

Compensating to Rape Victim: Bangladesh in Context

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Abstract: -Compensation to a rape victim is a growing need in this post-modern world of the twenty first century. Perpetrator as well as the state has responsibility to make good a rape victim through a proper legal framework. But the issue of compensation to rape victims has been paid less attention. The rape victims don't have any specific access to receive compensation as of right in the legal system of Bangladesh. Rather it has been made optional by specific laws and by the courts. Therefore, the issue of compensation to rape victim needs extra care. This paper is going to address the weakness of the existing laws in Bangladesh and argues for ensuring compensation, as of right, to the rape victim as justice requires in a civilised nation.

Keywords:Rape victims, Compensation, Compensation Scheme, Criminal Justice, Bangladesh.

Date of Submission: 07-10-2020

Date of Acceptance: 22-10-2020

I. INTRODUCTION:

Crimeless society is a myth. When there is a society, there is crime. The existence of crime in every society is inevitable¹ and the product of crime is equally bound to emerge. In Bangladesh criminal justice system, an accused is presumed to be innocent and shall have the right to defend him as well as shall be entitled to get fair and impartial trial. Article 35 (3) of the constitution of Bangladesh provides that an accused of a criminal offence shall have the right to get a speedy and public trial by an independent and impartial court or tribunal established by law. But the victims are still victims.² In spite of having egalitarian mandate pledged in the article 27 of the constitution, no such right is recognized in Bangladesh by the specific law for the crime victims who have suffered physically, psychologically and socially. According to article 1 of the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, "Victim means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws prescribing criminal abuse of power". During recent years, crimes against women are increased.³ Among various crimes, rape⁴ is the most heinous crime against mankind. It is inhumane act of violence against a woman. It attacks on the integrity and dignity of a woman. Victims of rape have to face social stigma of the society. They suffered harm including physically, mentally, economically and materially. Raping a woman is much more heinous crime than murder, because rape reduces a woman to a state of living corpse.⁵ Recently, Bangladesh government has passed highest punishment, death penalty, for rape.⁶ However, harsh punishments to perpetrators of rape to some extent, might console the victims of rape, would hardly arrest the dangerously increasing incidence of rapes.⁷ It is a matter of common experience that efficacy of deterrent punishment is based on full proof investigation; speedy disposal and certainty of punishment.⁸ In Bangladesh administration of criminal justice unfortunately is cuddled with faulty, incautious in investigation of rape cases; undue delay in disposal of rape cases, and poor conviction rates. Therefore, death penalty, for rapists, in the present situation, would have a little impact. Criminal and penal policy in Bangladesh should have sensitivity to the plight of rape victims and to their social, emotional as well as psychological rehabilitation. A country, in its criminal justice system, must be careful about the pressing need to restore their

¹ Reckless, W. C., *The Crime Problem*, New York: Meredith Publishing Company, (1967), p.10

² Mondal, A. H., *Crime Victims and their Treatment in the Administration of Justice*, Vol.14, Central India Law Quarterly, (2001), p.32

³ Nearly 1000 rape cases were reported between January and September this year according to Human Rights Organization Ain-o-Salish Kendra (ASK), 2020, accessed 12 October 2020

⁴ Rape, as provided under Section 375 of the Bangladesh Penal Code, 1860, in essence, coercive sexual intercourse with a woman.

⁵ Vibhute. K.I *Victims of Rape and Their Rights: Legislative and Judicial Response in India*, Coching University Law Review, (1999), p.38

⁶ Section 9(1) of the Prevention of Women & Children Repression (Amendment) Act 2000

⁷ Supra Note 5, p. 40

⁸ Ibid

untold trauma and humiliation experienced during the coercive sexual encounter.⁹ Therefore, a rape victim also not only needs to get fair and quick justice for the injury caused by the offender but also has a right to get adequate monetary compensation which helps the victim in social, emotional as well as psychological rehabilitation. A sentence with rigorous imprisonment for life and with fine to an accused person, may only give some mental consolation to the victim or to the family, but it will not compensate the actual loss sustained by the victim. Surprisingly, in the absence of any proper legal as well as institutional framework in Bangladesh, less attention has been paid to rape victim as well as their needs of compensation. That's why rape victim's compensation right still remains highly elusive in our criminal proceeding.¹⁰

The article focuses mainly on the legal and institutional framework in Bangladesh for the rights of the rape victim to get compensation. To substantiate the claim of the paper it explores five basic board issues. Firstly, it sheds light on international concern for compensation to rape victim in criminal justice system. Secondly, it aims at investigating into existing laws in Bangladesh to examine the right of the victim of rape to claim compensation. Thirdly, it puts judicial responses in compensating a victim of rape. Finally, it appeals with recommendations for introducing the effective criminal justice system in Bangladesh to provide for compensation of a rape victim to ensure the ends of justice.

II. COMPENSATION TO RAPE VICTIM: INTERNATIONAL CONCERNS

Compensation or restitution for victims of crime in general is not a new topic. International law has outlined the principles of compensation to aggrieved victim. United Nations General Assembly (UNGA) has adopted a resolution namely 'United Nations Declaration of basic Principles of Justice for Victims of Crime and Abuse of Power 1985'. At international level, it was for the first time that serious efforts were made to define the victim and his rights. This declaration is meant to provide compensation rights to crime victim in general, and it is therefore also applicable to the victim of rape. Under this declaration, victims have the right to compensation from the offenders, and if possible, from state as well. The declaration deals with some important rights of victim like access to justice and fair treatment, restitution, compensation and assistance etc. This declaration also defines the concept of victim in detail.¹¹ Particularly, the declaration notes that¹² victims should be treated with compassion and respect for their dignity and are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

Article 75 of the Rome Statute of the International Criminal Court (ICC) recognises the rights of victim reparation from the individual offender. It has also made the provision of creating 'trust fund' for the victims. Even though the instrument does not mention compensation for rape victim explicitly it addresses the right of all victims of crime including rape victim. "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law"¹³, adopted in 2005 by UNGA, deals with reparation for the victim of human rights violations. Besides these, several international human rights instruments such as the Universal Declaration of Human Rights (UDHR)¹⁴, International Convention on Civil and Political Rights¹⁵ (ICCPR), International Covenant on Economic, Social and Cultural Rights¹⁶ (ICESCR) and the Convention on Eliminating all forms of Discrimination against Women and Children¹⁷ (CEDAW) deal with the matter related compensation to victim. These conventions impose the obligation upon its signatory states to offer an effective criminal justice system to its citizen. Therefore, it includes the concept of legal remedy such as compensation to victim. The victims of rape, assault, child sexual abuse, drunk driving, and domestic violence, families of homicide victims are eligible to apply for the compensation programs.

Moreover, it is important to mention that above declarations, resolutions and codification of customary practices have no binding legal obligation upon states parties as they fall within the ambit of soft international law.¹⁸ Even though the declaration is not legally binding, it can still have an impact on the states when it comes to policy

⁹ Ibid

¹⁰ Final Report on a proposed law relating to payment of compensation and other reliefs to the crime victims (2007), See at <http://www.lc.gov.bd/reports/75.pdf> accessed 16 July, 2020

¹¹ Retrieved from https://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/220572/1/11_chapter_iii%20victim%20compensation-%20an%20analysis.pdf accessed 9 August, 2020

¹² Article 1 and 2 of the United Nations Declaration of basic Principles of Justice for Victims of Crime and Abuse of Power (November 29, 1985), United Nations, A/RES/40/34

¹³ UNGA Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, (2006), UN Doc A/RES/60/147

¹⁴ Universal Declaration of Human Rights, (1948), G.A. Res. 217(III) A, U.N. Doc. A/RES/217 (III)

¹⁵ International Covenant on Civil and Political Rights, (1966), S. Treaty Doc. No. 95-20, 6

¹⁶ International Covenant on Economic, Social and Cultural Rights, (Dec. 16, 1966), United Nations, Treaty Series, vol. 993

¹⁷ Convention on the Elimination of All Forms of Racial Discrimination (1979), United Nations, Treaty Series, vol. 1249

¹⁸ Starke, J. G. Introduction to International Law, Aditya Books Butterworths, (1994), pp. 52-55.

making. Bangladesh is a signatory country to those above-mentioned declarations, resolutions, and conventions. The High Court Division (HCD) declared that beneficial provisions and principles of international law can be resorted to and implemented in relevant cases unless they are contrary to the existing national laws.¹⁹ In *Professor Nurul Islam v Bangladesh*²⁰ the HCD even considered and applied non-binding instruments in the interpretation and application of domestic law. Also, in the case of *H.M. Ershad v. Bangladesh*²¹ it is held that national courts should not straightway ignore the international obligations which a country undertakes. If the domestic laws are not clear enough or there is nothing therein, the national Courts should draw upon the principles incorporated in the international instruments.

In commensurate with the international standards, in many jurisdictions the victims of rape are fairly protected, assisted, restituted and compensated by appropriate laws and measures. United Kingdom (UK) established the victim compensation scheme through the Criminal Injuries Compensation Act in 1964. A rape victim in UK is entitled to get compensation from the government. To compensate victims of violent crime including rape and sexual assault, the government has set up Criminal Injuries Compensation Authority (CICA). Under the scheme, a rape victim can claim compensation for physical damage, psychological damage, financial losses, medical expenses, rehabilitation costs, other expenses incurred as a victim of rape. It also states that all rape cases are treated as unique and the amount of compensation would depend on the severity of cases. Although compensation will never fix things right, it can still come as invaluable financial help for treatment and counselling for a rape victim.²²

In the United States America (USA), rape is generally prosecuted as a crime at the state level as well as victim compensation programs for rape victims are found at the state level.²³ However, victim compensation programs are funded by the Federal Crime Victims Fund, which was established by the Federal Victims of Crime Act of 1984.²⁴ While every state in USA has crime victim compensation programs that provide assistance to the crime victims and their families, they also understand that even though money cannot erase the grief and trauma that the victims undergo, the compensation amount is crucial in the aftermath of the crime.²⁵

In our neighbouring country India, the right of a rape victim of receiving compensation was recognized under section 357 of the Code of Criminal Procedure (CrPC), 1973. Under this section, compensation was to be paid by the accused and only granted when the trial is concluded. Besides, state had no duty to compensate the victim. In 2008, amendment has been made to the CrPC by which section 357A was inserted in the Code. This section imposes liability on the state to compensate the crime victim as well as it focuses on rehabilitating the victim even where the accused is not tried. In addition, section 357A will also respond to the immediate needs to the victims for first aid or medical benefit as well as any other interim relief, based on necessities. This section also requires every state government along with the central government to prepare a Victim Compensation Scheme (VCS) and almost all the states have come up with their own compensation scheme since the 2008 amendment. The scheme made way for an institutionalized payment of compensation to the victim by the state for any loss or injury caused to her by the offender. In cases where compensation paid by the accused is inadequate or no such compensation is payable on account of acquittal or discharge of the accused or the offender not being traced or identified; the VCS is applicable. Such payment may also be allowed on the specific recommendations of the court.²⁶

Section 357B of CrPC, (1973) specifically provides that in cases of acid attack and gang rape the compensation payable by the state shall be in addition to the payment of fine to the victim under the said sections. A Bangladeshi woman was gang raped by some railway employees in India. Damages were awarded to her against the *Railway Administration in Chairman, Railway Board* under Art.226.²⁷

Initially, there were a lot of discrepancies about the amount of compensation decided by the states under VCS. In *Tekan v. State of Chhattisgarh*²⁸, the Supreme Court observed that there has been observed that no uniform practice is being followed in providing compensation to the rape victim for the offence and her rehabilitation. In the case of *Nipun Saxena v Union of India*²⁹ the Supreme Court asked to constitute a committee

¹⁹Anika Ali v RezwanaulEhsan(2012) 17 MLR (AD) 49, Hussein Mohammad Ershad v Bangladesh and Others (2001) 21 BLD (AD) 69. See generally, Hasanat, A., Using International Law in National Courts: Bangladesh Perspective, Bangladesh Journal of Law, Volume 13, (2013), pp.49-72.

²⁰[2000] 52 DLR (HCD) 413

²¹2001 BLD (AD) 69,

²²For detail see <https://www.gov.uk/government/publications/criminal-injuries-compensation-scheme-2012>

²³ Available at http://www.ncpc.org/resources/files/pdf/mortgage-fraud/copy_of_WhatUCanDo508.pdf accessed September 2020.

²⁴Liton,S.RapeVictims in Bangladesh: Compensation Hard to Ensure, The Daily Star. Retrieved from <https://www.thedailystar.net/frontpage/its-hard-get-compensation-1216783> accessed August, 2020

²⁵ Available at www.nacvcb.org accessed July, 2020.

²⁶Dube, D.Victim Compensation Schemes in India: An Analysis, (2018) IJCJS. Retrieved from <http://www.sascv.org/ijcjs/pdfs/DubeVol13Issue2IJCJS.pdf> accessed 9 July, 2020

²⁷AIR 2000 SC 988: (2000) 2 SCC 465

²⁸Tekan V State of Chhattisgarh (2016) INSC 142

²⁹NipunSaxena V Union of India (2018) SCC online SC 2772

to frame a model rules for victims' compensation for sexual offences and acid attacks and accordingly, 'Compensation Scheme for the Women Victims or Survivors of Sexual Assault and Other Crimes' has been emerged. It provides provisions for the instant compensation in deserving cases. It also increases the minimum amount of compensation of rape from Rs. 3 lacks to Rs. 4 lacks. The scheme is significant milestone for the development and rehabilitation of rape victim in India.³⁰ Unfortunately, there is no such legal framework in Bangladesh.

III. COMPENSATION WITHIN THE LEGAL PURVIEW OF BANGLADESH: A REALITY CHECK

The history of penal law in Bangladesh can be traced back to the times of colonisation and the era of British rule. In Bangladesh, rape is dealt under with Section 375 and Section 376 prescribes punishment under the Penal Code, 1860 passed during the British colonial era. These sections are alive with providing no compensatory remedy to the victim. Most of the laws in Bangladesh are silent about the necessity for providing compensation to victims of crime. The very first trace of compensation in Bangladeshi law can be found in Section 545(1) (b) in the Code of Criminal Procedure (CrPC) of 1898. As provided the said Section, when court imposed a fine, court may order whole or part of the fine recovered to be applied in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the court, recoverable by such person in a civil court. But this section is applicable only in case of fine imposed and recovered by the court. It is not mandatory as well. It depends on the discretion of the court.

As provided Section 15 of Nari O Shishu Nirjatan Daman Ain, 2000 that a victim may get the fine as compensation in some specific offences mentioned in sections 4 to 14 and rape is one of them. Under the Section the offences for which fine is imposed by the tribunal, such fine 'may' be treated as compensation for the victim of the offence and the fine can be realised from the convict or from his existing property, it can be realised from the property of which he will be the owner or in possession in future and the claim of such fine or damage shall prevail over any other claim on that property. Besides, Section 13 of the said Act lays down the provision regarding a child born as a consequence of rape. Under the Section, the state is responsible for providing maintenance of a child born as a result of rape. To do this, the government primarily collects maintenance costs from the existing property of perpetrator as well as from the property of which he will be the owner in future. However, if offender is unable to pay the money or if he is insolvent, the government shall provide the maintenance costs from the state's fund.³¹

In addition, this law also empowers tribunal to hold trail of the sexual crimes against women and children for compensating the victims. As per the law, the tribunal may impose any monetary fine on convicted persons and order the district collector to sell, to confiscate the convicted person's, existing as well as future, movable and immovable assets and sell them on auction. Then the collector will deposit the money to the tribunal and that will award the money to the victim as compensation.³² But the completion of the process may take a long time if the convicted person files an appeal. So, there is no scope for a rape victim to get any compensation before the conclusion of her case.³³ The court is not bound to order for compensation as well.

Bangladesh Law Commission has realized that there is an urgent need for making a new law providing for the rights and benefits of the crime victims and for payment of monetary compensation to them for their survival in the society with honour, dignity and prestige. The Commission prepared a Draft Bill (Final Report on a Proposed Law Relating to Payment of Compensation, 2007) and it proposed that the crime victims are entitled to get compensation. Only the eligible crime victims as enumerated in this draft bill will be entitled to get monetary compensation and other necessary assistance. This Bill provides provisions for a 'Victim Services Committee' which will be established by the Government in each District within the office of the District and Sessions Judge under the control, supervision and management of the Ministry of Law, Justice and Parliamentary Affairs for carrying out the purposes of this Act.³⁴ The bill also proposed that Government shall establish a "Crime Victims Compensation Fund" in each District under the control and management of the Victim Services Committee for payment of compensation or other benefits to crime victims which shall consist of the Government contribution; collection of the Committee from other sources; any voluntary contribution, donations, grants or gifts from any individual or non-government voluntary organization; all criminal fines, amount of forfeited bail bonds and penalties under Section 13 of the Draft of Law commission, 2007.³⁵ However, the reality is that the Government did not take any initiative to introduce and pass the proposed draft

³⁰Gupta, S. Compensation to rape Victim: A Critical Analysis, (2019), retrieved from <https://criminallawstudiesnluj.wordpress.com/2019/08/30/compensation-to-rape-victims-a-critical-analysis/> accessed July, 2020.

³¹Patwari, S. Crime and Compensation, (2017), the Daily Star. Retrieved from <https://www.thedailystar.net/opinion/perspective/crime-and-compensation-1472062> accessed August, 2020

³² Section 26 and 27 of the Nari O Shishu Nirjatan Daman Ain, 2000

³³ Supra Note 24

³⁴ Sec. 6 of Draft bill of Law commission (2007), Retrieved from <http://www.lc.gov.bd/reports.htm> accessed August, 2020

³⁵For detail see <http://www.lc.gov.bd/reports.htm> accessed July, 2020.

bill as an Act in the Parliament. Bangladesh has ratified the Convention against Torture, Other Cruel, Inhuman or Degrading Punishment and Treatment, 1984 with a reservation of Article 14 which stipulates, "The state-party shall ensure in its legal system that the victim of an act of torture obtains redress and gets an enforceable right to fair and adequate compensation including means of full rehabilitation as far as possible".³⁶ As a result of this reservation, the government does not accept its legal responsibility to provide compensation to a torture victim or their family, or rehabilitated the torture victims.³⁷ This is an indication of the apathy of our government towards the suffering of victims of crime.

From the above discussion, it is clear that existing laws related to crime victim's compensation in Bangladesh are quite insufficient. Besides, the existing laws cannot assure that the victim would receive the compensation as of right. Section 545 of CrPC has empowered the court to pass an order to the effect that the fine charged on the offender to be paid to the victim as compensation.³⁸ But this provision does not confirm the victim to receive the compensation as of right. Section 15 of Nari O Shishu Nirjatan Daman Ain, 2000 suffers the same shortcomings in confirming the victim to receive the compensation as of right. It is only an enabling provision. Because, under this conditional payment provision, receipt of money charged on the offender as fine would be made by the victim or by his/her heir only when the same could be realized from the present property or from any such property the offender leaves after his death.³⁹ There is, therefore, a great need for making mandatory provisions for payment of compensation and other reliefs to the rape victims by enacting a specific law for that purpose.

IV. COMPENSATING TO RAPE VICTIM: JUDICIAL INTERVENTION

In Bangladesh, the need for a compensatory mechanism for rape victim is also emphasised by various judicial precedents. *Al Amin vs. The State*⁴⁰, A.K. Badrul Huq J stressed the need for compensating rape victims, where a girl was gang raped and photographed:

'Rape is a breach of the victim's fundamental right to life. It is the violation of human dignity of the victim. Rape is an indictable crime. Mere punishment of the offenders of sexual assault cannot give much solace to the victim and her family members. Adequate monetary compensation upon the offenders may redress the wrong and damage caused to the victims and the family members. A permanent mode of compensation has to be worked out. The Government may consider the matter under observations. This compensation has to be awarded independently having no nexus with the provision of imposition of fine.'

The need for compensation has been strongly emphasized in the above case. In *Md. Wasim Mia and another vs. The State*⁴¹ a deaf and dumb minor girl was found tied to a tree, stripped naked and raped by a man, who was a fugitive. The High Court Division upheld the conviction of the man under section 9(1) of the 2000 Act, sentencing him to life imprisonment and a fine of taka 10,000, which was to be treated as compensation for the victim. In *Sohel Rana vs. The State*⁴², the trial court convicted a man under section 9(1) for rape and imposed a fine of taka 50,000, and 40,000 of which was to be given as compensation to the victim by sale of property of the accused. But the amount of compensation awarded in above mentioned cases is more nominal.

In the case of *The State vs. Md Moinul Haque and Others*⁴³, a minor girl, 'X'⁴⁴, was gang raped by members of the Bangladesh police when she was under their care. The High Court Division, after dismissing the appeal, went on to issue some directives which conceives a rape victim's right to compensation: 'The victim of rape should be compensated by giving her half of the property of the rapist/rapists as compensation in order to rehabilitate her in the society'. This declaration is possibly one of the most radical but controversial statements in relation to compensating a victim of sexual violence, as it seems to extend the right of compensation to one half of the offenders' property.⁴⁵ The court also acknowledged the inefficacy of the law relating to violence against women, and the pressing need for reform in light of international legal obligations, so rape victims have an effective recourse in law.⁴⁶

³⁶ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly of the United Nations on 10 December 1984 (resolution 39/46), available at <http://legal.un.org/avl/ha/catctdtp/catctdtp.html> accessed 10 July, 2020

³⁷ Qudder, F. Crime Victims' Right to Compensation in Bangladesh: A Comparative Approach, European scientific journal, (2015), 11(31).

³⁸ Islam, Z. The Code of Criminal Procedure, (2000 (4th edition), Aarambag: Dhaka

³⁹ Barrin, F. 'Crime Victim Compensation Right: A Look into the Existing Laws of Bangladesh', Prime University Journal, (2008), 2(2), p 58.

⁴⁰ Al Amin vs. The State (1999) 19 BLD (HCD) 307, para 39.

⁴¹ 23 BLD (HCD) 2003 621.

⁴² 57 DLR (2005) 59.

⁴³ (2001) 21 BLD (HCD) 465.

⁴⁴ Here, the name of the victim is substituted by X for non-disclosure of her identity.

⁴⁵ Huda, T Beyond Criminal Justice: Towards Tort Liability for Sexual violence Against women, Bangladesh Journal Of Law, (2017), 17:1&2, p, 210

⁴⁶ ibid.

The International Crime Tribunal-1 (ICT-1) and the International Crime Tribunal-2 (ICT-2) established under International Crimes Tribunal Act 1973 (ICTA), in Bangladesh have rightly pointed out the paucity of provision for reparation of victims of crime. In particular, ICT-1 expressed grave concern for lack of victim protection in it.⁴⁷ In particular it held that there is no provision of victim - compensation in ICTA of 1973 nor in the Penal Code 1860. As such the Tribunal restrained to make an order against the accused for reparations to the particular victim of sexual violence. However, the Tribunal opines that all the victims of sexual violence committed during the War of Liberation, 1971 should be adequately compensated and rehabilitated by the State itself without further delay.⁴⁸ The tribunal in its observation also asked the state to initiate a compensation scheme for rape victim of 1971 and war-babies.⁴⁹ It can serve as an example of how the State must respond to women and girls who face sexual violence today. This must be a holistic response, including not only a focus on accountability, but also on reparation.

Very recently, on March 10, 2019, the High Court issued a rule demanding the Inspector General of Police (IGP) and other concerned authorities to explain why they should not be ordered to pay compensation of Tk 50 lakhs to a young woman who had been raped by two police officers in Manikganj earlier in February.⁵⁰ This is the first time HCD recognized rape as a gross violation of fundamental rights guaranteed by the Constitution for which State can be held liable to pay compensation.⁵¹ Therefore, this rule forces us to think of rape not only as a crime on part of the perpetrator, but also as a breach of the state's duty to ensure basic protection to its citizens, especially women and girls. It propounds that compensation is therefore a consequence of such failure.⁵² Although modern jurisprudence accounts for individual deviance as being no fault of the State,⁵³ it supports the factum that the State must assist the vulnerable as a matter of public policy.⁵⁴ Therefore, this rule shows us that rape not only as a crime on part of the perpetrator, but also as a breach of the state's duty to ensure basic protection to its citizens, especially women and girls.⁵⁵

V. RECOMMENDATIONS:

- a. In the light of the above discussion it can be said that the need for making provisions for payment of compensation to a rape victim should top the list. It is the duty of the state to ensure security of lives & property of its citizen specially women and children. So, ascertaining compensation for the rape victim is the prime responsibility of the state of which he/she is a citizen. Necessary amendments in the existing laws as well as formulation of new laws have to be accomplished to make sure that the victims could be paid compensation as of right.
- b. The government must seriously consider the need to establish a 'State Compensation Fund' for rape survivors (which exists in other countries such as India, USA, UK, Canada, Australia) where victims and survivors of rape can apply for compensation as of right.
- c. Rape should be defined as civil wrong under tort law. In china, there are rules in tort law which can be applied to rape victims, because it says that anyone who infringes civil rights of another person and interests shall be subject to tort liability.⁵⁶ The civil 'rights and interests' include the rights and to life, the right to health and reputation, and victims have the right to ask the infringer to assume tort liability.⁵⁷ But in Bangladesh when a woman is seduced or raped, the legal position as it exists today is that there is no civil remedy available to her. However most importantly, alandmark case of *Begum Shamsun Nahar vs. British American Tobacco Bangladesh (BATB)*⁵⁸ acknowledges that "A person can be liable for tort as well and damages may be claimed against them for such wrong doing as well as against an organization or establishment if it fails to ensure the prevention of sexual harassment and bullying to a woman." The pronouncement is immensely significant because it is the first time that the apex court of the land explicitly recognised that

⁴⁷The Chief Prosecutor v A T M Azharul Islam ICT-BD 05/2013 (ICT-BD 1).

⁴⁸Ibid, p.154.

⁴⁹<http://www.theindependentbd.com/post/109171> accessed September, 2020.

⁵⁰Huda, T. The Daily Star State Liability to Pay Compensation for Rape: A Necessary Ruling, (2019), Retrieved from <https://www.thedailystar.net/opinion/law/news/state-liability-pay-compensation-rape-necessary-ruling-1715395>

⁵¹Ibid

⁵²Goldberg, A, 'Equality and Government Action', (1964), 39 NYU L REV p.205-224.

⁵³Culhane, J. California Enacts Legislation to Aid Victims of Criminal Violence, 18 STAN L REV, (1965), p.266- 272

⁵⁴Jacob, B. 'Reparation or Restitution by the Criminal Offender to his Victim: Applicability of an Ancient Concept in the Modern Correctional Process', 61 The Journal of Criminal Law, Criminology, and Police Science (1970), p.152-167.

⁵⁵Supra Note, 48

⁵⁶Article 2 of the Tort Law of the People's Republic of China

⁵⁷Article 15 of the standing committee of PRC, 2009

⁵⁸66 DLR (AD) (2014) 80.

sexual harassment not only gives rise to tortious liability, but the victim can have recourse in tort and recover damages from the wrongdoer.⁵⁹

- d. State along with perpetrator should have the responsibility to pay the compensation for its failure in maintaining fundamental duty to protect its citizen.
- e. The term fine could be changed to compensation by way of amendments in existing penal laws for the rape victim for which there are provisions to charge fine as an instrument to award punishment to the offenders.⁶⁰ There should have mandatory compensatory provision.
- f. The prevalent law in Bangladesh must be reformed and redesigned to be in consonance with international standards.
- g. In addition, the judges' discretion should not become the vanishing point of victim compensation laws, and judiciary should play a significant role so that criminal justice system can ensure justice for accused as well as victim.⁶¹

VI. CONCLUSION:

The paper aims at paradigm shift in the approach of criminal justice system towards rights of rape victim, to get compensation in Bangladesh. Our legal and institutional framework for compensation to rape victim is sporadic inadequate and illusive. Bangladesh lags behind the international standard in this post-modern era. Our legal system is gripped by the colonial ghost. It needs to be considered with the passage of time. After having examined relevant laws in Bangladesh it is found that compensation may be awarded when criminal conviction is secured and court exercises its discretion to treat the fine as compensation. A rape victim does not have a right to claim compensation *per se*. Exhaustive review of the Penal Code, CrPC, Nari o Shishu Nirjatan Daman Ain should be under consideration to ensure ends of justice. In spite of having the challenges mentioned above, the stakeholder, government, prosecution, judges, and police officer must play pro-active role in accelerating the trigger of rape victim to get compensation along with other remedies under the existing legal framework.

This paper calls for urgent amendment of existing laws by parliamentary intervention and suggests for a scheme under proper framework for rape victim to provide compensation along with other remedies, which may help in the victim's rehabilitation. It has to be expeditious, speedy, accessible and fair. The humiliation or reputation that is snuffed out cannot be recompensated but victim to hold perpetrators to account through substantial order of compensation would at least provide some solace. This motion is imperative to make sure that rape victim in Bangladesh are treated with respect and are allowed to live with human dignity in consonance with the constitutional mandate.

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