

Re-examining Rape Laws: Medical Evidence The Role of Forensic Medicine in Rape Cases

"RAPE is a crime and not a medical condition... Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim... whether rape has occurred or not is a legal conclusion, not a medical one."

Perhaps few of us have considered the role of medical evidence in cases of rape. The above statement, taken from Modi's 'Medical Jurisprudence', may not be common knowledge, or appear obvious to the layperson. But, on giving some thought to the matter, it may become clear that the verdict of rape can only be made in a court of law.

In cases of alleged rape, a medical officer is justified only in describing the medical condition of the victim. This means that the only conclusions permitted after examination in such cases are, for example, whether sexual intercourse has recently taken place, whether the alleged victim shows certain injuries that may be consistent with a struggle or violence taking place, the mental condition of the victim, etc. Such conclusions are then used as medical evidence towards a legal verdict during trial.

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in court by being inadmissible and therefore detrimental rather than helpful in obtaining a conviction.

But it is not just medical personnel who lack the training and expertise to deal with rape cases effectively, but also the police involved in gathering and collecting evidence who routinely fail to collect or inadvertently destroy evidence such as seminal stains, pubic hairs, etc. found on clothing or at the scene. Lawyers also are frequently unacquainted with

the significance of forensic evidence.

Certain social stigmas/ taboos also make it difficult for medical examinations to take place as required. In Bangladesh, victims of rape are even more reluctant to go to the police or authorities to report and admit the 'shameful' incident, or undergo the second 'violation' of a medical examination by a stranger.

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This 13 year-old Mozambican girl was raped by soldiers of the armed opposition group RENAMO. She is now a mother. —Courtesy: Amnesty International

The actual process of medical examination should in theory be founded on the fundamentals of the legal definition of rape. In brief, according to the Penal Code, a man is said to have committed rape after 'sexual intercourse' without either a woman's consent or will, or with any female under sixteen. (Husbands are excepted, unless the wife is under sixteen years of age).

'Sexual intercourse', however, does not necessarily mean that the full and complete act of 'sex' must take place. Slight or partial penetration of the penis into the vulva is a sufficient condition for rape, according to 'Medical Jurisprudence'. Thus, by law, it is possible to commit rape without emission of semen or rupture of hymen, OB i.e. without any injury to the genitals and without leaving any seminal stains.

Medical examination, therefore, should determine the following:

Age of victim should be assessed as the question of consent is irrelevant for victims under the age of sixteen. Age is rarely recorded accurately in Bangladesh with no formal registration or certificates of birth. Therefore, expert determination of age through physical signs is important.

Examination of sexual organs plays a major part in the medical examination. However, injury to the genitals, and the state of the hymen is perhaps given too much importance as it is stated that full penetration need not occur. Furthermore, it is more common than is supposed for the hymen to remain intact in some cases after penetration has occurred.

Thus a distinction should be made between what have been termed by forensic experts as 'false virgins' and 'true virgins'. This distinction is rarely made in practice, and where examination reveals the hymen to be intact, courts are reluctant to believe rape may have occurred, even though the law itself states that complete penetration is not required. Another difficulty with placing such significance on the state of the hymen is that it appears to imply that women who are 'habituated to intercourse', i.e. married women, sexually active women, or prostitutes, cannot be raped, or there

cannot be sufficient evidence provided of rape as the hymen in such cases has already been broken.

Examination of the body for signs of violence, injuries, etc. therefore must play an important role in medical examinations. Resistance commonly results in marks inflicted with hands and nails. Therefore, it is also necessary to examine the accused for corresponding marks, and other physical evidence. Yet there is no examination of the accused in reality.

A violent rapist, or cases of gang rape, can also leave other more serious injuries. However, in cases of passive resistance or coercion with the threat of extreme violence (at knife or gun point) to the victim or her loved ones, there may be little sign of violence. Such circumstances must be kept in mind. In these cases assessment of mental condition and extreme stress that follow such an assault are important. This is relatively uncommon at present in Bangladesh as emphasis is placed on physical examination.

The victim should also be examined for signs of intoxicating substances that may have been administered unknowingly to the victim. Clothes and the scene of rape must be scrutinised carefully for physical evidence such as body fluids again, this is rarely done in a competent manner. And even in cases where such evidence is collected, forensic facilities in Bangladesh are sadly lacking, as is an integrated, interdisciplinary approach to the collecting and dissemination of medical evidence. OB.

It has been established that medical evidence is vital for conviction in almost all cases of rape. Many cases are dropped in court due to insufficient and inadmissible evidence, resulting in rapists going free without a trial. Yet a conviction is one of the clearest and most convincing forms of legal and social support for a victim. It is not enough to raise the penalty for rape as it was done in 1995, to the death sentence, if there is no arrest or conviction of offenders. Society must show it cares by dealing in an effective manner with this most horrendous of crimes against women.

HERE were 216 reported cases of rape in Bangladesh in 1995. In most cases, the accused went unpunished. The victim, on the other hand, faced further ordeals at the hands of the law, her medical examiners, and society at large. "When woman is raped," says Maleka Begum of Gono Shahajo Shongstha, "she is pushed down to the lowest regions of society."

The international human rights framework is clear," says advocate Sara Hossain, "in that men and women have equal rights, and that every human being has the right to be free from any form of cruelty." But the Bangladeshi rape laws are at wide variance with this framework. For example, by law, a man can legally rape his wife. Even when the husband and wife are separated, sexual assault by the husband may qualify as a sexual offence, but not rape.

After an incident of rape, the victim faces harassment at the thana, the medical examination, and in court. This includes rough and incoherent behaviour, lack of information about proceedings, and total disregard for the dignity and privacy of the victim. Social stigma at every corner makes it clear to the victim that she is to blame for the crime. Advocate Ila Chanda of Ain O Shishir Kendro describes running to three hospitals with a rape victim: "Monawara wouldn't take her. Holy Family wouldn't take her. At last, Dr. Qamruzzaman at the Community Hospital agreed, in spite of the fear of taking in rape victims." While the victim goes through ordeals as bad as the rape itself, the accused is almost never examined.

Unlike any other crime, where the accused must prove that he is innocent, the burden of proof in a rape case lies with the victim. Rape is defined by law as sexual assault without the consent of or against the will of the victim. Legislation has strengthened the punishment for rape to life imprisonment or death, but in practice few rapists are ever prosecuted. In Bangladeshi courts, it is extremely difficult to prove a case of rape without signs of serious injury or where the victim is not a virgin. The victim is subjected to an inquiry into her sexual history, which is pivotal in a court ruling.

There are instances of twelve year-old victims who received a medical report stating that she is habituated

by Gemini Wahhaj

to sexual intercourse, thus making it impossible to prosecute the accused. "But even if a woman is habituated to rape," Sara Hossain points out, "even if she has had sexual intercourse 500 times, if the 501st time was forced, then she was raped." It is the victim's right that what is private (her sexual past) should not be entered as evidence, and that the court should focus on what is public — the rape that has occurred.

Only recently, psychological observations have been entered as evidence in court. Where medical examination facilities are poor, the victim may be habituated to rape, or the victim may have been coerced to consent in a crime where the most fundamental damage is often psychological — psychological evidence is crucial. Rape victims share some common signs, such as a dazed state, incoherence of speech, and excessive crying. Also important is the testimonial of the victim herself, but this is largely disregarded in courts.

After-effects of rape include shame, humiliation, terror, post-traumatic disorder, phobia, and inability to rehabilitate in society. Many rape victims in Bangladesh



Far from recognising that a raped woman needs social support, society tells her to forget that a crime has occurred. —Courtesy: Amnesty International

I T was an Eid Day. One late afternoon of spring I was roaming on the Dhaka Protection Embankment with my 7-year-old daughter. They had studied upto Class IV and had to stop education because they had 'grown up' according to their guardians. Their swimming in the mighty Jamuna was also stopped. They had come to Dhaka with a village uncle and took shelter in a slum. After three months both had managed to get jobs in a garments factory. Like most girls of their age they had dreams: a good job, new cloths, enough to eat with their family and enough

place seemed quite unusual.

Inspired by my daughter, I had a talk with Marjina and Hasina. They were from a village in Sylhet on the bank of the Jamuna. They had studied upto Class IV and had to stop education because they had 'grown up' according to their guardians. Their swimming in the mighty Jamuna was also stopped. They had come to Dhaka with a village uncle and took shelter in a slum. After three months both had managed to get jobs in a garments factory. Like most girls of their age they had dreams: a good job, new cloths, enough to eat with their family and enough

Two adolescent girls were sitting at a little distance. They were sitting silently and weeping. Pushpita, my daughter said, "Abbu who are they? Don't they have a father? Why are they sitting alone there? Don't they have a house?" Women in Bangladesh are seldom seen in roads without male chaperones. Seeing the two girls in such a solitary

It would be quite shocking if the wage rates in our country was compared to that of other countries in garments industry. According to a survey in early 80s, hourly wage rate is as follows:

Country	Taka	Pound	Pound equivalent
USA	240	3.69	
Singapore	51	0.78	
South Korea	49	0.75	
Taiwan	45	0.69	
Hong Kong	44	0.87	
China	24	0.36	
India	21	0.32	
Sri Lanka	11	0.17	
Bangladesh	8	0.12	

Name of Position	Taka	Pound	Pound Sterling equivalent
Supervisor	1,050	17	
Machine Operator	850 to 700	10 to 11	
Ironman	500 to 550	8 to 9	
Helper	250 to 300	4 to 5	

James Bond
BY JAMES BOND
DRAWING BY HORAK



THE RIGHT TO LIVE

Women in the Garments Factory

by Gawher Nayem Wahra

their savings to their fathers. Hunger squashed their Eid desires.

It would be the first time that they would be without their parents on Eid Day with no celebrations.

After 1947 some countries in South Asia started the garments business. For the first time a garments factory was established in Dhaka during the 60s. The figure was raised to 5 in 1970. Garments industry entered into the foreign market in 1976 through the shipment from two export-oriented garments industries to the German Republic. By 1982-83 some 200 garments factories came into existence. A survey in 1988-89 revealed that there were 772 approved and registered garments factories in this country. Total workers in these factories are 300,000 out of which 90% are women.

Among the 'helpers' unskilled work is also done by women. There are males in most of the senior positions including manager, cutting master, cutting assistant.

In addition to cheaper wages rate, one of the major causes behind the employment of women, especially girls is that they accept whatever is doled out to them. They do not want to know why they should work for more than eight hours or why they are not entitled for overtime payments and bonus. They do not ask why they do not get letters of employment or why they are barred from joining trade unions? They never ask why they should lose their jobs if they want to have babies?

Who are they?

Every year river erosion makes 20,000 people homeless. Most of them migrate to the cities. Along with them the unemployment situation in rural areas force considerable number of families to migrate to cities in search of jobs. Women belonging to these migrated population constitute a majority of the labour force in garments factories.

Most of these families only own homestead land in the village. Male members of these families are either share-croppers or day labourers or low-paid employees or small traders who find it impossible to survive with their meagre income.

Most of the labourers in garments are girls of tender age and unmarried. Most of the married women are deserted or divorced. Statistics reveal that 60% of the female labourers are in the age group of 16 to 20 years. Around 70 to 75 per cent of

the girls are unmarried. Widowed or deserted women constitute 2 to 3 per cent.

Twenty per cent of the women do not have any formal education. Thirty per cent have studied upto Class V. Twenty per cent of the women have completed secondary school education.

If there were no garment factories where would these women go?

You would get the answer if you overheard the conversation between two rich housewives in any urban area; you will hear that nowadays they are finding it very difficult to get maid servants.

They undoubtedly blame the garments factories for the non-availability of maid servants.

In the recent past thousands of poor destitute women and girls rushed to cities and became maid servants. These servants had to work in lieu of food and accommodation; in almost all cases wages were very low. These servants had no working hours; they had to start work before sunrise and work hard till the last light of the house was switched off. Other jobs paid even lower wages.

It is not true to say that job opportunities were in abundance. Many would not dare to move towards cities and rather live with their miseries; the alternatives were to become the second wife of an old husband, being widowed at an early age and return to brother's or father's family or being deserted.

In spite of the massive expansion of garments factories the slow motion of industrialisation has resulted in the majority of the unemployed women not being absorbed.

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These factories are working as sub-contractors of the registered ones. Thus the number of girl workers is increasing in the informal sector resulting in a further reduction in the wage rate.

How their age is determined

As birth registration is very rare in Bangladesh, the age of these garments workers is determined by the inspectors just by looking at them a bit like determining the age of cattle in the cattle market. As a majority of the children in Bangladesh suffer from malnutrition, physical growth cannot keep pace with age. In most of the cases it is very hard to determine the actual age by just looking at the face and physique.

No one has the answer as to how these young girls will survive or where they would go. The right to live is a basic human right. Who will ensure this right?

With pressure from many of the human rights organisations and trade unions some superficial programmes have been undertaken for the retrenched girls by ILO, UNICEF and USAID which would be limited to so-called 'education programmes' for 7000 to 8000 girls.

Ultimately one can only

ask: Is it not possible to find ways and means to rehabilitate these girls in their own work place?



Taking away their jobs may take their only hope to lead decent lives.

Garfield ®



by Jim Davis



How garment workers changed their lives?

The women have escaped the bondage in their own family or others' family. They walk freely on streets, they, with lots of other people, live in the city, they have adjusted to modernisation, using their own creativity. Above all they have attained a sense of self-confidence. They have realised that they have to fight their own battles. They have escaped a simple bondage but still are