

# Capital punishment for rape

*But can legislation alone deter rape?*

At last, the government has proposed an amendment to the current law related to rape, enhancing the level of punishment. Rape and sexual violence has assumed an epidemic proportion. The recent horrific gang rape in Noakhali and the one in Sylhet, as well as innumerable others within a very short period of time, has led to public outrage, culminating into protests on the streets. According to Ain-o-Salish Kendra (ASK), at least 975 rape cases were reported in the country between January and September 2020. And that includes 208 gang rapes.

The government, in light of public demand, has announced the death penalty for the crime of rape. As well intentioned as it may be, we must point out that merely changing the existing law or bringing in new legislations would not automatically stem the plague the country is beset with. There are several aspects that one must be cognisant of, without addressing which it would not be possible to prevent rape. There is the legal, the procedural, as well as the societal angles which must also be addressed.

In so far as the legal aspect is concerned, there is unanimity in the demand for defining or redefining rape. Section 375 of the Bangladesh Penal Code 1860 is anachronistic, and the explanation therein is even more so. We feel that attempting to rape should also be considered as rape. Apart from this, laws should be brought in to provide protection for not only the victims but also the witnesses, simplifying the Evidence Act related to rape and the process of investigation, which more often than not ends up with the victim being even more victimised and consequently, irreparably traumatised. There is need, as a former Justice of the High Court Division says, for careful drafting and coordination of medical and psycho-social responses with legal responses.

The second aspect is the procedural, which cannot be delinked with the social aspect because of the taboo that the victim is subjected to. We should ask ourselves why 78 percent of rape victims (16, 804) between 2001 and 2013 chose not to pursue their cases even after taking the initial step of seeking medical treatment. This is the data from the government established one stop crisis centres. The fault is in the system; this is despite the appropriate laws. Thus, there is a need for making the legal procedure and investigation process more victim friendly, where the onus of proof should not be on the rape survivor. Furthermore, settlement of rape cases through local arbitration should be made a punishable offence.

It is because of flawed investigation, political influence and money that most of the cases fail to reach convictions. As another NGO report on the incidents of reported rape cases in six districts between 2011 and 2018 shows, of 4,372 cases, only five people were convicted. The reasons are evident.

Legislation only does not redeem a situation. Enabling conditions should be created for effective implementation of law, and that is what is necessary too for the prevention of rape.

# IEDCR antibody survey in Dhaka show surprising results

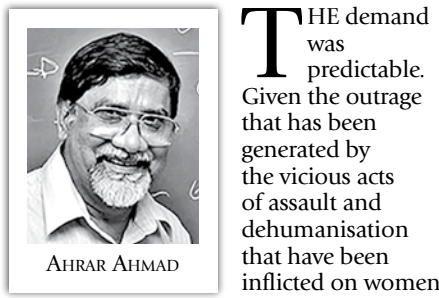
*But no scope for complacency*

THE cross-sectional epidemiological survey conducted in Dhaka jointly by the government’s IEDCR and Icdtrb have brought out some surprising revelations about the coronavirus situation in the country. It shows that around 45 percent of those surveyed in the capital were carrying Covid-19 antibody, a majority of them asymptomatic; the presence of such antibodies among slum-dwellers was much higher (about 74 percent). If extrapolated to the roughly two crore population in Dhaka, it means nearly one crore may have already been infected. This is marginally good news, scientists agree, as it means people might be on the way to develop herd immunity, provided the immunity against the virus lasts long. But scientists are unsure of how long the protection works, and whether if someone’s antibody test comes out positive, they may still be re-infected by Covid-19 and unknowingly spread the disease to others. This is especially risky for those with underlying health conditions.

However, these are still conjectures based on a survey done about three months ago and involving a relatively small sample size (3,227 households) compared to the large population of Dhaka. We still don’t know how immunity to Covid-19 works or how accurately such seroprevalence surveys can project the situation. So there is little room for complacency—which, unfortunately, continues to underpin our official response. We have seen how officials and ministers often suffered from misguided optimism over Bangladesh’s preparedness in the last seven months, resulting in devastating consequences. The official figures of infection hover around only 380,000, in stark contrast to the projected figures. Officials failed to explain this gap, nor did they tell us how the survey findings will factor into their response plan—both for those at risk of infection and those who recovered from the disease but still risk health complications and productivity loss as a result of their exposure. The fact is, although they assured us of “necessary preparedness” to deal with a possible second wave of coronavirus during winter, precious little has been done to improve our test, trace and isolate regime.

All this points to the fact that although antibody prevalence is vital to tackle the virus, the bigger concerns of a massive, silent outbreak and associated risks to both health and economy remain. Unless such surveys are done from time to time to understand the movement of the virus and relevant policy efforts are remodeled in light of their findings, such efforts are but wasted opportunities. We must continue to ensure the public wear face masks, along with maintaining physical distancing and hand hygiene. The IEDCR survey has shown how profound the threat is and how big a task we have at hand, so the government must respond by revitalising public health institutions and allowing scientific evidence to dictate its policy interventions to contain the virus.

# Contra capital punishment even in this ‘rapedemic’



THE demand was predictable. Given the outrage that has been generated by the vicious acts of assault and dehumanisation that have been inflicted on women over some time, it even appears justifiable. It is widely, perhaps passionately, believed that life imprisonment for rapists is not enough, they must face the death penalty. The arguments are fairly clear and obvious. First, anything less is considered to be disrespectful to the suffering of the women. This is not a crime with merely physical and immediate consequences for the victim. The trauma, the pain and the socially imposed guilt and shame that women are forced to endure are long, deep and often debilitating. If murderers are executed, so must rapists. This may help to bring some “closure”, and perhaps some relief, to the victim.

Second, some sexism may be implicit in the selective use of capital punishment. In Bangladesh, the death penalty is applicable for a whole range of crimes such as kidnapping or drug possession (over 25 grams of heroin or cocaine, and over 200 grams of yaba), but not if a woman is assaulted so brutally. The highest punishment for rape is life imprisonment, a penalty that can be cleverly “managed” and loopholes can be found to secure early release for the convicted.

Third, this punishment would serve as a deterrent to people who become aware of the dire consequences they would face if they are brought to justice. Such exemplary action by the state would serve as a lesson and warning to the people, strike fear into their hearts, and prevent such acts. The cogency and clarity of that position has given this argument historical validity, religious sanction and seductive appeal.

These are all undoubtedly powerful arguments. However, some interrogation is possible and necessary. Before one proceeds in that direction, it is essential to clarify that opposition to the death penalty for rape does not suggest that one is “soft” on rape, nor does it imply a patriarchal trivialisation of this grievous offence (which is usually done by referring to the victim’s dress, her sexual history and her “risky” behaviour in typical “slut-shaming” and victim-blaming efforts). It is important to state categorically that rape is one of the vilest crimes that can be committed, and that its punishment must be swift, sure and severe.

The first argument has been questioned by Indian feminists, among others. Jahnvi Sen has indicated that equating rape with murder is a disservice to the woman because it rests on some patriarchal notion of “honour” that is “intrinsically linked

to her sexuality”, which if “destroyed” means that she has lost her place in society, her value, her agency, and is as good as dead. Instead of helping her to cope and providing social, economic and psychological support, all this does is reaffirm her tragedy, her helplessness and her stigma.

The second argument that compares crimes and punishments is misleading and, in this case, totally unhelpful to the victim. Death penalty trials are typically longer, costlier and more complex; may lead to reduced reporting because many (most) perpetrators are known to the victims and there would be family pressures not to pursue the case (against the uncle, the brother-in-law, the kinfolk etc.); and may also provoke more murder of rape victims to ensure their silence.

The third is located within an empirical frame of reference and is therefore easier to analyse. There are less than 10 countries in the world which practice death penalty for rape. Apart from North Korea and China, all the others are in the Middle



PHOTO: COLLECTED

East. None of these countries can claim to be particularly sensitive to women’s rights and interests. Some of these countries practice female genital mutilation, some engage in honour killings, and most impose a perverse dress code that reveals the insecurities and misogyny of those heteropatriarchal societies. The death penalty for rape is merely an extension of their reliance on violence as a solution to all problems rather than an effort at establishing retributive justice.

The issue of deterrence provided by capital punishment may be examined from another perspective. Capital punishment for murder is upheld by 55 countries; 106 have banished it, 28 more have not practiced it. There is absolutely no evidence to indicate that countries with death penalties have lower homicide rates.

Even within the US, only 38 states have the death penalty. According to the American Civil Liberties Union, states with capital punishment were 25 to 46 percent more liable to have higher homicide rates

than states without, and the Death Penalty Information Center reported that southern states which had almost 80 percent of the executions for murder over the last 10 years, actually had higher rates of murder than the north-east states, which had less than one percent of the executions. Thus, capital punishment may not be as efficacious in halting crime as is popularly believed.

This issue of rape is complex. First, and foremost, the problem is attitudinal, behavioural and structural. It is inherent in a system of power—where women are commodified, objectified and reduced to being a collection of body parts (breasts, hips and vaginas) that robs them of their autonomy, their identity, and their humanity; where women are taught to be meek, frail, sacrificial (where good women quietly accept), while men are expected to be macho, aggressive, entitled (where real men get what they want); where women are still considered to be “property” and hence usable at will and disposable; where women are viewed as temptresses

law. Women suffer additional burdens—they are not believed, their cases often not recorded, and they have to submit to humiliating questions and tests.

Second, there are *bahinis* (gangs) of goons and thugs whose very swagger epitomises the “culture of impunity” in the country. No *bahini* can grow in a vacuum. There must be enabling conditions, protections and encouragements usually provided by political leaders who use them as auxiliaries for their own purposes (usually for elections but also for exerting local control). These *bahinis* function beyond the authority of the police or, at times, in collusion with them. If our political leaders cannot disown and dismantle these groups, and our police forces cannot stand up to them, all their pious platitudes about reducing sexual assault would appear to be hollow if not hypocritical.

Third, the juridical environment within which rape cases are situated is woefully archaic and biased. The definition of rape is still derived from Section 375 of the Penal Code of 1860 with its narrow emphasis on penile penetration, and the line of questioning about a woman’s “character” and related issues is admissible because it is based on Section 155(4) of the Evidence Act of 1872.

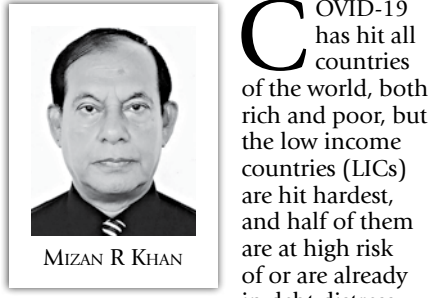
The judicial system remains serpentine and sluggish. Only three percent of rape cases end in prosecution, and as of March 2019, 1,64,551 cases for crimes against women and children are still pending, with 38,000 dragging on for more than five years. Many laws and even court directives are not even implemented. The story is not particularly reassuring for women, or for justice.

In this context, to push for the death penalty today would appear to be disingenuous. It is more a distraction, a tokenist flourish which provides the appearance of doing something, when little is being attempted and even less will be accomplished.

Thus, unless the nation addresses the difficult issues caused by economic inequality, democratic deficits, endemic corruption, institutional inefficiency, moral decay, and social dislocations (which often provoke intolerance, rudeness and aggression), and unless fundamental changes are made in education, family life, linguistic practices, notions of sexuality, the pervasiveness of drugs and pornography, and a national malaise of despair, disdain and distrust—all of which contribute to the culture of sexual violence—simply tinkering with punishment regimes is nothing but a sleight of hand, a *tromp l’oeil* or, in the language of T S Eliot (in *The Hollow Men*)—Shape without form, Shade without colour, Paralysed force, Gesture without motion.

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# Adaptation finance at the conflux of climate crisis, Covid-19 and debt distress



ALTHOUGH in April this year, the G20 Finance Ministers endorsed a Debt Service Suspension Initiative (DSSI) to grant temporary relief to the LICs to help manage the impact of the pandemic, the uptake to date appears limited. The DSSI covers only a part of the total debt of the LICs. Private-sector lenders have largely refused to come forward, thereby undercutting governments’ efforts.

On the other hand, climate disasters are increasing both in frequency and severity. The frontline victims are the LICs, with very little adaptive capacity. Mitigation ambition so far by major emitters is very weak, compared to the temperature targets set in the Paris Agreement. The Climate Action Tracker’s “thermometer” projects a temperature rise of up to 4.1 degrees Celsius by 2100, unless climate action is taken dramatically. Even if this happens, the IPCC report on 1.5 degrees Celsius made clear that very significant climate damages to lives and livelihoods in the LICs are to be expected. This makes the need for investments in adaptation immediate and urgent.

However, adaptation finance is extremely poor, despite the pledges made by donors. As the private sector is not that interested in adaptation in the LICs because of the inefficacy of market instruments and adaptation actions being mostly of a public goods nature, international public finance is the best possible source for adaptation. These countries have been accorded preferential treatment for support in the Paris Agreement. It may be recalled that provision of climate finance is a legal obligation for the developed countries, both under the Convention and the

Paris Agreement, and Article 7.4 has recognised that adaptation as a global responsibility. Against this, adaptation finance comprising of less than USD 10 billion a year falls short, by orders of magnitude, of the needs of USD 140-300 billion a year by 2030. Despite pledges of a balanced allocation, adaptation finance stands at less than 20 percent of total climate finance. The LIC citizens get average support of USD three per person per year, which is less than a cent per day, according to Oxfam.

The Global Commission on Adaptation (GCA) has made a strong case for adaptation and resilience investments, finding that benefit-cost ratios of interventions ranged from 2:1 to 10:1. However, private sector contribution to

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adaptation still stands at a paltry three percent of their total climate finance, and mostly goes towards mitigation. Obviously, there are barriers to investment in climate resilience, including a lack of awareness of its benefits and capacity constraints. The GCA highlighted the need to rapidly scale adaptation finance through both international and domestic sources.

According to the United Nations Conference on Trade and Development, developing countries’ repayments on

their public external debts will cost USD 2.6-3.4 trillion, just in 2020 and 2021. For Bangladesh, it stands at more than USD six billion a year. However, Bangladesh gets support of only a few hundred million, against the domestic investments of over USD three billion a year in adaptation. Obviously, in the absence of adequate liquidity support and major debt relief, the world economy, particularly the LICs, cannot return to pre-pandemic growth levels without risking severe climate distress and social unrest. In light of these concerns, the G20 has called on the IMF “to explore additional tools that could serve its members’ needs as the crisis evolves, drawing on relevant experiences from previous crises.”

Against the continued poverty in adaptation finance, there is a need to search for alternative sources. One such instrument worth considering is a “debt-for-climate swap” option. The global community has experience on “debt-for-nature swaps” (DNS) since the late 1980s and 1990s in developing countries, where debt relief was linked to investments in reforestation, biodiversity, and protection for indigenous people. In Bangladesh, we have experience of the Arannyak Foundation, established in 2003 under the US Tropical Forest Conservation Act, where a part of the debt to the US was converted into local currency for investments in nature conservation. Globally, this instrument could not have much impact on debt reduction because of its very small scale. For example, the share of debt relief derived from the DNS by some creditors is miniscule, just 0.3 percent of the total climate finance in 2012. Since then, it did not scale up much.

Although there is global agreement about adaptation finance being new and additional and largely grant-based for the LICs, whether debt for adaptation swaps (DAS) can be considered as such is controversial. These debates aside, at this time of a global financial crunch, DAS may be an option worth exploring by the global climate community.

It is argued that under appropriate designing and implementation, DAS can be a win-win option for both the creditors

and the debtors. However, it depends on many conditions on both sides. Making DAS a viable and sustainable option calls for relatively large amounts of public debt for having an impact on debt reduction. Given its acceptance, the management modalities, including budgetary support or through creation of a dedicated fund, can be decided later.

The International Institute for Environment and Development (IIED) in London in a recent study argues that debt for climate and nature swaps offer a way to restructure debt while promoting pro-poor growth and debt sustainability. The IIED proposes to establish a global expert group to further understanding of such swaps.

Another potential source is also being explored to boost adaptation finance. In 2019, the Climate Bonds Initiative (CBI) launched the Climate Resilience Principles, which informed the issuance of the first dedicated climate resilience bond by the European Bank for Reconstruction and Development in September 2019, highlighting an opportunity for the creation of a new market for such instruments. But given the experience of the private facility of the Green Climate Fund, and International Development Association of the World Bank, successful blended finance models are still in short supply. The debt instruments such as green bonds—including climate resilience bonds—may not be universally applicable or viable in all markets. Still, against a severely constrained fiscal space, in certain cases they may offer a much-needed leverage for short- and medium-term private finance for resilience goals.

These issues are likely to be raised at the upcoming World Bank and IMF Annual Meetings during 12-18 October. Obviously, the Bangladesh delegation to these meetings is expected to be conversant of these issues for sharing their considered interventions, in alliance with like-minded nations.

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