

Imagine what might happen if you survive rape, and seek justice. Prepare to be questioned about your character, especially about your sexual history. Now imagine this happening to you in an open court. If it saddens your heart to think about the mental trauma that a woman or girl goes through in the aftermath of rape, then think about the emotionally tormenting experience she faces when riddled with questions on her character and virtuousness in court.

You may think that in a rape trial, the focus will be on the medical and other evidence against the accused. This is what would happen generally in a trial. However, the trial process is different in rape cases. Here, the defense can interrogate the rape survivor about her character and lifestyle, and by doing so shift the focus away from the person accused of the crime. Not only does the law allow for such questioning in court, but the information obtained through such questioning is admissible as

statements and taken into serious consideration in judgments.

To take one example, in *Abdul Majid vs. State* [13 BLC (2008), page 53] a divorced mother with a child was allegedly raped while she was asleep in her hut. The accused confessed his crime when caught by villagers while escaping. The complainant's marital status and alleged sexual history were used as character evidence and the judgment made reference to her as someone "habituated in sexual intercourse..." (Paragraph 60) and that "...the victim is a woman of loose moral character and involved in anti-social and immoral activities..."

In another case, in *Shahin and Others vs. The State* [28 BLD (HCD) 2008, page 41], the rape complainant, who had been married twice, was taken away from her grandmother and allegedly gang raped at a local hotel. Here too, the judgment noted: "... this is a case of rape of a matured woman who has married twice..." (Paragraph 29) and "this case is an example

## An Archaic Abhorrent Law

Law on Character Evidence: A Barrier for Rape Survivors Seeking Justice?

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evidence and forms a basis for deciding if the accused will be convicted.

The provision on 'character evidence' is found in a colonial law, Section 155(4) of the Evidence Act, 1872. This states that "...when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character"... the prosecutrix being the girl or the woman who has been raped. In other words, Section 155(4) sanctions the use of character evidence to impeach the credit of the rape survivor at trial.

The Bangladesh Legal Aid and Services Trust (BLAST) recently researched reported judgments to identify cases where the survivor's character evidence had been considered by the higher courts. Judgments reported over a ten year period between 2000 and 2010, published in the Dhaka Law Reports and the Bangladesh Legal Decisions were reviewed. These revealed numerous examples where details such as the marital status, or past relationship history of a rape survivor were regularly referred to in defence

where, for the reasons stated above the sole testimony of the prosecutrix cannot be given credence..."

Reference to past relationship history and the absence of a demonstration of physical resistance on the complainant's part is exemplified in *Sohel Rana (Md) vs State* [57 DLR (AD) (2005), page 591]. The Court, acquitting the accused, noted with respect to the complainant: "...should she fall easy prey to his lust without any least resistance to save her virtue which was more precious to a maiden than her life itself..." In this case the complainant was allegedly raped in her own (empty) house by a neighbour who promised to marry her to continue regular physical contact with her.

In *Sree Pinto Pal V The State* [30 BLD (AD) 2010, page 220] the Court appears to have considered the complainant's behaviour in climbing a tree as evidencing her 'bad character' and therefore diminishing her credibility. The complainant was a young woman domestic worker allegedly raped by her employer. The Court noted that "...the victim entered

into the house of the accused by climbing [a] paupa [sic] tree as the gate of the house was closed which also proves that the victim is a woman of easy virtue, so her evidence cannot be believed without the corroboration of reliable evidence..."

Evidence of a rape survivor's good character is also given consideration as can be seen from the judgment in *Fatema Begum daughter of Azizur Rahman v Aminur Rahman Son Afser Ali & Ors* [25 BLD (AD) (2005), pg 342]. Here the Court stated that "...The learned advocate has submitted that in this case the

note that in most rape cases, the complainant herself is the sole witness and her sole testimony is easily attacked by any suggestion that the defence may have raised with respect to her character. All of this acts as a barrier to a rape survivor seeking justice.

The social pressure that rape survivors face more often than not forces them to stay silent and not to seek justice at all. Existing barriers such as the law and practice on allowing character evidence of the complainant deter women from pursuing criminal charges. Police records show that 21,291 cases of



prosecutrix an unmarried college girl who comes of a respectable educated family has deposed narrating the prosecution case... there was no plea of this prosecutrix being of questionable character".

All those accused in the cases mentioned so far had their convictions set aside on appeal, except in *Fatema Begum v Aminur Rahman & Ors* where only five of the eight men accused of gang rape were convicted (the three others accused in that case were acquitted; the Court had found the complainant there be of good character). Reliance on character evidence was not the only factor that led to such outcomes. However, in each case, the Court considered the rape complainant's character and past sexual history to be relevant as the law related to character evidence allowed this. It is important to

'women and child repression' (covering rape and other sexual offences) were reported in 2014, considerably higher than the 19,601 reported in 2013. It is unclear how many of these resulted in convictions.

Given the need to properly provide redress to rape survivors, reform of the archaic law that was put in place 143 years ago is urgently needed. The time has come for us in Bangladesh, alongside other countries in Asia and across the world, to realise that reference to character and the past sexual history of a rape victim is not only an irrelevant and an insensitive act but also an abhorrent practice that subjects a rape survivor to repeat a painful ordeal and denies her justice.

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