

Rape-a Nightmare for Victim, Dilemma for Certifier and a Challenge for Society

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Violence against women is a global phenomenon, represented in various forms and magnitude. Rape is also considered as the wicked act of violence against women by every civilized society. This article encompasses three-dimensional approach of the problem. The immediate, delayed and remote physical and mental trauma sustained by victim, the difficulties and inadequacies in medical examination and certification, deficiencies in investigation and laboratory set up and unrealistic and unsympathetic attitude of our society towards the victim are highlighted. Some measures to combat this crime and to lessen the misery of the victim are also suggested

Key words: Rape, sexual intercourse, psycho trauma, post-rape-complications

Rape (Zina Biljabr) usually is a un witnessed crime. It is considered by every civilized society a brutal, dirtying and demoralizing assault on women. Allah, in his holy Book Quran, says, "Nor Come Nigh to Adultery: for it is a shameful (deed) and an evil opening the road to other evil (xvii: 32) further adds ".... Nor Commit Fornication; and any that does this (Not only) meets punishment, (But) the penalty on the day of Judgment will be doubled to him, and he will therein in ignominy¹ (xxv: 68-69) In the Bible, the violation of women is described as an act of war, to be inflicted on the female population, after the men has been decimated².

Rape in fact is not an act of sex but an act of violence with sex as the primary weapon³. This barbarian violence registers an everlasting imprints on the victim. The clandestine nature of the crime, diversification of allegation and severity of punishment require absolute proof. If fully proven demands the most rigorous penalties allowed by law. The certificates regarding rape taxes the expertise of the certifier as the honour and future of the victim, the life and liberty of the accused are at stake. Hasty or casual medical examination, slightest error of judgement, personal prejudices and emotional involvement can amount to miscarriage of justice. Society's response is variable and generally not rational.

Prevalence

Rape has always been a taboo in the sense that it has been felt undesirable to talk about and a matter of shame and dishonor to be a victim. No reliable statistical data, therefore, is available in Pakistan as a little research has been done on the extent of sexual assaults or on the percentages of women subjected to it. However, print media, throughout the country, reports occurrence of this crime very often. Research in the United Kingdom and USA indicate a prevalence of one or more consummated rapes during the life time of 21-23% of the urban female population and an annual rape incidence of approximately 3%^{4,5,6}

1. Plight of the victim.

Legal considerations:

In the reign of King Henry II, the principle involved in prosecution for rape were " The victim must be of chaste character, must go at once while the deed is newly done, with hue and cry to the neighboring townships, and there show the injury done to her to men of good repute, her clothing stained with blood and her torn garments and in the same way she ought to go to the reeve of hundred, the King's sergeants, the corner and the sheriff. Let the truth be ascertained by an examination of her body, made by four law-abiding women sworn to tell the truth as to whether she is virgin or defiled⁷.

With the passage of time, modification to Saxon law occurred. Chastity is no longer a pre requisite for a rape victim and one medical practitioner replaces 'four law abiding women'. The basic tenets of early complaint, detailed consistent history, corroborative physical evidence and physical examination of the person persisted.

The prosecution of rape hinges on the testimony of the victim verses that of the accused. To substantiate further the victim's testimony and thus make it more credible than the accused, prosecution will present other corroborating evidence before the court.

Therefore, the most important foundations of the victim's testimony are firstly the allegation of sexual intercourse irrespective of degree of genital intrusion, secondly the absence of her free consent and thirdly, nevertheless the scientific corroborative evidence.

a. Sexual intercourse:

Unequivocal markers remain the recovery of spermatozoa or detection of enzyme marker (acid phosphatase) or protein marker (p30) of male secretion semen, collected from the female genital tract after the episode⁸. However, sexual dysfunction, physiological deficiency, azospermia, vasectomy, use of mechanical device (condoms), victim's post coital activity, delay in reporting and seeking medical attention, unreliable victim's history, defective collected

material and/or preservation method could be expected to loose/minimize the chances of sperm recovery.

b. Absence of consent:

For proving the charge of non-consenting sexual intercourse, prosecution believes in the registration of mechanical injuries to the private parts and more so on the other vulnerable parts of the body indicating resistance offered by the victim during precoital and coital period. This belief, however, is based on just presumption that a non consenting lady would offer resistance, offensive or defensive against such physical/mental abuse, reflecting certain findings in the form of bruises, abrasions, cuts, hostile bites on her person, derangement, tearing and soiling of clothes, disturbed make up etc and infliction of bite marks, scratches and bruises on the body of offender.

Law presumes that the victim would offer resistance to the extent that she is sufficiently injured to satisfy the medical examiner and the courts that she was not a consenting party to the offender's act. At the time of enactment of penal code, this presumption was possibly true. Today's violators are more aggressor, equipped with modern weapons and with sadistic inclination. A courageous, empty handed, even a weak woman can fight valiantly to save her honor with a male of strong physique provided the attacker is unarmed or carrying a less lethal weapon like club of older days. Do society expects from a lady, a substantial resistance in the presence of sophisticated firearm cradled in the offender's hand. Experience shows people or even a crowd does not show resistance against a felony during dacoity, bank robbery, car snatching or kidnapping for ransom due to sheer fear of hurt or life in the presence of lethal weapons.

Thus it is very much likely that a rape victim may assume submissive role to avoid harm; more over it is also likely that some victims regard the protection of their lives more important than their honor in such distasteful situation. In both circumstances no marks of struggle would be expected though commission of crime occurred Victim's story that absence of marks of resistance due to fear of hurt or death cannot be proved scientifically, resulting in shifting of pointer from possibility to probability.

c. Corroborative scientific evidence:

Law further requires scientific opinion of a medical man. Forensic physician and scientist, depending upon the postulate of Edmond Locard, recognizes, collects material from the subject and suspect which is transferred from one to other as a result of their genital and corporeal contact and also from the locus where the alleged incidence occurred, for comparison and verification. Apparently this legal and procedural exercise looks simple phenomenon, and it is expected that the iron clutches of law would tighten the culprit soon for an exemplary punitive punishment, which he deserves, but in reality "things are not always what they seem at first glance"

2. Insensitivities of law enforcers.

Generally, attitude of police is prejudiced. Instead of demonstrating impartiality, sympathy and reassurance, which is the need of eventuality, a humiliating approach is displayed. Print media documents incidence where instead of registration of complaint, police persuaded the victim / relatives not to lodge report, as she / they only can earn negative publicity and dishonor for the family⁹.

Bureaucratic approach further causes inordinate delay in medical examination of victim resulting either in total loss or minimizing chances of recovery of vital clues and/or introduction of confusing artifacts. Further no serious effort is made for the quick and timely apprehension of the alleged violator and his medical examination. Overall police attitude adds to distress and psycho trauma to an already traumatized victim and masking the valuable telltale clues of the crime.

3. Delayed medical examination

It is welcoming from the highest judicial tribunal that the female subjected to any criminal violence, whether living or dead should be examined by the doctors of their gender. The victim would feel safety, consolation and realization in the tense environs. In remote areas, however, women medical officers are generally not available, though posted on official records. If available, her presence cannot be ensured in the odd hours of night, wee hours of morning or on weekends whereas crime detection is considered as an emergency in law-abiding society. In case of non-availability of a female doctor at a particular center, the victim is referred / shifted to another center causing further delay in medical advice.

4. Lack of medical counseling

Health personals treat the case of rape purely as a criminal offence. They are more inclined towards noting the physical injury (ies) and collection of evidence to full fill the legal formalities. In cases where the physical injuries are more serious, victim is hospitalized they do not realize about the more devastating mental effects felt by the victim.

It is advisable that the medical examiner should be ready to offer reassurance to the victim and her relatives. In appropriate cases, screening of venereal disease and / or pregnancy should be initiated, least the victim/relatives must be informed / warned of such potential danger of tragic outcome. The victim may be referred to a psychiatrist for her immediate or foreseen problems¹⁰

5. Injuries

The damage resulting from sexual assault can be physical, mental and social.

a. Physical injuries

Acute physical hurt can be seen as a consequence of the violence accompanying sexual assault. Use of weapons, striking with a clenched fist or open hand, attempted strangling, forcible closure of mouth, kicking, being thrown against hard objects, hostile biting are some of the common

means of assault. Burning with cigarettes is sometimes reported. This violence is manifested as scratches, abrasions, swellings, extravasations, subcutaneous and surface bruising, hematomas, damage to mucous surface of lips and sometimes dislocation of teeth. Incase where child is sexually molested, bruising of vulva, vagina, tearing of genital tissues upto peri-anal area is observed due to disproportion in sizes of male organ in female genitalia¹¹.

b. **Psycho trauma:**

Post rape trauma is categorized as a posttraumatic stress disorder. Prominent symptoms of this disorder include intrusive thoughts, nightmares, fear, anxiety reaction, impaired interpersonal relationship, depression and sexual dysfunction. Other symptoms may include somatic disturbances, self-blame, anger, revenge or denial¹²

The rape-induced psycho-trauma can be acute, chronic or delayed. Acute reaction includes feeling of terror, mistrust, depression, rage and guilt. The victim may feel shame and self-disgust. These emotions if not easily resolved can lead to long-term problems with sexual identity and sexuality. Due to this intense emotional stress, the victims commit suicide¹³.

c. **Social trauma**

Victim losses sympathy, love, affection and consideration from her parents, relatives and friends. Family can be adversely affected by the assault. In order to save their honor, parents may relocate their residence even to a new geographic area, may loose their job, and lessen their social contact with people.

Mistrust, anger and sexual dysfunction may develop in a husband who may go for extreme step of divorcing. Unmarried girl may loose her fiancé, lover and a prospective spouse¹⁴

6 Post rape Complications.

a. **Infection / venereal disease.**

A victim may harbor an infectious / venereal disease as a result of sexual intercourse. Post rape infections have been shown to include gonorrhoea, chlamydial infections, trichomoniasis and bacterial vaginosis. In addition because AIDS is rapidly becoming more prevalent, risk of developing AIDS, a fatal and as yet incurable disease cannot be ruled out. Risk of transmitting AIDS to her legitimate sexual partner and to children will heighten. This can lead to infringe her marital relationship. Death due to AIDS is a possibility¹⁵.

b. **Pregnancy.**

Pregnancy following rape brings more wretchedness especially in un married / widowed women. In order to get rid of the illegitimate products of conception, she selects spurious methods for abortion, which are likely to endanger her health / life. If pregnancy persists till full term, she kills the newborn so becomes guilty of murder as per penal sections of the law¹⁶.

II. Difficulties of the certifier

The scientific examination that certifies the truth of matter, the proof of the presence of semen and the violent interference of genitalia, pathogonomonic findings of resistance, inter relation ship of the trace evidence to the victim / accused / locus, requires forensic / scientific expertise.

The medical examination is highly specialized and sensitive examination, because firstly the mensrea of rape is not merely the intention to have intercourse, but (a proven) intention to have intercourse with a woman who does not consent. Just a proof of recent sexual intercourse does not tantamount to crime of rape especially in married woman. Secondly the interests of the parties involved i.e. the accused and complainant, are divergent. So medical examiner may get false accusations or exaggeration of facts on one side and total non-cooperation from the opposite side.

Three hundred years old remarks of Sir Matthew Hale "Rape is an accusation easy to be made and hard to be proved, but harder to be defended by the party accused though innocent" echoes well even today.¹⁶ The reasons for the ambiguity, in the context of our circumstances are listed as under: -

1. **False accusations:**

False accusations of rape are not uncommon which may arise from many causes. A consenting girl caught in action by other(s), fear of parental wrath, fear of pregnancy, and fear of venereal disease. Revenge from opponents, family feuds, spite, blackmail, extra marital affair, and establishment of an alibi to appease parent or husband, non-compliance of promises are oft quoted grounds.

2. **Victim's attitude.**

The genuine victim feels that if a complaint is made, she is then subject to an assaulting process of queries by the relatives, the investigating officers, the medical examiner and the defending council and subsequent humiliating publicity. Non reporting or delayed reporting of the crime by the victim may be the outcome of this mental pressure. Secondly after the cruel act, the victim in a state of mental shock may narrate in-consistent history, which may arouse a suspicion of concocted story.

3. **Medical examination / collection of evidentiary material**

a. **Experience and training of examiner.**

Female doctors are trained to deal with the cases of obstetrics (married women with pregnancy) and gynecology (diseases of woman) They are not generally accustomed with cases of virgin girls, neither they observe the injuries indicating non consenting sexual intercourse. Special coaching classes by a Forensic specialist are mandatory for their knowledge. Further, recognition, collection, preservation of evidentiary material depends upon the knowledge, training and experience of collector, which also requires training.

b.Implements:

No proper examination can be ensured without proper tools. Examination centers are lacking in the essential facilities and implements, as the routine clinical examination differs from this special examination. Lithotomy couch for proper positioning, adjustable spotlight, magnifying glass, Glaister's keen rods, caliper and ruler are the basic requirements of an examination center dealing with Forensic cases. A cheap white plastic sheet recommended for collection of "droppings", while victim is made to stand on it at the time of disrobing is not available in medico legal clinics.

Semen has fluorescent properties and ultraviolet lamp locates seminal spots on the clothes. This facility is not available even in the best possible medico legal centers so medical examiner is compelled to collect blind specimen or send the clothes as such for scientific examination.

Collecting tools including containers

Recommended method is that sterilized containers and collecting device must be available in the locked cupboard, present at the stretched arm's reach for prompt use. Instead swabs mounted on applicators and containers are arranged on "ad hoc" basis where sterility of material cannot be guaranteed. Pipette for collecting high vaginal specimen is generally not available. Clothes soiled with blood and semen must be dried in cool airy room before packing them in paper bags for dispatch. Plastic enclosure may prevent drying of wet patches and encourage the bacteria and fungi, to the detriment of the specimen, giving negative results. These precautions are not strictly followed.

d. Delay in reporting of crime and/ or medical examination
In the live woman who has sexual intercourse and there after assumes an upright position, sperm and acid phosphates are diluted with the natural secretion and drain from the vagina in a matter of hours. This is in contrast to the situation where female has had sexual intercourse just prior to death. There is no further vaginal secretion and no opportunity for drainage and both sperms and prostatic acid phosphates are extremely resistant to autolytic changes and can persist under sterile conditions for years¹⁷. So delay due to any reason, in collection of vaginal swabs may not yield the proper results.

e. Choice of specimen

It is imperative that in cases of married women, control specimen of blood, must be obtained from the husband and the accused to compare it with seminal group to know the owner of semen. This is never practiced.

f. Dispatch of articles

Dispatch is through police which usually causes delay in submitting the material to the laboratory or the police stations are too far from the laboratory.

g. Collection of ancillary material from the locus.

The value of trace material left at the scene of crime cannot be under estimated as some important evidential material is

left by the victim or accused at the spot. Similarly the victim harbours material from the scene of crime and accurate comparison of the two can substantiate or rebut the story narrated by the victim. Visit to the scene of crime is entrusted to police. It is a general observation that in cases of sexual assaults, police do not visit the scene of incidence as in cases of other crimes like murder, suicide, accident or robbery. Therefore, the crucial trace evidence is never obtained for its evidential credibility as an aid to interpretation. It is pertinent to point out that visiting the scene of crime and collection of evidentiary material is now a day's a job of crime scene specialist, a scientist possessing knowledge and training of such work. In our country no step has been taken in this direction resulting in poor performance in the field of crime detection.

h. Laboratory's work

One Forensic laboratory caters the work of a province generally, which is usually short of staff compared to enormous workload. Only microscopic examination of specimen is performed to see the presence of sperms in the submitted specimen. Other chemical indicators of semen are not tested. Group of semen is either never asked or intentionally not done.

i. Victim's habit and cultural code

Too much emphasis is made by the western books about presence of foreign hairs (accused) and matting of pubic hairs of victim due to semen from accused, with an advise to recover the loose pubic hair by combing the area and collection of matted hair¹⁸. In our society pubic hairs are routinely shaved / removed by both sexes. Ablution by using water is a customary practice so these finding may not be possibly evident on the victim. This with the absence of struggle marks makes interpretation of crime profoundly difficult and complicated.

III. Attitude of the society

1- Society's general attitude is variable and incomprehensible. General apathy is noted. Many segments of society view rape as not a crime of violence motivated by aggression but merely a sexual act perhaps a result of provocation, carelessness or at least acquiescence by the victim and as such avoidable. Therefore the victim, who reports a rape, frequently will be the focus of suspicion from her family and from society that she is at least in part responsible for the attack. The society often has ambivalent feelings towards the victim, which compounds the victim's feeling of guilt, embarrassment and alienation¹⁹.

2. The extreme reaction of relatives due to social stigma result in murder of the rape victim.

3. Health authorities even today are unaware of mental and physical trauma caused by rape, which is treated purely as a criminal offence. Victims of rape are not offered medical aid; especially the psychotherapy and somatic medicine did not regard them as one of the multi-traumatized group of patients requiring special attention. Only visible signs of

physical injury are treated which has only a minor bearing compared to deep-seated psycho trauma and after effects²⁰.

Conclusion

Definition and decision regarding rape although is a legal discretion, its proof is undoubtedly a scientific domain. Measures should be taken to enhance the credibility of scientific interpretation. Society must display a humane approach to support and re-habilitate the victim.

This article proposes enhanced efforts to deal with rape. New attitudes and new policies must be implemented in the investigation, prosecution and treatment. Greater emphasis must be placed on behavioral treatment and on self-defense to prevent rape.

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