

ENSURING COMPREHENSIVE JUSTICE FOR RAPE VICTIMS IN BANGLADESH: A SOCIO-LEGAL STUDY

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ABSTRACT

Rape, one of the most severe forms of physical violence against women, has suddenly become a burning topic in Bangladesh due to increasing rape rates. The legislative organ has tried many times to address this issue by enacting strict laws, but these laws have failed to deter crime and have widely been criticized for their implementation. Under constitutional and international obligations, the State must respond appropriately to confront such a situation. Whenever debates were made to amend the law, it was amended to increase the punishment rather than ensure justice for the rape victims comprehensively. Due to the chaotic legal framework of rape, most rape victims don't seek justice. Besides these legal challenges, in a patriarchal society, gender discrimination has been established as a social norm, where women face discrimination, violence and oppression every day. Victims of rape face social stigmas, victim-blaming, and other issues that impede the comprehensive justice process. With all these backdrops, this article aims to critically analyze the existing legal framework of rape in Bangladesh to find loopholes that are the challenges to ensure comprehensive justice for rape victims. This article will also address key social issues that impede comprehensive justice. To fulfill the aims and while considering the nature of the article, this socio-legal study is conducted based upon the qualitative analysis based on doctrinal method, where both primary and secondary data are used. The findings of this article will show the urgent need to reform rape laws and deal with social challenges by focusing on the impact of law on society and maintaining harmony between both. Finally, this article will make some practical recommendations, such as changing the statutory definition of rape and some trial procedures and recommendation on further research on the subject.

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I. INTRODUCTION

Rape is one of the most heinous and terrible crimes against the human body. It is defined as coercive intercourse with a human, which does not always include sexual penetration. However, Bangladeshi rape laws states that it is exclusively done to females. Sexual intercourse instigated by one or more individuals against another person without their consent, or by coercion, physical force, or against their will, has been characterised as 'Rape'.¹

Although Bangladesh has enacted strict laws to protect rape victims and discourage rape, the number of rape cases has remained relatively stable throughout the decades. Existing legal framework isn't adequately decreasing the rate of rape; rather, the number of occurrences is increasing. The Penal Code 1860 (the PC 1860) - a British Colonial statute - defines rape as a "gender-based offence." It also fails to define penetration, doesn't cover marital rape, and ignores sexual assaults against third-gender and even sex workers.

Considering the grievance of the offence, Bangladesh enacted a special law; Nari O Shishu Nirjatan Daman Ain 2000 (NSNDA 2000), which criminalises various types of violence against women in Bangladesh, notably 'rape,' and imposes harsh punishments.² Such law was subjected to reforms from time to time and the death penalty for homicidal rape was included in later amendments.

The alarming rise in rape cases globally illustrates the diminishing worth of women in society, as well as the vanity and inadequacy of rape laws, despite the prevalent capital sentence for the act to discourage the crime and offer comprehensive justice.³ Rape is the most severe form of violence, yet it is regrettably frequent. Every day, newspapers, television stations, and internet news portals in

¹ Runa, J. S., "Revisiting Existing Rape Law in Bangladesh under Analytical Approach", 1(2) (2020) *South Asian law Review*, pp 116-127, at p. 116.

² Preamble and Section(s) 2 (e) & 9 of the Nari O Shishu Nirjatan Daman Ain, 2000.

³ Ahamad, R., "Bangladesh sees sharp rise of sexual violence", *The New Age Bangladesh*, March 08, 2020, available at: <<https://www.newagebd.net/article/101590/bangladesh-sees-sharp-rise-of-sexual-violence>> (Last visited on October 04, 2021).

Bangladesh report violent rape events around the country, with frightening statistics.⁴

The hardships experienced by rape victims throughout the rape trials have been termed "procedural rape or physiological torture"⁵ which is a reason for a lower number of case filing, lesser conviction rate, and failure to provide inclusive justice for the rape victims. Substantive and procedural shortcomings are key sources of all these flaws. The existence of Section 155(4) of the Evidence Act 1872 (the EA 1872) and the character assassination of rape victims are seen as major procedural disadvantages.

Our country's rape laws don't allow for rape victims' compensation or recompense, as this remedy is rare. The laws likely to focus on the punitive component, which hinders the goal of comprehensive justice for rape victims. In just 03 out of 44 cases, the court used its discretion to convert the punishment into compensation under the NSNDA 2000, according to BLAST's report.⁶

Most significantly, rape laws violate the Constitutional principles of "non-discrimination" and "gender equality." Moreover, Bangladesh has occasionally signed and ratified international legal agreements pertaining to human rights and women rights. Thus it is bound by international law to defend women's rights, abolish gender discrimination, and combat gender-based violence (GBV), including rape. This legislative structure is possibly in conflict with international commitments.

Aside from legal obstacles, numerous societal issues impede the rape victim justice procedure in Bangladesh. Male domination, men's guardianship and women's reliance, with women historically relegated to the private realms,⁷ existing gender imbalance in society,

⁴ Rayhan, A., "Admissibility of Character Evidence in Rape Cases: An Inequity to the Victims?", 3(1) (2020) *SCLS Law Review*, pp. 34-37, at p.34.

⁵ Surur, H. S. and Chaity, J. A., "The Second Rape", *The Dhaka Tribune*, August 25, 2017, available at: <<https://www.dhakatribune.com/bangladesh/law-rights/2017/08/25/the-second-rape>> (Last visited on October 04, 2021).

⁶ Huda, T., "No Justice without Reparation: Why Rape Survivors Must Have a Right to Compensation", (2020) *Rape Law Reform Research*, Reports no. 2 by BLAST.

⁷ Nazneen, S., "The Women's Movement in Bangladesh: A Short History and Current Debates", (2017) *FES Bangladesh Country Study*, available at: