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## The Legal Aspect of Rape: A Review of the 2020 Amendment of Nari O Shishu Ain (Act No VIII of 2000)

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### ABSTRACT

The detriment of rape even with the upsurge is received by the general mass with shock and the trauma enveloping the inflicted is incomprehensible. In a developing country like Bangladesh, the chastity of a woman is her ultimate pride and possession and when such is violated, considering the social predicament, the victim is usually humiliated *in lieu of* availing the much-required moral support to disposal. Falsely implicating an innocent is also evident in the trend. In the recent amendment, incarceration for life was substituted by the death penalty. Such incorporation endeavors toward the deterrent aspect of the penalty warning future perpetrators to avert from committing such mischief. This article aspires to illuminate the unexpanded idea of consent, extract the constitutional and legal justification of the recent amendment, the ends of statutory justice provided to the protected and sabotage of the very protective law, i.e., mis-application of it falsely incriminating an innocent.

**Keywords:** Rape, Chastity-Genocide, Women, Consent, False-Implication, and Nari-O-Shishu Ain.

### INTRODUCTION:

'Beasts' was the adjective inscribed to rapists by the Prime Minister of Bangladesh. The vicious social disorientation of rape isn't a newly inducted criminal trend nor can it be attached distinctively to any society, culture or country. Appalling statistics have been engendered by various social and legal researchers. The United States solely reports of one-sixth or approximately 17-percent women being subject and object of rape. The Regional South-Asian countries have infamously been in the lime-light of rape unswervingly for a considerable period. A summation of 32,500 rape cases were registered in India in the annual span of 2017. Astonishingly, Pakistan harbors a rape case every hour. Bangladesh on the other hand has had its share of rape victims, the year 2019 embraced 1,413 rape victims which was numerically double the amount of the previous year. Article 16 of the Universal Declaration of Human Rights provides for marital independence on UniversePG | [www.universepg.com](http://www.universepg.com)

attaining full age without any limitation, i.e., sexual rights are universal and such must be consented. It is well settled in law that interpretation and application of a statute should be *pro-tanto* appropriately consistent with established International Law save in so far the language used does not defeat the purpose of the statute. The already existent penal law being deficient in taming vehemence like rape in Bangladesh necessitated the enforcement of Act XVIII of 1995, which was there after repealed and reenacted in the form Act No VIII of 2000.

The enactment is a special statute with aspirations of minimizing and gradually eradicating crime against women and children. Rape can be categorized as genocidal as it immaculately transpires into the definition of genocide provided in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. To better understand lets scrutinize a few definitions of rape. The lexis originates

from the Latin term ‘*rapio*,’ which on translating literally means to seize. The primary definition is provided in Section 375 of the Penal Code, 1860, the same has been adopted in Section 2 sub-section 5 of Act No VIII of 2000 which states that rape is said to have been committed when a male compels sexual intercourse on a female against her will and without her consent where;

- i. Willingness or inclination to sexually involve with the male was absent;
- ii. Intercourse was not consented, neither previously nor instantaneously;
- iii. Consent may have been attained under the distress of injury;
- iv. Consent was obtained by maneuvering the inflicted into believing that the perpetrator was her lawful husband.

Black’s Law Dictionary stretches rape further to unlawful sexual intercourse under the influence of intoxication or in a state of unconsciousness inferring to instability of the mind. Rape has further been expounded as the ultimate violation of one’s own self, or of one’s personality and not mere physical assault. Such vehement act proliferates vulnerability by adversely impacting the consciousness of the inflicted, in short torments the soul of the victim or the survivor. Further, intercourse with a minor under fourteen years of age has been established to be *ipso facto* rape. From the trend of definitions, it can be unvaryingly concluded that rape is the felonious action of coercive, forceful, assertive, and assaulted, un-consented, unwilling, unpermitted sexual intercourse where the victimized female is deprived of her honor, violated of her chastity and jeopardized of her social life.

Bangladesh in the year 2020 embraced two variant pandemics, firstly the obvious Covid-19 and secondly the upswing of rape. The latter led to organized protests deprecating the rapists. The intention behind such pandemonium was heard and responded affirmatively by the government (Disha, 2021). Thence, the Statue was amended whereby maximum penalty was imposed for rape.

### **Aims and Scope**

Astoundingly the aberrant action of rape has been on the upraise, the necessity to embrace special enactments to currently combat and to avert future occurrences is substantively justified. This study attempts to navigate

- a. The Constitutional and Legal justification of the Amendment Act
- b. Extent of Statutory protection provided i.e., justice being served to the protected
- c. Elaborate the understanding of the notion of Consent
- d. Misapplication of Law i.e. Can the accused be falsely implicated?

### **METHODOLOGY:**

This study attempts to elucidate rape nexus the recent amendment of Act No VIII of 2020 i.e., endeavoring to illuminate the subject within the outline of the scope aforementioned in Section 1.1. This study is a normative legal research, and thus, will exhibit the results based on relevant content evaluation of available literature or secondary data. The preference of deploying qualitative juridical method in the course of this study is because qualitative analysis signifies the interconnection and interdependency between concepts, hypotheses and data which is vast and varied, thereby escalating the complexity of its quantification. Moreover, the Legal System in Bangladesh is one recognized as Common Law, i.e., laws fashioned by judges through their judgements. The Appellate Division in the case of *ACC vs Barrister Nazmul Huda* held that law declared by the Division manifests mandatory binding effect on Courts lower than the Division i.e., the High Court Division and all subordinate Courts. Furthermore, all subordinate Courts are under the superintendence of the High Court Division and law declared by either Divisions of the Supreme Court befalls the subordinate Courts irrevocably and judgment (s) of the lower Courts must not contradict or be inconsistent to that passed by either Divisions as such is unlawful or illegal. The same is provided and approved constitutionally *via*. Article 111. With that in mind the comprehensive data is scrutinized, deciphered and cohesively organized into a unit. Therefore, the vindictive action of rape shall be scrutinized under the shade of scholarly researches, *pari-materia* enactments and reported litigations of Bangladesh and other States

### **The 2020 Amendment**

In *Ibrahim Dewan vs State*, the presiding bench expressed the necessity to increment then penalty imposed on sexual perpetrators, and recommended that such penalty must be maximum, acting as a shield of deterrence for potential offenders. While

also stating that the crime of rape is a menace to society and humanity in general. On October 13, 2020 ensuing the vicarious upraise of rape, penalty for such post attaining assent of the President, via an amendment ordinance of Act No VIII of 2000 was substituted from 'lifetime rigorous imprisonment' to 'death,' provided the charge of rape is proved beyond every reasonable doubt against the accused.

Wherein injuries inflicted during the occasion of commissioning rape results in death of the victim, awarding death sentence is only fair. Though the Constitution provides for protection of right to life and personal liberty which is however subject to reasonable limitation within the circumference of law. The same imposition is also manifest on freedom of movement, freedom of assembly and association and other Fundamental Rights. Heretofore, the repealed Act No XVIII of 1995 statutorily transacted the same aspects where originally the penalty prescribed for rape was that of death sentence in compliance to which the Appellate Division in the case of *State vs Awal Fakir* transpired to ascertain that under no circumstances the Court holds any discretion to award remedial sentence lesser than statutorily defined as contemplated under section 423 of the Code of Criminal Procedure. Article 27 read with Article 28 of the Constitution of Bangladesh provides for equality before the law while being indifferent to any subject of the state based on gender. Further, the constitution confirms the protection of law being the inalienable right of every citizen where every citizen is guaranteed security of life and personal liberty and shielded against cruel inhuman or degrading punishment or treatment. In *BLAST & Others Vs Bangladesh & Others*, the review petition of the appellant, Md. Shukur Ali who was a death row convict and such was awarded for sexually assaulting the minor victim Sumi Akhter to death, the aforementioned constitutional provisions were invoked against the vires Section 6(2) and Section 34 of Repealed Act No XVIII of 1995 and Act No VIII of 2000 respectively where both of those sections provide for death penalty. The Court established that obliteration of capital punishment in Bangladesh in view of the social, economic and educational upbringing would only fail to preserve the dignity of the downtrodden females of the state. Capital punishment is eradicated in most of the Western countries and the afore-stated case makes mentions of the same. However, the results of the Gallup

Poll conducted in 2016 generated as much as 60% (sixty percent) Americans supporting death penalty. A survey conducted by Sanjeev P Sahni and Mohita Junnarkar resulted in 77.7% (seventy-seven-point seven percent) among the 25210 participating Indians opinionating in favour of capital punishment for the acrimonious crime of rape. The Asian Human Rights Charter advocates abolishing capital punishment, however, also provides the flexibility of imposing such penalty for crimes of heinous nature where execution of the felon must be publicly carried out hence forwarding the deterrent aspect the amendment acknowledged to convey. A deterrent sentence is evoked when the perpetrator holds a position of dominance and misuses his position and especially when the inflicted is a minor. Moreover, while awarding the sentence after the offence of rape against the accused is proved beyond all reasonable doubts the enlisted aspects must be considered –

- i. The age of the accused at the time of the commission of offence
- ii. Profession, income and family dependency on accused
- iii. Position of the accused i.e., whether or not the infiltrator holds position of dominance over the victim and there exists possibility of exploiting such position
- iv. The sentence must be pronounced while safeguarding the offender

Conclusively, in the case of *B.G. Goswami vs Delhi Administration*, the Supreme Court of India established equilibrium between deterrence and reformative theories of punishment, stating that a sentence serves as a platform of realization for the accused that s/he has not only wronged one's own self but also the society in general. The penalty is awarded with two significant aspirations viz. first, to allow a platform of reformation to a convict to be a rehabilitated into a law abiding citizen. Second, to promote deterrence, i.e., the sentence serves to consequentially warn potential offenders. Hence, the legislative mind substituting remedial death sentence for the offence of rape is sufficiently justified and is well intra vires.

### **Statutory Victim Protection**

In *State vs Mostafizur Rahman* while sympathizing the victims, the Apex Court stated that for an unmarried girl to publicize the infliction of rape unto her is a symbol of utmost bravery. Socially, Bangla-

desh is characteristic conservative whereby the victims are overlooked and outcaste which in turn obliterates the person of the victim, her diffidence, her aspirations, her chastity and those are infinitely valuable and violable assets. Considering the severity complex of rape, prior to this enactment, the offence was included in the Schedule of the Special Powers Act, 1974, and was tried by the Special Tribunal. In *Syed Sajjad Mainuddin Hasan vs State*, the Apex Court held that the language used in Section 375 of the Penal Code, 1860 is non-subliminal in regard to penetration as mere penial insertion without consent is adequate to constitute the offence of rape. A contention for complete penetration in a case of rape is not a mandate, partial penial insertion with or without ejaculation as hymenial crevice rupture is not essential, the mere attempt of penetration is sufficient to constitute the offence. Redness and abrasion of the medial side of the labia majora with white fluid discharge infers minor penetration, i.e., sufficient to establish rape. Evidentially inference is drawn based on the veracity of the accusation, usually when the victimized woman is vulnerable and socially downtrodden comes forward narrating her shameful ordeal, she has no gain in falsely accusing anyone. Proactive resistance offered by a deceased victim conferring resentment between the accused and victim is admissible in evidence as a statement in an accusation of rape. Act No VIII of 2000 has an overriding effect, when the victim is a minor; it is only safe to presume that her genitals aren't fully developed to accommodate penial insertion. Traces of sexual violence and vulvar congestion found in person of the minor victim conclusively confirms rape. In *Suroj Ali vs State*, rape on the minor victim was confirmed by the medical officer and was corroborated by independent, non-partisan witnesses. Such being complementary to one another allowed the Court to rightly draw the conclusion of conviction. Presence or availability of eye-witness (es) is the highest degree of evidence. Wherein, the examined witnesses consistently exert seeing the commission of the offence and profuse bleeding from the private part of the victim. On being medically examined, it was conclusive that such profuse bleeding resulted from forceful sexual encounter. Under such circumstances, the accusation of rape is undoubtedly proved beyond every reasonable doubt. The veracity of the FIR is confirmed and stays put when such is stood

by the plaintiff during trial, confirmed and appreciated by medical evidence and corroborated by the statement or testimony of the inflicted victim. An uncorroborated testimony of a solitary witness is seldom safe to transact conviction; however, such is the case, particularly in sexual offences. However, there must not exist previous hostility between the victim and the accused and such must be corroborated by neutral witnesses. A conviction should not be irrationally overturned like in the case of *Badal vs State*, whereby the appellant with another was alleged to have commissioned rape on a minor. The minor-victim was seen by the witness without her lower garment; however, the medical report found no sign of rape. Under such circumstances, the attempt to rape is inferred. Further, when an accused voluntarily confesses the crime extra-judicially about forcefully unclothing the victim and such extra-judicial confession is corroborated by the confessed-to individuals and the medical examination confirms that the deceased minor victim was exposed to attempt of rape before being murdered, such evokes the penalty for rape. Furthermore, deposition of a minor female victim consistently and accurately depicting the occurrence and making mentions of discharge of the male fluid contemplates rape, the testimony can alone suffice as the ground for conviction as it is judicially regarded as a vital piece of evidence and corroboration should only be looked for when there exists compelling reasons for it, or the testimony raises doubt in the judicial mind, corroboration only assists in strengthening or further confirming an accusation. Conviction for the atrocious crime of rape can be based on evidence of a solitary witness provided such is consistent, reliable and satisfies the judicial mind even without injury on the person of the victim.

### **Understanding Consent**

The definition of rape provided in Section 375 of the Penal Code, 1860 which was later adopted by the Prevention of Oppression against Women and Children Act, 2000 has accentuated the concept of 'consent,' however, such has not been given any definite meaning within provisions of the afore-mentioned statutes. The sole statutory understanding of consent in Bangladesh has been embodied and clarified in the Contract Act, 1872. On coalesced reading of Section 13 and 14, it can be affirmed that consent is the establishment of agreement on the same thing in the same sense between two or more individuals

without the external effect of coercion, undue influence, fraud, misrepresentation and mistake of either fact or law. Inference of consent maybe connected to freedom of thought and conscience, a guaranteed fundamental right of every citizen. In the case of *Mohammad Koya vs. Muthukoya*, it was held that under legal terms, consent is sturdier than knowledge as it implies conscious assent. Moreover, consent has been demarcated as an agreement embarked on choice, made by an individual in the position of freedom and capacity to make that choice. Therefore, consent denotes voluntary participation, post independently exercising between resistance and assent, while being aware of the significance and moral quality of the act. Consent can be synonymously attached to agreement, approval or permission given voluntarily by a competent person in regard of some act or purpose. The most explicit definition of consent to sexual intercourse has been disclosed in Section 74 of the British Sexual Offences Act, 2003 stating that someone agrees to vaginal, anal or oral penetration only if s/he agrees by choice to that penetration and has the freedom and capacity to make that choice which may either be implied or expressed, given freely to initiate sexual intercourse or sexual contact. The Irish Government incorporated the same definition in the Criminal Law (Sexual Offences) Act, 2017. Wills J in *Clarence* resonated that consent obtained by means of fraud or treachery is not be regarded as consent except when consent of a female for intercourse is obtained in exchange for bad money, consent is present even where it is obtained by fraud. The maxim of contract *consensus ad idem* i.e., agreement between two or more individuals on the comprehended understanding of the contractual terms and conditions is pertinent in case of consent involving intercourse. The Department of Justice of Canada outlined sexual consent in Section 273.1(1) of the Criminal Code as voluntary agreement to engage in sexual activity which however extends further to elaborately construe consent in the following subsections averring;

- i. Consent given by a representative of the complainant is not consent
- ii. Incapability on the counterpart of the complainant to consent e.g., age limitation
- iii. Obtaining consent via dominance by a man in a position of power
- iv. Expressly un-consented

- v. Rescinding previous consent either by express words or implied action

In the case of *State of Himachal Pradesh vs Dharam Dass*, the accused was rewarded acquittal as the prosecutrix had accompanied the accused and resided with him for about a week. The prosecutrix wasn't confronted by any threat yet elected not to narrate the incident to anyone. From those facts, the Court drew inference of consent to cohabit with the accused as the prosecutrix was not a minor. Similarly, in the case of *Biram Soren vs State of West Bengal*, the prosecutrix distinctively knew the accused and intentionally did not reveal his identity earlier to anyone including her parents. The identity of the accused was disclosed by the prosecutrix only on a later date to the doctor, who examined the profuse vaginal bleeding and confirmed sexual intercourse 'for' with 'as' its reason. Hence, the Court extracted inference of consent by the prosecutrix from the above and also the fact that the prosecutrix was not a minor and the delay in lodging FIR could not be adequately explained by her. Recorded denial on the counterpart of the victim to have been exposed to rape should be preponderating considered. The Court is not obliged to impose aspersion on her chastity that she had become the victim of rape which as a matter of fact is an infiltration on womanhood generally. Carole Pateman in her Article 'Woman and Consent' construes consent through the ideological figures of freedom and equality whereby rational persons obligate them to one another entering voluntarily and mutually in amenable agreements. Consent further is implied when the participants of the intercourse are under marital bond, especially in a case where a child is begotten out of wedlock. In *Shafiqul Islam vs State*, the alleged victim, a Hindu girl eloped from her father's house with her Muslim lover, accepted the religion of Islam and subsequently married him, the charges of rape against the appellant were found to be bogus. Moreover, in *Firoz Chokder vs State*, statement of the victim corresponded that she was the lawfully wedded spouse of the accused-appellant and that their marriage was solemnized by the Nikah Registrar, later sworn in an affidavit before the Notary Republic. Inference to being habitually involved in intercourse with the accused is drawn; hence the allegation of rape is unsustainable. Consent given freely as a result of free, cognizant and voluntary intermingling leading to intercourse does not invoke

or fall within the purview of any legal action. Consent is characteristic prior agreement and such is groundless when attained after the commission of the act. Unarguably, rape is characteristic *contra bonos mores* however in today's world; consent alone does not sufficiently transubstantiate the hindrance of rape into the pledge of mutually desirable sex

### **Victimized Accused**

In their research, Charlotte Triggs OBE mentions that women lie about rape and has characterized rape as regret sex. J.P. Martin & D. Webster in their book '*The Social Consequences of Conviction*' mentions 'Once a man is convicted of an offence, and particularly once he goes to prison, he will begin to lose the approval and support of his law-abiding family and friends. His ties to them will be cut or weakened. He cannot, however, exist without a degree of social approval from another and less scrupulous source.' A systemic approach to identifying the existence of *prima facie* case by the police is deficit in law, such deficit when seen in the Indian perspective only accumulated 53.2 percent of false rape allegations between 2013 and 2014. In the month of October 2017, the world of social media was taken over by the #MeToo hashtag, where the women who have been sexually assaulted previously shared their stories. The Pew Research Center's 2018 conducted research, showed that 31 percent of Americans took offence where innocent men were falsely accused of sexual assault that ultimately resulted in compromised reputation and wrongful conviction. The Apex Court of Bangladesh instituted the directory of evaluating the materials on record confirming the *prima facie* and nature of the allegation judiciously. Proceeding with a false allegation without confirming *prima facie* nature of such allegation is detrimental and also unnecessarily consumes the time of the Court as the allegations brought forward is eventually likely to be unsubstantiated in Court. The Judiciary of Bangladesh is well vested in *actus curiae neminem gravabit* i.e., the act of a Court of law shall prejudice no human. This doctrine embodies the jurisdiction of the Court to exercise based on necessity during a proceeding or an appeal even when the parties of the case has squashed their disparities. De Zutter, *et al.*, in their research proposed the theory of *fabricated rape* to pertinently distinguish between true and false facts. Where the allegations are based on truth, the facts are derived from

rumination of events and where it is false the facts are decorated fiction. An allegation based on falsehood usually resorts to summarizing the facts. When the scandalous crime of rape actually occurs, incidents that traumatize the victim is narrated, the verbal altercations and interactions usually act as corroboration of the truth. Rape being unconsented, characteristic forceful sexual encounter temporarily leaves behind traces or marks of violence on person of the victim by virtue of the action. The absence of such serves as a focal point in exposing and differentiating false accusation from a true one.

Allegations or the statements of allegation made or recorded by the victim must be proved in Court. Especially in cases where the prosecutrix is the lone witness and the only available corroboration of the incident is hearsay from the narrations of the prosecutrix, the truth behind such allegation must be assessed. In the case of *Abdul Latif vs State*, apart from satisfying the aforementioned circumstance, the prosecutrix collapsed before the offence of rape was commissioned on her, it is only justified for the Court to presume that she could not have identified the rapist due to her insentient, hence did not risk convicting the appellant as the allegations could not be proved beyond reasonable doubts. False allegations are usually the result of foreign ulterior motives which is mostly of personal nature the likes of vengeance, hurt, protecting family honor, et cetera. Provided accusations of rape brought by one party against another between who established antagonism is prevalent, the facts of such allegations must be scrutinized with paramount care. Independent witnesses must be present to corroborate the accusation under such circumstances. In the cases of *Md Sobuj vs State* and *Md Khairul vs State*, both share the common bound of sexual accusation by a rival. In the former the enmity was due to personal differences and the latter was based on land dispute. However, in the former case, medical report was not done and in the latter case the report disfavored the prosecutrix. Resultantly, no evidentiary trace of rape was found on person of the victims neither there was any corroboration by the disinterested neighbors. The evidentiary value of marks of violence on person of the victim has been transcript in the decisions of the Superior Courts innumerable. While establishing the facts of the case, the then wearing apparels of the victim must be produced and examined and the description so provided must be at par

to the sketch-map. In case, the sexual encounter did occur, the burden of establishing consent of the prosecutrix befalls the accused exception being in the case of a fully grown adult woman where the prosecution must establish that such sexual encounter was without the consent of the victim. In *Golam Ahmed vs State*, it was established that perpetual sexual encounters cannot be unconsented or obtained by fraud especially where the prosecutrix and the appellant reside together as a married couple for a considerable period of time. Hence, circumstantially the shared intercourse is not a single day event. Furthermore, in *Sanjay Kumar Biswas vs State*, the prosecutrix at her own concurrence arrived and stayed with Romeo at the refuge provided by the accused appellant. Amidst free mixing, it is only safe to assume that two adults of opposite sexes amicably indulged in intercourse. Thereby, the Bench concluded that consent was neither deceitfully nor forcefully obtained. Resistive force must be applied by the victim to promulgate that the intercourse was unconsented. As resistance is usually not exercised in sexual encounters where the indictment is false and the alleged victim is a willing partner. Inclination of the prosecutrix to indulge in intercourse with the accused can be shown by- defaults of legal technicalities like inordinate delay in lodging FIR, non-examination by a medical officer and corroborative evidences such as non-production and examination of independent, non-partisan, disinterested witness privileges the accused with the benefit of doubt. Such liabilities of proof are overlooked when the victim is habitually involved in intercourse with the accused making the accusation incredible. Sexual agreement is conclusive when the participating female is categorized as a sex worker. To establish rape on females of such profession, persuasive evidence and supportive corroboration is necessary. It is no surprise that innocent people have been falsely implicated and wrongfully convicted for rape previously. In the present scenario, keeping the recently amended penalty in view, the Courts ought to take utmost care in conducting litigations of such accusation to unmistakably separate a false allegation from a true one.

#### **CONCLUSION:**

The vehement action of rape is homogeneously transparent to homicide of a victim's chastity. From a general perspective, any action done with consent generates pleasure and vice-versa, the same is ex-

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clusively applicable in sexual contexture. The freedom of thought, conscience, and that of movement is constitutionally guaranteed, however, within the encirclement of limitation and such imposed constraints are the unacceptable, unsocial, penal-able demeanors such as rape. From the course of this study, it is conclusive that rape is established when a female is forced into sex or an attempt of unconsented intercourse is perpetrated. Such forceful, unconsented act defers resistance whereby marks of violence found in person of the victim, the condition of the then wearing apparels, confirmation of the accusation by disinterested witness serves as strong pieces of corroborative evidence. The Nari-O-Shishu Ain is primely executed to suppress the outburst of violence against women and children. The accommodation of the perniciousness of rape has served justice to its protected subjects as the designated Special Tribunals act fast and consistent. However, application is always accompanied by misapplication; use is always transverse to misuse. It is also evidently seen from this study that innocent people have been falsely implicated, again in the words of Charlotte Triggs OBE these are nothing but regret sex. Since, the amended penalty is capital, the presiding Courts ought to be extraordinarily cautious while hearing, scrutinizing and dispensing sentence as not to convict an innocent wrongly. Given, the social predicament of the country, the amendment is of utmost necessity to deter potential preparators.

Such is visibly seen when the practice of throwing acid to permanently burn faces of females was prevalent in the country. Then Government amended the penalty for such to maximum and successfully abolished the entire trend. This amendment finds its base in the same composition and expects to accomplish similar outcomes.

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#### **CONFLICTS OF INTEREST:**

There exists no potential conflict of interest between the author(s).

## REFERENCES:

- 1) Abdul Latif vs, (2011). 16 BLC 245.
- 2) Abdur Rahman & Ors vs State, (1999) 4 MLR (AD) 25.
- 3) Abdus Sobhan Biswas vs State, (2002) 54 DLR 556.
- 4) Abolishing Death Penalty (Asian Human Rights Charter), (1998). p.11. Available online at - <https://www.refworld.org/pdfid/452678304.pdf>
- 5) Abu Taher vs State, (2001). 6 MLR (AD) 77.
- 6) Abu Taher vs, (2005). 10 BLC 32.
- 7) ACC vs. Barrister Nazmul Huda, (2008). 60 DLR (AD) 57.
- 8) AK Azad vs Mostafizur Rahman, (2016). 21 BLC (AD) 8.
- 9) Al Amin vs State (1999), 51 DLR 154.
- 10) Amendment of Nari O Shishu Nirjaton Daman Ain (Women and Children Repression Prevention Act, 2000). [https://www.dpp.gov.bd/upload\\_file/gazettes/37120\\_60094.pdf](https://www.dpp.gov.bd/upload_file/gazettes/37120_60094.pdf)
- 11) Amzad Hossin vs State, (2010). 62 DLR (AD) 288.
- 12) Atish Ali & Ors vs. Rehati Mohan Sarkar & Ors, (1991). 11 BLD 97.
- 13) Azad MA and Tumpa RK, (2018). Law of Crimes, p.431, 2nd Edn, Sufi Prokashoni, Dhaka.
- 14) B.G. Goswami vs Delhi Administration, (1974). 3 SCC 85.
- 15) Badal vs State, (1999). 4 BLC 381.
- 16) Belén KHJ, Kinberg L, Dunn K & Gould JB, (2018). False Rape Allegations: Do they lead to a Wrongful Conviction Following the Indictment of an Innocent Defendant? Justice quarterly, 37(2) p. 281-303. <https://doi.org/10.1080/07418825.2018.1486449>
- 17) BLAST & Others vs. Bangladesh & Others, (2015). 1 SCOB (AD) (2015) 1.
- 18) Broom H, (1995). Broom's Legal Maxims, p.74, 10<sup>th</sup> Ed, Universal Book Traders, Delhi.
- 19) Carole Pateman, (1980). Women and Consent, *Political Theory*, 8(2) p.150. <https://doi.org/10.1177%2F009059178000800202>
- 20) Consent defined; free consent defined (The Contract) Act, (1872).
- 21) Consent (Sexual Offences) Act, (2003).
- 22) Consent, Washington State Legislature, RC-W 9A.44.010. Available online at - <https://app.leg.wa.gov/RCW/default.aspx?cite=9A.44.010>
- 23) Cr, (1972). 1464 J&K.
- 24) Cr LJ, (1992). 1666 Calcutta.
- 25) De Zutter, AWEA et al., (2016). Filing false vice reports: Distinguishing true from false allegations of rape, *The European Journal of Psychology Applied to Legal Context*, 9(1). <http://dx.doi.org/10.1016/j.ejpal.2016.02.002>
- 26) Definition of consent, Canadian Criminal Code; Available at - <https://www.justice.gc.ca/eng/cj-jp/victims-victimes/def.html>
- 27) Disha JS. (2021). Contemporary mainstream Bengali movies and societal perceptions towards rape: legal perspectives, *Asian J. Soc. Sci. Leg. Stud.*, 3(6), 247-255. <https://doi.org/10.34104/ajssls.021.02470255>
- 28) Firoz Chokder vs, (2006). 11 MLR 115.
- 29) Godcharles BD et al., (2018). Can empathy close the racial divide and gender gap in death penalty support, *Behavioral Sciences & the Law*, 37(1), p.17. <https://doi.org/10.1002/bsl.2391>
- 30) Golam Ahmed vs State, (2012). 64 DLR 93
- 31) Habibur Rahman vs Crown, (1954). 6 DLR 361.
- 32) Hanover Fire Insurance Company vs Muralidhar, (1958). 10 DLR (SC) 136.
- 33) Hareshuddin Pramanik vs State, (2008). 13 BLC 310.
- 34) Hester M and Lilley SJ, (2017). More than support to Court: Rape victims and specialist sexual violence services, *International Review of Victimology*, 24(3), p-314. <https://doi.org/10.1177%2F0269758017742717>
- 35) Horon vs State, (2018). 70 DLR 524.
- 36) Huda S, (2004). Sexual Harassment and Professional Women in Bangladesh, *Asia-Pacific Journal on Human Rights and the Law*, 2(1), p-52. <http://dx.doi.org/10.1163/1571815032120004>
- 37) Ibrahim Dewan vs State, (2016). 21 BLC 813.
- 38) Jahangir Hossain vs, (1996). 1 BLC 292.
- 39) Kamal Hossain vs State, (2009). 61 DLR 505.



- 40) Kessel A, (2019). The cruel optimism of sexual consent, *Contemporary Political Theory*, **19**, p-362.  
<https://doi.org/10.1057/s41296-019-00362-8>
- 41) Khan MEP & Karim MA, (2017). The Prevention of Women & Children Repression Act 2000: A Study of Implementation Process from 2003 to 2013, *IOSR Journal of Humanities and Social Science*, **22**(7), p-34. Available at -  
<https://www.iosrjournals.org/iosr-jhss/papers/Vol.%2022%20Issue7/Version-11/E2207113442.pdf>
- 42) Long LM, (2017). Rape Victim Advocates Experiences with Law Enforcement in the Emergency Room, *Feminist Criminology*, **13**(5), p-1.  
<https://doi.org/10.1177%2F1557085116687033>
- 43) Mahmud SR *et al.*, (2017). BONITAA: A Smart Approach to Support the Female Rape Victims, *IEEE Region 10 Humanitarian Technology Conference*, p-730.  
<https://doi.org/10.1109/R10-HTC.2017.8289061>
- 44) Martin JP and Webster D, (1971). Cambridge Study in Criminology, The Social Consequences of Conviction, p.218. 1<sup>st</sup> Edn, Ashgate Pub Co, London.
- 45) Masip, J and Herrero C, (2013). ‘What would you say if you were guilty?’ Suspects’ strategies during a hypothetical behavior analysis interview concerning a serious crime. *Applied Cognitive Psychology*, **27**; 60-70. <http://dx.doi.org/10.1002/acp.2872>
- 46) Masud Mia vs State, (2004). 56 DLR 352;
- 47) Md Abdul Quader vs State, (2006). 11 MLR 196.
- 48) Md Khairul vs State, (2008). 12 MLR 409.
- 49) Md Manirul Islam vs State, (2003). 8 MLR 27.
- 50) Md. Abdul Hakim vs. the State, (2004). 24 BCR 99.
- 51) Md. Awal Fakir vs The State, (2004). 9 MLR 297.
- 52) Md. Sobuj vs State, (2006) 26 BCR 61.
- 53) Misti & Ors vs State, (2001) 6 MLR 394.
- 54) Mohammad Koya vs. Muthukoya, (1979) 2 SSC 8.
- 55) Najim Uddin vs State (2017) 69 DLR 235.
- 56) Nurjahan Begum vs AFM Abdullaah, (2008) 13 BLC 535.
- 57) Panibhusan Behera vs State of Orissa, (1995) 2 Cr LJ 1561, Orissa.
- 58) Preamble, Definition of Rape, (The Prevention of Oppression against Women and Children) Act 2000.
- 59) Rape (The Penal Code), (1860).
- 60) Rehana Begum vs State (2011) 63 DLR 548.
- 61) Right to protection of law; Protection of right to life and personal liberty; Protection in respect of trial and punishment; Freedom of thought and conscience, and of speech, (*Constitution of the People’s Republic of Bangladesh*) 1972.
- 62) Roni Ahmed vs State, (2009). 61 DLR 147.
- 63) *Safazuddin vs State*, (2008). 13 BLC 271.
- 64) Sahni SP and Junnarkar M, (2020). The Death Penalty Perspectives from India and Beyond, p-xxi *Springer, Singapore*.  
<https://doi.org/10.1007/978-981-15-3129-3>
- 65) *Saiful Islam vs State*, (2019). 71 DLR 6.
- 66) *Samundar Khan vs State*, (1963). 15 DLR (WP) 115.
- 67) *Sanjay Kumar Biswas vs State*, (2016). 68 DLR 185.
- 68) Sarkar SK, (2020). Principal Information Officer, Press Information Department, Government of People’s Republic of Bangladesh, MSG: 72/2020-21, October 14.  
[http://www.pressinform.gov.bd/sites/default/files/files/pressinform.portal.gov.bd/allnotes/b308ada7\\_f96f\\_463f\\_bec4\\_ceacd7d92c60/2020-10-14-12-17-dea9d047814677300356e7ed1ed6a571.pdf](http://www.pressinform.gov.bd/sites/default/files/files/pressinform.portal.gov.bd/allnotes/b308ada7_f96f_463f_bec4_ceacd7d92c60/2020-10-14-12-17-dea9d047814677300356e7ed1ed6a571.pdf)
- 69) *Seraj Talukder vs State*, (1998). 3 BLC 182.
- 70) *Shafiqul Islam vs State*, (1998). 50 DLR 581.
- 71) *Shaik Mehtab vs State of Andhra Pradesh*, (2002). Cr LJ 1421 (AP).
- 72) Sharlach L, (2000). Rape as Genocide: Bangladesh, the Former Yugoslavia, and Rwanda, *New Political Science*, **22**(1), p-89.  
<https://doi.org/10.1080/713687893>
- 73) *Shibu Pada Acharjee vs State*, (2003). 8 MLR 200.
- 74) *Shyama Sundar vs State*, (2003). Cri LJ 1354 Orissa.
- 75) Smith & Hogan, (2005). Criminal Law, p.459 11th Edition, *Oxford University Press, London*.
- 76) Sohel Rana vs State, (2005). 57 DLR 591.
- 77) State vs Awal Fakir, (2004). 56 DLR 647.
- 78) State vs Azad Mia, (2000). 5 BLC 304.

- 79) State vs Mostafizur Rahman, (2015). 67 DLR (AD) 218.
- 80) State vs Rahim Sikder, (2000). 5 BLC 466.
- 81) *State vs Shahidul Islam*, (2006). 58 DLR 545; 26 BCR 204.
- 82) State vs Sukur Ali, (2004). 9 BLC 239.
- 83) Suroj Ali vs State, (2005). 10 BLC 292.
- 84) Syed Sajjad Mainuddin Hasan vs State, (2018). 70 DLR (AD) 70.
- 85) Taylor, Principles and Practice of Medical Jurisdiction, Vol-II.
- 86) Thabah YG and Paul RJ, (2019). Role of Police and Prosecution in Eliminating False Rape Cases: Applying the British No-Crime Label in Indian Criminal Justice Administration, **10**(2), p. 47.  
<https://ir.nbu.ac.in/handle/123456789/3616>
- 87) Triggs OBE C, (2018). False Allegations of Sexual Violence: The Reality. In: E. Milne Brennan K., South N., Turton J. (eds), *Women & the Criminal Justice System*, p.1.  
[https://doi.org/10.1007/978-3-319-76774-1\\_3](https://doi.org/10.1007/978-3-319-76774-1_3)
- 88) Ullah MA, (2020). Social Recovery of Rape Victim in a Tertiary District ‘Barishal’ of Bangladesh: An Incumbent Challenge that Requires Persistent Strategy, *International J. of Arts Humanities and Social Sciences Studies*, **5**(7), p-38.  
<http://www.ijahss.com/Paper/05072020/1179451179.pdf>
- 89) UN General Assembly. “Universal Declaration of Human Rights”, (1948). 217(III) A. Paris.  
<http://www.un.org/en/universaldeclaration-human-rights/>
- 90) Zacharek S, Dockterman EH & Edwards S, (2017). The silence breakers. Retrieved from <http://time.com/time-person-of-the-year-2017-silence-breakers/bn>

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<https://doi.org/10.34104/ajssls.022.058067> 