

JUDICIARY DECIDING RAPE CASES

'Good guy versus bad girl' syndrome

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N Bangladesh, the standard of proof in prosecution of crimes is beyondevery-reasonable-doubt. And any contradiction(s) within the entire fabric of the case can weaken the prosecution by casting doubt on the story propounded thereby. However, over and beyond the alleged truth of the case and the contradictions (if any), the judiciary is expected to be objective and an 'expressed' bias or suspicion towards either of the sides, always militates against such objectivity. Language as well as method of logical deduction can be of significance when such 'bias' or 'suspicion' is sensed and needs to be assessed.

In an old case (Md Abdul Khaleque and others v State) of 1960, it 'seemed' to the court that circumstances (the girl quite frequently lived with her mother coming away from her husband's house) point to the victim's having been involved in extramarital affair(s). The reason behind her raising the claims of rape, according to the Court, 'might perhaps' had been that on the occasion in question, 'marks' which 'could have been the result of passion had appeared on her face which she could not possibly hide.' And in line therewith, the Court went on to assume (!) that some of the accused persons whom the husband suspected as having an illicit affair with his wife, were falsely accused. It is submitted that the assessment of the adduced evidences

could have been done in a different way. Evidences may not prove the case of the prosecution and only this reason suffices to say that the defence wins. Logical deduction - based on assumption and not evidences - giving birth to an alternative story demeaning to the woman in question, only leads the readers to a sense of bias. In another occasion, (Mafizuddin Mandal v State (1962)), the victim could not produce her clothes and told the Court that she washed the same because she did not have any other to wear. It is undeniable that the absence of this evidence did weaken the prosecution's case. However, the Court's opinion to the effect that 'if she was so very chaste, her first



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instinct should have been to preserve the cloth intact at any cost...'does not seem very objective.

In the realm of case-laws related to rape, if even a couple of pro-woman decisions are to be cited, Saleh Muhammad v State (1966) will come out on top. Going quite against the then persisting trend of judicial attitude, it was observed that 'rape is possible without injuries in private parts and presence of spermatozoa is conclusive proof of sexual intercourse but not of rape, for they may have been removed by washing or discharge.' However, one noticeable thing is that in that case, the victim was an 'educated European lady'. This identity of the victim becomes relevant because regarding some defence suggestions (in respect of the victim's past sexual activities), the Court itself opined that those suggestions could be of use in case of 'unsophisticated' girls unlike the victim.

What the Court meant by 'unsophisticated girls' is something which is known to the Court only. If it can be said that victims whom the Court do not find 'sophisticated' enough, easily become susceptible to a male-bias attitude, remains as an open-ended question.

Reference can also be made to some

recent case-laws. In Shamsul Haque v State (2000), the prosecution claimed to be violated by the father of her friend and the Court opined without substantiation that 'it is highly unlikely and unnatural that a father will violate the...friend of his daughter...". Nature of relationship between the victim and the alleged rapist can certainly be taken into account. However, a generalised opinion is something which can always be avoided for the sake of not compromising with objectivity. In another instance (Bazlu Talukder v State (1996)), it 'seemed highly improbable' to the Court that 'someone who wanted to marry the victim, would rape her along with his brother and nephews'. Depending on what specifics or attributes of 'the' defence in the particular case in question, this assumption yielding from a laymanish generalisation, was drawn by the Court, was unfortunately not described.

In another instance (Sohel Rana v State (2005)), when materials on record indicated that the victim was senior to the accused, the Court frowned asking if it 'was possible on part of a boy who was

junior to her...to commit rape on her forcibly'. Further, it went on to opine 'should she not try to resist him....to save her virtue which was more precious to a maiden than the life itself.' In that case, the victim kept the matter a secret for quite a long time. This conduct, according to the Court, did not 'appear to be one of a virtuous girl eager and anxious to protect her virtue.' Keeping the matter a secret can certainly be taken into consideration to suggest that the prosecution's veracity shakes. But to suggest that keeping it a secret is not something that can be done by a 'virtuous and maiden woman eager and anxious to protect her virtue' is something that cannot be termed as a judicious opinion. Use of epithets such as 'virtuous' and 'maiden' only indicates a very parochial perspective.

It can be true for all the abovementioned cases that the evidences and circumstances did not and/or could not lead the Court to find a definite conclusion on the happening of the alleged occurrence(s). This endeavour is in no way to advocate that the decisions were not rightly made. The concern lies only and entirely with the choice of words and lack (or absence?) of a sense of objectivity both of which can affect the decision making in a negative way.

> THE WRITER WORKS AT LAW DESK, THE DAILY STAR.



US must allow humanitarian trade with Iran

HE International Court of Justice (ICJ) on 3 October 2018 ordered the United States to **_** remove any restrictions on the export of humanitarian goods and services to Iran after it challenged new US sanctions in July. Judges at the ICJ ruled unanimously that parts of the sanctions the US imposed on Iran in May were illegal and must be removed.

In May 2018, the Trump administration withdrew from a 2015 nuclear deal the United States signed with Iran announcing renewed US sanctions on dollar transactions, food exports and sales of aluminum and steel. The Iranian government hailed the ruling as proof that "Iran is in the right" but the US said it was not bound by the court's decision and would not ease sanctions. It must be noted that even though the verdict of ICJ is binding, US usually ignores the rulings of ICJ as it lacks enforcement mechanism.

Iran had argued that sanctions announced in May violated the 1955 Treaty of Amity between the United States and Iran. Iranian Foreign Minister Mohammad Javad Zarif called the directive "another failure" for the United States and a "victory for the rule of law." It is "imperative for international community to collectively counter malign US unilateralism," Zarif said. Hours later, Secretary of State Mike Pompeo said the United States is terminating the Treaty of Amity, calling it an "absolute absurdity" given the tensions between the two countries.

The 15-member panel of judges ruled that the United States "must remove" any impediments to the free exportation to Iran of goods required for humanitarian needs, as well as spare parts for civil aviation safety. The measures adopted by the United States, the court said, "may entail irreparable consequences."

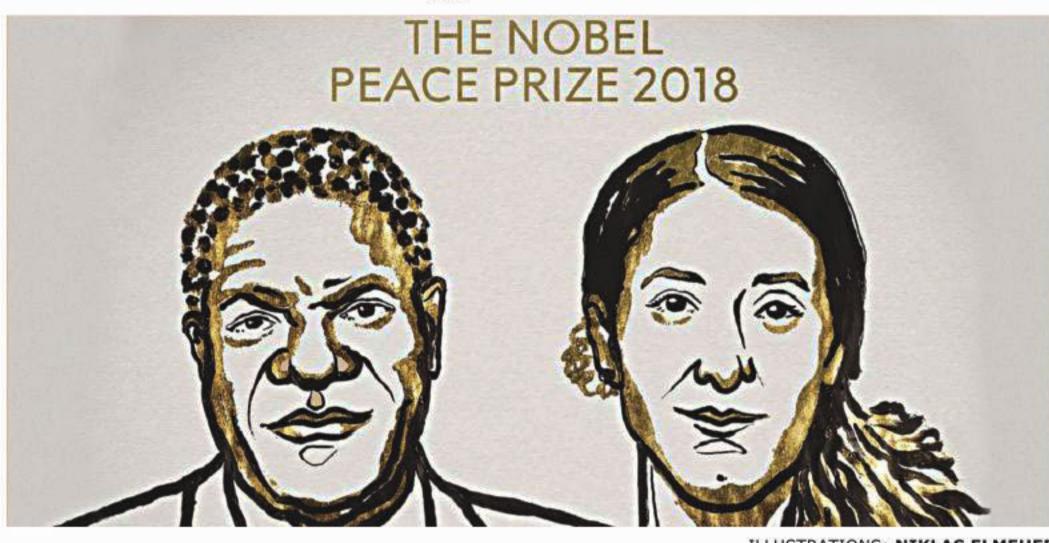
Under the nuclear deal, Iran agreed to curb its atomic energy program in exchange for the lifting of major UN and some US sanctions. That agreement permitted Iranian oil sales, halted penalties on European firms for doing business with Iran and allowed Iran to export things such as carpets, pistachios and other goods.

Mike Pompeo, the US secretary of state, said he was "disappointed that the court failed to recognise that it has no jurisdiction to issue any order relating to these sanctions measures." The court ruled that the US must roll back sanctions that would hamper Iran's ability to important medicine, food, and spare parts necessary for civilian airline safety.

COMPILED BY LAW DESK (SOURCE: WASHINGTONPOST.COM).



Recognition to anti-rape activism



ILLUSTRATIONS: NIKLAS ELMEHED

HE Norwegian Nobel committee said that Denis Mukwege, a doctor in the Democratic Republic of the Congo (DRC, and Nadia Murad, a 25-year-old Yazidi activist, had been awarded the prize "for their efforts to end the use of sexual violence as a weapon of war and armed conflict". The committee said: "Both laureates have made a crucial contribution to focusing attention on, and combating, war crimes. Denis Mukwege is the helper who has devoted his life to defending these victims. Nadia Murad is the witness who tells of the abuses perpetrated against herself and others."

Gynaecologist Mukwege, 63, has spent decades caring for the victims of sexual assault in his homeland. He founded and maintains the Panzi hospital in Bukavu, in the east of the DRC, where he has cared for tens of thousands of women who suffered sexual assault in the country's recurrent civil conflict. Trained as an obstetrician in France, Mukwege over two decades has treated more than 50,000 women and girls. As well as physical treatment, Mukwege created an approach that focused on providing psychological and socioeconomic support to the survivors, as well as founding a legal programme to help them obtain justice.

Beginning in 2013, he and his team had to care for dozens of young girls from the town of Kavumu who were taken from their beds and raped by a militia led by a provincial member of parliament who believed raping children would protect them from their enemies.

Murad was abducted with other Yazidi women in August 2014 when their home village of Kocho in Sinjar, northern Iraq, was attacked

by ISIS. Captured alongside her sisters, she lost six brothers and her mother as the extremists killed the village's men and any women considered too old to be sexually exploited. Murad has used her own story of enslavement and rape by Islamic State to publicise human rights abuses.

She eventually escaped and had shown uncommon courage in repeatedly recounting her own sufferings and speaking up on behalf of other victims, the committee said.

Murad came to Germany in 2015 as part of a special program for female victims of violence and met Merkel in 2016 to discuss her work helping others.

The government of Iraq recognised Murad's courageous campaigning on behalf of victims of sexual violence during conflict. The Nobel committee said that both

Mukwege and Murad had "put their own personal security at risk by courageously combating war crimes and securing justice for victims." Mukwege was in surgery when he heard he had won the peace prize. He learned he had won because he heard colleagues and patients crying. "I can see in the faces of many women how they are happy to be recognised," he said. Murad said, "I share this award with all

Yazidis, with all the Iraqis, Kurds and all the minorities and all survivors of sexual violence around the world.

As a survivor, I am grateful for this opportunity to draw international attention to the plight of the Yazidi people who have suffered unimaginable crimes since the genocide by Daesh (ISIS)."

COMPILED BY LAW DESK (SOURCE: GUARDIAN.COM).



Women's workplace in legal profession

RAIHAN RAHMAN RAFID

HE Constitution of Bangladesh envisages work as a right, assures the equality of opportunity and pledges to ensure participation of women in all spheres of public life. In reality, however, the women are still failing to thrive in the workplaces and spontaneously contribute as equal as the men do. In spite of having all these constitutional promises, the women professionals are often violated and victimised in their workplaces.

Bangladesh Legal Aid and Services Trust (BLAST) recently undertook a project called 'Participation of Women in Establishing their Rights' (PoWER) to identify and address the practical difficulties faced by women legal professionals in courts and workplaces across the country. Research, advocacy and outreach activities including stakeholder dialogues, were held in three different districts - Dhaka, Khulna, and Kushtia, from April 31, 2017 to May 31, 2018 to discover the condition of women profes-

sionals in the field of law practice. There is apparently no separate toilet for them, no daycare or childcare facility for working mothers, and no breastfeeding corner as well. The findings came from the research conducted under the PoWER project by BLAST. A number of 114 legal professionals including judges, lawyers and courtroom staffs shared their gruesome experiences at their workplaces.

The research also found that the local courts are still unfriendly to female lawyers. The woman lawyers are paid less, not trusted with challenging tasks, and the worst part is that they are deprived of family support. Furthermore, the interviewed professionals confessed to being victims of sexual harassment or abuse by the seniors and male co-workers.

The legal professionals themselves are subjected to workplace discrimination. Despite their having conspicuous idea of rights and vast knowledge of laws, this is unfortunate that they are also amongst the sufferers.

One of the three State organs, the judiciary rendered the foremost contri-

bution in patronising women at work-

place, back in 2009. In Bangladesh National Women Lawyers Association (BNWLA) v Bangladesh, the Court provided few guidelines against sexual harassment at the workplace.

The outlined objectives by the judges were to create awareness about sexual harassments, and to inform that such harassment is a punishable offence.

Remarkably, there was a guideline on the removal of the hostile environment towards women at workplaces, and in favour of boosting confidence and trust in women workers that they are not placed in a disadvantaged position in comparison to their male colleagues. The concerned authority was also directed to constitute a complaint committee in

the legal profession would be devastating for the future of the whole country. The principal barrier to establishing the constitutional promises can be adduced to the absence of an adequate environment which could foster the circumstantial growth of women's right to work. Again, implementation of laws is similarly prerequisite. Laws fail to manifest any fruition if not implemented. The sexual harassment prevention and complaint committee to be established in every institution, as mentioned in the guidelines, need to be formed in the Bar Associations very promptly. Most importantly it must function actively, regularly and impartially. Also, in the foundation training curriculum of the Judicial



every institution.

The guidelines were directed to fill in the legislative vacuum in the nature of law, which however did not see the light of implementation in the last nine years.

A recent study by ActionAid revealed that 64.5% of professionals are not even aware of the guidelines directed by the Supreme Court. Whereas, the research conducted by BLAST found that 75% legal professionals in Khulna and Kushtia, and 80% legal professionals in Dhaka are unaware of the guidelines. The status of the guidelines' implementation is also gloomy. But this profession specially requires the primary development as the dissemination of legal knowledge begins from here.

A deplorable condition for women in

Administration Training Institute (JATI), the gender sensitivity issues should be discussed and imparted in both implicit and explicit ways.

Having said that, it is actually the duty of the citizens, as per Article 21(1) of the Constitution, to maintain discipline, perform public duty and observe the supreme law of the Republic. Hence, in as much as the obligation is bestowed on the government, it is also our duty to implement a legislation. Human dignity needs to be perceived, sensitised and exercised so that any man or woman can utilise their potentials beyond any gender identity and according to their merit.

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