3

A Critique of the Feminist Movement in Bangladesh: The failure to protect women against "*revenge porn*".

Ehsan A. Siddiq[1]

This article considers the theoretical basis of the feminist movement in Bangladesh using the Pornography Control Act, 2012 as its central focus. It examines the dominating influence of liberal feminism over the women's movement and how its failure to appreciate and utilise insights from other feminist approaches such as radical feminism has rendered it unable to conceptualise and deal with the issues surrounding pornography and prostitution. It considers how the Pornography Control Act which was intended primarily to criminalise revenge porn has been thwarted in its goals by the liberal approach of the legislature. The article also examines how third-wave feminist approaches towards pornography and prostitution, although favoured by some activists in Bangladesh is unlikely to gain much traction because of the restrictions contained in the Bangladesh Constitution.

Introduction

In 2011, there was cause for celebration in Bangladesh's entertainment industry. Two of its most bankable stars – Apurbo and Prova – had tied the knot. Whilst still engaged to her long term boyfriend, Prova had eloped with Apurbo to be married in a private ceremony attended only by a few close friends.[2] News of the marriage had been withheld from the press until the formalities were over. However within weeks of the announcement, Prova's ex-fiancé smarting from the very public rejection, posted explicit videos recorded by him during their relationship on the internet. It was only a matter of time before the videos went viral. People watched them, shared them and downloaded them onto their computers and even their

1 The author is an Advocate of the Supreme Court of Bangladesh. He was called to the Bar of England and Wales from the Hon. Society of Gray's Inn. He obtained his LL.B (Hons.) from the London School of Economics and Political Science, UK. The author can be reached at ehsan.siddiq@thelcounsel.com.

2 "Actors Apurbo and Prova Tie the Knot", August 20, 2010. Accessed on May 26, 2015. http://archive.thedailystar.net/newDesign/print_news.php?nid=151394. See also "A new beginning for Apurbo", Priyo News, July 15, 2011 http://news.priyo.com/entertainment/2011/07/15/new-beginning-apurbo-31911.html.

mobile phones. Soon, most Bangladeshis had either seen the videos or heard of them. Initially the couple put on a brave face, attending interviews and appearing in public together. But in the end, the explicit images proved to be too much of a strain on the relationship. The marriage ended within three months. Prova was humiliated. Offensive comments and messages were posted on her internet fan pages. Her career almost ruined, she went into a self-imposed exile. She made a come-back in 2014, but her career failed to take off.

Earlier in the same year, a teacher of one of Bangladesh's leading single-sex schools was arrested when he was discovered to have sexually assaulted his student.[3] To make matters worse he had recorded the assault on his mobile phone and threatened, if the student complained, to post the videos. The threat was also used to compel the student to submit to further abuses. However, the student finally plucked up the courage to complain, which resulted in criminal proceedings against the teacher.[4] In the first 6 months of 2011, there were 11 incidents of young men blackmailing women for money or sexual favours with explicit videos recorded during the relationship.[5] And by the end of 2011, "revenge porn" or non-consensual pornography had become a serious menace in Bangladesh.

The government responded a year later by framing the Pornography Control Act, 2012. This was consistent with the strategy of successive governments of placating the public through legislation. The government could now, irrespective of the efficacy of the law silence critics when faced with allegations of inaction. Yet despite the increasing number of laws dealing with gender specific crimes, violence against women has not subsided.[6] Successive governments have failed to identify and respond to the underlying causes of gender-related attacks. However, the purpose of many of these attacks – whether it is the posting of videos or the throwing of acid on women who have rejected the advances of men is quite clear. It is to send the message - "if I can't have you no one will;" it is an attempt to dominate and subor-

3 "Parimal indicted for raping student", *BDNEWS24*, March 7, 2012. Accessed on May 26, 2015. http://bdnews24.com/bangladesh/2012/03/07/parimal-indicted-for-raping-student.

4 Md Sanaul Islam Tipu, "Two Viqarunnisa teachers testify in rape case against Parimal." *Dhaka Tribune*, November, 12, 2011. Accessed on May 26, 2015. http://www.dhakatribune.com/law-amp-rights/2013/nov/22/two-viqarunnisa-teachers-testify-rape-case-against-parimal.

5 Hameeda Hossain, "Create Spaces for Gendered Interaction" in *Rights and Realities*, 2nd Part, (Dhaka: Ain O Salish Kendro, 2014), 244.

6 Ibid.

dinate. In the first instance (cited at the beginning of this Article), the videos were used to control and determine the ex-fiancée's choice of partner. In the second, it allowed the teacher to control his student by coercing her to submit to abuse. But the rationale of the legislature in framing the Pornography Control Act was not to prevent or punish the attacks on women. In drafting the law, the legislature was guided by liberal principles which dictated that private conduct between two persons which led to the recording and use of explicit materials fell outside of the scope of legislation, while the harm done to the morality of public when viewing such materials fell very much within. Thus the stated purpose of the Pornography Control Act was to protect the public from the harms of pornography. This meant that the very wrong that the Pornography Control Act had set out to deal with, i.e. the victimisation of women with explicit materials remained unaddressed.

Although the media and the women's movement had in the months leading up to the promulgation of the Act been vocal about the effects of revenge porn on women, they seemed satisfied by a law which failed to recognise the harms suffered by women. There were no discussions or debates as to whether the law would be able to protect women by punishing and preventing incidences of revenge porn. The absence of any critique on the efficacy of the law was due to two reasons. Firstly, the large number of women's organisations operating within Bangladesh are *projectised* and NGO-*ised* and follow programmes dictated by donors.[7] The issue of revenge porn fell outside the scope of the donor driven programmes. Secondly and more importantly, the women's movement in Bangladesh, as I will show, has shown an excessive reliance on liberal feminist approaches. This has not only limited the movement's activism to the public sphere but it has also meant that it is unable to question the gender-neutrality of the legal system and legal tools on which it relies to implement its reforms. Thus the women's movement was happy to see the wrongs suffered by women in private translated into a harm suffered by the public, for the sake of legislative reform. Moreover, the failure to question the gender neutrality of the legal system meant that the women's movement was oblivious to the fact that the definition of pornography had been constructed from the male point

7 For more on the NGO-isation of the women's organisations and the impact on their activities, see Sohela Nazneen and Maheen Sultan, "Contemporary Feminist Politics in Bangladesh: Taking the Bull by the Horns" in *New South Asia Feminisms*, ed. Srila Roy, (London: Zed Books, 2012) and Lamia Karim, "Transnational Politics of Reading and the (Un)making of Taslima Nasreen", in *South Asian Feminisms*, ed. Ania Loomba and Ritty A. Lukose, (New Delhi: Zubaan, 2012), 208.

of view, something which as has been shown later, seriously eroded the protections made available to vulnerable women.

The purpose of this Article is to examine the theoretical underpinnings of the feminist movement in Bangladesh using the Pornography Control Act, 2012 as its central focus. Bangladesh has made huge strides in women's education[8] and employment.[9] A steady progress has also been made in involving women in the political process.[10] A liberal feminist approach has served Bangladeshi women well by identifying areas of discrimination and then removing them through legislation and the judicial processes to establish formal equality between the sexes. But there are limits to the liberal approach. The response of liberal feminism has not been satisfactory on issues such as sexual harassment, prostitution and pornography, the very essence of which is the gender of the victim. Granting of greater liberty and equality has not resolved these issues. These are issues to which liberal feminism has no appropriate answer. Yet legislators, the courts and activists have taken one-size-fits-all approach and have responded to the problems through liberally inspired laws. In the first part of this Article, I will show how liberal feminism has had a dominating and almost stifling influence over the law and activists in Bangladesh. It has been applied to the near exclusion of the developments and insights provided by other strains of feminism. Although pornography is better understood and dealt with in terms of radical feminism, the Pornography Control Act, 2012 fails to make use of its insights. In the second part I will show how the framers of Bangladesh's Pornography Control Act, 2012, were influenced by a liberal feminist approach and how this influence led unwittingly to the formulation of a definition of pornography (and revenge porn) from the male experience. And finally I will discuss some alternative approaches to conceptualising and framing a law to deal with pornography and revenge porn.

8 In 1990, 31.9% of the students who passed their secondary school examinations were females. By 2014, this has increased to 50.4%. These data have been obtained from the Educational Database of Bangladesh Bureau of Educational Information and Statistics at http://banbeis.gov.bd/data/index.php?option=com_content&view=article&id=316&Itemid=106. Accessed on May 26, 2015.

9 Statistics of 2010 from the Ministry of Public Administration show that 4503 are now employed by the Bangladesh Civil Service. However, it has been described as being below expectation, see Nazmunnessa Mahtab, Women, Gender and Development Contemporary Issues (Dhaka: A H Development Publishing House, 2012), 211.

10 If one considers the representation of women in the Union Parishads (i.e. a unit of local government) for instance, in 1973 there was only one female chairperson of a Union Parishad, while in 2003 there were 22, See ibid., 203.

The Liberal Feminist Tradition in Bangladesh

Liberal Feminism (The First-Wave)

Liberalism embodies within it the twin concepts of liberty and equality. The concept of liberty divides society into public and private spheres and argues that whilst the State is free to regulate the activities of individuals in the public sphere in the public interest, the conduct of individuals in the private sphere is off-limits. Regulation in the private sphere is however permissible, only where it is necessary "to prevent harm to others."[11] Liberal feminism is therefore restricted at very outset to operating mainly within the public sphere. This has limited liberal feminism's actions to areas such as employment and political participation. This is problematic as "women's lives have in many societies been lived to a greater extent than men's within the so-called private sphere."[12] Thus no matter how reprehensible the conduct of an individual may be in the private sphere, liberal feminists are restrained from insisting on state interference. This has called for a reconceptualisation of the public-private dichotomy by feminist lawyer, Nicola Lacey. Lacey relying on the works of Iris Marion Young argues that "the public" should be reconceptualised as openness to political debate and dialogue, while "the private" is to be regarded "not what the public institutions exclude but what the individual chooses to withdraw from the public view." This reconceptualisation, Lacey argues, is better equipped to protect human autonomy and deal with many of the issues around pornography that liberal feminists have failed to grapple with.[13]

For liberal feminism, the concept of equality means that "women, despite their physical differences, are equally capable of functioning in the public sphere, provided that the structured inequality in law and society can be removed. Thus, women are or could be 'just like men' and therefore accorded equality on that basis."[14] It is in this regard liberal feminists assume that the legal system and the various tools

11 John Stuart Mill, *Liberty and the Subjection of Women*, (London: Wordsworth, 1996), 13.

12 Nicola Lacey, "Theory into Practice? Pornography and the Public Private Dichotomy in Unspeakable Subject" *Feminist Essays in Legal and Social Theory* (London: Hart, 1998), 72.

13 See Ibid., 96 where Lacey argues that feminist critique has exposed the ways in which sexuality, an area of life traditionally constructed as private impacts in a way which should not be beyond the sphere of politics. Her reconceptualisation of the public private debate allows for a political critique of autonomy reducing sexual practices, which would otherwise have been ignored as a matter of private concern.

14 Hillaire Barnet, An *Introduction to Feminist Jurisprudence* (London: Cavendish Publishing Limited, 1998), 126.

that are deployed by it to rectify the inequalities and eliminate discrimination are gender neutral. They work "within the dominant ideology and seek to eliminate gender-based discrimination – to achieve true equality for women in all walks of life – without challenging the ideology itself and while remaining faithful to the liberal ideal of equality and autonomy."[15] This approach is now subject to severe criticism and it has been said that liberalism's biggest fraud lies in its assumption that men and women are equal.[16] And according to radical feminist Catherine A. Mackinnon, equality law erroneously assumes that women are already socially equal to men[17] when in fact, society has been created unequally prior to the advent of the law and constitution and the role of law and the constitution (including the law of equality) has since been to maintain the status quo.[18]

The application of Liberal Feminism in Bangladesh

The Bangladesh Constitution which was framed in 1972, sets a distinctively liberal tone for the women's movement in the country. Article 28(2) of the Constitution guarantees that "women shall have equal rights with men in all spheres of *State and public life*."[19] This Article is based on the public-private dichotomy of liberalism. Implicit in this Article is the desire not to upset the pre-existing hierarchical relations between the sexes in the private sphere.[20] Despite its limitations, feminists in Bangladesh have made significant progress operating within the liberalist tradition. They have not only managed to grant themselves increasing and more deeper access into the public sphere,[21] but as I will show have also successfully managed to bring about reforms in areas traditionally considered to be within the private sphere. These reforms have been made mainly, on the assumption of the gender-neutrality of the law, through legislative reforms. This is not only because

15 Ibid., 124.

16 Ibid.

17 Catharine A., Mackinnon, *Towards a Feminist Theory of State*, (Cambridge: Harvard University Press, 1989) 169.

18 Ibid., 163.

19 See Article 29(2) of the Constitution of the People's Republic of Bangladesh (*emphasis added*).

20 Although Article 28(4) of the Constitution permits the State to frame special laws remove inequalities faced by women, the legislation contemplated are those that would enhance a woman's ability to participate in public life. It is thus only a qualification of Article 28(2).

21 See for instance *Bangladesh Biman v. Rabia Bashri Irene*, 55 (2003) Dhaka Law Rep. (App. Div.) 132 where the Court struck down a provision fixing an earlier age of retirement for female flight attendants and *Shamima Sultana v. Bangladesh* 57 (2005) Dhaka Law Rep. 201, where the Court struck down a notification excluding female commissioners of a city corporation from taking part in certain functions.

liberal feminism's preferred course of action is through legislation but also largely because many of the leading feminists in Bangladesh are lawyers. This Lacey notes can be problematic as feminist lawyers tend to be lawyers first and feminists second, meaning that they seek legal remedies for many of the issues affecting women irrespective of the appropriateness of such remedies.[22]

In bringing about reforms in the private sphere, activists in Bangladesh have adopted two strategies– (i) identifying the harms due to non-regulation in areas considered to be within the private sphere and insisting in corrective measures and (ii) shifting issues out of the private and into the public sphere. The application of the first strategy is seen in the laws regarding the demand of dowry and the domestic violence associated with the demand. The works of activists have led to legal reforms that have criminalised not only the violence that attends a demand of dowry but also the demand itself.[23] Thus private arrangements of dowries between the families of the bride and groom are now well within the regulatory scope because of the harm that is caused to the bride and her family.

An important application of the second strategy can be seen in how Naripokkho, a country-wide women's organisation dealt with sex-workers facing eviction from their brothels in 1999. Prostitution which was never really regulated in Bangladesh[24] was considered a private arrangement between consenting individuals. It fell within private sphere and outside the regulatory scope of the State. However, activists have long been challenging this characterisation of prostitution and in 1999, the media provided coverage to the plight of the prostitutes facing eviction, bringing them into public attention. At the same time attempts were made to bring about a shift in terminology from "prostitutes" to "sex workers." This change, the activists argued meant that "we have changed the terms of the debate."[25] The change allowed (at least linguistically) to transform the issues surrounding prostitution to one of employment, an area which quite clearly falls within the public

22 (Lacey, 1997, 97), see note 12 above.

23 See section 4 of the Dowry Prohibition Act, 1980.

24 Although the Constitution imposes a duty upon the State to adopt effective measures to prevent prostitution, there are no laws prohibiting prostitution.

25 Shireen Huq, Sex Workers' Struggles in Bangladesh: Learning for the Women's Movement, *IDS Bulletin*, 37: (2006) 134–137 at 136. doi: 10.1111/j.1759-5436.2006.tb00315.x. See also Firdous Azim, "Keeping Sexuality on the Agenda: The Sex Workers' Movement in Bangladesh" in *South Asian Feminisms*, ed. Ania Loomba and Ritty A. Lukose (New Delhi: Zubaan, 2012), 276 and 282.

sphere and hence subject to intervention by the State.[26] The re-characterisation of prostitutes as sex-workers was picked up by the High Court Division, when it recognised the legality of prostitution and directed the authorities to release the evicted sex-workers who had been detained as vagrants.[27] However, as Firdous Azim reveals the benefits of the re-characterisation stopped there. The "legal recognition has not helped women to re-occupy their brothels."[28] "[S]ex-workers and sex work has not been integrated into the labour discourse."[29] Women's groups have not involved sex workers in their movements for better pay and working conditions. And the garments industry, which contains the largest concentration of female workers, Azim notes, has not participated in the sex workers' movements.[30] Liberal feminism has therefore not had much success with prostitution. And in fact earlier in 1994, when the same activists proposed the slogan '*Shorir amaar shidhanto amaar*' (my body, my decision) using the liberal rights based contractual portrayal of prostitution to demand greater sexual autonomy, the slogan quickly became controversial and soon fizzled out.[31]

The liberal approach has also produced rather unfortunate results. In 2011, the Bangladesh National Women Lawyers Association (BNWLA) approached the High Court Division for the formulation of guidelines to deal with "eve teasing", a euphemistic term used in South Asia to describe a form of sexual harassment that takes place in public locations such as streets, parks, buses, etc. From the very beginning the Court appeared to have had difficulty in dealing with the definition of the eve-teasing, resorting at one point to Wikipedia.[32] The difficulty it seemed

26 The argument here is flawed. It is based on the theory of linguistic determination which argues that language affect the way we think. However, linguistic determination has long been discredited. The idea that language can affect thought is now described as an absurdity. See Steven Pinker, *The Language Instinct*, (London: Penguin Books, 1994), 55-67.

27 *Bangladesh Society for the Enforcement of Human Rights (BSEHR) v Bangladesh*, 53 (2001) Dhaka Law Rep 1, where the High Court Division using the term "sex-workers" and "workers" to describe prostitutes held that although prostitution was socially condemned, it is admitted in society as a profession.

28 (Azim, 2012, 280), see note 21 above.

29 Ibid., 272.

30 Ibid.

31 (Huq, 2006, 135), see note 25 above.

32 Wikipedia is an online encyclopaedia and its information may be entered by anyone with access to the internet. It has been thus been held by the Supreme Court of India that the information provide in Wikipedia is not authentic. See *Commissioner of Customs v. Acer India (P) Ltd.*, (2008) 1 SCC 382.

stemmed from the attempt of the Court to conceptualise eve-teasing within the liberal framework. The Court first clarified that teasing when done in the private sphere by friends and in a friendly manner was harmless and even states that when done to a younger sister-in-law it is acceptable. In dealing with teasing in the public sphere, the Court attempted to apply the liberal harm test to determine the nature of the conduct that should be proscribed as eve-teasing, and this is where the difficulty begins. Even with regard to the harassment that takes place in public (i.e. on the street) the Court appeared to treat it as private conduct between the perpetrator and the victim, distinguishing between cases when an offence would or would not be committed. It held that although eve-teasing would be the normal experience for a woman living in the more affluent areas, the same behaviour would be likely to cause harm to girls from rural areas who have a different mental or social make-up. [33] It concluded that whether or not a conduct falls within the definition of eve-teasing would depend upon the "recipient girl." The incorporation of the harm test therefore created an anomalous situation where women from affluent backgrounds are expected to tolerate eve-teasing while those from less affluent or rural backgrounds can expect protection against similar attacks by the guidelines on sexual harassment. And in fact more worryingly the Court held that "American and British females" are likely to find eve-teasing enjoyable, which not only exposes women from the expatriate community but also women with a preference to western lifestyles in Bangladesh at risk of being expected to find such harassment enjoyable.[34]

Thus while liberal feminism has served activists in Bangladesh well for some time and in some areas, it has, as shown above, been fraught with difficulties in areas such as prostitution and sexual harassment. Attempting to understand prostitu-

33 *BNWLA v. Bangladesh*, 31 (2011) Bangladesh Legal Decisions 324 para 11.

34 It is difficult to appreciate what led the High Court Division to such a conclusion regarding American and British women. Note how an American author whilst describing the universality of the experience of street harassment by women wrote, that "constant sexual appraisal is exasperating and degrading. Yet we want to feel good about our bodies, and we do not want to give up our freedom to walk anywhere or to wear what we like." Melissa Klein, "Duality and Redefinition: Young Feminism and the Alternative Music Community" in *Third Wave Agenda: Being Feminist, Doing Feminism*, ed. Leslie Heywood and Jennifer Drake (Minneapolis: University of Minnesota, 1997), 218. See also Nuara Choudhury, "An Immodest Truth: An Evaluation of the Measures Taken to Combat Sexual Harassment in Bangladesh," *Bangladesh Law Journal* 12 (2012): 137 which provides a scathing criticism of the assumptions made by High Court Division regarding western women.

tion and sexual harassment in terms of liberal feminism is problematic. In these areas liberal feminism has at best produced no result and at worst rendered women more vulnerable than before. These issues are better dealt with by other feminist approaches. They are better understood in terms of violence against women and subordination/dominance by men. Pornography too falls within this category. Insistence on formal equality between men and women is neither relevant to nor will it solve the problems of pornography. And it is in this context that the Pornography Control Act, 2012 is considered in the following section.

Liberal Feminism and the Pornography Control Act, 2012

The Pornography Control Act, 2012 prohibits the "production, storage, marketing, carriage, supply, purchase, sale, broadcast or exhibition of pornography."[35] The Act begins with a justification based on the liberal harm principle for interference in the consumption of pornography, which the Act implicitly assumes to be within the private sphere. The preamble to the Act provides the following liberal justification:-

> *"Whereas, the display of pornography has resulted in the deterioration of moral and social values and is responsible for various offences and social unrest; and whereas, it is necessary to prevent the deterioration of moral and social values; hence, the following Act is promulgated."*

From the liberal perspective, pornography is *"a form of representation of sex, which, without proof of substantive harm to an identifiable subject, should remain legally unregulated in the interests of individual liberty."*[36] The substantive harm that was identified by the legislature in the preamble of the Act, was to the values held by society. Thus although the Pornography Control Act sets out to deal with the harassment that women were facing with revenge porn, the liberal tradition of the legislature forced it to frame a solution in compliance with liberal principles of legislation, i.e. the public-private dichotomy had to be respected. Thus for the Act, private recordings between adults fell outside the scope of legislation. This is also apparent from

35 See Section 4, Pornography Control Act, 2012.

36 (Barnet, 1998, 124), see note 14 above.

the definition of pornography which has been drafted in liberal terms as -

> "(1) any *obscene* dialogue, drama, pose, naked or semi-naked dance recorded in the form of motion pictures, video images, audio-visual images, graphics or by any other method capable of being exhibited, which *arouses sexual excitement* but has no artistic or educational value;
>
> (2) *Obscene* books, periodicals, sculptures, idols, statutes, cartoons or leaflets that *arouse sexual excitement*; and
>
> (3) Negative of soft versions of the materials described in clauses (1) and (2) above."[37]

It is immediately clear from the above definition that the content of pornography is implicitly assumed to be prepared for the consumption of the public. It is required to be in the form of a performance – i.e. a pose, dance, drama or dialogue. The contents of revenge porn are unlikely however, to constitute drama, pose or dance. The content is invariably the private conduct between individuals recorded during a relationship, which happens to be abused by one of parties when the relationship ends. Thus the definition of pornography excludes revenge porn which is a source of the victimisation of women and which was a major concern that led to the promulgation of the Pornography Control Act. Since the legislature was guided by liberal principles it refrained from legislating on private conduct. Hence, the content of neither of the two recordings described at the beginning of this Article would fall within the definition of pornography under the Act.

Moreover, in order to fall within the definition of pornography, the material is required to be both obscene and arouse sexual excitement. However, neither obscenity nor the capacity to arouse sexual excitement is susceptible to objective determination. The classic definition of obscenity laid down by Cockburn CJ in *R v Hicklin*,[38] which has been adopted in Bangladesh[39] involves a determination of

37 Section 2(c), Pornography Control Act, 2012 (*emphases added*)

38 [1868] LR 3 QB 350

39 See Sreeram *Saksena v.The Emperor,* AIR 1940 Cal 290 and *Yaqub v. The State,* (1960) 12 Dhaka Law Rep (WP) 45.

whether the tendency of the material is "to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall."[40] Revenge porn when recorded (and privately viewed) does not fall within the *Hicklin* definition, as it does not proscribe private recordings made for private consumption. Further, even when the content of revenge porn is abused, the purpose and effect is the embarrassment and distress to the victim[41] and not the depravity and corruption of the minds of the public. Once again through the concept of obscenity the legislature introduced the public-private dichotomy, willing only to intervene where the conduct has an adverse effect on the public. Thus hidden within the definition of obscene is the liberal restraint on the regulation of private conduct, i.e. the public-private dichotomy, which prevents the definition of pornography from being used for the benefit of the women who are the real victims of revenge porn.

The second limb of the definition of pornography involves determining whether the obscene content is capable of "arousal of sexual excitement". But sexual arousal of the consuming public cannot be objectively measured and the intention of the author or photographer in this regard can be contentious.[42] No doubt the Bangladesh Courts will attempt to adopt the test of the reasonable person. However, this test presents greater difficulties in the determination of sexual excitement than in the determination of obscenity. Is the reasonable person to be regarded as male or female, i.e. should the reasonable person belong to the category of the victim or the offender? It could be argued that by making sexual excitement an essential element of the definition of pornography, the legislature has defined in terms of

40 This is an objective test which is judged according to the standards of a reasonable person. The reasonable person is defined as "a normal man" who is "neither an artist, nor the lover of art, nor a physician, nor a surgeon, nor on the other hand a sexual pervert and the mentally depraved." This is a notoriously difficult test to apply, which led the judge in this case to replace the custodial sentence with a fine observing that there was "sizable diversity of opinion even amongst the highly educated people with regard to the fact whether these pictures were obscene." See *Yaqub*, see note 39, above at paras 13 and 17. Note also with regard to the definition of obscenity how a US Supreme Court judge observed rather casually "I know it when I see it," *Jacobellis v. Ohio*, 378 US 184, 197 (1964) per Stewart J.

41 A UK Government Circular while creating awareness about a new law criminalising revenge porn described it as "the sharing of private, sexual materials, either photos or videos, of another person without their consent and with the purpose of causing embarrassment or distress." https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405286/revenge-porn-fact-sheet.pdf.

42 Carol Smart, *Feminism and the Power of Law* (London: Routledge, 1989), 119

the male experience. Thus just as rape is defined in action by what the male does so too has pornography been defined in phallocentric terms. Legitimate questions may therefore be raised about the morality of a law that judges an offence from the viewpoint of the offender. Moreover, if the reasonable person is considered to be heterosexual - given that homosexuality is criminalised in Bangladesh and a reasonable person cannot be regarded as a person with criminal proclivities – would pornographic material catering to homosexuals be considered capable of "arousal of sexual excitement? These problems arise as the underlying structure of society that informs the law is both male and heterosexual. It is this gender and orientation bias within the law that liberal feminists fail to question that has allowed laws to be drafted from the male point of view. By making the definition of pornography dependent on "arousal of sexual excitement," many instances of revenge porn are likely to be excluded, as it is conceivable that the content of revenge porn may cause distress to its victims without being of a nature to arouse sexual excitement of a reasonable person.

The Committee on Obscenity and Films Censorship in the United Kingdom had worked around this problem by introducing the concept of explicitness, which is more susceptible to objective evaluation than obscenity or sexual arousal. As Carol Smart notes, the more explicit a material, the more arousing it is. Hence, explicitness can be used as an important test for reading off arousal.[43] The Minneapolis anti-pornography ordinance drafted by radical feminists, Catherine Mackinnon and Andrea Dworkin also incorporated the concept of explicitness. However the Bangladesh law fails to do so, leaving the courts to grapple with issues of obscenity and arousal, the determination of which are likely to be highly contentious.

Section 9 of the Pornography Control Act introduces a restriction on the definition of pornography. Religious images and scriptures are specifically kept outside the definition of pornography. However, this section is superfluous. Even under the flawed definition of pornography, religious art would not fall within the definition of pornography as it would not satisfy the first limb of the definition. Religious art would not by any stretch of the imagination be described as obscene under the *Hicklin* test. The same reasoning applies to medical books. Though the images in anatomy books may conceivably be cause for arousal of sexual excitement for some,

43 Ibid.

whether the tendency of the material is "to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall."[40] Revenge porn when recorded (and privately viewed) does not fall within the *Hicklin* definition, as it does not proscribe private recordings made for private consumption. Further, even when the content of revenge porn is abused, the purpose and effect is the embarrassment and distress to the victim[41] and not the depravity and corruption of the minds of the public. Once again through the concept of obscenity the legislature introduced the public-private dichotomy, willing only to intervene where the conduct has an adverse effect on the public. Thus hidden within the definition of obscene is the liberal restraint on the regulation of private conduct, i.e. the public-private dichotomy, which prevents the definition of pornography from being used for the benefit of the women who are the real victims of revenge porn.

The second limb of the definition of pornography involves determining whether the obscene content is capable of "arousal of sexual excitement". But sexual arousal of the consuming public cannot be objectively measured and the intention of the author or photographer in this regard can be contentious.[42] No doubt the Bangladesh Courts will attempt to adopt the test of the reasonable person. However, this test presents greater difficulties in the determination of sexual excitement than in the determination of obscenity. Is the reasonable person to be regarded as male or female, i.e. should the reasonable person belong to the category of the victim or the offender? It could be argued that by making sexual excitement an essential element of the definition of pornography, the legislature has defined in terms of

40 This is an objective test which is judged according to the standards of a reasonable person. The reasonable person is defined as "a normal man" who is "neither an artist, nor the lover of art, nor a physician, nor a surgeon, nor on the other hand a sexual pervert and the mentally depraved." This is a notoriously difficult test to apply, which led the judge in this case to replace the custodial sentence with a fine observing that there was "sizable diversity of opinion even amongst the highly educated people with regard to the fact whether these pictures were obscene." See *Yaqub*, see note 39, above at paras 13 and 17. Note also with regard to the definition of obscenity how a US Supreme Court judge observed rather casually "I know it when I see it," *Jacobellis v. Ohio*, 378 US 184, 197 (1964) per Stewart J.

41 A UK Government Circular while creating awareness about a new law criminalising revenge porn described it as "the sharing of private, sexual materials, either photos or videos, of another person without their consent and with the purpose of causing embarrassment or distress." https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405286/revenge-porn-fact-sheet.pdf.

42 Carol Smart, *Feminism and the Power of Law* (London: Routledge, 1989), 119

the male experience. Thus just as rape is defined in action by what the male does so too has pornography been defined in phallocentric terms. Legitimate questions may therefore be raised about the morality of a law that judges an offence from the viewpoint of the offender. Moreover, if the reasonable person is considered to be heterosexual - given that homosexuality is criminalised in Bangladesh and a reasonable person cannot be regarded as a person with criminal proclivities – would pornographic material catering to homosexuals be considered capable of "arousal of sexual excitement? These problems arise as the underlying structure of society that informs the law is both male and heterosexual. It is this gender and orientation bias within the law that liberal feminists fail to question that has allowed laws to be drafted from the male point of view. By making the definition of pornography dependent on "arousal of sexual excitement," many instances of revenge porn are likely to be excluded, as it is conceivable that the content of revenge porn may cause distress to its victims without being of a nature to arouse sexual excitement of a reasonable person.

The Committee on Obscenity and Films Censorship in the United Kingdom had worked around this problem by introducing the concept of explicitness, which is more susceptible to objective evaluation than obscenity or sexual arousal. As Carol Smart notes, the more explicit a material, the more arousing it is. Hence, explicitness can be used as an important test for reading off arousal.[43] The Minneapolis anti-pornography ordinance drafted by radical feminists, Catherine Mackinnon and Andrea Dworkin also incorporated the concept of explicitness. However the Bangladesh law fails to do so, leaving the courts to grapple with issues of obscenity and arousal, the determination of which are likely to be highly contentious.

Section 9 of the Pornography Control Act introduces a restriction on the definition of pornography. Religious images and scriptures are specifically kept outside the definition of pornography. However, this section is superfluous. Even under the flawed definition of pornography, religious art would not fall within the definition of pornography as it would not satisfy the first limb of the definition. Religious art would not by any stretch of the imagination be described as obscene under the *Hicklin* test. The same reasoning applies to medical books. Though the images in anatomy books may conceivably be cause for arousal of sexual excitement for some,

43 Ibid.

no court would describe the images as obscene. Thus the legislature does not specifically exclude medical books from the definition of pornography, being content to the let the *Hicklin* test (contained within the definition of obscenity) deal with it.[44]

Having defined pornography, the Act creates seven specific offences in relation to the use of pornographic materials. These offences are listed in subsections 1 through to 7 of section 8. The first offence is in relation to production of pornography, entering into contracts for the production of pornography or the inducement or coercion of any person to participate in pornography.[45] The second offence occurs when a pornographic content is used to harm the reputation of or used to blackmail or cause mental distress to the victim.[46] This is the offence of revenge porn. The third offence occurs when pornographic material is transferred through the internet, mobile phone or any other electronic device.[47] The fourth offence takes place when a person causes a public nuisance by exhibiting pornographic material.[48] The fifth offence occurs when a person sells, rents, distributes, publicly exhibits, prepares, produces, transports, stores or advertises the location of pornographic content.[49] The sixth offence occurs when children are involved in the preparation and distribution process.[50] And the seventh offence occurs when any person aids or abets the above offences.[51] Of the six substantive offences created by the Act (i.e. excluding the offence of aiding and abetting), five are directed at the public and involve protecting it from the consumption of pornography.

The provision of revenge porn however by contrast was framed not to penalise the wrongs committed against the general public but against the victims who had had suffered harm. Section 8(2) of the Pornography Control Act criminalises revenge

44 Note that section 2(c) of the Pornography Control Act, 2012 specifically excludes educational material from the definition of pornography. However, as already stated even this is superfluous as medical (or other educational) books are unlikely to be regarded as obscene under the *Hicklin* test.

45 Section 8(1), the Pornography Control Act, 2012.

46 Section 8(2), the Pornography Control Act, 2012.

47 Section 8(3), the Pornography Control Act, 2012.

48 Section 8(4), the Pornography Control Act, 2012.

49 Section 8(5), the Pornography Control Act, 2012.

50 Section 8(6), the Pornography Control Act, 2012.

51 Section 8(7), the Pornography Control Act, 2012.

porn in the following manner:-

> *"Whoever through the use of pornography harms the social or personal reputation of any person or by using threats demands money or other benefits or uses any pornographic material recorded with or without the knowledge of any person to cause mental distress, shall be treated to committed an offence and shall be liable to be punished with rigorous imprisonment for a term of up to 5 (five) years and with a fine of up to BDT 200,000."*

The criminalisation of revenge porn is dependent on the definition of pornography. And this unfortunately is its undoing. As shown earlier, pornography is defined by the Act in such a manner that it only includes materials that have been prepared for the public, i.e. it is required to take the form of a pose, dance, drama or dialogue. Further, the term obscenity contained within the definition of pornography also assumes that the recording is made for public consumption. However, the content of revenge porn is usually prepared for private consumption. Moreover, the purpose of revenge porn even when disclosed to the public is not to corrupt and deprave the public but to harass the victim. It is also conceivable that the content of revenge porn may be of such a nature that although it does not corrupt and deprave the public, yet it still causes humiliation and distress for its intended victim. Thus the content of revenge porn is unlikely to satisfy the *Hicklin* test. Similarly, it is also conceivable that the content of revenge porn may also not satisfy the second limb of the definition of pornography (i.e. arouse sexual excitement), yet may still be the cause of distress for its victims. Therefore, section 8(2) of the Act fails to criminalise the disclosure of private recordings of an intimate nature, which form the content of revenge porn.

There is yet another problem with this section. The prosecution will either have to prove that the pornographic material has caused harm to the reputation of the victim or that the victim has suffered mental distress. Thus once again the liberal harm test has also worked its way into the definition of revenge porn. Without proof of harm to the victim's reputation or proof of mental distress no offence is committed. If the prosecution were to argue harm to the victim's reputation, this would allow the defence to launch into an investigation of the character of the victim, which

will not only be distressing for the victim but seriously limit future prosecutions. And if the prosecution were to argue mental distress, it is difficult to see how it would be proved.

Alternative approaches and the Way Forward

The inadequacies in the definitions of pornography and revenge porn are due mainly because of the legislature's attempt to frame a law within the liberal tradition. This dictates that there can be no legislation regulating private conduct unless there is evidence of harm to others. Liberal feminists are also bound by such restrictions and it is these restrictions that have led to less than effective law on revenge porn. Hence, alternative approaches to conceptualising pornography and revenge porn are required to be considered.

Radical Feminist Definition (The Second-Wave)

Radical feminists reject the public-private dichotomy of liberal feminism and identify the problem of gender inequality as one of domination and victimisation of women by men. They argue that society is structured in male terms, such that women are always subordinated by men. Thus radical feminism questions the law's capacity for neutrality. Accordingly, they argue that there can be no equality within the existing societal structure which is based on "male-supremacist ideology."[52] Pornography, prostitution and sexual harassment are mere manifestations of this male-oriented society. The victimisation discourse of radical feminism therefore fits neatly with the nature of pornography and revenge porn. For Dworkin and Mackinnon, the victims of pornography are not only the women who have been portrayed in the pornographic materials but also women in general who have been degraded by being portrayed in various forms of subordination. They are degraded by being objectified for the pleasure and consumption of men.

Victims speaking of their experiences with revenge porn have described themselves as feeling dehumanised and objectified. One victim turned activist described her experience with revenge porn as a loss of control which was internalised over

52 Andrea Dworkin, *Pornography: Men Possessing Women* (New York: Plume, 1989), 13. Dworkin identifies 7 tenets of the male-supremacist ideology on which society is based.

time. "When you are told enough times that you do not deserve to be treated as someone of worth" she wrote "you lie in bed at night and begin to agree."[53] From the offender's point of view that is exactly the desired outcome – control over the victim. Radical feminism sees this loss of control through objectification as an expression of male supremacy which depends on the ability of men to view women as sexual object.[54] This was precisely the object of the publication of the materials in the two instances described at the beginning of this Article. From this point of view, Mackinnon and Dworkin define pornography as "the graphically sexually explicit subordination of women through pictures or words that also includes women dehumanised as sexual objects, things or commodities."[55] Mackinnon and Dworkin had to work within the absolute protection granted by the first amendment to the US Constitution to the freedoms of speech and expression which ultimately led to the laws they had drafted being declared unconstitutional.[56] However, the Bangladesh Constitution does not provide for unrestricted freedoms of speech and expression. It is therefore not suggested that the Mackinnon-Dworkin definition be applied wholesale or that the existing definition should be disregarded altogether but that the definition should be modified to reflect the true nature and conditions in which the offence of revenge porn takes place. The Mackinnon-Dworkin definition is useful as a conceptual and analytical tool to understand the pornography and the circumstances that lead to its proliferation. However, a problem with the definition is that it does not cover circumstances where the images (that do not depict scenes of subordination) are used for the purposes of subordination. This is invariably the case with the content of revenge porn. The content of revenge porn when recorded are not intended and do not depict subordination, but it is the manner in which they are subsequently used that subordinates and humiliates the women portrayed in the images. Thus in order to be a comprehensive definition, a Mackinnon-Dworkin type definition of pornography would have to be modified to include the subordination of women through sexually explicit pictures or words.

53 See Nina Bahadur, "Danish Activist Emma Holten Is Sharing Nude Photos To Combat Revenge Porn", *Huffington Post* January 9, 2015. Accessed on May 26, 2015.*http://www.huffingtonpost.com/2015/01/09/emma-holten-revenge-porn_n_6424814.html*. See also Emma Holten, "Consent: An Objection By Emma Holten" in *HYSTERIA #5 'Nonsense'*(2015). English translation available at http://www.hystericalfeminisms.com/consent/ (Accessed on May 26, 2015)

54 Ibid., 113.

55 Catherine A. Mackinnon, "Francis Biddie's Sister: Pornography Civil Rights and Speech" in *Feminism Unmodified* (Cambridge: Harvard University Press, 1987), 176.

56 The Bangladesh Constitution subjects the freedoms of speech and expression to the laws relating to decency and morality.

But the Mackinnon-Dworkin definition is not very practical. It is unlikely to be of much use for prosecutors. As Michael C. Rea argues it is not clear what constitutes a graphic depiction of subordination:-

> *"The problem isn't that there are borderline cases where we can't tell whether a depiction is subordinating someone. That sort of vagueness would be tolerable. Rather, the problem is that there don't even seem to be clear cases. One might well doubt whether it is even possible for a mere depiction to subordinate someone."*[57]

Third Wave Feminist Definition

The third wave of the feminist movement[58] began as a reaction by young feminists to the radical (second-wave) feminism which portrayed women as marginalised and passive victims of domination and subordination. Most third-wave feminists were born in the 60s and 70s and hesitated to take up the mantle of feminism because they feared being branded as fanatics and also because they felt the movement had stagnated.[59] It also arose out of a failure of some feminists to reconcile their desire to express their femininity with the radical feminist movement which saw such expressions as a form of objectification and subordination to men.[60] Third wave feminist arguments in Bangladesh are apparent from the writings of Firdous Azim.[61] While discussing prostitution, she laments that there had been no discussion on why sex work should be treated any differently from other forms of exploitation, especially when paid sex-work is often seen as a path to the empowerment of women. She also points out that there is no discussion on the sexual freedom, pleasure and power enjoyed by sex-workers. These are some of the major

57 Michael C. Rea, "What is Pornography?" *Noûs* 35:1 (2001): 118.

58 Many feminists would stop short of describing the third-wave as a movement. Gloria Steinem for instance commented that after reading third wave writings she felt like a sitting dog being told to sit, See Gloria Steinem, forward to *To be Real: Telling the Truth and Changing the Face of Feminism ed. by Rebecca Walker* (New York: Anchor, 1995), xxii.

59 (Klein, 1997, 207), see note 34 above.

60 See Katherine Frank, "Stripping Starving and the Politics of Ambiguous Pleasure" in *Jane Sexes it Up: True Confessions of Feminist Desire,* ed. Merri Lisa Johnson (New York: Four Walls Eight Windows, 2002), 171.

61 Third-wave feminism however has not caught on in Bangladesh. As Nazneen and Sultan point out many young feminists have stayed away from feminist movements as they perceive that the old guard is not in touch with emerging issues such as sexualities, "girl power" etc. See Sohela Nazneen and Maheen Sultan, "Contemporary Feminist Politics in Bangladesh: Taking the Bull by the Horns" in *New South Asia Feminisms,* ed. Srila Roy, (London: Zed Books, 2012).

themes present in the writings of third-wave feminists.[62] While third-wave feminists agree with radical (or second-wave) feminists that pornography is a means of subjugating women, they also see it as a means of profiting from their subjugation. Viewing prostitution or pornography as a non-unique form of exploitation or by describing them as exploiting ones exploitation[63] allows third wave feminists to argue that they empower women and hence should be legitimised. The third-wave feminists do not seek to solve the problem of exploitation. In fact they are not concerned with the social effects of pornography or the social and economic conditions that lead to prostitution, choosing instead to concentrate on its benefits. In an economic system where women face unequal job opportunities, sex-work is often seen a way in which women can get ahead.[64] However, the arguments of the third-wave are unlikely to find much force in Bangladesh as Article 18(2) of the Bangladesh Constitution specifically enjoins the State to prevent prostitution.[65]

It is also unlikely that prostitution or pornography will be seen as part of the sex positive agenda promoting sexual autonomy in Bangladesh. Speaking of the confessions of sex-workers to experiences of pleasure in their work, Azim despairs at the missed opportunity of harnessing the political force of these confessions.[66] What Azim does not state clearly, but what is all too apparent when one reads her work in juxtaposition with other third-wave writings[67] is that she realises the powerful force that such individual confessions may have in redefining femininity and the course of the feminist movement in Bangladesh. However, third-wave arguments based on sexual autonomy are unlikely to find traction in Bangladesh as they are based on unregulated freedoms of speech and expression which is absent in Bangladesh.

Another reason why third-wave arguments are unlikely to take hold in Bangladesh

62 See Bridget J. Crawford: Toward a Third-Wave Feminist Theory: Young Women, Pornography and the Praxis of Pleasure, *Mich. J Gender & L.* 14 (2007): 99 where 6 themes of the third wave movement are identified: (1) dissatisfaction with earlier feminists; (2) the multiple nature of personal identity; (3) the joy of embracing

63 (Klein, 1997, 220), see note 34 above.

64 (Frank, 2002, 199), see note 60 above.

65 Article 18(2) of the Bangladesh Constitution states that "[t]he State shall adopt effective measures to prevent prostitution and gambling."

66 (Azim, 2012, 278) see note 25 above.

67 (Frank, 2002, 205-206), see note 60 above, where Frank argues that confessing to personal experiences of pleasure and feelings of resistance wield a powerful political force.

is because of the nature of the movement itself. Third-wave feminists have been described as reactionary in that they fail to advance their own positivist view of how goals should be achieved. They respond to incomplete and distorted images of second-wave feminism and advance no legal theory and suggest no role for the law.[68] Bridget J. Crawford provides the following reasons for the failure of third-wave to spell out a specific programme or theory:

> *"The lack of third-wave writing about the law seems to arise out of third-wave methodology itself. Because third-wave feminist method – to the extent a single method exists – relies heavily on the first person narrative, this does not translate easily into action plans and impact litigation."*[69]

Ratna Kapur too points out that the campaigns of third-wave feminists should at best be seen as form of feminism *"lite"*. They are not revolutionary movements, she argues, but critiques of dominant feminist positions.[70] Thus although third-wave feminism may provide better understanding and elaboration of issues such as prostitution and pornography, unlike the feminisms of the first and second waves, it offers no solution to end the exploitation surrounding the issues.

The offence of revenge porn outside Bangladesh

Having considered various theoretical approaches to conceptualising pornography and revenge porn, in this section I propose to examine how the Bangladesh definition of revenge porn compares with definitions of similar offences in other parts of the world. In the United Kingdom, section 33 of the Criminal Justice and Courts Act, 2015 makes it an offence for a person to disclose a private sexual photograph or film if the disclosure is made without the consent of the individual who appears in the photograph or film, and with the intention of causing distress to the individual. As such the offence turns on the absence or presence of consent. This is consistent with how victims feel about revenge porn. One victim of revenge porn described consent as being key to the offence. *"Just as rape and sex have nothing to do with each other"* she observed, *"pictures shared with and without consent are completely*

68 (Crawford, 2007, 99), see note 62 above.

69 Ibid.

70 Ratna Kapur, "Pink Chaddis and SlutWalk Couture: The Postcolonial Politics of Feminism Lite", *Fem Leg Stud* 20 (2012): 1.

different things."[71] However, in Bangladesh revenge porn cannot be made subject to consent. This would have the effect of legalising pornography, which would be contrary to the constitutional limitations on the freedom of expression.

What is noteworthy about the UK offence of revenge porn is the absence of the term *"obscene"*. This term would have incorporated the liberal public-private dichotomy and the concept of public morality via the *Hicklin* test and thus take away attention from the offence and its effects on the victim. The UK legislation also fares better than the Bangladesh legislation in that it does not require the prosecution to prove actual harm. The UK law only requires that there be an intention to cause distress. This intention would be read off from the circumstances surrounding the disclosure, i.e. whether it was after the relationship ended, how long after, and whether there was acrimony between the parties.

The use of the term *"sexual photograph or film"* in the UK legislation is also an improvement from *"arousal of sexual excitement"* used in the Bangladesh legislation. The Bangladesh term of *"arousal of sexual excitement"* requires the content of revenge porn to be of a nature so as to arouse sexual excitement, although it is quite conceivable that the victim may experience harm irrespective of whether the images are capable of such arousal. This problem is not present in the UK term *"sexual photograph or film."* Moreover, the term *"sexual photograph or film"* is neutral as to sex-orientation. The use of the term *"sexual photograph or film"* ensures that there is no need to consider whether the material will appeal to heterosexuals or homosexuals. This circumvents the difficulty that arises in Bangladesh from the use of the term *"arousal of sexual excitement"* which as I have shown may be construed as referring to content which may appeal to a specific orientation. Regardless of the questions of the legality or illegality of homosexuality in Bangladesh, the intention of the Bangladesh legislature cannot be construed to have criminalised heterosexual pornography, while leaving homosexual pornography unregulated. However, by incorporating the requirement of arousal of sexual excitement" that is exactly what the legislature has unwittingly done.

Thus the UK legislation by avoiding use of the terms *"obscene"* and *"arousal of sexual excitement"* has provided a definition of revenge porn which not only avoids

71 (Holten, 2015), see note 53 above.

the problems of the public-private dichotomy, but has also succeeded in framing it in terms that cannot be said to have been drafted from the male point of view. This has been possible in a large part because of the works of radical feminists in revealing the inadequacy of the term obscenity to deal with issue of pornography. [72]

Conclusion

It is the shortcomings of the feminist movement in Bangladesh that has led to the failure of the Pornography Control Act, 2012 to deal with revenge porn. The mainstream movement is NGO-ised and largely focuses its attention on donor funded projects. And moreover, most of its rhetoric is drawn from liberal feminism (the first-wave) which has been inadequate in dealing with pornography or revenge porn. Faced with new forms of gender-related attacks, activists have called for legislative remedies. But as Dr. Hameeda Hossain notes, despite demanding stricter laws and more effective enforcement the "individual penalties did not become a collective deterrent."[73] Her solution, in the face of the ineffectiveness of legislative reforms is true to the women's movement's liberal tradition. She suggests greater interaction between the genders so that by "sharing and working together we can learn tolerance and respect." But where legislation penalising conduct which encroaches upon the liberty and equality enjoyed by women have failed to stem the rise of violence, can the promotion of even greater liberty and equality (though commendable in itself) solve the problem? One suspects not. Liberal feminism fails to see that society is gendered and that gender itself is hierarchised. What is therefore required is a form of dismantling of some of the existing societal structures and practices and a re-education and re-learning.

As this Article is being written, reports were coming in of attacks on women during the Bengali New Year festivities. There were reports of multiple attacks on women in the vicinity of Dhaka University. Even women with children were not spared. Men acting in groups would swoop on women and harass them. Although some of the attackers were handed over to the police, they were later released without charge. One eye-witness reported *"we asked the police to call other police. But they were*

72 Mackinnon discusses in detail why it is inaccurate to use the term obscene to define pornography. (Mackinnon, 1987, 174-175), see note 55 above.

73 (Hossain, 2014, 244), see note 5 above.

just waiting around."[74] The police initially denied the occurrence of any major attack although the attacks were widely covered by the media.[75] Despite the presence of amateur videos and CCTV footage, they are yet to make a major breakthrough. The Bengali New Year attacks are not isolated incidents. The law has systematically failed to provide protection to women in Bangladesh. In a recent survey 95% of the women were found to have no faith in the ability of the police to protect them.[76] Clearly the solution to the problems of gender-related attacks is not available with the law. Adding new laws to the already existing body of gender related laws, as Dr. Hossain notes, has not yielded results. And as Nicola Lacey observes the risks attendant on legal strategies are acute where one tries to use new legal regulation instrumentally to realise values which command little acceptance among those who will administer the laws in question.[77] She suggests political exercises such as debates, satires, boycotts, propaganda and pickets. This is not to say that the laws should not be framed, but the utility of the laws in preventing gender-related crimes should not be exaggerated. Moreover, strategies of radical (second-wave) feminism of consciousness-raising should also be considered an important tool to tackle the problems of sexual harassment, pornography and prostitution. And law-making could be considered an important part of the consciousness-raising exercise, especially when the legislative process contemplates the public hearings of victims' testimony similar to those which preceded the drafting of Minneapolis anti-pornography ordinance.[78]

Unfortunately, there has been no major radical feminist movement in Bangladesh. There is also no reflection of this movement in the writings and analyses of leading feminists. And thus we see a leap from the first to the third wave, where the writings of Shireen Huq and Firdous Azim betray a despair that the arguments of the third-wave have not caught on in Bangladesh. And without a second-wave having ever taken hold on Bangladesh, the activists of the third-wave (which be-

74 "First hand account of Pohela Boishakh sexual assault", Dhaka Tribune, April 18, 2015.Accessed on May 26, 2015.http://www.dhakatribune.com/crime/2015/apr/18/first-hand-account-pohela-boishakh-sexual-assault

75 Mohammad Jamil Khan, "No progress yet in Pohela Boishakh sexual assault probe", *Dhaka Tribune*, April 21, 2015.Accessed on May 26, 2015.http://www.dhakatribune.com/bangladesh/2015/apr/21/no-progress-yet-pohela-boishakh-sexual-assault-probe

76 "Sohayota pete pulisher opor asthasheel non 95% nari", (95% Women Cannot Rely on the Police), *Prothom Alo*, May 21, 2015.

77 (Lacey, 1998, 96), see note 12 above.

78 (Lacey, 1998, 90), see note 12 above, where Lacey described the public hearing which gave voice to the victims of pornography as a model of feminist political practice.

gan in the West as a reaction to the second-wave) seem to be listless and without purpose.[79] This coupled with the restrictions in the Bangladesh Constitution are the major reasons why the third wave arguments (at least in relation to prostitution and pornography) are unlikely to take hold in Bangladesh. The third-wave's view of prostitution goes directly against the State's obligation under the Constitution to prevent it. Further, the third wave's argument on pornography assumes unregulated freedoms of speech and expression, which in Bangladesh are subject to the laws on morality. Hence, it is unlikely that arguments from the third-wave will have too great an impact on policy and legislation in Bangladesh.

Therefore, radical (or second-wave) feminism notwithstanding its rejection by younger feminists still provides the best analysis of pornography and prostitution. The domination-victimisation discourse of radical feminism is an important conceptual tool for viewing gender-related issues, which the feminist movement in Bangladesh seems to lack. There is no discussion in Bangladesh of the subordination of women or the gender-bias of the legal system or the legal tools deployed by activists. Prostitution for instance has been dealt with through a liberal rights based approach demanding greater rights for sex-workers. It has also been conceptualised through third-wave feminist arguments. Yet there is no discussion from the radical perspective. The movement in Bangladesh seems to have missed a step in its education. And it is this missed step that is the reason for the failure of the women's movement to come up with appropriate solutions to deal with pornography and prostitution. A radical feminist approach would at least have allowed activists and the framers of the Pornography Control Act, 2012 to see women (and not just the faceless public) as the real victims of pornography. And as Lacey notes notwithstanding the criticisms, radical feminism has made an invaluable contribution to feminist legal politics.[80] Unfortunately the women's movement in Bangladesh has not been able to draw upon this contribution.[81]

79 It is apparent from the writings of Katherine Frank and Melissa Klein that the third-wave was born because their generation failed to identify with the discourse of radical feminism, (Frank, 2002, 176) and (Klein, 1997, 207), see notes 60 and 34 above respectively.

80 (Lacey, 1998, 97), see note 12 above.

81 If one looks hard enough, strands of the radical feminist argument can be found present in some writings. See Shahana Siddiqui, "Sultana's Nightmare: Hena and the Feminist Movement", in *Forum*, Volume 5 Issue 3 (Dhaka: The Daily Star, 2011) Accessed on May 29, 2015. http://archive.thedailystar.net/forum/2011/march/sultana.htm. Here Siddiqui calls for a change in the societal structure which leads to women being stigmatised in to remaining in abusive relationships and into being forced to commit suicide upon being subject to street harassment. There is a recognition in her writing that we live in a gendered and hierarchised society.