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IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION No. 10663 of 2013

IN THE MATTER OF:

An application under Article 102(1) and (2) (a) of the Constitution of the People's Republic of Bangladesh. ('the Constitution).

AND

IN THE MATTER OF:

Articles 27, 28, 31, 32 and 35 (5) of the Constitution.

AND

IN THE MATTER OF:

Section 155, Evidence Act, 1872.

AND

IN THE MATTER OF:

Bangladesh Legal Aid and Services Trust (BLAST), represented by its Legal Advisor, S.M. Rezaul Karim, of YMCA Bhaban, 1/1 Pioneer Road, Shegunbagicha, P.S. Ramna, Dhaka and others.

.....Petitioners.

-VERSUS-

1. Bangladesh represented by the Secretary, Ministry of Health and Family Welfare, Government of Bangladesh, Bangladesh Secretariat, P.S. Ramna, Dhaka.
2. Secretary, Ministry of Home Affairs, Bangladesh Secretariat, P.S. Ramna, Dhaka.
3. Director General, Directorate of Health Services, Mohakhali, Dhaka – 1212.
4. Inspector General of Police, Police Headquarters, Fulbaria, Dhaka.

.....Respondents.

AND

IN THE MATTER OF:

Continued use of the so-called "two finger test" during the medico-legal examination by physicians of women and girls who are subjected to rape, and the failure of the



respondents 1 – 4 to prohibit the same, resulting in discriminatory and arbitrary treatment, and violations of their fundamental rights to equality, freedom from discrimination on the ground of sex, to be treated in accordance with law, and to be protected from action detrimental to their body and reputation, right to health, as included in their right to health, as included in their right to life, and freedom from cruel, inhuman or degrading treatment, as guaranteed by Articles 27, 28, 31 32 and 35(5) of the Constitution.

Present:

Mr. Justice Mirza Hussain Haider.

-And-

Mr. Justice Muhammad Khurshid Alam Sarkar.

The 10th day of October, 2013.

Dr. Sara Hossain, with

Mr. Md. Akmal Hossain, Advocates,

.....for the Petitioner.↘

Mr. Al Amin Sarker, DAG.

..... for respondents.

Let a Rule Nisi be issued calling upon the respondents show cause as to why the impugned so called “two-finger test” undertaken upon the raped women and girls shall not be declared to have been undertaken without lawful authority and of no legal effect as the same being violative of fundamental rights under Articles 28(1), 28(2), 31, 32 and 35(5) of the Constitution; and further to show cause as to why the respondents shall not be directed to take effective measure to prohibit the use of the so-called “two finger test” during the medical examinations of the victims raped women and girls; and also why they shall not be directed to take all steps for such purpose by developing and instituting in consultation with concerned experts a protocol for the therapeutic treatment and gender-sensitive examination of the aforesaid victims and also by devising guidelines for the examination of women child survivors of sexual abuse or violence to minimize invasive procedures and further by ensuring that any test is only carried out with the fully informed consent of the victims to the extent that is possible and also with the full informed consent of the victim’s parent or guardian, where necessary; and further why they shall not be directed to provide funds for the training and monitoring of all concerned forensics

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personnel regarding the use of such a protocol or such guideline in sexual violence cases and also why the respondents shall not be directed to instruct the doctors not to comment on whether they believe the patient is 'habituated to sexual intercourse' based on medical findings and also instruct all senior police officials to ensure that police requisition letters for medical examinations do not ask doctors to comment on whether any person is "habituated to sexual intercourse" and for that, why they shall not directed to ensure that judicial education courses make clear that the so called "two finger test" results and medical opinions about whether any person is habituated to sexual intercourse" are unscientific, degrading and legally irrelevant and as such shall not presented in Court proceedings related to sexual offences and also by discontinuing the use in medical schools and courtrooms of medicolegal textbooks that perpetuate gender bias against victims women and girls and/or pass such other or further order or orders as to this Court may seem fit and proper.

The Rule is made returnable within 06(six) weeks from date.

Pending hearing of the Rule, the respondent no. 1 is directed to set up a Committee including experts in forensics, criminal justice, public health and experience in providing support to women and girl survivors of violence, to develop a comprehensive guideline for police, physicians and judges or Nari O Shishur Nirjaton Daman Tribunal on examination and treatment of women and girls subjected to rape and sexual violence and to submit a detailed report thereof to this Court within 03(three) months from the date of receipt of this order, for dealing with the same in accordance with law.

Let this Rule be served upon the respondents in usual course and also by registered post immediately on two sets of requisites being put in within 72 hours.

M.H. Haider.

M.K.A. Sarkar.

MAH
Typed by: Mahfuz:31.10.2013.

Read by: *[Signature]*
31.10.13

Exam. by: *[Signature]*
31.10.13

Readied by:

[Signature]
মোঃ মনিজুরুল হক খান
প্রশাসনিক কর্মকর্তা

[Signature]