

Oyshee Rahman Verdict: **Revisiting the Principles of Criminal Justice***

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Abstract

The article is a brief appraisal of the sensational *Oyshee Rahman v State parricide* case. Attempts have been made to cautiously draw on the positive implications of the case upon crime doers who have just attained the age of majority, and its bearing on the future course of law, on commuting the death sentence to life imprisonment. Alongside, it has been meticulously assessed if the reasoning is compatible with the psychological theories and the explanations of the schools of Criminology. Additionally, it has been argued insightfully whether the judgment proves instrumental in filling the legal void or goes against the spirit of the law. The case-note highlights, summarily, the instances where the Court should not have evaded from providing necessary explanations.

Facts of the Case

Oyshee Rahman, in 2013, killed both her parents- Special Branch (SB) Inspector Mahfuzur Rahman and Swapna Rahman. With malice aforethought, she brought a number of sedative tablets to the house and blended it in the coffee served to both the victims one after another. First, she killed her mother by indiscriminately stabbing on her abdomen with a sharp knife and hitting her on the neck. Succumbing to the wounds, Swapna Rahman consequently died. Mahfuzur Rahman too died afterward sustaining the stabs dealt by his daughter. Thereafter, Oyshee took her mother's wallet along with ornaments, money and other worn apparels. She left the house with his little brother and the housemaid. The bodies of the victims were recovered from Chamelibagh in Dhaka wherein the family used to reside. Two days after the incident, she had herself surrendered to the police and confessed to her involvement as well.

Oyshee was found liable for premeditated murder, on 12 November 2015, as the Dhaka Druto Bichar Tribunal No. 03 sentenced her to death with a fine of Tk 20,000. Later on, the High Court Division bench consisting of Justice Jahangir Hossain and Justice Md. Jahangir Hossain commuted her sentence of death to imprisonment for life on 5 June 2017.

Judgment Analysis

The judgment of *Oyshee Rahman v State*¹ can be interpreted to have intrinsically postulated the essence of positivist school² overshadowing the utility of deterrent punishment propounded by the classical school³ exponents. The crime being controlled by biological⁴,

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¹Death Reference No. 99 of 2015; Criminal Appeal No. 10281 of 2015; Jail Appeal No. 2016 of 2015.

²See Freda Adler and others, *Criminology* (McGraw-Hill, Inc c1991) 57-68. See also Sheikh Hafizur Rahman Karzon, *Handbook of Criminology, Criminal Justice, Victimology & Restorative Justice* (1st edn, Hira Publications Bangladesh 2016) [32].

³ *ibid*

psychological⁵, social⁶ and other influences, the capital punishment was subsequently abated. It, thereby, mirrors to the inherent spirit of the positivist school of Criminology.⁷ But from another standpoint, it may as well be seen merely as a case of mitigation resulting into commutation. However, It patronizes the idea of reformation and exposed the lacunas in our criminal justice system.⁸

The key factors for commuting Oyshee's punishment, as listed by the High Court Division, were; absence of apparent motive, suffering from mental derailment or ailment and also from ovarian cyst and bronchial asthma, history of psychiatric disorders in both paternal and maternal family, young age, lack of significant history of prior criminal activity.⁹ Oyshee confessed to her involvement in the killing, but that hardly played an extenuating role in passing lesser sentence.¹⁰ It was her willful surrender that acted as a mitigating factor before the Court.¹¹ The arguments presented and implications of the case are further analyzed along with a discussion on the extenuating circumstances and mitigating factors;

Double Murder and Motive

Oyshee killed two living persons, but the number of death barely makes a case of the rarest of the rare.¹² Double murder acted as an aggravating factor; even then, her mental condition exacerbated the mitigating circumstances.¹³ Despite familicide being one of the most heinous crimes in our society, the Court did not always show such killers the gallows. In a way, the HCD may have escaped prevalent acrimony¹⁴ likely to influence Oyshee's verdict by reasonably following the stare decisis. Previously, death sentence in a patricide case was converted into life imprisonment.¹⁵ In another case of *State of Jharkhand v Satyad Rizwan*¹⁶, daughter had killed her parents, brother, and grandmother for grabbing property. The killing with extreme cruelty and atrocity was spared of a death sentence in the absence of antecedents, considering the young age and possibility of reform. The mitigating factors here

⁴ *ibid* [75] (exhibit-15).

⁵ *ibid* [63, 64].

⁶ *ibid* [60-62, 73-74].

⁷ *Supra* note 2

⁸ *Supra* note 1 [56, 68-70]

⁹ *Supra* 1 [75]

¹⁰(1945) 46 Cri LJ 357 (DB) (Nag). See also Ratanlal Ranchhoddas and Dhirajlal Keshavlal Thakore, *The Indian Penal Code* (33rd edn, LexisNexis Butterworths Wadhwa Nagpur 1896).

¹¹*Supra* 1, 4 [75]

¹²*Ashok Kumar Pandey v State of Delhi* 2002 Cr LJ 1844 : (2002) 4 SCC 76 AIR 2002 SC 1468. See also Ratanlal Ranchhoddas and Dhirajlal Keshavlal Thakore, *The Indian Penal Code* (33rd edn, LexisNexis Butterworths Wadhwa Nagpur 1896).

¹³ *ibid*

¹⁴Sadiya S Silvee, 'State vs Oyshee Rahman: Assessment of mitigating and aggravating circumstances | The Asian Age Online, Bangladesh' (The Asian Age, 15 December) <<https://dailyasianage.com/news/99302/state-vs-oyshee-rahman-assessment-of-mitigating-and-aggravating-circumstances>> accessed 23 February 2018.

¹⁵*State of Rajasthan v Deva Ram*, 2001 Cr LJ 2353 (Raj). See also Ratanlal Ranchhoddas and Dhirajlal Keshavlal Thakore, *The Indian Penal Code* (33rd edn, LexisNexis Butterworths Wadhwa Nagpur 1896).

¹⁶*State of Jharkhand v Satyad Rizwan*, 2003 Cr LJ 2098. See also Ratanlal Ranchhoddas and Dhirajlal Keshavlal Thakore, *The Indian Penal Code* (33rd edn, LexisNexis Butterworths Wadhwa Nagpur 1896) [556].

appear identical to the ones uttered in Oyshee's verdict. Moreover, although Oyshee did take money and ornament, avarice cannot be deduced as an intention of her killing. Resentment towards parents in a delirious state of mind may be adduced to an apparent and immediate cause¹⁷ behind the murders. Albeit pre-planned, there was no ulterior intent¹⁸ or reasonable motive behind the killing which could be possibly extracted.

The general principle is that intention is relevant¹⁹ and the question of motive is immaterial²⁰. But the absence of motive is a factor in favor of the accused in cases of circumstantial evidence such as the case of Oyshee.²¹

Mental Health and Psychological Explanations

This is probably the first case in Bangladesh where mental health, during and after the commission of the crime, was successfully pleaded as a mitigation. Oyshee was drunk during the incident, drinking from two bottles of whisky.²² Anyhow, voluntary drunkenness is no excuse for the commission of a crime²³ and the accused will be deemed to have the same knowledge and liable for the consequences as he would have had, if he had not been intoxicated.²⁴ But the effect of this legal provision²⁵ is nugatory here, given that, even while sober, Oyshee was not completely a person of sound mind.

She was unhinged and in an abnormal mental condition that cannot be deemed to be a case for capital punishment.²⁶ She was suffering from conduct disorder, mental and behavioral disorders due to psychoactive substance use of tobacco, shisha, alcohol, yaba, and cannabis.²⁷ She was also found anxious, restless, perplexed, helpless and hopeless by the medical board.²⁸ They found her personality problems still persisting from the possible mental condition after the incident.²⁹

For an assessment, Oyshee was brought physically before the Court during the hearing on 10 April 2017. Neither did she show any realization whatsoever to her sentence nor was she in a position to ponder about her conduct in the dreadful night.³⁰ In a direct inquiry, she said that

¹⁷ Dr. L Kabir, *Lectures on the Penal Code with Leading Cases* (8th edn, Ain Prokashon, Dhaka 2009) [16].

¹⁸ Ibid [16]

¹⁹ Ibid [18]

²⁰ Ibid [17]

²¹ Ibid [17]

²² Supra note 1 [63]

²³ Dr. L. Kabir, *Lectures on the Penal Code with Leading Cases* (8th edn, Ain Prokashon, Dhaka 2009) [86].

²⁴ The Penal Code, 1860 s 86. See 1912 13 Cri LJ 864 FB. See also Zahirul Huq, *Penal Code* (5th edn, Anupam Gyan Bhandar 1981) [171]. See also Dr. L. Kabir, *Lectures on the Penal Code with Leading Cases* (8th edn, Ain Prokashon, Dhaka 2009).

²⁵ ibid

²⁶ AIR 1973 SC 806. See also Zahirul Huq, *Penal Code* (5th edn, Anupam Gyan Bhandar 1981) [856].

²⁷ Supra 1 [71]

²⁸ ibid

²⁹ ibid

³⁰ Supra note 1 [72]

she felt unwell when someone placed something before her with a bad intention to recall her past conduct and she was suicidal.³¹

Mere mental wrong,³² absence of motive and apparent senselessness of the murder cannot furnish extenuating circumstances for awarding lesser punishment.³³ Nevertheless, suffering from an unbalanced mind, accused being actuated by indignation in a brutal murder, may call for abatement.³⁴ Hence, the Court justifiably took into account the unavoidable mental condition of Oyshee to intervene in the earlier sentence.

The Age into Consideration

Becoming adult by age rarely renders the maturity and growth of mind.³⁵ The objective of the minimum age for criminal responsibility is to protect from uncomprehending consequences and ensure long-term rehabilitation and reintegration.³⁶ The prescribed age kept apart, 'sufficient maturity of understanding to judge of the nature and consequences of conduct'³⁷ resonates a similar meaning in the Penal Code, 1860. The deft consideration by the Court of Oyshee's tender age is indeed commendable.

Oyshee, then nineteen-year-old, had just attained the age of majority. The fact of her young age influenced the judgment significantly. The young age of the accused is not a mitigating factor ipso facto.³⁸ The death sentence was not interfered with in a judgment where four members of a family were killed in a pre-planned manner followed by a confessional statement.³⁹ Oppositely, being too young can per se be a mitigating factor⁴⁰ and an Apex Court decision⁴¹ found commutation justifiable if the offender had just attained the age of majority. Since no categorization can be found in any text of law, examining the maturity instead of age remains sui generis for future cases as well. Such circumstantial exception depends solely on the discretion of the judges. In the Oyshee Case, learned judges could have asked the lawmakers to intervene in this regard.

³¹ Supra note 1 [73]

³² AIR 1952 Mad 289. See also Zahirul Huq, *Penal Code* (5th edn, Anupam Gyan Bhandar 1981) [856].

³³ AIR 1973 SC 806. See also Zahirul Huq, *Penal Code* (5th edn, Anupam Gyan Bhandar 1981) [856].

³⁴ AIR 1944 FC 1. See also Zahirul Huq, *Penal Code* (5th edn, Anupam Gyan Bhandar 1981).

³⁵ See also Jee Y. Geronimo, 'Lower age of criminal liability? Here's why psychologists are against it' (Rappler, 18th February) <<https://www.rappler.com/nation/161860-lower-age-criminal-responsibility-psychologists>> accessed 26 February 2018.

³⁶ Vanessa Sedletzki, *Legal minimum ages and the realization of adolescents' rights A review of the situation in Latin America and the Caribbean* (United Nations Children's Fund (UNICEF) 2016) 53-55.

³⁷ The Penal Code, 1860 s 83. See also Dr. L Kabir, *Lectures on the Penal Code with Leading Cases* (8th edn, Ain Prokashon, Dhaka 2009).

³⁸ *Ram Deo Chauhan v State of Assam* AIR 2000 SC 2679 : 2000 Cr LJ 3954. See also Ratanlal Ranchhoddas and Dhirajlal Keshavlal Thakore, *The Indian Penal Code* (33rd edn, LexisNexis Butterworths Wadhwa Nagpur 1896).

³⁹ *ibid*

⁴⁰ *State vs. Rizia Doli and others* 11 BLC (2006) 498

⁴¹ *State v Saifullah Al-Mahmood Tanvir and others* 1 LM [AD]; Death Reference No. 99 of 2015; Criminal Appeal No. 10281 of 2015; Jail Appeal No. 2016 of 2015; [67].

Death Penalty and Commutation

The judgment reminds that death penalty is intended only ‘for the worst of the worst’ crimes.⁴² The Court placed a comparative picture on how capital punishment is sentenced all over the globe and especially, distinguished the practice of death sentencing between Bangladesh and India. But somewhat contradictorily, it also endorsed death penalty as a general rule and life imprisonment as the exception, referring to the *Ataur Mridha v State*⁴³ case. The stance of the Court thereto turned out to be ambiguous and to some extent equivocal.

Reflecting on the need for guidelines or rules to impose a death sentence, the Court further marked the non-existence of provision for a sentencing system in our legal scheme.⁴⁴ Furthermore, it has addressed how the system of commutation of a sentence is only in practice and not iterated anywhere in the law.⁴⁵ Whereas the court must present mitigating factors in order to commute any punishment, the weighing of such circumstances is yet to be guided by any baseline. Herein seeking the attention of the concerned authorities⁴⁶ instead of opting for an adventurous ride of activism⁴⁷, is an evident example of judicial self-restraint⁴⁸ exercised by the Court.⁴⁹

On the other hand, no female convict has ever faced the gallows in independent Bangladesh, and capital punishment against any woman was later commuted to life imprisonment.⁵⁰ A judgment is influenced by diverse circumstances including, inter alia, the sex⁵¹ of the perpetrator. Likewise, Oyshee Case cannot be surmised as an exception.⁵²

⁴² Supra 1 [56]

⁴³ *Ataur Mridha v State* (Criminal Appeal No. 15-16/2010, decided on 14 February 2017) AD.

⁴⁴ Supra 1 [69]

⁴⁵ Supra 1; Muhammad Mahbubur Rahman, *Criminal Sentencing in Bangladesh: From Colonial Legacies to Modernity* (Brill Nijhoff 2017) [194].

⁴⁶ Supra note 1 [70]

⁴⁷ See Ridwanul Hoque, *Judicial Activism in Bangladesh: A Golden Mean Approach* (1st edn, Cambridge Scholars Publishing 2011). See also Raihan Rahman Rafid, 'Colloquium on Judicial Activism and Judicial Self-Restraint | Law Help BD' (Law Help BD, 15 May 2017) <<https://lawhelpbd.com/news/colloquium-judicial-activism-judicial-self-restraint/>> accessed 28 February 2018.

⁴⁸ *ibid*

⁴⁹ Supra 1 [70]

⁵⁰ Jamal Uddin, 'No female prisoner executed in Bangladesh | Dhaka Tribune' (Dhaka Tribune, 10 June 2017) <<http://www.dhakatribune.com/bangladesh/2017/06/10/no-female-prisoner-executed-since-independence/>> accessed 22 February 2018.

⁵¹ See Zahirul Huq, *Penal Code* (5th edn, Anupam Gyan Bhandar 1981). See also Bangladesh Institute of Law and International Affairs- BILIA, 'Report of the Consultation on the research study titled 'Judicial Attitudes towards the Death Penalty in Bangladesh' (BILIA, 28 November 2017) <<http://www.biliabd.org/DPRP%20Project%20Events/Consultation%20Report.pdf>> accessed 23 April 2018

⁵² Supra note 1 [70]

Nature of the Life Imprisonment

*Ataur Mridha Case*⁵³ asserts that if death sentence is commuted to life imprisonment and the Court directs that the prisoner shall have to suffer rest of his natural life in jail, such type of cases would be beyond the application of remission.⁵⁴ The bar to remission must be expressly mentioned in the judgment. But in the case at hand, no such direction can be found on the category of Oyshee's imprisonment for life. Therefore, the possibilities of remission remain assumedly unfettered. Yet, the HCD could have stated conspicuously the nature of the life imprisonment because it was the first case of relevant implications immediately after the *Ataur Mridha* Judgment.

Concluding Note

One Oyshee Rahman, who has had an unattended childhood, grew up to be exposed to drugs, turned suicidal and ultimately killed her parents with her own hands. "In such a situation how far it is justifiable for gallows to be imposed on her?"⁵⁵ - the question perhaps summarily reflects on the entire judgment. What she did was wrong but scarcely it is asked what drove her to such deviance. The Court unexpectedly delved deeper into the upbringing of Oyshee and examined the variables to finally lessen the punishment.⁵⁶

The moot question arises whether justice has been dispensed or not. Well, giving mentally disturbed, traumatized young Oyshee a second chance cannot be called doing injustice. Then again, in a less corrective justice system⁵⁷, if she is not properly rehabilitated what good will, having spared with a life like that do?

⁵³*Ataur Mridha v State* (Criminal Appeal No. 15-16/2010, decided on 14 February 2017) AD.

⁵⁴*ibid* [88] See M Jashim Ali Chowdhury, 'Life imprisonment verdict: A contextual reading' (The Daily Star, 16th May) <<http://www.thedailystar.net/law-our-rights/life-imprisonment-verdict-contextual-reading-1405858>> accessed 22 February 2018. See also Raihan Rahman Rafid, 'Symposium on 'Imprisonment for Life as Imprisonment till Death' held in BILIA' (The FutureLaw Initiative, 21st May) <<https://futrlaw.org/symposium-imprisonment-life-imprisonment-till-death-reflections-jurisprudential-issues-held-bilia/>> accessed 22 February 2018.

⁵⁵ *Supra* [72]

⁵⁶ *Supra* note 1 [70]

⁵⁷ See Sheikh Hafizur Rahman Karzon, *Handbook of Criminology, Criminal Justice, Victimology & Restorative Justice* (1st edn, Hira Publications Bangladesh 2016) [242].