

Law and Our Rights

The Rape of Sisters at JU

The Rape of a Nation's Conscience

by A H Monjurul Kabir

Further pledging that it shall be a fundamental aim of the state to realise through the democratic process a socialist society, free from exploitation — a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens: ..... 3rd paragraph of the Preamble of the Constitution of the People's Republic of Bangladesh.

and sexual assault also reveals some ugly considerations and questions the very role of our so-called civil society. Firstly, the attitude of the varsity authority is not victim friendly at all. Rather they played a surprising pro-rapist role. Initially they were reluctant to take up the issue in the name of protecting the image (I) of the university. The malaise and perversion we find today among a section of the student community has not happened suddenly or in one day. This is the outburst of prolonged use of students for petty political interest. And the authority is very much a party to it.

seems that the political allegiance of the rapists works as the inspiration of syndicate's inaction. If the varsity authority could decide to lodge complaint with the police against the three accused outsiders, why it would not take the same course against the several students. Are they above the law? Or is their mere studenthip sufficient to give them immunity from one of the most heinous crimes like rape?

Fourthly, the role played by some leading human rights and legal aid NGOs waging movement against such atrocity is callous and deplorable. It is alleged that a leading legal aid NGO refused to act in favour of a JU rape victim when ap-

democracy in which fundamental human rights and freedom and respect for the dignity and worth of the human person shall be guaranteed..... (Article 11 of the Constitution).

The JU syndrome amply testifies our inherent bias towards rapists and their political allegiance and connection. It proves the inefficacy of constitutional protection for fundamental human rights and freedoms and the dignity and worth of the human person. The government led by a female Prime Minister and the opposition led by a female Leader of the Opposition are keeping an astonishing low-profile regarding the event. The electronic media, as usual keeps absolute mum. The

ONLY fifteen months before the 21st century we have set a new horrifying record: University, considered

Secondly the students of JU particularly the unfortunate

A Wake Up Call to Justice

by Saira Rahman

Society as a whole has to shrug off the taboos which shroud the crime of rape and realise that the victims are someone's daughter, sister, mother or wife. These women are part of society and have the same freedoms of speech and rights to occupation, justice and equality before the law as any other citizen of Bangladesh. Ensuring that their tormentors are properly punished is merely one step to helping victims of rape get on with life bearing the mental and physical scars - something that cannot be healed. However, it is a step in the right direction for making a more livable, safer society.

The recent occurrences of rape at Jahangir Nagar University and the previous occurrences of such crime and other cases of molestation which have now been made public have shocked the nation. However, the long-time silence of the victims does not come as a surprise. The crime of rape is probably one of the meanest crimes perpetrated by criminal-minded men and probably one of the oldest kinds of violence against women. In a patriarchal society like Bangladesh, it is a way in which the 'stronger' section of society - the male

the izzat of the family first - meaning the father, brothers and/or husband - and the victim is left to face the family's wrath or neglect. This silence of the victim is one of the reasons why alleged rapists take advantage of perpetrating such an offense. The taboos against rape is also the reason why such a crime goes unreported to the law-enforcing agencies. However, the fear of further rape in what is ironically termed as 'safe custody' also puts a damper on matters. Society has degraded so much that even those ordained to protect us have turned criminal.

and religious teachings and ideological beliefs. These value bases have been destroyed as society economy more materialistic due to globalisation and neo-colonialism. It is general human nature to break rules, and with no guiding principles, some cannot restrain themselves and destroy the personal rights and security of others.

The overall social view of rape, the taboos, the powerful socio-economic or political force supporting the perpetrators and lapse of morality are, therefore, the fundamental reasons why such crimes occur and why they are rarely reported. If the crime is brought to light, lack of proper evidence, poor medical examination of the victim, bribery and/or threats from the perpetrator, etc., prevent any legal action. Furthermore, the mere fact that the victim must relate her story in the publicity of a packed courtroom will make any woman cringe, as cases of rape are yet to be heard in the privacy of the judges or magistrates chambers - unfortunately our male-dominated legal system is yet to be so sophisticated and sensitive. Again, the evidence of the victim in the court of law is viewed with a certain amount of suspicion which makes cases of rape even harder to prove. In the case of Federation of Pakistan Vs. All Ihsan [1967] it was decided that the 'evidence of the prosecutrix in a rape case is customarily received by the courts with some suspicion. In certain jurisdictions it is the rule that the solitary evidence of the prosecutrix being a woman of full age is not accepted as sufficient, but requires corroboration by independent evidence, in order to be believed.'

What can we do to lift the taboos and see that justice is done? We could start by realising that rape is a serious crime and like any other crime, the perpetrators have to be punished, regardless of their social or political or economic standing. We have to realise the terrible effect the crime has on the victims - the physical and, more important, the mental scarring they live with for the rest of their life. If we can realise this, we will be able to support them and give society a small moral boost. There

should be a war against corruption - a difficult task, indeed, but one the people can come together and fight in stages in different sectors. Unity is the key here. Furthermore, there must be specific shelters and homes where victims can stay without fear of further rape in custody. As for the judiciary, cases of rape must be heard in the privacy of the judges chambers, or 'in camera', while law enforcing agents who turn into criminals must be charged as any ordinary criminal.

Universities also urgently require such offices where such complaints can be made, against any male student or teacher, if the victims given support and criminal investigations and later on charges can be made against the accused. Criminalisation of politics by student organisations in educational institutions, and the protection they receive from their 'political gurus' have put the teachers in fear of their jobs, if not their lives, which seriously hinders the course of justice. And the fear of failing an indentured corruption prevents students from making open assessments of their teachers which seriously affects the state of higher education. In many countries in Europe and America - and also in Asia - assessment of teachers is almost a compulsory matter and students are told to do so in order to improve the standard of education.

Society as a whole has to shrug off the taboos which shroud the crime of rape and realise that the victims are someone's daughter, sister, mother or wife. These women are part of society and have the same freedoms of speech and rights to occupation, justice and equality before the law as any other citizen of Bangladesh. Ensuring that their tormentors are properly punished is merely one step to helping victims of rape get on with life bearing the mental and physical scars - something that cannot be healed. However, it is a step in the right direction for making a more livable, safer society.

The writer is a Member of Odhikar, a coalition for human rights.

Rape (1 January to 30 September 1998)

Nature/Age	0-5	6-11	12-15	16-20	21-25	26-30	30+	Age Unknown	Total
Rape	35	119	50	38	18	6	2	71	339
Death after rape		5	5	6				1	17
Suicide after Rape				1					1
Gang-Rape	2	29	72	69	31	20	11	122	356
Death after Gang-Rape		1	3	10	4	3	4	8	34
Rape by Police		3	4	3	1	2	1	2	16
Nature of Rape not mentioned		1	2	2		1		5	11
Total	37	158	136	129	54	32	19	209	774

Courtesy: ODHIKAR, a coalition for Human Rights

by most of us as the highest seat of knowledge, has turned the den of hardened rapists. Our sisters are routinely sexually abused, harassed and raped there by their male class mates, other students, political goons and even, as reported in the print media, by some respected teachers! The worst revelation of 20 rapes and over 300 cases of

victims felt ashamed of their 'respected teachers' cowardice in not coming forward to support their cause. Even many of them when approached by the victims regarding the culprits' heinous crime, instead of aiding warned the complainants of the possible social repercussions they would face. All most all the accused culprits were

proached. Such mysterious stand of 'not embarrassing the government', lifted their veil and crystallises their anti-people stand. Besides the role of ADAB leadership in dealing with this grave crime questions their sincerity. The pioneer and supporters of the so-called civil society is also playing a dubious role.

intellectuals are trying to hide the political connection of the rapists by giving the oft-spoken sermon 'Hate the sin, not the sinner'.

By doing all these, whose interest we are serving? Are we not giving a wrong message to our young generation that we have an opulent heritage of forgiveness of crimes against humanity? Are we not kicking the very promises we made in the constitution 26 years ago? There is no alternative of taking stern legal action against the perpetrators of sexual crimes. Otherwise history repeats itself. Are we prepared to let our sisters be violated at such a gross scale in another citadel of learning again?

The role played by some leading human rights and legal aid NGOs waging movement against such atrocity is callous and deplorable. It is alleged that a leading legal aid NGO refused to act in favour of a JU rape victim when approached. Such mysterious stand of 'not embarrassing the government', lifted their veil and crystallises their anti-people stand. Besides the role of ADAB leadership in dealing with this grave crime questions their sincerity. The pioneer and supporters of the so-called civil society is also playing a dubious role.

Act Now, Please  
The Republic shall be a

sexual assault at Jahangirnagar University (JU) by the JU Fact Finding Committee Report has rocked the nation's conscience with the sense of disbelief, shock, fear and hatred. "Are we a civilised nation?" - possibly now-a-days, is the most asked question to one's own conscience that also haunts us with the deepest feeling of shame and hatred. 26 years ago, we pledged in our sacred constitution that we will establish a society in which the rule of law, fundamental human rights, freedom equality and justice will be ensured. But we shamefully failed to fulfill any of the criteria necessary for a just society. We not only violated our beloved sisters but also our constitutional obligations, mandates and promises.

backed by teachers for their political gain. Even there are allegations that teachers are involved with sexual assault. Thirdly, students, teachers and student leaders of Jahangirnagar University feel that the action taken by the authorities against the seven Bangladesh Chhatra League (BCL) leaders for committing rapes were far from being adequate. JU authorities have no plans to file criminal cases or initiate legal proceedings under penal code and concerned special act (Nari O Shishu Nirjatan-Bishes Bidhan Ain 1995) against 7 BCL leaders punished in connection with the rape incidents. Even the issue of filing criminal cases against the accused was not discussed at the last syndicate meeting. The authorities did not consult any legal expert over the issue. It

Lawscape  
Joint Statement Demanding Immediate Arrest of the Rapists

WE are outraged at the recent incident of rape and sexual harassment at Jahangirnagar University (JU). We demand the immediate arrest of the accused offenders on the basis of the report of the Fact Finding Committee. We also demand the initiation of stern legal action under penal code against them. We condemn the university authority's inaction regarding taking appropriate legal action against the culprit even after formal admission of such heinous occurrence. We, at the same time strongly protest the vulgar comments on the female students of the varsity made by the Vice Chancellor of the same in an interview given to the Daily Bhorer Kagoj. We demand immediate withdrawal of those comments and seek unconditional apology. This is the third statement issued by the same alliance. Statement signed by: Odhikar, Law Watch, Karmajibi Nari, DRIK and a group of individuals

Peace Keeping and Humanitarian Action

by Wilbert van Hovell

PEACE keeping is changing. It is no longer confined to monitoring ceasefires. The mission of many armed forces is expanding and so is the mission of my own organisation. Although refugees who have crossed international boundaries remain our primary beneficiaries, UNHCR and its 5300 staff members have become increasingly involved in assisting millions of people who are fleeing from war and persecution but remain within

their own countries. In so doing, we work with the ICRC, other UN agencies and a range of NGOs. Nowadays the number of internally displaced persons is much higher than that of external refugees. The Bangladesh army's logistical, medical and food distribution support during the flood catastrophe in this country is a nearby example, but also further afield Bangladeshis

As the working environment is often complex, politically charged and dangerous, the collaboration between peacekeepers and humanitarian actors must be highly professional. It must be based on the principle of predictable complementarity. We respect for consensual and neutral peace keeping and relief missions should not stand in the way when only forceful measures can save civilians from systematic, barbaric attacks. Ensuring aid deliveries in the midst of conflict when warring parties use food as a weapon of war is difficult enough, but the biggest challenge is to ensure physical protection. The painful experience of the people of Bosnia and of peace keeping there has demonstrated that enforcement action may not only be morally necessary but practically unavoidable in the worst cases.

The second point is - and I will end here - that I sincerely hope that the plan to establish a regional Peace Keeping Institute in Dhaka will be followed through and that there will be training and preparation of the future Blue Helmets of this country for humanitarian support functions. UNHCR is interested in foreign ties with the Bangladesh military and police as we have done in so many other countries or regional organisations, such as NATO.

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LAW WATCH

Adopted Muslim Child Not Entitled to Property

AN India court has ruled that Muslim law does not allow adopted children to inherit their parents' property in the absence of a will. The High Court of the western Indian state of Rajasthan has said that Muslim law recognises adoption only as a part of a custom or for any other reasons, but not for the purpose of succession. The Hindu newspaper reported. The ruling delivered by Justice, Mohammad Yamin, said that the concept of ancestral property under the Shariat, or Muslim Personal Law, was different from that in other religions. Under Islamic law, it is mandatory for a society to take care of a parentless child but not to the extent of giving him a share in the property. Anis Durrani, former secretary of the Delhi Haj Committee, told India Abroad News Service. According to the Shariat, the judge said, a Muslim is the absolute owner of property that is either self-acquired or bequeathed to him by his forefathers during his lifetime and he can give it away to anybody he chooses, including his adopted children. But once he dies intestate, his property is divided according to the specified code in the Shariat amongst his children, siblings and even parents, Durrani added. "So, giving a share of the property to an adopted child is considered an injustice to the man's own kin." However, the Shariat has no objection to adopted children inheriting their father's property if he leaves it to them in a will, the court said while dismissing a petition of Majidur Rehman, an adopted son, who wanted rights on his 'adoptive' father's property. Arguing for his client's claim to the property, Rehman's counsel had contended that adoption was an accepted practice among many classes of Muslims in the country especially because some of them had earlier been Hindus and then converted to Islam. The judge dismissed the argument saying that the Muslim law does not recognise filiation when the parentage of the child is known to be different. — India Abroad News Service

Civil Society and Democracy in Bangladesh

by Syed Ishtiaq Ahmed

Blatant liberation of Bangladesh our prevailing notions of a written constitution, its supremacy and the power of the Republic belonging to the people all crystallized into a real Republican Democratic Constitution. This embodied our dream for a democratic civil society and we made no mistake and declared that the Republic will be a democracy in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.

Over the years along the socio-political fault lines of the emerging democratic order the society of those who make decisions and wield centralized power - economic, social and political, has separated from our dream of a civil society. To be the largest constituency composed of the large majority of our populations rural and semi-urban, yet they find themselves excluded from the process of decision making. We should together build a 'house of law' where the strong are just and the weak protected. In reality in countries like ours this still is a far cry. The class of the strong have undergone a metamorphosis for worse in two most important ways. Firstly, in its class composition and secondly, by its criminalization.

We are face to face with the medieval ghosts of Stuart England when the king could stand up and say "I am under no law." About three hundred years before that Henry Bracton who from now lived about eight hundred years ago, a judge in the years of king Henry III left a legacy which has remained firm upto this day, when he said, "The king is under no man, but under God and the law."

enter with ease. Together they suffer deprivation, poverty, harassment and discrimination and dream of a better world for their children. Their strength lies only in their patriotism and love for humanity. The representatives of the civil society are people with courage, but a courage which is neither violent nor vulgar but restrained in every respect. These are the people who swim against the current. They too have patriotism and love for humanity. Without these nothing good can be achieved, nothing can be reformed. They have the will and the commitment to work for the civil society in addition to the work they do for their livelihood.

The representatives of the civil society will welcome a national debate on the declared principle of the state policy as ensuring participation of the people through their representatives at every level of administration. The constitutional jurists call such principles the essence of the constitution. The question here is not of the participation of the representatives alone but with them of the people, too. Unless the nation finds a way whereby the people are really put first and are no longer the excluded class we cannot prosper in freedom.

Written constitution where it exists is a framework of the Governmental system. The essence of this is that it contains basic limitations on each organ of the state. In one of the state trials of Stuart England the Attorney General said, which is an off-quoted statement, "shall any say, the king can not do this? No, we may only say, he will not do this." The concept of limited Government is such that we can say that "The government cannot do this."

The constitution in the modern times is not only an instrument of Government but also an instrument of social justice. New tools, new methods, new approaches are being

invented to achieve what we could not have even dreamt of in the olden times. The Courts thereby are not encroaching on the field of administration or of the Government or of the legislature. Those who make laws or take decisions are accountable to Parliament or to the Government as the case may be for efficiency and policy of which the Government or the Parliament is the sole judge. But they are responsible to the Court of justice for the lawfulness of what they do and of that the Court is the only judge. The new tools of social intervention therefore is for promoting lawfulness and justice not for interfering with the Government or the legislature.

Justice is an organ of the state, is an institution in which the people's confidence must be maintained at all costs. Its independence and separation from the Executive is an unresolved question which is constantly menacing the civil society's faith in the Government and the law both. Even people's confidence in the constitutional means of social justice is being shaken. It requires a little courage and statesmanship for a leader to achieve it. This will be good for the Government and the people both. Unfortunately while out of power a political party is vocal in demanding this. But when in power the promise is forgotten.

Judiciary as it is dissatisfied and tired of the conventional and traditional developmental models. Over the years the poor and the middle classes have paid more and more in taxes and have got less and less in return. They work harder and harder but had succeeded only in perpetuating their poverty. The representatives of the civil society do not rest by merely demanding elimination of poverty. They are out for a movement for making this the sole national economic strategy.

The people's most abundant resource, their labour, must have a productive use. Labour must cease to be goods for exploitation or be wasted by underemployment or unemployment altogether. Secondly, mere slogan of investment in people is not enough. It must be seen that basic social services - education, health and nutrition are provided and enlarged as part of this strategy. One thing is certain. There will be resistance from the special classes and the vested interest. Because

the largest share and benefit of this policy will go to the poor. The poor people who have no representation in the Government and do not participate in decision making have remained for long at the mercy of the urban elites, be they the politicians, the bureaucrats, the big business, and of late their armed gangs of cohorts. Yet no meaningful policy for elimination of poverty can be initiated and implemented without a Government politically determined to stand committed by the side of the poor. Indeed the politics of poverty must begin. The political commitment must be total. The national strategy for elimination of poverty must dominate all issues of public spending and investment. The Civil Society will continue to exist as a pressure group for attainment of such an objective. Let us enter the new century with this New Politics.

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