

LAW WATCH

Challenges of ensuring justice for rape victims

MOHSENA AKTER DRISHTY

Currently in Bangladesh, rape, as one of the most pervasive and gruesome violations of human rights, is alarmingly on the rise. Despite the existence of specific social and judicial framework for addressing the crime, in most cases the perpetrators get away with sexual pillage.

Rights Organisation *Odhikar* estimates approximately 14718 rape victims from 2001 to 2019; among them 7664 were children. As of 2020, between January and June, at least 1,387 children were subjected to different forms of violence and abuse – a report by *Bangladesh Shishu Adhikar Forum* (BSAF) reveals. *Ain O Salish Kendro* (ASK), a human rights organisation, reveals, from January to August 2020, total 889 women were raped, 41 were killed after being rape, 192 instances of attempt to rape and 9 suicides, committed in connection with or in pursuance of rape.

rape and sexual violence. It was done by acknowledging the severity of the situation, and to introduce much needed measures to address the issue.

It is time Bangladesh Government takes lessons and ratchets up its efforts to bring a staggering halt to sexual violence. To address this scourge, sexual violence against women should be declared a national emergency. It will mean that state resources will more readily be diverted to tackle this issue. A comprehensive national framework to uproot this menace has to be put in place as part of this emergency while fixing the loopholes in existing laws and enacting necessary provisions to take a holistic approach.

In 2016 the national Bengali daily *Prothom Alo* published a comprehensive research report examining 7864 cases from 2002 to 2016 filed under the *Prevention of Oppression against Women and Children Act, 2000* from Dhaka district. The findings revealed that

justice system. In many cases, victims and the families prefer to take resort to extra-legal ways over getting the cases reported through proper channels. As part of national measures, all these issues need to be properly addressed.

The prevailing legislative inconsistencies dealing with violence against women

The prevailing legislative inconsistencies dealing with violence against women further drops the rate of accountability of perpetrators. This results in secondary victimisation of the aggrieved. The colonial definition of rape bars victims, other than women to access fair and speedy justice.

LAW NEWS

REDUCING AIR POLLUTION TO IMPROVE AIR QUALITY



Air pollution is the single greatest environmental risk to human health and one of the main avoidable causes of death and disease globally, with some estimated 6.5 million premature deaths (2016) across the world attributed to indoor and outdoor air pollution. Particularly in developing countries, air pollution disproportionately affects women, children and the elderly, especially in low-income populations as they are often exposed to high levels of ambient air pollution and indoor air pollution from cooking and heating with wood fuel and kerosene. In the absence of aggressive intervention, the number of premature deaths resulting from ambient air pollution is estimated to be on track to increase by more than 50 per cent by 2050.

Poor air quality is a challenge in the context of sustainable development for all countries, in particular, in urban areas in developing countries, with levels of air pollution that are higher than the limits set out in the World Health Organisation air quality guidelines. Society bears a high cost of air pollution due to the negative impacts on the economy, work productivity, healthcare costs and tourism, among others.

Today, the international community acknowledges that improving air quality can enhance climate change mitigation and that climate change mitigation efforts can improve air quality. UN Member States recognise the need to substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination by 2030, as well as to reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management by 2030.

Encouraged by the increasing interest of the international community in clean air, and emphasising the need to make further efforts to improve air quality, including reducing air pollution, to protect human health, the General Assembly decided to designate September 7 as the International Day of Clean Air for blue skies. In the outcome document of the United Nations Conference on Sustainable Development, entitled “The future we want,” countries committed to promoting sustainable development policies that support healthy air quality in the context of sustainable cities and human settlements.

COMPILED BY LAW DESK (SOURCE: UN.ORG).



According to ASK, domestic violence, acid attacks and other forms of sexual violence are also on the rise at present times. A vast number of such crimes go unreported. Considering the fact that sexual violence is still treated as a taboo in Bangladesh and that the girl victims are held socially responsible for the violence they undergo; it is rational to infer that the actual number is far higher.

Following the spike in rape and other forms of sexual violence, Liberia in September 2020, Sierra Leone in February 2019, among several others, declared emergency over

conviction was awarded in only 3% of the cases.

Years of Research suggest that insufficiency of evidence, incompetency of the investigating officer, lack of coordination with prosecutors, inadequacy on part of the prosecution, delay in trial, reluctance of witnesses to testify, numerous adjournments, pending status of cases for a lengthy period, increase in frivolous and vexatious cases are some of the root causes that lead to low rate of conviction and miscarriage of justice. All these contribute to making the victims lose confidence in the

further drops the rate of accountability of perpetrators. This results in secondary victimisation of the aggrieved. The colonial definition of rape bars victims, other than women to access fair and speedy justice. Boys or men, members of transgender community or even women who fail to prove penetration, cannot seek justice under section 9 of the 2000 Act, read with section 375 of the Penal Code, 1860. This is particularly problematic considering how rape laws across the globe has received a much more comprehensive definition inclusive of other forms of sexual violence.

The anachronistic provision i.e. Section 155(4) of the Evidence Act 1872 permits questioning the character of rape victims to impeach her credibility. There is no rape shield law to protect her from this utter humiliation. Public disclosure of the identity of rape victims is harmful for the victims given the social settings in Bangladesh.

Additionally, absence of provisions criminalising marital rape is a reflection of the nation’s submission to patriarchy. Rise of domestic violence against women during the pandemic and State’s failure to respond in a manner commensurate to the crisis shows how unsuccessful it has been in protecting its women altogether. A dearth of emergency state action could set women back decades and reverse all the advancement made in the past.

Lastly, it is to be noted that law and order can at best award stringent punishments to the culprit in no time and ensure justice for the victims while ensuring proper administration of justice. However, law alone cannot communicate ethics, norms or erase the misogynistic societal order prevailing from centuries.

For prevention of sexual violence, every man, woman and every single person has to come forward to break the generational cycle of misogyny and be part of the solution.

THE WRITER IS A STUDENT OF LL.M, DEPARTMENT OF LAW, UNIVERSITY OF CHITTAGONG.

YOUR ADVOCATE

ADDRESSING THE ISSUE OF RESIGNATION AND DISCIPLINARY PROCEDURES



This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, family law, employment law, land law, banking law, constitutional law, criminal law, and IPR.

Query
I have been working in an organisation as a senior executive. I have formally resigned from my employment after 4 years of my service and my resignation got accepted by the organisation on the next day. After that, my office email got deactivated within 8 days; but later I received a show cause letter from my organisation on my personal email with 10 points of allegations of which some are not true at all. I want to know if an organisation can issue a show cause after accepting my resignation letter when I request for my compensation and other benefits as per my contract.

Anonymous Response
Resignation is a right of the employee and the same cannot be restricted by any organisation. There may be formalities and notice period etc. but no one can be tantamount to forced labour. Once an employee serves a notice of resignation (or surrender salary in lieu of notice), it is deemed to have been communicated on that day (assuming you hand delivered/mailed, unless such is not customary). Accordingly, it does not matter whether your employer accepted your resignation or not, as your resignation letter has already been communicated with the employer.

This is also worth noting that, after an employee serves the notice of resignation, employers do not have any legal right to withhold the resignation. The only exception is where there is already a pending disciplinary process. They cannot serve any show cause notice and start disciplinary procedure after the resignation, as he/she is no longer an employee of the organisation. Hence, in your case your former employer cannot start a disciplinary



process after the resignation is effected.

As such, if the employer organisation have any allegation against any ex-employee, they can file a suit in an appropriate court based on the nature of the allegation. Therefore, there is a possibility that your ex-organisation may take such alternative action against you.

Moreover, I am giving you an overview regarding the laws related to resignation from the employment. Section 27 of Bangladesh Labour Act (BLA), 2006 states that a permanent employee may resign from his service by giving the employer 60 (sixty) days’ notice in writing. In case of temporary employee, he/she may resign from his service by giving the employer 30 (thirty) days’ notice, if he is a monthly rated employee and 14 (fourteen) days’ notice, in case of other employees, in writing.

On the other hand, where an employee intends to resign from his service without any notice, he may do so by paying the employer an amount equal to the wages for the period of notice, in lieu of notice. It is mentionable that if you are a managerial staff, you need to follow the terms of your employment for ascertaining the notice period etc. as the BLA may not apply to you.

Furthermore, an employee who resigns from the service, is entitled to all the payments of salaries, benefits, allowances, other lawful entitlements etc. applicable till the last day of work. So, here it is important to see when is the last day of your work which you have not mentioned to us, as, in accordance with that you shall be paid all the entitlements. It is to be noted here that, all final settlement payments must be made by employer to employee within a maximum period of 30 (thirty) working days following the date of cessation of the employment.

LAW REVIEW

Illegal fishing and laws of Bangladesh

MOHAMMAD RUBAIYAT RAHMAN

Fishing is one of the major livelihoods of the coastal populace of Bangladesh. To garner potentials of blue economy prospects, it is critical for Bangladesh to spearhead the fight against illegal, unreported and unregulated (IUU) fishing.

The incidents of IUU fishing activities are of significant concern to the littoral states of the Bay of Bengal. Among coastal states of the Bay of Bengal, no countries are better poised to address challenges of IUU fishing than Bangladesh. Unfortunately, IUU fishing activities in the maritime zones of Bangladesh have been persisted due to lack of legal and administrative monitoring, and surveillance mechanisms.

As of now, there is no reliable estimated record of IUU fishing activities in the Bay of Bengal ocean realm. However, the news outlets’ frequent citations of incidents about IUU fishing activities in the Bay of Bengal are particularly alarming. Apart from that, the problem of the IUU fishing activities is also veering into bulwark towards achieving Goal 14 of the Sustainable Development Goals (SDG).

All these concerns are menacingly interweaved together, when we look into the existing legal regime of Bangladesh regarding protection of living marine resources. The ‘Protection and Conservation of Fish Act, 1950’ as well as the ‘Marine Fisheries Ordinance of 1983’ address the necessity of conservation of inland and marine fish. However, both laws lack comprehensive mechanisms to prevent and deter unauthorised fishing activity. These laws also do not contain any provision that would either define or recognise IUU fishing activity as an offence.

Although section 10 of the Coast Guard Act of 2016 mentions about the constabulary function of law enforcement agencies to tackle IUU fishing, several issues have remained unaddressed, such as: inspection of alleged foreign flagged IUU vessel and the prevention of IUU-catch product to enter into the port. All of these have made it harder to effectively pin down



the challenge of illegal and unreported fishing activities.

However, recently drafted Maritime Zones Act of 2019 has provided acquiesce to the significance of regulatory mechanism to tackle IUU fishing activities.

Nevertheless, what perhaps most conspicuously is absent in the draft Maritime Zones Act of 2019 is a specific definition regarding IUU fishing. This has thrown an unexpected spanner into the regulation of illegal fishing activities. At first cut, it is very likely to presume that only foreign fishing vessels are involved in the IUU fishing activities. In reality, along the way of IUU fishing activities, the involvement of domestic licensed fishing vessels cannot be discounted. Due to this omission, the evasive violations of the provisions relating to IUU fishing would obviously loom large.

Sections 47 and 48 of the draft Maritime Zones Act of 2019 specify enforcement measures to prevent, deter and eliminate IUU fishing activities. Section 47 authorises the port authority to carry out inspections of equipment, paperwork, catches, and records of alleged fishing vessels that authority believes to be engaged in IUU fishing. As authorised by provisions of section 47, the port authority would take requisite measures to ensure that ‘IUU-catch products’ are not entering national and international market and to do so, port authority may act in accordance with the Port State Measures Agreement (PSMA) of Food and Agriculture Organization (FAO).

Internationally, the PSMA is the

first binding international treaty that specifically aims to prevent, deter and eliminate IUU fishing. It is pertinent to mention here that, on December of 2019, Bangladesh ratified the PSMA. However, there is no relevant provision in the draft Act of 2019 that would enumerate coordination mechanisms among the law enforcement agencies, maritime administrations, and port authorities. This would evidently create enforcement and administrative stalemate in implementing sections 47 and 48 of the draft Act of 2019.

Section 48 metes out provisions to punish individuals associated with IUU fishing. Any person involved in or involved in helping anyone in either illegal, unreported and unregulated fishing, or destructive fishing practices, shall be punishable with imprisonment for a term which may extend to one year or with fine which may, in currency of Bangladesh, extend up to Taka Eight Million (US \$100,000), or with both.

To garner the benefits of blue economy, ensuring ocean governance is prerequisite for Bangladesh. However, IUU fishing is veering into an obstacle to garner such goal. To sum up the existing legal regime of Bangladesh against IUU fishing, it stands at odds with the existing international law, principles, and obligations. The situation is unlikely to change quickly due to ineffective fisheries management policies and inadequate reflection of precautionary principle.

THE WRITER IS ASSISTANT PROFESSOR OF LAW AT BANGABANDHU SHEIKH MUJIBUR RAHMAN SCIENCE & TECHNOLOGY UNIVERSITY, GOPALGANJ.