



LAW VISION

Upcoming challenges of the ship recycling industry in Bangladesh

Amongst the existing ship recycling yards in Bangladesh, most are non-compliant, preventing them from recycling ships once the Hong Kong Convention takes effect. As a result, the industry's capacity to employ thousands will lessen significantly.

SHAIKH MD MUJAHID UL ISLAM

Bangladesh ratified the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships 2009 in June 2023, and it will enter into force in June 2025. Hence, it is crucial to tackle the challenges of effective implementation of this Convention.

Since its inception in the 1980s, the ship recycling industry in Bangladesh has contributed to the nation's economy by supplying scrap to reolling mills and creating employment opportunities. Data indicates that this industry supplies 60% of the raw materials for the iron industry. The economic livelihood of millions is directly tied to this sector, providing a steady income for both regular and casual labourers. After the Hong Kong Convention comes into effect, except for at the certified Green Ship Breaking Yards, no ship can be dismantled elsewhere in Bangladesh. According to the Ship Breaking Association, there are five to seven classification society-certified Green Ship Recycling Yards, including PHP Ship Recycling Yard, SN Corporation, and KR Ship Recycling Yard. Furthermore, 15 other ship breaking yards are struggling to comply with the standard and are investing significant funds to make necessary improvements.

Amongst the existing ship recycling yards in Bangladesh, most are non-compliant, preventing them from recycling ships once the Hong Kong Convention takes effect. As a result, the industry's capacity to employ thousands will lessen significantly. Moreover, if scrap supply becomes limited, reolling mills will ultimately cease production, jeopardising

job creation. Additionally, to maintain the steel supply, the government will need to import raw materials, which will deplete foreign currency reserves and affect Bangladesh's macroeconomic context.

Additionally, as a result, this will allow India and Pakistan to thrive in this business, as India, supported by its government, showcases more compliant green yards, shifting the international community's focus on ship dismantling to there. In Gujarat, India, there are numerous shipbreaking yards claiming to be green, attracting global attention towards ship recycling.

Another compliance issue regarding the Convention that requires a solution is the need for the establishment of a TSDF (Treatment, Storage, and Disposal Facility), which is essential for hazardous waste disposal. Although establishing a TSDF is a compliance requirement for the HKC 2009, there are insufficient efforts to complete it by June 2025. Currently, the initiative is only at the land acquisition stage, making prompt establishment unlikely. Consequently, this leads to ongoing environmental pollution from the industry, while the Green Ship Breaking Yards have established hazardous waste storage facilities at their own expense to comply with the HKC 2009. The issue of environmental pollution remains a significant concern for Bangladesh and requires urgent government action to establish a TSDF, a critical commitment in the HKC 2009 and a demonstration of government activism to promote this industry for the benefit of the environment and economy.

Furthermore, the ship recycling industry in Bangladesh faces regulatory challenges. In line

with the commitment to fulfill the obligations under the Convention and following the directives of the Honorable High Court Division of the Bangladesh Supreme Court in a Writ Petition filed by the Bangladesh Environmental Lawyers Association (BELA), the Government of Bangladesh adopted the Ship Building and Recycling Rules 2011. This was peculiar because no law was enacted by the Parliament at that time that could give the rule-making power to the government. After a long delay, in 2018, the Parliament enacted the Bangladesh Ship Recycling Act 2018, establishing a Ship Recycling Board and granting it all regulatory power. Unfortunately, despite the passage of long time, board members have not been appointed due to bureaucratic constraints. Moreover, as per section 37 of the 2018 Act, without the board's authorisation, no court will take cognizance of any case filed under this Act. Thus, all administrative and judicial functions related to ship recycling rely on the board's action under this Act, which is yet to be fully constituted.

It can be said that the Hong Kong Convention disproportionately places responsibility on the Ship Recycling State rather than the flag state. This criticism is substantiated when significant stakeholders, such as cash buyers or Ship Broker Agents, are excluded from responsibility. In this context, to address both socioeconomic and environmental interests, the government must take steps to overcome the administrative, infrastructural, and environmental challenges for the application of the Convention in Bangladesh.

The writer is PhD Research Fellow on Ship Recycling, the University of Malaya, Malaysia.

LAW REFORM

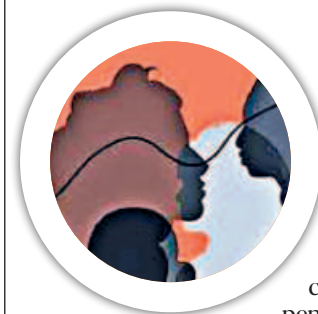
Changing the understanding of Rape

SOEB AKTAR

Rape is a heinous sexual violence and a violation of an individual's dignity. The Penal Code 1860 (PC) is the primary law in Bangladesh that defines most of the crimes and specifies the penalties. The Nari O Shishu Nirjatan Daman Ain 2000 is one of the special laws that was passed in response to the large number of violent incidents relating to violence against women and children. Section 9 of this Act lays down the punishment of rape, whereas section 2 of the Act gives the definition by referring to section 375 of the PC. Section 375 of the PC states that a man commits rape if he engages in sexual activity with a woman under certain circumstances e.g., against her will, without her consent, when her consent is obtained by putting her in fear of death or hurt, etc. Age, marriage status, and other factors are also included. However, the Code does not provide a thorough definition of "sexual intercourse".

Remarkably, the explanation in this section claims that sexual activity necessary to constitute the offence of rape requires penetration. However, the type and degree of penetration, as well as the use of foreign bodies, oral and anal sex, have not been incorporated. The court held in *State v Shahidul Islam alias Shahid* (2006) that complete penetration is not necessary to prove

It needs to be noted that the definition of rape evolved in the United States and the United Kingdom in response to shifting societal demands. Even in India, the definition of rape has been changed to hold offenders legally accountable following the Nirbhaya case.



rape; even small or partial penetration, with or without semen emission and hymen rupture, or even an attempt at penetration, is sufficient.

Indian courts considered penile-vaginal penetration to be the strict requirement prior to the Nirbhaya case. Later, the Supreme Court of India has ruled in numerous cases that even partial penetration is enough to constitute rape. In *Aman Kumar & anr v State of Haryana*, it was determined that for rape, it is adequate if the penis partially penetrates the *labia majora*, without causing semen to be released. Things further changed after the Indian Penal Code was amended in 2013. In *Santhosh v State of Kerala* (Criminal Appeal no. 1311 of 2016), where the court ruled that a woman is raped if someone penetrates her between the thighs. As per the court, such penetration creates a result similar to that in a typical penile-vaginal intercourse. However, Bangladesh has not adopted these reforms and continues to adhere to the outdated "penile-vaginal" definition of rape included in the Penal Code, in contrast to the USA, UK, and India. Unfortunately, the existing definition of rape under section 375 of the Code does not directly cover all grave forms of sexual assault, other than penile-vaginal penetration, as rape.

Now the approved draft of the Nari O Shishu Nirjatan Daman Ordinance 2025 seeks to widen the definition of rape by moving beyond the penile-vaginal understanding of rape. This could prove to be a step in the right direction, provided the criminal justice actors are duly sensitised to the change and its potential.

The writer teaches law at American International University-Bangladesh.

CRIME AND JUSTICE

Compensation for victims of international crimes

MOHAMMED ASHRAFUL BARI

The International Crimes Tribunal Act, 1973 did not contain any provision regarding compensation for victims. The sentence, as outlined in section 20 of the Act, only prescribed death or other form of punishment, with no mention of compensation to the victims. The International Crimes Tribunal (Amendment) Ordinance 2024, promulgated last November, marks the beginning of a new chapter in the legal landscape of new Bangladesh.

Notably, as per the newly added section 20A of the International Crimes Tribunal Act inserted by section 17 of the 2024 amendment, the tribunal is authorised to impose on the perpetrators compensation amount as they deem suitable. Such compensation is to be recovered from the perpetrators, from their current assets, or when both are missing, any assets they may acquire in future.

The fundamental transformation of International Crimes Tribunal regarding its criminal justice approach deserves praise for several justifiable reasons. First, victim's right to compensation, in conjunction with rights to protection, participation, and



rehabilitation, forms the foundation of a just and fair redressal mechanism. The criminal Justice system of Bangladesh has failed to acknowledge the critical importance of these rights for long. Insertion of such compensatory provision sets a legislative good practice example. Second, compared to administrative assistance of monetary

nature, judicial compensation is preferable due to its personal, holistic, and preventive nature.

Third, by providing compensation to the victims of international crimes ensures that the International Crimes Tribunal of Bangladesh is in harmony with recent evolution of compensatory mechanism

observed across several other international crimes trials. For instance, International Criminal Tribunals of Yugoslavia (ICTY) and Rwanda (ICTR) had supported the rights of the victims to be compensated. Moreover, global documents, such as 1998's Rome Statute (Article 75) and Draft Articles on Prevention and Punishment of Crime against Humanity 2019 (Article 12), also recognise victim's rights to obtain compensation. In line with such development, in February 2024, a record-breaking number of 49,772 victims were awarded with collective reparation of more than 52 million Euro by the International Criminal Court in *Prosecutor v Dominic Ongwen*.

Finally, provision regarding victim's compensation is crucial to ensure the Tribunal adopts a victim-centric approach. In the past, lack of such an approach, among others, has had a negative impact on the tribunal, leading to loss of credibility and reducing it as a state apparatus aimed at political persecution.

Inclusion of provision regarding victim's compensation, though commendable for the aforementioned reasons, is not without shortcomings. The notion of reparation in the legislation centers only on victim's

right to compensation, entirely neglecting the necessity to rehabilitate the victims of July. It is not only the short-term financial restitution that is required, but also the long-term aid intended for rehabilitation of the victims that is necessary.

Another drawback is that section 20A of the Act fails to put in place a formal mechanism to manage the extensive undertaking of disbursing the compensation funds to the victims. Previous mechanisms, including Trust Funds for Victims of International Criminal Court and Victim Support Section of Khmer Rouge Tribunal, have demonstrated successful models of achieving such tasks.

In conclusion, although incorporating a more contemporary approach within the International Crimes Tribunal is advantageous, its execution is not just imperative, but essential for meaningful redressal for the victims of July Revolution. To ensure the realisation of such progress, it is the concerned stakeholders of criminal justice system who have the responsibility to take proactive steps.

The writer is Intern at Bangladesh Legal Aid & Services Trust (BLAST).