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Joint Statement by the Asian Human Rights Commission and Odhikar on the occasion of the UN Special Rapporteur on Violence Against Women's visit in Bangladesh
Collapsed criminal justice system compounds violence against women

Introduction:

1. Bangladesh has been ruled alternately by two women for more than two decades. Both the Prime Minister and the Leader of the Opposition are women, and the posts have been held by women since the 1990s. The country's parliament has more than sixty female members and several of them are members of the cabinet. There are a considerable number of women serving in the civil service, judiciary, police, military and local government institutions today. The mere fact that there are a considerable number of woman employed in these institutions is used by the government to create a false impression that women are empowered in the country.

2. The fact that there are an increasing number of women participating in administrative, political, and financial sectors, in comparison to the same picture two decades ago, sometimes helps certain segments of the country to make such claims. The fundamental points relating to women's right to enjoy their fullest dignity as human beings and their right to protection from all forms of violence are often ignored, if not totally forgotten. Women face a spree of violence against them in Bangladesh, where the society struggles to consider the women as deserving equal dignity as what the men enjoy. The lives of women are not secure in the society.[1]

Discrimination begins at home:

3. The society's notion about girl children within the family itself builds up a mindset that girls ought to be 'less important' than the male children[2]. The multiple forms of discrimination against girls begin at home and continue to the end of their lives. For example, the boys in a family are given the better educational opportunities and better quality meals, depriving the girls. Likewise, an unjust opinion of a male member of the family is meant to be accepted by the entire family, while the females are often deprived and do not have their say. This imbalanced foundation of knowledge, fully biased in favour of the males of the family, spreads through the society in general, resulting in tremendous forms of violence and injustice to women as a whole.

4. The entire society gets affected by the male-dominated mindset that makes almost every place – household, academic institution, workplace and public spaces - vulnerable for the women where they could be victims of violence.

Dowry – a social cancer:

5. Bangladesh nourishes a culture of paying dowry at the time of marriage from the bride's family to the groom's family. The practice of paying dowry has been deeply rooted over centuries in all religious communities, including the Muslim community, which has different norms in theory. Dowry Prohibition Act, 1980, remains useless in protecting women from the curse of dowry [3]. Families from all parts of society practice it and endlessly suffer from the culture of paying dowry depending on their respective affordability and capacity to handle the situation. Numerous cases of violence against women occur solely due to the uncontrollable greed for dowry.

Non-existence of the rule of law:

6. The main problems relating to the prevention of violence against women are centered around the collapsed criminal justice system meaning the non-existence of the rule of law in Bangladesh. An ordinary female victim of violence does not have any guarantee of getting justice from the criminal justice system. In Bangladesh's criminal justice system, practically every step requires bribery and persuasion by influential persons from the ruling political parties. For example, in order to register a complaint regarding violence against women and or any criminal offence, one has to go the relevant police station first. Police stations are considered one of the most unsafe places for female victims to approach as the police also rape, sexually abuse or harass the victims in their custody. Moreover, at the very beginning, the complainants have to pay bribes to the police officers to register the complaint, along with using their political connections to pressure the police and other professionals involved in the process.

7. Often, the perpetrators become very influential due to their capacity to pay a higher amount of bribes to the police and manage to ensure backings from the ruling political parties. As a result, the victims and/or their relatives fear to file any complaints. The police protect the perpetrators, receiving bribes and/or following political persuasions. The Asian Human Rights Commission (AHRC) has discovered that the Koyra police in Khulna district insisted the victim to marry the person who committed the crime. The police investigator allegedly intimidated the victim, asking her to withdraw the case. It was known that the police officer received bribes from the alleged acid-attacker, who had backing of the ruling political party members. Ironically, the latest investigation report cleared and discharged the perpetrator, despite strong evidence linking him to the crime, as the victim could not afford paying bribes to the police and prove any political connections stronger than those of the alleged offender. No action has been taken against the police officer responsible. [4]

A corrupted policing system:

8. For the purposes of protecting the perpetrator, the police implicate persons who are not connected to the alleged crime. For example, in an incident of gang rape, the police included the name of the boyfriend of the victim as an accused in the complaint due to bribery and political

pressures from the perpetrators' side. Four persons were identified as the main perpetrators of the gang; however, the police did not register their names in the First Information Report (F.I.R.). Documentation by a human rights fact-finding team asserts that the alleged perpetrators were supported by an influential leader of the ruling party, who is chairperson of a local governmental unit in Satkhira district, and the police received bribes from the perpetrators [5].

9. To get any criminal investigation conducted by the police, the complainant has to pay bribes to the relevant police officers. The police seek offenders through their sources and demand bribes from those offenders; in exchange, they do not include their names in the investigation report (which is known as charge sheet). The police also compel the victim or complainant to pay bribes with the assurance of making a 'true investigation report' that may lead to the conviction of the perpetrators. When the perpetrators pay more money, and the victims/complainants fail to afford the demands of the police investigators, the police pressurize the victim/complainant to withdraw the complaint during the period of investigation. The perpetrators succeed in making the police biased in their favour and take advantage of this opportunity to insist and intimidate the victims into settling the matter outside the purview of the criminal justice institutions. Often, the alleged perpetrators offer a proposal of marriage in exchange for not filing any formal complaint (or withdrawing the case if it is already registered), making the offer of marriage merely for the sake of escaping from prosecution.

Dysfunctional criminal investigation system:

10. There is lack of the very basic expertise and scientific logistical facilities to conduct credible investigations in the crimes relating to sexual abuses against women. Sometimes, the inefficient police officers fail to collect necessary evidence or neglect to collect evidence. As a result, substantial evidences are either lost or destroyed deliberately.

11. Excessive costs of fighting litigations, delays in trials and exposure in public - resulting in social stigmatization and leading to further humiliation – mostly discourage the female victims of violence and their families to seek justice from the existing criminal justice system. That's why many incidents of violence against women remain unnoticed and undocumented in Bangladesh.

A culture of impunity:

12. The government continues to withdraw criminal cases from the courts, terming the cases 'politically motivated', in order to ensure impunity to the offenders associated with the ruling political parties. Withdrawing 'politically motivated cases' has become a trend in the last twenty years. In 2012, the present government continued withdrawing cases using the same excuse. For instance, on 19 September 2012, the National Committee for Withdrawing Politically Motivated Cases recommended the withdrawal of 10 cases of murder and rape. [6]

Absence of a Victim-Witness Protection Mechanism:

13. Bangladesh does not have any law to guarantee the protection of victims and other witnesses let alone any mechanism to protect victims and other witnesses in Bangladesh as there is no definition of 'victim' either in the Penal Code, 1860, or in the Code of Criminal Procedure, 1898[7]. 'Witness' is defined in Section 118 of the Evidence Act, 1872[8]. The State has an undeniable obligation to protect victims and witnesses, and should immediately create and implement a mechanism through which to do this.

Incompetent forensic examination system:

14. The role of medical doctors and law enforcement agencies in getting medical examination reports is vital in the criminal investigation process of Bangladesh. The victims of sexual abuses have to get their complaints registered with the police or a Court first, and then it becomes the responsibility of the police to take the victim of sexual violence to a nearby public hospital for a medical examination. As access to the complaint mechanism remains almost closed to the victims due to corruption, the matter of getting a proper medical examination done by competent doctors becomes an additional challenge. The female victims of violence mostly have to face male doctors in the hospitals for the medical examination, which is highly embarrassing and often amounts to further humiliation of the victim. The country's hospitals hardly have female doctors for examining the female victims of violence. For example, until a High Court Bench ordered a change on 16 April 2013 - in a ruling, which asked the government as to *why conducting forensic examinations of rape victims and for age detection by male doctors should not be pronounced illegal* - there were no female medical doctors available to do such examinations at the largest medical institution of the country. Corruption is so widespread that the medical certificates and reports by bribing the doctors, who are expected to examine a female-victim's injuries, can be literally purchased. As a result, there is no guarantee that the victims' wounds would be properly documented and reflected in the medical examination report, due to the patriarchal mindset of the police and male doctors, inefficiency, lack of modern scientific facilities, and entrenched corruption in the entire process.

Burden of DNA Test on the victims:

15. In the medico-legal aspects of today's justice system, Deoxyribonucleic Acid (DNA) profiling is an unavoidable and essential component of criminal investigation in certain specific crimes, including rape, murder and acid throwing. In Bangladesh, there is a national-level laboratory for conducting the DNA profiling for the purpose of criminal investigations. The DNA profiling tests are very expensive (nearly USD 200 for each involved person's profiling), which becomes an extra burden to the victims. The victims virtually always have to pay the costs, although the country's High Court asked the State to bear all the relevant costs, including that of the DNA tests[9] in all similar cases.

Crisis-stricken One-stop Crisis Centre:

16. In gathering medical evidence and supporting the female victims of violence, a role is played by the One-Stop Crisis Centre (OCC). Survivors of domestic violence, physical assaults and sexual abuse often require medical attention during the crisis period. The victims are supposed to receive psycho-social counselling and legal assistance from the OCC. But the OCC does not function properly to provide these services. There are no competent psychologists or counsellors or specialised physicians with comprehensive knowledge about the overall condition and requirements of the victims of violence at the OCCs in Bangladesh. In a case of rape, the medical examination is supposed to be completed as immediately as possible after the commission of the crime. However, often deliberate delay in conducting medical examinations, preparing the medical report and submitting the same to a competent Court, while the process involves the police and the doctors of public hospitals, frustrates the administration of justice.

Police remain above all other institutions:

17. Custodial violence, particularly rape and other forms of sexual abuses against women and children, is quite common in Bangladesh. The analysis of a case[10] of custodial torture involving college student Sumaiya Sultana Shima and her mother Aleya Akhter shows the real problems that the victims face in Bangladesh. Both persons were given electric shocks and physically tortured during six days of illegal detention in police custody in Kushtia district. In reality, the police do not register complaints against their own colleagues. Their investigation reports highly lack credibility regarding the complaints against the police officers.

18. Documentation reveals that in the process followed by Bangladesh's criminal justice institutions, including the highest judiciary, the State violated its fundamental obligations in the case of sexual abuse of Seema and Aleya in police custody. The victim must have access to the complaint mechanism, along with an immediate forensic examination to gather evidence in relation to the allegation of sexual abuse.

19. In order to bar the victims from filing a complaint regarding the sexual abuse and torture that had happened between 10 and 18 September 2012, the police officers implicated Aleya and Seema in a murder case on 'suspicion'[11], although the police have not yet produced any evidence against the victims regarding their involvement in the alleged murder. The Magistrate's Court went along with the police's ill motives, beyond legality, and ordered Aleya and Seema to be detained on 26 September 2012. Subsequently, after Seema and Aleya were released from the prison on bail for the second time in October 2012, the family has suffered constant threats of further detention through regular visits from police officers and their informants. When human rights groups intervened into the matter and took the case to the High Court, the police abducted Seema's younger brother Arif Hossain, a 14-year-old student, in order to compel Seema and her mother not to proceed with the allegations of sexual abuse and torture against the police officers.

Inconsistency in the law:

20. There is no provision for a judicial inquiry for custodial torture, ill-treatment, rape and sexual abuse of women in the criminal justice system of Bangladesh[12]. However, Section 9 (5) of the *Nari O Shishu Nirjaton Daman (Bishes Bidhan) Ain, 2000*[13] (Amended in 2003) gives the punishment for rape in custody. If custodial rape occurs, then the person (one or more) who was in charge of ensuring an environment of custodial safety, as well as those persons who were directly involved in the act, shall be punished for not more than 10 years and not less than five years with a fine which is not less than ten thousands taka. They will be punished for failing to perform their duty to keep citizens safe in custody. The penalty for State agents, who are obliged to protect the citizens, for committing crimes should not be lesser than for ordinary offenders.

Absence of a judicial mindset among judges:

21. At the Magistrate's Court hearing, the two women alleged that they were abused in custody. The Judicial Magistrate of Kushtia district had a legal responsibility under Section 164 (1) of the Code of Criminal Procedure, 1898[14] to record the allegations. The Magistrate also had obligation of treating the statement containing an allegation of sexual abuses, as per Section 4 (h)[15] of the Code of Criminal Procedure, as a complaint, which was fully undermined. The Magistrate should have complied with Regulation 467 (6) (b) of the Police Regulation of Bengal, 1943[16] at the time of recording the statement of the accused – Seema and her mother – and arranged a proper medical examination of the victims. All that the Magistrates did in this case ultimately protected the police officers, who committed the crimes. The Court also did not question the way the victims were arrested and the fabricated murder case against them.

22. At least four hearing dates in Seema's case were completely wasted by the judges of the High Court Division Bench. It reflects the poor level of sincerity and the absence of knowledge and empathy among the judges of the Supreme Court of Bangladesh.

The judiciary protects the police officers:

23. The judiciary seriously lacks the commitment to hear cases involving heinous crimes like rape in police custody. In such cases relating to police brutality and the sexual abuse of women, the judiciary is expected to demonstrate a great sensitivity, as police brutality, abuse of women and similar violations are all too common in Bangladesh. The judges are obviously aware of these problems. In the case of Seema and Aleya, there was a delay of over two and a half months in fixing the case for hearing. Besides this, no medical board with forensic medicine experts was formed. This deprived the case of valuable evidence that would have greatly assisted the judiciary in examining the allegation of sexual abuse and torture in custody.

24. The police officers abducted Seema and Aleya on 26 November 2012, prior to a date of hearing at the High Court scheduled on 29 November, after a period of more than two months since the sexual abuse took place, symptoms of pregnancy could have been evident. Allegedly the police had

a different intention behind the abduction on 26 November, as assumed by the human rights defenders involved in dealing with the case. The police allegedly wanted to observe Seema if she had symptoms of pregnancy by that time. The police allegedly had an intention to force Seema to abort before the matter is revealed in public with the assistance of human rights groups and media. However, the judiciary of Bangladesh seems not to take much notice of or display much courage in dealing with crimes committed by the police. The entire criminal justice system appears to be working for the protection of the state-sponsored perpetrators, who wear uniforms at the costs of the tax money from the people.

A disappointing situation:

25. The incidents of violence against women and children are increasing alarmingly in Bangladesh as there is no guarantee of justice for the victims. Instead, there are guarantees of impunity to the perpetrators due to their political identities and ability to pay bribes to the police in a seriously flawed criminal justice system. The custodial violence against women and children reminds everyone concerned about the misuse of power by, and the entrenched corruption in, the law enforcement agencies. The collapsed criminal justice system, the ineffectiveness of the legal framework, the lack of understanding and implementation of the law, the culture of impunity, and mostly, the non-existence of the rule of law constantly contribute to make the situation worse. As a result, the law enforcement agencies act as violators rather than protectors. Citizens are compelled to survive in these circumstances, in complete disappointment.

Recommendations:

26. The Asian Human Rights Commission and Odhikar recommend the following areas that require urgent intervention:

- i) Bangladesh's criminal justice system requires thorough reforms, which should enable it to acquire the competence to administer justice independently and speedily, in compliance with the universal norms and standards of fair trial and justice;
- ii) Immediately create and implement an effective witness protection mechanism;
- iii) Academic curricula – from elementary school to university level – need to be thoroughly reformed and restructured for the sake of removing the existing social mindsets about the women in the country. This should enable the nation to prevent violence against women;
- iv) The government of Bangladesh should take effective administrative, legislative and judicial measures to address the situation, bury its culture of impunity and establish a functional rule of law based criminal justice system solely for the purpose of ensuring justice to everyone and strengthening democratisation in the country.

- [1] "ASIA: A general view of the conditions of women in Asian countries", at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-044-2010>
- [2] <http://www.ethicsinaction.asia/archive/2011-ethics-in-action/vol.-5-no.-6-december-2011/bangladesh-manifold-struggles-needed-to-realize> Last accessed on 20 May 2013.
- [3] <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-051-2012/>
- [4] <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-144-2009>, accessed at about 3.15 pm, 15/05/2013
- [5] *Odhikar*, a national human rights organization of Bangladesh, conducted fact-finding in a gang-rape case, which occurred in Satkhira district early in 2013.
- [6] Annual Human Rights Report of Odhikar of 2012, <http://www.odhikar.org/documents/2013/AHRR\2012/report-Annual%20Human%20Rights%20Report-2012-eng.pdf>, accessed at about 2.11 pm, 14/05/2013
- [7] <http://www.lawcommissionbangladesh.org/reports/74.pdf>, accessed at about 10.42 am, 14/05/2013
- [8] Section 118 of the Evidence Act, 1872, states: "*All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind*". The full text of the law can be accessed at: http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=24
- [9] A report titled " Police to file rape case: HC" published in www.bdnews24.com, a Bangladeshi news portal, on 29 January 2013 citing the High Court Division Bench's order, which was last accessed on 20 May 2013 at: <http://bdnews24.com/bangladesh/2013/01/29/police-to-file-rape-case-hc>.
- [10] http://www.odhikar.org/documents/2012/FF_Report_2012/Police_2012/49_Aleya_Shima_Kushtia_Torture_EN_2012.pdf; <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-027-2013>, accessed at about 2.47 pm, 14/05/2013
- [11] Section 54 of the Code of Criminal Procedure, 1898: http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=75, allows the police to arrest persons on suspicion. This provision is widely abused by the country's police.
- [12] Section 176 of the Code of Criminal Procedure, 1898 (Amended in 2005) of India entails that judicial inquiry will be held if such types of incidents took place in the custody. It states about an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate if rape is alleged to have been committed on any woman while such woman is in the custody of the police or in any other custody authorized by the Magistrate or the court.
- [13] *Nari O Shishu Nirjaton Daman (Bishes Bidhan) Ain*, 2000 is a special law for trying the perpetrators of violence against women in Bangladesh.
- [14] Section 164 (1) of the Code of Criminal Procedure, 1898, reads: "Any Metropolitan Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Government may, if he is not a police-officer record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial."

[15] Section 4 (h) of the Code of Criminal Procedure, 1898, reads: "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police-officer."

[16] Regulation 467 (6) (b) of the Police Regulation of Bangladesh, 1943, which reads: "While it is not in general necessary or desirable to invite complaints of ill-treatment by the police, cognizance of such complaints when made should be promptly taken, and any indications of the use of improper pressure should be at once investigated. If any injuries are noticed on the body of the accused or are referred to by him he should be asked how he came by them, and if necessary, in order to enable the Magistrate to be satisfied that the accused is about to speak voluntarily, the accused should be medically examined before his statement is taken."

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Odhikar, means 'rights' in Bangla language, is a human rights organization based in Dhaka, Bangladesh. A group of human rights defenders established this organisation in October 1994 to create a wider monitoring and awareness raising system on the abuse of civil and political rights in Bangladesh. The rights watchdog contributes to policy advocacy aiming to address the contemporary human rights situation in Bangladesh. It is registered as an NGO with the NGO Affairs Bureau of the Government of Bangladesh bearing registration no. 924, 1995. Odhikar has special consultative ECOSOC status at the United Nations.

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The Asian Human Rights Commission is a regional non-governmental organisation that monitors human rights in Asia, documents violations and advocates for justice and institutional reform to ensure the protection and promotion of these rights. The Hong Kong-based group was founded in 1984