

**JUDGMENT REVIEW**

# Life imprisonment verdict A contextual reading

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OUR longstanding perception of 20 to 30 years of "life imprisonment" has been sharply questioned by the Chief Justice of Bangladesh in recent time. The latest judgment of the Appellate Division (AD) in *Ataur Mridha v State* (Criminal Appeal No. 15-16/2010, decided on 14 February 2017) marks the official consolidation of his Lordship's views. His arguments are quite clear and they make sense. "Life imprisonment" as one of the modes of sentencing is endorsed by section 54 of the Penal Code. Section 45, on the other hand defines "life" as the natural life of a human being unless something contrary appears from a given context.

calculating fractions of terms of some punishment. This particular section of Penal Code has continued to fetch our mistaken but longstanding perception of a 30 years' tenure for life imprisonment. The AD in *Ataur Mridha* has successfully refuted the myth. Plainly understood, section 57 is applicable to cases where the court would need to award sentence in terms of fractions of sentence prescribed for a principal offence. Take the offence of 'sedition' for example. Sedition, as per Section 124A is punishable with imprisonment for life. If somebody attempts sedition but fails, the Penal Code would not define the punishment expressly. Rather Section 511 of the Code would require the

Procedure Code (CrPC), and Jail Code and the longstanding perception and practices arising therefrom have fetched a generalised belief that a person sentenced to imprisonment for life would usually be released after spending a maximum of 21-22 years in prison. In this regard, it is important to note that Article 49 of the Constitution concerning President's power to grant pardons, reprieves, respites or remissions of punishments is exclusive and not justiciable (p. 47 of the judgment). The AD also does not see any problem with the section 55 of the Penal Code and section 401 of the CrPC which empower the government to commute an imprisonment for life

remission framework of the Jail Code, it would be a clear violation of law (p. 33 of the judgment). The reasons behind this position are twofold. As a life imprisonment of indefinite duration, the remission earned by a prisoner do not in practice help him, as it is not possible to predict the date of his death (pp. 24-25 of the judgment). Additionally, the Jail Code remission rules being mere 'administrative instructions', they cannot 'stultify the effect of the sentence of life imprisonment given by the court under the Penal Code' (p. 60 of the judgment).

**A context sensitive reading**  
It is clear from the judgment (specifically from p. 77 and onwards), the AD was not concerned with the remission in life imprisonments in general. From the Indian and native precedents referred therein and also from the particular context of the case in hand (*Ataur Mridha's* lawyer was pleading for a commutation of death penalty), it is abundantly clear that the Court was much more focused: "If [this court or the High Court Division] on consideration of the nature of offence committed by the offender and taking consideration of the interest of the victim and the accused, commutes the sentence of death [to imprisonment] till life .... this category of cases would be beyond application of remission" (p. 88 of the judgment).

What could it best possibly mean? Is the Government's commutation power under section 401 CrPC restricted for "all" cases of life imprisonment? Or it is "only in cases where one's death sentence is commuted (by the court) to life imprisonment"? The Attorney General favours the second one. From a contextual point of view, I would also.

**The ground rule**  
Therefore, the ground rule of life imprisonment after *Ataur Mridha* would be like this: life imprisonments are meant for the whole duration of the convict's life. No life convict may be given remission under the Jail Code, Prisoners Act and subordinate rules. A life convict however may be eligible for commutation of sentences under article 49 of the Constitution, section 55 of the Penal Code and section 401 of the CrPC. A death convict whose sentence has been commuted to life imprisonment will not be eligible for remission, commutation, etc. under the Jail Code, Prisoners Act, Penal Code or CrPC. Article 49 however remains unaffected.

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Honorable Chief Justice therefore calls for a plain but combined reading of sections 45 and 54 of the Penal Code. Both taken together, "Life imprisonment" would mean a sentence of imprisonment for the whole of the remaining period of the convicted person's natural life (p. 18 of the AD judgment in *Ataur Mridha*). There is however confusion as regards the exact 'law' that is sought to be established by the AD through this judgment. While some of us see a strict rule of till death imprisonment for all life convicts, the Attorney General argues for a context sensitive reading of the verdict. Several thorough readings of the judgment gave me an impression that the Attorney General is perhaps right.

**Section 57 and "fractions of the terms of punishment"**  
Section 57 reckons "imprisonment for life" as equivalent to rigorous imprisonment for thirty years while

court to award a sentence of maximum half of life imprisonment prescribed in section 124A. But what is "half" of one's life? This time the section 57 would step in. Reckoning "life imprisonment" as thirty years imprisonment, a half-fraction of "life imprisonment" for this case would be fifteen years. The AD here holds that except helping us determine the fractions applicable to offenses like above, section 57 has no other role to play with the tenure of life imprisonment as such. Life imprisonment therefore means "imprisonment for the natural duration of a convict's life" (pp. 50-51 of the judgment).

**Problems of "remission" under the Jail Code**  
Sections 45, 54 and 57 being convincingly resolved, the Court entered the gloomy area of "remission", "commutation" etc. Some provisions of the Penal Code, Criminal

into an imprisonment of either description for a term not exceeding twenty years. A clear position of the AD is that 'in absence of any order of commutation of sentence either under the Penal Code or the Code of Criminal Procedure,' a prisoner sentenced to imprisonment for life is bound in law to serve the life term in jail (p. 20 of the judgment). The AD, however, sees problem in the longstanding practice of remissions awarded to the prisoners under various rules of the Prisons Act and Jail Code. The Court feels that any mechanical conversion of life sentence into one of fixed term by the jail authority is apparently without jurisdiction. If the jail authority reports any life convict's case to the government after the completion of twenty years, the government may consider it under section 401 of the CrPC (p. 34 of the judgment). But if they are being mechanically released after completion of 20 years through the regular

**LAW ANALYSIS**

# Character assassination of rape victims

**ANAM HOSSAIN**  
DESPITE being a heinous crime, sexual offences, specially cases of rape, mostly go unreported in Bangladesh. There are numerous reasons for this to happen. The biggest hurdle appears to be the adversarial court proceeding which is lengthy, complex and even fails to offer adequate protection to the victims of sexual offences. Section 155(4) of the Evidence Act 1872 allows the defence counsel in a rape case to show that the victim was of generally immoral character in order to impeach her creditworthiness in a court. While it is understandable that the burden of proving the offence of rape rests with the prosecution and the presumption of innocence lies in favour of the accused, it is utterly degrading and humiliating for the victim.

Ironically, however, Bangladesh has chosen to continue with the doomed legacy! In UK, section 41 of the Youth Justice and Criminal Evidence Act 1999 prohibits the accused from questioning the complainant or adducing any evidence about her sexual behaviour without the leave of the court. In addition, 'sexual behaviour' has been

evidence is to impugn the credibility of the complainant as a witness. Under section 228A of the Indian Penal Code 1860, disclosing the identity of a rape victim is a punishable offence except in very limited circumstances. The Criminal Law (Amendment) Act 2013 brought about the rape shield law in the form of section 146 of the Indian Evidence Act

The court will have to play an extremely cautious and vigilant role while considering such an application. This is unlikely to hinder the defendant's right to a fair trial since the burden of proving the offence of rape still rests with the prosecution beyond reasonable doubt. On the contrary, the non-application of a rape shield law violates a woman's right to privacy by



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Almost as old as 150 years, section 155(4) is no doubt an archaic law which requires significant reform. Bangladesh is in need of 'rape shield' laws which prevent questioning the victim about her past sexual morality or behaviour except in rare circumstances. Such laws also prohibit the publication of the personal details of the victim. Rape shield laws are common in various jurisdictions including, but not limited to, Australia, Canada, United States of America (USA), United Kingdom (UK), South Africa, Scotland, Singapore and India. Most of these jurisdictions carried out rigorous law reform process to protect victims of sexual offences from being questioned about their character recognising the prejudicial impact of adducing bad character evidence. Section 155(4) is a relic of the British colonial period. UK and Indian legal systems, which heavily influence the legal system of Bangladesh, have repealed this provision already.

defined so widely that even evidence of mere flirting would ordinarily be encompassed within its definition and as such offering maximum protection to the victim. The court will not grant a leave unless specific exceptional circumstances arise under sub-section (3) or (5) and where refusal of leave might risk rendering of an unsafe conclusion by the jury. The 1999 Act imposes further restrictions, such as that the questions must relate to 'specific' instance(s) and that no question shall be asked if it appears to the court to be reasonable that the purpose or main purpose behind such question or

1872. It is worth noting that section 146 provides an 'absolute' rape shield without specifying any circumstances when the rape shield would not be applicable. It is high time for Bangladesh to also introduce similar rape shield laws. Though it may not absolutely prohibit evidence/questions of past sexual behaviour of the victim, it may require the defence to make an application for leave of the court before adducing such evidence or asking such questions. The leave, however, may only be granted in limited circumstances without attacking the credibility of the victim.

allowing her personal life to be put on public display during a rape trial. With day and age, Bangladesh as a society is becoming more matured. People are now openly discussing and debating serious issues like rape, sexual assault, consent, etc. on the social media, which were previously a social taboo. While the society is adapting to the needs of the 21st century, it is high time section 155(4) should also go through a robust change for ensuring gender justice in the society.

THE WRITER IS A PRACTISING BARRISTER.

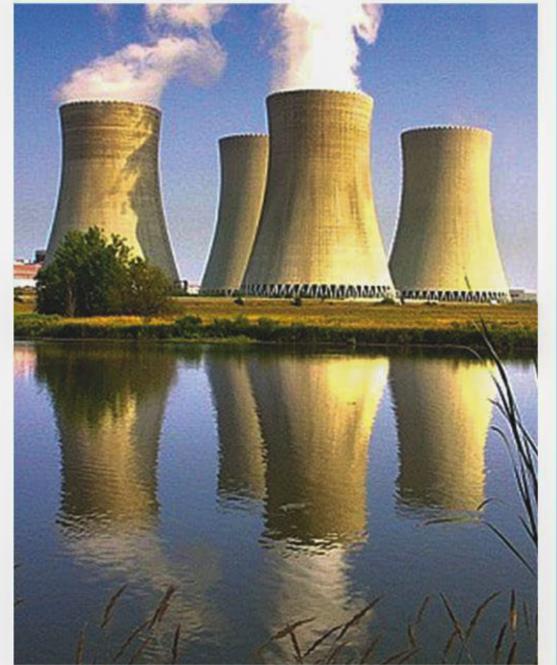
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# FUTURE OF NUCLEAR ENERGY IN BANGLADESH

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ENERGY, being the pre-requisite for all developments, is inevitable for emerging economies like Bangladesh to continuously run all the development activities smoothly. Most countries have been exploiting popular and common options e.g. fossil fuels and renewables to generate energy based on their socio-economic capabilities. Simultaneously, in developed countries, energy generation from nuclear reactors has garnered significant attentions as sophisticated alternative since it apparently promises to produce cleaner energy. With the first nuclear plant established in Russia in 1954, so far more than 30 countries have been generating power from total 452 nuclear reactors. France with 58 reactors supply 72%, USA with 100 reactors supply 20%, Slovakia generates 54%, and Hungary and Belgium generate 51% of their national electricity demand. Nevertheless, on the dark side of the story, even after having adequate access to resources, competent manpower and logistics, after the tragic disaster of Japan's Fukushima Daiichi reactor in 2011, countries like Germany, Italy and Switzerland have decided to stop nuclear energy production referring nuclear power generation risks unacceptably high. Japan has 43 reactors yet after the said disaster, public opinion survey revealed the serious unwillingness of the participants in welcoming energy from nuclear reactors. Very recently, Vietnam has scrapped two prospective nuclear power plants capable of generating 4000MW on the ground of danger to the environment. Thus, even though nuclear energy is perceived by many to be the best option in energy production, it requires expert and sophisticated skills to tackle all possible technical, financial, and institutional challenges.

Bangladesh government has started the process to generate nuclear power in a couple of months in collaboration with Russian Nuclear Energy Corporation, ROSATOM. The journey which was originally started in 1961 is now in the final stage to kick-off at Ruppur in Pabna District. While the initiative taken



by the government is genuinely praiseworthy, there are some serious concerns too as nuclear energy production has to undergo dangerous processes. The economic competence and dense population of the country with constant threat of natural disasters round the year may be handled positively as neighboring countries like India and Pakistan run 22 and 4 reactors respectively. Nevertheless, a successful atomic power program involving a broad framework including provisions on nuclear establishments, pool of competent human resource, facilities, investigation bodies, administrative facilities, government divisions with atomic skill, and instructive organisations with implementable disaster response programs is highly desired for Bangladesh. A very strong legal framework with the experiences of nuclear superpowers like USA, Russia, China and Japan may ensure the success of such program. Apparently there is dearth of authoritative and reliable information available in the public domain regarding this initiative. The Nuclear Power Company of Bangladesh is established under the Nuclear Power Plant Act 2015. Even though there are some general provisions on risks and safety under the Bangladesh Nuclear Energy Control Act, 2012, so far no comprehensive law to deal with the risks, safety and possible liabilities arising out of nuclear power plant has been adopted. With these risks and safety concerns, Bangladesh should additionally consider the possibility of cyber-attacks from the terrorist groups as they have already attempted several times to cyber-attack on nuclear power plants to acquire weapons of mass destruction by hacking the cyber system of nuclear power plants.

Bangladesh's current nuclear policies have relied heavily on closed expert panels without sufficient public involvement. Although highly advanced new reactors may reduce risks based on "inherent" safe technologies, i.e. "passively safe" measures developed by the generation III reactor, for successful nuclear power production, public and stakeholder involvement before the formal operation is fundamental. Failing to do so may develop negative perception and attitude against the program. It is high time that the government consider developing a comprehensive legal framework while the infrastructure development is going on addressing the possible challenges, i.e. risks, safety and cyber-attack regarding the nuclear plant. It may be presumed that due to the customary practice, the detailed provisions, as normally contained in the subsidiary legislations, will be adopted later on. Subsequent enactment of subsidiary law with comprehensive provisions may turn to be suicidal in relation to nuclear energy production. Instead, comprehensive legal framework should come first before the power production. Country like Malaysia has taken such approach, i.e. it has not started the nuclear plant yet, but has already adopted a comprehensive legal framework required to successfully run the program. With the successful running of more than 450 reactors around the world, the countrymen may comfortably welcome the venture, but the need to come up immediately with comprehensive legal framework should not be compromised.

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