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Violence, sexual harassment and law

by Saira Rahman Khan

Today is International Day for the Elimination of Violence against Women. I am not a big fan of international days to remember that there should be no violence towards women, or that persons with disabilities must be respected, or that we must respect and understand indigenous communities, or that women are human beings as well, with rights and freedoms. These, and more, are issues that must be honoured and respected on a daily basis. However, having said this, being prompted by my conscience with the fact that I have not written about women's issues in a long time, November is just the excuse I need. However, I do not wish to dwell on the various forms of violence faced by women — we all know about that. We also know that in practice, little is being done to ensure that the violence stops. What I want to discuss here is whether what we have on paper is effective enough to reduce and eradicate violence — if and when there is a will to do so.

Before I commence this brief examination, we need to know what the term 'violence against women' means. The first official definition of 'violence against women' was incorporated in Article 1 of the UN Declaration on the Elimination of Violence against Women, 1993. The definition reads: 'Any act of gender based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life.'

Women in Bangladesh are subject to the various forms of violence mentioned in the definition, because gender relations place them in subordinate positions in all aspects of life. The legal framework appears ineffective in combating patriarchal practices and dominance because of exceptions and loopholes. As a result, social norms that are detrimental to women are reinforced.

We have several criminal laws prosecuting perpetrators for violence against women — for sexual harassment and violence in the private domain we have the Domestic Violence Act 2010; the Suppression of Repression against Women and Children Act 2000 (amended in 2003) covers several public and private acts of violence; the Acid Crime Control Act 2002; as well as provisions in the Penal Code prosecute crimes involving corrosive substances and the last also deals with crimes such as causing miscarriage, wrongful confinement, abduction, bigamy, etc. The 2010 law on domestic violence is unique as it focuses on not only physical violence, but

defines psychological and economic violence as well. It also provides for case workers, specialised law enforcement officers, restraining orders and other forms of protection for victims of domestic violence and their legal assistance. The Nari O Shishu Nirjatan Daman Ain, or the Suppression of Repression against Women and Children Act of 2000 seems to have been created based on a handful of specific kinds of violent acts faced by women in Bangladesh. It contains the revolutionary provision for who should take responsibility for a child born as a result of rape. However, it was amended in 2003 to only enhance punishments for certain offences. It also has caused some controversy due to the fact that some of its rigid provisions do not allow the judges to use their judicial mind and give a decision that is just for both the victim and the perpetrator. It has also failed to address all the forms that violence against women can take — including economic and psychological forms of violence and sexual harassment.

Thus, despite some drawbacks and limitations, it seems as if we have penal provisions providing punishment for most forms of violence commonly faced by women in Bangladesh. However, there is one issue that has not been effectively provided for. Sexual harassment is an issue that has been briefly dealt with in the act of 2000, but at that time, was not something that was deemed as pressing as the other crimes contained in that law — death due to dowry violence, rape, trafficking, kidnapping, and offences caused by corrosive substances. However, some of these offences may commence with or involve some act of sexual harassment, such as the crimes of kidnapping, trafficking and rape. Sexual harassment was not clearly defined in the act of 2000. The physical manifestation was briefly mentioned — directly or indirectly touching various parts of a woman or child, making rude gestures or sexually assaulting a woman to satisfy sexual urges. However, the actual impact or affect this had on the victim and the ways and means to control this was not detailed in the law.

Given that the issue of sexual harassment of women in both the private and the public domain is both a crime unto itself as well a catalyst and precursor for other acts of violence against women; it is imperative that this should be clearly defined and included in the act of 2000 — if this is to be the major law under which to prosecute crimes against women. Recognising the urgent need to control sexual harassment at workplace and in academic and other institutions, in 2008 the Bangladesh National Women Lawyers' Association filed a writ petition in the High Court Division of the Supreme Court calling for the adoption of guidelines, policies and legislation to address the issue of sexual harassment safeguarding women and girl children in the workplace, academic institutions and other public areas. The writ petition gave several examples of harassment suffered by women in academic institutions, media houses, garment manufacturing factories and non-government organisations in order to highlight the extreme levels this harassment had reached. The petition also reminded the learned High Court of the Beijing statement of Principles of the Independence of the Judiciary in the LAWASIA region, which was accepted by the chief justices of the Asia-Pacific region — including our own at that time: the chief justice ATM Afzal. According to this statement of principles, the objectives of the judiciary include ensuring that all persons are able to live securely under the rule of law; promotion of the observance and attainment of human rights; and administration of the law impartially among persons and between persons and the state. This was a reminder to the

court that it had the capability to make some landmark decisions to safeguard women from acts of sexual harassment.

After hearing the matter, the High Court did issue several guidelines to be followed and observed in all workplaces and educational institutions till legislative amendments and inclusions were made. The objectives of the guidelines were aimed at creating awareness about three things: sexual harassment, the consequences of sexual offences, and that sexual offences are a punishable crime. The court also defined the term 'sexual harassment' to mean and include 12 acts or conducts which would be considered humiliating and creating a health and safety problem at the workplace or educational institutions.

Following this landmark decision, in 2010 the BNWLA filed another writ petition in the High Court Division in regard to sexual harassment not just in institutions and the workplace but in all public places. The BNWLA highlighted the fact that several young women and girls had committed suicide to save themselves from the incessant stalking and harassment and also drew the attention of the court to the fact that people who have protested at the harassment and challenged the perpetrators have also lost their lives to them. The court issued some recommendations to the government to amend the laws and involve local law enforcement in monitoring the crime of sexual harassment. The second writ petition is important for three major additions to the guidelines laid out in the 2008 decision. It not only recognised the need to eradicate sexual harassment in public but also the need to eradicate the use of the term 'eve teasing' for acts of sexual harassment. Furthermore, 'stalking' was defined and separated from sexual harassment, and the court borrowed the definition of stalking from the Stalking Intervention Act 2008 of Australia, which is a gender neutral definition.

Keeping the guidelines laid down by the 2008 Writ Petition, the honourable Court amended the same by adding that 'the term 'sexual harassment' is the appropriate term to be used by all including the law enforcement agencies, government organisations/establishments and the media for describing the incidents or mischief of so-called eve teasing and/or stalking'. It also added the definition of 'stalking' to the guidelines and added the roles and responsibilities of government agencies, such as the police, police stations, the district law and order committees and guidelines for cybercafé owners and operators. As regards legal reform, the court recommended that the government should amend the provisions of the Nari O Shishu Nirjatan Daman Ain and include in it the definition of 'sexual harassment' as laid down in the court directives, formulate a law to protect victims and witnesses and amend or formulate laws to incorporate provisions giving evidential value to audio/video recorded statements of victims and witnesses of sexual harassment in order to prosecute perpetrators.

The guidelines and directives given by the High Court Division in the writ petitions of 2008 and 2010 are more than enough to ensure sexual harassment and stalking in all their forms are monitored, curbed and punished not only in academic institutions, offices and places of work — but in all public areas. Through these guidelines, the law enforcement has been encouraged to form separate teams to deal with acts of sexual harassment and complaints of sexual harassment in public places and public transport. However, the law has yet to be amended;

new laws are yet to be formulated and sexual harassment and stalking continue unabated. We have seen that well-drafted, well-placed and well-meaning guidelines and directives passed by the High Court Division are not acted upon by those who must do the needful. Another example of this are the directives to reduce the practice of torture and ill treatment of persons in police custody and remand, given in the matter of BLAST vs Bangladesh in 2003. Just as torture and ill treatment in custody continue, so continues the sexual harassment of women — leading to other violations, violence and sometimes death.

In this busy schedule of our lives, it is good to have a day to reflect on and discuss specific and important issues of human rights and highlight the violations; but harassment and violence against women in Bangladesh, in public and in private, is a continuing, persistent issue. We have all the laws we need (albeit in need of some revision), all the guidelines and policies to implement to eradicate this menace, all the government and non-government expertise and all the necessary criminal justice tools — all that is missing is the necessary attention and willingness needed to tackle this monster by the horns, contain it and punish it. Sexual harassment is the beginning of nightmares that become all too real. The court directives need to be followed and the law needs to be amended and implemented effectively as soon as possible to prevent other forms of violence against women from manifesting themselves.

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