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From 1950 till today; (d) Bangladeshi statutes, ordinances and orders; and (e) central statutes of India.

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On the way to digitalise whole judicial system and legal research,

BDLEX can be used in a wide variety of end markets with users ranging across academic, government, legal and corporate professionals, banks, consulting companies, media houses, research institutes, NGOs and others. To subscribe BDLEX, user has to pay an amount after complying with its terms and conditions. Before becoming a subscriber of BDLEX, one can experience the comprehensiveness of its database and the power of its legal research with a free 24 hour trial. To subscribe BDLEX or experience free trial, anyone can visit at: www.bdlex.com.

Last but not the least, for the purpose of integrating and optimising the database to work flawlessly with a company or law firm's IT department by providing training and answering questions to make users' research seamless; BDLEX offers a complete pre- and post-sales support through its office in Dhaka and back-end support from India.

-BY LAW DESK.

'murder after rape'

NAUREEN KARIM

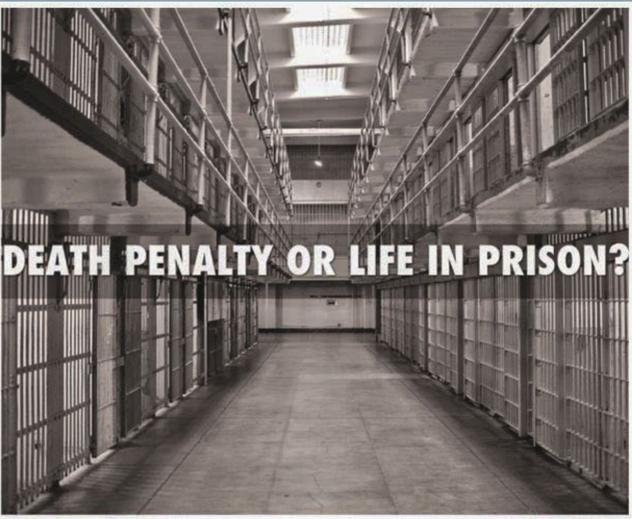
HAVING law background, many of us often face the question that whether death penalty has been abolished in Bangladesh after the recent debate concerning *Shukur Ali's case*. The Supreme Court of Bangladesh on 5 May 2015 ruled over the unconstitutionality of certain provisions regarding mandatory death penalty for the offence of 'murder after rape'. This rule in *Bangladesh Legal Aid and Services Trust (BLAST) and others v Govt. of Bangladesh and others* has given rise to confusion in the society. Same question has been evoked even

Oppression Act of 2000; and section 303 of the Penal Code of 1860. According to sections 6(2) and 6(4) of the Act of 1995, the Court is empowered to award death penalty for the offence of 'murder after rape', if the accused gets proved guilty. Similarly, section 303 of the Penal Code authorises the Court to punish an accused with death penalty, if he/she is found guilty of committing murder while serving his/her sentence of 'imprisonment for life' in prison.

These legal provisions are declared unconstitutional as they violate articles 7 (constitutional

In 2005, a renowned human rights organisation BLAST filed a writ petition (see, *BLAST and another v Bangladesh and others*, Writ Petition No. 8283 of 2005) challenging Shukur Ali's sentence and constitutionality of section 6(2) of the Act of 1995. The High Court Division delivered its judgment on 2 March 2010, in which it declared section 6(2) unconstitutional on the ground that the provision of awarding mandatory death penalty curtails the discretionary power of the Court. By time, this Act of 1995 was also repealed in 2000.

However, the High Court Division upheld the verdict of the



The Court has now the discretion to award the offender with death sentence or life term imprisonment – under the Act of 2000 – depending on the gravity of

throughout social media.

Legally speaking, the provision of capital punishment for this heinous crime has not been abolished by the recent decision of the Supreme Court; but it still remains with an option of life term imprisonment and fine as punishment if death sentence is not awarded to the offender. So, this is upon the Court to grant death penalty or life term imprisonment after analysing the facts and evidences of each case.

The Prevention of Oppression against Women and Children (Special Provisions) Act of 1995 was repealed in 2000 by the Prevention of Women and Children Oppression Act of 2000 (as amended up to 2003). Section 34(2) of the Act of 2000 provides that though the Act of 1995 has been repealed by the current Act; the cases which are pending or filed under the Act of 1995 will be tried and disposed of under the previous Act, i.e. the Act of 1995.

The Appellate Division of the Supreme Court of Bangladesh declared unconstitutional the following legal provisions in BLAST case: sub-sections (2) and (4) of section 6 of the Prevention of Oppression against Women and Children (Special Provisions) Act of 1995; section 34(2) of the Prevention of Women and Children

supremacy); 26 (laws inconsistent with fundamental rights to be declared unconstitutional); 27 (right to equality before law); 32 (right to life); and 35 (prohibition on cruel and degrading treatment or punishment) of the Constitution of People's Republic of Bangladesh. However, under the Act of 2000 there remains two options for the Court to punish the offender with – either capital punishment or life term imprisonment with fine of taka one lakh. Moreover, the Court is directed to decide on the question of punishment after considering the gravity of the crime.

On 11 June 1996, Shukur Ali, a 14-year old boy living in Manikganj, raped and subsequently killed a 7-year old girl. Both the accused Shukur Ali and the victim deceased girl were children as per the then Children Act of 1974 (that has been revised in 2013). On 12 July 2001, the trial-Tribunal established under the Act of 1995 found Shukur Ali guilty under sections 6(2) and 6(4) of the Act of 1995 for the offence of 'murder after rape', and sentenced him with death penalty. Later, on appeal filed by Shukur Ali, both the High Court Division and the Appellate Division of the Supreme Court upheld the judgment of the trial-Tribunal.

trial-Tribunal and stayed the execution of Shukur Ali's death penalty until an appeal in the Appellate Division gets disposed of. In this regard, the Appellate Division of the Supreme Court on 5 May 2015 decided that the offenders could be awarded with capital punishment or life term imprisonment with a fine of maximum one lakh Taka for killing the victim girl after rape, by abandoning the provision of mandatory death sentence for the offence under the Act of 1995.

On 3 August 2015, the Appellate Division in deciding on a review petition commuted the death penalty of Shukur Ali by awarding him with life term imprisonment. A four-member bench of the Appellate Division headed by Honourable Chief Justice Mr. Surendra Kumar Sinha issued the order after disposing of a petition filed by Shukur Ali seeking review of his death penalty.

The Supreme Court of Bangladesh has declared mandatory death penalty unconstitutional under the Act of 1995. However, the Court has now the discretion to award the offender with death sentence or life term imprisonment – under the Act of 2000 – depending on the gravity of the offence.

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WITH an aim to provide people with a single-point source of accessing diverse legal knowledge, Manupatra brings its vast technical and operational know-how to Bangladesh with BDLEX. BDLEX is an online database and offers a comprehensive research tool to the individuals concerned with legal profession and legal research. BDLEX's initiator Manupatra has a reputation of being one of the pioneering companies that previously brought top-notch digital legal research tools to India. Having created the largest and most comprehensive online resource of primary documents, proprietary analytical content including commentaries, treatises, digests, editorial enhancements in India; Manupatra now offers this online-hub of legal resources to professionals in Bangladesh through BDLEX.

Enabling faster and better legal research, BDLEX offers not only domestic case law and legislation, but also a vast regional (India and Pakistan) repository. It has brought an integrated approach to the informational needs of people: a service-based solution which includes customised content integrated with personalised tools, training and support.

BDLEX is considered to be an ideal solution which takes no shelf-space to store. It is not tied to a single machine nor is limited by the time of day. Basically, it offers the luxury of access anywhere and anytime. Currently, BDLEX provides: (a) Bangladesh case laws since 1970; (b) Relevant Indian and Pakistani case laws of 1870-1969; (c) Indian Supreme Court's judgments



Write-up Competition

To celebrate Human Rights Day 2015, **LAW & OUR RIGHTS**, The Daily Star is pleased to announce a short legal write-up competition for all law enthusiasts, learned and right activists.

The competition is open to anyone with legal and human rights knowledge.

The write-up should be based on any of the following themes:

- a) Human rights issues in Bangladesh that is yet to be visited; and
- b) Challenges to implement human rights through UN mechanisms.

Guideline:

- The length of each write-up should not exceed 700 words.
- The write-ups must be original in writing and sufficiently analysed.
- One individual can submit only one write-up.
- Any plagiarised or already published write-up will not be considered for participation in this competition.

The best two write-ups will be published in special supplement of Law and Our Rights, The Daily Star after reviewing by distinguished personnel of the legal arena.

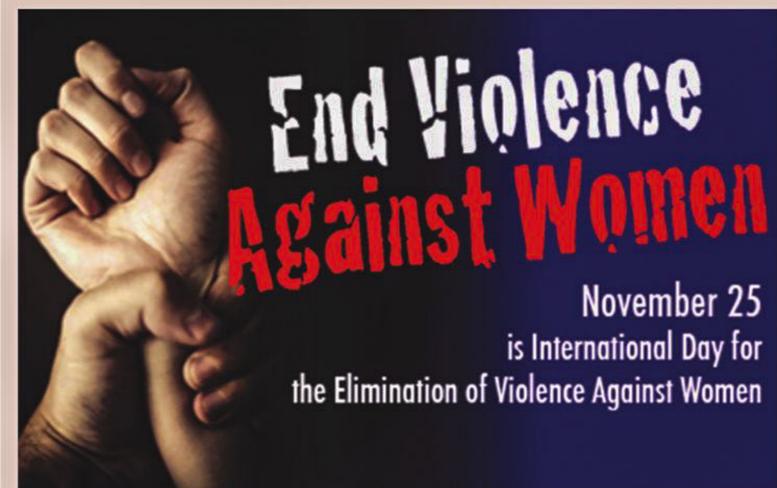
The write-up must be submitted by December 3, 2015 at: dslawdesk@yahoo.com

10th DEC INTERNATIONAL HUMAN RIGHTS DAY



OBSERVING THE INTERNATIONAL DAY FOR THE ELIMINATION OF VIOLENCE AGAINST WOMEN

The silence that enables perpetuation



KARISHMA ZEENAT

As a nation, we have suffered trials and tribulations; as is true of all nations. Yet the purpose today is not to discuss the commonly debated issues: it is to discuss the trials and tribulations of 58% of our population. Bangladesh is not an overtly gender biased nation: the country has voted into power, women leaders for over two decades now. One can also notice the rising

rates of women in all strata of the workforce, in both the rural to the urban settings of the economy. Yet there is a salient problem that exists, despite the strides taken and achieved by women nationwide: this problem, or social disease, is gender violence; which affects women from all segments of society, and one that we as a nation cannot seem to eradicate.

Despite legislations, focusing on each aspect of gender violence, for the last 15 years,

gender violence continues to persist. And contrary to popular thought, it is not contained within the lesser privileged, lesser educated, or the rural population.

Gender violence exists everywhere. It only depends on who chooses to speak about it and who does not. It depends on misconstrued ideas of shame and honor; of what society should know and what we deem they should not. Gender violence in Bangladesh is multi dimensional, it perpetuates due to social dogma, which in turn leads to incapacity to implement the laws designed to protect gender rights.

One can draw a connection between social dogma and the incapacity of legal implementation. It is society and its members that ultimately determine social ideology and thereby as well its tenacity towards equity. In a society, where gender disparity is ingrained, not only in social deviance, but also social norms and practice, can equity exist?

In 2012 a graduate of BUET University and a PhD candidate enrolled with the University of British Columbia, was subjected to horrific violence at the hands of her spouse. The attack nearly took her life and led to complete loss of sight. The victim was a highly educated woman, with career aspirations and opportunities that placed her outside of the cliché of those that we deem as the only sufferers of domestic violence. She was neither illiterate, nor was there any reason that could have prevented

her from reporting the abuse, which is applicable to the law passed in 2000, "The Prevention of Suppression of Women and Children" as well as the "Domestic Violence Prevention and Protection Act" 2010. Given the severity of the attack, it can be assumed that this was not the first instance; although the legislation of 2000 does not focus on domestic violence, it does contain mandatory punishment for those that cause bodily harm to women. So what was it that prevented a woman of her credentials to not report such attacks?

In 2015, the victim of likewise violence was a Master's student at Dhaka University, married to an educated service man. This gives the presumption that the malefactor was not from an impoverished background and had some sense of the law. However, the victim had to be admitted into DMHC due to the injuries she sustained after being brutally beaten by her in laws and her spouse. When she called her father and brother for help, they were unable to rescue her and therefore the police were required to intervene in the situation. Fortunately, the victim survived. The abuse was for demand of dowry, a clear violation of the law, which prohibits dowry claims, or acceptance of any form of monetary and/asset gain for the prolongation of a marital relation. So why would an educated service man not be aware of that?

The reason for mentioning these

instances is due to the background of the women victimized, each educated, each married to educated men; yet social ideology led to these horrific offenses, and caused these women to remain silent about it till it was too late. If they cannot report abuse what about the hundreds and thousands of women, from lesser privileged backgrounds?

Although I/NGOs and other civil society organisations have tried to do their fair share, with tenacity and dedication, such campaigns will never have the impact unless society believes in them. According to Ain O Shalish Kendra there were an estimated 488 cases of domestic violence last year; and from those 256 women lost their lives.

It is time therefore to ask ourselves, as a society and a nation, what can we do to stop the dogma that allows such actions to persist. Why is the law not implemented to ensure that all cases are tried in accordance to due process? It is time to ensure that dogma that has such tremendously horrific consequences are changed; that women stand up for each other, that gender sensitivity becomes practice, and equity does not remain theoretical. Laws are not legislated so as to remain on paper, they are meant to be implemented so that what is written on paper is reflected in everyday life.

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