

# Why rape victims stay silent

After much outcry on social and news media, the culprits behind the rape of two private university students on March 28 at a hotel in Banani now stand answerable in front of the law. What is alarming, however, are the gaping flaws in our legal system, the lack of implementation, and the social perception of rape that this case yet again has highlighted. From the outdated legal concepts under which cases of rape are tried in court, the "medical" tests that are required for proving rape, to the institutions which are supposed to stand by the survivor, it is not surprising that many women are scared or traumatised to even report incidents of sexual violence.

Sarah Anjum Bari, Moyukh Mahtab and Shamsuddoza Sajen of The Daily Star explore a few of these issues.

## YES/NO: How difficult is it?

A popular opinion that resurfaced was that the university students had "deserved", even "incited" their own rape, by going to a party. Recently, pictures claiming their prior acquaintance with the culprits have been circulating on social media, all of which force us to realise that a major chunk of even the "educated" still fail to grasp the very basic concept of consent when it comes to sexual relations.

Does it count as consent if your partner, who you're romantically involved with, wants a kind of physical contact that you don't? No. Does it count if you're mildly uncomfortable, but your partner cajoles you into having sex anyway? No. Does being friends, accepting

## Legal gaps

There are two other laws that cover the purview of rape case proceedings. Drawing on the definition of rape from the Penal Code, penalties for rape are provided for in the Suppression of Violence against Women and Children Act. The Evidence Act 1872, is relevant when investigation and court proceedings take place, and determines how exactly a case of rape is proved in court.

The immediate problem with the laws arises with the definition of rape itself. While it does provide for a basic idea of consent, the definition of rape is gender-specific, that is, "rape" is rape only when a man has sexual intercourse with a woman without her consent. That men can be, and are,

married, older or has had multiple children, it is of little use. On the other hand, for every victim, it is another traumatic incident that they have to suffer in order to get justice.

Combined with this, the government prescribed forms used to record evidence provide space for, among others, the marital status, description of pubic/underarm hair and breasts, and detailed description of sexual organs, including "vaginal canal" – for which the finger test is used. As Asmita Basu, in her paper "Use of medical evidence in rape cases in Bangladesh" notes, "The format allows for recording information not only of the incident of sexual assault but also the sexual history of the victim. The latter information may be used to discredit the victim's testimony, in line with ... the Evidence Act".

On the other hand, space for recording relevant information such as other forms of sexual violence except rape and "activities such as bathing, washing, urinating, etc., which may result in the loss of evidence" is absent.

In many cases it was even found that the proscribed tests were being carried out by male doctors. In 2013, the High Court had to summon the director of Dhaka Medical College Hospital (DMCH) and the head of its forensic department after Prothom Alo had reported that male doctors were conducting the tests on rape victims and male ward boys assisting those doctors at the forensic department.

## Institutional deficiencies

In 2000, the Women and Children Repression Prevention Act was passed, and was later amended in 2003. The Act focused on dowry related violence, rape, trafficking, kidnapping and other offences caused by corrosive substances. Yet, despite wide prevalence of sexual harassment and its role as a catalyst and precursor to other acts of violence against women, including rape, the Act fails to recognise it properly and provide adequate legal instrument to prosecute such crimes.

In 2009 the High Court issued certain directives to fill the legislative vacuum. It was particularly aimed at preventing sexual harassment at educational institutions and workplaces. But, eight years into the pronouncement of the court order, most of the directives remain largely unimplemented, if not ignored.

The poor status of implementation of the laws and directives regarding violence against women clearly indicates why we have failed to create a safe environment for women in Bangladesh. A few representative important sectors can serve to highlight the complete disregard of the High Court's rulings.

## Educational institutions

Article 5(a) of the High Court guideline directs that "there must be sufficient orientation before the formal classes start for a new session in educational institutions, and monthly, half yearly orientation in all workplaces and institutions" to create awareness and public opinion against gender discrimination and sexual harassment. It advised to widely publicise these directives and provisions of the Constitution and statutes regarding gender equality and sexual offences. In addition, the Court asked the concerned authorities to constitute a complaint committee in both public and private sector institutions to record and redress complaints made by victims.

The implementation status of this directive in educational institutions is revealed by a study conducted by Bangladesh National Women Lawyers Association (BNWLA). It shows that around three in four university students are not even aware about the court's directives on the formation of mandatory complaint committees. According to UGC, only 25 public universities (among 38) and 34 private universities (among 93) have reported having complaint committees on their campuses (Dhaka Tribune, May 18, 2017). But the ground reality is that 76 percent female students face sexual harassment in public and private universities in Bangladesh (UN Women, 2013). The situation is far worse in lower levels of education: it is reported that most schools and colleges do not have any complaint committee.

## Law enforcement agency

The first point of contact for reporting any case of violence against women is the police. In 2011, the High Court 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.

The case of rape of the two university students in Banani speaks volumes about the adverse setting in police stations. When the rape survivors went to report the case in Banani police station they had to face verbal abuse and intimidation by the officer in charge. It took almost 48 hours to lodge the complaint.

It is also alleged that women members of the police face sexual harassment by their male colleagues. Suicide of the constable Halima is a case in point. She took her life after being denied to lodge a complaint against the police officer who had raped her inside the barrack. Commonwealth Human Rights Initiative (CHRI) revealed last November that at least 10 percent female constables, three percent female Assistant sub-inspectors and two percent sub-inspectors, are victims of sexual harassment.

## One-stop crisis centre (OCC)

The government has been establishing one-stop crisis centres countrywide since 2001 to provide medico-legal assistance for victims of physical and

judges of the tribunals. On December 6, 2016 the High Court prescribed departmental action against public prosecutors, investigation officers and judges of the Women and Children Repression (prevention) Tribunals for continued failure to complete trials of crimes against women and children in a timely manner.

The Women and Children Repression Prevention Act sets out that the tribunals will finish the trial of such cases in 180 days after the framing of charges. But a survey conducted by Naripokkho stated that only 0.5 percent of the cases filed under the Women and Children Repression Prevention Act between 2011 and 2015 resulted in conviction. Undoubtedly there is a close connection between the low conviction rate and an increasing number of such crimes.

In the three months, from January to March this year, there have been 93 cases and 21 attempts of rape according to Ain O Salish Kendra. This should highlight how urgently we need reforms to our laws and awareness about the idea of consent in our society. Implementation of the existing laws and High Court's directives could go a long way to address this, and ensure a safe environment where victims can effectively get justice. Our colonial laws when it comes to

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sexual assaults. Besides health care, it was meant for providing police assistance, DNA tests, social services, legal assistance and psychological counselling. Unfortunately, the whole initiative has turned into mere medical treatment centres. 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 (Dhaka Tribune, June 19, 2013). The Impact Evaluation Study 2014 conducted by the Planning Ministry also added that "lack of proper orientation [of OCC officials]... lack of speedy trial for the severe victims caused apathetic and lack of interest and enthusiasm amongst victims and their parents and relatives".

## Women and Children Repression (prevention) Tribunals

Though the government instituted separate tribunals for quick disposal of VAW cases it has achieved little due to the indifference of the public prosecutors, investigation officers and

definition of rape and the collection of evidence need reform suitable for an age which has come to understand rape in its varied forms. Human rights groups have long campaigned about the outrageous and traumatic "two-finger" test, and yet it remains legally essential in such cases. We must realise that when the definition of rape has evolved all over the world to requiring proof of consent rather than proof of force, these "tests" and use of a victim's sexual history to question her allegation only serve to grant impunity to rapists. For consent, the education must start with the one basic tenet – that no one, be it a friend, a partner, a stranger, or a sex worker, regardless of where they are or what they wear, can be forced or coerced into sex. Every form of sexual violence is an expression of extreme power and control over a woman, and should be treated like the reprehensible crime that it is.

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"Strange emotions and imaginings... bits and pieces of understanding. It is difficult, perplexing, confusing and confounding being sexually harassed. I wouldn't wish it on anyone. This abstract painting expresses these feelings of dismay."

ART SERIES TITLED "SEXUAL HARASSMENT"/GRACE DIVINE GALLERY

someone's invitation to a party, or even flirting with someone, count as consent? No. Clothes, location, background, or even prior actions do not confirm consent.

These nuances of consent are made particularly confusing by the way our culture defines the agency of women when it comes to sex. It gives self-entitled or sometimes maybe misled men, the idea that a woman's refusal is simply masking her shy interest.

All of this is particularly worrying. A study carried out by the UNFPA and the icddr, 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".

These confessions contribute to the prevalence of date rape, or any other form of acquaintance rape, that is still largely under-discussed in our culture. The reason lies in how easily and flippantly we blame victims of sexual abuse for the rape, instead of discussing what defines consent. (Broadly defined, date rape refers to "rape that is perpetrated by a person who is known to the victim [such as] someone the victim is dating, a classmate [or] co-worker.")

Rape, according to Section 375 of the Penal Code 1860, occurs when a man has sexual intercourse with a woman against her will, without her consent, or when her consent has been gained by putting her in fear of death or hurt. As such as these laws fail to accommodate the concept of marital rape, they do mandate explicitly, that the woman be willing to have sex with the man.

raped too is completely absent from our laws. The Penal Code in defining rape also states that sex "by a man with his own wife ... not being under thirteen years of age, is not rape." This colonial definition of rape ignores modern legal frameworks, where marital rape is a recognised concept.

The Evidence Act, also a colonial heritage, provides that when a man is prosecuted for rape, the claim of the victim can be questioned by showing that she was "of generally immoral character." So, in trials, defendants try to prove that the women were of "immoral character" and that the act was not forceful. Thus, the victim's educational levels and economic status sometimes ends up to be the basis of judgement: the reasoning being, an economically or socially well-off woman has much to lose from the social repercussions, and is less likely to make a false accusation.

## Collection of "medical" evidence

One of the most widely criticised aspects of the legal provisions of rape cases in Bangladesh has been the "two-finger test." A 2010 HRW Report describes the two-finger test as "a practice where the examining doctor notes the presence or absence of the hymen and the size and so-called laxity of the vagina of the rape survivor. The finger test is supposed to assess whether girls and women are 'virgins' or 'habituated to sexual intercourse'. 'Results' which assert that a victim was not a virgin at the time of her rape are frequently used in the courtroom to cast public doubt on her moral character and to reduce the weight of her evidence." ("The Two-Finger Test: About Character or Consent?", Forum, The Daily Star, 2011).

The two-finger test has been shown to be of no scientific merit and rests solely on a subjective assessment of the examining doctor. It rests on the assumption that only women with no past sexual experience can be victims of rape. So, in cases where the victims are

Consent is an affirmative, enthusiastic 'yes.' It is ongoing and freely given.

Sexual violence is any unwanted sexual contact.

It can happen within or outside a relationship.

Sexual violence affects people of all ages, genders and sexualities.

SOURCE: WWW.RYERSON.CA