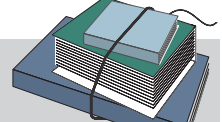


## HUMAN RIGHTS analysis



## Star LAW analysis



# Shattered Reflections: Acid Violence and the Law in Bangladesh

SAIRA RAHMAN KHAN

"I never wanted to look into a mirror again"..... "Why do people think it is my fault?"..... "The pain was unbearable and I wanted to die"..... "I am afraid to go home because the person who did this to me is still roaming free."..... "I am only 15 and I want to go back to school".... such are the words of girls and young women who have been victimised with acid.



Needless to say, the flinging of acid on the face and body of a person in truly a heinous act. It leaves both physical and mental scars, which usually stay for life. The victim will always be in pain. The old saying goes 'hell hath no fury like a woman scorned'. However, when it comes to acid violence, things are a little different. A large majority of the women who have fallen victim to this are those who have rejected marriage proposals and proposals for sexual relationships, the perpetrators being the scorned suitors. To date, the perpetrators of acid violence have always been men.

What makes a man so vindictive that he must throw acid on a person in order to seek revenge? Are there any socio-cultural factors that affect the male members of society to such an extreme that acid violence is the only way in which to resolve a dispute? Why is it that in a group of friends, only one will think about throwing acid? There are, unfortunately, no concrete evidence as to what compels a person to throw acid. However, if we look at the tool used, we see that it is comparatively cheaper than a knife or a gun, it can be thrown from a distance - avoiding proximity and giving the perpetrator time to flee the scene - and the result is painfully permanent. The perpetrators are mainly unemployed, frustrated youth, and, due to a lack of recreational facilities in rural Bangladesh, whose idle minds sometimes became the 'devil's workshop'. If such a youth was rejected by a young woman, that might be construed as an insult to his masculinity and that is when acid may seem to be the most effective means to make the girl remember her 'mistake'. The concept of women as chattel or objects is, sadly still regarded in the patriarchal society of Bangladesh. The fact that the perpetrator has the time to buy the acid and lay a plan on how to administer it, shows the cold-blooded nature of the crime.

What happens when a person is attacked with acid? Unless treated with water immediately after the attack, acid corrodes the skin, burning its way down to the bone. In some instances, the bone also melts away. Needless to say, the pain is excruciating. Treatment is also painful, as the burnt upper layers have to be gently peeled away to allow for healthy scar tissue to form. There is always the fear of infection and victims who have large areas of their bodies burnt are rendered immobile. What of the availability of acid? Unfortunately, acid is sold openly in chemist and homeopathy shops and local medicine dispensaries and can be found in goldsmith workshops and shops selling and repairing car batteries. It is also openly sold around the tannery factories. Despite the law, there are no checks as to the trade in acid and other corrosive substances and those selling the liquid ask no questions. There is even, allegedly, a good trade in cross-border smuggling in acid, which may play a role in contributing to the high rate of acid violence in the border districts.

### The laws

The President of the Peoples' Republic of Bangladesh approved the Acid Control Act 2002 and the Acid Crime Control Act 2002 on 17 March 2002. The laws were promulgated to meet the demands that acid crimes be controlled and perpetrators receive swift punishment and that the trade in acid and other corrosive substances be guarded by legal checks and balances to prevent their easy accessibility.

A lot of though has been given to the drafting of these laws, especially in the area of compensation to the victim, carelessness of the investigation officer, bailability, magistrate's power to interview at any location, medical examinations and protective custody, the setting up of an Acid Crime Control Council and (District) Acid Crime Control Committees, establishing rehabilitation centres, licences for trade in acid, etc.

According to the Acid Crime Control Act, this law aims to rigorously control acid crimes. It houses stringent punishments

ranging from the death sentence to life imprisonment, to between fifteen to three years and a hefty fine. The variations of punishments depend on the gravity of the crime. For example, if the victim dies due to the crime, or totally or partially loses sight or hearing or both or 'suffers disfigurement or deformation of face, chest or reproductive organs', the punishment is the death penalty or life imprisonment. Interestingly enough, the Act provides that if the Acid Crime Control Tribunal feels that the investigating officer has lapsed in his duty in order to 'save someone from the liability of the crime and did not collect or examine usable evidence' or avoided an important witness, etc., the former can report to the superior of the investigating officer of the latter's negligence and may also take legal action against him.

The Acid Control Act has been introduced to control the "import, production, transportation, hoarding, sale and use of acid and to provide treatment for acid victims, rehabilitate them and provide legal assistance". The National Acid Control Council has been set up under this act, with the Minister for Home Affairs as its Chairperson. Under this Council, District-wise Committees have been formed, only in six or seven Districts to date. Members of the Council include the Minister for Women and Children Affairs, Secretaries from the Ministries of Commerce, Industry, Home Affairs, Health, Women and Children Affairs, and representatives from civil society as specifically mentioned in the law. This allows for a broad spectrum of representation. More importantly, according to this law, businesses dealing with acid need a license to do so, and the government has arranged for a Fund to provide treatment to victims of the violence and to rehabilitate them, as well as to create public awareness about the bad effects of the misuse of acid.

### The realities

Despite the Acid Laws of 2002, why do annual figures on reported incidents of acid violence continue to stay above 300 (where almost 85% of the victims are women)? Why is it still so easy to procure acid and sell it openly without a license? According to studies carried out by the Acid Survivors Foundation, there are several reasons for this and for why the law is not being implemented properly. Some of the more noteworthy reasons are as follows:

There is yet to be a separate, modernised Investigation Department with trained investigators in the police force and overburdened police are unable to carry out their investigation duties properly. This may result in hurriedly written reports and inefficient investigation. Many NGOs have called for the formation of a separate department, but pleas fall on seemingly deaf ears. Furthermore, there is not follow-up done as to whether businesses are procuring licenses for the sale and trade of acid.

Doctors are unable to identify acid burns, due to lack of training and medical certificates are not clear and sometimes vital information is not noted down, thus weakening the evidence. Furthermore, many doctors are reluctant to come to court to give evidence. Lack of sufficient judges and judicial officers in the lower courts causes delay in hearings and cases are either not heard on time or remain pending.

Many of the above findings are applicable to other sectors where lack of implementation of the law causes serious damages in matters pertaining to violence against women such as rape and dowry-related violence. This being the case, why are no steps being taken to rectify the matter? Issues of violence against women still remain in the medieval era in the country. Non-government organisations are doing their bit to create awareness against acid violence and the social and legal repercussions it has. The government is now legally bound to do its share, under the 2002 Acid Laws. A lot of power has been given to the National Acid Control Council and it must gear up its activities and not wait for NGOs to prompt it into action.

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# Definitions of Crimes of Sexual Violence under ICC

SULTANA RAZIA

International Criminal Court (ICC) can be treated as the last court for the humanity and it defines crimes of sexual violence more elaborately than before.

It was seen that all the time sexual violence is treated as the weapon of war but only now are these crimes explicitly, permanently, and enforceable outlawed. As per the Rome Statute definitions of war crimes and crimes against humanity definitely outlaw many acts of systematic sexual violence like: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and other acts of similar gravity. From the Elements of Crimes Annex and the Rome Statute following definitions are taken:

### Rape

The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. [It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements of article 7(1)(g) - 3, 5 and 6.]

### Sexual Slavery

The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.

The perpetrator caused such person or persons to engage in one or more acts of a sexual nature. [It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.]

### Enforced Prostitution

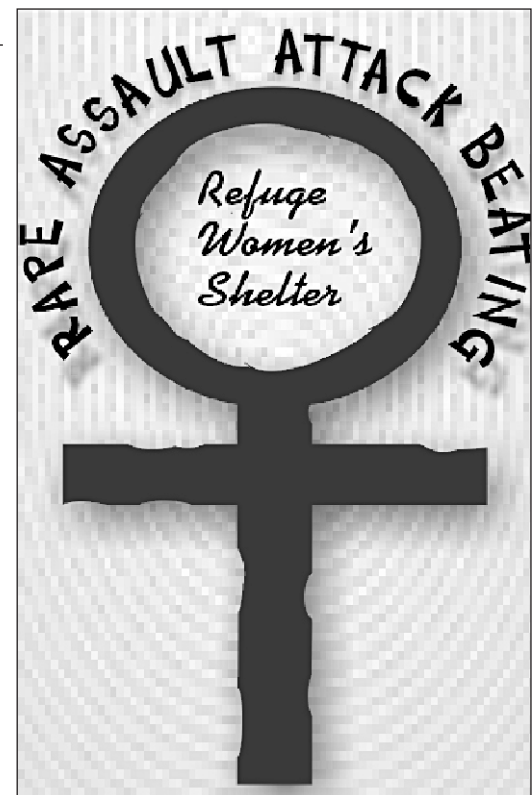
The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.

The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

### Forced Pregnancy

The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

### Enforced Sterilisation



The perpetrator deprived one or more persons of biological reproductive capacity.

The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent. [The deprivation is not intended to include birth-control measures which have a non-permanent effect in practice.] [It is understood that "genuine consent" does not include consent obtained through deception.]

### Sexual Violence

The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.

### Persecution

Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court Article 7(2)(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

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## LAW alter views

# Some laws do not consider women as an adult

BARRISTER SADIA ARMAN

Section: 155 of the Evidence Act 1972 of Bangladesh states:

1. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:
- (4) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

CONSIDER the meaning of this extant law. Firstly think of the first line of defence that naturally springs to the mind of a lawyer when defending a man charged with committing rape, and consider what the conduct of that defence entails in relation to the victim. Think of the victim. She has been raped. Then, struggling with the burden of the agony and the shame, she has finally summoned enough courage to confront him who has wronged her. Then the defending counsel shouts in front of the court: "My lord, the truth is that this woman is a whore. She pursued my client for money. My client is a man of upright character, who has been wrongly seduced by this woman". The woman hears, and her first reaction is to hide her face in utter agony, then, she starts crying with sobs: a perfect pathetic spectacle of shame for all the world to condemn.

I have just portrayed the scene as described to me by a young female advocate, who had joined the profession a few months back. She said that on witnessing this she felt that if she were to conduct such a defence, her nature would rebel

against her to such an extent that she might fall prey to some serious physical disorder. So she left the profession for good.

Consider the insinuation of bad character within the construction of the sentence for any victim. But consider also the purport of the provision for a woman of 'immoral character'. The legal provision suggests that such a woman may be raped with impunity.

The legal provision in question which was drafted in 1872 during the British regime reflects the social attitudes towards women that were reflected in the law. What kind of a woman lets herself be raped? What kind of a woman lets herself fall into such a situation that she gets raped? She can't be a lady of the upper classes who is travelling with a male escort in a carriage. She is of the wrong sort, who mixes with all kinds of men, and certainly she is from the lower classes. This kind of woman deserves little legal protection, if any, from the court.

In England the law against rape evolved, and had a major overhaul in the case of *RvR*, (1992), in which the House of Lords held that if a man has forcible sexual intercourse with his lawfully wedded wife, that shall amount to rape.

This created ripples even in England because although English law had slowly been developing to grant woman increasing protection, it had mandated since Blackstone's time that since a man by marriage is entitled to enjoy a woman's body, he is not capable of raping her: the benefit of the delights of the body being incorporated within the marriage contract itself.

*RvR* stripped the husband of any such guarantee, and moved the mind's focus to another place: the issue of consent. If a woman does not consent to sexual intercourse, she is being raped. Full Stop.

This resulted from a major development in social perceptions. Woman's body was at last



recognised as a sacred entity over which she alone should have supreme control.

This development in relation to rights over the body occurred parallel to other developments, relating to marital status and property. Before 1882, a woman, upon marriage, gave a gift of her person and property to her husband: she therefore had no separate personality, and she could not dispose of any real or personal property that she owned. By the Married Women's Property Act 1882 a married woman acquired the right to own and dispose of personal and real property, but only if she had been married before 1882!

At about the time of *RvR*, if only some thirty

before, an interesting development had been taking place over the property rights of the unmarried woman who had been living together with a man, sharing a home. The married woman had a right over the matrimonial home, and could claim half the value upon divorce, but not so the unmarried woman, who had not concluded a formal contract of marriage. But England at the time had a very dynamic and humanitarian judge heading the Court of Appeal, a man who was never afraid of moulding the law to suit the needs of justice. This wonderful Judge, Lord Denning, when faced with some cases where woman had to separate after spending the major part of a life-time with an unmarried man, decreed, that even though she

may not have paid for the value of the house in economic terms, yet she was entitled to half the value of the home in an appropriate case where she taken care of the home and the children. It was by virtue of her services that the man was able to work and earn, and her work had thus a corresponding economic value to which she was entitled in the shape of a share in the matrimonial home. The abolition of this distinction between the rights of the married and unmarried in relation to the matrimonial home was consolidated by the Family Law (Maintenance of Spouses and Children) Act 1976.

In fact most of the conceptual changes with respect to a woman's body and property took place in the 20th century. Woman was not till then recognised as a full-fledged citizen, because, as Ruskin argued, her proper place was in the domestic, not the public sphere. Only in the 20th century did woman gain the right to vote at Parliamentary elections, the culmination of many years' campaigning by the female suffragettes.

These social conceptions regarding woman can be said to relate to the fact that she was not considered fully adult: her physical and mental powers, her judgement, were all considered inferior. It followed that she was in some way or the other the ward of a man: her father, her husband, or even her son. But although the Occident has gone a long way from such ideas now, in Bangladesh we understand too well the implication and meaning of these. Can an unmarried woman or a divorcee rent a flat of her own and stay? Few hotels in the country will let in such a woman. May a single unmarried woman adopt a child? May she even ride a bicycle in the streets? In business, in travel, in finding a shelter for herself, she must find a male counterpart for legitimacy. And legitimacy is a very powerful concept. The single woman, or, the woman who likes to do things alone as an adult in her own right

finds her very identity, her very existence coming into question.

The law refuses to accept that woman is an adult. Where a Bangladeshi woman marries a foreigner, she cannot pass citizenship to her husband. Neither the Muslim nor the Hindu laws of inheritance allow daughters to inherit family property like sons. The Muslim religion dictates that a woman giving evidence in court is the equivalent of half a man. So woman is half an adult.

Interestingly, the issue of women's emancipation is not really like any other human rights issue; such as ethnic minority rights, the right to practise a religion, or the right of a people to their language. Nor is it like any single category of right that concerns a whole nation, like freedom of assembly, freedom of thought and expression. Woman is not a minority, and neither are we concerned here with a single category of rights. The issue of women's rights is easily the most important human rights issue of all simply because women constitute half the population of the human race.

And here we come to the stalwart Convention on the Elimination of all Kinds of Discrimination against Women (CEDAW), which came into force in 1981, and to which Bangladesh is a signatory, which declares effusively and stridently in its Preamble:

"... Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields, Have agreed on the following:"

And here we have the wonderful CEDAW. You are invited to take a look at it.

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