The Daily Star

FOUNDER EDITOR
LATE S. M. ALI

DHAKA TUESDAY NOVEMBER 16, 2021, AGRAHAYAN 1, 1428 BS

Ensure justice for the victims of communal attacks

Victims' depositions paint a disturbing picture that demands investigations

IN a public hearing held on Sunday, victims of the recent communal attacks in the Chattogram region alleged that law enforcers stood silently by as looters went on with their mayhem at the puja mandaps during Durga Puja last month. According to the depositions of the victims, it was the failure of police and administrative officials to respond immediately to their calls for help that allowed the miscreants to carry out their atrocities unobstructed. These allegations are extremely disconcerting, and demand serious investigations by the relevant authorities.

The victims also alleged that police have yet to arrest the main culprits who are roaming free in their respective areas, issuing threats to withdraw cases against them. It is another case of victims being victimised again due to the inaction of law enforcers, which seems to have become all too common in Bangladesh. Despite the countrywide protests against the senseless violence that was carried out against minority communities, which led to government high-ups making big promises in terms of ensuring justice, the fact that law enforcers have yet to arrest the known criminals is alarming and raises a number of questions, such as: Who are protecting these criminals from being arrested, and why?

Some of the victims also alleged that the miscreants were not from the area—they were outsiders. They alleged that the miscreants tried to sever generator connections so that they could launch their attacks in the dark of the night, and that many of the miscreants organised themselves by meeting at the offices of the ruling Awami League's associate organisations. Not only do these allegations indicate that the attacks were well-organised, but that they were somewhat planned—and not a result of spontaneous outrage.

Who were the masterminds behind these attacks? What were their intentions? These are questions that the authorities must answer. Moreover, the authorities must investigate and find out why the local law enforcers failed to act promptly when the violence was taking place, why they have failed to arrest many of the miscreants, and why some local government officials have been urging some of the victims to withdraw their cases. Without such actions, we fear that violence against minority communities, which has been on the rise in recent decades, will only continue, leading to the communal harmony in the country deteriorating further—all the while, the instigators and masterminds behind such attacks continue to roam free and pursue their twisted agendas.

Take action against overcharging bus operators

Why should commuters always suffer due to their unruliness?

IMMEDIATELY after the government increased bus and minibus fares due to the fuel price hike, many bus operators in Dhaka and Chattogram have started charging passengers more than the government-fixed fares. While the government increased bus fares up to 28 percent, many operators were found to be charging as much as 50 percent higher. Unfortunately, the ongoing mobile court drives have not been able to prevent them from overcharging the passengers.

What is even more concerning is that, taking advantage of the situation, many CNG-run vehicles have also raised their fares, further exacerbating the sufferings of the commuters. Since the new bus fares came into force on November 8, as many as 10 mobile courts of Bangladesh Road Transport Authority (BRTA) have been conducting drives to prevent bus operators from overcharging. According to BRTA, of the 245 buses that were fined on November 14 in the two cities, 198 were diesel-run, while the rest were 49 CNG-run.

Reportedly, the Bangladesh Road Transport Owners Association's decision to abolish seating and gate lock services to lower the bus fares have not yielded much result as yet. Ignoring the decision, many buses were found to be charging the passengers extra in the name of providing seating service.

The irregularities regarding the bus fares were bound to happen, given the fact that our bus operators have always tried to make profit at the expense of the passengers' sufferings. As such, the authorities concerned should have put a plan in place to mitigate the sufferings of the public before hiking the bus fares. People are already bearing the brunt of rising prices of essentials—and the exorbitant bus fares have only added to their woes.

Under the circumstances, in order to lessen the sufferings of commuters, the authorities must take action against the bus operators who are overcharging. In addition, the mobile court drives should continue, and if needed, more mobile courts should be deployed to bring the situation under control. All the buses must have a printed list of bus fares pasted on their vehicles to avoid overcharging, while the CNG-run ones should use stickers on their buses mentioning that they are CNG-run. We strongly urge the authorities to take legal action against the bus companies for overcharging and other irregularities.

How the Banani rape verdict exposes rape culture in courtrooms

'JUSTICE' IN PRACTICE

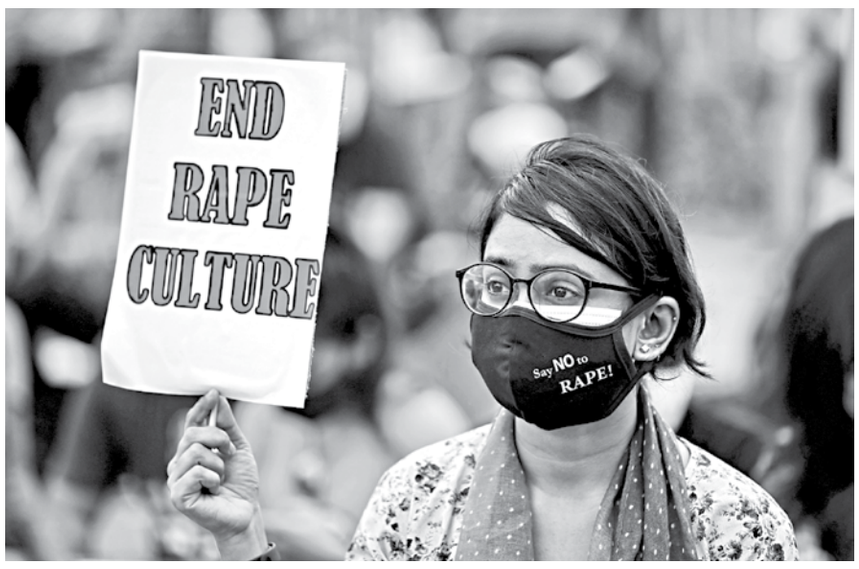
TAQBIR HUDA

ON November 11, 2021, Mosammat Kamrunnahar, judge of Women and Children Repression Prevention Tribunal 7 in Dhaka, reportedly asked the police "to refrain from receiving a case if a rape victim comes to the police station after 72 hours of the incident" since "semen cannot be traced after 72 hours."

Judge Kamrunnahar reportedly made these statements when acquitting all of those accused in the widely discussed Banani rape case, in which two women had accused five men of gang-raping them in a hotel at gunpoint on March 28, 2017. The women had filed the case with Banani police station on May 6, 2017.

The judge's now infamous statement is appalling for at least two reasons. Firstly, according to the Limitation Act, 1908—the law that prescribes time limits within which cases must be filed—there is no limitation period for the filing of a criminal case, such as a rape case under Section 9 of the Women and Children Repression Prevention Act, 2000. Secondly, such a statement ignores the undeniable reality that most rape survivors are precluded from promptly filing cases due to a number of socio-institutional barriers: from the misplaced social stigma, to violent threats of retaliation, to persistent community pressure to "settle the matter" through *shalish*, and most importantly, the debilitating trauma of being subjected to rape, which can often multiply in a country where victim-blaming is the norm. Therefore, for a judge to suggest an artificial and illogically restrictive time limit on the filing of rape complaints is not only against the existing laws, but is also an affront to rape survivors, for whom the struggle for justice remains an uphill battle. Naturally, therefore, as the statement made headline news, the judge's reasoning was met with public outrage. In a country where over 90 percent of rapists reported facing no legal consequences for raping a woman or girl, as per a 2013 UN study, suggesting a 72-hour time limit on the filing of rape cases can only perpetuate the already severe culture of impunity.

> *From my reading of Supreme Court judgments on rape from the past 20 years reported in six different law reports, one of the common reasons the Supreme Court tends to acquit a rapist convicted by the tribunal is the delay in the filing of the rape complaint.*



FILE PHOTO: REUTERS

A woman holds up a placard, asking to end the rape culture that is rampant in the country, during a protest in front of Jatiya Sangsad Bhaban in Dhaka.

In the face of mounting public outrage, on November 13, Law Minister Anisul Huq told *The Daily Star* that he had found the statement to be "totally illegal and unconstitutional" and that he felt the judge had "lost her ability to remain in the post of a judge because of her observation." He further mentioned that the law ministry would immediately send a letter to the chief justice "requesting appropriate action against the judge." Soon after, on November 14, Chief Justice Syed Mahmud Hossain issued a directive temporarily suspending Judge Kamrunnahar's judicial powers, asking her to refrain from presiding over the tribunal for the time being.

While such swift action is indeed commendable, we would be remiss to think that innovating artificial time limits for rape complaints is an issue that only extends to Judge Kamrunnahar. From my reading of Supreme Court judgments on rape from the past 20 years reported in six different law reports, one of the common reasons the Supreme Court tends to acquit a rapist convicted by the tribunal is the delay in the filing of the rape complaint. Therefore, while Judge Kamrunnahar may have gone overboard with her suggestion on November 11, the fact remains that rape survivors who are unable to promptly file their complaint are routinely viewed with suspicion by judges, and this delay often acts as a ground of eventual acquittal. Introducing an online complaint mechanism, such as a designated website to file complaints, could enable rape survivors to bypass some of the socio-institutional barriers and file cases more promptly. As such, this was mandated by one of the 18 directives on ensuring justice for sexual violence survivors without delay or discrimination issued by the Supreme Court in 2016, which still remains unrealised.

The issue of time limit and delay in filing rape complaints aside, Judge Kamrunnahar reportedly made a number of other (less discussed) observations when ordering the acquittal that also exemplify problematic judicial reasoning on rape, and the wider rape culture in courtrooms. For instance, the judge reportedly observed that, based on the medical examination report of the two rape complainants, there was insufficient proof of rape; rather, the two women were found to have been "habituated" to sexual intercourse. She reportedly inferred consent on the rape complainants' part since they "willingly went to a party, danced, drank alcohol and swam in the pool." Judge Kamrunnahar reportedly further noted that the investigation officer of this case was "influenced" into submitting the charge sheet against the accused, implying that it was a false allegation. Therefore, she reportedly castigated the investigating officer for "wasting valuable hours" during which "many important cases" could have been dealt with.

Using medical evidence of women's past sexual history as a basis to negate their rape complaints has a long history in many justice systems, including ours. Therefore, in a 2018 judgment banning the use of the humiliating "two finger" test commonly used by doctors on rape complainants, the Supreme Court issued eight directives on the medical examination of rape survivors and procedure for rape trials, two of which are of particular relevance in the instant case, and which the judge clearly appears to have acted in contravention of. Firstly, the Supreme Court prohibited physicians and forensic experts from using the degrading phrase "habituated to sexual intercourse" when issuing medical certificates to rape survivors, and also asked them to refrain from asking rape survivors any questions about their past sexual history. Secondly, the Supreme Court directed the Women and Children Repression Prevention Tribunals to ensure that "no lawyer shall ask any degrading question to (a) rape victim which is not necessary to ascertain any information of rape." Following the Supreme Court ruling, on July 21, 2019, the Gender, NGO and Stakeholder Participation Unit of the Health Services Division under the health ministry issued some guidelines to reiterate the Supreme Court directives and instructed all doctors to abide by them.

While Judge Kamrunnahar's swift suspension has been welcomed by many, what this whole debacle really proves is the dominance of rape culture in our courtrooms, and the urgent need to introduce gender sensitisation training sessions for all justice sector actors, such as judges, police officers, forensic officials, public prosecutors and lawyers, which was one of the 10 reform demands issued by the Rape Law Reform Coalition in October 2020. Justice for a heavily gendered crime like rape can only be as good as the gender sensitivity of those delivering it.

Taqbir Huda is the advocacy lead of Brac's Gender Justice Programme and a member of the Rape Law Reform Coalition.

The Carbon Tax is Overrated

ANIS CHOWDHURY *and* JOMO KWAME SUNDARAM

ADDRESSING global warming requires cutting carbon emissions by almost half by 2030! For the Intergovernmental Panel on Climate Change (IPCC), emissions must fall by 45 percent below 2010 levels by 2030 to limit warming to 1.5 degrees Celsius, instead of the 2.7 degrees Celsius now expected.

Instead, countries are mainly under pressure to commit to "net zero" carbon (dioxide, CO2) emissions by 2050 under that deal. Meanwhile, global carbon emissions—now already close to pre-pandemic levels—are rising rapidly despite higher fossil fuel prices.

The burden of carbon taxes would be heavier on average consumers in poor countries than on poor consumers in 'average' countries. FILE PHOTO: REUTERS

Emissions from burning coal and gas are already greater now than in 2019. Global oil use is expected to rise as transport recovers from pandemic restrictions. In short, carbon emissions are far from trending towards net zero by 2050.

False promise

At the annual climate meetings in Glasgow, carbon pricing was touted as the main means to cut CO2 and other greenhouse gas (GHG) emissions. The European Union president urged, "Put a price on carbon," while Canadian Prime Minister Justin Trudeau advocated a global minimum carbon tax.

Businesses are also rallying behind one-size-fits-all CO2 pricing, claiming it is "effective and fair." But there is little discussion of how revenues raised thus far should be distributed among countries—let alone to support poorer countries' adaptation and mitigation efforts.

Carbon pricing supposedly penalises CO2 emitters for economic losses due to global warming. The public bears the costs of global warming—e.g. damage due to rising sea levels, extreme weather events, changing rainfall, droughts or higher healthcare and other expenses. But there is little effort at or evidence of compensation to those adversely affected. Therefore, poorer countries are understandably sceptical, especially as rich countries have failed to fulfil their promise of USD 100 billion yearly climate finance support.

The CO2 price market solution is said to be "the most powerful tool" in the climate policy arsenal. It claims to deter and thus reduce GHG emissions, while incentivising investment shifts from fossil fuel burning to cleaner energy generating technologies.

No silver bullet

Carbon pricing's actual impact has, in fact, been marginal—only reducing emissions by under two percent yearly. Such impacts remain small as "emitters hardly pay." Most remain undeterred, still relying on energy from fossil fuel combustion. Also, many easily pass on the carbon tax burden to others, whose spending is not price sensitive enough.

Only 22 percent of GHGs produced globally are subject to carbon pricing, averaging only USD 3 per tonne! Hence, such price incentives alone cannot significantly discourage high GHG emissions, or greatly accelerate widespread use of low-carbon technologies.

Powerful fossil fuel corporate interests have made sure that carbon prices are not high enough to force users to switch energy sources. Thus, existing CO2 pricing policies are "(more) modest and less ambitious" than they could and should be. Meanwhile, several factors have undermined carbon taxation's ability to speed up decarbonisation.

First, carbon taxes have never actually provided much climate finance. Second, CO2 taxes misrepresent climate change as a result of "market failure," not as a fundamental systemic problem. Third, it seeks efficiency, not efficacy! Thus, it does not treat global warming as an urgent threat.

Fourth, market signals from carbon taxation seek to "optimise" the status quo, rather than to transform systems responsible for global warming. Fifth, it offers a deceptively simplistic "universal" solution, rather than a policy approach sensitive to circumstances. Sixth, it ignores political realities, especially differences in key stakeholders' power and influence.

Unfair to poor

Even if introduced gradually, the flat carbon tax will burden poorer countries more. Worse, carbon pricing is regressive, causing more suffering to the poor. Thus, the burden of CO2 taxes is heavier on average consumers in poor countries than on poor consumers in "average" countries.

A UN survey showed that a seemingly fair, uniform global carbon tax would burden—as a share of GDP—developing countries much more than developed countries. Thus, although per capita emissions in poorer countries are far less than in rich ones, a flat CO2 tax burdens developing countries much more.

Also, a standard carbon tax burdens low-income groups more, by raising not only energy costs directly, but also those of all goods and services requiring energy use. With this seemingly fair, one-size-fits-all tax, low income households and countries pay much more relatively.

Analytically, such distributional effects can be avoided by differentiated pricing, e.g. by increasing prices to reflect the amount of energy used. Also, compensatory mechanisms, such as subsidies or cash transfers to low-income groups, can help.

But these are administratively difficult, particularly for poor countries, with limited taxation and social assistance systems. Furthermore, effectively targeting vulnerable populations is hugely problematic in practice.

Mission impossible?

Selective investment and technology promotion policies are much more effective in encouraging clean energy use and reducing GHG emissions. Huge investments in solar, hydro and wind energy as well as public transport are required, typically involving high initial costs and low returns. Hence, public investment often has to lead. But most developing countries lack the fiscal capacity for such large public investment programmes. Large increases in compensatory financing, official development assistance and concessional lending are urgently needed, but have not been forthcoming, despite much talk.

Climate finance initiatives generally need to improve incentives for mitigation, while funding much more climate adaptation in developing countries. Potentially, a CO2 tax could yield significantly more resources to cover such international funding requirements, but this requires appropriate redistributive measures, which have never been seriously negotiated.

Carbon taxes can help

Even without an ostensibly market-determined CO2 price, taxing GHG emissions would make renewable energy more price competitive. The UN advocated a "global green new deal" in response to the 2008-2009 global financial crisis. It noted that a USD 50 per tonne tax would make more renewables commercially competitive, besides mobilising USD 500 billion annually for climate finance.

A International Monetary Fund (IMF) staff note from mid-2021 has proposed an international carbon price floor. This would "jump-start" emission reductions by requiring G20 governments to enforce minimum carbon prices. Involving the largest emitting countries would be very consequential while bypassing collective action difficulties among the 195 UN member states.

The scheme could be pragmatically designed to be more equitable, and for all types of GHGs, not just CO2 emissions. But even a global carbon price of USD 75 per tonne would only cut enough emissions to keep global warming below two degrees Celsius—not the needed 1.5 degrees, the Paris Agreement goal!

Anis Chowdhury is adjunct professor at Western Sydney University and the University of New South Wales, Australia.
Jomo Kwame Sundaram is a former economics professor and a former assistant secretary-general for economic development at the United Nations.