

Research Article

Rape in Bangladesh: A Heinous Crime Tough to Prove

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Abstract: Science has changed all the ways of life at most. But in some aspects, we still have the same antique view. Rape is one of aspects where we have hardly changed. Modernity is in awkward situation. Rape is increasing with the pace of its beastly aptitude. We are merely curious as to how an incident of rape can be proven in a court of law. After a little research, We have learnt that background check, history, medical investigations and psychological evaluations are some of the methods used to prove/disprove the claim of rape. But unfortunately, the existing laws have failed to give actual justice to the rape victims in most cases. The procedures of proving an occurrence of rape is against the victims. It is high time we tried to have some practical solution to this curse. So, here we have tried to show the existing rape laws with their flaws and some of the recommendations by which a rape victim can get the justice without further hurdles.

Keywords: Rape, Victim, Medical Investigation, Proof, Hurdles.

INTRODUCTION

Rape is nothing but a forceful intercourse with a female. It does only signify the carnal penetration. It can be in various ways. Though the existing laws only indicates that it is only done with the female. A rape victim loses the status in the society. They are regarded as they have committed the crime. It is often committed as there is no justice for the rape victim. Specially, they are raped several times during the procedural test to prove that they are raped.

DEFINITION OF RAPE

According to Thesaurus.com, 'Rape' means "Unlawful sexual intercourse or any other sexual penetration of the vagina, anus, or mouth of another person, with or without force, by a sex organ, other body part, or foreign object, without the consent of the victim".¹ Rape is giving sex to somebody who doesn't want it.² Date rape, statutory rape, tentacle rape, gang Rape are of various types of rapes.³ In Bangladesh, a couple of laws prohibit rape. According to section 375 of the Penal Code of 1860 and the Prevention of Oppression against Woman and Children Act of 2000 also give the same view of rape.

REASONS BEHIND RAPE

"Popular perception about rape does not reflect the reality. It is

commonly assumed that usually rape is committed in lone places, outside the protective enclosure of the home, in dark streets or desolate fields, where the victim's screams will go unheard. But facts reveal that rape is committed in the home, in the fields, in public and even in government institutions."⁴ There are some very known reasons behind rape occurring around the globe randomly. In western countries majority of the rapes are committed by the familiar persons. According to the Rape Abuse Incest National Network, 93% of juvenile sexual assault victims know their attackers, and 34% of them are of family. From the analysis of the reasons behind rapes, there are two main reasons why the number of rapes is increasing day by day. They are (i) opportunity and (ii) lack of empathy. There are other reasons too which are strongly supporting commission of rape. Unbridled sexual desire, sexual frustration, urge to control, challenge to establish patriarchy, deep sense of insecurity, unwilling to accept women who disturb the balance of power,⁵ dealing with rejection, feeling superior to women, expression of power, revenge, compensation, regaining control are some of the other reasons behind rapes.⁶ It can also be said that it must be a combination of lust, lack of empathy, anger and frustration,

⁴ Khaleda Khatun; The Definition Of Rape and Some important issues.

⁵ Survey: We asked people 'why do men rape women?' The answers are fascinating Updated: January 27, 2014, 5:03 PM IST.

⁶ Why do men rape women? By M. Farouk Radwan, MSc.

¹ Retrieved from Dictionary.com on 6 June, 2017.

² Retrieved from Dictionary.com on 6 June, 2017

<http://uncyclopedia.wikia.com/wiki/Rape>.

³ Retrieved from Dictionary.com on 6 June, 2017.

and a desire to dominate, plus the knowledge that you can get away with it.⁷ Another important cause for rape is the less severe punishment for rapists.

FLAWS OF EXISTING PROCEDURES AND RECOMMENDATIONS

DEFINITION OF RAPE:

The definition of rape is not updated. We are still following the 150 years old definition given in the Penal Code, 1860 by the British rulers. There is no saying about the marital rape without consent. However in Bangladesh it is almost impossible for a sex worker to file a rape complaint. Police and society, neither would believe her. Even, Penetration is not only the means of rape; there are others too. India has changed the definition of rape in their Penal Code with the latest means of rape.⁸ It has included anything penetrated in any part of the body or touching of any part is rape.

CONSENT:

Consent must be free consent. A woman is unable to consent by reason of – (1) her age; (2) unconsciousness; and (3) idiocy or imbecility or that it was obtained by fraud.⁹ A cessation of genuine resistance will not amount to her consent.¹⁰ A study carried out by the United Nations Fund for Population Activities and the International Centre for Diarrhoeal Disease Research, Bangladesh in November 2011 revealed that 10 percent of urban and 14 percent of rural men in Bangladesh had been sexually violent with women at one time or another in their life. Seventy-seven percent of urban and 81 percent of rural men shared the belief that “sex is men's entitlement”. Twenty-nine to thirty-five percent of them had sexually abused women to channel their anger or punish the women, and 57-67 percent had done it “just for fun”.¹¹ So, the consent is never taken from the female side.

LEGAL ASSISTANCE:

When a case is reported at the police station, the police show negligence and fail to get a medical examination for the victim in adequate time. As a result, the case again becomes weak.¹² According to a 1994 Supreme Court judgment, as soon as a woman approaches a police station with an allegation of rape, the police ought to inform her that she is entitled to legal counsel to help her file a case. The lawyer should also assist her in other ways, such as in getting medical care. “The police should be under a duty to inform the victim of her right to

⁷ Why do men rape What is the science reasoning behind it/answer/Steven-de-Rooij answered May 10, 2016 retrieved from <https://www.quora.com>.

⁸ Section 375 of Indian Penal Code, 1860 amended in 2013.

⁹ *Biram Soren vs. State of West Bengal*, 1992 Cr LJ 1666 (Cal).

¹⁰ *Ibid*.

¹¹ Why rape victims stay silent by Sarah Anjum Bari, Moyukh Mahtab and Shamsuddoza Sajen May 24, 2017.

¹² Violence against Girls in Bangladesh: published in Geneva, September 2003.

representation before any questions were asked of her and that the police report should state that the victim was so informed,” the ruling says. A list of lawyers willing to help with these cases should be available at every police station, it adds.¹³

SEPARATE DESK:

The first point of contact for reporting any case of violence against women is the police. In 2011, the High Court Division of Bangladesh issued a directive asking the police authority to set up a separate cell or team in every police station to deal with the issues of sexual harassment. Unfortunately, most police stations in the country do not have separate desks to deal with such cases except some in the Dhaka metropolitan area.

FEMALE OFFICER(S):

A woman is raped several times during filing a case. There is no special provision that female police will write the complaint. Every station is meant to have a female officer not below the rank of head constable available around the clock, according to a 2009 Delhi High Court judgment.¹⁴ Recently the Banani Rape incident has given an example for this. The victims of this incident experienced verbal abuse from the male officer. They refused to lodge the case and after 48 hours they file the case. Even Halima, a raped female constable, burned herself for being rejected to file a rape case.¹⁵

ONE STOP-CRISIS CENTER (OCC):

Our government has been establishing OCC for medico-legal assistant of the physical and sexually assaulted victims. So far 16,804 victims have been treated at the OCC, of which only 3,747 victims took legal action, meaning that 78 percent had opted to keep quiet.¹⁶

CONFIDENTIALITY:

Women cannot be called to the police station for interrogation under Section 160 of the Criminal Procedure Code, 1898.¹⁷ Even, a woman who has been raped has a right to record her statement in private, in front of the magistrate without being overheard by anyone else. She also has a freedom to record her statement with a lady constable or a police officer in personal. Under section 164 of the Criminal Procedure Code, the cops will have to give the privacy to the victim without stressing her in front of masses.¹⁸ Section 228-A of the Indian Penal Code makes the disclosure of a victim's identity a punishable offence.¹⁹ Privacy must be kept for a standard life after the victim gets relief.

¹³ *Delhi Domestic Working Women's Forum v. Union of India*, Oct. 19, 1994.

¹⁴ *Delhi Commission for Women v. Delhi Police*; April 23, 2009, W.P. (CRL) 696/2008.

¹⁵ *Dhaka Tribune*, April 25, 2017.

¹⁶ *Dhaka Tribune*, June 19, 2013.

¹⁷ 9 CWN 199.

¹⁸ Code of Criminal Procedure, 1998.

¹⁹ Indian Penal Code, 1860.

RIGHT TO VIRTUAL COMPLAINTS:

We are digital but not equipped with modern facilities of science. We do not have the internet facility to all people. As a result, Virtual complaint is still not that much popular among the complainants. But India has managed to arrange the right to virtual complaint through email or sites without going to the police station.²⁰ For greater interest of the victims, they have to be given the scope to lodge complaint via internet.

MEDICAL ASSISTANCE:

Shower, bathing, urinating and elapse of time destroy the testimony of rape. According to the Women and Children Repression Prevention Act, 2000 (amended in 2003), a doctor needs to examine her within the next 24 hours. The doctors should also give the victim a copy of the report. But it hardly happens. And, copy is rarely given within 24 hours. "Two Finger Test or Virginitiy Test" is the worst of the procedures during a trial for rape. A doctor puts his fingers into the vagina of the rape victim to know the sexual activity. It is quite an old process and majority of the countries have banned it. It is almost impossible if the rape is done by unknown person at unknown place. This is why a bench of the High Court has recommended that investigating officer have DNA test. DNA test sometimes goes wrong as a woman may have sexual relation with his husband or boyfriend(s). Even, a woman carries the DNA of their sexual partners.²¹ But some people shed less DNA in a woman body. Still there is lack of female doctors for these sorts of tests. And if the doctor says that no occurrence of rape happened, the alleged is acquitted. The High Court has ruled to observe the doctors during test of the rape victims.

PRESUMPTION OF INNOCENCE:

A person cannot be convicted as there is the doctrine of presumption of innocence. And section 155(4) of the Evidence Act of 1872, describes that if the character of the rape victim is proved to be immoral, the accused person get relief. But, it has also to be considered that a woman may not come to lose his reputation or status of virginity for revenge publicly. So, here presumption of innocence should be set aside.

BURDEN OF PROOF AND WITNESS:

Plaintiff always has the burden of proof. But in case of rape, this task must be given to the alleged person to prove that he has not committed rape. Even some religions want witness of rape. Rape is never done in public places. So, finding witness for proving that a victim is raped, is quite problematic. In the nineties, there was a very sensational case of rape under police custody. Yasmin, a young girl from Rangpur, was raped by a police officer. The first question is whether he has had sex or not. Following the case the Women and Children Repression Prevention Act says that the accused is responsible for proving

himself not guilty.²²

CAMERA TRIAL:

From the time of rape, a victim started losing her confidence and inner strength. Victim is generally asked indecent questions about the incident of rape before the public. Section 20(6) relating to the trial process of the Women and Children Repression Prevention Act, 2003 states that the trial proceedings of the crime can take place in a closed room under section 9 of the law. "But the trial in camera section is hardly practiced," says Farida Yasmin, deputy director (Law) of Bangladesh Legal Aid and Services Trust (BLAST) and a Supreme Court lawyer.

SPEEDY TRIAL:

Day to day trial is much needed to meet justice for the rape victims in our country. The evidences fade away with course of time. DHAKA, Oct 26, 2016 (BSS) - Urging the prosecution to be more active in ensuring maximum punishment within quickest of time for the people guilty of assaulting and raping children, Law Minister Anisul Huq said such trials will be conducted by the speedy trial tribunals for swift disposal of cases. "Filing of charge sheet must be prompt and trial must take place on a day-to-day basis. Adjournments in the trial proceedings must not be granted as a rule, except in exceptional circumstances." Justice Sathasivam, who is number two in seniority among Supreme Court judges, expressed.²³

PUNISHMENTS:

We have two acts for the punishments for the rapers/rapists. According to section 376 of the Penal Code, 1860, whoever commits rape shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in this case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. According to section 9 of The Nari O Shishu Nirjatan Daman Bishesh Ain 2003, the highest punishment for death of the rape victim is rigorous imprisonment for life with fine of 1 Lack taka. This is a provision that special laws will prevail over ordinary acts. Here, the provision of The Nari O Shishu Nirjatan Daman Bishesh Ain 2003 will be applicable. The amount of punishment is totally inhuman for the victims. Rapist must be hanged till death to set an example for the common minded especially when it is a child.

MEDIATION:

A rapist is still punished by the way of mediation. We know mediation is a fifty-fifty win process for both the side. As a

²⁰ The Times of India, Jan 27, 2016 by Gopi Saha.

²¹ Women May Carry the DNA of All Their Sexual Partners by Moe posted May 5, 2015, Alchemy, DNA.

²² The legal framework of Bangladesh's rape law by Aziza Ahmed posted on 04.12.2013.

²³ Speedy trial a must in rape cases: Justice Sathasivam retrieved from The Times of India posted on Dec 25, 2012.

result, here victim is profoundly harmed. A rapist is forced to marry the girl he raped. How could it be a justice to the victims? It is merely a process to give more pain to present victim. It is against the Human Rights. Severe punishment should be imposed on the perpetrator.

NO COMPENSATION BY STATE:

In Bangladesh there is no provision for compensating the rape victims by the state. But In USA is ranging \$1000-100,000.²⁴ Recently, India has set a glaring example of compensation to the rape victims. In March, 2014, India's Supreme Court has ordered the West Bengal government to pay 5 lakh rupees to a tribal woman who was gang-raped in January on orders of village elders.²⁵ The judges said the state had failed to protect the victim's fundamental rights as a woman.

DHORSHITA:

I think the word 'Dhorshita' must be changed to a decent. A victim carries this cursed stamp on his head throughout her lifetime. This is why most of the rape victims do not come forward to file a case to be stamped. It could be 'Vuktovogy' what means a victim.

LACK OF AWARENESS:

Living in modern age, we are still lagging behind. We still don't know where to find justice. There are a lot of organizations for ensuring justice for the rape and sexually abused victims. A victim must report as early as possible after the rape is committed. They try to rub all the vice from their body. But this is another mistake they make. However, a woman should go to the doctor so that all the evidences are still fresh enough to justify what happened.

AFTER MATH OF RAPE AND REHABILITATION:

Victims experience both short and long-term psychological effects of rape. Self-blame results in psychological problems. Self-blame slows or, in many cases, stops the healing process. But still the rehabilitation of the rape victims is questioned. Other common emotional and psychological effects of rape include:²⁶

- Post-traumatic stress disorder (PTSD) – feelings of severe anxiety and stress
- Depression
- Flashbacks – memories of rape as if it is taking place again

²⁴ Copyright 2003 by the National Center for Victims of Crime.

²⁵ BBC News, 28 March 2014.

²⁶ Effects of Sexual Assault | RAINN | Rape, Abuse and Incest National Network. (n.d.). RAINN | Rape, Abuse and Incest National Network | RAINN: The nation's largest anti-sexual assault organization. One of America's 100 Best Charities Worth magazine. Retrieved June 27, 2012, from <http://www.rainn.org/get-information/effects-of-sexual-assault>.

- Borderline personality disorder
- Sleep disorders
- Eating disorders
- Dissociative identity disorder
- Guilt
- Distrust of others – uneasy in everyday social situations
- Anger
- Feelings of personal powerlessness – victims feel the rapist robbed them of control over their bodies.

In approximately 5% percent of cases, rape results in pregnancy.²⁷

SOCIETY:

It is a matter of great sorrow that this society has given "Birongona" title to the raped women during Liberation War of 1971. But in this 21st century, our sisters are raped and they get the stamp of 'Dhorshita'. We hate them. They are outcast. We only show mere sympathy for them. But the conditions they went and will go through must be empathized.

CONCLUSION:

A girl or a child is at risk of rape not only among the unknown but also among the known people at a known place. The number is increasing. As a result, we have to have a strict sketch for the offenders of rape. More and more awareness building programs are to be taken among the young people especially schools, colleges and universities and places where it is happening rampant. Both male and female are to take some measures for keeping them apart of this modern curse. If the mentality of the modern people is not changed, the male mass will be termed as rapist in a word indiscriminately. Government has to take more deterrent initiatives for the rapist and common minded. This is how we can hope a better place for our counterparts and innocent children.

REFERENCES:

- ❖ Retrieved from Dictionary.com on 6 June, 2017.
- ❖ Retrieved from Dictionary.com on 6 June, 2017 <http://uncyclopedia.wikia.com/wiki/Rape>.
- ❖ Retrieved from Dictionary.com on 6 June, 2017.
- ❖ Khaleda Khatun; The Definition Of Rape and Some important issues.
- ❖ Survey: We asked people 'why do men rape women?' The answers are fascinating Updated: January 27, 2014, 5:03 PM IST.
- ❖ Why do men rape women? By M. Farouk Radwan, MSc.

²⁷ Rape, Abuse and Incest National Network, "Who are the Victims? Breakdown by Gender and Age." (2009). www.rainn.org.

- ❖ Why do men rape What is the science reasoning behind it/answer/Steven-de-Rooij answered May 10, 2016 retrieved from <https://www.quora.com>.
- ❖ Section 375 of Indian Penal Code, 1860 amended in 2013.
- ❖ Biram Soren vs. State of West Bengal, 1992 Cr LJ 1666 (Cal).
- ❖ Ibid.
- ❖ Why rape victims stay silent by Sarah Anjum Bari, Moyukh Mahtab and Shamsuddoza Sajen May 24, 2017.
- ❖ Violence against Girls in Bangladesh: published in Geneva, September 2003.
- ❖ Delhi Domestic Working Women's Forum v. Union of India, Oct. 19, 1994.
- ❖ Delhi Commission for Women v. Delhi Police; April 23, 2009, W.P. (CRL) 696/2008.
- ❖ Dhaka Tribune, April 25, 2017.
- ❖ Dhaka Tribune, June 19, 2013.
- ❖ 9 CWN 199.
- ❖ Code of Criminal Procedure, 1998.
- ❖ Indian Penal Code, 1860.
- ❖ The Times of India, Jan 27, 2016 by Gopi Saha.
- ❖ Women May Carry the DNA of All Their Sexual Partners by Moe posted May 5, 2015, Alchemy, DNA.
- ❖ The legal framework of Bangladesh's rape law by Aziza Ahmed posted on 04.12.2013.
- ❖ Speedy trial a must in rape cases: Justice Sathasivam retrieved from The Times of India posted on Dec 25, 2012.
- ❖ Copyright 2003 by the National Center for Victims of Crime.
- ❖ BBC News, 28 March 2014.
- ❖ Effects of Sexual Assault | RAINN | Rape, Abuse and Incest National Network. (n.d.). RAINN | Rape, Abuse and Incest National Network | RAINN: The nation's largest anti-sexual assault organization. One of America's 100 Best Charities Worth magazine. Retrieved June 27, 2012, from <http://www.rainn.org/get-information/effects-of-sexual-assault>.
- ❖ Rape, Abuse and Incest National Network, "Who are the Victims? Breakdown by Gender and Age." (2009). www.rainn.org.