

# REJECTING NOTIONS OF “HONOUR” TO MITIGATE STIGMA

## PROSECUTIONS FOR SEXUAL VIOLENCE BEFORE THE BANGLADESHI INTERNATIONAL CRIMINAL TRIBUNALS

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War time rape victims cannot be viewed as a mere woman who lost her chastity. In fact they fought by laying their highest self-worth, for the cause of our independence.<sup>2</sup>

The characterisation of sexual violence as a crime against honour has been socially entrenched throughout history. This gendered narrative is reflected in the articulation of sexual violence across diverse cultures, and also in international humanitarian law. Against this backdrop, this paper analyses recent prosecutions for sexual violence at the Bangladeshi International Criminal Tribunals (Bangladeshi ICTs), where these crimes are framed as attacks against honour. It argues that viewing conflict-related sexual violence through the lens of “honour”, and the related notions of social morality such as chastity, dignity, modesty or purity, fuels the shame and stigma associated with sexual violence, while entrenching harmful gender stereotypes. Despite seeking to mitigate stigma by valorising survivors, the approach taken by the Bangladeshi ICTs in framing sexual violence as a crime against honour has contributed to the perpetuation of the stigma attached to this crime and the disempowerment of survivors.

Through concepts such as honour, chastity and modesty, the narrative of female morality and sexual purity permeates the naming and articulation of sexual violence in many societies. In Tamil culture, the relationship between chastity and rape is unequivocal. The commonly used word for “rape” in the Tamil language literally translates to the “destruction of chastity” (“கற்பழிப்பு”).<sup>3</sup> Women from China and Korea who were sexually enslaved by Japanese troops during the Second World War lived in a Confucian culture that idealised chastity and female purity as a virtue greater than life. At that time, any woman who did

not commit suicide after the “degrading” experience of sexual violation was seen as an affront to society.<sup>4</sup> More recently, a villager in the Eastern Democratic Republic of Congo (DRC) described the stigmatisation of fellow villagers who survived sexual violence in the following way: “If someone lives without honour, she or he dies on a daily basis”.<sup>5</sup>

In many cultures, “honour is generally seen to be residing in the bodies of women”.<sup>6</sup> A longstanding stereotype in patriarchal and patrilineal societies is that women are the repositories of family and communal/societal honour and

virtue. These concepts are constructed around notions of female virginity before marriage and their sexual fidelity following marriage.<sup>7</sup> “Frameworks of “honour” and its corollary, “shame”, operate to control, direct and regulate women’s sexuality and freedom of movement by male members of the family”.<sup>8</sup> Family status in many societies depends on honour. The ideal of masculinity – whether of an individual man, or a family or community – is based upon the notion of honour too and is inextricably connected to controlling female behaviour and sexuality.<sup>9</sup>



## Articulating sexual violence as an attack against honour and situating this crime in the realm of social morality fuels the stigmatisation of survivors.

- 1 The views expressed in this paper are solely those of the author. Unless otherwise noted, references to women includes girls, and references to men includes boys. This paper uses the words “victim” and “survivor” to best suit the context of use. The use of the word “victim” is in no way meant to disempower or diminish the agency of the individual(s) referred to.
- 2 Judgment (Trial), Syed Md. Qaiser (ICT-BD Case No. 04 of 2013), ICT-2, 23 December 2014, § 720.
- 3 In light of the deeply stigmatising nature of this word, practitioners have coined another word to describe “rape”: “പ്രതിധർമ്മം”.
- 4 Iris Chang, *The Rape of Nanking* (New York, NY: Basic Books, 1997), 53 cited in Kelly D. Askin, “Comfort Women – Shifting Shame and Stigma from Victims to Victimizers”, *International Criminal Law Review* 1 (1) (2001), 23–24.
- 5 Chris Dolan, “War is Not Yet Over”: *Community Perceptions of Sexual Violence and its Underpinnings in Eastern DRC*, (London: International Alert, 2010), 45-46, <https://www.international-alert.org/sites/default/files/publications/1011WarIsNotYetOverEng.pdf> (view of key informant in response to the question: ‘Is it worse to be shot or to be raped?’).
- 6 Radhika Coomaraswamy, “Violence Against Women and ‘Crimes of Honour’”, in *Honour Crimes, Paradigms, and Violence Against Women*, ed. Lynn Welchman and Sara Hossain (London: Zed Books, 2005), xi.
- 7 For example, in Syria, see “I Lost My Dignity”: *Sexual and Gender-Based Violence in the Syrian Arab Republic*, UN Doc. A/HRC/37/CRP.3, 8 March 2018, § 95.
- 8 Coomaraswamy, “Violence Against Women and ‘Crimes of Honour’”, xi.
- 9 Ibid.
- 10 Ibid.
- 11 Susan Brownmiller, *Against Our Will: Men, Women and Rape* (London: Simon & Schuster, 1975), 38.
- 12 Marie Forestier, “You Want Freedom? This is Your Freedom’: Rape as a Tactic of the Assad Regime”, *LSE Centre for Women, Peace and Security Working Paper Series 3* (2017), 5, <http://www.lse.ac.uk/women-peace-security/assets/documents/2017/wps3Forestier.pdf>.
- 13 The Hague Conventions on Laws and Customs of War on Land of 1899 and 1907 both provide for the protection of family honour and rights in Article 46. The 1949 Geneva Conventions contained the first explicit and specific prohibition of rape. The Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (GC IV) directly addressed sexual violence, defining rape and enforced prostitution as attacks on honour.

Thus, a man’s honour is linked to the sexual purity and physical safety of the women in his family, as well as his ability to protect their “virtues”.<sup>10</sup> When women are sexually assaulted, male family members are considered to have been emasculated through their failure to protect them and defend their family honour. As argued by Brownmiller, “Defense of women has long been a hallmark of masculine pride, as possession of women has been a hallmark of masculine success. Rape by a conquering soldier destroys all remaining illusions of power and property for men of the defeated side”.<sup>11</sup> Thus, in a reported incident of sexual violence in Syria, militia raping a girl while forcing her father to watch exclaimed: “We want to take your honour”.<sup>12</sup>

This narrative of morality and chastity, coupled with notions of chivalry, is replicated in the legal description of sexual violence under international humanitarian law (IHL). The gendered language of honour and morality in prohibiting sexual violence in conflict permeates early IHL instruments.<sup>13</sup> These gendered constructs embedded in IHL endure until today and cannot be dismissed as mere linguistic relics. As discussed below, the judicial narrative and litigation strategy adopted during recent prosecutions of sexual violence cases before the Bangladeshi ICTs is replete with stigmatising language that is reliant on the concept of honour.

This paper seeks to explore the problematic consequences of viewing conflict-related sexual violence (CRSV) through the lens of “honour”, and the related notions of social morality such as chastity, dignity, modesty or purity.<sup>14</sup> It probes the intersections

between honour, stigma and shame, arguing that situating sexual violence in the realm of social morality fuels the stigmatisation of survivors of this crime. It then focuses on recent prosecutions before the Bangladeshi ICTs for CRSV committed during the Bangladesh Liberation War of 1971.<sup>15</sup> Judgments of the Bangladeshi ICTs provide a framework through which to explore the inadvertent but problematic outcomes linked to articulating sexual violence through the prism of “honour”: first, as an assault on the national honour of the state; secondly, as harming the collective honour of the community (*izzat*); and finally, as an attack on the personal honour of the survivor. The final section of the paper, while highlighting the achievements of the Bangladeshi ICTs in prosecuting CRSV observes that, despite seeking to valorise victims and eschew victim-blaming, these prosecutions and other reparative efforts have had the unintended consequences of disempowering and stigmatising them. The paper concludes with some thoughts on mitigating the stigma associated with sexual violence.

## SEXUAL VIOLENCE AS A CRIME AGAINST HONOUR: THE NEXUS WITH STIGMA

Articulating sexual violence as an attack against honour and situating this crime in the realm of social morality fuels the stigmatisation of survivors. “Stigmatisation is a social process that leads to the marginalisation, labelling or ostracism of individuals or groups.”<sup>16</sup> The notion that sexual violence is shameful because it tarnishes the honour of the individual, family, community and nation undergirds the process of stigmatisation. Stigma is socially and culturally constructed around stratified gender relations and expectations or perceptions of the role, behaviours and responsibilities of the traditional binary genders in society; in other words, gender stereotypes.<sup>17</sup> As

discussed below, gender stereotypes associated with female chastity and male invincibility impede accountability for sexual violence.<sup>18</sup>

The stigma associated with sexual violence is virtually universal,<sup>19</sup> and its consequences can be grave and manifold. These include ostracism, abandonment, poverty, “honour crimes”, trauma that can lead to suicide or self-harm, and medical complications.<sup>20</sup> Stigma also perpetuates further violations. When stigmatisation is driven by the community, this may cause displacement by forcing survivors and their families to flee the country. Some survivors consider rape to be a fate worse than death, and others ask to be killed as they consider their life to have ended because they perceive that “the shame of rape is worse than dying”.<sup>21</sup> The stigma associated with sexual violence can have life-long repercussions not only for survivors, but also for their families and children, including children born of rape.<sup>22</sup>

Stigma binds many survivors in a covenant of silence. Survivors feel implicated in these acts that are perceived as taboo, bringing dishonour to their families. As Copelon writes, dishonour – which implies the loss of stature or respect – reinforces the social view, often internalised by women, that the raped woman has been dishonoured and is therefore, dishonourable.<sup>23</sup> For this reason, amongst others, survivors often conceal the crime, and this sense of self-blame perpetuates a culture of impunity.<sup>24</sup> In the case of survivors of sexual slavery by the Japanese military, they were regularly treated as outcasts, considered “spoiled goods” and blamed for failing to prevent the crime.<sup>25</sup> The shame of losing their “chastity”, and fear of social ostracism, ensured the silence of survivors for 50 years.<sup>26</sup> For others, the silence endured for their lifetimes. Some of the women who were sexually enslaved by the Japanese military were bound to a lifetime of sexual exploitation because



## Gender stereotypes associated with female chastity and male invincibility impede accountability for sexual violence.

their initial enslavement, coupled with the attendant stigma, trapped them in this system for economic survival.<sup>27</sup>

Similarly, approximately a quarter of a century later, Mosamma Rajja Khatun Kamla, a CRSV survivor of the Bangladeshi conflict, said she could not find work “because people could see from my scars that I was a rape victim and no one gave me food or shelter”. Having no other choice, she eventually turned to prostitution to support her family. She had been 13 years old when she was raped and sexually enslaved.<sup>28</sup> Also in this period of the 1970s, when the Khmer Rouge ruled Cambodia, the prevalent but mistaken belief amongst the general population was that all victims of gender-based violence, particularly of rape, were killed after the crimes.<sup>29</sup> This myth has been reinforced by societal pressure for survivors to remain silent due to the stigma associated with sexual violence.

Impunity fuels further violations. Perpetrators under the Khmer Rouge were therefore able to repeat acts of sexual violence with impunity because survivors were too afraid to report these crimes.<sup>30</sup> More recently, safe in the knowledge that survivors’ silence would shield them from being held to account for their crimes, perpetrators of sexual violence in the Syrian conflict continue to rely on stigma to evade justice.<sup>31</sup> In Myanmar, almost all instances of CRSV are reportedly attributable to the Tatmadaw (the military) that acts with impunity and actively promotes perpetrators within its ranks.<sup>32</sup> In Sri Lanka, as in Myanmar, there is almost complete impunity for CRSV.<sup>33</sup>

Article 27(2) of the GC IV reads: “[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”.

- 14 According to the Oxford English Dictionary, “honour” is variously defined as reputation, allegiance to what is right and chastity; “chastity” is defined as being chaste (the state of not having sex with anyone or only having sex with the person to whom you are married) and “modesty” is defined as “pure-minded” or “decorous”. These concepts, to varying degrees, place sexual violence in the realm of social morality and relate to the policing of female behaviour.
- 15 CRSV includes the following acts: “rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict”: *Report of the Secretary-General on Conflict-Related Sexual Violence*, UN Doc. S/2018/250, 23 March 2018, § 2.
- 16 UK Foreign and Commonwealth Office, *Principles for Global Action: Preventing and Addressing Stigma Associated with Conflict-Related Sexual Violence*, 19 September 2017, 7, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/645636/PSVI\\_Principles\\_for\\_Global\\_Action.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/645636/PSVI_Principles_for_Global_Action.pdf). Stigma manifests at all levels: individual, community/ social and structural/institutional.
- 17 Gender stereotypes influence our perception of fact, resulting in a certain classification of facts that perpetuates gender norms. See United Nations Office of the High Commissioner for Human Rights, “Gender Stereotypes”, <https://www.ohchr.org/en/issues/women/wrgs/pages/genderstereotypes.aspx>.
- 18 See Kelly D. Askin, “Prosecuting Wartime Rape and Other Gender-Related Crimes Under International Law: Extraordinary Advances, Enduring Obstacles”, *Berkeley Journal of International Law* 21 (2) (2003), 288-298.
- 19 *Report of the Secretary-General on Conflict-Related Sexual Violence*, § 19.
- 20 UK Foreign and Commonwealth Office, *Principles for Global Action*, 1, 21.
- 21 Dolan, “*War is Not Yet Over*”, 45–46. In response to the question whether it would be worse to be shot or raped, an informant responded: “with rape, the person is already dead on the inside; it would be better to be killed with the Kalashnikov”.
- 22 As a form of sexual violence, forced pregnancy is under-explored and has received limited attention, even though its effects span generations.
- 23 Rhonda Copelon, “Surfacing Gender: Re-engraving Crimes Against Women in Humanitarian Law”, *Hastings Women’s Law Journal* 5 (2) (1994), 249.



The portrayal of sexual violence as an attack against honour and the resulting shame and stigma renders it a hidden crime. This invisibility of sexual violence complicates efforts to document, investigate and prosecute this crime.

- 24 "I Lost My Dignity", § 95.
- 25 Askin, "Comfort Women", 22–23.
- 26 *Ibid.*, 25–26. See the Women's International War Crimes Tribunal 2000 for the Trial of Japanese Military Sexual Slavery, in the matter of *The Prosecutors and the Peoples of the Asia-Pacific Region v Emperor Hirohito et al. and the Government of Japan PT-2000-1-T*, Summary of Findings, 12 December 2000, before Judge Gabrielle Kirk McDonald (Presiding), Judge Carmen Argibay, Judge Christine Chinkin, and Judge Willy Mutunga.
- 27 George Hicks, *The Comfort Women: Japan's Brutal Regime of Enforced Prostitution in the Second World War* (New York: WW Norton, 1995) xxi, cited in Askin, "Comfort Women", 25.
- 28 Bina D'Costa, "Birangona: Bearing Witness in War and 'Peace'" in Hamed Hossain and Amena Mohsin, eds. *Of The Nation Born: The Bangladesh Papers* (New Delhi: Zubaan, 2016), 71–72, referring to testimony given at the Asia-Pacific Regional Women's Hearing on Gender-Based Violence in 2012.
- 29 Nakagawa Kasumi, *Gender-Based Violence During the Khmer Rouge Regime: Stories of Survivors from the Democratic Kampuchea (1975-1979)*, 2nd edition (Phnom Penh, 2008), 19, <http://gbvkr.org/wp-content/uploads/2013/02/Kasumi-GBV-Study-2007.pdf>, 9. In April 1975, the Khmer Rouge regime (officially known as the Democratic Kampuchea) seized power and governed Cambodia for three years and eight months. Starvation, forced labour and torture were the hallmarks of their rule. Out of the total estimated population of Cambodia of 8 million, more than 1.5 million perished during their reign of terror.
- 30 *Ibid.*, 19.
- 31 Sema Nasser, comments delivered during a press conference of the European Centre for Constitutional and Human Rights: Germany's Role in the Prosecution of Sexual and Gender-Based Violence in Syria, 18 June 2020.
- 32 Office of the UN High Commissioner for Human Rights, *Report of the International Independent Fact-Finding Mission on Myanmar*, UN Doc. A/HRC/39/64, September 2018, § 52, 82.
- 33 Redress and Institute for International Criminal Investigations, *Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Sri-Lanka Specific Guidance for Practitioners* (London and The Hague: Redress, 2018), 9, <https://redress.org/publication/supplement-to-the-international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict-sri-lanka-specific-guidance-for-practitioners/>.

While the stigma related to sexual violence is longstanding, the ways in which it is exploited continue to evolve with time and technology. A noxious combination of technology and stigma can also condemn survivors to silence, and in some instances, trap them in a vicious cycle of violence. Survivors of CRSV in Sri Lanka have reported that perpetrators recorded their rapes on mobile phones and used the threat of making these recordings public to ensure their silence. Other survivors have reported that having raped them, perpetrators would leverage this first crime to blackmail them to submit to subsequent acts of sexual violence.<sup>34</sup>

The portrayal of sexual violence as an attack against honour and the resulting shame and stigma renders it a hidden crime. This invisibility of sexual violence complicates efforts to document, investigate and prosecute this crime.<sup>35</sup> The delivery of remedies and rehabilitative measures is similarly affected by the stigma shrouding sexual violence, as illustrated by the case study below.

## SEXUAL VIOLENCE DURING THE BANGLADESH LIBERATION WAR OF 1971

As discussed above, narratives of female morality and sexual purity result in the articulation of sexual violence as a crime against honour in many societies. Bangladesh is no exception: honour is a deeply rooted and strongly held notion that underpins social interactions. In

Bangladeshi society where a wife was seen as "private property" of the husband, wartime rape was an insult to him as "his property has been usurped by another".<sup>36</sup> The very presence of women who had been raped was a painful reminder of men's failure to protect "their" women, and fall of the norm of "purdah" in that society.<sup>37</sup> In this section, judgments of the Bangladeshi ICTs provide a case study through which to explore the problematic and unintended outcomes of viewing sexual violence through the lens of "honour". This approach resonates with domestic prosecutions of rape in Bangladesh, where "rape is addressed within frameworks of morality, chastity and honour".<sup>38</sup>

By way of background, the Bangladeshi ICTs were established to address the grave crimes committed during the Bangladesh Liberation War of 1971 (*muktijuddho*). During this conflict, which spanned the nine months from March to December 1971, the Pakistani military invaded Bangladesh, which was then known as East Pakistan: the Eastern province of the Federation of Pakistan that emerged through the process of decolonisation in 1947 when British colonial rule in India ended.<sup>39</sup> The purpose of this invasion was to quash the Bengali independence movement that was seeking liberation from Pakistan.

The Pakistani military and its collaborators committed a plethora of conflict-related atrocities against the pro-independence Bengali population to destroy their efforts to achieve independence from Pakistan. This included the killing of unarmed civilians, torture, hostage-taking, forced disappearances, executions without trials, and the large-scale destruction of houses, villages, towns and public utilities.<sup>40</sup> While the number of victims in this conflict is subject to dispute, judgments of the Bangladeshi ICTs often cite the figure of three million individuals killed and over 10 million fleeing to India to seek refuge from

persecution at home.<sup>41</sup> Sexual violence was committed in a widespread and systematic manner during the conflict. This included rape, gang rape and other forms of sexual violence such as sexual captivity and slavery, invasive body searches as well as forced pregnancies which resulted in children born of rape, (known as “war babies” in Bangladesh).<sup>42</sup> Although there is no consensus on the number of rape victims, in Bangladesh it is generally accepted that approximately 200,000 women were raped.<sup>43</sup>

On 16 December 1971, Bangladesh achieved independence following the surrender of the Pakistani army to the joint forces of India and Bangladesh. After independence, the government of Bangladesh decided to prosecute the crimes committed during the war of liberation. In 1973, the International Crimes Tribunals Act 1973 was enacted and, following a number of amendments, it is presently the International Crimes (Tribunals) (Amendment) Act (ICT Act 1973 (amended)). The act established the Bangladeshi ICTs. For reasons that were mainly political and practical, it was only in 2010 and 2012 that two ICTs, namely ICT-1 and ICT-2 respectively, were activated to prosecute crimes committed. Since its establishment in 2010, ICT-1 has prosecuted 30 cases as of December 2019.<sup>44</sup> ICT-2 was formed in 2012 and prosecuted 11 cases until 2015 when its functioning was suspended indefinitely.<sup>45</sup>

Although a domestic tribunal, the Bangladeshi ICTs’ mandate covers core international crimes committed during the conflict; notably crimes against humanity, genocide, war crimes and other serious crimes under international law. In its preamble, the ICT Act 1973 (amended) provides “for the detention, prosecution, and punishment of persons responsible for committing genocide, crimes against humanity, war crimes, and other crimes under international law” by establishing a domestic prosecuting

mechanism. The Bangladeshi ICTs adopted and applied IHL principles and the Geneva Conventions in adjudicating charges of crimes under the ICT Act 1973 (amended). Perpetrators incur individual and joint criminal responsibility as well as command responsibility under section 4 of the ICT Act 1973 (amended). The accused in these trials were civilian leaders of political parties and members of local paramilitary groups. They are accused of allegedly directly or indirectly participating, collaborating and being complicit in the crimes, as well as aiding and abetting in their commission. The majority are senior leaders in Bangladesh’s main opposition parties.<sup>46</sup> Rape is categorised as a crime against humanity under section 3(2)(a) of the ICT Act 1973 (amended). The cases prosecuted at the Bangladesh ICTs include charges of rape during armed assault and rape in detention following abductions. The Bangladeshi ICTs have prosecuted several accused for the commission of rape and direct and/or indirect participation in the abduction of women for rape.<sup>47</sup> The judges have accepted that CRSV in Bangladesh was a “weapon of war”, describing these acts as “genocidal rape” and as an attempt to dilute a religious community.<sup>48</sup> The Bangladeshi ICTs’ judgments have adopted a broad interpretation of “rape” to include sexual slavery, forced pregnancy, enforced prostitution, torture, persecution and other similar inhumane acts.<sup>49</sup>

Yet, despite the attention paid to crimes of sexual violence in the Bangladeshi ICTs, the approach taken in portraying these violations and the survivors has contributed to the perpetuation of the stigma attached sexual violence. Relying on Article 27(2) of the Geneva Convention IV, which characterises sexual violence as any attack on women’s honour, judgments of the Bangladeshi ICTs continue to carry forward the language of chastity and honour associated with an antiquated articulation of sexual violence.

34 With the caveat that it has not seen them, the UN reported that former detainees described their captors proudly showing them photos or videos of naked or semi-naked Liberation Tigers of Tamil Eelam (LTTE) cadres who were either dead or alive. At least two former detainees were reportedly shown videos of sexual abuse, in one case of a naked Tamil woman being held by soldiers and raped; in another, the victim herself being abused. *Report of the OHCHR Investigation on Sri Lanka*, UN Doc. A/HRC/30/CRP.2, 16 September 2015, § 598.

35 See Priya Gopalan, “Conflict-Related Sexual Violence in Kosovo: Gendering Justice Through Transformative Reparations”, in *Gender and War: International and Transitional Justice Perspectives*, ed. Solange Mouthaan and Olga Jurasz (Cambridge: Intersentia, 2019), 296–298.

36 Nayanika Mookherjee, “Remembering to Forget: Public Secrecy and Memory of Sexual Violence in the Bangladesh War of 1971”, *Journal of the Royal Anthropology Institute* 12 (2) (2006), 433, 439.

37 D’Costa, “Birangona”, 77. “Purdah” is a highly contextual religious and social practice of female seclusion among some Muslim and Hindu communities. It is about modesty and can take two main forms: first, the physical segregation of males and females and second, the covering of women’s bodies with items of clothing in order to conceal their skin and form.

38 Sylvie Rougerie, *Medical Evidence in Rape Cases in Bangladesh: Law and Practice*, (Dhaka: Bangladesh Legal Aid and Services Trust, 2009) cited in Sara Hossain, “Public Interest Litigation on Violence Against Women in Bangladesh: Possibilities and Limits”, in *Gender, Violence and the State in Asia*, ed. Amy Barrow and Joy L. Chia (London: Routledge, 2016), 127.

39 M. Rafiqul Islam, *National Trials of International Crimes in Bangladesh: Transitional Justice as Reflected in Judgments* (Leiden: Brill Nijhoff, 2019), 1–5.

40 *Ibid.*

41 See, for example, Judgment (Trial), Delowar Hossain Sayeedi (ICT-BD Case No. 01 of 2011), ICT-1, 28 February 2013, §§ 5, 10; Judgment (Trial), Motiur Rahman Nizami (ICT-BD Case No. 03 of 2011), ICT-1, 29 October 2014, §§ 8, 13; Judgment (Trial), Mohibur Rahman et al. (ICT-BD Case No. 03 of 2015), ICT-1, 01 June 2016, § 24; Judgment (Trial), Sakhawat Hossain et al. (ICT-BD Case No. 04 of 2015), ICT-1, 10 August 2016, § 24.

42 Islam, *National Trials*, 149.

43 Judgments of the Bangladeshi ICTs refer to more than [two lakh/200,000] women being raped. A commonly quoted range is 200,000–400,000 in Brownmiller, *Against Our Will*, 80.

44 No new judgments have been published online since December 2019. For ICT-1 judgments, see International Crimes Tribunal -1, Bangladesh, <https://www.ict-bd.org/ict1/judgments.php> and, for ICT-2 judgments, see International Crimes Tribunal -2, Bangladesh, <https://www.ict-bd.org/ict2/>.

45 M. Rafiqul Islam and Nakib Nasrullah, “The Application of International Humanitarian Law by the International Crimes Tribunals of Bangladesh” in *Asia-Pacific Perspectives on International Humanitarian Law*, ed. Suzannah Linton, Tim McCormack and Sandesh Sivakumaran (Cambridge: Cambridge University Press, 2020), 586-587.



“Birangona” literally translates as “war heroine”, and was intended to valorise women (for example, political activists, freedom fighters and survivors of rape), by acknowledging their sacrifices for the freedom of the country during the war of liberation.

46 International Crisis Group, *Mapping Bangladesh's Political Crisis* (Brussels: International Crisis Group, 2015), 17–18, <https://d2071andvip0wj.cloudfront.net/264-mapping-bangladesh-s-political-crisis.pdf>. Concerns over the fairness and independence of proceedings have marred the Bangladeshi ICTs' legitimacy. Defendants are subject to the death penalty and trials in absentia. British barrister Geoffrey Robertson, who wrote a report on the Bangladeshi ICTs' functioning in 2015, stated that, “I am sorry to say this, for I think the exercise itself is laudable and necessary, and many of its participants have been doing their best to make it work, but the evidence set out in this report drives me to the conclusion that this trial process is calibrated to send defendants – all from the Jammatt of the BNP – to the gallows”: *Open Society Justice Initiative, Options for Justice: A Handbook for Designing Accountability Mechanisms for Grave Crimes* (New York, NY: Open Society Foundations, 2018), 444, <https://www.justiceinitiative.org/publications/options-justice-handbook-designing-accountability-mechanisms-grave-crimes>. A differing view is offered by Islam and Nasrullah, who argue that “no international crimes trial – international, hybrid or national alike – is free from criticisms of one form or another.” They ask that the achievement of undertaking a complex domestic accountability process to end impunity, absent any international support and by a country with serious resource constraints, be not only recognised but applauded: Islam and Nasrullah, “The Application of International Humanitarian Law”, 606-607.

47 Islam, *National Trials*, 150.

48 Suzannah Linton, “Wartime Military Sexual Enslavement in the Asia-Pacific” in *Asia-Pacific Perspectives on International Humanitarian Law*, ed. Linton, McCormack and Sivakumaran, 291. See e.g. *Hossain et al.*, Judgment, § 192 and *Kaiser Judgment*, §§ 683, 974.

49 Islam, *National Trials*, 168.

50 Bina D’Costa, *Nationbuilding, Gender and War Crimes in South Asia* (London and New York: Routledge, 2011), 120.

51 See e.g., TRIAL International, *Rape Myths in Wartime Sexual Violence Trials: Transferring the Burden from Survivor to Perpetrator* (Geneva: TRIAL International, 2018), <https://trialinternational.org/wp-content/uploads/2018/01/20180112-TRIAL-Rape-Myths-ENG-WEB.pdf>.

52 D’Costa, *Nationbuilding*, 120.

53 *Ibid.*, citing Faustina Pereira, *The Fractured Scales: The Search for a Uniform Personal Code* (Kolkata: Stree, 2002), 62.

## “BIRANGONA”: THE WAR HEROINE NARRATIVE:

### Sexual Violence as an Attack Against National Honour and Community Honour (Izzat)

The father of the nation of Bangladesh, its first Prime Minister Sheikh Mujibur Rahman, introduced the term “*Birangona*”. “*Birangona*” literally translates as “war heroine”, and was intended to valorise women (for example, political activists, freedom fighters and survivors of rape), by acknowledging their sacrifices for the freedom of the country during the war of liberation. Prime Minister Sheikh Mujibur Rahman spearheaded efforts to recast sexual violation as women’s sacrifice for the nation, emphasising that rape survivors should be treated with honour and respect.<sup>50</sup> This was a unique endeavour, which was especially progressive over four decades ago. This approach sought to eschew a practice that was and is as prevalent as it is deeply unjust: victim-blaming.<sup>51</sup> Nonetheless, D’Costa writes that the term became a distinct marker that identified women as rape victims and often subjected them to humiliation and abuse.<sup>52</sup> The odious impact of stigma meant that most women did not seek this title “because to do so would be tantamount to focusing on the scar of rape on the victim, thus forcing her to risk a social death”.<sup>53</sup>

Despite these limitations associated with the term “*Birangona*”, it continues to be

used decades later in prosecutions before the Bangladeshi ICTs. For example, one decision stated that:

It is also the moral obligation of the nation to come forward to accept, recognise and honour the “*Beerangona*” in the society. They are the pride of the whole nation like as “freedom fighters” and “martyrs”.<sup>54</sup>

Judges at the Bangladeshi ICTs took the view that “war time rape upon women can be seen as raping the body of the whole community”.<sup>55</sup> Rape survivors were described as laying down their “supreme honour”, “supreme wealth” and “self-worth”.<sup>56</sup>

War time rape victims cannot be viewed as a mere woman who lost her chastity. In fact they fought by *laying their highest self-worth*, for the cause of our independence.<sup>57</sup>

The six brave victims recounted the extreme harm caused to their *supreme worth*, with immense trauma.<sup>58</sup>

While its intent is to valorise survivors, the “war heroines” epithet is problematic for a number of reasons. To begin with, it proffers a gendered view on the roles played by women and men in conflict. While the war heroes fought for the cause of independence with their weapons, the “war heroines” fought for the same cause “by laying their highest self-worth”,<sup>59</sup> namely, by being raped and sexually violated. This framing furthers the harmful perception that women’s bodies can legitimately be used as a battlefield. It also endorses the perpetrators’ constructions of sexual violence and their intent in perpetrating this crime to instil notions of the destruction of the enemy community’s honour, by destroying/harming women’s sexual purity.<sup>60</sup> The use of women’s bodies as battlefields or the sites of conflict instrumentalises

them in the narrative of the nationalist cause. It foists upon them this narrative and straightjackets them into a cause that is much larger than their own lived experiences. As Das notes in her exploration of this concept in the context of the Partition of India and Pakistan:

[V]ictory or defeat in war was ultimately inscribed on the bodies of women. [...] Yet, the violence of the Partition was unique in the metamorphosis it achieved between the idea of appropriating a territory as nation and appropriating the body of the women as territory.<sup>61</sup>

Moreover, by equating sexual violence with women's contributions to the national cause, this narrative also implies that experiencing these crimes was a willing sacrifice by survivors, thus masking the reality of their lack of choice and the abject violence inherent in this crime. It leads to the individual harm experienced by survivors being primarily viewed through the prism of the harm to the nation. As Hirsh and Sarkis argue:

If a nation uses sexual violence prosecutions to advance its own policies, agendas, and ambitions, women's struggles will be discounted as will the overall struggle against sexual violence.<sup>62</sup>

Women's experiences of sexual violence were also viewed in the context of their family and community honour (*izzat*):



## The use of women's bodies as battlefields or the sites of conflict instrumentalises them in the narrative of the nationalist cause.

[H]undreds of thousands women who sacrificed their supreme honour for the cause of our independence. The rest of their life must be allowed to go on with utmost honour. In fact they fought by laying their highest self-worth, for the cause of our independence. *It is the time to unlock the collective voice to recognise and honour our great mothers and sisters, the war heroines.*<sup>63</sup>

First, survivors were defined in terms of their role in the community as "great mothers and sisters",<sup>64</sup> or "daughter of [a man] or son's wife".<sup>65</sup> A reliance on gender stereotypes and socially constructed norms in labelling and identifying survivors – as mothers, daughters, sisters and wives – strips them of identity and agency, and overlooks their individuality. This approach of defining women by way of their relationships with others is replicated in IHL. Out of the 42 provisions focusing on women in the 1949 Geneva Conventions and their 1977 Additional Protocols, 19 deal with women as mothers, proffering a constrained vision of what it means to be a female experiencing conflict.<sup>66</sup>



By equating sexual violence with women's contributions to the national cause, this narrative also implies that experiencing these crimes was a willing sacrifice by survivors, thus masking the reality of their lack of choice and the abject violence inherent in this crime.

54 Judgment (Trial), Azharul Islam (ICT-BD Case No. 05 of 2013), ICT-1, 30 December 2014, § 331 (emphasis omitted).

55 *Qaiser* Judgment, § 974.

56 See, e.g., Rahman et al., Judgment, §§ 351, 464; Judgment (Trial), Shikder et al. (ICT-BD Case No. 10 of 2016), ICT-1, 13 August 2018, §§ 439, 366.

57 *Qaiser* Trial Judgment, § 720 (emphasis added).

58 *Shikder* et al., Trial Judgment, § 365 (emphasis added).

59 *Ibid.*, § 439; Judgment (Trial), Sheikh Md. Abdul Majid et al. (ICT-BD Case No. 07 of 2016), ICT-1, 28 March 2019, § 553.

60 One of the criticisms made of the first case before the International Criminal Tribunal for the Former Yugoslavia that prosecuted only sexual violence was that the examination of the survivors in the courtroom took the perpetrator's perspective in eliciting the details of the crime, with little room for the survivors to narrate the crime as experienced and leaving them disempowered by the process. See Julie Mertus, "Shouting from the Bottom of the Well: The Impact of International Trials for Wartime Rape on Women's Agency", *International Feminist Journal of Politics* 6 (1) (2004), 110.

61 Veena Das, "Language and Body: Transactions in the Construction of Pain", *Daedalus* 125 (1) (1996), 82–83.

62 Susan Hirsch and Caroline Sarkis, "Establishing Rape as a Crime Against Humanity: Innovations and Reactions from African Nations" in *Women, War and Violence: Topography, Resistance and Hope*, ed. Mariam M. Kurtz and Lester R. Kurtz, (Westport, CT: Praeger Press, 2015), 518, cited in D'Costa, "Birangona", 101.

63 *Shikder* et al., Trial Judgment, § 439 (emphasis added).

64 *Ibid.*

65 *Nizami* Trial Judgment, § 166.

66 Judith G. Gardam and Michelle J. Jarvis, *Women Armed Conflict and International Law* (Alphen aan den Rijn: Kluwer International, 2001), 93–94.



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## SEXUAL VIOLENCE AS AN ATTACK AGAINST PERSONAL HONOUR

As seen in the judgment extracts above, the loss of “honour”, “highest self-worth”, or “supreme wealth” are some of the terms used to articulate the harms of sexual violence. For example, in the case of *Qaiser*, the judges rightfully commended the courage of the survivor and her daughter (a child born of rape) for coming to testify and “ignoring social ostracism”.<sup>73</sup> The judgment recognises the scale of this problem, noting that “[h]undreds of thousands of rape survivors remained socially ostracized and unattended.”<sup>74</sup> Yet, the judicial narrative in *Qaiser* and other cases before the Bangladesh ICTs relied upon these very descriptions of rape that embed the shame and stigma that drive social ostracism. Specifically, stigmatisation – the cause of the social marginalisation and ostracism to which the judges refer – is rooted in the shame of losing “honour”, “highest self-worth”, or “supreme wealth”. Thus, the description of the harm endured, and loss suffered by survivors further stigmatises them in the courtroom, where they should be empowered, their voices heard, and their rights upheld.

Characterising rape in this manner placed survivors in the unenviable position of having to tout their “personal humiliation” to be accepted as credible witnesses. In some cases before the Bangladeshi ICTs, their “humiliation” and stigma were employed as part of the litigation strategy to rebut defence arguments that the survivors or their family members were falsely alleging rape.<sup>75</sup>

No woman would prefer to come forward making false and unfounded accusation of *robbing her supreme wealth which may likely to stamp stigma on her life, and make her social and family life shattered*.<sup>76</sup>

Second, case law from the Bangladeshi ICTs found that family honour and group identity are enmeshed with female chastity,<sup>67</sup> which is to be protected by male family members. For example, one case describes a brother’s role in protecting his sister from the “untold wound his sister sustained by laying down her supreme wealth”.<sup>68</sup> This language represents the prevalent gender stereotypes associated with female chastity and male invulnerability – the perennial female victim in need of protection by the fearless male warrior. It reinforces the deep-seated and destructive myth that men cannot be victims of sexual violence, and that sexual violence is a crime that affects only women.

When sexual violence is viewed in a blinkered manner, through “mono-categorical lenses such as gender lenses of male perpetrators and female victims,”<sup>69</sup> our ability to properly investigate, record, categorise and respond to sexual violence is impeded. Gender stereotypes about their invulnerability entrench the invisibility of sexual violence against men. In contrast, the data on this issue, albeit limited, reveals a very different picture. While there is increasing evidence that men suffer many forms of sexual violation in diverse conflicts across the world,<sup>70</sup> such violence continues to be “under-reported, under-documented and under-acknowledged, thereby preventing survivors from receiving much needed assistance and from accessing justice”.<sup>71</sup> The limited attention paid to sexual violence against Rohingya men and boys is a current example of this injustice.<sup>72</sup>

67 See e.g., Judgment (Trial), Md. Idris Ali Sardar and Md. Solaiman Mollah (ICT-BD Case No. 06 of 2015), ICT-1, 05 December 2016, § 355.

68 *Rahman et al.* Judgment, § 351; see also § 343: “Coercive and horrific atmosphere did not permit him to come forward to save his sister’s *supreme honour*. What a tragedy!” (emphasis added).

69 Chris Dolan, “Inclusive Gender: Why Tackling Gender Hierarchies Cannot Be at the Expense of Human Rights and the Humanitarian Imperative”, IRRC 98 (2) (2016), 625, 628, citing Patricia Hill Collins, “Intersectionality’s Definitional Dilemmas”, *Annual Review of Sociology* 41 (2015), 12.

70 Amrita Kapur and Kelli Muddell, *When No One Calls It Rape: Addressing Sexual Violence Against Men and Boys in Transitional Contexts* (New York, NY: ICTJ, 2016), 1, [https://www.ictj.org/sites/default/files/ICTJ\\_Report\\_SexualViolenceMen\\_2016.pdf](https://www.ictj.org/sites/default/files/ICTJ_Report_SexualViolenceMen_2016.pdf).

71 UN Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report of Workshop on Sexual Violence Against Men and Boys in Conflict Situations* (New York, NY: UN, 2013), 5, <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/report/executeive-summary-report-of-workshop-on-sexual-violence-against-men-and-boys/Workshop-on-Sexual-Violence-against-Men-and-Boys-in-Conflict-Situations.pdf>.

72 David Eichert, “Concerns About the Non-Inclusion of Sexual Violence Against Men and Boys in The Gambia v. Myanmar”, *OpinioJuris*, 4 March 2020, <http://opiniojuris.org/2020/03/04/concerns-about-the-non-inclusion-of-sexual-violence-against-men-and-boys-in-the-gambia-v-myanmar/>; Eva Buzo, “Characterisation of Sexual Violence as a Women’s Issue in the Rohingya Crisis: A Response to David Eichert”, *OpinioJuris*, 18 June 2020, <http://opiniojuris.org/2020/06/18/characterisation-of-sexual-violence-as-a-womens-issue-in-the-rohingya-crisis-a-response-to-david-eichert/>.

73 *Qaiser* Judgment, § 973. This was a case against Syed Md. Qaiser, a member of an auxiliary/paramilitary force that associated and collaborated with the Pakistani army. He was convicted for substantially contributing to, facilitating and abetting the commission of mass rape (charges no. 8 and 12).

74 *Ibid.*, 986.

75 See also *Islam* Judgment, § 246; *Rahman et al.* Judgment, § 353; *Hossain et al.* Judgment, § 177; *Shikder et al.* Judgment, § 366.

76 *Sardar and Mollah* Judgment, § 334 (emphasis added).



It is hardly to be believed that for getting a job [for] her son [...] a simple, illiterate, pardanshil village-woman has come forward before the Tribunal just to make a *humiliating statement against her honor and dignity such as [that of] sexual violence upon her.*<sup>77</sup>

Our social pattern does not allow a woman to prefer bringing a false accusation of yellowing her supreme honour *as it stamps stigma on her life, and makes her social and family life devastated.* Thus, we find no rationale to doubt the testimony of victims.<sup>78</sup>

[Rape as] [t]he act of disparaging attack on their supreme honour need not be proved with detailed precision [...] [b]esides, a woman is not believed to portray a fabricated story of *demolishing self-worth.* She will never invite social stigma by telling untrue account of *ravishing self-worth.*<sup>79</sup>

When the chastity of a woman is equated with her “highest self-worth” or “supreme wealth”, this entrenches the perceived implications of rape on a woman’s selfhood – the absolute and irredeemable loss of her value. Survivors themselves may see and articulate rape as an attack on their “highest self-worth” or “supreme wealth”, thereby internalising the social view that the raped woman has been dishonoured. Such a framing of the crime also obscures the fact that rape is fundamentally a violent attack on the body, autonomy and security of a person.<sup>80</sup> When rape is described as an act worse than death<sup>81</sup> and when the loss suffered is depicted as irredeemable and perceived to define the survivor, then the scope for her recuperation and reintegration is greatly truncated, as discussed below.



The description of the harm endured, and loss suffered by survivors further stigmatises them in the courtroom, where they should be empowered, their voices heard, and their rights upheld.

## THE IMPACT OF “HONOUR” ON REPARATIVE EFFORTS

In the immediate aftermath of the Bangladeshi conflict, efforts were also made to assist survivors of sexual violence. Here too the notion of honour reared its head to the survivors’ detriment. These measures did not have an unadulterated agenda of survivor well-being but were motivated by the protection of national honour and the preservation of purity of the Bengali blood. Instead of experiencing the reparative process as one that was meant to serve them, survivors were instrumentalised as vessels of national and community honour.

The government-led Bangladesh Women’s Rehabilitation Organisation directed these efforts, which included livelihood training and employment assistance, assistance with arranged marriages, abortions and the adoption of children born of rape.<sup>82</sup> In particular, the abortion and adoption programmes appear to have been motivated by protecting the community’s *izzat* (honour), through the maintenance of the “purity” of the Bengali identity. Prime Minister Sheikh Mujibur Rahman reportedly said that: “None of the bastard babies who carry the blood of the Pakistanis will be allowed to remain in Bangladesh”,<sup>83</sup> and “Please send away the children who do not have their father’s identity. They should be raised as human beings with honour. Besides, *I do not want to keep those polluted blood in this country.*”<sup>84</sup>

77 Islam Judgment, § 246 (emphasis added). “Pardanshil” [sic], correctly spelt, “pardanashin/pardanshin” refers to a woman who follows the practice of purdah.

78 Shikder et al. Judgment, § 388 (emphasis added).

79 Ibid., § 366 (emphasis added).

80 Copelon, “Surfacing Gender”, 249.

81 Shikder et al. Judgment, § 386; see also § 438: “The perpetrators used the act of rape as a weapon which was more powerful than a bullet. *Rape is thus a living death.*” (emphasis added).

82 Brownmiller, *Against Our Will*, 80–86; Bina D’Costa and Sara Hossain, “Redress for Sexual Violence Before the International Crimes Tribunal in Bangladesh: Lessons from History, and Hopes for the Future”, *Criminal Law Forum* 21 (2) (2010), 340–343.

83 D’Costa, *Nationbuilding*, 133, citing Ain-O-Salish Kendra interview, 1997 (unpublished); D’Costa interview, 1999. See also, D’Costa and Hossain, “Redress for Sexual Violence”.

84 Ibid., citing Nilima Ibrahim, Ami Birangana Bolchi, *As a War Heroine, I Speak* (Dhaka: Jagriti Prokashoni, 1998), 18, (emphasis added).



Instead of experiencing the reparative process as one that was meant to serve them, survivors were instrumentalised as vessels of national and community honour.

The issue of reparations before the Bangladesh ICTs was also viewed through the lens of “honour”. In the case of *Qaiser*, the judgment noted that the submissions advanced by the prosecution on this issue relate to “the logic that the wealth and honour of the rape victims that has been snuffed out cannot be compensated—but however, the “reparation” or “compensation” will at least provide some solace to the grave wound they sustained”.<sup>91</sup> The judges opined that “from a humanitarian point of view” and a “modern approach to victimology”, rape victims were entitled to compensation and rehabilitation adequate enough to mitigate their continuing lifelong suffering and trauma.<sup>92</sup> However, not having the capacity to order reparations under the ICT Act 1973 (amended), they passed the mantle on to the government, social organisations and NGOs.<sup>93</sup> The judges called for pensions, psycho-social support and social service packages for survivors’ rehabilitation.<sup>94</sup> They asked the state to design a programme to remove the stigma of rape “by honouring and compensating the victims for the supreme sacrifice they laid”.<sup>95</sup> They opined that the compensation should cover livelihood costs, funeral expenses, loss of earnings, and also address mental stress and trauma.<sup>96</sup>

In October 2015, the Ministry of Liberation War Affairs of Bangladesh formally recognised 41 women in an official list as *Birangonas*. This status entitles them to an honorarium, rations and medical services. A government minister explained that this list would be updated regularly and that their names would be published 30 years later to spare them having to face the social taboo associated with being rape survivors. This reiteration and reinforcement of social taboo and stigma perpetuates the view that being raped in war (even for the cause of national liberation) is shameful.<sup>97</sup> Despite the state’s attempts to provide for the economic and social needs of rape survivors, their social

As D’Costa writes, the children born of rape “were vivid reminders of the attack on a “pure” Bengali identity”.<sup>85</sup> In this context, “pure” meant purging the state of Pakistani blood. This task of cleansing the “impure” was perceived as necessary to safeguard the honour of the new nation. To this end, “the state exercised its authority over women’s bodies and their maternal role through abortion and forced adoption programmes,” often against their wishes. Given the prevailing social attitudes towards raped women, they effectively had no choice. Women’s bodies were appropriated for the interests of the nation.<sup>86</sup>

Another tangible and harmful example of the impact of honour is the treatment of and fate of children born of rape, pejoratively described as “polluted blood”.<sup>87</sup> The wide scale of forced pregnancies resulted in state-sponsored abortions, foreign adoptions, and discrimination against those who remained in Bangladesh. It is estimated that 25,000 women were forcefully impregnated during the conflict.<sup>88</sup> In the *Qaiser* case, judges identified Shamsun Nahar, a war baby, as the secondary victim of her mother’s rape. Shamsun Nahar was abandoned by her husband and his family when this fact became known. The stigma of sexual violence consigns both survivors and their children to a lifelong struggle with issues of identity and often dire social, emotional and economic repercussions.<sup>89</sup> The judges acknowledged the stigma faced by children born of rape and called for reparations to be provided to them.<sup>90</sup>

85 D’Costa, “Birangona”, 83.

86 *Ibid.*

87 In other conflicts, babies born of such violence have been called “bad blood” or “children of the enemy.” In Rwanda, they are referred to as “enfants non-desires” (unwanted children) or “enfants de mauvais souvenirs” (children of bad memories). See also Marion Hart, “UNICEF Helps Rohingya Babies Born into a Legacy of Sexual Violence”, UNICEF USA, 19 June 2018, <https://www.unicefusa.org/stories/unicef-helps-rohingya-babies-born-legacy-sexual-violence/34477>.

88 Brownmiller, *Against Our Will*, 84; D’Costa and Hossain, “Redress for Sexual Violence”, 343.

89 Here unfortunate parallels are to be seen between this situation in Bangladesh decades ago and current reports about mass rapes of the Rohingya refugees and the consequent unwanted pregnancies. In June 2018, UN officials estimated that some 40,000 pregnant Rohingya women would give birth in the subsequent weeks. While it is unclear how many of these pregnancies are the result of rape, it is believed that pregnancies resulting from a “frenzy of sexual violence” in August and September the year before “could come to term very soon”, said Andrew Gillmore, UN Assistant Secretary General for Human Rights: Hart, “UNICEF Helps Rohingya Babies”.

90 See *Qaiser* Judgment, §§ 675–721, 973–997.

91 *Ibid.*, § 978.

92 *Ibid.*, § 979.

93 *Ibid.*, § 991.

94 *Ibid.*, §§ 987–991.

95 *Ibid.*, § 982.

96 *Ibid.*, § 983.

97 D’Costa, “Birangona”, citing *Dhaka Tribune*, 13 October 2015, 78.

ostracism proved to be an insurmountable barrier to accessing such assistance.<sup>98</sup> Consequently, most survivors of CRSV did not benefit from state rehabilitation programmes and were excluded from the prevailing narratives about the “heroic” tales of the war.<sup>99</sup>

This is reminiscent of the experiences of survivors in the immediate aftermath of the conflict decades earlier. Such was the impact of stigma, that rape survivors who survived the conflict left the country in droves.<sup>100</sup> Some survivors refused assistance to stay in Bangladesh, choosing instead to leave the country with their Pakistani captors. One woman reasoned that in a distant country, “[w]hether I work as a prostitute or sweep roads, people will not recognize me, my husband or child will not ridicule me.”<sup>101</sup> Other rape survivors sought to escape stigma by aborting or abandoning babies conceived of rape, or they committed suicide after being rejected by their families and societies.

## CONCLUDING REMARKS

The prosecution of crimes of sexual violence as part and parcel of the core crimes perpetrated during the Bangladesh Liberation War of 1971 has been a significant achievement of the Bangladeshi ICTs. The tribunals provide a judicially endorsed account of widespread rape and sexual violence during the conflict,<sup>102</sup> recognising the gravity of these crimes, rendering them visible and holding perpetrators accountable. This is noteworthy in light of the persistent challenges that have plagued the prosecution of sexual violence in other fora, making invisibility and impunity the hallmarks for these crimes.<sup>103</sup>

Criminal prosecutions expose the violent nature of these acts through the trial process and can, when properly conducted, inform and educate the public, while also mitigating stigma.



When sexual violence is not prosecuted, there is no public reckoning with the acts of perpetrators. When the final word in the narrative of this crime is survivors’ silence, it compounds the view that sexual violence is not a matter to be addressed in the open, but one that survivors must bear in private, thus perpetuating the shame and blame associated with it.

When sexual violence is not prosecuted, there is no public reckoning with the acts of perpetrators. When the final word in the narrative of this crime is survivors’ silence, it compounds the view that sexual violence is not a matter to be addressed in the open, but one that survivors must bear in private, thus perpetuating the shame and blame associated with it. In the case of the Bangladeshi ICTs, the public condemnation of perpetrators of sexual violence for their crimes was unequivocal. They were named, shamed and punished.

When we reverse the stigma associated with sexual violence, we remove much of the power held by perpetrators over survivors.<sup>104</sup> Accountability for these crimes can go some way toward addressing this asymmetry in power, and also has a role to play in prevention, as evident in the views expressed by a male survivor of CRSV in Sri Lanka:

I am giving this statement to help prevent that these nasty things, such as the torture and sexual violence I suffered will not happen to any Tamils or to any human beings.<sup>105</sup>

Accountability is also important to give meaning to the sense of responsibility that some survivors carry for other survivors. Many survivors also turn to the criminal justice process to create a historical record that would document their experiences and honour survivors of similar atrocities elsewhere. “This [the

98 *Ibid.*, 79.

99 Bina D’Costa, “Marginalized Identity: New Frontiers of Research for International Relations” in *Feminist Methodologies for International Relations*, ed. Brooke A. Ackerly, Jacqui True and Maria Stern (Cambridge: Cambridge University Press, 2006), 129, cited in D’Costa and Hossain, “Redress for Sexual Violence”, 341. See also Mookherjee, “Remembering to Forget”.

100 *Sayeddi Judgment*, § 190: the survivor’s husband testified that she faced humiliation for recalling painful memories of her rape and forced pregnancy, causing her to leave for India “to get rid of such humiliation”; *Sayeddi Judgment*, § 203: to get rid of the “disgraceful happenings” including rapes, the father, mother, and three victim sisters left for India; *Nizami Judgment*, §§ 135: “the Pakistani Army and the Rajakars raped 30–40 women in the villages of Baousgari, Ruposhi and Demra. Many of them were forced to leave the country as a result of their rape, and as such, they were effectively deported to India as refugees” and § 144.

101 Marianne Scholte, “Liberating the Women of 1971”, *Forum* 5 (3) (2011), <http://archive.thedailystar.net/forum/2011/march/liberating.htm> citing an interview by Nilima Ibrahim with a survivor.

102 Islam, *National Trials*, 168. See, e.g., *Sayeddi Judgment*, §§ 5, 10; *Nizami Judgment*, §§ 8, 13; *Rahman et al.*, *Judgment*, § 24.

103 For a discussion of these challenges, see Michelle Jarvis and Kate Vigneswaran, “Challenges to Successful Outcomes in Sexual Violence Cases”, in *Prosecuting Conflict-Related Sexual Violence* at the ICTY, ed. Serge Brammertz and Michelle Jarvis (Oxford: Oxford University Press, 2016): 35–72.

104 Askin, “Prosecuting Wartime Rape”, 347.

105 A 2018 report by the International Truth and Justice Project (an NGO that documents CRSV and torture in Sri Lanka), focuses on sexual violence against mostly Tamil men and boys. It contains a narrative analysis of the experiences of more than 100 male survivors of sexual violence by the state security forces in Sri Lanka, their testimonies collected between 2014 and 2018. Most were detained and violated multiple times: Heleen Touquet, *Unsilenced: Male Survivors Speak of Conflict-Related Sexual Violence in Sri Lanka* (Johannesburg: International Truth and Justice Project Sri Lanka, 2018), 2, Witness 202, [http://www.itjpsl.com/assets/ITJP\\_unsilenced\\_report-final.pdf](http://www.itjpsl.com/assets/ITJP_unsilenced_report-final.pdf).



Stigma inside the courtroom does not exist in isolation but is a reflection of the world outside the courtroom — most notably the status of women in a given society.

106 Interview with Croat woman from Bosnia, Vienna, April 1995: Mertus, "Shouting from the Bottom of the Well", 111.

107 Mertus, "Shouting from the Bottom of the Well", 113.

108 He was interviewed by Bina D'Costa and this interview is cited in D'Costa, "Birangona", 85.

109 For a discussion on a survivor-centred approach in investigating and prosecuting CRSV, see Priya Gopalan, Daniela Kravetz and Aditya Menon, "Proving Crimes of Sexual Violence" in Brammertz and Jarvis, *Prosecuting Conflict-Related Sexual Violence*: 111–171.

110 See Michelle Jarvis and Najwa Nabti, "Policies and Institutional Strategies for Successful Sexual Violence Prosecutions" in Brammertz and Jarvis, *Prosecuting Conflict-Related Sexual Violence*, 90–96.

prosecution of rape before the ICTY] is not just for us," explained a woman from Sarajevo, "it is for [the Comfort Women] from Japan too."<sup>106</sup>

Nonetheless, even well-meaning efforts that have the ostensible aim of mitigating stigma can reinforce it in the judicial process, as in the case of the Bangladeshi ICTs. Despite intentions to honour victims and eschew victim-blaming, CRSV prosecutions at the Bangladeshi ICTs and other efforts to assist have had the unintended consequences of disempowering and stigmatising survivors. The litigation strategy, judicial narrative and overall approach to interacting with survivors has served to compound stigma and a sense of victimhood.

The deeply stigmatising language used to describe CRSV survivors during legal proceedings underscores how the judicial process can embed stigma and disempower survivors. This segues into one of the criticisms made of the adversarial trial process. Female survivors who testified during a trial before the International Criminal Tribunal for the Former Yugoslavia reported feeling frustrated in their ability to exercise agency during the trial process. In the words of one survivor of CRSV, "it is like shouting from the bottom of a well".<sup>107</sup>

As seen from the case study above, notions of honour and stigma are pervasive social and cultural constructs that can infiltrate the judicial and other reparative processes to the detriment of survivors. Stigma inside the courtroom does not exist in isolation but is a reflection of the world outside the courtroom — most notably the status of

women in a given society. Geoffrey Davis, a physician who worked in Bangladesh in the immediate aftermath of the conflict, had this to say about the status of women in Bangladesh at that time:

[...] and women's status in Bangladesh was pretty low anyway. If they had been defiled, they had no status at all. They might as well have been dead.<sup>108</sup>

The stigma associated with CRSV is complex, multi-layered and pernicious. In mitigating stigma from an institutional and accountability perspective, a fundamental overhaul in the mindset and approaches underpinning investigative, prosecutorial, judicial and reparative methodologies is needed.<sup>109</sup> At the very least, stigma must always be challenged; it must not be accepted as an unfortunate but unavoidable consequence that survivors must bear due to the nature of the violence suffered. Sexual violence must be excised from the framework of sex and placed squarely in the realm of violent crimes - its sexual component de-emphasised and the crime recognised as the violent attack on physical integrity and individual autonomy that it is. This approach can de-link sexual violence from damaging notions of morality, honour and dignity that perpetuate stigma.<sup>110</sup>

Ultimately, however, violence against women is perpetrated in a landscape of systemic gender inequality sustained by patriarchy. It is a manifestation of underlying power relations, including structural gender discrimination that is exacerbated in conflict. It is in this context that stigma emerges and festers. Thus, any efforts to fight stigma must also seek to upend a root cause of stigma, namely the secondary status of women in society. Women must be inherently valued as autonomous individuals with their own identities, beyond any "honour" framework that situates them in their communities.



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