



*In a roundtable discussion on 'the use and misuse of defamation law and its impact on journalism' organized by the Daily Star, the journalists are delivering their opinions. Photo Source: The Daily Star*

# Rape Victim becomes Defamation Victim in Media Trial

**Maruf Ul Abed**

Rape victims often become victim of murder and then subsequently become victim of defamation. Sometimes the criminal action of a rape offender is not confined only within commission of rape since it extends to cause of death of the victim. Once the victim of rape and murder became the subject of torture by criminals of such rape and murder then they also become victim of the society through the bad comments related to victim's clothing, way of life, parental control over the victim, etc. The comments of the people are visible in social media which made in a way as if the victim and her family have contribution to it and they are to blame for the wrong committed by the offender. This behavior of the society not only frustrating and painful for the victim but it possesses threat against the public tranquility and social order. Taqbir Huda, a research specialist at Bangladesh Legal Aid and Services Trust, said "Whenever a rape gets reported, we see a large section of society normalizing the crime and implying that the rape was almost inevitable".<sup>1</sup> Laws of the land cannot protect us from the crime as long as we make excuses for the perpetrators and pointing figure to the victim.

According to some people, lenient punishment one of the reasons we are still struggling to prevent this heinous crime. Several protests also made for the increasing the severity of punishment and consequently an amendment made to include the death penalty for rape. It is true that,

rape has been considered as an offence and defined by our hundreds year old existing colonial law i.e. Panel Code 1860 through its section 375. The Act also includes unnatural offences as a punishable crime in section 377. The said section provides, whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life or imprisonment in either description for a term which may extend to ten years and shall also with fine. The punishment for unnatural offence and rape are the same as the provisions of the Panel Code 1860. However, this old colonial law does not include death sentence as punishment for abovementioned two grave crimes which have been criticized by several law experts of our country. To fill the gap, section 9 of Nari-o-shishu Nirjatan Ain 2000 came into action which provides, if a male commits rape to female or children then he shall be punished with death sentence or lifetime imprisonment and also with fine. In the sub-section (2) of the same section it is provided that, if victims died in consequence of rape then the perpetrator shall be punished with death or imprisonment for life and also with fine to the extends of one lakh taka. Since the Act is a special law thus it will prevail over the Penal Code. As a result, justice might not be a failure for lacks of highest punishment in panel code with the rape victim of female or children. Since the highest punishment is available for the perpetrator in the specially enacted existing laws. Thereafter rate of this heinous crime is not decreasing in the society. Moreover, the provision of section

9 of Nari-o-shishu Nirjatan Ain 2000 requires changes by adding transgender and male in the list of victims to make the law anti-discriminatory and more worthy.

Punishing the rape offender might not be enough to bring justice to the society. It is necessary to ensure that those who protect the offender by words or blaming the victims to justify the incident of rape are also brought before justice. Such comments and statements in favor of the perpetrator may prevent any victim to complain about the rape incident. After publishing a report for rape on the digital platform of newspaper or news channel, the comments there become visible to everyone. Comment makers in favor of the perpetrator of rape are not indolent to make comments against the victim by blaming her attire or movement.

Such words are mostly against the modesty of women. It is demoralizing and may cause unwillingness to bringing a case

against the offender. To overcome this situation, legal actions should be taken against the comment makers. Otherwise, we cannot ensure access to justice in society.

Imputation made against a person who is dead is also amount to defamation since explanation 1 of section 499 provides- it may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives. In the recent incident with a seventeen-year-old rape victim and her family severely criticized by some comment makers in social media which is hurtful to her family and acquaintances.

This action of comment makers, if falls under defamation, then it should be punishable in accordance with section 29 of Digital Security Act 2018. The provision provides, a person may be liable to three years in jail or a fine of Tk 5 lakh or both, if he or

she commits the offences stipulated in section 499 of the Penal Code through a website or in electronic form. This section may save the rape victim from becoming a defamation victim.

The person making defamatory statement is required to be brought before the justice system for ensuring a sound society by eliminating the crime. Otherwise, their words may support the perpetrator for committing the offence and at the same time discourage the victim to take legal action. Who wants to be a victim again in another way!

### References

1. Nilima Jahan 'Victim blaming must stop' The Daily Star (Dhaka, January 9, 2021)

### Maruf Ul Abed



LL.B (BRAC University)  
Apprentice Lawyer  
Dhaka Judge Court  
Email:  
marufulabed@gmail.com

