

**LAW INTERVIEW**

**WOMEN'S RIGHTS**

*No time to wait for a miracle to happen*



Khandaker Farzana Rahman is a Lecturer at the Department of Criminology, University of Dhaka. Her research interest includes terrorism and counter terrorism, gender empowerment, crime and criminal justice. She is one of the trainer consultants in ALDI (a leading global discount supermarket chain) Factory Advancement Project. Law & Our Rights talks to her on the following issues concerning women's rights and gender equality.

**Law Desk (LD):** In Bangladesh, a large number of women is facing sexual harassment and domestic violence. What are the reasons behind such violence and harassment?

**Khandaker Farzana Rahman (KFR):** From a working woman's perspective, this crisis is all about the conflict over exercising power between a woman and her husband or in-laws. Power structure or power hierarchy basically works as an overall system of influence within a particular group. Now if you could just substitute 'the group' with 'a family', marital crisis is bound to arise because of any instance of conflict or divergence within it.

Think about a working woman who goes to her respective place of work and interacts with different people. She becomes economically solvent; or let me use the word 'empowered'. Eventually, she tries to participate in the decision-making of her family. She considers this as one of her rights. That's the starting point for the conflict within the system to arise. A husband and a woman's in-laws believe that making decisions doesn't come within the ambit of a woman's responsibilities. Traditionally the area of that ambit has been determined by the society. A husband's decisions are always

thought to prevail over that of his female counterpart. A little change in the well-established structure gives birth to frustration in men and hence the violence.

**LD:** Talking about the domestic violence, what about those who are in an inferior position in terms of education and financial solvency?

**KFR:** When it comes to the rural families, women are more likely to be tortured because they are not always educated or economically empowered. And when they are not as such, they don't have the ability or don't even feel the urge to raise their voices against domestic violence or harassment. Somehow, the helplessness of these women feed the ghosts of patriarchy.

**LD:** Speaking of patriarchy, critiques are arguing that the preoccupied mindset of patriarchy has been reflected in our primary text books. What do you think about it?

**KFR:** Before the textbook issue, let's just take one step backward. In our country, almost all the parents buy their sons wheeled toys, guitars and toy guns. For girls, they prefer buying dolls, kitchen utensils or apparels. Apparently this doesn't seem to be an example of gender stereotyping. But in fact, it truly is one. The children, thus, from the very

beginning of their lives, learn to search for an identity based on their sexes. Now coming back to the text book issue, it has become a politically controversial one. Textbooks in which the patriarchal mindset of the society gets reflected does the same thing to a child that gender bias toys do to them. The text can seriously hamper a child's psychological growth. As a result, a child grows up with a gender-specific identity and not with that of a 'human being'.

**LD:** Recently we observed that women are getting engaged in terrorist activities. Do you find any nexus between the vulnerability of women and their engagement in terrorist activities?

**KFR:** When we study the role of women in terrorism, we get to learn things which are simultaneously interesting and terrifying. Terrorists are basically puppets in the hands of a handful of people. The people, who are behind the show, consider women to be extremely beneficial to successful terrorist operations. An incident gets utmost media attention when a woman is involved therein. Thus a female terrorist can be the most powerful catalyst for disseminating terror. Once the men in the family get brainwashed, they successfully try to get the vulnerable

and uneducated women within the vicious orb as well.

**LD:** In the wave of emerging terrorism, how would you define the role of women to combat terrorism?

**KFR:** Mothers are strategically the first to deal with their children's fear, frustration and anger. I think a mother can understand the potential threats and address this issue through de-radicalisation techniques within the family. However, this is not possible only by herself. Other social institutions need to stand strong with her. Unfortunately, in developing innumerable popular misconceptions too, a mother plays a role, a vital one. Ignorance, together with carelessness of the mothers, encourages terrorism.

**LD:** The theme of this year's International Women's Day is 'Be Bold For Change'. What would be your suggestion to materialise this theme in the context of Bangladesh?

**KFR:** This is high time a change came. And it's not the time to wait for a miracle to happen. Rather the women, themselves need to be the changemakers. The development index, among other factors, helps us get our hopes up. Sectors for the working women are increasing day by day.

Society, because of its inherent patriarchy, surprisingly still tries to make us think that certain jobs are not for the women to participate in. A woman is thought to be best suited for the job of a teacher or a doctor. More surprisingly, a doctor is considered more likely to be a gynecologist. The women and none else can break these stereotypes. Only they can prove these established norms to be wrong and futile. Let them be bold and let them make the decisions. A change is bound to come.

**LD:** Thank you very much.  
**KFR:** You're welcome.

**LAWS TOUCHING THE LIVES OF WOMEN**

**Marriage and Family, and Violence against Women**

- ❖ The Child Marriage Restraint Act 2017
- ❖ The Dissolution of Muslim Marriages Act 1939
- ❖ The Muslim Family Laws Ordinance 1961
- ❖ The Muslim Marriages and Divorces (Registration) Act 1974
- ❖ The Domestic Violence (Prevention and Safety) Act 2010
- ❖ The Dowry Prohibition Act 1980
- ❖ The Hindu Marriage Registration Act 2012
- ❖ The Hindu Women's Re-marriage Act 1856
- ❖ The Hindu Married Women's Right to Separate Residence and Maintenance Act 1946
- ❖ The Christian Marriage Act 1872
- ❖ The Divorce Act 1869
- ❖ The Special Marriage Act 1872
- ❖ The Maintenance to Parents Act 2013
- ❖ The Acid Control Act 2002
- ❖ The Acid Violence Prevention Act 2002
- ❖ The Suppression of Oppression against Women and Children Act 2000
- ❖ The Evidence Act 1872
- ❖ The Code of Criminal Procedure 1898

**Preventing Commercialisation of Women**

- ❖ The Human Trafficking (Prevention and Protection) Act 2012
- ❖ The Pornography Control Act 2012
- ❖ The Overseas Employment and Migrants Act 2013
- ❖ The Labour Act 2006

**Women's Right to Property**

- ❖ The Married Women's Property Act 1874
- ❖ The Hindu Women's Rights to Property Act 1937



**Assailing the rape victim's character**

PSYME WADUD

**SECTION 155(4)** of the Evidence Act, 1872 allows evidence of the victim's immoral character to be offered by the defence. The rationale behind this archaic provision is twofold - to prove the likeliness of the victim to consent to the conduct charged and to prove the victim worthy of disbelief. The character of the alleged rapist cannot be questioned unless he takes advantage of the 'mercy rule' and offers evidence of his own good character. This is applicable to all the accused persons in criminal proceedings.

This is an utterly outdated approach and in this context, Bangladesh lags behind many countries including the USA, the UK, Canada, South Africa, Scotland, Singapore and India. They have already taken and/or changed their stances considerably. In India, questions regarding previous sexual experiences have expressly been made irrelevant in the context of sexual offenses. Keeping pace (!) with Bangladeshi legal system, among others, Pakistan still allows impeachment of the rape victim's character.

In the wave of a nationwide movement, a legislative change was brought about in the USA. The underlying idea was to limit irrelevant queries digging deeper into the rape victim's character. Introducing a special exception for the cases of sexual offenses only, the rape shield laws allowed

Taking a holistic approach and learning from some counterproductive stands taken by different countries, a possible way out can be suggested for Bangladesh. The provisions of producing character evidence cannot straightaway be repealed overnight. That way, legal practice might devour the reform intent as it was witnessed by India.

Character evidence is offered by bringing the victim's previous sexual history and putting innumerable indecent questions forward. This way, section 155(4) seems to be an exception to section 151 which imposes a bar on asking indecent and scandalous questions. An argument in favour of this exception is to prove the likeliness of giving consent, the core fact in issue in a rape case. Harping on the same strings, technically it can be said that the likeliness of threatening the victim to endure such a gruesome conduct can be proved only through impeaching the moral character of the accused.

Like that of the USA, an exception to the general rule of not questioning the character of the accused thus can be introduced in cases related with sexual offenses only.

The shield should be lowered for both the parties. Character evidence can be produced only upon the acceptance of an application made to the Court. The burden to prove its probative value should be on the party asking for it. While

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the prosecution to offer evidence of the alleged rapist's prior sexual misconducts.

Introducing the exception similar to that of the USA, South Africa has gone one step ahead. Between two of the parties, whoever wants to offer character evidence, has to make a formal application to the Court. The burden is on the defense or prosecution to show that the opposition's character evidence has significant value. Additionally, the court has to cautiously follow certain guidelines in order to determine if the evidence outweighs its prejudicial effects.

accepting or entertaining a particular application, the court should play an extremely cautious and vigilant role. This can make the trial at least less of an ordeal for the victim.

The law itself treats a rape victim with suspicion judging her subjective sense of 'morality' and categorically divides the women into two groups, let alone the society. It is high time we started thinking about a change to come.

**THE WRITER IS A REGULAR CONTRIBUTOR OF THE LAW DESK, THE DAILY STAR.**



**Stop torture to protect women's dignity**

EMRAAN AZAD

**VIOLENCE** against women is strongly condemned in almost all national constitutions and international laws. Violence against women has many forms. Torture - both physical and psychological - is a common one. To prevent domestic violence, the government of Bangladesh enacted a law in 2010 called the Domestic Violence (Prevention and Protection) Act. In the same year, the Supreme Court of Bangladesh handed down a landmark decision in the case of *Bangladesh Legal Aid and Services Trust (BLAST) v Bangladesh* reported in 63 DLR (HCD) (2011) p. 1, declaring the imposition of extra-judicial punishment, or say torture, in the name of executing Islamic Sharia/Fatwa (religious dictum) unconstitutional and illegal. The case came to one High Court Division bench of the Supreme Court in the form of a Public Interest Litigation when numbers of news concerning violence against women were appearing in the media on daily basis. The news drew the attention of the Court which seriously dealt with the matter by calling upon the State agencies concerned. The Court found that women from villages are mainly the victims of extra-judicial punishment and torture in the name of Fatwa. As the question of legality of Fatwa was already then pending before the Appellate Division, the High Court Division in *BLAST* case refrained from making any analysis about it. The Court confined itself only to deal with the constitutionality issue of imposing extra-judicial punishment and torture in the name of Fatwa. Here it is to mention that the legality of Fatwa was first questioned before the High Court Division in another case titled *Editor, The Daily Banglabazar Patrika v District Magistrate and Deputy Commissioner, Naogaon 21 BLD (HCD) (2001) p. 45*. The High Court Division in this case declared Fatwa delivered by any unauthorised person illegal. Subsequently, this decision was challenged in the Appellate Division in the case of *Tayeb and Others v Government of the People's Republic of Bangladesh 67 DLR (AD) (2015) p. 57*. The Appellate Division upheld the



decision of the High Court Division with a further opinion that only properly educated persons may give Fatwa which, however, cannot be imposed on any person. Not to be confused, the Fatwa or Islamic religious edict was declared legal in "religious matters", but Fatwa violating human rights and facilitating torture/punishment was declared totally illegal and a punishable offence.

In *BLAST* case, the High Court Division's decision was based on two particular points. Firstly, the Court believed that the imposition of punishment on any person is an exclusive legislative authority of the judicial forum. No other entity or institution can impose punishment on a person unless he or she is proved guilty by a competent Court or Tribunal. Since Salishs in village are not legally recognised judicial forum under any law, the imposition of punishment is not legal as well. The Court specifically said that these Salishs were not found as village courts or arbitration councils under existing law. Rather these Salishs were alleged to be run by self-proclaimed religious leaders and elders having no legal recognition.

Secondly, the Court found that imposition of extra-judicial punishment is nothing but inflicting torture upon a human being. According to international human rights jurisprudence, the idea of human rights suggests each State not only to protect rights of its citizens, but also to respect

and protect human dignity of each person. When women are inhumanly beaten, whipped and tortured by private persons having no legal authority, human dignity and dignity of women is simultaneously violated. Such violence does not warrant any safeguard either under the Constitution of Bangladesh or any international law. Precisely, article 35(5) of the Constitution prohibits "torture or cruel, inhuman, or degrading punishment or treatment". Again, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment confirms that freedom from torture is a fundamental human right and the prohibition of torture is an absolute and non-derogable principle of international human rights law. Apart from recognising freedom from torture, the Court explicitly declared the imposition of extra-judicial punishment and torture as punishable offence.

In this judgment, the Court specially highlighted the failure of the State to take preventive measures under international law in order to stop extra-judicially punishing and torturing women. At the same time, the Court reminded the State that its failure to comply with international law amounts to violation of international obligations.

Apart from prosecuting the persons responsible for torturing women in Salishs, the local government and law enforcing agencies were directed to take preventive measures ending such culture of torture. To raise people's awareness, the Ministry of Education was instructed to include reading materials in the syllabus discouraging the imposition of extra-judicial punishment and torture in the name of execution of Fatwa.

Almost seven years have passed since the decision was delivered. Still we see news of torture facing women in the name of Fatwa. It is hoped that government will increase preventive and prosecution measures to combat such a heinous crime and human rights violation in order to protect the dignity of our sisters, the women.

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