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Saving the Unsaved: Combating Rape Against Females in Bangladesh – An Analytical Review

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ABSTRACT

Rape is a violent crime that is widely regarded as the most terrible kind of sexual assault on the planet. Victims of rape suffer from psychological trauma in addition to physical traumas, which affects not only their lives but also the lives of those around them. In Bangladesh, rape has reached epidemic proportions. When any rape occurrence takes place, it is seen that the victim is subjected to far greater harassment than the perpetrators. They are socially oppressed in addition to being physically harmed. They are frequently denied justice because the perpetrator of the rape is not adequately punished. Victims are often reluctant to sue because of this culture of injustice and social stigma. The rate of rape has increased so substantially in the previous 20 years that it is now high time to pull the strings of rape. This article focuses on the barriers that prevent rape from being stopped, as well as proper recommendations for rape control, to help rape survivors adjust and reintegrate into society without trouble.

Keywords: *Sexual Intercourse, Perpetrator, Incest Rape, Rape Laws, Recommendation*

I. INTRODUCTION

Rape is the ultimate blow to the development of the female being. Rape is one of the worst forms of violence a woman can face. Rape has existed in society since birth, and the current state of the civilized world has not improved much. Rather, in some cases, the situation in different countries is deteriorating. Even in developed countries, women are being raped more. Bangladesh is not an exception to this. Discrimination, exploitation, and violence against women are common in Bangladesh. Physical assault is the most common kind of violence, followed by rape and sexual assault, according to reports and surveys undertaken by numerous studies on women in the country. In Bangladesh's current society and culture, women are generally regarded as inferior to men. Women's rights violations are a typical occurrence in the current social framework as a result of such attitudes toward women. Sex and sexuality are inextricably linked to humanity. Because women are considered inferior in society, sexual

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violence against them, including rape, is a widespread occurrence in the state. On the other hand, it is common in Bangladeshi society to blame the victims of rape, which are almost always women, although it should be the norm to condemn and degrade the position of the rapists. The social stigma, sense of insecurity, and ignorance about the legal provisions, support, and services make the women and children victims remain silent. The traditional society of Bangladesh is permeated with patriarchal values and norms of female subordination subservience and segregation. Thus to bring changes for women and children being victims of rape, the issue of combating rape against females should be a matter of greatest importance in Bangladesh.

This article at first tries to present a brief scenario and different manifestations of rape that actually take place in Bangladesh. Then the existing rape-related laws and the barriers standing in the way of curbing rape have been identically analyzed. Finally, some effective recommendations have been suggested to control rape.

II. RAPE IN BANGLADESH: A BRIEF SCENARIO

Although this article is to show an overall picture of the current state of rape in Bangladesh, it is necessary to draw a little attention to the extent of rape during the horrific genocide that took place in Bangladesh during the liberation war. In 1971, the Pakistani army raped and killed about 200,000 women. It is believed that at that time Pakistani forces used rape as a tool to intimidate Bangladeshis. As a result of massive rape, a large number of women became pregnant and lots of war babies were born. Many raped women committed suicide and many war babies were killed by the Pakistani forces in a horrible manner.²

There have been many rape events in independent Bangladesh since independence but due to lack of actual data, no research has been done on it. Since 2000 some NGOs like Odhikar, BNWLA, ASK, and BSAF working in Bangladesh have been reporting on rape and violence against women. Although all the incidents of rape happen but are not reported in the media. Many victims refrain from reporting against rape for fear of embarrassment and social stigma. According to a report of Odhikar, in 2001 the total number of rape victims was 622 and in the following year in 2002, it almost doubled amounting to 1350. In 2004, this number had come down a bit. After five years in 2009, the number again decreased to 456 but in the next 8/9 years, the number of rape victims did not decrease at all rather in 2019 it exceeded to thousand.

² Military, *Rape During Bangladesh Liberation War*, https://military.wikia.org/wiki/Rape_during_the_Bangladesh_Liberation_War

In 2020, the situation got worse and the number of rape victims increased to 1538 which was the highest in the past years.³

According to a report of Ain O Salish Kendra (ASK), from January to September 2020, about 975 women were raped, 204 women became victims of an attempt to rape, 43 women died as a consequence of rape and 12 women committed suicide.⁴ Last year in 2021, Inspector General of Police submitted a report to the HCD according to which throughout the country a total number of 26,695 rape cases had been registered in the last five years. The number was 4331 in 2016, 4683 in 2017, 4695 in 2018, 6766 in 2019 and 6220 in 2020.⁵ According to another report of Bangladesh Mahila Parishad, from 2020 to 2021, many more women have been victims of violence. Approximately 1235 women were victims of rape among which 629 were girls and 179 have been gang-raped. 155 women became victims of attempts to rape. In January 2022 alone, 62 women were raped, of which 14 were gang-raped.⁶

The United Nations has strongly advised the government of Bangladesh to modernize its sluggish, lenient criminal justice system since the number of rape cases in the country is alarmingly rising. The citizens of Bangladesh also raised a huge protest and shook the country with nationwide public rallies calling for the reformation of the country's existing laws including the death sentence and a swift trial for sexual offenders. Taking all these under consideration, the government implemented capital punishment for rape. Despite increased punishment, the prevalence of crime has been on the rise in the country. The alarming fact is the rate of such heinous crimes is rapidly increasing.⁷

III. DIFFERENT MANIFESTATIONS OF RAPE IN BANGLADESH

It is commonly believed that women are usually raped by strangers which is not true. Females may undergo rape by different persons including their near and dear ones and in different settings. It is sometimes quite surprising when they are raped by their fiduciary relations within their protective territories. There are different categories and forms of rape which should be

³ Odhikar, *Rape: January 2001 - December 2019* (Nov. 24, 2020), Error! Hyperlink reference not valid..

⁴ Kajalie Shehreen Islam, *When rape is okay*, The Daily Star (Oct. 9, 2020, 11:38 PM), <https://www.thedailystar.net/opinion/news/when-rape-okay-1974769>

⁵ Star Digital Report, *26,695 rape cases filed in last 5 years: IGP office report to HC*, The Daily Star (Mar. 3, 2021, 08:27 PM), <https://www.thedailystar.net/crime/news/26695-rape-cases-filed-last-5-years-igp-office-report-hc-2054337>

⁶ Mahila Parishad, BNWLA, *2021, a violent year for women*, The Daily Star (Jan. 4, 2022, 12:50 AM), Error! Hyperlink reference not valid. star.net/news/bangladesh/rights/news/2021-violent-year-women-2931911

⁷ Shuva Das, *Rape in Bangladesh: An Epidemic Turn of Sexual Violence*, HIR HARVARD INTERNATIONAL REVIEW (Jan. 11, 2021, 9:00 AM), <https://hir.harvard.edu/rape-in-bangladesh-an-epidemic-turn-of-sexual-violence/>

identified considering the socio-cultural conditions of a given society. The following are different manifestations of rape that usually take place in Bangladesh:

(A) Infant or Child Rape

When an adult develops a physical relationship with a person who has not reached the age of majority, it may be termed child or infant rape. In this case, it is immaterial whether the underaged person gives consent or not to that cohabitation. Child rape is directly related to the deprivation of child rights. Child rape in Bangladesh is on the rise, which could have dire consequences for the entire nation. According to research by the National Girl Child Advocacy Forum (NGCAF), the rate of child rape climbed drastically between April 2019 and November 2021. At least 1,117 children were raped across the country between August 2020 and November 2021. Just a year earlier, the figure was 626.⁸

(B) Spousal Rape or Marital Rape

Spousal rape happens when sexual activity occurs without the consent of the spouse. Marital rape is another phrase for it. It is difficult to prove rape in such a tight relationship because it is committed between husband and wife. The absence of permission is a critical component of this, and whether or not general force or violence was used is irrelevant in this circumstance. It is a form of domestic and sexual violence. In many developed countries around the world, it is now a criminal offence. In Bangladesh, sexual intercourse between husband and wife is considered a spouse's right, and violent or indecent penetration between husband and wife is not considered illegal. In a survey on sexual assault against women done by the Dhaka Tribune in 2020, 63.8% of respondents thought rape was acceptable in marriage.⁹

(C) Gang Rape

In this form of violence, there are multiple but not less than two offenders and one victim. In this form of rape, sexual assault is severe and the victim's resistance is less due to the power and pressure from the gang perpetrators. There was no clear data on gang rapes in Bangladesh until 2006. Odhikar was tasked with calculating the number of rape victims. They began tracking the frequency of gang rapes and deaths following rape in 2007. According to their records, there were around 79 gang rapes in 2007. In the following 15 years, the number

⁸ Fahim Reza Shovon, *Child Rapes on the Rise in Bangladesh*, Dhaka Tribune (Dec. 9, 2020, 11:59 PM), <https://archive.dhakatribune.com/bangladesh/crime/2020/12/09/child-rapes-on-the-rise-in-bangladesh>

⁹ Kohinur Khyum Tithila, *Marital rape, hardly considered a crime*, Dhaka Tribune (Nov. 25, 2020, 12:30 AM) <https://archive.dhakatribune.com/bangladesh/2020/11/25/marital-rape-hardly-considered-a-crime>

climbed quickly, reaching 283 in 2021. In Bangladesh, the number of gang rape is rapidly on the increase.¹⁰

(D) Incest Rape / Rape by Relatives

Incest rape occurs when the victim is raped by family members or close relatives. Since family members or close relatives are considered the safest place in which someone is safe, this type of incident is in no way desirable. This is why it is considered most shameful in most of the societies of the world. In Bangladesh, however, such rapes are not very evident. But in recent times, we have come to know about such incidents through newspapers. What is alarming is that these incidents are on the rise due to the extreme erosion of moral values. A Dhaka Tribune online survey revealed the shocking news that in Bangladesh those who are raped, 54% of them are molested by friends or family members.¹¹

(E) Rape by natural Guardians/Parents

Strangers and pedophiles, according to popular belief, are the perpetrators of sexual abuse. However, the majority of those who sexually abuse children are their friends, lovers, family members, and neighbors. According to a survey report, approximately 93 percent of children who have been sexually abused are aware of their abuser. The fact that a child or a juvenile girl can be raped by her parent or natural guardian is a source of great humiliation. In Narayanganj, a person named Muslim aged 50 was detained for allegedly raping his own daughter for the past one year. Muslim raped his daughter during the last one year while his wife worked in a garment industry, according to the case statement.¹²

(F) Date Rape / Acquaintance Rape

If the person dating or spending time with his/her partner forces to have sex then this type of sexual relationship will be termed date rape. Nowadays this kind of sexual relation is becoming a common phenomenon in Bangladesh as well. After making a relationship, most of the time the couples engage in sex on the promise, in almost all cases, from the male partner to get married soon. Later on, when the male partner refuses to marry for any reason the female partner comes to court against her male counterpart. This situation is though now intensely

¹⁰ Share-Net Bangladesh, *Sexual violence and rape cases in Bangladesh from 2001-2021*, KNOWLEDGE PLATFORM ON SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS (Feb. 20, 2022), <https://www.share-netbangladesh.org/sexual-violence-and-rape-cases-in-bangladesh-from-2001-2021/>

¹¹ Kohinur Khyum Tithila, *Dhaka Tribune Survey: 54% people molested by family, friends*, Dhaka Tribune (Oct. 18, 2020, 11:09 PM), <https://archive.dhakatribune.com/bangladesh/2020/10/18/dt-survey-54-molested-by-family-friends>

¹² Prothom Alo English Desk, *Father detained for 'raping' daughter in Narayanganj*, The Daily Prothom Alo (Oct. 30, 2019, 23:24), <https://en.prothomalo.com/bangladesh/Father-detained-for-%E2%80%98raping%E2%80%99-daughter-in>

prevalent in the country; the law is not clear on this problem. In this situation, both the boyfriend and the girlfriend have consented to have sex at the first instance. But for any reason whether acceptable or not, the boy refuses to marry the girl, there arises a legal problem. This particular problem should also be addressed in law. Date rape is also called acquaintance rape. To take an instance, an O-level student was killed, allegedly after rape, in the Kalabagan area of Dhaka on Thursday. Police said the victim went to a friend's house in Kalabagan for a group study. Next, the student's male friends 'raped' her and took her to the hospital. Doctors informed the law enforcers after the victim had died there.¹³

(G) Rape by Instructors

Rape is an epidemic in many sports centers, cultural centers, gyms, and other non-educational institutions where children, adults, and minors go to learn extra-curricular activities. It is a matter of fact that the girls and women joining to learn in such centres are being victims of sexual harassment, molestation, and rape by their instructors. Though this matter is widely known to all, there are no such data available on this particular form of rape.

(H) Rape at Educational Settings

Every day in Bangladesh, female students, particularly tender-aged girl students are frequently raped at their educational institutions, at coaching centres, or even inside their houses while receiving education from private tutors. Rape in educational settings always remains a 'forgotten secret' since educators and administrators refuse to admit the problem existing in their institutions or do not want to accept their legal and ethical responsibilities to deal with it. Rape in educational settings not only ruins the female entity but also poses a great threat to female enlightenment. In Bangladesh, rape of female students has been prevailing and continuing for a long time but due to lack of exposure in both electronic and press media, this violent issue has always remained in darkness. 'According to the BSAF, between January and March this year, 164 children were raped or gang-raped across Bangladesh, while 87 were sexually harassed. Of them, 15 were raped or gang-raped in their educational institutions.'¹⁴

(I) Rape at Workplace

Rape at the workplace is very common in Bangladesh. Many women and girls, no matter where they work, encounter such incidents. Many women do not report sexual harassment due to

¹³ Staff Correspondent, *O-level student killed after rape in Dhaka*, The Financial Express (Jan. 08, 2021, 11:31:52), <https://www.thefinancialexpress.com.bd/national/o-level-student-killed-after-rape-in-dhaka-1610083912>

¹⁴ Kamrul Hasan, *Sexual abuse in educational institutions: A dangerous trend on the rise*, Dhaka Tribune (April 13, 2019, 1:20 AM), <https://archive.dhakatribune.com/opinion/special/2019/04/13/sexual-abuse-in-educational-institutions-a-dangerous-trend-on-the-rise>

concerns about job security and social stigma. To take an instance, Roksana, 22, who came to Dhaka from Mymensingh five years ago, was raped on her third day at a garment factory by a clerk. But she did not file any complaint at the advice of another colleague who said she might lose her job if it would come out publicly.¹⁵

(J) Rape at Refugee Camps

Rape is an epidemic in Rohingya camps in Cox's Bazar. Although the exact number of the victim is unknown. Many Rohingya women who experienced rape and torture fleeing Myanmar report facing sexual violence again in their new home. To take an instance, On September 29, 2019, the family of a 12-year-old Rohingya girl accused three members of an army patrolling team of raping her after barging into their shanty in Nayapara Rohingya refugee camp in Cox's Bazar. Bangladesh Army headquarters had taken the allegations seriously and formed a high-level probe committee to investigate the incident.¹⁶

(K) Statutory Rape

The non-forcible sex by an adult with a person who has not attained the age of consent under the statute is called statutory rape. In this situation, both the parties have consented to have sexual intercourse but due to the statutory age limit, such sexual activity is termed rape.¹⁷ In Bangladesh, statutory rape will be committed if any sexual intercourse occurs with a girl under sixteen years of age even if she consents to have sex as per provisions of the Nari O Shishu Nirjaton Daman Ain, 2000 (Women and Children Repression Prevention Act, 2000).¹⁸

(L) Prison Rape

Prison rape is rape occurring in prison. The phrase is commonly used to describe the rape of inmates by other inmates, less commonly to the rape of inmates by staff, and rarely to rape of staff by inmates. Though no such statistics have been found, it would not be wrong to say that prison rape is also a form of rape that is less talked about in a country like Bangladesh.

(M) Rape by Members of Law Enforcing Agencies

When rape is committed then the victim and his family go to the police to report the case. The

¹⁵ Nawaz Farhin, *Workplace sexual harassment remains unreported, ignored*, Dhaka Tribune (May 21st, 2018, 1:06 AM), <https://archive.dhakatribune.com/opinion/special/2018/05/21/workplace-sexual-harassment-remains-unreported-ignored>

¹⁶ Nazmul Huda Nasim, *Rape in Rohingya Camp: Accused Soldiers to be sacked, jailed if found guilty*, Dhaka Tribune (Oct. 11, 2019, 11:04 AM), <https://archive.dhakatribune.com/bangladesh/rohingya-crisis/2019/10/11/rape-in-rohingya-camp-accused-soldiers-to-be-sacked-jailed-if-found-guilty>

¹⁷ Victoria, *Some Psychological Implication of Rape on Rape Victim*. In S. A. (eds), *Women in Development: Essays in Memory of Professor Dorcas Olubanke Akintunde*, pp. 363-366 (2015). Ibadan: John Archers Publishers Ltd

¹⁸ Sec. 9

moral and legal responsibility of the police is to provide all possible assistance to the victims in getting justice. But occasionally there are exceptions. Sometimes members of the law enforcement agency sense the opportunity to rape the victim and accordingly do so losing humanity as well as legal and moral responsibility which is very much undesirable. If the protector plays the role of the eater, then where will the common people go? Sexual misconduct committed by police is considered a hidden crime and it often goes unreported. In Bangladesh, from only some newspaper reports such rape incidents are revealed to common people. Though the number of such incidents is not significant it should in no way be endured that women would be raped or sexually harassed by members of the law enforcement agencies. This unfortunate mishap takes place at regular intervals. To take an instance, in August 2021, a sub-inspector of police (SI) was arrested after a woman filed a rape case against him. The woman alleged that she filed a case against one of her friends to such SI and one day in the name of assuring her of solving the problem the SI took her to a house and raped her there.¹⁹

(N) Vengeance Rape / Rape Resulting from Revenge or Anger

Girls are often raped out of revenge. There are some vengeful men in society who offer love or marriage if they like some girls or females. But if the females do not respond to the offer, then the men try to rape the women to take revenge. The philosophy that acts in the mind of the perpetrator is that: “If I don't get you as my lover or wife, no one else in the world will have the right to marry you. A raped female will not be married to any other man. If I rape you, you will be automatically compelled to marry me.”

IV. EXISTING LEGISLATIONS ON RAPE IN BANGLADESH

The Statutes that contain provisions relating to rape are as follows:

1. The Constitution of The People's Republic of Bangladesh;
2. Nari O Shishu Nirjaton Daman Ain, 2000 (Amendment 2003) (Women and Children Repression Prevention Act, 2000);
3. The Penal Code, 1860;
4. The Evidence Act, 1872;
5. The Code of Criminal Procedure, 1898

¹⁹ Staff Correspondent, *Sub-inspector sent to jail for abduction, rape*, The Daily Star (Aug. 31, 2021, 10:42 PM), <https://archive.dhakatribune.com/bangladesh/crime/2021/08/31/sub-inspector-of-police-sent-to-jail-in-rape-case>

(A) The Constitution of The People's Republic of Bangladesh

There are no direct legal provisions on rape according to The Constitution of The People's Republic of Bangladesh but the Constitution guarantees some constitutional safeguards to women. It provides:

There shall be a society free from the exploitation of man by man.²⁰ The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed.²¹ All citizens are equal before law and are entitled to equal protection of law.²² Women shall have equal rights with men in all spheres of the State and State shall not discriminate against any citizen on grounds of religion, race, caste, sex, or place of birth. State may also make special provisions in favour of women or children.²³ To enjoy the protection of the law, and to be treated in accordance with law, is the inalienable right of every citizen.²⁴ No person shall be deprived of life or personal liberty save in accordance with law.²⁵

(B) Nari O Shishu Nirjaton Domon Ain, 2000 / Women and Children Repression Prevention Act, 2000 (Amendment 2003)

The Act defines rape and specifically provides punishment for rape along with some other related procedural provisions. It provides thus:

Notwithstanding anything contained in any other law for the time being, the provisions of this Act shall apply.²⁶ If a man rapes a woman or a child he will be sentenced to death or life imprisonment and he will also be liable to pay fine. Such punishment is also applicable in the case of gang rape also.²⁷ If any male without being lawfully married to any female commits sexual intercourse with such female who is above sixteen years of age without her consent or with consent when such consent is attained by inflicting fear or by deception is considered to be rape. Also, rape shall be constituted if such sexual intercourse is done with or without consent when the female is under sixteen years of age.²⁸ The child born as a consequence of

²⁰ Constitution of the People's Republic of Bangladesh, art. 10

²¹ *Id.* art. 11

²² *Id.* art. 27

²³ *Id.* art. 28

²⁴ *Id.* art. 31

²⁵ *Id.* art. 32

²⁶ Women and Children Repression Prevention Act, 2000, No. 8, Acts of Parliament, 2000 (Bangladesh), sec. 3

²⁷ *Id.* sec. 9

²⁸ *Id.* Explanation to sec. 9

rape will be able to get maintenance from the State and State shall collect the cost of maintenance from the perpetrator.²⁹

(C) The Penal Code, 1860

In Bangladesh, rape has been defined under section 375 of the Penal Code, 1860 as a man committing sexual intercourse with a woman against her will or without her consent or with her consent when this consent has been obtained by putting the fear of death or hurt, or with her consent when she thinks the man committing sexual intercourse is her husband whereas the man knows that he is not that man to whom he thinks to be lawfully married, or with or without her consent when she is below fourteen years age. In the same place, sexual intercourse is explained as penetration only. Though the penetration is not clarified here, the courts consider by penetration as penile-vagina penetration in adjudicating cases of rape. In the same section, sexual copulation by a man with his own wife not being under thirteen years is made an exception to be rape. So, from the language of this section, it is apparent that if sexual intercourse is committed by a husband with his wife who is thirteen or above is not rape even if sexual intercourse is done forcefully or without the consent of that bride. Even in section 376 of the Penal Code, it is provided that if a husband rapes his wife who is not below the age of twelve will be sentenced to two years' imprisonment or with fine or with both. Since unconsented sexual intercourse with a wife of thirteen years or above is not rape as per section 375 of the Penal Code, here to prove rape with the wife, she must be under thirteen but if not below twelve years the husband will be sentenced to two years or with fine or with both. The law is not clear about the sexual cohabitation with the wife who is below twelve years of age though it may be presumed that that will fall under the general sentencing of rape.³⁰

(D) The Evidence Act, 1872

The Evidence Act contains provisions to question the rape victim's character. It runs thus:

When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.³¹ Here prosecutrix is generally considered to be a female victim of a crime on whose behalf the State is prosecuting a suspect/accused.

When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend to test his veracity, or to discover who he is and what is his position in life, or to shake his credit, by injuring his character, although the answer to such

²⁹ *Id.* sec. 13

³⁰ Shariful Islam, *An Overview of the Existent Rape Laws in Bangladesh: Need for Urgent Reformation and Change*, Green University Review of Social Sciences, Vol. 05, Issue 02, pp. 49-50, (Dec. 2019)

³¹ The Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (Bangladesh) sec. 155(4)

questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.³²

(E) The Code of Criminal Procedure, 1898

Notwithstanding anything in this Code, no Magistrate except the Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or send the man for trial for the offence.³³

V. IMPEDIMENTS STANDING IN THE WAY OF CONTROLLING RAPE IN BANGLADESH

The fact that why girls are being raped is a matter of endless debate. Many factors work together behind rape. It is not possible to eradicate rape for good from society. But it should be reined in to have time. There are several obstacles to preventing rape in Bangladesh. All the barriers have been clearly highlighted below:

(A) Problems with the Definition and Extent of Rape

According to section 375 of The Penal Code, it shall not be considered rape if sexual intercourse is committed by a husband with his wife who is thirteen (13) years or above. This is not a good provision because any sexual intercourse without consent should be considered rape irrespective of age. Again under the same section, any sexual intercourse with a wife under thirteen (13) years of age is liable to be punished with the highest or capital punishment but under section 376 of the said Act in the case of raping a wife between the years, 12 to 13 is liable to be punished with 2 years' imprisonment or with fine or with both. Here lie inconsistencies between sections 375 and 376 of the Act regarding age, consent, and punishment relating to rape. But in the Women and Children Repression Prevention Act, 2000 (Amendment 2003) [WCRP Act], age has been emphasized rather than consent. According to section nine (9) of this Act, sexual intercourse with a female below the age of sixteen (16) years with or without her consent shall be considered rape. Nothing is clearly stated in this Act whether it will be considered rape or not when sexual intercourse is committed with a wife above 16 but she does not give consent to such intercourse. Again, under the provisions of The Child Marriage Restraint Act, 2017 marriage with a girl under 18 years of age shall be treated as child marriage (except it is done for the interest of the underaged girl) and no such marriage can be registered.³⁴ Where under the provisions of the Penal Code and WCRP Act, a female

³² *Id.* sec. 146

³³ The Code of Criminal Procedure, 1898, No. 5, Acts of Parliament (Bangladesh) sec. 561(1)

³⁴ *Supra* note 26, sec. 2, 11 and 19

under 18 years of age is considered a valid wife but under Child Marriage Restraint Act, she is not. Thus, it is pertinent here that there are repugnancies among all the above laws.

(B) Section 154(4) of The Evidence Act – A Procedural Bar

Section 155(4) of The Evidence Act, 1872 is widely used by the lawyers on the part of the accused or perpetrator to defame a rape survivor by asking her humiliating questions during rape trials. The issue of consent should be the main concern in rape trials. Adducing character evidence in courts in such trials is completely irrelevant. This is one of the main reasons why perpetrators of rape can evade justice. Questioning the past sexual history of the rape survivor cannot be relevant in determining whether the offence of rape has been committed.³⁵

(C) Extrajudicial Arbitration in the Name of *Salish*

Sometimes it is shown that the victim does not file a case. The victim's family tries to settle the crime through village arbitration in the name of *salish*. It is learnt that during the proceedings, the victim or his family is pressured to take up the case and try to settle it through *salish*. Attempts are also made to get rid of the offender for a small fine by exerting political and administrative influence on behalf of the offender. Again many times attempts are made to defame the character of the victim. Such *salish* or out-of-court arbitration is a huge obstacle to justice.

(D) No Witness Protection Law

The draft Victim and Witness Protection Bill, prepared by the Law Commission in 2006 and revised in 2011, provides for the Court to make special directions, such as maintaining the confidentiality and conducting medico-legal examinations of victims in the presence of female family members or professionals, in case of rescue operations for women and children who are victims of rape; protection and safe custody orders for victims as well as witnesses and special measures, such as in-camera trials and video conferencing to record evidence. There has, however, been no action to enact this draft in the past few years, despite repeated concerns being raised by women's rights organizations around the country.

(E) Wedlock with the Rapist

In our country when rape is tried through arbitration or *salish* instead of court, it is seen that the perpetrator is offered to marry the rape victim under a ridiculous excuse that there will be

³⁵ Taqbir Huda, *The long road to the repeal of Section 155(4): Will questions about a rape survivor's 'character' finally be banned in court?*, The Daily Star (Jul. 05, 2021, 11:11 PM), <https://www.thedailystar.net/opinion/justice-practice/news/the-long-road-the-repeal-section-1554-will-questions-about-rape-survivors-character-finally-be-2123791>

no social marriage of the rape victim. This works in favour of the rapist. The message that will be established in the society is: “If you offer love to a girl or female but she refuses then first try to rape her and she will be automatically compelled to marry you.”

(F) Absence of Women’s Desk at Police Station

Women and girls have to undergo different kinds of harassment when going to the police station to file a case. There is no scope for women’s desks at most of the police stations. As a result, the victims don’t feel comfortable reporting the incident of rape to a male police officer. Besides while questioning the character of a survivor, the male police officer forgets that any girl or woman can be subjected to rape, irrespective of her personal history or character.

(G) Not Following the Directives Issued by HCD

Following a massive protest earlier in 2020, in response to a case in Dhaka, a High Court ordered the Law Ministry in January to form a commission within 30 days to address the troubling rise of sexual violence in the country, with the aim of producing recommendations by June. However, more than nine months after the order, it is unclear whether the commission is functioning, and it has not produced recommendations. In 2018, the Bangladesh High Court ruled that the police had delayed recording the complaint of a woman who was gang-raped on a microbus in Dhaka in 2015, and issued guidelines for handling rape cases. These included taking the victim’s statement in the presence of a social worker, designating female officers at police stations to receive complaints, providing support for victims with disabilities, and criminalizing police failure to register a case without sufficient cause. But these guidelines are rarely followed and there appears to be no mechanism to hold accountable police who ignore them.³⁶

(H) Drawbacks in Medical Report

During rape investigations, neither police reports nor medical reports are prepared and submitted properly. Medical reports must always be submitted to the investigating officer first, and the investigating officer should never be required to submit a DNA report in a rape case to the medical officer. Yet, these procedural errors are allowed to take place.

(I) Non-effectiveness Of Helplines Number

The helpline number that was introduced in 2018 has not been widely used. Many women do not know the helpline number or even if they know it, do not take help from it. The Daily Star

³⁶ Tribune Desk, *HRW: Take meaningful action to combat sexual violence, support survivors*, Dhaka Tribune (Oct. 09, 2020, 10:56 AM), <https://archive.dhakatribune.com/bangladesh/2020/10/09/hrw-take-meaningful-action-to-combat-sexual-violence-support-survivors>

has conducted a random survey among over 40 female young professionals and students to know their experiences of using the app and the helpline, or whether they actually know about the two platforms. The responses were eye-opening. None of them has ever heard of the mobile app, which was launched on July 29, 2018. On the other hand, only five said they heard about the toll-free 24/7 helpline introduced in 2012, but none of them ever used it in reporting incidents of violence against them.³⁷

(J) No Compensation and Financial Assistance for Rape Victims

Section 15 of the WCRPA, 2000 empowers judges to treat fines imposed on the convict in rape cases as compensation to the victim/survivor. However, this discretion is seldom exercised by the Tribunal, possibly due to a lack of awareness on part of both the judges and prosecution lawyers. Further, this form of discretionary compensation is dependent on the criminal conviction of the accused, which tends to be very low as recent studies have shown.

(K) Low Conviction Rate

In many rape cases in Bangladesh, the perpetrators are not properly punished. Due to the low conviction rate in rape cases, an overwhelming majority of rapists in Bangladesh believe that they will get away after raping a girl or woman or will be slightly punished. At a national dialogue on actions against sexual violence, the speakers expressed with great regret that in Bangladesh, the conviction rate in rape cases is lesser than expected. Only 3% of cases relating to violence against women and children result in a conviction, as reported by the Women and Children Repression Prevention tribunal from five districts.³⁸

(L) Negative Attitude Towards Women by Law Enforcement Agencies

In our country, the police usually show a negative attitude towards rape victims. They don't want to believe the victims first. When survivors of rape go to the police station, they are often refused to file cases. They frequently undergo biasness, victim-blaming, stigma, and humiliation. Besides, police in our country don't have adequate training and knowledge regarding handling gender-based violence cases.

(M) Weaknesses in the Judiciary

One of the weak points of the justice system in Bangladesh is that the perpetrators are not properly punished due to a lack of evidence despite the provision of severe punishment against

³⁷ Nilima Jahan, *HELPFUL yet not much known*, The Daily Star (Jan. 10, 2020 12:00 AM), <https://www.thedailystar.net/frontpage/mobile-app-joy-helpline-109-may-helpful-women-against-violence-1851979>

³⁸ Mehedi Al Amin, *Only 3% convicted for rape in Bangladesh*, Dhaka Tribune (Nov. 26, 2019, 12:19 AM), <https://archive.dhakatribune.com/bangladesh/dhaka/2019/11/26/only-3-convicted-for-rape-in-bangladesh>

rape. There are a number of reasons for this, the most notable of which are political interference, complex and lengthy judicial process, corrupt administration, dishonesty and irresponsible behavior of the police department, and, in some cases, false rape cases.

(N) The Evils of Moral Decay

People distinguish between good and bad by applying ethical values. Depression of moral values is one of the main reasons behind rape. Family, school, and society play a major role in inculcating moral and religious values in children and adolescents. But at present, children and adolescents are not getting proper moral and religious education from families or schools. Disorder in the name of modernity is more prevalent among today's adolescents and they are not very interested in holding religious and moral values. Due to indifference to religion and the erosion of moral values, that rape is an unjust, unethical, and illegal act that many cannot or will not accept.

(O) Poverty

Most of those raped are members of poor families. In the name of job or work, they are taken out of the house and raped. Working women in poor families are the more victims of rape either at the workplace or on the street. Some women knowingly choose a career that requires money, such as working in a hotel or bar or a massage parlour where the chances of their rape are much higher. Showing the temptation of money well-to-do men lure many girls into rape.

(P) Indirect Effects of Drug Addiction

At present many men and young people in Bangladesh are addicted to drugs. Drug addicts often have sexually arousing ingredients that can lead to rape. Drugs contain a mixture of sexually arousing substances which make them addicted to women and eventually result to rape. Newspaper reports of rape show that most rapists are more or less addicted to drugs.

(Q) Abuse of Technology

Due to mechanical excellence, people are now able to use the internet much more easily and cheaply. In the huge porn world on the Internet, adolescents as well as young boys and perverted males are aroused to immorality and are forced to commit rape without thinking about the consequences.

(R) Social Unawareness

In Bangladesh, the majority of people are still unaware of the legal implications of rape. Many people refuse to believe that rape is a crime that should be prosecuted in court and instead try to discredit the victim's reputation. To be rehabilitated in society, the raped female must go

through a lot of hardship. The girl is considered as if she committed a crime in society; she appears to be ruined and untouchable. She relinquishes her right to a regular existence.

VI. RECOMMENDATIONS

- At every police station in Bangladesh, there shall be a Women Affairs Desk, and a female police officer not below the rank of sub-inspector should be available at the desk with a separate register so that if any rape victim comes to report the case, she would be able to record everything properly.

- After a rape incident, it is critical that the victim receives instant full assistance and cooperation from all parties. Victims and survivors must be provided with adequate medical care, psychosocial therapy, immediate full legal protection, and quick legal aid. Witnesses should be given complete legal protection, and the trial process should be accelerated.

- Government should ensure that the safety of the victim and witness is no longer threatened and satisfactory alternative arrangements have been made. In this regard, Government should cause the 'Victim and Witness Protection Bill' to come into effect as legislation, granting victims and witnesses the right to institutional protection, emergency shelter, livelihood support, psycho-social support, and protection of their identity or relocation as required.

- The definitions of rape as enshrined in the Penal Code 1860 or Nari O Shishu Nirjaton Daman Ain, 2000 are not exclusive and need to be reformed immediately by adding a definition of 'penetration' which should refer also to the use of objects or any other part of the perpetrator's body. Consent of the victim should be considered an essential element of constituting an offence of rape. The age limit for consent in the Penal Code should be raised to 18 to maintain compliance with the Child Marriage Restraint Act, 1929 and Children Act, 2013.

- Section 15 of the Nari O Shishu Nirjaton Daman Ain, 2000 needs to be amended and provision for compensation to the victim should be made compulsory.

- Financial compensation shall be ensured to the rape victim. This can be done in two ways. First, by making provisions of law, the offender must be made to pay compensation to the victim. If the offender does not pay compensation, it can be obtained by selling his movable and immovable property. Secondly, if the offender is insolvent or in such a state that he is not capable to provide compensation, then State shall provide compensation to the victim. This can be done through the formation of a State Compensation Fund. The quantum of compensation must depend on the nature and extent of the injury or harm sustained. The court may order

compensation at various stages of the trial. This may be before the conclusion of the trial as an interim measure so that the victim can meet some of the immediate expenses arising out of rape. In case of maintenance to the child born in consequence of rape, the above provision should be applied.

- Section 155(4) and other relevant provisions of the Evidence Act, 1872 need to be reformed so as to ensure that defense lawyers do not ask humiliating or degrading questions during cross-examination of rape complainants. Section 22 of the said Act should also be amended which deals with oral evidence, to enable individuals with speech/hearing impairments or intellectual disabilities to give evidence in court in rape trials.

- An independent investigation team should be formed under the supervision of Sessions Judge to investigate incidents of rape, and investigating officers should be held accountable where a case is dismissed due to lack of proper investigation in order to avoid the occurrence of false or inaccurate reports and to ensure that investigation process is not in any way influenced by the perpetrator or by political intervention.

- Accountability of the police should be ensured. If the process of investigation can be made more transparent, then an effective investigation may be ensured which will ultimately lead to a significant increase in conviction rate.

- Judges should apply their discretionary powers in case of attributing punishment proportionate to the gravity of offence.

- Rape trials must be stopped through extrajudicial arbitration or '*Salish*.'

- Electronic and Press Media must report the objective truth of rape. News or information that identifies the victim cannot be disseminated. A substantive follow-up report has to be made so that a strong social movement can be formed against the rapist.

- Reports on cases where appropriate punishment has been ensured for rape should be widely disseminated in the media so that people understand that no one can get away with rape. The higher the conviction rate is circulated, the more effective the deterrence theory of punishment will be and the proportion of rape will gradually decrease.

- The death penalty has been imposed as capital punishment against rape in Bangladesh. But the death penalty is not the ultimate solution to curb rape in the country. What is needed most is the appropriate imposing of punishment in proportion to the gravity of the offence and the full percentage of the conviction rate.

- The medical officers dealing with medico-legal, forensic, and post-mortem cases should undergo training programmes that will help them in managing and handling rape cases in a better way.
- Under no circumstances can a victim be married to a rapist. Punishment of perpetrators must be ensured through a due judicial process.
- Social awareness is a very important issue in preventing rape. Moral, ethical and religious values should be instilled in the children and adolescents by the family and society. Social resistance should be built against rapists. At the same time, awareness-raising activities should be spread among the people so that empathy will be shown to the rape victims and they can be rehabilitated and re-established in society in the future. Electronic and print media and NGOs can play an important role in this regard.
- As there lies a simple connection between pornography and rape, access to pornography must be controlled by the government where protecting women and girls is a priority.
- The government should increase access to services for rape victims by establishing a suitable number of shelters, at least one in each district, and providing survivors with financial aid, housing, legal assistance, support services, counseling, as well as health and mental health services.
- The government should immediately follow all the Directives issued by the High Court Division and take appropriate measures for implementing those.
- Though it is not proper to tell womenfolk to change their dresses, the dress may be a factor in controlling rape. Sleeveless and short dresses may arouse sexual desire in perverted people. So females should wear elegant clothes when they go out of their houses.
- All females must be taught compulsorily martial arts and arts of self-defence. Martial arts should be taught to all girl students besides physical exercise at all schools.
- A syllabus on 'Gender Justice' must be developed for students at the secondary level.

VII. CONCLUSION

Rape is an extreme obstacle to the development of women. Those who are raped frequently undergo fear, depression, and emotional numbness besides physical injuries. They also face difficulties with communication, intimacy, trust, and sexual relations, and their enjoyment of social activities are adversely affected. In Bangladesh, rape has already become an everyday phenomenon. There is not a single day when the country does not record a single occurrence

of rape. Though the main victims in most cases of rape are women, it affects not only the survivors but also all the people around them. It is impossible to make Bangladesh a rape-free state overnight, but it is very necessary to curb rape day by day. The country might become safer for women if each of the variables is addressed properly. The legal loopholes should be amended as soon as possible. Provisions of laws must be implemented strictly to ensure that no perpetrator can escape the legal consequences and punishment of rape. Raising awareness among people alone is not enough. All must possess zero tolerance and stand against rape with utmost resistance.

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