

# Why crossfire will not solve our rape problem



TAQBIR HUDA

THE recent rape incident of a second year Dhaka University student has reignited widespread public frustration on the prevailing culture of impunity for rape in our country. In response to this, on January 14, 2019, Members of Parliament engaged in an impromptu discussion in Jatiyo Sangsad on how to tackle the rape epidemic in Bangladesh. Mujibul Haque Chunnu, MP, first raised the issue citing a Police Headquarters report which apparently stated that 2019 saw the highest number of rape incidents. He reportedly said that “A provision for death penalty should be incorporated in the law” as “mere life terms will never be able to control the growing number of rape incidents” (*The Daily Star*, Jan 15, 2020). Turning to the Home Minister Asaduzzaman Khan Kamal, he reportedly asked, “You are allowing ‘crossfire’ as part of a fight against drugs. Then why aren’t you doing the same in case of rape?” Tofail Ahmed, MP, agreed and reportedly said, “It’s true we need a tougher law. But if we can take instant actions through ‘crossfire’ on drug-related issues, then why can’t we follow the same in case of rapists? The person who we know has committed this crime [rape] does not have any right to stay alive anymore.” Syed Nazibul Bashar Maizvandary, MP, also expressed his support and reportedly said, “I can say that you will go to heaven if you kill rapists in crossfire”. Kazi Firoz Rashid, MP, echoed support and reportedly stated, “When you will go to court to try the rapist, you won’t find any witness. Therefore, you will have to go for ‘encounters’ to free the society from this menace.”

While it is refreshing to see lawmakers belonging to different political parties unite in their demand to end impunity for rape through legal reform, the type of intervention being proposed needs to be carefully examined.

We must first look at the existing legal provisions relating to punishment

for rape in order to contextualise and fully understand the “solution” offered by our lawmakers. The punishment for rape is set out in section 9 of the Nari o Shishu Nirjatan Daman Ain 2000, which states that rape can either be punishable with the death penalty or life imprisonment. When a person is sentenced to death by a trial court, it is sent to the High Court Division of the Supreme Court (HCD) for confirmation (which does not typically happen in non-death penalty cases). This special procedure recognises that the death penalty is the gravest and most irreversible punishment in law and therefore requires careful and additional consideration before it is executed. The person sentenced to the death penalty, like any person facing criminal conviction, can also appeal the trial court’s decision before the Supreme Court, and challenge any subsequent decision by the Supreme Court through appeal, revision and review under the Criminal Code. It is only after these processes are exhausted that a death sentence can be executed and the convict usually remains in prison in the interim period. In carrying out a death sentence, section 368 of the Code of Criminal Procedure 1898 requires any person sentenced to death to be “hanged by the neck till he is dead”.

Bearing in mind the reported statements of the MPs and the relevant legal provisions mentioned above, it can be reasonably assumed that the lawmakers primarily have two demands. Firstly, the existing punishment for rape is not “tough” enough and that the death penalty for rape (which already exists as an option for the court) should be made mandatory. Secondly, this mandatory death penalty for rape should be carried out by law enforcement agencies without any trial of the accused in court. Let us address each of these in turn.

Firstly, the question of imposing mandatory death penalty for rape in Bangladesh is one that has already been debated and settled in the past, both in Parliament and in the Supreme Court. Mandatory death penalty for rape was first introduced in Bangladesh in 1995, by section 6(2) of the Nari o Shishu Nirjatan Daman (Bishesh Bidhan) Ain 1995 (enacted under the then BNP government) in cases where the



ILLUSTRATION: KAZI TAHSIN AGAZ APURBO

rapist killed the victim in committing the rape. Five years later, the 1995 law was repealed and replaced by the Nari O Shishu Nirjatan Daman Ain 2000 (enacted under the then Awami League government), which has since then remained the cardinal law on violence against women and children in Bangladesh. However, rape cases filed under section 6(2) of the 1995 law in the five years it was in force continued to be subject to the mandatory death penalty. One such case involved Shukur Ali, a minor boy who had raped and killed a minor girl and was sentenced to the mandatory death penalty. BLAST along with other rights organisations challenged the mandatory penalty of the 1995 law, as a result of which the Supreme Court declared the mandatory death penalty to not only

be in complete violation of the right to life and fair trial guarantees under international human rights law but also our own Constitution.

Furthermore, research by the Death Penalty Project (and others) has shown that there is no evidence that death penalty has had a special deterrent effect in countries where it was imposed (on the assumption that it would especially deter crime). Additionally, experts on rape laws have repeatedly said that mandatory death penalty for rape cases, far from ensuring justice for rape, may actually hinder it. This is because in most rape cases, the perpetrator is known to the victim and introducing a mandatory death penalty actually deters them (and their families) from reporting this person to the police, since “seeking justice” and

“putting someone you know to death” become one and the same.

Secondly and more worryingly, the proposal to outsource the power to execute the gravest and most irreversible form of punishment to law enforcement agencies instead of the judiciary, is the single biggest affront to our Constitution and the justice system as we know it (the implications of which would require a thesis in itself). The question of who counts as a rapist (or any criminal for that matter), is a difficult question of fact and law that only judges and the court-based system are specifically trained to answer, not police officers or other law enforcers. No one in their right mind would deny the sorry state of justice in our country. However, ending impunity for injustices such as rape requires the strenuous task of strengthening our failing and overburdened institutions (by employment of higher numbers of judges to decrease the case backlog and opening more courts across the country etc.), not the complete deletion of the court-based trial process itself with a “trigger happy solution”. Time and time again, history has shown that extrajudicial punishments only create lawlessness and mayhem, the ultimate victims of which are the most marginalised sections of society.

While it is true, as Kazi Firoz Rashid, MP highlights, that rape cases are frustrated by the non-appearance of witnesses, even a cursory inspection into the matter will show that this is because rape often involves a power disparity between the victim and the perpetrator and those who take legal action face violent intimidation from the rapist’s supporters (Why Rape Survivors Stay Out of Court, BLAST, 2018). The real solution to this problem would be to introduce a witness protection system by enacting a Witness and Victim Protection law as drafted by the Law Commission in 2006 but which has sadly remained a bill for the past 14 years. Rape law most certainly requires reform to end impunity for rape, but not the kind that has been offered.

Real solutions require real effort. Violence can only beget more violence. Who stands to gain if we take “justice” out of the justice system?

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# Heavy New Year



HUMOROUSLY YOURS

NAVEED MAHBUB

THE legendary ball drops at New York City’s Time Square, the Sydney Opera House is all lit up from fireworks as are the Eiffel Tower and many other landmarks around the world, not to mention the countless non-descript ones. For Dhaka, it is meant to be like any other evening—dark. No, not to be in sync with the not-yet-extinct load shedding, but due to strict no-no’s on practically any partying. In line with the spirit (no pun intended) of the US Prohibition of the 1920s, Dhakaïtes, in full swing, are on roof tops, cracking fireworks and launching the local version of the space shuttle, aka, the *fanush*, into the skies of a brand new year. The stroke of midnight is a moment of celebration for *S@ifurs*, as there is a collective spike of spoken English with millions, in not just Dhaka but around the country, chanting “Happy New Year” in unison.

I will admit that I had a little crowd in my house, all of whom arrived extra

promptly at 7:00 pm despite being told not to come before 10:00 pm. For the Tri-State Area, aka, BGB, aka, Baridhara-Gulshan-Banani, is almost sealed off, thus throwing its residence into a New Year’s Eve special bubble inside the already existing bubble.

For the few “outsiders,” it is a breeze “getting in,” as the majority are smart enough to remain in the more happening parts of the city.

So, the new year is ushered in with many a senior Bangladeshi celebrating his birthday on this day, for somewhere in the past and for the sake of convenience of remembering, the birthdays were penned down as January 1. So much so, that many an unsuspecting Non Resident Bangladeshi (NRB) in the US gets a heart attack on January 2 (January 1 is a national holiday there, unlike in the

party pooper Bangladesh) when his colleagues throw a surprise birthday party for him. The price to pay for having to live a lie (along with his ‘certificate’ age) for the rest of his life.

Aside from the gifts of the fictitious Bangladeshi birthdays, there are the global new year’s gifts. This year, they come in the form of explosive news of explosions rocking the Middle East, thus throwing the American public into amnesia regarding something called impeachment. If Leo Tolstoy were alive today, he would write his sequel, *War Im Peach*. The two foe nations play a game of unlucky 13, with Iran identifying 13 US targets and POTUS targeting four-fold-fifty-two, one on average per week leading to the 2020 Presidential Elections.

Not to be outdone and fuelled partially by another American, there are explosions in the UK too, and in the eyes of the tabloids, of much greater magnitude, as Prince Harry and Princess Meghan announce their own Brexit from royal duties. In other words, they decide to retire from retirement. Prince Harry is smart, taking an early retirement, after seeing his dad “working” for 67 years without a promotion.

So, important meetings are in motion on both sides of the pond. The

US Congress convenes to symbolically cull the powers of a wartime POTUS, while the royal family convenes in the English countryside to decide the fallout from the Yankee yanking the prince away from grandma.


In many ways, the British royal family is like a geometry box—there is a ruler, a compass and sometimes a divider. Prince Harry remains in the UK while Princess Meghan joins the ranks of many a Bangladeshi women in the royal equivalent of *Begum Para*, Toronto, Canada. At least our non-resident Bangladeshi-Canadian *bhabis* are much more fortunate, for Princess Meghan has to take up a real job as a voiceover artist for a Disney movie, brought into fruition by Prince Harry hustling the CEO of Disney: “Did you know that my wife is a voiceover artist?” Yes, he actually said that.

And yes, it is indeed a heavy new year, Novocain for the pain, war to forget impeachment, Meghxit to forget Brexit and for us in the developing world, to bear the brunt of every global hiccup.

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**GEORGE ORWELL**  
(1903-1950)  
English novelist, essayist, and critic.

*If liberty means anything at all, it means the right to tell people what they do not want to hear.*

**CROSSWORD BY THOMAS JOSEPH**


<b>ACROSS</b>	32 Drop the ball	doubt
1 Sized up	33 Fancy wraps	10 Completely full
6 Skate park sights	35 Pens for hens	16 Bullfight stars
11 Full of energy	38 Plain silly	20 Student’s punishment
12 Old market	39 Henry VIII’s house	21 Calendar box
13 Hit the gas	40 Duo quadrupled	24 Letter after upsilon
14 Dramatic no-show	41 Flight makeup	25 Ventilate
15 Diner dish	42 Must have	26 Walked with purpose
17 Holiday lead-in		27 Sense of taste
18 Merkel of movies	<b>DOWN</b>	28 Started the bidding
19 Treated tenderly	1 Seasoned	29 Fixes, as a clock
22 Road sealer	2 Smith grad	30 Offshoots
23 Rover’s rewards	3 Musical handicap	34 In the past
24 Devoutness	4 Malevolent	36 Catchy music
25 On the beach	5 Sensor’s job	37 Fourth-yr. students
27 “—favor”	6 Cloth scrap	
30 Audit	7 Before today	
31 Mimic	8 Classic car	
	9 Shows beyond	

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**YESTERDAY’S ANSWERS**

B	A	T	H	E		S	A	L	A	D
U	S	H	E	R		A	L	I	B	I
S	K	E	W	S		W	A	F	E	R
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A	S	T	R	O		I	M	A	G	E
B	E	S	E	T		T	E	N	O	N

**BETLE BAILEY** by Mort Walker



**BABY BLUES** by Kirkman & Scott

