

HC verdict on rape, sexual assault cases

Ministries must ensure implementation of directives

IN response to a writ petition filed by rights organisations over the rape of a Garo woman in 2015 and the police's delay in recording her complaint, the High Court has come up with a set of 18 guidelines for ensuring protection and justice for victims of sexual assault and rape, which include some issues in need of critical attention.

The 2015 incident once again highlighted, as we have seen repeated over and over again since then, issues of police negligence and delay in recording complaints, providing victim support, and ensuring a gender-sensitive environment for the victim. The court has ruled that necessary chemical or DNA tests in such cases must be conducted within 48 hours of occurrence and that the police have to record complaints of rape or sexual assault of women and children without any delay and discrimination. The directives also mention that police stations must have a round-the-clock female police official who must be present during the recording of the victim's testimony, among other guidelines for making the victim feel safe and comfortable. Victim support services, interpretation services for those with disabilities, and the issue of discretion have also been covered by the verdict.

We have long stressed for the need for reform of the hostile environment that victims of rape and sexual assault face in trying to get justice—these directives, if properly implemented, should go a long way towards that end. Recently, we also saw the banning of the controversial "two-finger-test". These are steps in the right direction. We commend the HC directives, and hope that the concerned ministries will take immediate measures for their implementation until the required legislation can be passed.

Rising rate of C-sections worrying

Take action against exploitative hospitals

WE commend the state minister for health and family welfare for stating that action will be taken against private hospitals if they are found to perform C-section operations on pregnant women without a valid reason and for taking note of the fact that the rate of C-section operations in private hospitals in the country far exceeds the recommended level put forward by World Health Organization which is 10-15 percent.

The rising rate of C-sections in the country, particularly in private hospitals, is extremely concerning. The Bangladesh Demographic Health Survey (BDHS) 2014 found that a staggering 80 percent of deliveries in private facilities were caesarean. One of the factors driving this trend is of course financial motive as C-sections cost at least twice that of normal deliveries. Another major reason is the lack of trained staff who can carry out normal deliveries and insufficient manpower at clinics and hospitals.

C-section is supposed to be performed if a normal delivery is perceived to be risky for the mother. Factors can range from obesity, diabetes, and maternal age to birth-related complications. Thus C-section is considered to be a lifesaving procedure undertaken as a last resort. However, hospitals in the country seem to be overusing C-sections at a large scale due to the factors stated above. It must be noted that C-sections too have associated risks for both the mother and the child.

While we welcome the state minister's comments, we must say that such assurances are not enough. The government should act upon its words and take punitive action against hospitals that are unnecessarily performing C-sections. There is also a need for trained staff who can perform normal deliveries in health complexes and deployment of educated midwives—as recommended in a UNFPA report—who can play an important role in reducing maternal mortality.

LETTERS TO THE EDITOR

letters@thedailystar.net

Bangladesh should go to ICC

Why did China, Russia, Asean and even Japan not do anything to stop Myanmar and its armed forces from massacring and expelling the Rohingyas? Why instead are they now trying to prevent Bangladesh from taking the matter to the International Criminal Court?

Bangladesh's attempt to solve the crisis bilaterally with Myanmar has gone nowhere and has been a disappointment. Without help from the United Nations and other international organisations, it seems that this problem will never be resolved. This is why Bangladesh should absolutely take Myanmar to the ICC.

ABM Moniruddin, By e-mail

Compensation for negligence

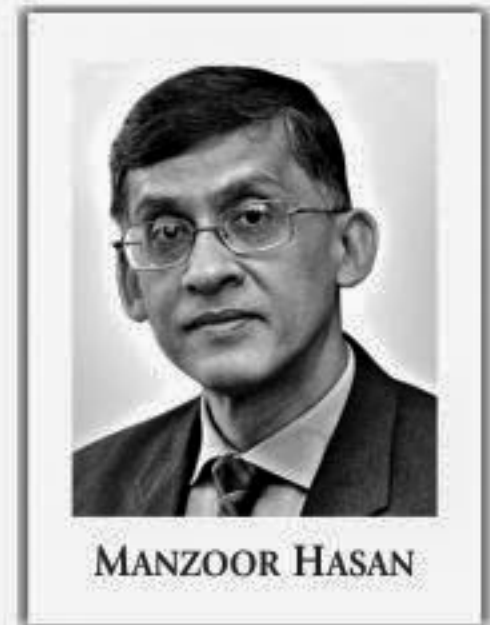
In 1998, Azhar Ali Raza was arrested in a murder case and sentenced to death. The High Court, however, acquitted him in 2012 and the Appellate Division retained the order in 2012. He was supposed to be freed right after the order was given but wasn't because the order did not reach Dinajpur jail for six years.

Raza lost a huge chunk of his life and at least six because of sheer negligence by the authorities. He can't have those lost days back, but the government can at least compensate him for his loss and to help him begin anew.

Tapas Pal, By e-mail

ICC AND ROHINGYA REFUGEES

Bangladesh demands accountability, peace and justice



MANZOOR HASAN

IN "Dhaka, Ottawa and The Hague: Rohingya Convergence" (*The Daily Star*, April 19), I referred to the legal process commenced by the International Criminal Court (ICC) in relation to the arrival of the Rohingya refugees in Bangladesh. On April 9, the Chief Prosecutor of ICC made an application on jurisdiction under the Rome Statute. The question raised was whether the ICC may exercise jurisdiction under the Rome Statute over the alleged deportation of the Rohingya people from Myanmar to Bangladesh. On April 11, the Pre-Trial Chamber gave its favourable decision.

On May 7, a letter was sent by the ICC Prosecutor to the government of Bangladesh seeking the latter's opinion on the issue of jurisdiction by June 11 and June 20 has been set for a closed-door hearing on the jurisdictional question. The ICC Prosecutor has already very eloquently argued that the court has territorial jurisdiction due to the fact that the deportation of Rohingyas from Myanmar involved movement into Bangladesh, which is a party to the statute. According to the Rome Statute, territorial jurisdiction is not limited to the place where the coercive act took place, Myanmar in this case, but to all states involved in the deportation across an international border, concluding at the receiving state, Bangladesh in this case.

The ICC Prosecutor sought opinion from the Pre-Trial Chamber relating to the exercise of jurisdiction for alleged crimes prohibited by Article 7(1)(d) of the Rome Statute relating to "deportation or forcible transfer of the population" as a crime against humanity. Experts believe that in the absence of a Security Council referral, or Myanmar unexpectedly submitting itself to ICC's jurisdiction, this specific crime would be the only jurisdictional hook for ICC on the Rohingya matter.

In addition to the Prosecutor's assertions on jurisdiction, and hopefully Bangladesh will strongly agree with her assertions, the following are some points that Bangladesh could consider in formulating its response:

As a party to the ICC, Bangladesh has a duty to carry out its obligations under the Rome Statute, and to promote and advance the overarching purpose of the ICC in attaining justice and accountability for alleged international crimes perpetrated by Myanmar forces.

The territory of Bangladesh is not merely a recipient of the effects of the crimes but is intrinsically part of the commission of the crimes, given that the conduct of deportation is not complete until the deportees have crossed an international border. In other words, the crime of deportation could not be made out without access to another state. This makes Bangladesh, in plain language, a "scene" of the crime. Bangladesh, therefore, must consider the crimes as having been partially conducted on its territory, hence bringing them within ICC's jurisdiction.

Bangladesh is currently the host to the most important evidence relating to not only the crime of deportation that may fall within ICC's jurisdiction, but far more serious crimes, such as genocide and other crimes against humanity (e.g. murder, rape), and war crimes (e.g. wilful killing, destruction of property, torture, attacks against civilian objects) that are outside of the ICC's jurisdiction due to Myanmar not having acceded to the Court's jurisdiction. Bangladesh is, therefore, uniquely positioned to collect, preserve and analyse this evidence

and has interest in seeking ICC's involvement.

As a sovereign state, Bangladesh's national interest is at stake, and the country has a moral and legal responsibility to exercise jurisdiction over crimes committed across an international border that occur upon its territory, applying its domestic criminal laws. Bangladesh also has an obligation, as a party to the ICC, to prosecute international crimes that occur within its jurisdiction.

The principle of complementarity governs the exercise of ICC's jurisdiction *vis-à-vis* that of Bangladesh over the crimes committed, with Bangladesh having the first responsibility and right to prosecute international crimes.

The ICC may only exercise jurisdiction where Bangladesh fails to do so. In light of this, any view expressed by Bangladesh relating to ICC's jurisdiction may be taken as a statement of the state's intention and willingness to prosecute the crimes nationally. In the case that Bangladesh is unwilling or unable to

refugees in Bangladesh is certainly one of them. Despite such threats, the prime minister took the bold decision to accept and provide sustenance to Rohingya refugees. She has been recognised globally for this decision. "Bangladesh, Burma and the Rohingya Crisis", a recent House of Commons report, observed "the Bangladesh Prime Minister...must be thanked and commended for the way sanctuary was provided to the Rohingya."

The recent victory of Mahathir, who felt obliged to return to politics from retirement at the age of 92, has given him the mandate to establish accountability in Malaysia. This should be a source of inspiration for us in Bangladesh. Prime Minister Hasina and her government now have the opportunity to play a very significant role in the world arena by placing the matter of international accountability of the Myanmar regime's acts *vis-à-vis* the Rohingya before the ICC. As Bob Rae pointed out in his recent report, "Tell Them We're Human", calling for accountability is not a zero-sum



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PHOTO: AMRAN HOSSAIN

prosecute the international crimes, it must refer the crimes to the ICC and support the Court's arguments asserting jurisdiction.

Bangladesh needs to be mindful of the broader interest of justice and accountability while formulating its views on ICC's jurisdiction over the crime of deportation under Article 7(1)(d).

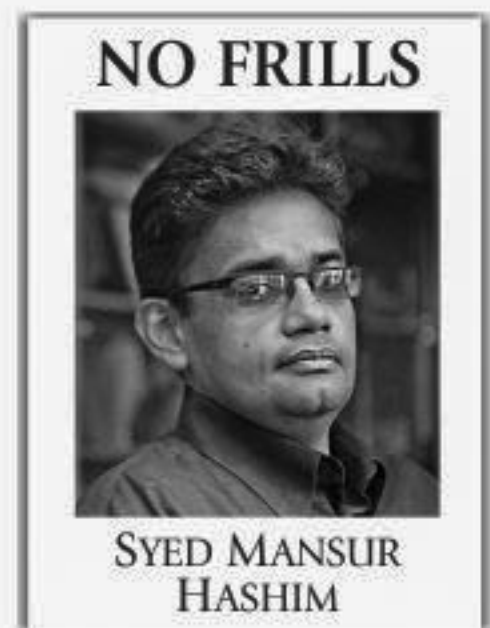
In today's tumultuous world, peace and justice are becoming elusive goals both nationally and among nations. The attainment of peaceful and inclusive societies is now an integral part of the 2030 Agenda for Sustainable Development. Bangladesh has achieved majority of the Millennium Development Goals and has won many other accolades since its independence in 1971 despite formidable odds. Bangladesh is now uniquely poised to achieve middle-income status by 2021. But there are serious threats that could derail Bangladesh from its plan. The presence of Rohingya

game. Rae stated succinctly, "Rights and development must go together."

The government of Bangladesh has to be far-sighted in presenting its case to assist the ICC to advance international law and accountability. Given the fact that Bangladesh has already won the hearts and minds of millions of ordinary people by its unprecedented generosity and hospitality, Prime Minister Hasina's government has to take the moral high ground. Whatever the outcome of the ICC process, history will record Bangladesh's desire for global peace and justice under the leadership of Prime Minister Hasina if the letter and spirit of accountability is embodied in the response to be submitted by June 11, 2018.

Manzoor Hasan, OBE, Barrister-at-Law is the executive director of Centre for Peace and Justice, BRAC University. The views and opinions expressed in this article are those of the author. Email: mhasan56@gmail.com

Seating service: Nothing more than a sham



SYED MANSUR HASHIM

NO FRILLS

BANGLADESH Road Transport Authority (BRTA) had formed an eight-member committee on May 2, 2017 to submit recommendation s for bringing city buses providing the so-called "seating service" under a legal framework. The committee came up with seven recommendations on seating-service buses and 26 overall recommendations on public transport system in late October 2017. Unfortunately, we have not yet seen the implementation of those recommendations in the absence of

chaos that exists in Dhaka's bus services came to the fore thanks to a survey carried out by Bangladesh Jatri Kalyan Samity (Bangladesh Passengers' Welfare Association) last week. What we gather from the survey is that commuters are undergoing a lot of hardship as nearly 96 percent of public buses reach their destinations keeping their doors locked. The situation is worse during rush hour between 7am and 11am and the bitter experience is repeated from 2pm till 11pm. Commuters are barred from getting on or off the buses that are operating on the basis of "seating service". And in the name of offering such service, bus companies are overcharging their customers. This is putting extra pressure on the people of lower-income groups who must travel by bus to get to their destinations as it is the

It is deplorable that the authorities have kept such a nagging problem on hold for so long. Millions of people are being held to ransom by a coterie of transport companies.



The seating service chaos is putting extra pressure on the people of lower-income groups who must travel by bus to get to their destinations as it is the only transport they can afford.

PHOTO: AMRAN HOSSAIN

policy formulation for the sector.

In the meantime, another Ramadan has begun with the city bus services charging their customers as they see fit. It is ironic to see that bus companies feel free to offer seating service whereas no bus company has obtained any license from the authorities to that effect. The

only transport they can afford.

The survey was conducted among 310 public buses at several points of the city for six days to assess the sufferings of commuters, and 82 percent of all passengers expressed dissatisfaction at these irregularities taking place, particularly in the holy month of

Ramadan. While bus operators are overcharging people for the much-vaunted seating service, the survey revealed that 28 percent of bus passengers actually have to travel standing up inside these buses. This speaks volumes about the lack of sincerity and measures by the authorities to bring to heel a chaotic public transport system where owners of private bus services do what they please.

So, a full year has passed and still we have no separate guidelines for seating service. The government backed down last year in the face of bus operators withdrawing their buses from the streets after a drive by the authorities with mobile courts. In the meantime, passengers are left to endure the illegal practices of bus operators charging fares much higher than the government-fixed rate charts. Some of the recommendations that had been put forward included a bus company keeping some of its buses under the seating service with separate fare rate, stoppages and colour for the service. BRTA had also recommended the establishment of a modern control room system to monitor all public buses and new air-conditioned buses with separate

fare rates, relocating inter-district bus terminals outside of Dhaka, setting up city bus terminals, and strict enforcement of traffic rules.

The BRTA organised a stakeholders' meeting on February 14 this year which brought together leaders of transport owners and workers and came to the conclusion that all the recommendations submitted by the committee would not be implemented right now. On April 17, BRTA sent several recommendations to Dhaka Metro Regional Transport Committee (MRTC), which is the authority governing route permit for Dhaka city. So, in essence, what the BRTA did was wash its hands off the issue and we are now told that MRTC will hold another stakeholders' meeting "soon". Given the rate at which these meetings take place and the enormous political influence transport associations wield in this country, one should not hold one's breath for any decision to come anytime soon.

It is deplorable that the authorities have kept such a nagging problem on hold for so long. Millions of people are being held to ransom by a coterie of transport companies who are intent on fleecing commuters. And knowing that complaints against errant bus operators go nowhere, bus owners feel free to charge whatever they want. Now, had the BRTA recommendations been taken into cognisance as good practices, bus operators would have to earmark separate buses for the seating service as per MRTC guidelines. They would be easy to spot as they would be coloured differently and these buses would actually be newer and better equipped to serve premium-paying commuters as opposed to the rickety, rundown buses we have today. While building separate bus terminals will take time, surely the authorities can now take measures that will bring some relief to commuters who are being taken for a ride.

Syed Mansur Hashim is Assistant Editor, The Daily Star.