Conference Report

RAPE LAW REFORM IN BANGLADESH

DHAKA | 8 December 2018

Bangladesh Legal Aid and Services Trust (BLAST)
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Our Board Members, Justice Abdur Rahman and Advocate ZI Khan provided important leadership, and our Chief Legal Advisor, Justice Nizamul Huq, gave us invaluable advice throughout.

Sara Hossain
Honorary Executive Director
BLAST
INTRODUCTION

**Background:** A UN study on male violence, surveying perpetrators of rape, found that in Bangladesh 95% of urban respondents and 88% of rural respondents reported facing no legal consequences for raping a woman or girl.\(^1\) Additionally, data from the Government of Bangladesh’s One Stop Crisis Centre shows that out of the 16,804 rape survivors who sought treatment between 2001 and 2013, only 3,747 took legal action, meaning 78% chose not to pursue their cases even after taking the initial step of seeking medical treatment.\(^2\)

These statistics demonstrate that the vast majority of rape victims and survivors still do not come to court to seek redress. When they do, they routinely face threats and reprisals, including, in some cases, death threats (especially if the accused is from an influential background). Victims and witnesses have limited recourse to emergency shelter, social security, safety or protection in such cases. Many therefore fail to pursue justice, contributing to a culture of impunity for rape. Even where cases are filed, investigations concluded, and trials take place, there are very few convictions.\(^3\) The vast majority of rape victims and survivors are thus precluded from seeking justice, for one reason or another, including the discrimination inherent in the existing rape laws and their application.

In this context, the National Conference on Rape Law Reform brought together about 180 lawyers, judges, academics, researchers, government officials, law enforcement officers, journalists, human rights, women's rights and community activists from across the country to discuss the need to reform rape laws, to ensure holistic, effective and inclusive justice for rape survivors and to end impunity for rape.

The conference was the culmination of four expert consultation seminars earlier held by BLAST with relevant governmental and non-governmental stakeholders in 2018. These had focused on distinct procedural and substantive concerns regarding the content and application of laws on rape, and proposed workable recommendations for reform. Based on the consensus reached in these consultations and the additional concerns raised by expert participants, the conference focused on identifying a priority reform agenda to ensure justice for rape victims and survivors.

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\(^3\) For example, a recent study by Prothom Alo found that out of the 4,277 violence against women cases (the vast majority of which were rape cases) disposed in Nari-O-Shishu Nirjaton Domon Tribunals in Dhaka district between 2002 and 2016, the accused was sentenced to punishment in less than 3% of the cases. See: Tahmina, Q. A. & Bhowmik, P., “*Shaja Matro Tin Shotangsho: Dhaka Nari O Shishu Nirjaton Domon Tribunal*” [Punishment in Only 3% of Cases: Suppression of Violence against Women and Children Tribunal, Dhaka] Prothoma (2018).
The key aims of the conference were set out including: identification of the distinct procedural and substantive areas of rape law which require immediate reform, with a view to develop workable recommendations on how such reform may be implemented and the importance of ensuring inclusive justice. A presentation on legal developments regarding rape in Bangladesh was followed by a special session titled ‘Hear Me Too: Representatives from Marginalized Communities Speak Out’. Two publications were launched followed by speeches by two former Justices of the Supreme Court of Bangladesh: Justice Md. Nizamul Huq and Justice AFM Abdur Rahman.

Opening Address

Taslima Yasmin, of the Faculty of Law, Dhaka University, set out the conference aims, giving a brief background of the four preceding expert consultation seminars. She stressed that a rape law reform agenda can only be achieved through the concerted efforts of civil society organizations and government agencies.
History of Rape Law Reform in Bangladesh

Relevant laws – both substantive and procedural - such as the Penal Code, 1860, the Evidence Act 1872, and the Code of Criminal Procedure 1898 -- all predate the Constitution, and therefore require review in light of constitutional principles of equality and non-discrimination. Substantive aspects of rape law, such as the definition of rape, have been left largely unchanged since the colonial period.

The first post-independence special law on violence against women (Cruelty to Women (Deterrent Punishment) Ordinance 1983) provided for the death penalty as the maximum punishment for rape, replacing life imprisonment under the Penal Code. A decade later, the Nari-O-Shishu Nirjaton Domon (Bishesh Bidhan Ain) 1995 [Suppression of Violence against Women and Children (Special Provisions) Act]] made the death penalty mandatory for cases of rape leading to death (subsequently struck down by the Supreme Court in the Shukur Ali case)4. These laws introduced Special Tribunals on violence against women and children, with fast track procedures, and certain victim protection measures. However, they tended to focus more on sentencing and procedural issues, and not on the definition of rape.

Role of Civil Society in Ensuring Inclusive Justice for Rape Survivors

“Certain aspects of rape law require immediate reform since they are unconstitutional. Civil society organizations must advocate for the reform of rape laws, particularly to broaden the definition of rape. Is it acceptable for an aspiring middle income country and ‘Digital Bangladesh’ to still be bound by colonial era laws dating back to 1855? Rape is rape whether it occurs in the public or private sphere and called for criminalizing marital rape, especially because we live in a country where the vast majority of women face intimate partner violence from their husbands. If we cannot guarantee basic protection of the 51% of the population who are women, then who are these laws serving and what purpose are they fulfilling?” Reform to rape laws we have seen thus far have resulted from the continued advocacy of civil society and the need for this movement to continue until rape laws are reformed to ensure gender equality.”

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Three speakers spoke to the experiences of rape survivors from marginalized communities and the additional hurdles they face when seeking justice for rape. This was designed to tie in with UN Women’s #HearMeToo movement as part of the 16 Days of Activism against Gender-Based Violence Campaign.

**Justice for Rape in the Dalit Community**

“Dalit women face institutional discrimination and gender-based discrimination from within their own communities. As women are not represented in the Panchayat (traditional dispute resolution body) of the Dalit community, they are unable to seek justice there when subjected to rape. Given their financial situation, is practically impossible for them to seek justice from the formal courts. Where they do file cases, they often face discrimination from law enforcement agencies. My request to all is that our rights should be ensured so that we can live a decent life.”

**Justice for Rape in the Chittagong Hill Tracts**

“While filing any case on violence against women, such as rape, indigenous women face an additional hurdle in the form of the language barrier. Due to lack of translation services at the police station, indigenous women cannot accurately present all the information nor fully understand the process be it in the police station, hospital or court which ultimately proves to be a real challenge. Human rights defenders who support victims are also met with violent intimidation, as in the recent Marma sisters rape case. There is virtually no justice for rape in the Hill Tracts, even in the rare cases where a culprit gets arrested, they quickly get obtain bail by utilizing their political influence. I hope all those responsible for rape of indigenous women are properly brought to justice.”
Justice for rape in the Hijra Community

“Members of the Hijra community face overwhelming obstacles when seeking justice for sexual violence. They are reluctant to go the police given their experience of facing harassment and mockery, and hearing police officers scathingly ask ‘How can a Hijra be raped? This is your profession! And who would want to rape a Hijra to begin with?’ Hijras face double discrimination of this kind from law enforcers not only because of their gender identity but also their occupation, as many are sex workers. Hijras also face hurdles from their ‘gurus’ who fear that rape complaints may hinder the thriving sex trade in the Hijra community and therefore pressurize victim/survivors to keep silent ‘for the sake of the community’. Noting the Cabinet’s ‘recognition’ of the Hijra community, she questioned why Hijras cannot obtain justice for sexual violence, or feel safe or protected?”

Launching Ceremony

Publications on Justice for Rape

Two publications were launched. The first was on case studies highlighting pre-trial hurdles faced by rape survivors and the experiences of paralegals, Why Rape Survivors Stay out of Court. The second summarized a recent landmark judgment in Naripokkho and others v Bangladesh, and was titled 18 Directives by the Hon’ble High Court Division on Prosecution of Rape Cases.

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Writ Petition No. 5541 of 2015.
Speech by the Special Guest

“The definition of rape is yet to be updated, despite the enactment or amendment of special laws in 1995, 2000 and 2003. My experience in applying the Acid Control Act 2002 and Acid Crime Prevention Act 2002 over the years has led me to believe that there could be instructive lessons here for reform of rape laws, in terms of careful drafting and coordination of medical and psycho-social responses with legal responses. Action is necessary to reduce the incidence of rape, to focus on prevention and to ensure justice for victims. It is unfortunate, but whenever there is a discussion on amending any law, the lawmakers and parliamentary representatives think about increasing punishment rather than ensuring justice and prevention of rape incidents. The laws need to be amended but at the same time we need to work harder to stop such incidents, including taking initiatives to build greater social morality in people.”

Chair’s Remarks

"Formal legal reform alone is not enough to address the issue of rape without changes in practice. The reform of legal procedures is necessary, as well as a greater focus in ensuring protection of victim’s rights, and changes in social perceptions and attitudes. This change, however gradual, has to start somewhere. Section 27 of the Nari O Shishu Nirjaton Domon Ain 2000, which allows a complainant to file a complaint petition with the Nari O Shishu Nirjaton Domon Tribunal if a police officer refuses to file their case, is of particular importance in rape cases, but due process is not followed when dealing with such complaints. When a case is filed, the Tribunal must order an inquiry into the matter, and must both be satisfied of the merits of the complaint, and of failure on the part of a police officer to file the complainant’s case. However, the inquiry is seldom undertaken by a magistrate, as required by section 27, being assigned to the police instead, and inquiry reports rarely comply with the requirement to investigate into the police officer’s initial refusal to take the case. Many strong cases fail to result in convictions due to lack of proper compliance with section 27. I believe that with proper changes introduced, we can increase the conviction rate to 97% from the current 3% rate.”
SESSON II:
Challenging Discriminatory Rape Laws

Speakers highlighted how the archaic definition of rape in our criminal law continues to be discriminatory and exclusionary and how judicial perceptions of consent continue to be shaped by rape myths and gender stereotypes. They also identified legal loopholes and inconsistencies which obstruct justice for rape survivors and made recommendations on how best to reform the definition to bring it in conformity with international human rights standards and constitutional norms.

**Problems in the Definition of Rape: Limiting Justice for the Rape Victim**

“The colonial definition of rape in the Penal Code, does not define penetration, fails to elaborate the meaning of consent, or how consent can be proved. The law still requires proof of physical resistance. While the laws cover women and female children, serious sexual violence against male children is left uncovered. Cases of sexual violence against men can only result in prosecution for “unnatural offences”. The laws fail to ensure prosecution for sexual offenses committed against transgender persons. They also do not recognize marital rape. Deceitful promises to marry have not been addressed in our provisions, deceitful co-habitation is addressed somewhat but it does not include rape. The definition also allows rape with child bride of 13 years and above and this is contradictory to the Child Marriage Restraint Act. This also contradicts the commitments of Bangladesh under various international instruments.”
Role of the Tribunal in Mitigating False Rape Cases

“There is an overwhelming backlog of cases in the Nari O Shishu Nirjaton Domon Tribunals. It is very difficult to distinguish between rape complaints that are genuine and false, as in my experience, some women are made to file false cases in exchange of money, which delays justice and legal redress for actual victims and survivors of rape. The court should have the jurisdiction to exercise its power *suo motu*, to deal with false cases brought under section 17 of the Nari O Shishu Nirjaton Domon Ain 2000 and bring proceedings against complainants in such cases. In April 2017, the High Court issued a circular prohibiting the appointment of police personnel as investigation officers in rape complaints. Subsequently, however, a different Bench encouraged the inclusion of police personnel in investigations, which would serve to ensure a smoother investigation process and produce accurate reports in a timely fashion. There are concerns about the lack of coherence in High Court decisions, and a need for uniformity in the decision to permit police-led investigations into complaints of rape.”

Lutfa Begum
Former Judge, Nari O Shishu Nirjaton Domon Tribunal

Overcoming Common Hurdles in Rape Cases

“The law prescribes specific time limits for investigation, trial and disposal of rape cases, yet these are not enforced and measures are hardly taken against police officers and court officials who fail to comply with these limits. The effective enforcement of these rules, and ensuring proper compliance with procedures, should also be considered when pursuing legal reform. It is important to produce accurate medical reports as evidence in a rape case, and to ensure that forensic doctors and medical officers are properly trained on preparing medical reports for rape victims and survivors as deficiencies and vagueness in the reports subsequently result in obstacles in court and undermine the credibility of the evidence.

Obstacles to justice include delays in rape trials as well as intimidation of witnesses by perpetrators. Another major barrier is the desire or practice of family members to take part in informal *shalish* and marry the survivor off to the rapist as a quick solution, in contrast to a court case. The prescribed time restrictions placed by the 2000 Act to investigate and dispose of rape cases are never followed in practice. Even when rape survivors try to seek justice in the courts, rapists belonging from influential backgrounds may use their political power to force the victims to withdraw their cases. Measures should be taken against hostile witnesses. Action is needed against influential perpetrators who coerce victims and/or their family members into signing affidavits affirming that the accused did not commit rape.”

Tawhida Khondoker
Director, Bangladesh National Women Lawyers’ Association (BNWLA)
Lessons from Case Studies

“From my research into the issue of gayebi, or fabricated, rape cases, I found that women have gone to court and said that they had not been raped, yet those accused in such cases were still on trial for rape, due to influence exerted by political actors to keep them in prison. On the contrary, I came across a gayebi case of attempted rape followed by an acid attack (Nari O Shishu Nirjaton Domon Tribunal, Case No. 339/07) that was dismissed as false, as no witnesses ever appeared in court to give their statements in support of the complainant, whose brother-in-law had attempted to rape her, and in failing to do so, had thrown acid on her body. In reality, the complainant’s witnesses in this case, including an NGO representative who rescued the complainant, the medical officer who conducted tests, and the police officer who led the investigation, were forced by the perpetrator to refrain from giving evidence in court. The NGO representative’s son was abducted outside his own house and taken away for 21 days. The complainant’s husband then appeared before court to give evidence and called his wife a ‘dushchoritra nari’ (‘a characterless woman’). The complainant had informed me that every summer, when her injuries from the acid attack oozed pus, she longed to go to the One-Stop Crisis Centre and show the authorities how her body was bearing witness to the case she had ‘fabricated’. I implore judges to be more considerate of social circumstances and bear in mind factors that are not always visible.”

Fatama Suvra
Assistant Professor,
Dept. of Anthropology,
Jagannath University

The Need for Strong and Independent Investigations into Rape Incidents and Role of Courts in Ensuring Justice for Rape

“An independent investigation team should be formed under each 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. The reluctance of the police to file cases is a reason for delay in investigation and trial of rape cases. Police officers may blame the victim, or be influenced by the perpetrator, and refuse to file the case. In these circumstances, when a victim files a complaint case and the same, reluctant, police officer is appointed as the investigating officer, the investigation process is weakened. In such cases, it would be better to hold a judicial inquiry.

There are many barriers that obstruct access to justice for rape survivors. These include family members’ willingness to reach an out of court settlement based on statement made by the complainants in favor of the offender, or a family decision marry the rape survivor to the offender to avoid social stigma, the falsification of medical reports, and the lack of preservation of evidence. There is therefore an immense responsibility on the courts to assess each piece of evidence minutely, look out for discrepancies in the medical and investigation reports, and take into account the survivor’s statement, to ensure that justice is actually served.”

Nurun Nahar Osmani
Former District Judge;
Member, National Human Rights Commission
Chair’s Remarks
“The definition of rape needs to be updated since the Penal Code is now almost a 160-year-old law. In addition to legal reforms and changes in entrenched patriarchal norms and attitudes, reform of procedural issues is also necessary to remove corruption in the justice system and mitigate delays and challenges in proper investigation of rape cases. Rape is a form of violence that is so severely traumatic for the victim that she does not want to go to court only to face her trauma all over again. If mandatory compensation for rape survivors is introduced, in addition to punishment for the perpetrator, this might encourage survivors to tell their stories, and to bring their rapists to account by seeking justice from the courts.”

Dr. Shahnaz Huda
Professor,
Dept. of Law, University of Dhaka

Participants’ Recommendations

● Ensure accountability of investigating officers.

● To ensure protection of children, amend the Penal Code and Nari O Shishu Nirjaton Domon Ain to increase the age of consent to 18, for consistency with the Children Act 2013, which defines anyone under the age of 18 as a ‘child’, and the Child Marriage Restraint Act 2017, which defines girls under the age of 18 and boys under the age of 21 as ‘minors’.

● Undertake procedural reforms to give courts the power to directly take cognizance of rape complaints, and to then assign the matter to the appropriate authority for inquiry.

● Amend Section 22 of the Evidence Act 1982, which deals with oral evidence, to enable individuals with speech impairments to give evidence in court.

● Include guidelines in the Nari O Shishu Nirjaton Domon Ain 2000 for cases involving child complainants or witnesses in rape cases to be sent to the Children’s Court.

● Where a child is born to a rape survivor due to pregnancy resulting from the rape, and the Nari o Shishu Nirjaton Tribunal ascertains the child’s paternity, ensure that the Tribunal has the power, under section 13 of the Nari O Shishu Nirjaton Domon Ain 2000, to direct the offender to provide maintenance for the child, since receiving maintenance from the state, as specified in this provision, is a lengthy process.
SESSION III:
Procedural Barriers to Accessing Justice for Rape

Speakers outlined the hurdles that rape survivors face when making a complaint and during the process of investigation, regarding the collection of medical evidence. The presentations focused on pre-trial barriers faced by rape survivors which bar the vast majority of rape cases from reaching court and the need for a witness protection law in ensuing justice for rape.

Pre-Trial Barriers Faced by Rape Survivors

“BLAST’s experiences of providing support through paralegals to rape complainants suggest specific pre-trial hurdles prevent rape survivors from seeking legal recourse. These range from the reluctance of family members to support a complainant to seek or pursue legal action due to fear of the ensuing stigma, their inability to counter the opposition from influential community leaders, the pressure to take part in informal shalish and out of court settlements. Other hurdles are the lack of responsiveness of emergency medical service providers and law enforcement agencies, coupled with an overall lack of awareness of the processes required to seek remedies. Compliance with the High Court’s directives in the Naripokkho judgment, (regarding the stages of filing a complaint and undertaking medical examination), and implementing the legal and policy reforms recommended, could mitigate many of the identified pre-trial barriers to seeking justice for rape, and enable rape survivors to reach the courts.”

Barrister Abdullah Titir
Research Specialist,
BLAST
Necessity of Witness Protection Law for Ensuring Justice to Rape Survivors

“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 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, including secure accommodation and livelihood support; necessary arrangements for rehabilitation of rape survivors; 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.”

The Role of Judges in Preventing Out of Court Settlements in Rape Cases

“Rape is an offence where any aposh, or out of court settlement, is barred by the law. However, in most rape cases filed under the Nari o Shishu Nirjaton Domon Ain, which we have dealt with, we frequently find that there is pressure upon the complainants to withdraw the case and resolve the matter out of court. We see complainants agreeing to a compromise with the perpetrator while a trial is underway, particularly where the perpetrator wields greater power and influence in the community, which often leads community leaders and even in some cases local government members to act in favor of the perpetrator by attempting to settle the matter through informal shalish and pressurizing the complainants to back away. Although rape is a non-compoundable offence, it is a common practice for litigants to file petitions requesting time to settle the matter out of court, and affidavits stating that they would prefer a compromise. Courts have, on many occasions, in many cases, allowed out of court settlements between parties by fixing a time and date for such ‘aposh’ to take place.

Judges in trial courts rarely apply their powers to stop such practices. This becomes an immense barrier to access to justice for rape survivors and is a cause of concern. JATI can play a significant role here, in training and sensitizing judges on the need to ensure that non-compoundable cases remain non-compoundable. The Ministry (MoWCA) can also set up a strong monitoring system for cases before the Nari o Shishu Nirjaton Tribunal, to be strictly monitored by the High Court, to prevent settlements in rape cases and ensure justice for rape survivors.”
“Out of 667 recorded instances of rape between January and November 2018, HRLS was able to file only 61 cases, all of which are still pending judgment. The remaining cases were simply left out of the formal justice system, which either reflected the prevalence of and preference for settlements through informal local *shalish*, or the reluctance of rape survivors to take matters to court as they are not comfortable with existing justice mechanisms.

To eliminate procedural barriers, the stages of filing, investigation, medical examination and trial should be connected in a coordinated manner as these are interlinked, and delay at any stage will affect the entire process of securing justice for the survivor. Although the law prescribes a time limit of 180 days within which to dispose of rape cases, this is hardly complied with in practice. For example, in BRAC’s cases, all 61 cases filed are still pending judgment, caused by lack of coordination.

In our experience, rape survivors are uncomfortable and unwilling to undertake medical examinations because these are often conducted by male doctors, in the absence of a sufficient number of female forensic doctors, or adequately trained female doctors. There is a need to ensure the presence of female doctors during medical examinations of rape survivors, in compliance with a directive issued by the High Court to the Dhaka Medical College and Hospital in 2013.

To reduce the pressure on rape complainants to take part in *shalish*, local grassroots committees in rural areas, including government and non-government bodies, should take an initiative to monitor the incidence of informal *shalish* in rape cases. Local police stations can play an active role through intervening where there are attempts to settle rape cases out of court.”

Training for Medical and Forensic Officers on Collection of Medico-Legal Evidence in Rape Cases

“The Court, in the ‘two-finger test’ case, acknowledged the protocol introduced by the government to collect medico-legal evidence without an FIR. Any doctor, irrespective of their gender, can examine the victim in the absence of a female doctor. We have prepared a training module for doctors to provide services to rape victims. The protocol also addressed special measures to be taken during the collection of medico-legal evidence from rape survivors who are children and/or persons with disabilities.”
Chair’s Remarks

“We need an overall reform of the Evidence Act 1872, not only for rape cases. The police do not prioritize violence against women. Moreover, the existing social stigma means that the victim is too often blamed by society. Gender sensitization training is needed for change as well as a combined effort from all relevant actors in the justice system.”

Rita Das Roy
Member, Naripokkho

Open Discussion and Recommendations

- Ensure that the Ministry of Health’s Protocol for the collection of medico-legal evidence is made accessible to human rights defenders. Medico-legal experts should also take into account that the High Court in the TFT judgment has only banned the two finger test in the medico-legal examination of rape survivors, and not for any other instances.

- Ensure gender balance in the MOHFW’s trainings on the protocol for collection of medico-legal evidence to doctors and medical officers.

- Take steps to ensure prosecutors are more gender-sensitive, and address concerns for rape survivors in giving evidence, particularly in a congested and male-dominated court-room.
• Address the right to reparation and rehabilitation for rape survivors, including the stigmatizing of survivors and their families.

• Set up an independent fact finding or investigation cell to ensure justice for rape survivors, to be monitored by the NHRC.

• Undertake research to see whether any Nari O Shishu Nirjaton Domon Tribunal has ever provided reports to the High Court, under section 31 (a) of the 2000 Act, explaining why it had taken the Tribunal more than 180 days to conclude a rape case, whether such a report has been reviewed, or such circumstances monitored, by the Court, and whether authorities responsible for such delay have ever been held accountable.

• Ensure DNA tests are carried out, and free of charge, and DNA evidence collection should also be made more transparent as DNA samples may also be tampered with.

• Set up more safe shelters for rape survivors, which should provide counseling services to prevent them or their families from agreeing to a compromise with the perpetrator, and witness protection laws should be reformed to incorporate this.

• Ensure the presence of doctors in court as witnesses to avoid delays in the trial of rape cases.

• Appoint women doctors to conduct medico-legal examinations of rape survivors to ease the process for survivors who are already traumatized from the incident.

• To prevent complainants from withdrawing their initial statements regarding the incident, which frequently happens due to threats and pressure from the perpetrator and the community, when filing the complaint, the individual should be recorded through audio or visual media to ensure that they cannot subsequently alter or deny the complaint/statements provided (this is what the participant said).

• Provide psycho-social counselling support to perpetrators.

• The High Court’s directives, protocols and guidelines should be translated into Bangla to ensure a wider outreach and greater awareness of these provisions.

• Amend the practice of only bail petitions being heard during Sessions Court vacations, to ensure Nari O Shishu Tribunal judges hear rape cases even during vacations.
Speakers highlighted the inefficacy of the criminal justice system in curbing rape as shown by the increasing rates of rape incidents and the decreasing rate of rape convictions. They noted that the exclusive focus on punishment and the perpetrator has meant that there is little to no focus on the survivor and how she moves forward. The first presentation evaluated the effectiveness and proportionality of existing penalties for rape and the second presentation highlighted compensation as a much needed form of redress and its potential for deterrence, when combined with punishment. Panelists discussed how punishment for rape can be made effective, taking into consideration rape survivors’ own notion of justice while also maintaining proportionality.

**Punishment for Rape in Bangladesh: Has Punitive Rhetoric Backfired?**

“The overall conviction rate for rape in Bangladesh is abysmally low, 3% being recorded as the highest rate across all five Nari O Shishu Nirjaton Domon Tribunals in Dhaka, which indicates that existing penalties are not acting as effective deterrents. The key reasons for low conviction rates include lack of proper investigation into rape complaints, ineffectiveness of law enforcement agencies, public prosecutors and special tribunals, stringent bail provisions, and the possibility of false charges of rape and sexual violence. There is a need to take into account the severity of the offence committed and the particular circumstances of a case when sentencing, arguing against the 2000 Act imposing the same level of penalty for all forms of rape. The fundamental flaw with the law is its assumption that all rapes are equally grave. The absence of judicial discretion in sentencing in rape cases sometimes forces judges to treat unequal situations equally and denies the locus of victim. Mandatory sentences in practice contributes to low conviction rate. In a recent study it was found that judges admitted to feeling compelled to acquit offenders due to mandatory sentencing.”

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Beyond Criminal Justice: Establishing Compensation as a Remedy for Rape

“Section 15 of the Nari O Shishu Nirjaton Domon Ain 2000 allows 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 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.

Going forward, there are three different ways in which compensation can be established as a remedy for rape survivors and victims. Firstly, through amendment of relevant sections of the 2000 Act to grant victims compensation as of right instead of subjecting it to the judge’s discretion. Secondly, through the establishment of a state-run compensation fund (as in, among others, India and the United Kingdom) which would enable a victim/survivor to apply for compensation without having to identify or prosecute the perpetrator. Thirdly, recognition of a rape victim/survivor’s right to damages in civil law (namely tort) against both the perpetrator and relevant third parties who ought to be held accountable (either due to their negligence or vicarious liability). None of these three options are foolproof and should not be seen as mutually exclusive but rather pursued together to offer holistic redress to the victim/survivor and create deterrence through imposition of compensation liability on not just the accused, but also the state and relevant third parties.”

Publicizing Punishment for Rape as a Deterrent

“Punishment of rapists must be sufficiently publicized so that offenders fear being held accountable and punishment has its desired deterrent effect. Even in the low number of cases where the rapist received punishment, if these are publicized then at least people will get to know that rape is not going wholly punished.”

Afsana Islam
Asst. Professor,
Dept. of Women and Gender Studies,
University of Dhaka
Strategies to Ensure Compensation for Rape

“There are three ways in which a rape survivor’s right to compensation can be enforced. Firstly, it can be through the formation of a State Compensation Fund, as we have seen in India. The state guarantees the right to life, so whenever a girl of woman is raped, her life is grossly violated in a way that can never be measured in terms of money. Nevertheless, compensation may act as a form of relief, as a beacon of justice. The quantum of compensation must depend on the nature and extent of the injury or harm sustained. It has been 47 years since our Independence and yet there is no visible initiative by the State to establish a victims’ compensation fund. Secondly, it can be through statutory compensation. When a rapist is being tried, 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. A more substantial payment can be made upon conviction. Thirdly, it can be also done through public law compensation under Article 102 of the Constitution, which will be distinct and in addition to other forms of compensation. Through this conference we would like urge our Government to take necessary steps towards providing compensation for rape survivors and victims.”

Barrister Abdul Halim
Advocate,
Supreme Court of Bangladesh

Importance of Sentencing Guidelines in Rape Cases

“We have no officially formulated sentencing guidelines. Judges receive guidelines from the appellate courts in individual cases when they go on appeal. In the absence of sentencing guidelines, we commonly see the highest possible punishment being imposed. Due to mitigating factors not being taken into account, eventually a convict is deprived of a fair sentence. Serious and heinous crimes are not distinguished from less serious ones. The Coroners and Justice Act 2009 in the United Kingdom binds every court to follow certain sentencing guidelines, with lower and upper levels of punishment. When sentencing the offender for the crime, it requires judges to take into account of aggravating factors such as committing the crime while on bail and causing long term injury to the victim and also mitigating circumstances such as minor age of the offender, good character, no prior conviction and mental disorder. I want to give an example of the situation regarding lack of sentencing discretion due to mandatory sentencing, from my time as a judge in the Nari O Shishu Nirjaton Domon Tribunal. A rape case came before me involving a man and woman, who were in a live-in relationship with a view to marry, where eventually the woman lost interest and did not go forward with the marriage. During their cohabitation, the man forcefully had sexual intercourse with the woman which she did not initially consent to but at one point ‘co-operated’ with the man. Since the man admitted to the fact that initially there was no consent on part of the woman, the law (section 9(1) of the 2000 Act) only allowed me to give one sentence for rape: imprisonment for life. In such a situation, how inhumane would it be for me to give life imprisonment to the man and how justifiable would it be for me to let him free?”

Dr. Fowzul Azim
Chief Legal Research Officer,
Bangladesh Law Commission
"Based on our experiences from working in rural areas of Bangladesh, it is the norm for victims of sexual violence, such as rape, and their families, to not seek justice in courts due to the high level of costs attached. Thus the perpetrator enjoys impunity. It is in this context that we approached the issue of compensation. Compensation is undoubtedly needed for rape, but perhaps we should be wary of calling it ‘khoti puron’ (‘repairing a harm’ or ‘making good a loss’) bearing in mind the impact it may have on society, as rape is not a type of ‘khoti jetar puron hote pare taka diye’ (‘harm which may be repaired by money’). As we have seen, it is very rare for rape victims and survivors to receive compensation in court, so a state based compensation should be available. Violence against women, such as rape, has certain invisible costs which may prove difficult to calculate, such as social and psychological costs which have a high impact on family and children. Rape results in a huge psychological burden, with many victims unable to lead a normal life, or participate in social activities and also temporarily stopped from receiving education, all of which are huge losses. It is very important for there to be a standard of assessing compensation as leaving it up to the judge’s discretion may result in inconsistent and insufficient awards being made. In order for compensation to be a more common remedy for rape, there needs to be a change in the mindset of lawyers and judges in how they view compensation.”

**Chair’s Remarks**

“There is a need to establish criteria for determining compensation to cover both physical hurt and psychological harm. Compensation cannot replace punishment, but is an additional form of redress. It is important that any punishment imposed be proportionate. The lack of sentencing guidelines hurts not only the accused but also the rape survivor. The reason we have brought together the issue of ensuring redress for the victim and proportionality of punishment to the offender is to highlight that justice is a process that involves both a victim and the offender, the complainant and the person accused. In our context, owing to the culture of impunity, including in cases of rape, we as rights activists as well as the media often approach and engage in legal reform with demands to make the laws more stringent and impose harsher punishments. In doing this, we forget about the accused’s right to a fair trial. If we look back, we can see how to do things differently. For example, state actions taken in recognizing and responding to the Birangonas, survivors of mass rape during our Liberation War of 1971, and providing rehabilitation, as well as some redress, although very belated (catalysed by BNWLA’s important PIL on this), can serve as an example of how the State must respond to women and girls who face sexual violence today. This must be a holistic response, including not only a focus on accountability, but also on reparation. If we want to undertake reform of laws, keeping in mind the spirit of liberation, we should conduct a thorough review of all our laws pertaining to rape, many of which are from a pre-independence, and colonial period, to identify whether they are consistent with the Constitution and with the state’s international human rights obligations, to ensure gender equality."
Open Discussion: Comments and Recommendations

- Compensation may increase the likelihood of rape cases being used as a tool for settling personal vendettas. At the same time, compensation should not only act as a relief for the victim but also if the amounts are set at a level which is unrealizable as it exceeds the net worth of the offender, it may act as a preventive deterrent.

- Ensure that compensation can be speedily recovered by every rape survivors; under existing laws successful claimants take many years to recover awards of compensation as they need to ensure execution of decrees, a separate process following the conclusion of the trial.

- Through informal shalish, a victim may in practice receive a financial award from the opposing party, but usually these are paltry sums. For example, in one case 60,000 taka was given as compensation for rape through shalish, but only 10,000 taka actually went to the victim as the rest was divided between the mediators and other locally influential people.

- There is a risk that compensation payments by the accused may be seen as a form of purchasing immunity from prosecution. The socio-economic standing of a rapist would determine whether or not they are able to pay adequate compensation to the victim. While a wealthy rapist would easily be able to pay compensation, a rapist with low income would not be able to. Therefore it is important for the State to have a compensation fund so the convict is not the sole source of securing compensation.

- Increase awareness of those involved in rape trials, both judges and lawyers, of the scope to award compensation through fine under the current law. Since rape is a crime which may cause severe trauma to the victim, even for a lifetime, compensation awards should reflect the severity of the crime; 10 lakh taka should be established as the bare minimum and this should be publicized so it has a deterrent effect.
At the end of the conference, participants endorsed a declaration on the high priority areas for reform of laws on rape, and the need to ensure necessary changes in laws, policies and practices to secure victims’ rights to justice, fair trial, and to further achievement of the Sustainable Development Goal 16 and 5.

Bringing Rape Law in Conformity with International Human Rights Standards

“Women and girls have to undergo different kinds of harassment when seeking justice in our courts. When questioning the character of a survivor, we forget that any girl or woman can be subjected to rape, irrespective of her personal history or character. In the absence of social security, safe shelter and livelihood, most rape survivors opt out of seeking legal remedies. We need to make changes to the existing environment so that it is less comfortable for perpetrators of sexual violence.”

“I think it is extremely important that you have all been able to come together to issue this united call for rape law reform, because it is by no means a given that is as easy to achieve in a country as diverse as Bangladesh, and in a country where there are diverse views and perspectives on this particular issue. As far as the United Nations is concerned, we are following very closely developments on human rights overall, but also on women’s rights and gender equality, and rape law reform is a key issue in this regard. The UN’s Special Rapporteur on Violence Against Women had raised the issue of rape law reform very forcefully in her visit to Bangladesh five years ago, after which several other international mechanisms have also done so. In addition to rape law reform, it is vital to address the root causes and manifestations of violence against women in all its forms. These relate to entrenched societal stereotypes against women and against the concept of gender equality itself. In the most recent Universal Periodic Review, Bangladesh broadly committed itself to reform laws not in conformity with international human rights standards. It is
very welcome that Bangladesh has ratified so many international conventions but the crux of the matter lies in implementation. The United Nations is going to be supportive of initiatives such as this and any subsequent action by policy makers when they act on what this meeting is calling upon them to do.”

Role of Media in Advocating for Justice for Rape Survivors

“Even though we know in theory that journalists are not supposed to disclose the identity of a rape victim, yet whenever a rape incident occurs and is reported on, we see journalists crowding in front of that particular victim’s house with a camera crew, creating a commotion, which in turn identifies and draws public attention to her home and family, and knowledge of the rape allegation then spreads like wildfire. Every time journalists focus obsessively on what the victim was wearing, what she was doing, where she was going, we give an opportunity for stories to be created in the minds of rapists. Instead of obsessing over individual stories of rape, we should focus on those cases where justice for rape was secured, or on important High Court directives on rape justice, such as in the BLAST and Naripokkho ‘micro-bus gang rape’ case. The public want justice for rape, but only focus on punitive measures. The media itself only portrays the death penalty as the exclusive and most appropriate punishment for rape, but never highlights other provisions in our laws through which justice for rape can also be ensured, such as imposition of fines and/or compensation for rape victims and survivors, which therefore do not form part of public perception or scrutiny.”

“No matter how much we amend the laws, if we do not change our own attitudes, then we cannot ensure that rape survivors are able to freely and securely live their lives. Sexism is embedded in the mindset of society. The media are not outside this society and may also report rape incidents in ways that are wholly inappropriate. Let me give you an example from Prothom Alo’s study of rape cases in Dhaka’s Nari O Shishu Nirjaton Domon Tribunals. I went through police documents to see how often gender-biased language is used against rape complainants. In one particular case, the Investigating Officer wanted to grant the accused bail so in his final report he referred to the trial court judgment which apparently stated that the rape complainant ‘has no beauty or physical attraction’, implying that she therefore bore no risk of being raped. These prevailing social attitudes which do not recognise gender equality cannot be cured only by passing laws. This is where the media can play an important role in shaping public perceptions in a way that promotes equality, through ethical journalism.

Conversely, we must also bear in mind that the media owes a duty to report ethically to not just the victim but also the persons accused of rape, as this may have been done falsely to cause harassment or fulfill other personal agendas. An allegation of rape is a very serious charge which can destroy an individual’s life and reputation. Therefore, the media must be careful in reporting rape. It should take up investigative journalism on sexual violence against women as a crusading mission to end it.”
Linking Justice for Rape to SDGs

“The rape law reform agenda is closely tied to three of the Sustainable Development Goals (SDGs), namely SDGs 5 (Gender Equality), 10 (Reduced Inequalities) and 16 (Strong, Just and Peaceful Institutions). Rape is a profoundly discriminatory practice of gender-based violence, as is state failure to adequately respond to cases of rape. These are rooted in the failure to recognise women and girls as equal in rights and dignity to men and boys, and they produce and exacerbate existing inequalities between sexes. Once we recognise rape as a discriminatory form of violence, and that equality is necessary to build sustainable societies, then the connection between the rape law reform agenda and SDGs becomes clear. I think the recommendations and declarations made today clearly reflect an SDG-based approach to rape law reform, in addition to the values enshrined not just in international human rights law but also domestic constitutional law.”

Collaboration Between Different Stakeholders to Raise Community Awareness on VAW and Strengthen Capacity of Responders

“Greater focus on building awareness amongst the general public, of what is an offence and what is not, is crucial, even more so than providing trainings to different stakeholders. This requires a singular approach, a specific avenue for people to seek information. The National Helpline Centre for Violence against Women, and its hotline number, 109, which is known to every household and every telecom provider, is one such avenue that can provide immediate assistance and advice to victims of rape. They can call into this helpline as a first point of contact after such violence has occurred, and get guidance on all next steps that are available for them to take. For rape cases, it is crucial to ensure that any article of clothing or evidence available is preserved, and it is necessary for people to be aware of the significance of doing so.

As a next step, professionals, such as forensic doctors, police officers, lawyers, judges and media personnel, should be sensitised on how to interact with rape survivors and their families, and also on how to ensure a collaborative response to violence against women and its prevention. Identifying and understanding the barriers to investigation and trial of rape cases will lead to identifying areas for reform within the justice system to eliminate such barriers. A robust collaboration mechanism is necessary for effective prevention of and response to violence against women, and to have such a mechanism in place, government and non-government stakeholders, civil society organizations, development partners and international, rights-based organizations need to unite as a single coordination platform.”

Prof. Fiona De Londras
Chair, Global Legal Studies,
University of Birmingham

Dr. Abul Hossain
Project Director,
Multi-Sectoral Programme on Violence Against Women,
Ministry of Women and Children Affairs
Overcoming Barriers to Justice for Rape and Role of NLASO

“Our criminal laws have seen more activity and reform than any other area of national law. Rape, was already recognised as a criminal offence by the Penal Code in 1860. From the 1980s, special laws were enacted, and rape trials were brought under a special tribunal. In spite of these special laws and procedures, however, something remains amiss. We have not been able to sufficiently address rape, which continues to be on the rise. This is because the definition of rape itself, a fundamental ingredient of the offence, is inadequate. It is very important to remove discriminatory and contradictory provisions from our laws. For example, the age of consent, as set out in the Nari O Shishu Nirjaton Domon Ain 2000, is in conflict with Muslim personal law. This issue of discrimination on the basis of age remains in all other laws, which requires immediate reform. We still do not recognise marital rape as an offence. Non-consensual sex with a sex worker is also an offence, but is not always treated as such. The key element here is consent, which has to be legal and valid, and the absence of which makes an act of sexual intercourse an offence.

The National Legal Aid Services Organisation’s eligibility criteria include 17 categories of individuals. These include women and children and survivors of rape and acid violence. There is no financial bar to seeking legal aid from the government. The NLASO bears all costs of DNA tests, pregnancy tests and paternity tests for rape survivors. It is now also using digital technology to provide legal advice and assistance through its toll-free government legal aid call centre, 16430, which is open from 9 am to 5 pm every day and enables callers to get legal advice from lawyers directly. Rape survivors are encouraged to make use of this helpline to receive legal aid from the government. “

Lack of Proper Compliance with Procedures in Rape Investigations

“In my experience, 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 were allowed to take place in the case of Tonu, where the medical officer in charge refused to provide a report until the DNA report was submitted to them. In the Chittagong Hill Tracts, very few rapes are reported. Medical reports, submitted three to four days after the incident, come back stating there was no sign of force, based on which the police submit an investigation report stating that no incident of rape had occurred. In Rupa’s case, the filing of the complaint was delayed. And in the Banani Raintree Hotel rape case, the primary accused was recently released on bail. While the court has the discretion to grant bail to those accused in non-bailable offences, this discretion is not uniformly exercised.

We need to raise our voices, and speak out against such injustice. In cases of rape, we need to call for exemplary punishment, and life imprisonment may be an appropriate penalty.” BLAST is ready to stand by victims and survivors and assert their rights.”
Closing Remarks by the Chair

“Rape is used as a tool of oppression against women, systematically suppressing their identities as women and their fundamental human rights. Each and every stage of the investigation and trial process in a rape case is dominated by patriarchal attitudes and practices, and serves to undermine a woman’s dignity. Even when enacting laws, we apply a lens that is gender-biased. Our laws need to be amended in order to bring them into conformity with contemporary, international standards and human rights instruments. The key elements of the offence of rape, from its occurrence to its investigation to the trial process, should be the subject of extensive research, to enable a necessary structural overhaul, involving reform of rape laws and the legal framework and effective implementation of laws. We need to ensure equality in both the public and private spheres. While we have many positive traditions, we need to address attitudes and practices that are gender-biased.”

Ayesha Khanam
President,
Bangladesh Mahila Parishad
DECLARATIONS

Panelists and Participants holding a banner demanding justice for rape
(L to R: ZI Khan, Heike Alefsen, Taqbir Huda, Mahtabul Hakim, Fiona De Londres, Ayesha Khanam, Zafrul Hasan, Sara Hossain, Justice Nizamul Huq, Dr. Abul Hossain)

General Issues
1. Reform rape laws in conformity with constitutional guarantees of fundamental rights and international human rights law (including CEDAW and the CRC) to ensure protection and access to justice without discrimination for all rape victims/survivors (irrespective of sex, gender, identity, sexuality, religion, race, ethnicity, disability and age) and to fulfil the Sustainable Development Goals 5 (Gender Equality), 10 (Reduced Inequalities) and 16 (Strong, Just and Peaceful Institutions).
2. Establish a state-run compensation fund to enable rape victims/survivors to apply for compensation as of right on proof of rape, irrespective of the perpetrator being identified and prosecuted for the offence.
3. Review training modules for the police, lawyers (both prosecution and defense), judges and social workers to include necessary information on gender equality, relevant High Court Directives, the Ministry of Health Protocol on Medico-Legal Evidence, social context information on experiences of women and girls in accessing justice, barriers faced, and responsibilities of duty bearers.
4. Undertake regular training programmes for police, forensic doctors, lawyers, judges, and social workers on reformed laws.
5. Incorporate information on violence against women and girls (VAWG) (particularly rape and other forms of sexual violence), including the concept of consent and choice, into educational curricula starting at the primary education level, to change people's perceptions of gender and VAWG and break through prevailing misogynistic social norms.
6. Make information about the rights of rape victims/survivors, witnesses, and the conduct of rape trials and investigations widely available in multiple formats and languages.
7. Disseminate relevant information in simple language on rape laws and procedures, particularly the High Court Directives in Narpokkho and others (Writ Petition 5541 of 2015) and the Ministry of Health Health Response to Gender Based Violence: Protocol for Health Care Providers to all concerned (judges, lawyers, police, social workers, legal services organizations)

8. Redefine rape to ensure that all forms of non-consensual penetration are covered by it, irrespective of gender of the perpetrator or the victim/survivor.

9. Add a definition of ‘penetration’ which refers also to the use of objects or any other part of the perpetrator’s body.

10. Clarify the definition of rape to reflect that consent may be revoked at any point and that the absence of proof of force or physical resistance does not establish consent.

11. Clarify the term ‘child’ under the Nari O Shishu Nirjaton Domon Ain 2000 to include male children.

12. Amend Section 15 of the NSNDA to grant rape victims/survivors the right to compensation from the perpetrator instead of making it conditional upon imposition of fine and the exercise of judicial discretion to treat the fine as compensation.

13. Amend laws to enable judges to exercise discretion in sentencing and formulate necessary sentencing guidelines which ensure proportionality of punishment and take into account both mitigating circumstances (such as the age or mental health of the accused) and aggravating circumstances (such as the use of weapons, force or violence and causing permanent physical or mental impairment of the victim/survivor).

Review of Code of Criminal Procedure, 1898

14. Amend the Code to ensure persons with speech/hearing or intellectual disabilities may give evidence in rape trials.

Review of Evidence Act, 1872

15. Amend Section 155(4) of the Act and other relevant provisions to abolish admissibility of character evidence of complainants in rape trials.

16. Direct Tribunal Judges so they are duty bound to ensure that defense lawyers do not ask humiliating or degrading questions during cross-examination of rape complainants.

Adopt Witness Protection Bill


18. Following further public consultations, enact the Victim and Witness Protection Bill, 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, and ensuring that such protection is continued until the victim and witness’s safety is no longer threatened and satisfactory alternative arrangements have been made.