

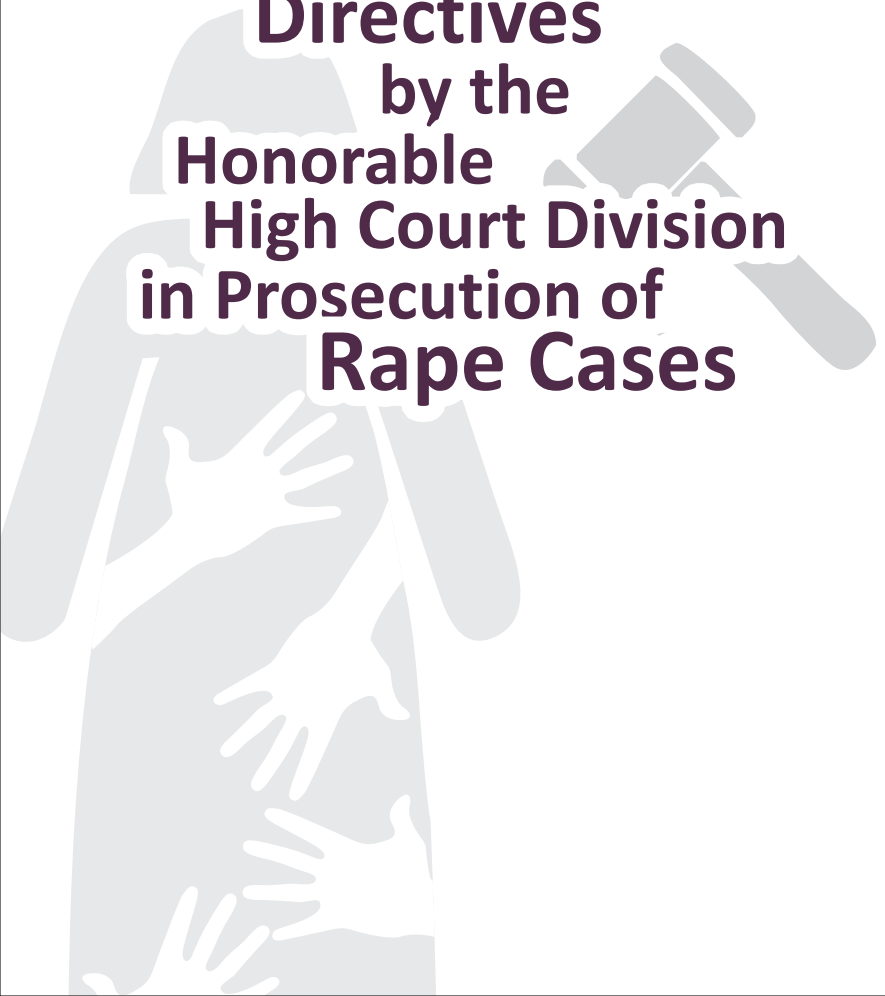
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Directives by the Honorable High Court Division in Prosecution of Rape Cases



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Published by: Ain O Salis kendra

Published in: December, 2018

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Design: Manan Morshed



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Rape is undoubtedly a heinous and grave crime that violates the human rights of a woman, leaving a damaging effect on her personal liberty and right to self-control. Not only does it badly influence the physical, mental, and family life of a victim but also questions the dignity of the woman. Rape is an offence against the whole society rather than only the victim woman. Assessing the statistics from the Information Preservation Unit of human rights organization—Ain o Salish Kendra (ASK) gives an idea of the nature and magnitude of this crime. It can be seen from the previous years' reports of ASK that in the incidents of rape, only 56.72% cases were filed in 2014, 56.38% in 2015, 54.7% in 2016, 63.2% in 2017 and 68.18% in 2018 (starting from January till September). This means almost 40% of the total incidents of rape goes either unreported or the police station or court does not acknowledge the complaints. Research has found many causes behind the victims not filing a case. Negative perception of the society towards rape victims, a sense of shame, threats from the dominant oppressors, complexities and perpetuity of

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1 Information has been collected from daily Prothom alo, daily Ittefaq, daily Shamakal, daily Nayadiganta, daily Sangbad, daily Janakantha, The Daily Star, Dhaka Tribune, New Age

pursuing legal proceeding, fear of facing harassment while trying to lodge the complaint, unfavorable environment for seeking justice for the victims of rape, are some of the key reasons. There have also been complaints of victims being harassed by the concerned authority, particularly, the police when they try to file a case. One such incident involves a raped girl from the Garo community and her parents who were harassed at the time of filing a complaint with the police on last 21May 2015. The matter finally reached the High Court Division in the form of a writ petition.

Background of the Case

According to the case description, the victim was a young Garo girl worked as a salesperson at the Jamuna Future Park. On 21 May 2015 she was waiting for her bus near the Kuril Biswaroad area of the capital after work, when 5 persons forcibly picked her inside a microbus. They raped her and left her on Jashimuddin Road at Uttara. When the victim and her parents went to file a complaint, they were not well received by the police and had to bear the hassle of visiting one police station after another. According to the elder sister of the victim, being residents of Uttara they first went to the Turag Police Station on 22 May 2015, but were refused by the police at around 4 a.m. on the ground that the incident took place in a different area outside their jurisdiction. They visited the Gulshan Police Station at 5a.m., but only to be told that the incident was beyond that station's jurisdiction. At around 6 a.m., they went to the Vatara Police Station where they were asked to wait because the OC was absent. Thereafter, the OC came at 9.30 a.m. and after hearing everything filed the case.



Although the law in force provides for the victim to be examined by a female doctor without any delay, the police sent the victim to Dhaka Medical College Hospital (DMCH) three days after the incident took place, i.e., on 23 May 2015. Aggrieved by repeated refusal of the officers to record an FIR (First Information Report) by the victim and the breach of constitutional duty by the concerned authority due to failure in taking immediate and effective actions for medical examination of the victim and causing delay in sending her to a Victim Support Center or OCC, Ain o Salish Kendra (ASK), Bangladesh Legal Aid and Services Trust (BLAST), Naripokkho (NP), Bangladesh Mahila Samity (BMS) and Jatiya Adivasi Parishad filed a public interest litigation (Writ Petition No: 5541/2015). After preliminary hearing on 25 May 2015, the High Court Division bench consisting of Justice Farah Mahbub and Justice Kazi Md. Ejarul Haque Akondo of the Honorable Supreme Court ordered a Rule asking to show cause as to why actions should not be taken against the responsible persons for the delay in taking the complaint and sending for medical examination, and why the victim should not be compensated. Furthermore, the Court directed the Inspector General of Police, and the Police Commissioner, DMP to frame and disseminate a circular to all police stations of Dhaka Metropolitan City stating their obligation to ensure that required services are provided to all concerned irrespective of religion, color, gender, caste, place of birth etc. and to record the FIR (First Information Report) promptly in case of allegation of rape. After receiving the directives from the High Court on 25 May 2015, the Bangladesh Police has published a circular on 10 June 2015. The circular is as follows-

***The Government of the People's Republic of
Bangladesh***

Bangladesh Police
Police Headquarters, Dhaka
Circular No.-02/2015

Subject: *Instructions for filing cases on violence against women and children in light of the Writ Petition No- 5541/2015 before the High Court Division of the Honorable Supreme Court*

Source: *Reference No-Law/Writ/47-2015/ (Writ-5541)/934 Date: 01/06/215*

The following instructions are given in light of the Writ Petition No- 5541/2015 filed before the High Court Division of the Honorable Supreme Court in relation to reception of news, filing cases and investigation of complaints of rape, violence against women and children, and sexual harassment.

1. Every member of the Bangladesh Police will perform their duties in conformation with the provisions of the Constitution of the People's Republic of Bangladesh.

2. Appropriate application of Article 27 (Equality before law), Article 28 (Discrimination on grounds of religion), Article 31 (Right to protection of law), of the Constitution and Section 32 of the Women and Children Repression Prevention Act (relating to medical examination of the victim) through realization of the provisions, is to be ascertained in

cases of complaints of rape, sexual harassment and violence against women and children.

3.Cases must be filed without any delay and discrimination when a complaint of offence related to rape, sexual harassment or violence against women and children is received.

4.Preparation for the medical examination of the victim of offence/sufferer/survivor must be made without any delay.

5.Evidence of offence must be properly collected and preserved and, if need be, immediate chemical/DNA test must be conducted.

6.In jurisdictions where a Victim Support Centre/One Stop Crisis Centre/Cell has been set up, investigation of cases sent to that Victim Support Centre/One Stop Crisis Centre/Cell must be continued as per the need of the victim of offence/sufferer/survivor.

7.In order to prevent violence against women and children, it is to be ensured that the circular 'reference no- N. O. S. N. P. cell/circular/01-2013/130(20)/01 date 05/02/2013' issued by the Police Headquarters is enforced and followed.

On 18 February 2017, after the final hearing, the High Court Division bench consisting of Justice Farah Mahbub and Justice Kazi Md. Ejarul Haque Akondo disposed of the writ petition and delivered the verdict. The full judgment was later published on 18 April 2018.

Key areas analysed and emphasised by the Court

The judgment mentioned that DNA test has to be mandatorily done within 48 hours after receiving the complaint of any incident of rape or sexual violence. Apart from that, any failure on the part of the investigation agency in collecting report or taking the victim to the nearby hospital for medical examination will be deemed as punishable offence. Every concerned party is ordered to comply with the directives until a separate law is enacted to deal with filing cases and investigation in cases of rape. The Ministry of Law, the Ministry of Women and Children Affairs, the Ministry of Home Affairs and Superintendent of Police have been directed to take requisite steps to form a policy in light of the judgment. While pronouncing the judgment the Honorable Court has ordered the ministries to perform their respective duties in accordance with the **National Action Plan to Prevent Violence against Women and Children (2013-2025)**.

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Analysing **Section 154 of the Code of Criminal Procedure**, the Court informed that according to this Section, in case of cognizable offences, if an individual comes to the Police Station with the information of an offence committed then the Officer In-Charge must reduce it to writing. The location of the commission of the offence is not significant. The Court further highlighted that it is the duty of the OC to record the first information with respect to every

cognizable complaint which is evident from **Section 244(a) of the Bengal Police Regulations**.

On **Section 32 of the Women and Children Repression Prevention Act** (relating to medical examination of the victim) the Court commented that, for cases involving any kind of sexual harassment, medical examination is of utmost importance. However, this Section is unfortunately does not provide for the duties and responsibilities of the police in concerned police station, in cases of rape or any other sexual violence. Rather, it is stated that the doctor on duty would hastily conduct the tests upon arrival of any victim.

The Court has specially referred to several Constitutional provisions such as:

Article 32 Protection of right to life and personal liberty: *“No person shall be deprived of life or personal liberty, save in accordance with law”*;

Article 27 Equality before law: *“All citizens are equal before law and are entitled to equal protection of law”*;

Article 28(1) Discrimination on grounds of religion, etc.: *“The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth”*;

Article 40 Freedom of profession or occupation: *“Subject to any restrictions imposed by law, every citizen possessing such qualifications, if any, as may be prescribed by law in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business”*;

Article 31 Right to protection of law: *“To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.”;*

And, the **preamble** of the Constitution: *“Pledging that the high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in, the national liberation struggle, shall be the fundamental principles of the Constitution; Further pledging that it shall be a fundamental aim of the State to realise through the democratic process a socialist society, free from exploitation a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens”.*

Analysing the above provisions, the Honorable Court opined that, it is therefore constitutionally affirmed that every person has a right to redress against any kind of sexual assault or violence.

The Court also noted the obligations under international conventions that Bangladesh is a signatory to such as the **Convention on Elimination of all forms of Discrimination Against Women (CEDAW) 1979** and the **Declaration on the Elimination of Violence against Women, (Resolution no. 48/104m dated 20.12.1993)** for ensuring a safe environment for women. The Court



precisely referred to Article 1 and Article 4 of the Declaration, stating that according to Article 1, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life, and, to stop this violence, Article 4 of the Declaration urges every State to take immediate and effective measures with regards to eliminating sexual harassment, investigation of sexual harassment, judicial proceeding, and the punishment of the offender.

To address the lacunas in the existing laws to prosecute offences of rape as well as any incident of sexual harassment, the High Court has enumerated 18 directives.

The Directives



1. Information relating to commission of cognizable offence including rape, sexual assault or similar offence shall immediately be reduced to writing by the officer-in-charge of a police station, irrespective of the place of occurrence, and without any discrimination or delay whatsoever.

2. A designated website should be launched, enabling the informant to register his/her complaint online.



3. The statute should contain a specific provision dealing with refusal or failure of the concerned officer of the respective police station without valid reason, to register such cases.

4. Every police station must have a female police officer round the clock, who is not below the rank of a Constable. On receiving information on the offence of rape or sexual assault, the duty officer recording the information shall call the female police officer present at the police station and take measures to make the victim and her family members comfortable.

5. At all stages the identity of the victim should be kept confidential.

6. A list of female social workers who may be of assistance should be kept at all police stations



7. The victim should be heard in the presence of a lawyer or friend chosen by her, or alternatively a social worker or protection officer.



8. The victim should be made aware of her right to protection from the State and to give any information she requests on the matter.

9. The Duty Officer immediately upon receipt of the information shall inform the Victim Support Centre.



10. Interpretation services should be provided where necessary, especially for women or girls with disabilities who are victims of rape or sexual assault.



11. After reducing the information to writing, the Investigating Officer along with the female police official available, shall escort the victim for medical examination without delay.



12. The Victim Support Centre should be discreet and should at all times have all the facilities required for the recovery of the victim.

13. In all cases of rape or sexual assault it is mandatory to conduct chemical/DNA tests.

14. The DNA and other samples should be sent to the concerned Forensic Science Lab or DNA Profiling Centres within 48(forty-eight) hours of the alleged occurrence.

15. Any failure of duty on the part of the investigating agency in collecting the report or causing the victim to be taken to the nearest hospital for medical examination would be considered as a punishable offence.

16. The investigating officer shall strive to complete the investigation at the earliest.

17. There should be wider dissemination of the national helpline number (10921) [The



government has reduced the helpline number into three digits, therefore, the current national helpline number is 109] on violence against women, girls or children, through visual, audio as well as print media including designated websites.



18. In addition to the above, an office in every Metropolitan City should be established for the purpose of providing necessary security, medical, chemical and counseling assistance and secured protection for the victim.

Regarding the judgment, Executive Director of Ain o Salish Kendra (ASK), Sheepa Hafiza commented that, “Hopefully, the concerned ministries of the government and organisations will be sincere in implementing this judgment and introducing Rules and Circulars required for effective and forthwith materialisation of the same which will prove to be a milestone in establishing the rule of law.”

Ayesha Khanom, President, Bangladesh Mahila Parishad said, “This is a positive judgment for providing legal aid to the young, teenage girls and women victim of rape, gang-rape and sexual harassment. We hope that the concerned administration would follow the spirit and directives of the judgment. Hopefully, gender sensitised, medico-legal procedure would be influential in supporting the women and female children victim. For this purpose, a separate unit needs to be formed with the corresponding doctors, specialists, trained nurses and affiliated members.”

Jatiya Adivasi Parishad's President Rabindranath Soren noted, "This judgment will be an exemplary judicial pronouncement for protecting the indigenous women as well as women anywhere in Bangladesh. I urge that the judgment is made effective immediately. Alongside, I strongly implore that an example is set by bringing the culprits to book."

Kamrun Nahar, member of Naripokkho (NP) opined on the judgment, stating that, "It is the responsibility of the State to provide security to its citizens and protect their rights. We are optimistic that the government would pay maximum attention for establishing the rule of law in our country, and would adopt necessary means to implement the judgment so that no such incident of violence ever occurs again."

Honorary Executive Director of Bangladesh Legal Aid and Services Trust (BLAST), Sara Hossain expressed her opinion in this regard. She says, "The high court's judgment in the **Naripokkho and others vs Bangladesh** case is a landmark in removing gender discrimination in the way the police record and investigate cases of rape of women and girls. The court has also made clear that the police must be held accountable and subject to disciplinary action where they fail to ensure timely recording of such allegations or forwarding victims for medical examination. It is important that the police, prosecution and victim support organizations as well as judges take action to implement this judgment. We need to start training for lawyers, police, doctors, and relevant women's rights advocates. We also need public information campaign on the judgment by public and private tv and radio as well as social media."