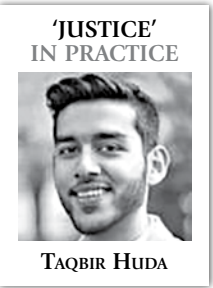


Why the death penalty will do nothing to end impunity for rape



‘JUSTICE’ IN PRACTICE
TAQBIR HUDA

ON October 13, the Women and Children Repression Prevention (Amendment) Ordinance 2020 was passed making some changes to our central law on violence against women and children. The most significant and discussed change is that it “introduces” the death penalty as the maximum punishment for single perpetrator rape under section 9(1) of the 2000 Act.

Before this amendment, the only available punishment for single perpetrator rape was a mandatory life sentence. Before we delve into the efficacy of this reform, two important points must be noted by way of contextualisation.

Firstly, popular discourse in support of the death penalty for rape (and therefore this reform) tends not to acknowledge that death penalty already existed as an available punishment for three out of the four categories of rape in our law, even before the amendment. That means, the death penalty was already prescribed as the maximum punishment for three of the more serious categories of rape under section 9 of the 2000 Act. These are: rape leading to death, gang rape, and gang rape leading to death. Therefore, the only form of rape which did not involve the death penalty was single perpetrator rape, perhaps owing to it being the least severe of the four categories. This contextualisation is important because many fail to realise that the death penalty was already available as a punishment for the Noakhali rape case which triggered the protests, since it was not single perpetrator rape, but a case of gang rape.

Secondly, this amendment does not “introduce” the death penalty for even single perpetrator rape, because section 6(1) of the Women and Children Repression Prevention (Special Provisions) Act 1995—which the 2000 Act repealed—had first introduced the death penalty for single perpetrator

rape, which the 2000 Act removed. This is, therefore, a “reintroduction” of the death penalty for single perpetrator rape, and the existence of the death penalty for a single perpetrator for five years between 1995 and 2000 did not have any particularly significant impact on justice for rape.

Now coming to the central question: will this reform do anything to improve justice for rape? The short answer is no. The death penalty has already existed for the three other forms of rape for at least 25 years, but can we really say that has at all been able to decrease rape leading to death (such as Rupa and Tonu’s cases) or gang rape (such as the recent Noakhali case)? Research by the Death Penalty Project, an international organisation, has shown that there is no evidence that the use or existence of death penalty has especially helped deter crime anywhere. Instead, research from around the world tends to show that increasing the severity of punishment tends to decrease conviction rates in criminal cases. This is because the more severe the punishment becomes, the more cautious and reluctant judges become in handing out guilty verdicts, since their judicial conscience tells them to exercise extra care by gaining extra surety. This effectively results in the standard of proof being pushed up in practice and only the most severe forms of the crime being recognised. Making the two most severe punishments in law—life imprisonment and death penalty—the only possible penalties for rape will, therefore, have two damaging effects. Firstly, it will push the standard of proof for rape to an unattainable standard. Secondly, it will lead to only the most severe rape cases resulting in conviction.

Rape is an offence that, due its very nature, is already incredibly difficult to prove. Most of the rape cases will not be equally brutal or have a video recording of the crime taking place, as in the Noakhali case. Following the amendment, the vast majority of rape survivors will be deprived of justice either because they are unable to satisfy this unattainable standard or their rape is not on the severe end of the spectrum, which therefore would mean the rapists get

acquitted. This is because the law would not allow any alternative punishments. Allowing judges enough sentencing discretion to order punishment that is proportionate to the crime committed is a basic requirement in any justice system. Yet under our rape laws, our judges hardly have any discretion. Little wonder, then, that a report by *Prothom Alo* has shown that the conviction rate in rape cases filed in Dhaka’s tribunals is only 3 percent.

The ongoing discussion about death

would be foolish to think that the absence of death penalty for single perpetrator rape is what was deterring around 90 percent of rape survivors from taking legal action against their rapists. A more realistic answer would be the misplaced social stigma on rape survivors and their inability to file a rape case due to fear of facing violent reprisals from the rapists, who are usually more powerful—and the death penalty does nothing to address either of these. Due to space constraints, I will discuss

having filed the case, and returns home, the police is not bound to ensure their safety. They are fair game, yet again. If we had an effective victim and witness protection system, as proposed by the Law Commission as far back as 2006, then this would no longer be a problem, as it would then become the state’s responsibility to ensure the safety and protection of not only rape complainants, but also witnesses who testify on their behalf. It would do so by posting police officials outside their residence to ensure safety, or providing them safe custody.

Secondly, section 155(4) of the Evidence Act 1872 specifically allows defence lawyers to raise questions about a rape complainant’s character in open court, in order to undermine their credibility as a witness. In practice, this provision essentially allows the defence lawyer to use the very misplaced social stigma that a rape survivor experiences as a weapon to humiliate them to the point where they reach their breaking point and abandon legal proceedings to avoid further humiliation. This tactic shifts so much of the focus on a rape complainant’s lifestyle, clothing and life choices that the rape survivor often feels they are the ones on trial, and not their rapist. Countries around the world have recognised the discriminatory and damaging impact such a legal provision can have on justice for rape, and have limited or completely prohibited the use of character evidence against rape complainants. For example, India and Pakistan, who inherited this same provision from our British colonisers, have already abolished it, while we have consciously retained it.

If we are serious about ensuring justice for rape survivors, we must introduce reforms which actually help achieve that objective. At the very least, our state must have in place a system which will ensure their protection throughout the justice-seeking process, and the state must repeal the colonial law which essentially puts a rape survivor on trial, instead of their rapist.

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A protester sitting on the street in front of the National Museum in Dhaka wearing a sari printed with anti-rape slogans, on October 10, 2020.

PHOTO: AMRAN HOSSAIN

penalty for rape makes two very big presumptions: that a rape survivor has been able to file a case and the trial has reached the ending point where the judge has to decide what punishment to give. Importantly, a multi-country study by UN agencies which interviewed rapists found that on average over 90 percent of respondents from Bangladesh reported facing no legal consequences for raping a woman or girl. This means that the vast majority of rape survivors are precluded from taking legal action in the first place. It

only two reforms that could very much have addressed these two barriers to justice for rape survivors.

Firstly, since rape takes place due to a power imbalance, the rapist can utilise this very imbalance to preclude the survivor from seeking justice for the crime done to them, through use of threats or actual violence. Therefore, seeking justice then becomes akin to facing more violence. Rapists are able to do so because they know that once a rape survivor steps outside the police station after

China-US War: A Frightening Possibility

ALI AHMED ZIAUDDIN

US Secretary of State Mike Pompeo, speaking at an Atlantic Council Front Page event on September 15, called for building an international coalition against China. Meanwhile, Michèle Flournoy, widely expected to be Pentagon chief in a Biden administration, said, “American military and its partners should consider developing capabilities to sink the entire Chinese Navy within 72 hours to deter Beijing.”

From what we understand from these hawkish statements by the incumbent and possible future key cabinet members of the US, the country is on an irreversible collision course with China, irrespective of who wins in November. To sustain its war economy that mostly benefits its plutocracy, the US needs to be on a war footing. How and when the two countries collide is a matter of conjectures. But the indicators of a gathering storm are getting alarmingly visible.

After the recent China-India spat, it seems India has finally decided to shed its reluctance and actively engage with the anti-China Indo-Pacific military alliance in the making, known as the “Quad”, when it invited Russia to join the initiative. Moreover, India and the US are expected to sign the Basic Exchange and Cooperation Agreement (BECA) for geo-spatial cooperation on October 26-27, according to *Hindustan Times*. In layman’s words, it’s the basis of a future military alliance, under which both can draw from each other’s military assets and resources if and when needed.

To put the above facts into perspective, these are indications that the US’s growing aggression against China will only get worse in near future even without Russia joining the Quad, which seems highly unlikely. The US can turn up the heat on China using two possible strategies: i) diplomatic, financial and economic pressure, and ii) military means. As part of the first strategy, it may try to strangle China in the following ways.

First, it may put immense pressure on Japan, ASEAN and the EU to fall in line behind the US sanctions and economic decoupling from China. Japan will be willing, unlike the other two, but if the US stops its present hostility towards the EU, things may change. And this will definitely create a huge problem for Chinese accessibility to the EU market.

Second, the US may ask banks across the world to not have dollar transactions with China. In case of non-compliance by any bank, the US Federal Reserve may penalise that bank by seizing all its dollar assets or barring it from trading in dollars. It can also preclude Chinese banks from using the SWIFT, the interbank dollar transfer tool. In both cases, China’s overseas trade of goods and services against dollar payment can be stopped almost immediately. This will in effect mean that any supply chain anywhere or third country doing business with China, or wanting to make payment in dollars to China, will be barred from doing business with the US. Yes, alternative payment in Chinese yuan is possible, but to establish it as a mode of payment first will take a lot of time, and more importantly, many states may be unwilling to accept it instead of dollars.

Third, the US can raise the tariffs on Chinese goods further, making it impossible for the latter to remain competitive. This means virtually preventing Chinese market access into the US, which it has already started by forcing Chinese tech giants to cease their business in the US.

Fourth, the US may get tempted to apply the nuclear option, and seize all Chinese dollar assets.

All these measures will, in effect, be akin to a declaration of Cold War 2. Well, some key policy planners are keen to do precisely that considering how the first Cold War had created full employment and a prosperous economy. But a key difference is, back then the US was the world’s number 1 creditor nation, whereas today it’s the biggest debtor

nation. By the end of the year, the US is expected to incur a debt of USD 30 trillion, more than its GDP, meaning it has entered a permanent debt trap. If, in this context, the US decides to adopt the above measures, it will definitely harm China by cutting it off from the global market, but in the process will also wreak havoc on the world economy in general and the US economy in particular. Because, in a globalised world economy where innumerable supply chains are so integrated, disruption anywhere is sure to create havoc everywhere. It means the cost of goods and services will rise in the US as it’s the biggest consumer.

Moreover, the US will lose the biggest market of its agro products, and all its major companies based in China will lose the most if they are shut off from the 500-million-middle-class Chinese market. The fourth option will surely be a death blow to the dollar’s dominance and status as the reserve currency. If this option is used, it is highly unlikely that any country will want to buy dollars as foreign exchange reserve or even buy US treasury bonds. This in turn will stop bankrolling the chronic US budget deficit. Yes, it still can go on printing its currency, but that will trigger inflation and make the dollar even more valueless.

Given this overall negative impact of pursuing the above measures, can the US afford to start a prolonged Cold War? In all probability, the most tempting course of action might be to look for a quick fix, as Ms. Flournoy has suggested, hoping China will bend to US diktats. More so, because the conventional thinking is, the US’s presently far superior military capability holds a good chance of defeating or crippling China for good. In 5-10 years’ time when it is sure to reach parity with the US, this may be impossible. But it’s inconceivable to imagine that, despite the US’s military advantage, China will give in without a massive retaliation if its survival is threatened. If the US is seriously considering such a disastrous

undertaking, there is no way China will submit without a regime change—meaning all-out war, boots on the ground, and in the worst-case scenario, a nuclear exchange. Here is where Bangladesh comes in the picture.

If we look at the map of Asia, there are several entry points to mainland China both on land and by sea. In any military showdown between China and the US, the South China Sea will obviously be the main theatre because that’s the main entry point to mainland China. In all probability, neither Russia nor any Central Asian states will allow the US to encroach China from their land in the north or the west. The ASEAN till now has expressed a desire not to take sides in any hot conflict between China and the US. That only leaves South Asia which looks like the obvious second theatre. Afghanistan has no interest in getting involved unless, of course, the US forces stationed there impose an unwanted war upon it. Pakistan, being a nuclear state and a close defence partner of China, will definitely not side with the Quad to wage war against it.

It is natural for India as a member of the Quad and a military ally of the US to lead the assault on China’s border, which will definitely turn the entire region including Nepal and Bhutan into a destructive battlefield of superpower hostility. There will be immense pressure on both Bangladesh and Sri Lanka to join the war effort, but far more on Bangladesh, because of the Bay of Bengal. From its shores, the US naval forces can fire hypersonic missiles that can reach deep inside China in a few minutes with a speed between 4-5 thousand mph—a few more minutes perhaps for supersonic jets with a speed close to 2000 mph. The Bay, and by extension Bangladesh, may turn into a key war zone.

Although Bangladesh has no interest whatsoever to get involved in this superpower rivalry, it may well be dragged forcibly. Before the Afghan invasion, the US threatened Pakistan to either join it or get bombed “back to the Stone Age”. Three levers can be

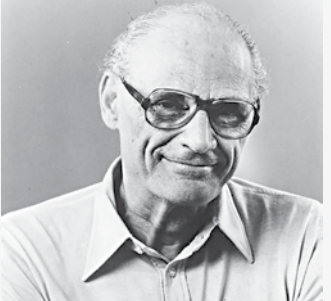
used to squeeze Bangladesh. One, India is sure to apply its utmost persuasive power, if that doesn’t work, the US might step in with several lucrative offers; and if that fails too, it will restore to its typical muscle-flexing tactics. Bangladesh holds USD 38 billion reserve with the Fed, which the US may threaten to confiscate like it did to Iran and Venezuela. In addition, it may also threaten high tariffs on garments and render it impossible for Bangladesh to remain competitive.

Yes, all these possibilities may seem far-fetched, but no one had imagined the outbreak of World War I even before one month of it. The whole of Europe was already a powder keg—all that was needed was a spark, which came in the form of a murder in Sarajevo. Today, the sharp and growing polarisation and increasing civil/military alignment of antagonistic powers are indicators of a gathering storm. The US and the EU are extremely perturbed to see China beat them in their own game and not bending to their will unlike the rest of the developing world, over which they held full sway for over three centuries—first by colonial occupation, and then by market and financial control which is slowly ebbing away. The developing world has an alternative now. Moreover, throughout history, all major socioeconomic crises had led to warfare. The frequency of close encounters between the US and Chinese forces in the South China Sea may cause accidents anytime, triggering a flare-up.

Like all rational minds, I hope this frightening possibility never occurs. But for that to happen, America will need to make peace with China. Will rational sense prevail? The history of all declining empires says otherwise. All had tried their best to sustain the status quo with the help of the most advanced weaponry, but all eventually imploded and got sucked into the ravages of time.

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ARTHUR MILLER
(1915-2005)
American playwright.

Don't be seduced into thinking that that which does not make a profit is without value.

CROSSWORD BY THOMAS JOSEPH

ACROSS

1 Floats on the breeze

6 Wall worker

11 Figure of speech

12 Texas player

13 "Search me"

14 Herrings' cousins

15 Yale student

16 "Krazy —"

18 Stadium cry

19 Ave crossers

20 UFO fliers

21 Make a knot in

22 Casual top

24 Discover

25 Pancreas product

27 Easy two-pointer

29 Pestered

32 Omelet start

33 Flowed into

34 Old hand

35 Fellow

36 Unmatched

37 Go bad

38 Studio sign

40 Omit phonetically

42 Decree

43 Kitchen gadget

44 Valleys

45 Garden starters

DOWN

1 Most board

2 Full-price payers

3 Carpenter's fastener

4 Cargo unit

5 They light up

6 Ship staffs

7 Cabinet wood

8 First negotiating number

9 Decree

10 Had a snack

17 Brought into harmony

23 Tattoos, slangily

24 Mideastern fruit

26 Painters' aids

27 Showed the use of

28 Kenya neighbor

30 Wore away

31 Smitten ones

33 Cavalry posts

39 Julep need

41 Tell tales

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BETTE BAILEY

BY MORT WALKER

BABY BLUES

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