



## TACKLING VIOLENCE AGAINST WOMEN

# Punishment is not enough



NUARA CHOUDHURY

WHENEVER a particular incident of violence against women catches the media attention and is thrown in front of the public eye, the reactions that follow fall into a similar pattern. People are outrage and disgust, coupled with demands that these social perpetrators be punished and hung. They need to be eradicated from our society. Stronger laws and harsher punishments, the public cries, that is the way forward. When we consider the depths these acts of violence and cruelty reach, such reactions are unsurprising. Acid throwing that leaves young girls scarred for life, domestic violence culminating in brutal disfigurement, violent incidents of rape that leave their victims dead and mutilated. When we look back at the headlines that have gripped our front pages, the stories are sickening and often chill to the bone.

However, in turning to the law for solutions, we need to be more careful about our demands and more critical of the measures that follow. Our law-makers are no strangers to legislating in respect of women. An examination of the legislative history reveals a long list of laws that have been enacted especially

for women. These enactments have not been shy in being heavy-handed with punishments; the Nari-O-Shishu Nirjaton Daman Ain (2000) alone has twelve offences which carry the death penalty. However, whilst enacting offences with harsher punishments might succeed in temporarily appeasing the public amidst their reactionary cries for more legislation, this practice largely ignores the relatively unchanged social reality for women, where stereotypes and myths surrounding the female gender remain deep-rooted and pervasive. In limiting our demands to simply the enactment of harsher punishments, we failed to address the deep-rooted stereotypes that plague existing laws and, as a result, we allow these stereotypes to pervade and influence the enactment of new legislation.

For example, Section 354 and Section 509 of the Penal Code, 1860 create offences of outraging and insulting the “modesty of a woman”. The scope of Section 354 is limited to actions involving criminal force and assault, but Section 509 widens the scope, allowing for the possibility of words and gestures also being interpreted as offences under the provision. However, the main problem with both these offences is that they are grounded in ideas of “womanly modesty” and

thus, immediately, the focus shifts to the character of women rather than the violence done to them. Issues of modesty and morality often come to the fore in discussions of violence against women. Outfits of rape victims are scrutinised to ascertain whether she “asked for it” and the characters of domestic abuse victims are criticised to show that she “deserved it”.

If we turn to the Nari-O-Shishu Nirjaton Daman Ain with the hope that offences have progressed beyond such archaic definitions, disappointment awaits. The offence of outraging the modesty of a woman can be found in its reincarnated form, in Section 10 of the Nari-O-Shishu Nirjaton Daman Ain. The section states true to its Penal Code predecessors; the focus is yet again on notions of womanly modesty. The main difference - Sections 354 and 509 of the Penal Code attract maximum punishments of 3 years and 1 year imprisonment, respectively, whilst Section 10 of the Nari-O-Shishu Nirjaton Daman Ain carries a minimum sentence of three years and a maximum sentence of ten years imprisonment. Thus, Section 10 emerges as simply a repackaging of the existing Penal Code provisions, with a harsher punishment tagged on at the end.

In demanding changes and additions to the law, we cannot limit our demands to harsher punishments alone. We must go further and challenge the stereotypes that exist within our law if we are to truly change them. Harsher laws with heftier penalties will do no good if requirements of “modesty” and the like leave victims of violence outside the remit of protection. Simply enacting harsher punishments may be the quicker and easier route, but it has the long term effect of upholding the status quo rather than challenging it. To challenge it is the harder route and perhaps, on some levels, a more uncomfortable one for us in a society. Changing sexist stereotypes and presumptions within the law requires a parallel examination of the same stereotypes existing in our society. It may be easier to label the perpetrators of violence against women as degenerates whose actions are anomalies on the social spectrum, but the truth is that they are products of society; our society. In the midst of our demands for changes in law, we must not forget this fact; otherwise, legal change will be rendered useless by social reality.

THE WRITER IS A BARRISTER-AT-LAW.



*This week your Advocate is Barrister Tasnuva Shelley, Advocate, Supreme Court of Bangladesh. Ms. Shelley is a Senior Associate of a renowned law firm named Syed Ishtiaq Ahmed & Associates. The partners and associates of the firm are highly experienced in litigation and have a sizeable legal practice having expertise in various branches of law mainly in commercial law, corporate law and in conducting litigations before courts of different hierarchies.*

### Query

We had decided to sell off our property after the demise of our father to purchase adequate number of flats for all our existing family inheritors. One interested buyer (Mr.X) of our neighborhood only paid us about 50 % of the cost of the property within the stipulated time and tactfully took possession of the key of one of our two floors under the pretext to carry out repairs in advance, before moving in that floor. In good faith and trust we handed over the keys. The buyer then vanished and his representative took over possession of the repaired floor of the premises without any further payment. We requested them time and again to settle the matter and revise the payment figures because of the inflation after about 2 years but they kept stalling and avoiding the issue.

In the meantime another person (Mr.Y) took the issue into account. He and his associates then drafted a dummy sale deed (unregistered), and took sign by two of us. Later when the validity period of the deed was expired we identified his malafide intention about the deed. Honorable Sir, my question now is, what is the legality of this unregistered expired dummy deed (which is in the possession of Mr.Y) and to what extent he can use it as a leverage against us to harass us or harm us or take some undue legal advantage. Also in your opinion is it essential for us to take any steps to retrieve or cancel this document and punish the fraudulent person and his accomplices.

Jamal Hussain

### Response

The laws and regulations relating to sale or transfer of property, whether “moveable property” or “immovable

property” are quite complex and hence, we always advise all our clients to conduct due diligence prior to execution of any kind of deed to protect their property and interest. The situation you and your family are experiencing is unfortunately very common in Bangladesh and I will not go into the details of what could have been done in the first place. In responding to you queries, please first note that there is no such legal term as “dummy sale deed” and the law defines buildings or any part of building (including roof), land are considered as “immovable property”. The document executed between you (only 2 inheritors out of four) and Mr. Y is in fact a “Bainapatra or Baina” which is a compulsory registerable document as per section 17 of the Registration Act, 1908 (the Act) as amended in 2004 and there are certain conditions that must be fulfilled for it to have any legal effect. The Act also states that legality of such “un-registered” bainapatra or baina shall not any create any legal right or interest and shall be deemed to be considered null and void in the eye of law. Regrettably, the ill intentions of Mr. Y in using it against you or your family cannot be determined but there are recourses available to protect your property/interest legally, such as filing a declaration suit in the District Court and/or criminal charges against Mr. Y/his accomplices, both of which may be lengthy and time consuming (considering the current political instability of the country). In conclusion, when dealing property of considerable value, engage an expert, have all required documentation up-to-date and follow the due process of law upon paying the required stamp duty and not rush or to take any decision in a haste manner. I hope I have been able to endow with some assistance to you and your family members.

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# Demand and supply lead to trafficking

“Demands for sexual exploitation, cheap labour and domestic workers, organ removal, illicit adoption and forced marriages, begging or exploitation by armed groups all fuel human trafficking,” the United Nations Special Rapporteur on trafficking in persons, Joy Ngozi Ezeilo, said in a special report to the UN Human Rights Council. “However,” the human rights expert underscored, “the demand side should not be understood merely as the demand for sexual, labour or other services of victims of trafficking, but rather more broadly, as an act that fosters any form of exploitation that, in turn, leads to trafficking.”



“Measures taken by States to discourage demand have often focused exclusively on demand for commercial sexual exploitation, particularly of women and girls, and neglected other forms of demand, such as demand for exploitative labour and sale of organs,” Ms. Ngozi Ezeilo noted.

In her report, the human rights expert urges Governments worldwide to broaden their perception of the problem, stressing that the demand side of trafficking generally refers to the nature and extent of the exploitation of the trafficked persons after their arrival at the point of destination, as well as the social, cultural, political, economic, legal and developmental factors that shape the demand and facilitate the trafficking process. “States have a responsibility to protect against human rights abuses, including trafficking in persons and exploitation of persons by third parties, including business enterprises and criminal associations, through appropriate policies, regulation and adjudication,” she said.

The Special Rapporteur also emphasized that Governments should ensure that “all busi-

ness enterprises within their jurisdiction will respect human rights throughout their operations, both at home and abroad, and take appropriate action to stop trafficking in persons or the exploitation of persons from occurring regardless of the size, sector, operational context, ownership and structure of the business enterprise.” “Businesses must be seen as an important partner in the fight against trafficking in persons,” the Special Rapporteur underlined, recalling her previous report on the issue of trafficking in persons and global supply chain presented last year to the United Nations General Assembly. “In a majority of trafficking cases that

have been brought to her attention, private actors are often implicated particularly in the context of labour exploitation,” she noted.

“Human trafficking is a risk in a wide range of industries and sectors integrated into global markets, including agriculture and horticulture, construction, garments and textile, hospitality and catering, mining, food processing and packaging,” Ms. Ngozi Ezeilo warned. “I would like to stress the necessity of ensuring that anti-trafficking measures do not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, the Special Rapporteur underscored, expressing particular concern about the respect for all human rights while combatting trafficking. “I urge States to actively monitor the impact and possible side effects of measures to discourage demand and take appropriate action to address any unintended side effects which restrict the exercise of human rights,” she said.

SOURCE:

[HTTP://WWW.OHCHR.ORG/EN/NEWSEVENTS.](http://www.ohchr.org/en/newsevents)



# Abduction of bali and alleged torture by BSF

OLI MD. ABDULLAH CHOWDHURY

AS Shukharanjan Bali languishes in Indian Jail, there are contradictory claims made in the media. A few weeks back, Human Rights Watch (HRW) urged Indian government to take all necessary steps to protect Bali, a long-missing witness in the International Crimes Tribunal (ICT) in Bangladesh. On the other hand, BBC Bangla Service has principally relied on court documents to conclude that Bali crossed the border illegally. As Indian court documents revealed, Bali confessed to his guilt for entering into the Indian territory illegally on his own.

According to HRW release, Bali claimed that he was abducted by the Bangladeshi police from the entrance to the ICT courthouse, detained in Bangladesh and then forced by Bangladeshi security forces across the border into India. Bali, however accused BSF of torture. He was supposedly detained and tortured before being held in Kolkata's Dum Dum jail. The accusation of torture against BSF is not new at all.

Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Torture is thus defined in the Convention against Torture (CAT) and both Bangladesh and India are parties to the convention.

Bangladesh had accessed into CAT on 5 Oct 1998. Interestingly, India signed the convention on 14 Oct 1997. Though it has been stated in Article 2(1), “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”; India has largely failed to restrict BSF and there were reported deaths resulting from torture in previous years also.

International human rights groups on many occasions protested brutality of BSF. In December 2010; HRW launched a report, entitled, “Trigger Happy” revealing excessive use of force by BSF at the Bangladesh border. In 2012, Amnesty International also issued a release where they alleged that dozens of Bangladeshis believed to be tortured or ill-treated after being picked up by Indian border security guards. The trend though declined but there were rare incidents where perpetrators were brought to book.

Though it has been stated in Article 10 of CAT, “Each State



Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment”; there has hardly been reflected in the conduct of BSF in the border with Bangladesh. Let alone torture, BSF resorted to firing when they identified suspected behavior in the border line with Bangladesh on many occasions.

Even if Bali crossed the border illegally, this could not have been justified for torturing a person. It has been said in Article 2, “No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture”. As it came out in the BBC Bangla; Bali crossed the border in order to meet his brother.

Responsibility of state in case of an incident of torture has been specified in the CAT. “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”-said in Article 12.

Will there be a prompt and impartial investigation in this case?

THE WRITER IS A HUMAN RIGHTS WORKER