Executive Director of UN Women has termed the violence against women as a shadow pandemic. In this backdrop, Law & Our Rights, The Daily Star invited a panel of experts to shed light on the shortcomings of the existing laws

measures to reduce and prevent violence against women and girls. On a national level, we have different laws which have been enacted as a response to the rising incidents of violence against women. Bangladesh has enacted two different special legislations to tackle acid violence. Punishments for rape has been raised in the Nari O Shishu Nirjatan Daman Ain 2000 and laws have been enacted regarding domestic violence as well. Although the laws appear to be sufficient, they have many loopholes and therefore they do not adequately provide redress to the victims. When these laws get implemented, their inherent inadequacies become apparent. It is important to ask

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Manusher Jonno Foundation conducted a telephonic survey from April to July 2020. In July, about sixty-three thousand women were contacted and it was found that besides an increase in domestic violence, there has also been a rise in violence against child workers. The informal sector had collapsed during the first two months of the lockdown, but they slowly opened up again in July - as a result, more children are being sent to work as domestic aides. The social insecurity, poverty and the closing down of schools have exacerbated the crisis and have led to a rise in child marriage as well. Instances of marital rape have also gone up.



We need to increase implementation of research and identify whether the implementation mechanisms of the government, such as the One-stop Crisis Centre (OCC), is working properly. In cases of crisis, when the usual social-support resources collapse, we need to identify what alternative social-support mechanisms can be resorted to. Women’s access to menstrual hygiene and contraception is also a significant area that we need to address. Our research focus can be shifted to these areas. We should also include and analyse the key drivers for the perpetrators in our research and try to find out the factors behind the increased incidence of violence, among other things. Our prevention measures should focus on possible perpetrators and include men and boys in awareness raising activities.

converted to COVID-19 treatment facilities. As a result, it has become paramount that we question the adequacy of the state’s actions in this regard. The National Human Rights Commission (NHRC) can act proactively while still staying within its mandate; for example, many states have recognised domestic violence as a ‘shadow pandemic’ in their national strategies and plans of actions. Nothing similar has been done in Bangladesh. Many research works have shown that domestic violence has a great economic cost. According to conservative estimates, a country loses about 2.5% of its GDP due to domestic violence. We expect the NHRC to push the government to undertake necessary policy measures and make proper budgetary allocation for domestic violence prevention.

## RECOMMENDATIONS

- Prevention measures for violence against women should focus on possible perpetrators and incorporate awareness activities for men and boys.
- The National Action Plans and Policies pertaining to violence against women should be revised to include the impacts of the pandemic.
- State actors should be held accountable as to the lack of gender-sensitivity in the national emergency response strategies for COVID-19.
- The State should ensure that girls have access to education and continue schooling; special measures should be taken to provide protection to those who drop out of schools.
- Citizen research can be used as a means of strengthening public participation and assisting the NHRC.
- Domestic violence should be recognised as a ‘shadow pandemic’ as a preliminary step to facilitate the assessment of the harms caused by domestic violence.
- Bangladesh’s reservation to CEDAW articles 2 and 16(1)(c) should be removed.
- The government should simultaneously work to remove the inadequacies in laws and ensure capacity-building and gender-sensitisation of the relevant implementing stakeholders under relevant laws, including members of law enforcement and the judiciary.

and policies pertaining to violence against women and share their recommendations for the stakeholders. Emraan Azad, from The Daily Star and also a Lecturer in Law, Bangladesh University of Professionals, moderated the discussion.

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Bangladesh has ratified an array of international human rights instruments such as ICCPR, ICESCR, CEDAW, etc. We are obligated under the international instruments to take appropriate

whether the stakeholders have been sufficiently consulted and whether their consultations have been incorporated in the laws. We also need to pay attention to whether the implementing stakeholders have the necessary knowledge and training. The patriarchal premise permeating different sectors of society creates manifold obstacles in attaining justice for the women; this, among others, also needs to be taken into consideration. We are lagging in ensuring capacity-building and gender-sensitisation among the enforcement bodies. Our policies do not prioritise these issues; the national emergency response to COVID-19 also does not sufficiently address the needs of women and girls.

Our field-level workers are in regular contact with many women and based on our mandate, we have maintained such correspondence to try and keep track of the condition of women across the country. Our staff has also attempted to provide counselling to women over telephone. While there are many challenges and drawbacks of telephone surveys, we consider such correspondence to be a manifestation of our mandate in terms of supporting them in a situation where their access to traditional social-support systems and legal redress has largely been restricted, due to the unprecedented crisis.

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As researchers, we must be cautious about collecting information through digital/telephonic surveys. We need to be mindful of whether the interviewees will be subjected to newer and additional violence due to their participation. Most of the perpetrators of such violence are intimate family members, and the international community has reiterated the need for such cautiousness.

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Before the pandemic, the UN women’s surveys showed that 1 in 3 women has been subjected to violence, but this has intensified since the pandemic has started. 15% of women who had never been subjected to violence before, have been victims of violence during the pandemic. Children, elder people, differently abled people, and domestic workers also reside in the marginalised section within families. Rates of pregnancy have also gone up – we cannot but ponder whether it is entirely resultant of consensual sexual relations.

When we discuss the matters of violence against women and girls, we look largely towards the contribution of non-state actors, i.e. NGOs. In case of lawlessness in public sectors, we look to the state but in case of private incidents like domestic violence, we do not automatically look at the state – which is where in fact the primary responsibility lies. From the month of March to July, the access to justice in case of violence against women and girls was restricted. Women were told to show a COVID-19 negative certificate before providing them shelters. Many OCCs have been

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The NHRC has expressed its concerns regarding the rise in violence against women. The NHRC acts as a bridge between the government and the people; it cannot provide redress independently. The government and concerned ministries are to provide the necessary assistance to the victims through legislative and policy measures. The NHRC’s dedicated team is active and has maintained correspondence with relevant stakeholders amid the pandemic. The NHRC has many constraints – it works with limited resources to tackle a wide variety of issues. However, it is providing legal assistance to women through its panel lawyers. We have several national strategies and action plans that address violence against women. The NHRC has also addressed the relevant ministry to restrict the provision of relief measures to those who have been identified as perpetrators of domestic violence. However, we need to change the mindset of the society before we can properly implement the rights women are entitled to under the existing laws.

THE REPORT IS PREPARED BY LAW DESK, THE DAILY STAR.

## LAW OPINION

# Force majeure could be the way out from coronavirus fallout

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The whole world is currently in a war against the novel coronavirus, a potential threat to a stable and growing economy. The havoc wreaked by the virus has pushed people to go into quarantine and contact by and large with the outside world is at standstill. Many people are without work and the country has experienced a closure of offices, businesses and development work for nearly three months. This essay on force majeure is intended to identify the ways in how to get out of this crisis by quickly cleaning up the stains and repairing damages to our economy and life. Before we deal with it, it is better to determine the primary domain of this essay.

Here we will address questions like: what is force majeure and why is this provision necessary in an agreement? Can force majeure be applied even if it is not mentioned in an agreement? Can we provide immunity to parties to the causes arising out of an ongoing pandemic? Can the parties, irrespective of their origin, be treated on the basis of equality? Can we attempt to find an acceptable solution for quick resumption of stalled work or supply of goods and services creating win-win situation for parties concerned? As opposed to the idea of supervening impossibilities, will the provisions of the Contract Act, 1872 help resolve force majeure during this difficult time of pandemic? We will attempt to answer these questions and more in the following paragraphs.

To being with, the roles, responsibilities and obligations of the parties which are clearly mentioned in a contract are determined through numerous discussions and negotiations. But force majeure takes its place in an agreement in general terms as a separate provision because it broadly means an ‘Act of God’ such as flood, hurricane, tornado, earthquake or any other events or incidents not limited but including natural calamities which are beyond the control of

human beings. These are uncertain, not foreseeable and irresistible within the might of human capacity. Therefore, force majeure makes its room in an agreement to provide relief and recourse to parties to the agreement.

In order to avoid the uncertainties involved in finding a resolution, parties to agreements often prefer to provide a specific reason for force majeure along with a definition of which events shall qualify for special treatment within its purview. As the provision excuses a party from carrying out its obligations, it needs to be thought through and customised for the project in question. Care should be taken to ensure that force majeure events only relieve obligations to the extent that they prevent the party from performing them.

Force majeure as outlined above may assist the parties who are aware of it, they may take initiatives to resolve the stalemate by invoking the provision of force majeure, enjoying immunities for non-performance.

Parties to the agreement may resolve it by their conscience as the resolution of any unforeseen situation which stands on the way of fulfilment of the responsibilities of the parties, because reaching to the finality following lawful means is the first option as it can provide benefits to the parties minimising the damages. It provides the scope of application of the principle of force majeure even if it is not mentioned in an agreement.

The situation which has arisen out of this pandemic was never thought of by any human being; therefore, the parties to an agreement have no role in its aggressive presence or to its unknown disappearance if it happens by miracle. In this context, the parties for their failure of performance during the presence of current pandemic, without civil be treated as immune and keeping this in mind, the parties, mediators if appointed by the parties must not spend time as to the causes but to look forward as to resolution providing relief to the parties irrespective of their origin i.e. foreign or national, contractor or

subcontractor, etc.

Because a party to an agreement cannot enjoy an edge unless the other party knowingly agrees to it. Therefore, the standard is set to govern the provisions of an agreement reflecting equity and reciprocity, providing opportunities proportionate to the role and responsibilities of parties. The principle of equity shall be adhered to and damages caused will be shared between parties.

The pandemic has caused disruption and suspension of almost all work putting parties to the side lines and they have no other choice but to play the role of onlookers in most cases.



A committee at the national level with proper people and terms of reference can be formed so that it can find out generally acceptable terms and conditions for quick resumption of stalled performances irrespective of nature and volume of the work. The committee may work out recommendations sharing the issues with different stakeholders. Once the committee finishes its task, the government may act on it and finalise the recommendations into decisions. This shall help to set out a common feature and standard as to quick amicable resolution and resumption of works.

The Contract Act, 1872 provides how

the parties may reach to an agreement and contract, finalising a deal on any subject but it does not contain any provision on force majeure.

It is interesting to read some of the pieces on force majeure being published in esteemed newspapers these days where the theory of supervening impossibility as enumerated in section 56 of the Contract Act is mixed up. Perhaps, appreciation of both the ideas are not done applying legal mind. If we read section 56 of the Act carefully, it transpires that if parties agree to do something which is impossible, it is void. Secondly, performance becomes

uncertain in future also falls within the sphere of this section.

The differences between force majeure and theory of frustration or supervening impossibility are simple. Frustration or supervening impossibility discharges all parties from any further performance of their obligations under an agreement but force majeure provides recourse and relief as soon as the grounds of disruption of works are over and force majeure is flexible but frustration or supervening impossibilities are not. The flexibility of force majeure needs to be further explained by an example so that parties to the agreements may find some way out of the situation

created by the pandemic Covid-19. For example, suspension of Metro Rail project work at present may resume anytime as soon as either the restrictions are relaxed or normalcy of life returns. Therefore, force majeure remains outside the purview of section 56 of the Contract Act, 1872.

The stalemate that has been created by the pandemic is all pervasive and it has shaken life and livelihood, both. As of today, in absence of any vaccine to prevent the spread of the virus, precautions to reduce the threat to life and ensuring livelihoods especially of the marginalised segments of society are of paramount importance. In this backdrop, we should be careful to find out amicable settlement in between parties applying common formula to be worked out by the aforesaid committee or otherwise. With the easing of lockdown, relaxing of restrictions to movement within Bangladesh and beyond, both public and private entrepreneurs should start the process of negotiation finding amicable settlement to ensure resumption of work without further delay to mitigate the losses caused by the pandemic.

The achievable targets are to minimise job cuts, create further opportunities for employment, revamping the economic indexes, plugging the sliding down of people to the next tier, elevating Bangladesh to middle-income country status. The destination of our post pandemic journey should be capable of maintaining pace of repairing likely immense losses due to Covid-19 within a short time so that Bangladesh can fulfil the challenges of protecting lives and livelihoods of its citizens. We have no time to waste and that is why we should follow the principle of ‘the sooner, the better’.

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