

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 victim⁴¹ 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 *Yaquub*, 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 phallogocentric 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 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 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 movement⁵⁸ 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 exploitation⁶³ 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 writings⁶⁷ 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.