Increase the Death Penalty in Rape Offenses: Prospects and Challenges for Future

Abdulla-Al-Mamun*
LL.B(Hon’s), LL.M (pursuing), University of Barishal
& Research Assistant
e-mail: dmbu013@gmail.com

Abstract
Rape is being alarming condition in Bangladesh day by day. Rape victims blaming are inherently linked phenomena, the existence of a rape culture which normalizes sexual violence and blames rape victims for the attacks against them create cultural violence in Bangladesh. For a result, the Government of Bangladesh increased the punishment of rape (death penalty). But the procedure to amend the laws is not accurate and is not given any debate upon the subject matter. As a result, this increasing punishment may be good for the future times or may be created as many as challenges which we cannot thinks in that normal period.

Key word: Rape, death penalty, future, woman, punishment

Introduction
Over the last few years, rape has been increased alarmingly rate in Bangladesh. There is not a single day that there is no news of rape, when a newspaper is opened, on the television screen, various online platforms, social media and so on. It has reached such a stage that one has to start every morning after hearing the news of rape. In a recent report, Rape Statistics by Country 2020, Bangladesh has been rated as 9.82, which have been total 11,682 incidents (World Population Review, 2020) (tbs news, 2020).

It is estimated that approximately 35% of women world-wide have experienced sexual harassment in their life (The Daily Star, 2020). However, some nationals studies show that up to 70 per cent of women have experienced physical and/or sexual violence from an intimate partner in their lifetime, according to data of the United Nations. Ain o Salish Kendra report - between January and September 2020 - at least 975 rape cases were reported in Bangladesh, including 208 gang rapes (Ain O Salish Kendra, 2020).

As we know that rape is an unlawful sexual orientation or activity typically forcibly or under threat of injury against a persons (basically women and girls) will. But now a days, the sexual orientation between men to men, which we considered as unnatural last, also increased and it is also a types of rape. At present rape is not targeting any particular age of group. From children to old women, is being raped. It is also seen that all the children who are being raped, the rapist are cutting the genitals of the children within sharp objects to satisfy their bad desires and then raping them. So, does not it show that rape has reached a certain level in our country?

In view of all this, an anti-rape movement has been formed in the country since October 5, 2020. And a demand has been raising for commenting for increasing the death penalty in lieu of life imprisonment. As a result, a massive response began within the country. Before the outrage of the people’s movement, the Hon’ble Prime Minister of the country stood in the National Assembly and announced that the punishment for rape in the country would be increased to death penalty in lieu of life imprisonment. And finally, on 13 October, 2020 through a gazette notification, the punishment for rape was increased to the death penalty.
Objectives of The Study

The research has a broad objective that is:

a. To know the general conception about definition and punishment of rape.
b. To know the prospects of increasing punishment of rape.
c. To know the challenges for future may arising for increasing punishment of rape.

Definition and Punishment of Rape in the Existing Laws

Rape is defined an unlawful sexual activity and usually sexual intercourse carried out forcibly or under threat of injury against a person's will or with a person who is beneath a certain age or incapable of valid consent because of mental illness, mental deficiency, intoxication, unconsciousness, or deception (Merriam Webster).

Before the enactment of the special law “Nari o Shishu Nirjatan Daman Ain, 2000”, the punishment for rape cases was provided under section-375 of the Penal Code, 1860. Though the Act of 2000 takes the rape’s definition of the definition provided in section-375 of the Penal Code, 1860. Section-2(e) of the Act of 2000 provides that Rape means rape stated under section 375 of the Penal Code 1860 (Act XLV of 1860) subject to section 9 under this Act (Ministry of Law, Justice and Parliamentary Affairs, 2000). So, the definition of rape under section-375 of Penal Code (Ministry of Law, Justice and Parliamentary Affairs, 1860) is-

A man is said to commit ‘rape’ who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

a) Against her will
b) Without her consent
c) With her consent, when he consent has been obtained by putting her in fear of death, or of hurt
d) With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married
e) With or without her consent, when she is under fourteen years of age.

Punishment for rape under The Nari O Shishu Nirjatan Daman Bishesh Ain 2003):

According to section 9 of this Act -

i. Whoever commits rape with a woman or a child shall be punished with death penalty or rigorous imprisonment for life and with fine (Ministry of Law, Justice and Parliamentary Affairs, 2020).

Explanations: Whoever has sexual intercourse without lawful marriage with a woman not being under fourteen years of age, against her will or with her consent obtained, by putting her in fear or by fraud, or with a woman not being above fourteen years of age with or without her consent, he shall be said to commit rape.

ii. If in consequence of rape or any act by him after rape, the woman or the child so raped, died later, the man shall be punished with death or with transportation for life and also with fine not exceeding one lac taka.

iii. If more than one man rape a woman or a child and that woman or child dies or is injured in consequences of that rape, each of the gang shall be punished with death or rigorous imprisonment for life and also with fine not exceeding one lac taka.

iv. Whoever attempts on a woman or a child to cause death or hurt after rape, he shall be punished with rigorous imprisonment for life and also with fine.
b) To commit rape, he shall be punished with imprisonment for either description, which may extend to ten years but not less than five years rigorous imprisonment and also with fine.

v. If a woman is raped in the police custody, each and every person, under whose custody the rape was committed and they all were directly responsible for safety of that woman, shall be punished for failure to provide safety, unless otherwise proved, with imprisonment for either description which may extend to ten years but not less than five years of rigorous imprisonment and also with fine.

Punishment for rape under Penal Code:- According to section 376 of this Code -Whoever commits rape shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Prospects of Increasing Death Penalty for Committing Rape**

As we know that deterrent theory is one of the important theory among the various forms punishment recognized in the world. The object of criminal justice in awarding punishment, according to this theory, is to deter people from committing crime (Kabir, 2017, p. 57). The infliction of punishment serves as a check on others who are evil-minded (toppr).

As in the recent years, the incident of rape cases are gradually increasing, Bangladesh’s government should consider amending law to ensure the death penalty for the rapists, an official said, as nationwide protests erupted against recent incidents of sexual assault. Because, there has been a demand to amend the relevant law to punish the rapists with capital punishment in the country apart from strict implementation of the existing laws to control sexual assaults (Sakib, 2020). And this formula is the theory of deterrent.

But, the question is now that what are the prospects of increasing death penalty for committing rape in future? And is capital punishment a solution?

In 13th October, the Cabinet of Bangladesh Government while passed the decision of increasing death penalty for committing rape, Experts, however, said tougher penalties would not be enough to tackle the problem and that authorities needed to immediately address systemic problems in rape trials and the extremely low conviction rates. Meenakshi Ganguly, South Asia director of Human Rights Watch, "It's a bad decision, not only because capital punishment is inherently inhumane and should be abolished, but because it is not a real solution to sexual violence" (Islam, 2020). Because, There is no conclusive evidence that capital punishment curbs any crime, including rape, and it could end up deterring reporting or even encouraging rapists to murder their victims to reduce the likelihood of arrest. The low conviction rate for rape in our country gives rapists every reason to be confident that they will get away with their crimes (Halim, 2020).

However, many Jurists and Scholars in our country, is of the view that capital punishment will help curb sexual crimes. They stressed that our country needs the death penalty. Their strong believe that the death penalty is the most severe punishment and that will provide a greater deterrence than life imprisonment. It also registers in the minds of the people that rape is one of the most heinous crimes. Bangladesh's existing laws allow for the death penalty in cases of murder. So, it's highly unlikely that the amendment of the sexual crime-related law will encourage the rapists to murder their victims.

But is the death penalty really the answer? Feminist scholars and activists have been arguing for years that it isn’t (Sen, 2020). There are exists some points why death penalty is not the actual solution to combat the rape in our country.

1. **Data doesn’t prove the death penalty is a deterrent**- For crimes of different kinds across the world, nobody has been able to conclusively say that the death penalty is an effective
deterrent. It appears that the call for the death penalty is more an outcome of outrage than of serious thought on what can change the prevailing situation. Especially in countries like Bangladesh, where the certainty of punishment is relatively low and legal trials are often harder on victims than on the accused (leading to them withdrawing the case), simply changing the quantum of punishment in a few famous incidents is unlikely to deter others, as most cases either languish in the courts or are dismissed due to lack of evidence (Sen, 2020).

2. Reduced reporting- In a large number of rape cases the accused is known to the victim. In that cases, there having the threat of death if the incidence is published or even face increased pressure from their families to keep the matter to themselves.

3. More chances of murder/increased violence- once it is clear that the death penalty is highly probable in rape cases, it could lead to perpetrators making sure the victims are left dead or in no state to make a complaint or recognize the perpetrators.

4. There is no consensus among judges- there is a lack of consistency among the Judges. It is often seen that the lower courts have often given the highest punishment in rape cases. But in the case of Appeals, the higher court reverses the verdict and imposes imprisonment, often acquitting the accused.

5. Tough’ criminal laws can target weaker sections- it is often seen in Bangladesh that criminal justice systems mirror the biases of society – including against weaker sections who cannot afford expensive lawyers or to appeal their cases in higher courts. And here exist also political pressure upon the victims. So, a tendency is seen to file the cases in weaker sections.

6. Problems with retributive justice- while some argue that the country has a duty to support society’s retributive rage against those convicted of crimes such as rape, this argument is a slippery slope to allowing the death penalty for all sorts of crimes. Much has been said against retributive justice and why it doesn’t create a sustainable criminal justice system.

7. Rape should not be equated with death- The logic behind arguing for the death sentence for perpetrators of rape is that the crime they committed is equivalent to death. It is the logic to enhance death penalty for rape is that rape is a fate worse than death. But, is solely a Patriarchal and Feminist ideology. There is a need to strongly challenge this stereotype of the ‘destroyed’ woman who loses her honour and who has no place in society after she’s been sexually assaulted. We believe that rape is tool of patriarchy, an act of violence, and has nothing to do with morality, character or behavior (Sen, 2020).

Challenges for Future

Laws are created to save from chaos and law saves society from chaos. Laws introduces to prevent chaos can be both good and bad (Rahman, June, 2017). In the context of our country, we think that as the punishment for any crime increases, that crime decrease. But due to the dirty political environment of Bangladesh, criminals can easily get away with it. So, instead of decreasing the percent of crime, is increasing day by day (Billah, 2020). Is there any guarantee that rape will not happen in our country?

In our country, criminals are seen in the shadow of big political parties. Whenever a person is accused of rape, he tries to go under the umbrella of one or the other political party. And in this cases, the political parties of our country are one step ahead. They also fail to save the person from the justice system. If there is any allegation of rape against any political activist, there is no ward. But, when an innocent person is accused of rape, the situation is reversed (Halim, 2020).

According to S M Masum Billah, A Associate Professor of Law, Jagannath University, the
following challenges may be arise in the future to ensure death penalty for rape cases:

(a) If the punishment for rape is death penalty, and if the punishment for rape with causing death of the victim is also death penalty, the offender will think that as the punishment is death penalty at any event, he will murder the victim to vanish the evidence. In this way, the death penalty may tend to cause more extreme violence.

(b) The social and political pressure upon the victim may be increased not to file a case, as the death sentence is more sever than other forms of punishments.

(c) The judge may not be reasonable in handing down a death penalty, as there is no scale to measure a simple rape and a rape with extreme atrocity.

(d) In politically sensitive rape cases, the lower court will feel it necessary to give death penalty due to its huge popularity. Because, people in society do not bother about whether the allegation is true or not, they only want death penalty of an alleged culprit. The lower court and police administration, along with the government remain under pressure to impose maximum punishment to make the people believe that justice have been done. The lower court judges might think that as his/her decision will be appealed against to the Higher Court, he/she may give death sentence primarily, and shifts the burden on to the appellate court (i.e. HCD or AD) to make a better decision. As such, the death sentence provision will have its own complexity, equation and politics.

There is a need to be more careful in some cases as there is a provision of death penalty in rape cases:

1. An FIR has to be filed with the concerned police station without delay.
2. Medical health examination should be done to determine the rape along with the rape allegation.
3. Signs of rape should be recovered from the spot by inspecting the spot without delay.
4. The cloths of the victim should be sent to the forensic and scientific laboratory for examination.
5. The investigating officer shall make in-depth and in-depth investigation into certain matters during the course of investigation-
   - Date of the incident
   - Time of the incident
   - Place of the incident
   - Source of identity of the victim with the rapist
   - Reason for the victim going with the rapist at the time of the incident
   - Analysis of recovered symptoms.
6. The proximity of time should be analyzed in the following matters-
   - At the time of rape
   - At the time of filing a complaint
   - At the time medical examination.
7. In determining the location of the victim at the time of incident, the following persons should be interrogated quickly-
   - Parents
   - Siblings
   - Friends
   - Neighbors
   - School, college etc authorities
- Relatives.
8. To make arrangements to accept the guilt of the accused on the basis of information, not based on the torture but on investigation.
9. To collect and analyze investigation-based data on the accused’s previous relationship and hostility etc with the victim.
10. If the victim wants, the victim’s statement about the incident should be recorded by a learned Magistrate as soon as possible.
11. In rape cases, a culture of consistent and supportive conduct of the courts should be developed with certain agencies as a whole-
   - Learned Court
   - Learned Magistrates in charge of investigations
   - Learned Public Prosecutor (PP)
   - And investigating agencies.

Conclusion

As the demand of the public to increase the punishment for rape, the punishment for rape should be increased. But, the way the punishment has been increased is by no means desirable. There is a definite method of making laws, or amending, or adding laws. But the sudden increase in the punishment for rape under the “Nari O Shishu Nirjatan Daman Ain” is against the rule of law (Billah, 2020). There is maintained no provision in any law making system. No comment was received from legal experts, people, policy makers etc of the society (Halim, 2020). The law has been amended in a hurry by gazette.

In addition, it should be noted that the definition of rape in the country was coined by the British Regime in 1860 (Section-475 of the Penal Code-1860). At present, a review of the causes of rape cases in the country shows that most of the rape cases are due to breach of marriage vows. It is seen that many men and women engage in premarital sex and engage in physical intimacy by promising to marry each other. The matter comes to the fore and there are cases of rape, if the men latter denies to marry that women. But if that girl or women marries somewhere else, then the issue of rape is no longer raised. In addition, false cases of rape are often filed to frame others.

So, if the punishment for rape has to be increased, then the definition of rape has to be changed and re-arranged keeping mind in considering the consent, age, unwelcoming attitude of the victim, penetrative requirement (Billah, 2020).

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