A STUDY ON IDENTIFYING THE GAPS AND CONCERNS TO ENSURE ACCESS TO JUSTICE FOR GENDER-BASED VIOLENCE SURVIVORS FROM THE JUSTICE SECTOR ACTOR'S PERSPECTIVE

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About Bangladesh Women Judges Association(BWJA)

BWJA is a registered, non-profit and non-governmental association representing all women judges from each tier of the Bangladesh Judiciary. BWJA's mission is to promote equal participation of women in the development of law. To attain this goal, the association believes in collaboration with different international organisations worldwide to promote human rights, eliminate inequality in access to justice and strengthen the governance structure of Bangladesh.

Disclaimer:

Acknowledgment:

The report was commissioned by UNDP in partnership with Bangladesh Women Judges Association (BWJA). The research was conducted and consolidated by the lead researcher Professor Shahnaz Huda, PhD. Faculty of Law, University of Dhaka who worked as the national consultant of UNDP BAngladesh.

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Designated justice sector agencies officials from judiciary, prosecutors, law enforcement agencies, legal aid officers, legal practitioners, medical officers, legal experts, legal academics have participated in this study. The researchers are grateful to all the research participants who have given their time to share their experience, valuable feedback and knowledge on this topic.

Acronyms

AD-Appellate Division
ADC- Appellate Division Case
ALR -Apex Law Reports
ASK- Ain O Salish Kendra
BBS-Bangladesh Bureau of Statistics
BLAST- Bangladesh Legal Aid and Services Trust
BLC-Bangladesh Law Chronicle
BLD-Bangladesh Legal Decisions
BLT-Bangladesh Law Times
BRAC - Bangladesh Rural Advancement Academy
BWJA-Bangladesh Women Judges Association
BNWLA- Bangladesh National Women Lawyers' Association
CDM - Centre for Development Management
CEDAW-Convention on the Elimination of All Forms of Discrimination Against Women
CID-Criminal Investigation Department
CJM-Chief Judicial Magistrate
CR- Complaint Registered
CrPC- Code of Criminal Procedure
DB- Detective Branch
DLAO-District Legal Aid Officer
DLR-Dhaka Law Report
DNA-Deoxyribonucleic acid
FIR- First Information Report
GB-Gender Based
GBV-Gender Based Violence
GR- General Registered
HCD- High Court Division
INGOs-International Non-Governmental Organisations
IPC-Indian Penal Code
JM-Judicial Magistrate
LCLR – Legal Circle Law Reports
LNJ -Lawyers & Jurists
MLAA- Madaripur Legal Aid Association
NLASO-National Legal Aid Services Organisation
NGOs- Non-Government Organisations
OCC-One-stop Crisis Centre
PBI- Police Bureau of Investigation
PP-Public Prosecutor
PRB-Police Regulations of Bengal
PVAWI- Preventing Violence Against Women Initiative
IDLO-International Development Organisation
IO-Investigating Officer
ICCPR- International Covenant on Civil and Political Rights
ICESCR-International Covenant on Economic, Social and Cultural Rights
MM-Metropolitan Magistrate
MLR-Mainstream Law Report
NOSNDA-Nari O Shishu Nirjatan Daman Ain

NOSNDT-Nari O Shishu Nirjatan Daman Tribunal
OC- Officer-in-Charge
QRT-Investigation Unit and Quick Response Team RAB-Rapid Action Battalion
SCOB- Supreme Court Online Bulletin
SDG-Sustainable Development Goals
SJM- Senior Judicial Magistrate
SI- Sub-Inspector
STDs-Sexually transmitted diseases
UN-United Nation
UNDP- United Nations Development Programme
VAW-Violence Against Women
VSC -Victim Support Centre

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1. BACKGROUND OF THE STUDY:

Bangladesh has achieved many of the goals set forth in the United Nations Millennium Development Goals (MDGs), has been successfully addressing the Sustainable Development Goals (SDGs) and is systematically placed to advance to a middle-income country by 2026.

A variety of measures, activities and actions have been taken by the State to introduce gender parity and to increase the efficiency of State institutions and mechanisms to make people's access to rights-based, easier and more accessible services. The Government is committed to fulfilling 'the UN's Sustainable Development Goals on Gender equality and Peace, Justice, and Strong Institutions, 8th five year plan and 2041 perspective plan."[1]

There is an increasing recognition within the Government that effectiveness of the formal judicial institution, semi-formal judicial institution and access to justice is crucial for improving the state of rule of law in Bangladesh.[2] It is also crucial to achieving gender equality as declared in Goal 5 of the United Nations Sustainable Development Goals which relates to the achievement of gender equality and empowering all women and girls. Under the SDGs, formulated by the United Nations for all countries, an agenda to achieve "access to justice for all" has seen a prominent presence. [3] For instance, 'rape law reform agenda is closely tied to three of the Sustainable Development Goals (SDGs), namely SDG 5 (Gender Equality), 10 (Reduced Inequalities) and 16 (Strong, Just and Peaceful Institutions). This is also consistent with the overall aim of this study –i.e. ensure access to justice for gender based violence survivors and victims.

Goal 5 of the SDGs clearly enunciates the importance of achieving gender equality and includes as one of the targets (Target 5.2.) the elimination of all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation. Goal 10 aims to reduce all forms of inequalities, which for the purposes of this study would include inequalities intrinsically existing between the rich and the poor and between genders as well as amongst those who are politically powerful and the affluent as compared to the powerless, to access the formal justice system. The targets under Goal

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[1] Bangladesh Women Judges Association (BWJA) (2020). Outline of Research Study of BWJA and UNDP Joint Initiatives to Address Increasing Trend of Gender-Based Violence In Bangladesh: A Critical Evaluation of Role and Response of Justice Sectors; Research Proposal [Technical].

[2] GoB (2020 a). Eighth Five Year Plan. General Economics Division (GED); July 2020-July 2025 –Promoting Prosperity and Fostering Inclusiveness; Bangladesh Planning Commission; GoB at p.175.

[3] Ibid.

16 of the SDGs include the necessity to reduce all forms of violence and related death rates everywhere as well as to end 'abuse, exploitation, trafficking and all forms of violence against and torture of children.'[16.1. and 16.2.].

It is widely believed among social scientists that long-term sustainable development of nations critically depends on the rule of law and their capacity to protect property rights as well as individual rights within their policies.[4] This necessitates that the policymakers invest resources to make judicial services accessible, affordable and acceptable.[5]

In Bangladesh, a vast majority of women, adolescent girls and male and female children are plagued by unending everyday cycles of violence which prevent them from attaining their full potential in life. Additionally, persons belonging to vulnerable groups, such as those belonging to different, diverse or indeterminate gender identities are not only susceptible to gender based violence but also lack the protection of the law.

Not only outside in the public domain, but also within their homes, women and girl children in Bangladesh encounter different forms of violence; some are even murdered as a consequence of such violence. Numerous laws are in place to address such types of violence. Additionally, all acts of gender based violence (GBV) are in contravention of the fundamental freedoms granted by the apex law of the land---i.e. the Constitution. The Constitution of Bangladesh in several of its Articles guarantees non-discrimination and equal protection of the law. Article 27 iterates that all citizens are equal before law and are entitled to equal protection of law whilst Article 31 ensures the alienable right of all to 'enjoy the protection of law and to be treated in accordance with law, and only in accordance with law' Article 28 stresses on non-discrimination based on gender and other factors as well as equality of men and women in state and public life. Affirmative action in favour of women as well as children and backward sections of the society is provided for in Articles 28(4), 29(3) (a) and 65(3). As an important member of the international community Bangladesh is also a State Party to several international instruments such as the CEDAW and the CRC, as well as the two international Covenants -- the ICCPR and ICESCR.[6]

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[4] Ibid.

[5] Ibid.

[6] International Covenant on Civil and Political Rights (ICCPR) 1966 and International Covenant on Economic, Social and Cultural Rights 1966.

Over the decades, new laws have been enacted to counter GBV or amendments have been made to existing laws to deter gender-based violence. For example, the *Nari O Shishu Nirjatan Daman Ain*[7] of 2000 contains several provisions for the death penalty to be imposed.

Gender based violence however continues in spite of the fact that such laws, as well as policies and programs which aim to address, prevent and punish gender based violence are in place to combat such violence. Despite enactment of special laws to deal with GBV containing harsh penalties, access to justice is curtailed for most of those affected by such violence. It is therefore necessary to investigate the gaps and challenges in the prevalent legislative framework and the criminal justice system in order to address and redress gender-based violence in Bangladesh. To do so it is required to examine the roles played by judges, prosecutors, and the policies in the legal system's response to gender-based violence and to recommend the future roles and responses of the various justice sector actors to end institutional barriers so as to ensure justice in VAW cases.[8]

The administration of criminal justice in Bangladesh involves numerous stages. The reality is that the journey to obtain justice is perilous and full of impediments which begin as soon as an offence occurs. For victims of gender-based violence, every stage is a battle which must be overcome in order for them to even attempt to get justice. A criminal justice system that consistently fails to secure convictions has little credibility. As a result of which the victims may give up reporting the crimes and be encouraged to take the law into their own hands and resort to vigilante justice.[9]

One of the purposes of the present study is to critically investigate issues related to accessibility of survivors and victims of GBV to justice and to find out what measures and reforms are required to render speedy justice for gender-based violence victims.[10] Therefore one of the major concerns addressed are the reasons victims' of such acute sexual and other forms of violence avoid seeking formal redress. There have been a number of researches and studies aimed at addressing the above question but the present study, as mentioned

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[7] Act No.8 of 2000.Referred to in this study as the *Ain* or the *Ain* of 2000 and sometimes as the Act of 2000.

[8] Op. cit. Bangladesh Women Judges Association (BWJA) (2020).

[9] Naznin, S.M. Atia and Sharmin, Tanjina (2015). The Research Report of the VAW Project, BRAC University, "Reasons for the Low Rate of Conviction in the VAW Cases and Inconsistencies in the Legislative Frameworks", BRAC University Press, Dhaka at p 23.

[10] Op. cit. Bangladesh Women Judges Association (BWJA) (2020).

earlier, is unique in that it takes into account the opinions of judicial sector actors from across the entire country. The present situation of the alarming increase of VAW cases in Bangladesh amid pandemic and beyond indicates that an urgent review and evaluation of gender-based violence against women needs to be given a particular focus where justice sector stakeholders can play a crucial role. BWJA have enabled the dialogue by engaging concerned criminal justice stakeholders by analysing the causes of the increasing rate of domestic violence as a cross-cutting issue and included the valuable feedback from the justice practitioners in the research.

2. METHODOLOGY:

Bangladesh Women Judges Association (BWJA), with the technical assistance of UNDP Bangladesh, initiated the present study on 'Identifying the gaps and concerns to ensure access to justice for gender-based violence survivors from the justice sector actor's perspective'. BWJA was established in 1990 as a non-profit and non-governmental association representing all women judges from each tier of the Bangladesh Judiciary.[11]

Bangladesh has been proactive in enacting laws and identifying policies to address the issue of gender-based violence. As discussed earlier, the Constitution of the People's Republic of Bangladesh is also committed to ensure gender parity in several of its Articles. Additionally, Bangladesh is a State Party to several crucial international treaties which address the issue of violence against women and girls. Despite laws which provide for the sternest of exemplary punishments with an aim to deter potential gender based violence, incidents of such violence continue to be rampant and unstoppable. The COVID pandemic has exacerbated such violations manifold. This study aims to assess and understand such increases as a 'cross-cutting issue[12]' along with the issues of gendered lack of access to the formal justice system and the abysmal rate of convictions when women and children do manage to access such systems. This present research argues that weak inter-agency justice sector responses

[11] See Nasrin, Khadiza (2021). "Study on identifying the gaps and concerns to ensure access to justice for gender-based violence survivors from the justice sector actor's perspective"; Research Study of BWJA and UNDP Joint Initiative to Address The Gender-Based Violence ; Power point Presentation by Khadiza Nasrin
Research Officer (Joint District Judge) of the Law Commission, Bangladesh.

[12] UNDP (2021). Terms of Reference of National Consultant: To Conduct a study on identifying the gaps and concerns to ensure access to justice for gender-based violence survivors from the justice sector
actor's perspective; UNDP July 2021.

impede the effective implementation of these laws which fail to secure justice for victims of gender-based violence.[13] The study will also seek to identify barriers to providing adequate and timely justice to gender-based violence
victims from the justice sector perspective."[14]

The primary object of the study is to identify and analyse existing inconsistencies in the law; to reassess 'the role and response of the justice sector from a judicial perspective' in order to ensure implementation of current legislation and policies; 'and to make the justice system of Bangladesh more effective and responsive in a way that can be conducive to address and redress gender-based violence."[15]

The focus of the study is on the *Nari-O-Shishu-Nirjatan Daman* Tribunals which deals with a variety of GB offences. The study has explored the gaps and lacunas of the existing system of delivery of justice taking into consideration contexts which impede access to justice even before a GBV victim can approach the Court as well as critical areas of reform in justice delivery processes for VAW cases. The target of the study is to inform upon the necessary actions and activities to be undertaken to achieve the above-mentioned objectives. To reiterate, the specific objects of the present study are:[16]

- To identify & analyse existing barriers in laws to deal with GBV cases;
- To assess & explore the critical areas of reform in justice delivery processes for VAW cases;
- To focus in particular on cases under *Nari-O-Shishu-Nirjatan-Daman* Tribunal;
- To identify the problematic patterns and concerns with access to justice for gender-based violence survivors;
- To review the role and response of the justice sector from a judicial perspective for the stronger implementation of legislation & policies;
- To propose recommendations to address the high rate of gender-based violence incidents.

The study was headed and supervised by a research team composed of distinguished members of the BWJA. In order to conduct the study a mixed-method approach was used.

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[13] Ibid.
[14] Op. cit. UNDP (2021).
[15] Ibid.
[16] Op. cit., PowerPoint presentation by Nasrin, Khadiza (2021).

The research involved the collection of both primary and secondary evidence. A mixture of research methods was utilised and these included:

(A) ▪ **Secondary Data Collection** through a review of literature and documents from various sources

(B) ▪ **Primary Data Collection** through

Quantitative Research Techniques
Qualitative Research Techniques
Focus Group Discussions
Key Informant Interviews

(A) SECONDARY DATA COLLECTION THROUGH LITERATURE/DOCUMENT REVIEW:

Literature review mainly refers to consulting general secondary sources to get an overview of all relevant subject areas of the research.[17] A comprehensive literature review has been done of sources which addresses the existing laws related to the issue of GBV as well those which focus specifically on the *Nari O Shishu Nirjatan Damn Ain* of 2000; lacunas in the law related to convictions for rape and other types of violence; reports of the Law Commission of Bangladesh; reports of conferences and studies done on the subject by other NGOs; on-line materials, law reports as well as scholarly articles (see bibliography for a comprehensive list of materials reviewed). The materials formed the basis of secondary material collection. These include academic sources as well as an analytical examination of the existing policies and laws that aim to deter, prevent and punish gender based violence and the impediments on the ground which prevent the proper implementation of laws as well those which inhibit women and children from accessing the formal system. Through the collation of secondary and primary evidence collected, it is intended and anticipated that it will be possible to identify gaps in laws and policies as well as to propose necessary amendments and inclusions.

(B) PRIMARY DATA COLLECTION:

Primary data or information was collected directly from main sources through several methods. Bangladesh is divided into eight Divisions -- In alphabetical order, these are -- Barishal, Chattogram, Dhaka (the Capital of Bangladesh), Khulna, Mymensing, Rajshahi, Rangpur and Sylhet. Each Division is again divided into Districts of which there are 64 in total.

[17] Faruque, Dr. Abdullah Al (2019) Essential of Legal Research; *Palal Prokashoni*, Dhaka at p.31.

The apex Court of Bangladesh, the Supreme Court, consisting of the High Court Division and the Appellate Division, is situated in the capital whilst the District Courts are primarily situated at the District levels (except for certain special *chowki adalats* which are set up in traditionally hard to reach areas). By the *Nari O Shishu Nirjatan Daman Ain* 2000*, Nari O Shishu Nirjatan Daman* Tribunals were established in each District.

Empirical investigation was conducted nationwide in all eight Divisions of the country by the methods discussed below. **A total of 46 Districts amongst the 8 divisions are covered under this research. Stakeholders, including Tribunal Judges, Public Prosecutors, Magistrates, Legal Aid Officers, Medical Officers, Investigative and other Officers, from 72% of the 64 Districts, participated in the Workshops.**

◉ (I) QUESTIONNAIRE SURVEY for Quantitative and qualitative data collection:

Questionnaires were developed by the Consultant in active consultation with the Research Team of the BWJA. Separate questionnaires were used to gather data from various groups of respondents. All sets of questionnaires contained both close-ended and open-ended questions. Thus both quantitative and qualitative results could be obtained. Close-ended questions grant options to the respondent to choose from and are quantitative in nature. The questionnaires used close-ended questions to gather information in consonance with the objective of the research. These questions help collect quantitative data and hence are extensively used in quantitative research.[18]On the other hand, qualitative surveys use open-ended questions to produce long-form written/typed answers. Questions aim to reveal opinions, experiences, narratives or accounts.[19]
All the questionnaires were self-administered by the respondents themselves.

(i) Questionnaire for the Honourable Judges of the *Nari Shishu Nirjatan Daman* Tribunals:

Questionnaires were sent to 61 Judges of the NOSND Tribunals and responses were received from 44 Tribunal Judges, which is approximately 43.1% of the Judges from all the NOSND Tribunals of Bangladesh.

[18] https://www.questionpro.com/blog/quantitative-research/
[19] https://deakin.libguides.com/qualitative-study-designs/surveys

The following Table shows the number and types of participants of the **QUESTIONNAIRE** survey:

Participants	Number
Tribunal Judge	**44**
Public Prosecutors	**8**
CJM/SJM/MM/JM	**19**
Inspector/Sub-Inspector	**2**
Medical Officer	**6**
DLAO	**6**
Total	85

There were 29 questions which included both close-ended and open-ended questions. Questions related to:

Disposal/ Conviction/Acquittal rates; Reasons for acquittal; Gaps of existing legal framework and necessary reforms; Responsibilities of Police, Public prosecutor, Lawyer and Judges. As shown above, 44 **of NOSND Tribunals responded to the questionnaire survey.**

(ii) Questionnaire for the Magistracy:

Magistrates have an important role to play as regards the offences over which the Tribunals have jurisdiction. The questions to Magistrates included queries as to their responsibilities during investigation of cases instituted under the NOSNDA, opinions as to the lengthy trial processes as well as information regarding statistics.

(iii) Questionnaires for District Legal Aid Officers[20]:

DLAOs were asked questions regarding the numbers of legal aid applicants seeking their services, their gender and the nature of problems for which they access the government legal aid services. Queries were also made regarding the number and nature of the issues which were settled by ADR and so forth.

(iv) Questionnaires for Public Prosecutors:

[20] For a more detailed discussion on legal aid services, see below.

Questions for PPs included the number of cases each was involved in; Reasons for long-windedness of trials and delays; Questions regarding production of witnesses; Possibility of use of digital technology to depose witnesses and so forth.

(v) Questionnaire for Medical Officers:

The questionnaire for medical personnel contained queries regarding, amongst others:

Trainings related to the taking of medico-legal examinations; Forms used for medical examinations; Procedure of medical examinations in case of victims of rape and other types of violence committed against women and children; Time periods for completing examinations; DNA testing related questions.

(iv) Questionnaires for Investigating Officers:

Investigating Officers occupy an important position in the criminal justice system and for the success of a prosecution, proper investigation is crucial. The questionnaire distributed amongst IO contained questions related:

Their experiences in investigating GBV cases; What sort of offences are they usually investigate and the processes involved ;The steps taken if an investigation cannot be finished within the time required by law; Questions related to collection and preservation of evidence

◉ (II) Qualitative data collection through Division-wise workshops:

Extensive collection of primary evidence was elicited by workshops attended by stakeholders from all 8 Divisions.

"Workshops are increasingly being used in various fields of research as a qualitative research method where researchers can work with participants to gather a rich collection of data about participants and their co-creation on an innovation or a shared topic for investigation."[21]In December (3rd to 5th), 2020, a Workshop on "Gender-Based Violence in Bangladesh Amid Covid-19 Pandemic" and Pre-Research Consultation on the Increasing Trend of Gender-Based Violence in Bangladesh: A Critical Evaluation of Role And Response of Justice Sectors

[21]https://portal.findresearcher.sdu.dk/en/publications/using-workshops-in-business-research-a-framework-to-diagnose-plan#:~:text=Workshops%20are%20increasingly%20being%20used,a%20shared%20topic%20for%20investigation.

was organised by the BWJA and UNDP at Sarah Resort, Gazipur as a pre-consultation exercise for the purpose of the present study.

After the commission of the Study, in all, three physical and one virtual workshop were organised. Despite plans to hold all workshops in person and in specific Divisions, due to the COVID pandemic the workshops had to be rearranged and in some cases amalgamated. The first physical and residential two-day workshop included stakeholders from the Districts constituting the Sylhet Division (hereafter referred to as WORKSHOP 1) which was held on the 18th and 19th of November 2021 in Grand Sultan Tea Resort, Srimongal, Moulvibazar. On the 28th and 29th of January, 2022, a virtual workshop was conducted with the participation of stakeholders from the Barishal Division (hereafter referred to as WORKSHOP 2). Workshop 3, which was an in-person residential workshop was arranged at BRAC CDM, Savar on the 4 and 5th of March, 2022, This 3rd Workshop was attended by stakeholders from Khulna, Chattogram, and Rajshahi Divisions. The last workshop (WORKSHOP 4) was held at the previous venue at BRAC CDM, Savar on the 11 and 12th of March, 2022 and was participated by stakeholders from the Divisions of Dhaka, Mymensing and Rangpur. The Table below shows the details of the Workshops, including venue, dates, number and types of participants. Altogether there were 115 participants from different Districts. 92 of the Judges of *Nari O Shishu Nirjatan Daman* Tribunals i.e. approximate 91% of the total number of Judges in charge of NOSND Tribunal across the country participated. **The Table below shows details about the Workshops together with venues and the Districts in the eight Divisions, which were participated by a wide section of justice sector actors.**

Date	Venue	Workshop	Participants Judicial sector actors –Division wise	Districts

3rd to 5th Decem	Sarah Resort, GAZIPUR	Pre-Research Consultation		
18th to 20th Noven	Grand Sultan Tea Golf Garden Srimongal, SYHET	Workshop No.1	SYLHET DIVISION	Study conducted in all 4 District 1. Habiganj (3 tribunals) 2. Moulvibazar 3. Sunamganj 4. Sylhet
28th to 29th January 2	VIRTUAL	Workshop No. 2	BARISHAL DIVISION	Study conducted in 5 out of 8 1. Barishal 2. Barguna 3. Jhalokati, 4. Pirojpur 5. Patuakhali
4th to 5th March 2022	BRAC CDM Savar, DHAKA	Workshop No. 3	i) CHATTOGRAM DIVISION	Study conducted 8 out of 11 Dist 1. Bandarban 2. Brahmanbaria 3. Chandpur 4. Chattogram 5. Cox's Bazar 6. Cumilla 7. Feni 8. Noakhali
			(ii) KHULNA DIVISION	Study conducted in 9 out of 10 1. 1.Bagerhat 2. Chuadanga 3. Jhinaidah 4. Khulna 5. Kushtia 6. Magura 7. Meherpur 8. Narail 9. Satkhira

			(iii) RAJSHAHI DIVISION	Study conducted in 5 out of 8 D 1. Bogura 2. Naogaon 3. Natore 4. Rajshahi 5. Sirajganj
11th to 12th March	BRAC CDM Savar, DHAKA	Workshop No. 4	(i) DHAKA DIVISION	Study conducted 8 out of 13 Di 1. Dhaka 2. Faridpur 3. Gazipur 4. Gopalganj 5. Kishoreganj 6. Manikganj 7. Shariatpur 8. Narsingdi
			(ii) MYMENSINGH DIVISION	Study conducted in 3 out of 4 D 1. Mymensingh 2. Jamalpur 3. Sherpur
			(iii) RANGPUR DIVISION DIVISION	Study conducted in 4 out of 8 Di 1. Dinajpur 2. Gaibandha 3. Panchagarh 4. Thakurgaon

Given that approximately 43.6% of the Tribunal Judges took part in the questionnaire survey and 91% of the NOSND Tribunal Judges attended the Workshops, without claiming to be absolutely representative of the entire scenario of the NOSND Tribunals in Bangladesh, the present study may posit to be an accurate and comprehensive portrayal of the present situation.

◉ (III) On-line Focus Group Discussions:

Two FGDs were arranged virtually with stakeholders to get a greater understanding of the issues under study. Focus group discussions give the participants the opportunity, which may be absent in one-to-one interviews, to interact with each other to share experiences with,

clarify or contradict opinions, thus giving the researcher a clearer idea about the subject matter.

The first FGDs was participated mainly by professionals working in or involved with non-Government organisations who provide a variety of services to victims of violence and have in-depth knowledge of the practical scenario related. The participants included:

1. Zannatul Ferdous Borna, Coordinator, Bangladesh National Women Lawyers Association
2. Md. Mozahidul Islam, Manager; Prosecution Component, USAID's Fight Slavery and Trafficking-in –person (FSTIP)
3. Mitali Jahan, Program Manager, Social Compliance, BRAC.
4. Taposhi Rabeya, Assistant Director-Mediation, BLAST
5. Morium Nesa Manager- Women Rights & Gender Equity, ActionAid Bangladesh

The second FGD was also participated by members of NGOs which work closely with survivors of GBV, including those from the grassroots level. In addition, the participants included an academic involved in research on gender violence related issues.

1. Ms. Taslima Yasmin
Associate Professor
Department of Law
University of Dhaka

2. Tamanna Hoq Riti
Assistant Coordinator
Ain O Shalish Kendro (ASK)

3. Taqbir Huda
Lead
Advocacy, Communications and PVAWI
Gender Justice and Diversity Programme
BRAC

3. Asma Khanom Ruba
Senior Staff Lawyer Mediation and Rapid Response
Ain O Shalish Kendro (ASK)

4. Advocate Sipra Goswami
Farispur Unit Coordinator
BLAST.

1. Advocate Dipti Rani Shikdar
Senior Lawyer,
Bangladesh Mahila Parishad

◉ (IV) Key Informant in-depth qualitative Interviews conducted in person; by telephone or on-line:

Four key informant interviews were conducted with persons who have expert knowledge of issues and concerns related to access to justice for GBV survivors in Bangladesh. These included experts on human rights, civil servants as well as defence lawyers.

1) Dr. Abul Hossain
   Former Project Director
   Multi-Sectoral Programme on Violence Against Women
   Ministry of Women and Children Affairs

2) Muhammad Mahbubur Rahman PhD
   Professor
   Department of Law
   University of Dhaka

3) Ehsanul Haque Shomaji
   Advocate, Supreme Court of Bangladesh

4) Kamrun Nahar
   Program Manager
   Naripokkho, Dhaka

3. LEGISLATION TO COMBAT GENDER BASED VIOLENCE:

Given the extent and seriousness of GBV in Bangladesh several pieces of statutory laws have been enacted. Below is a short discussion, in order of year of enactment, of several laws which address gender based violence. Detailed discussion on the *Nari O Shishu Nirjatan Daman Ain*, 2000 is contained in Chapter 4.

3.1. The Penal Code of 1860:[22]

The Penal Code provides the definition and punishment for certain gender based crimes but in general addresses the issue of a wide variety of offences committed against men, women, religion, the State, public servants and many other entities. Chapter XVI deals with a whole gamut of offences committed against or 'Affecting the Human Body'---various degrees of culpable homicide, hurt, wrongful confinement, kidnapping, and abduction i.e. offences committed against any person – male and female both. Certain specific sections concentrate on offences committed against women, girls and children. In the case of kidnapping, Section 361 specially mentions the offence in relation to a girl under the age of 16. Section 312 to 318

[22] Act No. XLV OF 1860.

deals with offences relating to the 'Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births'. Section 354 addresses the offence of 'Assault or Criminal Force to woman with intent to outrage her modesty' while Section 509 provides for punishment of any 'Word, gesture or act intended to insult the modesty of a woman'. Within the chapter on offences affecting the human body is included the definition of rape and the punishment of rape (section 375 and 376). Therefore, rape, the most heinous of all categories of sexual offences, has been placed under the broad category "Of Offences Affecting the Human Body".[23] 'Offences relating to Marriage' are contained in Chapter XX of the Penal Code.The Code does not contain any separate chapter on sexual violence related offences.

3.2. ***Nari O Shishu Nirjaton Daman Ain*, 2000**, is the most important piece of legislation at present, and the primary focus of the present study. This special law was enacted in 2000. The *Nari O Shishu Nirjaton Daman Ain*, 2000 (NOSNDA) or the Women and Children Repression Prevention Act of 2000, as it is referred to in English, deals with the offences of rape, gang rape, dowry demand related offences,
and so forth.

3.3. Acid *Oporadh Daman Ain*, 2002[24] (Acid Offences Prevention Act, 2002) and Acid *Niontron Ain*, 2002 (Acid Control Act, 2002)[25]:

In 2002, two laws were enacted which addressed violence related to acid and other harmful substances. The Acid *Oporadh Daman Ain*, 2002 deals with violence committed by the throwing of acid and other burning, corrosive and poisonous substances intending to disfigure, maim or kill and provides for harsh punishments, including in some cases, the death penalty. The other piece of legislation, the Acid *Niontron Ain*, 2002 (Acid Control Act, 2002), was enacted to control the easy availability of acid and other substances.

3.4. *Paribarik Shahingshata (Pratirodh O Shurokkha)* Ain (Domestic Violence Act) 2010 and Rules of 2013[26]:

[23] UNDP and IDLO (2015). A Critical Appraisal of Laws relating to Sexual offences in Bangladesh-- A Study Commissioned by the National Human Rights Commission Bangladesh, at p. v.
[24] Act No.2 of 2002.
[25] Act No.1 of 2002.
[26] Act No.58 of 2010.

To deal with the prevention of and protection from domestic violence committed against women and children within the home, a special law was enacted which provides for several remedies. Domestic violence is defined by Section 3 of this Act as:

> 'any physical, psychological or sexual violence or economic harm committed against any woman or child family member by any person who has a family relationship with them.'

The remedies provided are civil in nature and for this reason the above mentioned law has been referred to as quasi civil and quasi criminal. These remedies include protection, residence and compensation orders. In 2013 the Domestic Violence Prevention Rules were made to provide for details for the proper implementation of the law.

3.5. *Manab Pachar Daman O Pratirodh Ain* (Human Tracking Deterrence and Suppression Act) 2012[27]:

The above Act was enacted to deter and provide punishment for offences of human trafficking including the crime of organised human trafficking. The Act provides for the setting up of Anti-Human-Trafficking Offences Tribunals for the speedy trial

of such offences in any District. Punishments provided include imprisonment for various terms including for life, fines as well as the death penalty for the organized offence of human tracking.

3.6. Pornography *Niyontron Ain* (Pornography Control Act) 2012[28]:

The Pornography Control Act was enacted in 2012 to prevent the deterioration of societal values, social unrest and decadence within society — all of which in turn leads to various offences being committed. Cyber crimes against women and girls have reached worrying proportions and to address such crimes the law was enacted and makes pornography in any form an offence punishable with rigorous imprisonment for various terms and the imposition of fines of different amounts.

3.7. *Shishu Ain* (Children Act) 2013[29]

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[27] Act No. 3 of 2012.
[28] Act No. 9 of 2012.
[29] Act No.24 of 2013.

The Children Act of 2013 was enacted, replacing the Act of 1974, with the purpose of implementing the UN Convention on the Rights of the Child. A child, under the Act, is defined as a person under the age of 18.

The law mainly deals with juvenile justice and establishes varying degrees of care and protection services for children in conflict with the law such as the system of diversion.[30] The law also provides safeguards for the protection of children who come into contact with the law. It provides that at all stages of any judicial proceedings, whether as victims, witnesses or offenders -- children shall be treated in a special manner and puts in place specialised systems in consonance with a child's dignity, age, surrounding conditions, gender, incapacities, maturity and so on. Additionally, the Children Act provides for penalties for cruelty to a child.[31]

3.8. Deoxyribonucleic Acid (DNA) Act, 2014 and Rules of 2018[32]:

The DNA Act was enacted in 2014 'to make provisions for determination of the process and methods of DNA sample collection and its analysis, control of using DNA sample and profile, establishment of forensic DNA laboratories and a national DNA database and for the matters ancillary thereto'. In cases of GBV related cases such as rape, gang rape and so forth, DNA evidence can have a major impact in reinforcing investigations and facilitating prosecutions. Provisions are made in the Act for the collection, analysis and so forth of DNA Samples. Section 5 states that DNA samples may be collected from any crime scene or any other place where DNA samples may be found. Section 10 and 11 details the procedure for collection of DNA samples and analysis of the sample collected. Section 24 provides for the establishment of a National DNA Database which shall include crime scene index and a convicted offenders' index. A report containing DNA profile may be treated as an admissible evidence in the proceeding of a court (Section 37).

3.9. Child Marriage Restraint Act (*Balyabibhaho Nirodh Ain*), 2017[33] and Rules of 2018:

Bangladesh continues to have one of the highest rates of underage marriages in the world. Early marriages have a huge adverse effect on the lives of girls who are prevented from reaching their full potential. Child marriage also thrusts young girls into situations of violence. Additionally, ending child marriages is within the agenda of the Sustainable Development

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[30] Huda, Shahnaz (2021). Legal Framework Analysis on the Challenging Fear of Violence; Plan International Bangladesh, November, 2021 at p.24-25.
[31] bid. I
[32] ACT No. X OF 2014.
[33] Act No.6 of 2017.

Goals. The Act of 2017 replaced the British made law of 1929 and includes several new provisions. The minimum legal age of marriage continues to be 18 for females and 21 for males. It emphasises the prevention of underage marriage and provides several positive innovations. Punishments for the offence of child marriages have been increased; provisions have been made for the setting up of Prevention Committees; proper mechanism for the proof of age and so forth. Section 19 also provides for an exemption clause which allows underage marriage. In 2018 the Child Marriage Restraint Rules were made.

3.10. *Joutuk Nirodh Ain* (Dowry Prohibition Act) 2018[34]:

Dowry demands constitute a major cause of violence against married women and girls. The NOSNDA of 2000 deals with violence and death caused as a consequence of dowry demands. The Dowry Prohibition Act of 2018, which replaces the Act of 1980, makes the taking or giving of dowry at the time of, before or during the existence of a marriage a punishable offence.

4. DECONSTRUCTING the *NARI O SHISHU NIRJATAN DAMAN AIN*, 2000:[35]

The prime focus of the present study, as mentioned earlier, is the ***Nari O Shishu Nirjatan Daman Ain*, 2000** (NOSNDA) which falls within the list of special laws enacted by the legislature.

The *Nari O Shishu Nirjatan Daman Ain* of 2000, was preceded by similar laws such as the Cruelty to Women (Deterrent Punishment) Ordinance, 1983[36] and the *Nari O Shishu Nirjatan Daman (Bidesh Bidhan) Ain* of 1995[37].

4.1. Primacy of the law:

The NOSNDA of 2000 in Section 3 provides for the supremacy or primacy of the enactment over matters contained therein by stating that:

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[34] Act No. 39 of 2018.

[35] Act No. 8 of 2000. In English, Women and Children Repression Prevention Act, 2000.The law will be referred to in this study by its Bangla title; as NOSNDA or the Act of 2000.

[36] Act LX of 1983. Now stands repealed.

[37] Act XVIII of 1995. Now stands repealed.

Notwithstanding anything contained under any other law for the time being in force, the provisions of this Act shall prevail.[38]

The Act therefore will take precedence over other laws dealing with the same subject matters.

4.2. Woman and child under the Act:

Section 2 of the Act provides several definitions. Most of these will be mentioned when dealing with each offence where relevant. It is important however to clarify certain general concepts from the beginning. For example, a woman is defined as a person of any age and a child as 'any person under sixteen years of age.' In 2000, when the law was enacted, the age of a child was defined as being below 14 years of age. By the amendment of 2003, it was increased to 16.

'Child' therefore includes both girls and boys under the age of 16. Inconsistency as regards who is a child is very apparent since different laws use a variety of different definitions. Under the Domestic Violence (Prevention and Protection) Act of 2010 and the Children Act 2013, a child is a person under the age of 18 years. On the other hand, under the Labour Act of 2006,[39] a child is a person between the ages of 12 to 14.

Under Section 20 (7) of the *Nari O Shishu Nirjatan Daman Ain* of 2000, when a child is accused of committing an offence under the Act, or is a witness to an offence, the provisions of the Children Act 2013 will have to be followed as far as possible. As mentioned earlier, under the Act of 2000, a child is a person below the age of 16. Being a State-party to the Child Rights Convention, Bangladesh is obligated to accept that a child is a person below the age of 18 but childhood continues to be construed differently in different laws in Bangladesh, including in the Act of 2000.

Justice Sector Actors in the Workshops commented there was controversy regarding the age of children defined in the Act and that the age of child should be increased to 18 in alignment with other national laws and international instruments (Workshop 1) which was also agreed u pon in Workshop 4.

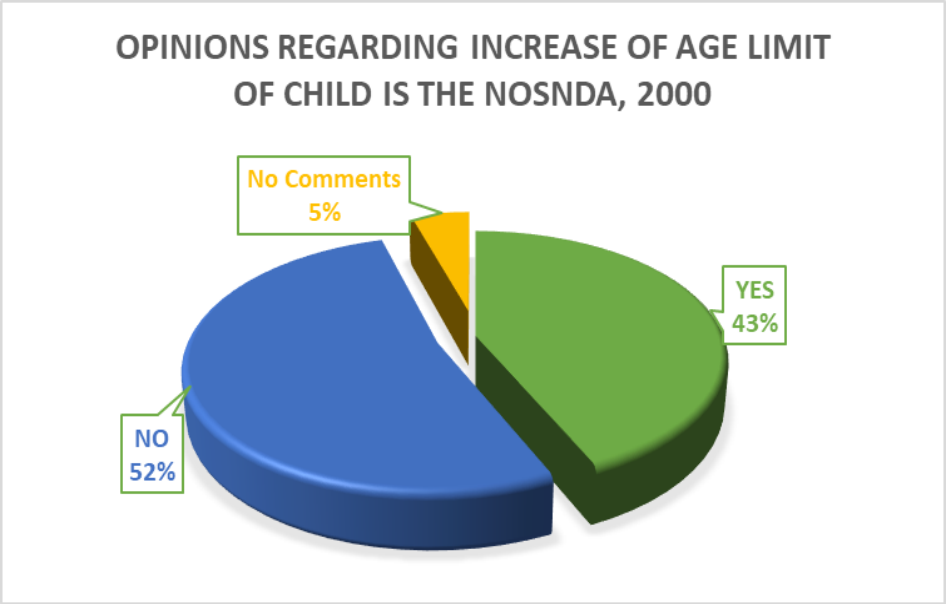
In Workshop 3, the Judge of a Tribunal from the Chattogram Division spoke about problems related to the determination of age and said that although medical jurisprudence requires

[38] The unofficial translation of the Act is partially from https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/110524/137495/F-248465822/BGD110524%20Eng.pdf The majority of the English versions are based on my own translation.

[39] Act No. 42 of 2006.

that 8 to 9 tests should ideally be done, usually only one to two tests are done so there may be mistakes in such determination. In Workshop 1 A Tribunal Judge mentioned that sometimes the age of the accused is wrongly mentioned in the Police report —a child is shown as an adult or vice versa.

The Table below represents the responses from stakeholders of the research, expressed in the questionnaire survey, as to whether it is necessary to increase the age of child from 16 to 18 years under the NOSNDA, 2000.

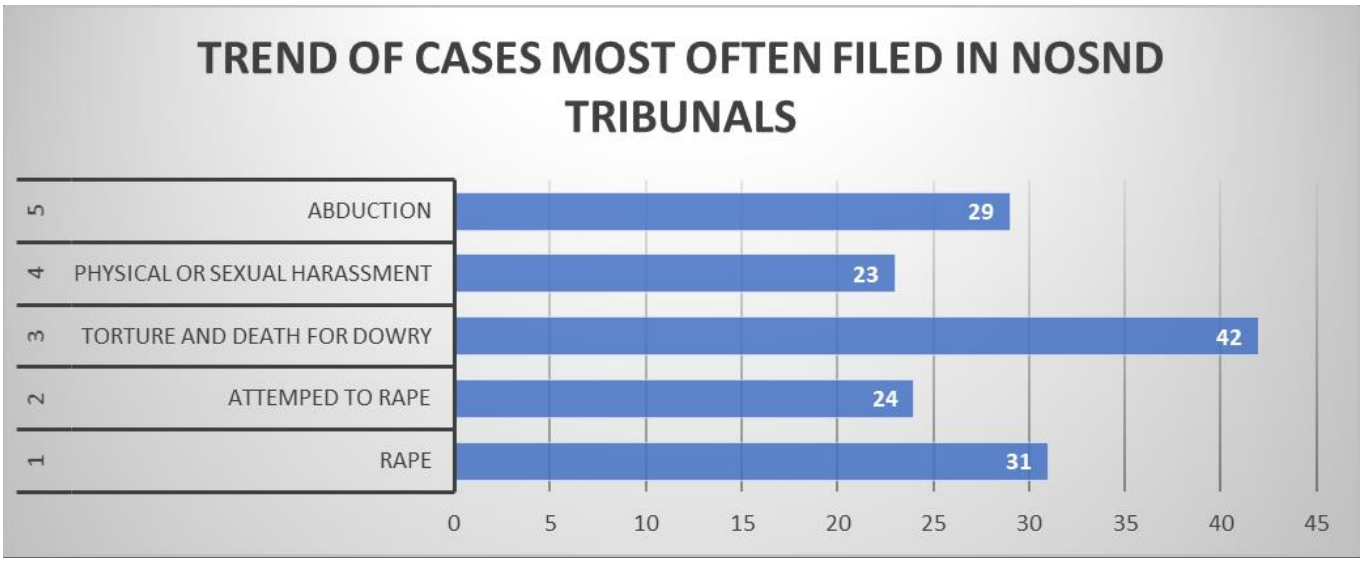


Some new concepts were introduced by the above law which hitherto did not exist in the legal system, although it has now been replicated in several laws. The following chapters contain detailed discussions of the offences covered by the NOSNDA; important procedural aspects and other important features of the law.

5. OFFENCES COVERED BY THE NOSNDA, 2000

In the present research by the BWJA, Judges of the *Nari O Shishu Nirjatan Daman* Tribunals participating in the questionnaire survey were asked to mention the main kinds of offences committed against women and children for which survivors/families of victims accessed the Tribunals.

The Table below show the responses given as to the most common types of offences which come before the Tribunal according to the questionnaire survey:



The present chapter contains a holistic and critical analysis of the offences which the Act of 2000 has jurisdiction over. Other laws which simultaneously deal with the offences contained within the Act, have also been mentioned.

5.1. ACID/CORROSIVE/POISONOUS SUBSTANCES etc. RELATED VIOLENCE:

Attacks committed by acid or other corrosive or poisonous substances are crimes which are horrendous in nature and viciousness since the primary aim of the perpetrator is to maim and horribly disfigure victims so that they either die excruciating deaths or suffer their entire lives. Acid attacks, like other forms of violence against women, are not random or natural phenomena. Rather, they are social phenomena deeply embedded in a gender order that has historically privileged control over women and justified the use of violence to 'keep women in their places.'[40]

Acid/corrosive substance related offences are covered by several separate laws. For instance, the Penal Code of 1860, in Sections 324 and 326, contains punishment for voluntarily and without provocation causing hurt and grievous hurt respectively with any instrument as well as 'by means of fire or any heated substance, or by means of any poison or any corrosive substance,' 'or by means of any substance which it is deleterious to the

[40] Kalantry, Sital and Kestenbaum, Getgen (2011). Combating Acid Violence in Bangladesh, India, and Cambodia; Avon Global Center for Women and Justice and Dorothea S. Clarke Program in Feminist Jurisprudence. New York. Paper 1.
http://scholarship.law.cornell.edu/avon_clarke/1

human body to inhale, to swallow, or to receive into the blood….'. Punishment for simple hurt is imprisonment of either description for a term of up to three years or with fine or with both and in the case of grievous hurt, imprisonment for up to ten years along with fine. In 1984, an additional Section 326A[41]was added to the Penal Code Section. In 2002 two laws were enacted to deal with acid related crimes. The *Acid Oporadh Daman Ain*, 2002[42] (Acid Offences Prevention Act, 2002) deals with acid-related offences committed against persons of all genders and ages. The Act of 2002 provides for special Tribunals called Acid *Oporadh Daman* Tribunals to try acid-related offences. The definition of acid related offences provided for in both the Acts of 2000 and 2002 are the same. The Acid *Niontron Ain*, 2002 (Acid Control Act, 2002)[43]was enacted with the purpose of controlling the import, production, transportation, hoarding, sale and use of acid; to prevent the misuse of acid as a corrosive inflammatory substance and to provide treatment to victims of acid violence, rehabilitate them and provide them with legal assistance. Under this law two Rules have been made – The Acid (Import, Production, Stock, Transportation, Sale and Usage) Rules, 2004 and the Medical Treatment, Legal Aid and Rehabilitation of the Persons Injured by Acid, Rules 2008. It is to be noted that both the Acid *Oporadh Daman Ain*, 2002 and the NOSNDA 2000 are special laws and each have an overriding effect on other laws under Section 3 of both Acts. This leads to confusion as to their application in terms of acid or other similar substance related offences.

❖The *Nari O Shishu Nirjatan Daman Ain* of 2000 also deals with violence committed by corrosive, burning and poisonous substances in Section 4. The Section deals with the punishment for offences committed by such substances and provides for capital punishment or rigorous life imprisonment as well as fine not exceeding one lac taka for death or attempt to cause death of any woman or child by acid or other corrosive substances. The same punishment is prescribed for grievous injuries such as severe damage or disfigurement to sight or hearing or limb or to sexual organs and so forth. For lesser but still serious injuries, such as damage to any limb, joint or part of the body, the perpetrator shall be punished with rigorous imprisonment which may extend to fourteen years but shall not be less than seven years and shall also be liable to pay a fine not exceeding fifty thousand taka. Attempts to cause injury by corrosive, scalding, poisonous and other acidic substances is punishable by

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[41] Section 326A was inserted by section 2 of the Penal Code (Second Amendment) Ordinance, 1984 (Ordinance No. LXIX of 1984)

[42] Act No.2 of 2002.

[43] Act of 1 of 2002.

rigorous imprisonment of either description which may extend to seven years but will be not less than three years and also with fine not exceeding fifty thousand taka.[44]

Provision for providing compensation for survivors/victims of acid/corrosive, scalding, burning and poison related crimes or for their heirs was introduced by Section 4. Survivors/victims or their heirs shall be entitled to the amount of fine imposed for an offence under sub-section (4) of the aforementioned Section which shall be realised from the convicted person's existing property or in the case of his death, from property left at his demise.

In the Workshop, stakeholders spoke of the need for a more comprehensive definition of the substances referred to in Section 4. Tribunal Judges and other justice sector participants from Districts within all the Divisions discussed at length about the lack of clarity of Section 4. It is unclear, according to them,
as to what exactly corrosive, poisonous, burning substances mentioned in that Section include. In Workshop 4, Judges spoke about the difficulties faced in giving convictions due to such confusion. In many cases, according to their experience, women are burned or scalded with boiling water or kerosene, but these substances do not fall within the definition of corrosive or burning substance contained within Section 4. In the Barishal Divisional Workshop (Workshop 2) attendees also spoke about women and children being potentially injured by other heated liquids such as oil and said that the scope of Section 4 needs to be widened.
The Law Commission in its Concept Paper on the Draft of *Nari O Shishu Nirjatan Daman Ain*, 2021[45] explains that there are numerous reports of horrendous torture on domestic servants, both adults and children, by their employers through the use of boiling liquids such as rice water and with heated implements such as *Khunti* (cooking utensil). These may be difficult to try unless the section specifically includes such instruments, implements and liquids within the law.

In Workshop 3, discussants spoke about cases where the burns injuries are caused by the use of hot utensils but this is also not included in the law. It is proposed that the definition of the substances should be expanded to include, for example, injury or death caused by corrosive/scalding/boiling liquids as well as heated metallic objects. In this workshop, the

[44] Section 4 (3).
[45] Op. cit. the Law Commission of Bangladesh (2020).

recommendation was made that in the NOSNDA, as in the Penal Code, illustrations may be used to explain the nature of an offence.

Trafficking of women and children: now omitted

Previously, the Act of 2000 dealt with trafficking-related offences. With the enactment of the *Manob Pachar Protirodh O Daman Ain* [46](Human Trafficking Deterrence and Suppression Act) in 2012, the NOSNDA no longer has jurisdiction over such offences. Sections 5 and 6 of the NOSNDA 2000 were omitted in 2012 by Section 47(1) of the *Manob Pachar Protirodh O Daman Ain* of 2012.

5.2. ABDUCTIONS: ANALYSING the PROVISIONS of the LAW:

The *Nari O Shishu Nirjatan Daman Ain* 2000 provides for punishment for the offences of abduction as well as for demanding ransom. Under Section 7, any person who abducts a child or a woman for the purpose other than abduction for an offence under Section 6 of the Human Trafficking Deterrence and Suppression Act, 2012, shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years and also with fine.

Under Section 8 of the NOSNDA, if the abduction is for the purpose of demanding ransom, the punishment is death or rigorous imprisonment for life with additional fine.

The two Sections above are silent on the consequence and punishment of abduction leading to murder which is what often occurs. Judges of the NOSND Tribunal, participating in the present study, addressed the issue of murder after abduction which is not covered by the Act leading to confusion if such related offences take place. According to them, in many instances of abduction, the abductee is killed. However, the Act is silent regarding such connected offences. In the Act, the word '*Opohoron*' is used to signify abduction and is used without any regard to the age of the victim like it is in Section 361 of the Penal Code of 1860. Section 2(b) of the Act of 2000 defines 'Abduction' as taking a person from one place to another by coercion, inducement, instigation or misrepresentation.

Section 364 of the Penal Code, 1860 deals with the offence of 'Kidnapping' or 'Abducting' in 'order to murder' and the punishment prescribed is 'imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine'. In the

[46] Act. No. 3 of 2012.

case of abduction and consequent murder, the State must proceed under the Penal Code 1860 since the NOSNDA does not provide for such an offence. The inconsistency is that in the case of abduction with the purpose of getting a ransom, the NOSNDA prescribes the death penalty or life imprisonment with additional fine as penalties whereas abduction or kidnapping with murder under the Penal Code is punishable by life imprisonment or the maximum sentence of ten years imprisonment. The Penal Code also provides for varying degrees of punishment for kidnapping or abduction committed for different purposes. Punishment also varies according to the age of the victim. On the other hand, abduction as construed by the Act of 2000 is straightforward and does not go into intricacies regarding the purpose of the offence or the age of the victim.

The inconsistency is apparent and the relevant Section under NOSNDA needs to be reformed to allow Tribunal Judges to address the above mentioned offences. The stakeholders strongly recommended that provisions should be added within the NOSNDA which provides for punishment for abduction leading to murder.

5.3. OFFENCES OF RAPE : CRITIQUING the LAWS:

According to the Judges of NOSND Tribunals, who participated in the present study, the most common cases which come before them are those related to rapes, gang rapes and dowry related violence. Legal Aid Officers, from Sumanganj and Habiganj participating in the Sylhet Divisional Workshop, shared that the number of female legal aid seekers is more than males and that in all districts one of the main issues women come to seek advice for is rape. These women are frequently advised to file cases in the Tribunal.

Despite the imposition of the harshest of punitive measures for the offence, incidents of rape continue unabated in Bangladesh. According to *Ain O Shalish Kendra* documentation unit,[47] during the period of January to December 2022, 936 women were raped; there were 158 attempted incidents of rape; 47 women died after rape and 7 committed suicide after rape.[48] Survivors included 60 children below the age of 6 and 97 between the ages of 7 to 12.[49] Media reports show that violence against women and children has increased remarkably in the last several years and rape incidents continue unremittingly. Following news reports, ASK documented 734 incidents of rape during the nine month period of January to September 2022. [50]

[47] https://www.askbd.org/ask/2023/01/03/violence-against-women-rape-jan-dec-2022/
[48] Ibid.
[49] Ibid.
[50] https://www.askbd.org/ask/2022/10/04/violence-against-women-rape-jan-sep-2022/

The present chapter examines the provisions of the NOSNDA which deals with rape and the punishments for rape. It also delves deeper into the way rape is defined by the law in Bangladesh, the lacunas related to such definition as well as comparing the law applicable in India. The punishments imposed for the offence of rape by the Act of 2000 is also critically analyzed, based on the inputs of the stakeholders of the study.

The *Nari O Shishu Nirjatan Daman Ain* 2000 in Section 9 contains provisions related to the punishment etc. of rape and other incidental issues. The definition of rape used by the Act of 2000 is the same definition contained within the Penal Code of 1860. Section 2(e) of the NOSNDA 2000 states that rape under the Act of 2000 means, subject to section 9 of the Act, 'rape' as defined by section 375 of the Penal Code, 1860.[51] The definition of rape contained in the Penal Code, Section 375 states:

> A man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:
>
> Firstly. Against her will.
> Secondly. Without her consent.
>
> Thirdly. With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.
> Fourthly. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
> **Fifthly. With or without her consent, when she is under fourteen years of age[52].**
> Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.
> **Exception. Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.**

Initially, as mentioned earlier, the NOSNDA of 2000 defined a child as a person under the age of fourteen. Subsequently this age was increased to sixteen by the NOSND (Amendment) Act of 2003. Although the definition of rape contained in the Act of 2000 is based on the definition of the offence given in the Penal Code, it is made 'subject to the provisions of Section 9' [Section 2 (uo)] which means that all amendments made to Section 9 of the NOSNDA of 2000 will automatically be included as part of the Section.

[51] Act XLV of 1860.

[52] Emphasis given to show what role age plays in determining culpability for the offence of rape under the Penal Code, 1860.

5.3.1. Analyzing the Definition of Rape in Bangladesh and Comparison with India:

The understanding of what legally constitutes rape in Bangladesh remains exactly as it was perceived decades ago by the British in the Penal Code of 1860. In all the workshops, the definition of rape was extensively discussed by different stakeholders. It was unanimously agreed that the definition of rape needs to be upgraded since the nature of the offence has changed considerably. According to participants of the Barishal Divisional Workshop (Workshop 2), Section 2(f) needs immediate amendment based on different directions provided by the High Courts. For instance, in the case of The State v. Md. Moinul Hoque and Others, the High Court directed that the definition of rape shall be amended to include any act of a sexual nature which is committed towards a person in circumstances which are coercive. Sexual violence shall not be limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.[53] In Workshop 3, the suggestion was that should be a comprehensive definition of rape within the NOSNDA without reference to the Penal Code.

The definition of rape under Section 375 of the Penal Code of Bangladesh which is followed by the *Nari O Shishu Nirjatan Daman Ain* is narrow and problematic in the sense that it leave many acts outside of the definition of rape. Judges, medical experts and other participants of the four Workshops all discussed the lack of clarity and definition as to what constitutes 'penetration'. 'The rape offence is narrowly applied to include peno-vaginal penetration only. Other forms of sexual penetration are covered under "unnatural offences" or sexual oppression/ assault, which carry significantly lower penalties'.[54] Study participants recommended that penetration by foreign objects, anal penetration and many other forms of penetration which do not fall within the traditional definition of rape should be specifically included. In Workshop 3, a Tribunal Judge spoke of a wife coming to the Tribunal with a

[53] 21 BLD 2001 (HCD) 485.

[54] Op. cit. at p.19 https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/3578/attachments/original/1618920590/Sexual_Violence_in_South_Asia_Legal_and_other_Barriers_to_Justice_for_Survivors_-_Equality_Now_-_2021_%281%29.pdf?1618920590

complaint of sodomy against the husband. The problems regarding such complaints are manifold and confusion persists in the law as it exists. The law does not recognise marital rape above a certain age and the offence does not fall within the definition rape since there is no peno-vaginal penetration.

At the very first Workshop with judicial sector actors from all over the Sylhet Division, Sharmin Nigar, member Research Team of BWJA and then Judge of the *Nari O Shishu Nirjatan Daman* Tribunal of Rajbari emphasized on the necessity of 'following the directions of the High Court Division relating to filing of rape cases in any thana, online filing, action for prompt medical tests and so forth should be followed by Magistrates and all others concerned'. She also spoke about the need to change the definition of rape to cover sodomy, penetration by objects oral sex etc.

Definition of rape under Indian Law: Our neighboring country India, which also follows the same Penal Code, has overhauled its definition of rape. In India, under the reformed Section 375, a
man is said to commit "rape" if he—
(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

Although both the Bangladeshi and Indian laws refer to the necessity of lack of consent for an act to fall within the definition of rape, consent has been qualified broadly in the latter case. In the case of consent, the Bangladesh Penal Laws including the NOSNDA is unclear. The Indian Act clarifies that consent means "an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act.
The Indian law also clarifies that an act will be construed as rape even when the female has consented 'when, at the time of giving such consent, by reason of unsoundness of mind or

intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent' or if 'she is unable to communicate consent'. It should be noted again that: Bangladeshi law does not deal with the issue of incapacity to provide consent at all, in the case of adult victims.[55]

The Indian law also makes clear 'that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity'. India and Bangladesh in their explanations to Section 375 have both added that consent will be irrelevant in certain circumstances. In the Bangladeshi Penal Code, consent of the victim is immaterial when it 'has been obtained by putting her in fear of death, or of hurt'. India has qualified this further by adding that such fear may be of death or hurt not only to the female herself but also to 'any person in whom she is interested.' Additionally, the Indian Code raises the age of consent to 18 years, when it is 16 under the applicable NOSNDA of 2000. Section 375 of the Penal Code of Bangladesh continues to provide an exception by stating that sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape; whereas in India this age has been extended to fifteen.

In addition to defining consent, the IPC, in Section 375 clarifies that, for the purposes of this section, "vagina" shall also include labia majora"; which explanation is missing in the Bangladeshi context.
From the above it is clear that in Bangldesh, the 'colonial definition of rape in the Penal Code, does not define penetration, fails to elaborate the meaning of consent, or how consent can be proved. The law still requires proof of physical resistance.'[56] Echoing all of the above and especially based on the opinions of the Judges of Tribunals from all over Bangladesh, the need to expand the definition of what constitutes rape needs immediate attention.

5.3.2. Penalties for rape: Rethinking the Punishments:

Section 9 (1) of the NOSNDA prescribes punishments for the offence of rape and states:

> If any man rapes a woman or a child, he shall be punishable with death or with rigorous life imprisonment and shall also be liable to pay a fine.

[55] Op. cit. Equality Now and Dignity Alliance International (2021) at p.23.

[56] Yasmin, Taslima in Op. cit. BLAST at p.10.

Before 2020, the maximum punishment for rape was life imprisonment with additional fine. By an amendment in 2020, death penalty was added as one of the penalties for the crime of rape itself. Previous to such amendment, under Section 9(2) of the Act, death penalty was prescribed as one of the punishments for rape only in the case of death occurring as a consequence of rape or activities connected to rape or gang rape. Additionally, the *Nari O Shishu Nirjatan Daman (Shongshodon) Ain* of 2020 inserted the provision for death penalty not only for the act of rape itself but also for attempt to injure or cause death after rape. Section 9 (4) (a) of the Act makes such attempts punishable by death or rigorous imprisonment for life, along with additional fines. Prior to such an amendment, attempts to cause hurt or death was punishable by life imprisonment as the maximum punishment.

Under Section 9 (2), punishment is prescribed for the offence of murder as a consequence of or related to the offence of rape. It provides:

> If as a consequence of rape by any person or by any other act by him after the rape, the woman or child victim of the rape dies, such person shall be punished with death or with rigorous imprisonment for life and also with fine not exceeding one lac taka.

The above section has been criticised on the ground that it has 'been formulated in such a fashion that it creates additional burden on the prosecutor to prove the guilt which, in turn, leads to failure of conviction.'[57] For example, section 9 (2) of the *Nari O Shishu Nirjatan Daman Ain*, 2000 provides that if death is caused as a result of rape or post-rape acts, the sentence is death or life imprisonment. The problem with such formulation of the crime is that the prosecution has to prove two inter-connected crimes, i.e., rape and death as a consequence of the rape or rape related acts. The prosecution may prove these two crimes separately, i.e., rape and murder, but this section imposes the additional burden of proving that rape and/or other acts directly caused the death, making the task of conviction more problematic.[58] Again, In the case of gang rape, according to Barishal Divisional Workshop participants, death or injury is a pre-condition for punishment, which they opined, should be omitted.

Under 9 (3), if 'injury or death is caused as a consequence of gang rape, each and every member of the gang shall be punished with death or rigorous imprisonment for life and also with fine not exceeding one lac taka'. There is lack of clarity as to what the punishment is

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[57] Tania, Sharmin Jahan (2007). "Combating Violence Against Women: A Critical Assessment of Legal Framework" in Special Issue: Bangladesh Journal of Law; November 2007; pp.199-236 at p.215. http://www.biliabd.org/article%20law/Vol-7%20special%20issue/Sharmin%20Jahan%20Tania

[58] Ibid.

when potentially there is a gang rape but no death or injury is caused to the survivor. This should be clarified, according to the respondent Judges.

There was unanimity of opinion amongst the Judges and other justice sector stakeholders participating in this research that as regards rape cases, there should be different slabs or tiers of punishment for the offence – depending upon the heniousness of the crime, types and categories of rape and other extraneous circumstances such as the age of the survivor and so forth. Rahman argues against 'imposing the same level of penalty for all forms of rape' and says:

> The fundamental flaw with the law is its assumption that all rapes are equally grave. The absence of judicial discretion in sentencing in rape cases sometimes forces judges to treat unequal situations equally and denies the locus of victim. Mandatory sentences in practice contribute to a low conviction rate. In a recent study it was found that judges admitted to feeling compelled to acquit offenders due to mandatory sentencing."[59]

The Judges of NOSND Tribunals participating in the Workshops expressed their belief that they ought to possess the discretion of imposing different punishments depending upon the severity of the offence. According to them, Sections 9 (1) (2) and (3) include the same punishment which is unusual and influences conviction. The Section should be amended by providing the Judge the discretion to impose fitting punishment. Further, as mentioned earlier, not only should the inclusion of death or injury as a pre-requisite for punishment in the case of gang rape be omitted, punishment for gang rape and death caused due to gang rape should be separated.

A rational sentencing policy proportionate to the magnitude of harm inflicted on society is pre-requisite for a sound criminal justice system. But there is a discernible trend of prescribing harsh punishment to solve the 'law and order' situation ignoring the social dimension of the problem.[60]

The Law Commission of Bangladesh in its 2010 'Report on the Amendment of Certain Sections of the Nari-o-Shishu Nirjatan Daman Ain 2000'[61] reported that there were inconsistencies as regards punishment imposed under the Act of 2000. The Second chapter

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[59] Rahman, M, (2019) "Judicial Attitudes Towards the Death Penalty in Bangladesh", Bangladesh Institute of Law and International Affairs (BILIA) cited in BLAST (2019) at p.19.

[60] Faruque, Dr. Abdullah Al (2021a). Goals and Purposes of Criminal Justice System in Bangladesh; 1-31 at p.10 https://www.biliabd.org/wp-content/uploads/2021/08/Dr.-Abdullah-Al-Farooque.pdf

[61] Op. cit. The Law Commission of Bangladesh (2010).

of the proposed law, 'The Prevention of Violence Against Women 2021[62] by the Law Commission of Bangladesh provides for different tiers or slabs of punishment for rape depending upon the gravity of the offence. Different punishments are prescribed for victims of rape under 14 years of age: under shelter or protection; by persons in a relationship of trust or in a fiduciary relationship or by taking advantage of any relationship by erosion of trust.

The proposed law of the Law Commission also contains separate punishments for rape due to communal violence or during pregnancy or when the victim is unable to consent; consensual intercourse with a child above the age of 14 (the proposed law does not provide exceptions for if the parties are married thereby criminalizing marital rape). Punishments should also depend on the type and extent of injury caused.[63]

5.3.3. Rape against males, necrophilia and other types of rape.

In all the workshops for the present study, the issue of rape of males came up. Tribunal Judges said that they sometimes receive cases involving the rape of male children and nowadays such incidents are being reported more. Since the Ain or Act of 2000 deals with children under the age of 16, the law includes male children and offences committed against them. Difficulties arise in cases of male rape as regards the consideration of the offence itself. For medical examinations, an OCC doctor for this study said, if the survivor is below the age of 12, male forensic doctors do the examinations.[64]

The definition of rape provided by Bangadesh as well as the Indian Penal Codes fails to take into account cases of rape against males of any age or against persons who do not fall within the usual categories of binary genders. Males, especially male children, often face serious GBV. The present study elicited that when a case of forceful or non-consensual sodomy against young boys come before the Tribunal they are forced to try and use the definition of rape contained in Section 375, although the latter specifically only deals with rape committed against a woman by a man by penile penetration. In the case of Abdus Samad (Md) alias Badsha vs. State[65] it was held:

> Since a child under the age of sixteen is not in a position to give consent to sexual intercourse or sodomy, the sodomy committed by a man even on a consenting male-child will also come under the mischief of rape punishable under section 9(1) of the Ain.

[62] The Law Commission of Bangladesh (2020). Recommendation and Draft of the Nari Nirjatan Daman Ain 2021; Final Report (20/12/2020).
[63] Op. cit. The Law Commission of Bangladesh (2020).
[64] Workshop FOUR.
[65] 19 BLC 171.

> The criminal proceedings in such cases must be instituted and proceeded against the perpetrator man under the provisions of the Ain.

In two aspects this judgement may be questioned. Firstly, the offence of rape as used by the Ain only refers to offences committed against any female and secondly, there is, under the applicable law, no scope to refer to consensual sodomy since Section 377 of the Penal Code makes the act, consensual or not, punishable.

Homosexuality is a taboo subject in Bangladesh with the Penal Code of Bangladesh still considering such acts as offences and providing punishments for the crime of sodomy under Section 377. In India such consensual relations between same sex adults was decriminalized when in 2018 the Supreme Court struck down Section 377. Reforms in Bangladesh may also be considered with emphasis on consensual acts.

In recent years incidents of rape against men and boys are beginning to be reported.While there is no nationally representative or documented data on violence experienced by adolescent boys, anecdotal evidence and small-scale studies point to violence experienced by adolescent boys as well.[66]

Despite many incidents reported of rape against male victims there is no provision for dealing with such offence in the applicable laws. The *Nari O Shishu Nirjatan Daman Ain* deals with offences against women and children ---the latter includes boys below the age of sixteen. However, even when the victim of a male rape is below the age of 16 Section 9 cannot legally apply since the definition of rape under 375 of the Penal Code specifically mentions that the offence is to be committed against any woman. One approach is to file a case in the Sessions Court under Section 377 of the Penal Code. Section 377 however deals with voluntary acts and does not mention non-consensual sexual acts. It reads:

> Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section

Judges of Tribunals from different Districts spoke about several cases of necrophilia they have encountered, commenting that there is no adequate provision in the Act of 2000 for

[66] GoB (2016). National Strategy for Adolescent Health 2017-2030; Maternal and Child Health (MCH) Services Unit, Directorate General of Family Planning; Ministry of Health and Family Welfare (MoHFW) (2016) at p.12.

such offence. Necrophilia consists of having sexual intercourse with a corpse. According to a Tribunal Judge from Chattogram Division, 'this sort of offences take place in the morgue and constitute disrespect to the dead body. The offence should be defined in the law of 2000'. It should be considered to be within the offence of rape was the opinion shared in Workshop 3.

5.3.4. Death Penalty for rape and related offences: A Critique:

In 2020, as mentioned above, the death penalty was included as one of the punishments for the crime of rape. Initially capital punishment was not within the law for the offence of rape itself. To reiterate, capital punishment was one of the prescribed punishments only in cases of death of the victim as a consequence of rape but not for the crime of rape itself.

In view of several highly publicized incidents of brutal rapes and massive backlash from the public, the Bangladesh Government inserted the death penalty as a potential punishment along with rigorous life imprisonment for the offence of rape itself by the *Nari O Shishu Nirjatan Daman (Shongshodon) Ain*, 2000. In 2020, two incidents along with regular local media reports on rape perpetrated by men closely involved in politics had ignited massive discontent among the public.[67] In a bid to appease the country, the government introduced the death penalty for the offence of rape itself. This insertion has led to much debate, with many considering that it was only an eye wash by the Government, which in reality would have little impact on deterring potential rapists. In Workshop 1, participants were of the opinion that the death penalty or life imprisonment provided for under Section 9 (1) can reduce the offence of rape only if the law is well circulated and duly implemented. In the same workshop, while discussing the major drawbacks which impede access to justice, lack of awareness regarding laws dealing with GBV and information relating to available legal assistance was identified. Whilst having legal awareness as to the rights and remedies provided by law is important, the participants of the Sylhet Divisional Workshop also identified several socio-cultural causes which act as barriers to accessing the Tribunals. This is especially true in cases relating to sexual violence where 'fear of social stigmatization' prevents survivors from coming forward.

The successful deterrent effect of imposing the capital punishment for the crime of rape has been questioned. To the question posed in the questionnaire for the Judges of NOSND Tribunals which queries as to whether the inclusion of the death penalty or life imprisonment would decrease the incidences of rape most Judges answered in the negative. Judge of the

[67] https://theowp.org/bangladesh-introduces-death-penalty-for-rape/

Naogaon NOSNDT said clearly: 'There is no evidence in the world that offences decrease because of the fear of punishment.'The Guardian cited Amnesty International which pointed out that the issue in Bangladesh was not the severity of punishment for rape, but a failure of the courts to bring convictions in rape cases and the victims' fear of coming forward.[68]

Only a small number of rape cases end up before the Tribunal with the victims/survivors seeking justice. Studies have shown repeatedly that the majority of rape victims and survivors still do not come to court to seek redress.[69] One of the major concerns and questions this present research aimed to address were the reasons why victims of such acute sexual violence avoid seeking formal redress. There have been a number of researches and studies aimed at addressing the above question but the present study, as mentioned earlier, is unique in that it takes into account the opinions of judicial actors from all eight Divisions of the country.

5.3.5. Marital Rape and Statutory rape----the grey areas:

Bangladeshi law explicitly permits marital rape of adult women in all circumstances, with no exception even for when the parties are separated.[70] Adult in the context of the *Ain* refers to girls or women above the age of sixteen. To reiterate the penalty prescribed for rape which has already been mentioned above, under Section 9 (1), the punishment for any man who rapes a woman or a child, shall be the death penalty or rigorous life imprisonment with payment of additional fine. An explanation is added to the above which states the following:

> Whoever has sexual intercourse **without lawful marriage**[71] with a woman not being under sixteen years of age, against her will or with her consent which has been obtained by putting her in fear or by fraud, or with a woman not being above sixteen years of age with or without her consent, shall be said to commit rape.

Thus the age of statutory rape is sixteen but even if a wife is raped by her husband, he will not be held guilty of rape if she is below or above the age of sixteen.

The Age of Consent under the NOSNDA is therefore 16; raised from 14 in 2003 by an amendment to the law. The age of consent is the age at which a person under the law is considered to be old enough to consent to sexual activity. So a girl in Bangladesh who is

[68] https://www.theguardian.com/world/2020/oct/12/bangladesh-approves-death-penalty-for-after-protests

[69] https://www.blast.org.bd/rapelawreform

[70] Op. cit. Equality Now and Dignity Alliance International (2021) at p.25.

[71] Emphasis added.

below the age of 16 and participates willingly in a sexual act is considered to be a victim of statutory rape, provided of course if she is not married to the person. To clarify, under the NOSNDA, the statutory age for rape is above 16 and age of marital rape is 'under sixteen years of age.'

The Supreme Courts of Bangladesh have been pro-active in dealing with rape cases sensitively and have given several judgments which aim to secure the rights of survivors of rape.

5.3.6. Impugning the character of the survivor/victim of rape:Critical Law Reform:

Like the ancient Penal Code's definition of rape, the Evidence Act of 1872 continued until very recently, to contain discriminatory provisions which allowed the defense to adduce evidence as to the character of the alleged survivor of rape in order to question the reliability of a witness. Section 155(4) of the Evidence Act 1872 had, until very recently, stated that in a case of rape ".... it may be shown that the prosecutrix was of generally immoral character". Again Section 146(3) of the Evidence Act of 1872 previously allowed the asking of questions during cross examination that may have injured the character of the witness in order to verify their credibility.

It has been the usual practice for survivors to be often asked offensive questions about her sexual history and her sexual relationships, especially if any with the perpetrator. The defence lawyer aims to discredit her by trying to prove that she is of bad character and thereby her consent is to be assumed. 'Survivors are asked scandalous questions which makes them puzzled and frightened and thus they are re-victimized,' was the opinion of attendees of Workshop 1.

Section 155(4) and 146(3) of the Evidence Act, 1872 have been under debate and challenged for several decades and sought to be repealed on the ground that it further discouraged a survivor from pursuing criminal charges. According to the UN Women Guidelines, legislation should include a definition of sexual assault which is not framed as a crime of honour or morality.[72] The discriminatory provisions of the law of Evidence, applicable in Bangaldesh, have long been considered to be a colonial hangover which resulted in survivors of rape being further violated during the legal process. In 2022, the government undertook the

[72] Ibid.

revolutionary process of amending the relevant impugned sections of the Act of 1872. Crucial changes have been made to the ancient Evidence Act of 1872 by the Evidence (Amendment) Act, 2022[73] which was passed by the Parliament on the 3rd of November 2022. According to the Law Minister Annisul Huq: "This section was stigmatising for women. It has been amended, which will bring honour to them and the country."[74]

By Section 20 of the Evidence (Amendment) Act of 2022, a proviso has been added to Section 146(3), which reads:

> Provided that in a prosecution for an offence of rape or attempt to rape, no question under clause (3) can be asked in the cross-examination as to general immoral character or previous sexual behaviour of the victim:
> Provided further that such question can only be asked with the permission of the Court, if it appears to the Court necessary for the ends of justice.

Section 155(4) which allowed for impugning the character of rape survivors has been omitted by Section 21 of the Amendment Act of 2022.

5.3.7. Veracity of the Testimony of the Victim and Importance of Medical Evidence in the case of rape:

Except for a few cases, medical evidence constitutes a crucial part of the investigation and prosecution of crimes under the NOSNDA. This is especially true in cases of sexual violence such as rape and gang rape. In all the Workshops, importance was placed on the role of Medical Officers; medical certificates and related issues and exhaustive discussions took place. The Act of 2000 in Section 32 contains directives regarding the collection of medical evidence. Problems were identified by relevant stakeholders in connection to collection of medical evidence. In Barishal, for example, a host of gaps were identified in connection to the proper presentation of medical evidence. These include in brief – skewed doctor patient ratio; absence of Medical Officers; insufficient number of female medical officers; delays in examination and collection of evidence; incomplete and sometimes fraudulent medical certificates being submitted and so forth.

The question which frequently comes before the court is whether the existence of forensic evidence or physical evidence is essential for conviction in rape cases. Medical examination

[73] Act No. XX of 2022.

[74] https://thefinancialexpress.com.bd/national/bangladesh-amends-colonial-law-disallowing-questioning-of-rape-victims-character-sexual-behaviour-1667538997

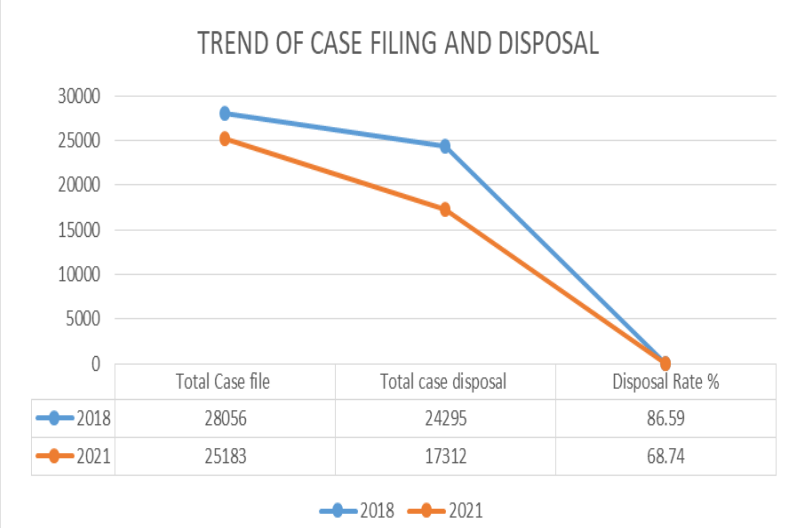
of survivors or victims of rape, as has been mentioned elsewhere is of critical importance. However, such evidence may be absent or not obtained properly and the question then arises as to the proof of the offence.'A look at the case law reveals that in many reported cases, judges accord high value to medical evidence in ruling on the statutory factual elements (e.g. sexual intercourse, penetration, consent, age of victims, and physical capability of the accused). Excessive reliance on such medical evidence however, risks undervaluing victims' sole testimony and circumstantial evidence, which in turn could reduce the chance of successful prosecution in many instances.'[75]

The Court in the case of Saiful Islam (Md.) vs. The State[76] was clear that in 'a case of rape, the statement of the victim deserves the paramount consideration. When the victim herself is saying that nobody committed rape on her it is not the duty of the Court to impose aspersion on her chastity that she had become the victim of rape'.

The Appellate Division in the case of State vs. Md. Polash gave the opinion that medical examination of the person of the prosecutrix is not a sine qua non[77] to prove rape.[78]

5.3.8. Low Rate of Convictions for rape:

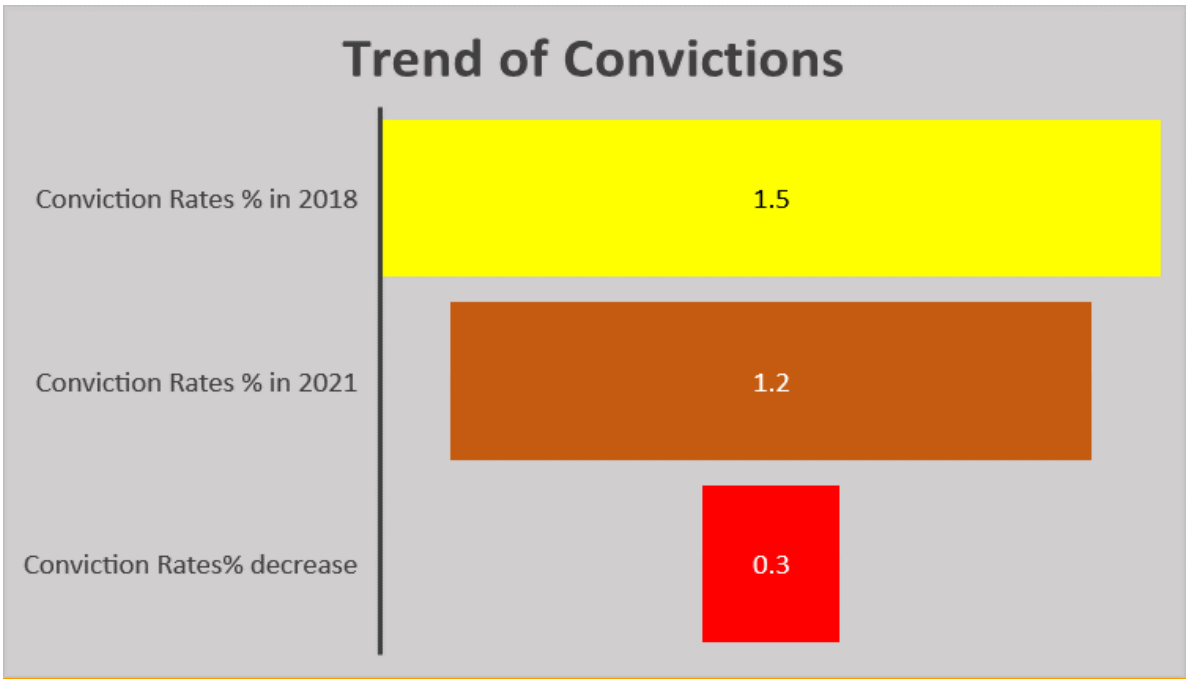
From the questionnaire survey undertaken for this study a pattern was found regarding the filing and disposal of cases. The following Table illustrates the general trend of filing and disposal of cases instituted under the NOSNDA in the eight Divisions during the period of 2018 to 2021:



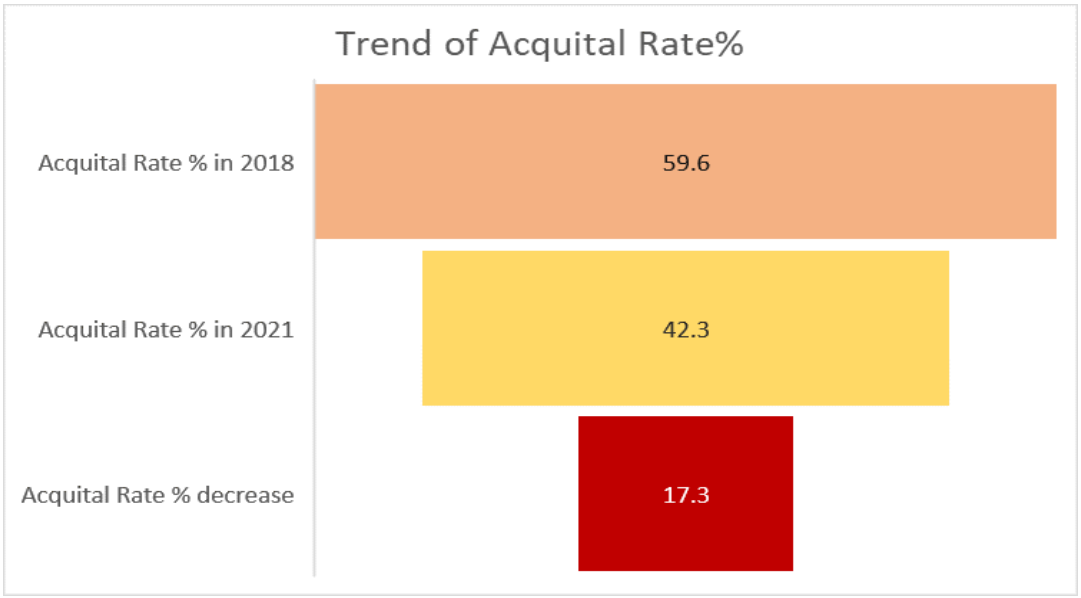
	Total Case file	Total case disposal	Disposal Rate %
2018	28056	24295	86.59
2021	25183	17312	68.74

[75] Op. cit. UNDP and IDLO (2015) at p.28.
[76] Saiful Islam (Md.) vs, The State 71 DLR 2019 6.
[77] *Sine qua non* in Latin refers to a necessary or indispensable requirement.
[78] State vs. Md. Polash 3 CLR 2015 (HCD) 233; 20 BLC (AD) 348.

As can be seen, the disposal rates are high. However, as has been predicated in several studies, the conviction rate is extremely low. This general low trend of conviction, based on the questionnaire survey, can be seen in the Table below:



The Survey also shows that compared to conviction rates the acquittal rates are considerably high. The Table below represents the rates of acquittals:



Based on all the above statistics and the opinions elicited from the Workshops arranged, it continues to be a matter of great and persistent concern that despite ample anecdotal as well as hard evidence asserting the consistent frequency of rapes in Bangladesh, the number of convictions for such offence is abysmally low. Naripokkho, a women's rights organisation, found that in six districts between 2011 and 2018, only five out 4,372 cases resulted in a conviction. Overall, only 3.56% of cases filed under the Women and Children Repression Prevention Act have ended up in court, and only 0.37% have resulted in convictions.[79] Convictions ideally act as a deterrent to future perpetrators. The existence in our law books of stringent laws to combat GBV makes the issue more confusing. The present study found that the reasons for the low rates of convictions are manifold and complicated.

The stakeholders of this study discussed the many grounds responsible for the low rate of convictions for offences under the NOSNDA. In the Sylhet Workshop, the main reasons identified for the acquittal of the accused included compromise between the parties, unavailability of witnesses, negligence of the prosecution, defective investigation, faulty medical reports as well as destruction of *alamot* due to delayed reporting of the incident. In Workshop 4, Judges and other judicial sector actors from Dhaka, Mymensing and Rangpur Divisions identified, for example, the general lack of knowledge and awareness of laws, social taboos, impunity provided to criminals by influential people in society as possible reasons. There are many reasons during the trial process itself which hamper successful convictions and the stakeholders identified these to include Tribunals being overburdened by cases; lengthy processes; faulty prosecution of cases; lack of monitoring of prosecution services, non-availability of witnesses and so forth. Even when rape victims manage to reach the Tribunals and trials take place, the number of conviction are low due to the grounds mentioned above and many others.

The vast majority of rape victims and survivors are thus precluded from seeking justice, for one reason or another, including the discrimination inherent in the existing rape laws and their application which ultimately contributes to a culture of impunity for rape.[80]

[79] https://www.theguardian.com/world/2020/oct/12/bangladesh-approves-death-penalty-for-after-protests
[80] https://www.blast.org.bd/rapelawreform

Echoing the findings of this study other authors have also identified similar reasons for the low rate of convictions. According to Harvard International Review,[81]

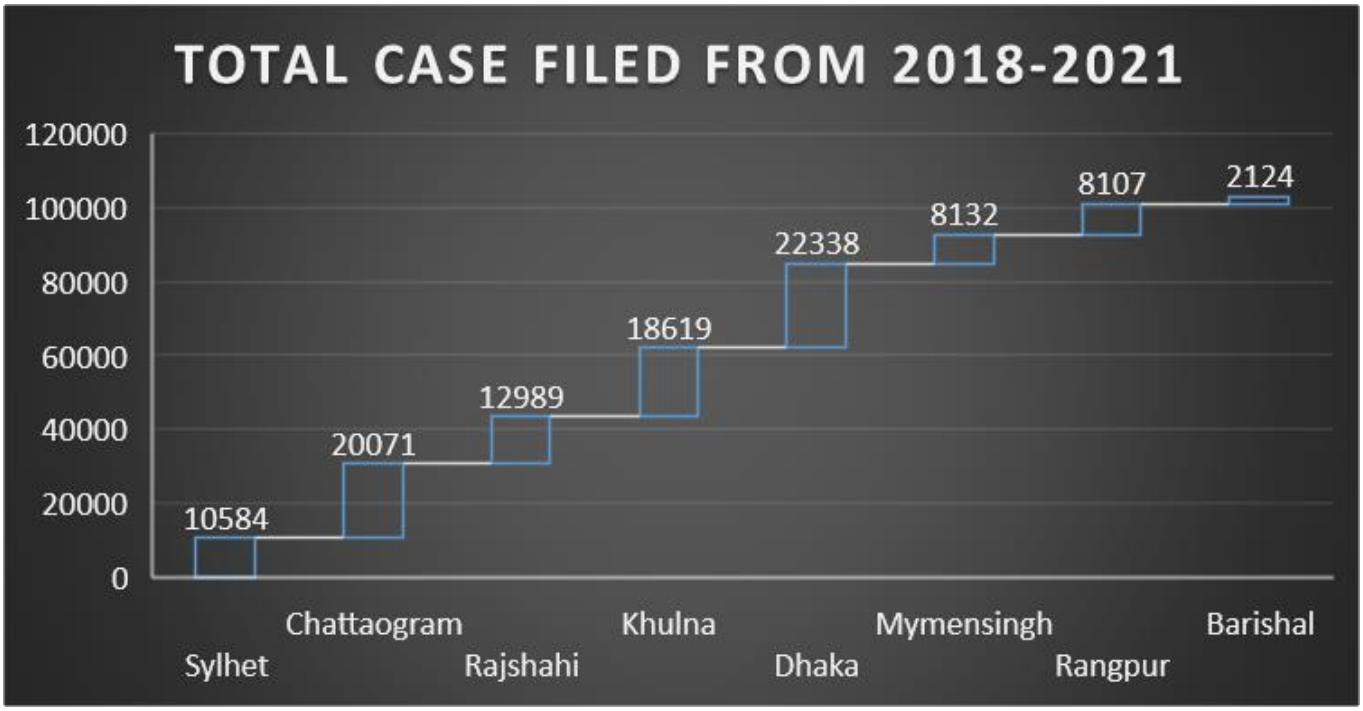
> (t)here are numerous reasons why prosecutors do not get convictions: illegitimate political intervention, the complex and slow trial system, a corrupt administration, and, in some cases, intentionally false lawsuits.

Criminal convictions require a higher degree of proof and there must be evidence to support such convictions. For the purpose of proper administration of criminal justice, the processes which operate to bring an accused to Court for the crime of rape must be speedy and of such a nature that the victim is not further victimized. Even when survivors file a complaint, prosecution is very rare and takes years to complete.[82] A Tribunal Judge from Sylhet participating in Workshop 1 pointed out that in reality the rate of disposal of cases brought before the Tribunals are not insignificant but very few of the accused persons are found guilty or punished after full trial of the cases. This encourages the belief that the conviction rates are extraordinarily low. Ms. Umme Kulsum, Joint Secretary, Law and Justice Division of the MLJPA, District Judge and the Head of BWJA Research Team opined in Workshop 1 that the due disposal of cases depends on the role of several stakeholders but the ultimate dissatisfaction of the people at large is with the Judiciary alone. As the Judge of the NOSND Tribunal, Sunamganj explained, 'the Tribunals are there not only to give punishments but to provide justice.'

The Table below, based on the questionnaire survey, shows the trend of cases filed under the Tribunal from all the Divisions based on the Districts which were part of the study.

[81] Ibid.

[82] https://www.reuters.com/article/bangladesh-rape-protests-idUSKBN26V0AP



5.3.9. Clarifying the concept of consensual sexual relationship which is subsequently alleged to be rape:

Several of the Judges shared their frustration as to how to deal fairly with allegations of rape brought before the Tribunal when the parties had been in a past relationship. Tribunals in many instances are confronted with cases where there existed a consensual sexual relationship between a man and a woman but later, when the man reneged on a promise made explicitly or tacitly to marry the woman, she alleges rape before the Court. Section 375 of the Penal Code of 1860 which supplies the definition of rape used by the *Nari O Shisu Nirjatan Daman Ain* of 2000 stipulates five descriptions for the offence of rape if sexual intercourse has taken place thereunder and there is no specific clause relating to the promise of marriage at a future date.[83] Lack of consent is one of the elements under Section 375 of the Code and under Section 90 of the Code: 'A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that

[83] Sakib, Sazzad Ali (2020). Establishing Consensual Sex as Rape Retrospectively upon Breach of the Promise to Marry: Laws and Practice; Dhaka Law Review. https://www.dhakalawreview.org/blog/2020/11/establishing-consensual-sex-as-rape-retrospectively-upon-breach-of-the-promise-to-marry-laws-and-practice-5034

the consent was given in consequence of such fear or misconception'. Promise to marry as a ground of consent to sexual relationship may fall within the concept of misconception.

The NOSNDA has, in the explanation to Section 9, added the concept of 'fraud' which remains absent from Section 375 of the Penal Code though some elements of fraud are present in the fourth explanation to Section 375 of the Penal Code. Under Section 25 of the latter, **"**A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". For an act to be fraudulent there must be two elements present ---firstly, deceit and secondly injury.[84] Deceit means an intentional misrepresentation or concealment of the fact. Thus, when a man misrepresents the initial intention regarding the promise to marry and obtains the consent of the woman, he is said to obtain the consent by fraud.[85]

In the context of Section 9 of the Act of 2000 therefore, if a man convinces a female, above the age of 16, to consent to engage in sexual intercourse on the promise or assurance that he will marry her with no intention of fulfilling this promise, he is guilty of fraud and since injury, in the form of sexual intercourse, is caused to the woman, the man will be guilty under Section 9 of rape. The above mentioned author concludes by saying:

> The convicted person must have a mala fide intention while making a promise to the woman before marriage. If he had any true intention to marry then the intercourse would not constitute rape. Such mental state should be examined very carefully while treating false promise and a bona fide promise differently.

In addition, the author adds that the promise 'must be in proximity of time to the occurrence'.[86]The Panel discussing specific reforms to the NOSNDA in Sylhet suggested that 'Consent obtained by fraud' as mentioned in explanation to section 9 should be properly clarified to determine liability of the accused.

The pertinent questions which arise are: does consensual sex retrospectively establish rape upon breach of the promise to marry? Does the context of marriage only value a woman's consent as a matter of fact? Even so, does it constitute an offence of rape or that of cheating?[87]

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[84] Ibid.
[85] Ibid.
[86] Op. cit. Sakib (2020).
[87] https://www.observerbd.com/details.php?id=174321

Within our law, unlike Pakistan, '*zina*' that is fornication is not a crime although adultery is and would be a dangerous concept to add to the law leading to further persecution of females. The Bangladeshi Courts have been clear that:

> If an accused makes sexual intercourse with a girl above the age of 16 years with the consent of the girl, the accused will not be held guilty of rape for having sexual intercourse with the victim after having promised to marry her. Such conduct though socially condemnable and morally reprehensible would not constitute an offence under section 375 of the Penal Code as the act was done with the consent of the prosecutrix and was not done forcibly.[88]

In several cases recently, there have been reports[89] of victims of rape and convicted rapists being married at the Jail gate with the directive of the Court, which raises the question as to the future of a couple when the man is forced, in order to avoid imprisonment, to get married where he patently has no intention of doing so. To be fair, in many such cases the woman had become pregnant and given birth and in the social and economic context, even marriage with her rapist is considered to be the better option. Only by ensuring speedy compensation for the woman can she gain some economic freedom rather than be forced to marry a person who has abused her. On the other hand, a man should also not be penalised for an act which is not an offence if it is consensual and with an adult.

It must be emphasized that past consent does not mean perpetual consent and at any moment the woman/girl may withdraw her consent notwithstanding the existence of a relationship with him and in that context, the man will be guilty of rape upon proof of withdrawal of consent. In fact, the entire argument in support of criminalizing marital rape is based upon such reasoning. It is for the Tribunal to sift through facts to determine the veracity of the claims of the woman since fabricated allegations of rape and the consequent waste of time or wrongful convictions discourage true victims from approaching the Court. Activists, NGO members and academics have warned against generally designating rape cases widely as false in a society which already trivializes sexual offences.

5.3.10. Provision regarding maintenance of child born as a consequence of rape - Section 13(1):

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[88] Monwar Malik vs The State (2009) 17 BLT 25 [41].

[89] https://www.news18.com/news/world/bangladesh-high-court-permits-jailed-rape-convict-victim-to-marry-2998190.html
https://www.newagebd.net/article/123072/rape-accused-gets-high-court-bail-after-marrying-victim
https://www.thedailystar.net/backpage/news/hc-terms-bail-rape-accused-marries-victim-feni-jail-1997949

Notwithstanding anything contained under any other law for the time being in force, the maintenance of any child born in consequence of a rape shall be borne by the State [13(1) (ga)]. Under the Act of 2000, this is the only situation where the state assumes financial responsibility in the case of rape i.e. when there is a child born due to the rape.[90] The State may, under Section 13(3), recover the amount of maintenance payable to any child from the existing assets of the rapist, or the assets he will in the future be the owner of or be entitled to a share of. Such maintenance shall be payable until the child is twenty one years old; in the case of a daughter until her marriage and in case of a child born with disabilities until such child is able to support itself [13 (1) (d)]. The child shall remain in the care and custody of the mother or its maternal relations and shall have the right to be identified as the child of the father or mother or both 13(1) (ka) and (kha). As regards the amount of maintenance, under 13 (2), it shall be determined by the Rules. Such Rules have not been made even after 22 years of the enactment of the Act.

The provisions of the Act of 2000 were amended by the NOSND Amendment Act of 2003. Earlier, Section 13 had provided that the rapist was to be held responsible for the maintenance of a child born as a consequence of rape. The Tribunal was to determine the custodian of the child. These provisions were criticised as being bizarre as well as impracticable. Amongst several objections the most pertinent was the fact it foresaw a connection between the victim and the rapist for life which was 'illogical and inhuman'.[91] The amendment of 2003 did not however clearly consider the question of legitimacy of the child or with cases of gang rape. The question of inheritance depends upon the child's legitimacy which issue has not been clarified.

Several observations and recommendations were in the Workshops under this study. The stakeholders spoke about the 'limited provision of maintenance for child born out of rape provided under Section 13' and suggested that the State should actively take on the responsibility of maintenance of children born as a consequence of rape as provided for under Section 13 (1) (ga) of the Ain. In addition, panelists at the workshops suggested that the paternal identity of children born out of rape should be ensured under Section 13 of the Ain through DNA tests, specially in the case of a child in case of gang rape. According to one Tribunal Judge from Sylhet, 'protection for children born out of rape as mentioned in

[90] Taqbir Huda (2020). No Justice without Reparation: Why Rape Survivors Must Have a Right to Compensation, Rape Law Reform Research Reports, no. 2; Dhaka: BLAST and UN Women at p.18-19.
[91] Naripokkho (2000). *Nari O Shishu Nirjatan Daman AIn, 2000---Akti Porjalochona* at p. 36

section 13 should extend to all kinds of rape irrespective of consensual physical relation or consent obtained by fraud and age of victim.'

In Motiur Rahman Mithu vs. The State[92], a young female domestic helper was raped by her employer's brother. The perpetrator threatened her with death if she disclosed the matter to anyone, and as he was the son of the Union Parishad (UP) Chairman of her locality, she kept the matter secret out of fear. When she became pregnant and gave birth to a son, she eventually sought justice. The Tribunal convicted Motiur under Section 9(1) of Act of 2000 and sentenced 2,000 BDT per month as the maintenance of the son, until he attained the age of 21, under Section 13 of the Act of 2000. [93]

Rules need to be made specifying how questions as regards the legitimacy of the child born of rape are to be settled as well as clarifying issues related to who will be the legal guardian of the child since the law only talks about custody and care of the child in Section 13(1)(ka).

5.4. ABETMENT of SUICIDE – Section 9 Ka:

The media often report the suicide of women and children who have been the victims of sexual violence and harassment. In 2021, 9 women[94]committed suicide after rape and between the months of January to September 2022 seven women committed suicide after rape.[95] These initial survivors of violence are provoked into taking their own lives due to lack of options, lack of societal and family support and social stigma. Judges and other stakeholders of this study have mentioned several times that in our society sexual violence is considered to be a social taboo and the survivor is often blamed for the violence committed against her. Additionally, due to the many pressures, the survivor is made to feel that there is little chance of getting prompt justice and she has very little option.

'Many victims of sexual violence and harassment reportedly commit suicide because they feel trapped in unbearable situations and do not receive sufficient support from the community.'[96]
Section 9 ka was added to the Act of 2000 by the amendment of 2003. It states:

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[92] 35 BLD (2015) (HCD) 656.
[93] Ibid.
[94] https://www.askbd.org/ask/2022/01/13/violence-against-women-rape-jan-dec-2021/
[95] https://www.askbd.org/ask/2022/10/04/violence-against-women-rape-jan-sep-2022/
[96] BNWLA (Bangladesh National Women Lawyers' Association (2003). Violence Against Women in Bangladesh 2002; BNWLA, Dhaka at p.19.

> If a woman commits suicide due to her modesty being directly violated as a consequence of any wilful act of any person, committed without her consent or against her will, such person will be guilty of the offense of abetment of suicide of such woman and for such offense shall be punishable by a maximum of ten years and a minimum of five years rigorous imprisonment and shall also be liable to additional fine.[97]

Respondent Judges of the Tribunals spoke about lacunas of Section 9 ka since it limits the liability only if suicide is committed as a consequence of the outrage of modesty. According to a Tribunal Judge from the Sylhet Division, 'application of section 9 ka should not be confined to when suicide is committed only due to 'outraging of modesty' — rather it should include any other reason as the NOSNDA is a special law aimed to protect women from oppression/ violence.' The word which is used in the law is সম্ভ্রমহানি which directly translates into dishonour or loss of prestige. The term is not defined in the law.

The Court in the case of Dr. APM Sohrab-uz-zaman vs. The State[98] held:

> The imperative ingredients of 9Ka of the Ain are that there must be an act of abetment of committing suicide of a female; that there must be a wilful act of the accused; that the said wilful act is done without the consent of the victim or against her will; that the said wilful act violates her modesty and that violation of her modesty is the direct cause of her to instigate suicide by his aforesaid act.

In the same case, the concept of modesty has been considered from the traditional concept of the way a woman or girl is expected to behave in society. In the above case, the Court considered with 'due and serious reflection' the use of the term *shombromhani* (সম্ভ্রমহানি) in Section 9 Ka. It was the finding of the Court that the term, if interpreted as 'modesty' it 'also covers a broad spectrum of notions bringing within its purview, inter alia, the concepts of honour, dignity, prestige and indeed chastity In this regard, this Court is of the view that the term সম্ভ্রমহানি as arises in Section 9 Ka covers a broader range of meaning and sense of dignity and self-respect inclusive of the notion of 'chastity' as is more strictly and specifically referred to Section 10 with regard to cases of যৌন পীড়ন or sexual oppression. Proceeding on that premise and bearing in mind in particular the precept of statutory interpretation that should there be a choice between two interpretations of a statutory provision, the narrower of which would fail to achieve the manifest purpose of the given legislation, the Court should

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[97] Translation mine.

[98] 68 DLR (AD) 331.

strive to avoid that construction which would reduce that particular legislative provision to futility.[99]

Judges at Workshop 3 remarked that in Section 9 ka, child has not been included, which they think is probably accidental. Therefore.if a child commits suicide the child cannot come under 9 ka which is gap within the law, according to them.

5.5. SEXUAL ABUSE/OPPRESSION and SEXUAL HARASSMENT - Section 10:

Section 10 of the NOSND Ain 2000 defines and punishes sexual abuse or oppression. The Section states:

> If any male, in order to illegally satisfy his carnal desires, touches the sexual or any other organs of any woman or child with any organ of his body or with any other object, or outrages the modesty of any female, his action will amount to sexual abuse and for this offence he may be punished with rigorous imprisonment for any period between three to ten years and be required to pay additional fine.

The Section uses several terms, the meanings of which are open to confusion. For example, Section 10 is said to deal with punishment of যৌন পীড়ন which means sexual abuse or oppression or even torture. The term is not clearly defined and stakeholders of the study recommended that the scope of the Section should be widened to comprehensively cover and punish verbal abuse, physical assault, harassment, abuse, outraging modesty etc.

The Section mentions that an offence under Section 10 will be committed through the touching of sexual or other organs of a woman or a child with any organ or with any object or through the outraging the modesty of a woman. The concept of outraging the modesty of a woman or শ্লীলতাহানি is not defined in the law in Bangladesh although it is often in use in the Court. In Workshop 3, stakeholders from the Divisions of Chattogram, Rajshahi and Khulna commented that the term শ্লীলতাহানি has also not been clearly defined. শ্লীলতাহানি in English can be termed as molestation or violation of modesty or dishonour.

The Indian Supreme Court attempted to define what outraging modesty means in relation to Section 345 and Section 509 of the Penal Code. "The act of pulling a woman, removing her saree, coupled with request for sexual intercourse would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the

[99] 1 LCLR (2012)HCD 75.

offence," the Bench said in a judgment that has drawn from several verdicts by different courts.[100] The Indian Penal code has added certain new sections, absent in the Bangladeshi Penal law. For example, Section 354A of the IPC deals with sexual harassment; Section 354B with intention to disrobe a woman; Section 354C with voyeurism and Section 354D with stalking. Separate punishments have been prescribed for the above offences.

It has been construed widely by an author who considers 'that any act which falls short of rape needs to be attributed as outraging modesty of the woman.'[101] The supreme court in the case of Ramkripal v. State of Madhya Pradesh[102], defined modesty by laying down that the 'essence of a woman's modesty is her sex'. Therefore, any crime against women which falls short of penetration would constitute an offence under section 354 of the IPC, expanding the ambit of crimes falling under this section.[103] At Workshop 3, Panellists speaking about the gaps within the law of 2000, mentioned that Section 10 specifies physical touch and in many cases women are dishonoured orally by the use of demeaning language. This is not covered by the Act and is a shortcoming of the law.

At the time of its enactment in 2000, the NOSNDA provided penalties for the offence of sexual abuse as well as sexual harassment. The latter contained in Section 10(b) was later omitted by an amendment in 2003 due to the fact that it may be used to harass rivals.[104] The Section, now omitted, had stated:

> If any male, trying to illegally satisfy his carnal desires, abuses the modesty of any woman or makes any indecent gesture, his act shall be deemed to be sexual harassment and for this such male will be punished by rigorous imprisonment for a term which may extend up to seven years but shall not be less than two years and shall additionally also be liable to fine.

Sexual harassment which is a phenomena which plagues women, adolescents and girls at all levels of society whether on the streets, at educational institutions, work places have not been included specifically in any law. It impedes women's freedom of movement and mobility continually.[105] In 2009, the High Court Division of the Supreme Court of Bangladesh.[106] in a

[100] https://timesofindia.indiatimes.com/india/sc-defines-what-is-a-womans-modesty/articleshow/1785567.cms

[101] Sharma, Ritika (2020). "The Offence Relating to Outraging Modesty of Women- An Evaluation" in Journal of University School of Law and Legal Studies; Indraprastha Law Review Summer 2020: Vol. 1: Issue 1; pp. 1-11 at p.3.

[102] See https://indiankanoon.org/doc/1308370/

[103] Op. cit. Ritika (2020) at p.3.

[104] The Daily Star, June 16, 2003.

[105] Op. cit. Huda, Shahnaz (2021) at p. 21.

[106] Bangladesh National Women Lawyers Association (BNWLA) vs. Bangladesh 14 BLC (2009), 694.

landmark judgment provided detailed guidelines for action in cases of sexual harassment against women 'at all work places and educational institutions until adequate and effective legislation is made in this end'. The Government was ordered to treat these guidelines as law until the enactment of a law. The Court gave a comprehensive definition of what constitutes sexual harassment. In 2011, the High Court Division of the Supreme Court of Bangladesh, in the case of Bangladesh National Women Lawyers Association vs. Government of Bangladesh and Others addressed the issue of not only sexual harassment but also stalking. The Court, kept intact the definition of sexual harassment given by it earlier and directed the addition of a new sub-clause (m) to address the issue of stalking of women and girls. It further directed that the 'euphemistic expression "Eve Teasing" should not be used anymore and the term sexual harassment should be used by all including law enforcing agencies, government organizations/establishments and the media, public and private, for describing the incidents or mischief of so-called eve teasing and/or stalking.[107]

In India in the case of Vishaka and others vs. State of Rajasthan,[108] the Supreme Court of India, stipulated guidelines regarding sexual harassment at workplace similar to those provided by the High Court of Bangladesh. Such guidelines were superceded in 2013 by the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

In the context of Bangladesh there has been proposals for a separate law to deal with sexual harassment. However, the participants of the workshops for this study opined that since the NOSNDA is a special law, it needs to include such offences within its purview whilst ensuring that the law is not misused. The Penal Code of 1860 provides for punishment for assault and outraging of modesty in Sections 354 and 509 but the *Ain* of 2000 needs to incorporate specifically these offences with proper definitions and punishments which suit the offence.

5.6. PREVALENCE OF DOMESTIC VIOLENCE in BANGLADESH and DOWRY DEMAND RELATED VIOLENCE – Section 11: CRITICAL ANALYSIS :

For a significant majority of women and children in Bangladesh, violence is inescapable and omnipresent, part and parcel of everyday life. The numbers, which try to describe the occurrence of domestic violence in Bangladesh are terrifying. A Human Rights Watch

[107] Writ Petition No. 8769 of 2010 BNWLA v. Govt. of Bangladesh.
[108] AIR 1997 SC 3011.

Report,[109] citing various sources, shows that over 70% of married women or girls have faced some form of intimate partner abuse, and at least 235 women were murdered by their husbands or their families in just the first nine months of 2020. In 2021 and 2022 respectively, 224 and 206 women were murdered by their husbands.[110]
Statistics gathered by ASK show that in 2022 alone, 75 women were tortured and 79 women killed due to dowry demands.[111]

The Bangladesh Bureau of Statistics (BBS) in their report of 2011 on VAW had revealed that 87.1% of all married women in Bangladesh had been subjected to some form of domestic violence — indicating that only less than 13% of married women in Bangladesh were free from violence within their homes.[112] In their later 'Report on Violence against Women (VAW) Survey 2015,'[113] it was reported that the domestic abuse rate has decreased somewhat in the intervening four years from the abovementioned 87.1% to 80.2%, which was and continues to be a matter of grave concern.

Domestic violence in Bangladesh takes on a variety of forms and is committed against various family members. The types of violence may also be different in terms of gravity – beginning from verbal abuse to simple or grievous hurt and even murder. Amongst the many forms of gender based violence, wife-battering is by far the most common. Such violence may occur due to a variety of causes such as refusal of the wife to give permission to the husband for entering into a polygamous marriage; suspicion that the wife is involved in a relationship; the wife protesting the husband's extra-marital relationship; wife visiting her family too often or her speaking to other males; inability to give birth to a son ---the list is endless. Again, wife battering may occur for no reason at all or the flimsiest of reasons. In spite of the many causes due to which married women face violence, dowry demands continue to be the most frequent and common. Therefore, as discussed earlier, although predicated upon a variety of factors, the major motive for domestic violence is undoubtedly dowry demands. In answer to

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[109] Human Rights Watch (2020). "I Sleep in My Own Deathbed" -- Violence against Women and Girls in Bangladesh: Barriers to Legal Recourse and Support.
https://www.hrw.org/report/2020/10/29/i-sleep-my-own-deathbed/violence-against-women-and-girls-bangladesh-barriers

[110] https://www.askbd.org/ask/2022/01/13/violence-against-women-domestic-violence-jan-dec-2021/
and https://www.askbd.org/ask/2023/01/03/violence-against-women-domestic-violence-jan-dec-2022/

[111] https://www.askbd.org/ask/2023/01/03/violence-against-women-dowry-jan-dec-2022/

[112] https://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/vaw%20survey/bangladesh%20vaw%20survey.pdf?vs=5638

[113] BBS (2016). Report on Violence against Women (VAW) Survey 2015; Bangladesh Bureau of Statistics, Statistics and Informatics Division; Ministry of Planning, Government of the People's Republic of Bangladesh; August 2016.

the question regarding what types of offences most commonly come before the Tribunals, the Judges in this study identified dowry related domestic violence as one of the most regular issues.

Although marriage is considered to be of utmost importance in the lives of women and girls in Bangladesh, the marital home may be a place where they are subjected to abuse and torture. Child marriages are widespread and consistently predicated upon the perceived lack of security from sexual violence facing unmarried young women. 'Many parents arrange marriages for their young daughters to avoid the dangers which lurk around, they fear, at every corner. Unfortunately, after marriage the threats facing an adolescent girl may only alter in nature ---she is still subjected to violence of a more private and persistent nature such as intimate partner violence and violence from in-laws'.[114]

In the Divisional Workshop 1, held in Sylhet, which was the first after the COVID pandemic, speakers discussed that during the COVID pandemic, gender based violence incidents, especially violence within the home, skyrocketed. The Covid-19 pandemic on one hand has already resulted in a huge step-back for women's right of access to justice and on the other hand the immediate aftermath of this pandemic has alarmingly increased violence against women (VAW) around the world.[115] A survey conducted in July of 2020 by the Manusher Jonno Foundation (MJF) of about 63,968 women and children revealed that 8389 had become victims of domestic violence during the pandemic [116] Although exacerbated during times of crises, the epidemic of domestic violence is omnipresent in the daily lives of women and children. In 2010, the *Paribarik Shahingshata (Pratirodh O Shurokkha) Ain* 2010 [the Domestic Violence (Prevention and Suppression) Act] was enacted but only provides for civil remedies and not penal sanctions.

Under NOSNDA 2000 domestic violence must relate to dowry demands:

[114] Op. cit. Huda, Shahnaz (2021) at p.19.

[115] Report of the Divisional Consultation on "Study on Identifying the Gaps and Concerns to Ensure Access to Justice for Gender-based Violence Survivors from the Justice Sector Actor's Perspective"; Organised by Bangladesh Women Judges Association (BWJA) and United Nations Development Program (UNDP), Bangladesh; 18 November, 2021 to 20 November, 2021;Grand Sultan Tea Resort and Golf, Srimongal, Moulvibazar.

[116] Manusher Jonno Foundation MJF (2020). Violence against Women and Children: COVID 19' A Telephone Survey: Survey period: July 2000; Initiative of Manusher Jonno Foundation http://www.manusherjonno.org/wp-content/uploads/2020/10/Report_of_Telephone_Survey_on_VAW_July_2020.pdf

The *Nari O Shishu Nirjatan Daman Ain* of 2000 strictly deals with domestic violence and provides for severe penal sanctions for such violence including the death penalty. However, offences of domestic violence come within the jurisdiction of the Act of 2000 only if such violence is connected to the demand for dowry or if it is committed by the throwing of acid or other substances covered under Section 4 of the *Ain*. Domestic violence caused on any other ground or reason is not addressed by the Act and therefore seriously limits the access of many victims to the special law. Despite amendments to the law, the *Ain* of 2000 continues to contain a significant lacuna in not dealing with domestic violence caused by reasons other than dowry demands.

Dowry has been defined in Section 2 (j) of the *Nari O Shishu Nirjatan Daman Ain*. (Section 11 of the Act prescribes the punishment for violence caused due to dowry demands.

Section 11 states:
If the husband of any woman or his father, mother, guardian, relative or any other person on behalf of the husband, for the reason of dowry, causes death of the woman or attempts to cause death, or causes grievous hurt or simple hurt then such husband, husband's father, mother guardian relative or person:

Such person shall be punished
(a) For causing death --- by the death penalty or for the attempt to cause death, by imprisonment for life and in both cases shall also be liable to pay fines
(b) For causing grievous hurt, rigorous imprisonment for life or rigorous imprisonment for a term not exceeding twelve years but not less than five years and also with additional fine, in both cases;
© For causing simple hurt: rigorous imprisonment not exceeding three years but not less than one year with liability for additional fine.

Section 11 of the Act deals with three types of offences —murder, grievous hurt and simple hurt.

5.6.1.Penalties for dowry Related Violence

5,6,1.1. Mandatory Death Penalty -Section 11(ka):

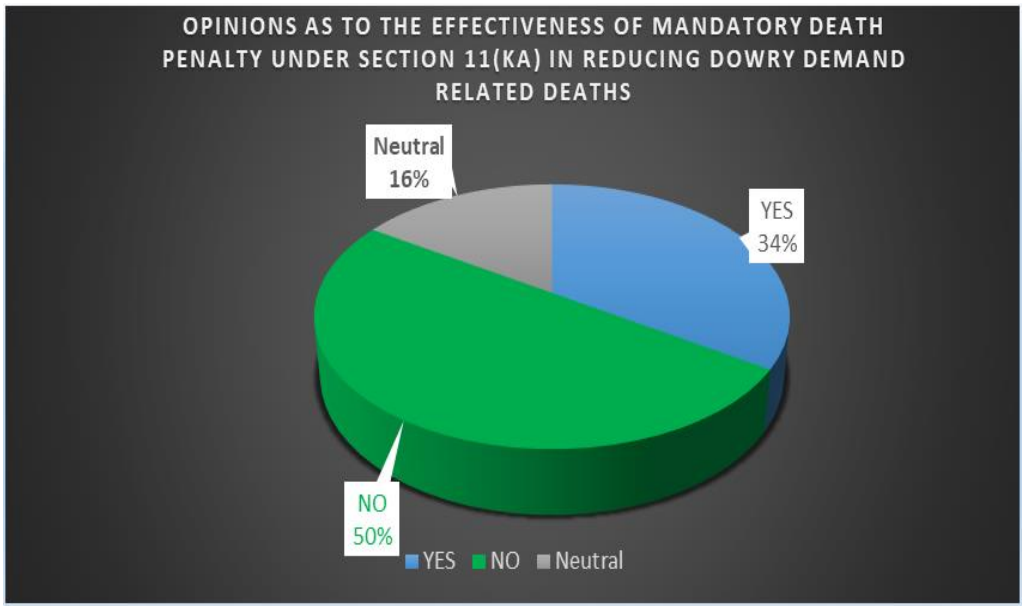
For death caused as a consequence of violence committed due to dowry demands, Section 11(ka) provides for mandatory death penalty.

In Bangladesh, harsher and harsher punishments have been mandated as exemplary punishment for violence against women so as to deter such incidents against women. However, as the statistical and anecdotal evidence shows, there has been little or no impact

of such punishments. On the contrary, due to the lack of other sentencing options, it is contended that in murder cases where death has been caused due to dowry demands, perpetrators may avoid conviction by the Tribunal in the absence of any discretion at all on the part of the Judge.

The 44 respondents (Judges of Nari O Shishu Nirjatan Daman Tribunals) of the questionnaire survey under this study who were asked whether the inclusion of a mandatory death penalty for murder due to dowry related offences under Section 11(ka) has contributed to the deterrence of such crime responded thus —- 15 answered in the affirmative, 22 in the negative while 7 remained neutral. According to a NOSND Tribunal Judge of Hobiganj, offences of murder due to dowry demands 'do not seem to be decreasing — under social pressure, outside court settlement (compromise) is increasing.' Another Tribunal Judge from the same District also agreed that the number of offences have not decreased and the reason is because most of the people in this country do not know and are not aware of the law.

The Table below represents the opinions of NOSND Tribunals, as expressed in the questionnaire survey, as regards the effectiveness of mandatory death penalty in reducing incidents of dowry remand related murders:



The Law Commission[117] proposed that instead of mandatory death penalty, other options should be made available keeping in mind the type of the violence, extent, age of the accused and his motive and other mitigating circumstances.

[117] Op. cit. The Law Commission, Bangladesh (2010).

Critics opine that the effect of such severe punishments may in fact be a factor contributing to the lower conviction rates. For instance, if found guilty of murder due to dowry demand the Judge has no other option but to impose the death penalty without any discretion to consider extraneous circumstances such as the young age of the perpetrator and so forth or to acquit him. Again due to the severity of the punishments the burden of proof is so onerous that it may be impossible and thereby the percentage of convictions is negligible compared to the number of cases instituted.

In the case of BLAST & Others vs. Bangladesh & Others,[118] Surendra Kumar Sinha, CJ opined:

> A provision of law which deprives the court to use of its beneficent discretion in a matter of life and death, without regard to the circumstances in which the offence was committed and, therefore without regard to the gravity of the offence cannot but be regarded as harsh, unfair and oppressive. The legislature cannot make relevant circumstances irrelevant, deprive the court of its legitimate jurisdiction to exercise its discretion not to impose death sentence in appropriate cases. Determination of appropriate measures of punishment is judicial and not executive functions. The court will enunciate the relevant facts to be considered and weight to be given to them having regard to the situation of the case. Therefore we have no hesitation in holding the view that these provisions are against the fundamental tenets of our Constitution, and therefore, ultra vires the Constitution and accordingly they are declared void.

The above judgment related to a case under the now repealed *Nari O Shishu Nirjatan Daman (Bishesh Bidhan) Ain*, 1995 which contained mandatory death penalty for death as a consequence of rape. The Tribunal, under the Act of 1995, had no discretion to sentence the accused other than with death. In 2015 this mandatory death penalty provision was scrapped by the High Court.

The Appellate Division in the above case also made an observation related to Section 11(ka) of the NOSNDA of 2000 and commented,[119] 'that under 'section 11(Ka) of the Ain of 2000, it is provided that if death is caused by husband or husband's, parents, guardians, relations or other persons to a woman for dowry, only one sentence of death has been provided leaving no discretionary power for the tribunal to award a lesser sentence on extraneous consideration. This provision is to the same extent ultra vires the Constitution.' However, even though the mandatory death penalty provision of the Act of 1995 was omitted,[120] the

[118] 1 SCOB [2015] AD.

[119] 1 SCOB [2015] AD BLAST & Others Vs. Bangladesh & Others. (Surendra Kumar Sinha, CJ).

[120] https://www.thedailystar.net/backpage/death-penalty-95-law-scrapped-80686

mandatory provisions under Section 11(ka) continue to be included within the NOSNDA of 2000.

5.6. 2: Simple Hurt – Section 11(ga):

Section 11(ga) deals with the punishment of simple hurt caused on the grounds of dowry demands. By Section 4 of the *Nari O Shishu Nirjatan Daman (Shongshodon) Ain*, 2020, simple hurt caused due to dowry demands has been made compoundable. The recommendation by the study participants was that Section 11(ga) should be removed from the NOSNDA, 2000 and in the Dowry Prohibition Act a Section related to 'demanding dowry along with assault/simple hurt', should be incorporated.

Section 11(ga) overburdens the NOSND Tribunals with cases. In the Barishal Divisional Workshop, participant Judges deliberated in depth about Section 11(ga). The judicial actors opined that inclusion of such subsection is unnecessary since the nature of such offence is related to crimes under section 3 and 4 of the Dowry Prohibition Act of 2018. As the law now stands, the punishment for simple hurt under the special Act of 2000 is lesser than that provided for in the Dowry Prohibition Act of 2018. Several Tribunal Judges pointed out that under 11 (ga) of the NOSNDA, punishment for simple hurt is 1 to 3 years, but in the Dowry Prohibition Act, punishment is set at 1 to 5 years or with fine or both. The punishment is thus lesser for an offence under 11(ga) although the 'the gravity is more,' they opined. Opinions were expressed that the punishments provided for in the two laws should be consistent with the aims of the laws. Shermin Nigar, at present District Judge, Brahmanbaria, and member of the BWJA Research Team, presenting on law reforms clarified the suggestion that the offence under 11(ga) contained in the NOSNDA should be brought within the jurisdiction of the Magistrate under the Dowry Prohibition Act of 2018. In every Workshop there were consistent recommendations regarding the above. This would lessen the case log and the pressure on the Tribunal. This was reiterated by the participants of the three Divisional Workshops (Khulna, Rajshahi, Chattagram). Another issue that was highlighted in all the workshops was the lack of clarity as to what constituted simple hurt. In the Barishal workshop, one participant pointed out that although a medical certificate was necessary in cases of simple hurt,[121] it may not be possible for all victims to be able to procure such a certificate.

5.6.2. Limited coverage of domestic violence and misuse of the law:

[121] See Uthpal Kumar Roy and three others.vs. Meghnad Shaha and another.15 SCOB [2021] HCD 77.

The various types and grounds for domestic violence have been analysed in detail in **5.6.** The law of 2000 covers most offences committed against females and children but if the woman or child bride suffers simple or grievous injury or is even killed in a domestic dispute not related to dowry and not committed by the use of acid or other substances mentioned in Section 4, the Tribunal has no jurisdiction over such offence. In such cases, the proper forum will be the Sessions Judge Court or the Magistrate Court.

There was a general opinion elicited from the workshops and interviews that the scope of Section 11 should be enlarged to include domestic violence committed for all and any cause. In Workshop 1, the opinion put forward was that Section 11 should start with the wording 'If any person as a consequence of demanding dowry or for any other reason commits violence against a woman.....' In short, the section should include the **causing of death or hurt for any reason.** This will ensure that all types of domestic violence, committed for all and any type of motive, may be covered by the law. It will also preclude the tendency to institute false claims of dowry demands to bring the offence of domestic violence within the jurisdiction of the NOSNDA.

Due to the above limitations imposed by the Act, in many cases there is the tendency to institute false cases where an untrue allegation of dowry demands is attributed as motive for the violence, in order to bring the offence within the scope of the special Tribunal's jurisdiction. Therefore, to reiterate, even if grievous physical violence has indeed been committed or death of the wife is caused by the husband or his family, the Tribunal does not have the jurisdiction over such offence unless dowry demand is proved to be the motivation. In the Sylhet workshop, one of the key reasons for filing false cases in the Tribunal was identified as the narrow scope of Section11. Women often, agreed the participants of the workshops for this study, when they are tortured for any reason, file cases mentioning demand of dowry as the motive, to bring the case within the ambit of the Ain.

Demand of dowry is the precondition to attract section 11(ka) of the Ain.[122] In the case of Osena Begum alias Babuler Ma and another vs. The State,[123]the Court held that the moment the Adalat (Court) finds no proof of the existence of a motive of dowry for any offence within the mischief of the Ain (Act) it must take its hands off the case... ...In such situation the only course remaining open for the Adalat would be to send the case record to the Sessions Judge for trial.

[122] The State vs. Golam Sarwar Ripon 4 LNJ 170.
[123] 55 2005 DLR 299.

In Abul Kalam Azad vs. State,[124] the accused got acquittal from the High Court Division and the Court's observation was that, 'since the prosecution has failed to prove beyond reasonable doubt that the death of the bride was due to dowry demand, the accused should be acquitted.'

In another case, State vs. Bahar Mia,[125] based on the Police report, the Tribunal took cognizance of the offence of causing death through the demand for dowry. However, the prosecution failed to prove that the motive for the killing was demand for dowry. The trial court, upon being satisfied that the accused had indeed caused the death of the victim, convicted him under Section 302 of the Penal Code. The HCD observed in the above mentioned case that although section 25 (1) of the 2000 Act provides that a Tribunal may exercise all the powers of a Sessions Judge, it could not act as a court of session while trying an offence under the 2000 Act; this was outside of its jurisdiction. The Tribunal was constituted for the trial of special offences specified under the Act of 2000. The High Court Division rejected the death reference and the judgement and conviction order of the trial court was set aside. The Court further opined that jurisdiction over the subject matter is a condition precedent to the acquisition of authority over parties and a judgment without jurisdiction is null and void.[126]

In the case of The State vs. Md. Sharif Molla, the Court held that '*Nari O Shishu Nirjatan*, Daman Tribunal is specially empowered to deal with the offences of *Nari O Shishu Nirjatan Daman Ain*, 2000 (as amended in 2003). It has no jurisdiction to try any offence under the Penal Code solely, though the Judge of the Tribunal has got the status as Sessions Judge as per section 25(1) of the Ain."[127] 'If the judge of the Tribunal is authorized as sessions judge to try offences alone then the power of the Sessions Judge becomes obsolete. In that view of the fact, the judge of the Nari-O-Shishu Nirjatan Daman Tribunal has no jurisdiction to adjudicate any offences alone excluding the offences of the said Ain."[128]

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[124] 58 DLR (2006) (AD) 26. This was a case under the *Nari O Shishu Nirjatan Daman (Bishesh Bidhan) Ain 1995* related to the almost same provision of law related to the punishment for murder alleged to have been committed on the grounds of dowry demands.
[125] (2004) 56 DLR (HCD) 454.
[126] Ibid.
[127] 18 ALR (HCD) 55-64.
[128] Ibid.

In Anarul@ Anarul Huq vs. State,[129] the Appellate Division held that the prosecution miserably failed to prove the case of dowry and therefore opined that no case was proved under section 11 (ka) of the Ain but rather the case of murder under section 302 of the Penal Code has been proved. Invoking Article 104 of the Constitution, the sentence should be altered to imprisonment for life under section 302 of the Penal Code instead of death under section 11(ka) of the Ain, 2000.

In a relatively recent case of Md.Shahadat Hossain[130], the High Court Division held:

> 'The prosecution has been unable to prove the charge of rape on the person of the victim, although investigating offiver submitted charge sheet against the accused person under sections 7/9(2)/30 of the Ain and the charge was framed under the same sections but the charge of rape and the abduction has not been proved beyond reasonable doubt and, as such, appellate Court can travel from the case of Nari–o-Shishu Nirjatan Daman Ain to the Penal Code, if the allegation of sexual violence or assault and abduction is not proved beyond reasonable doubt by prosecution witnesses'. The question arises that in the above cases, does the High Court itself have the authority to invoke Section 302 of the Penal Code and alter the punishment or should it return the matter to the Tribunal as the Trial Court for it then to refer it to the Sessions Court. Legal experts feel that the latter should be the correct process and doing so will not violate Section 403 of the CrPC.[131]

However, the question arises as to the time such a convoluted procedure will take which will further add to the backlog of cases and lengthen the time to the detriment of both the survivor/victim as well as the accused. There needs to be clarification by the office of the Chief Justice.

6. SPECIAL TRIBUNALS, PROCEDURES and RELEVANT PROVISIONS UNDER THE *NARI O SHISHU NIRJATAN DAMAN AIN 2000*:

[129] 67 DLR (AD) 172.
[130] 73 DLR (HCD)2021 278.
[131] Personal Interview with Ehsanul Haque Shomaji (KI); Advocate, Supreme Court of Bangladesh

6.1. Special Tribunals for trial of offences under the *Nari o Shishu Nirjatan Daman* Ain:

Offences under the Act of 2000 are to be tried by special Tribunals. Section 26 of the Act provides for the establishment of ***Nari O Shishu Nirjatan Daman*** **Tribunals** in every District and if necessary, for the establishment of more than one Tribunal in any district. The Tribunal shall consist of one Judge and the Government shall appoint such judges from amongst District and Sessions Judges. At present there are approximately 101 such Tribunals across the country.

6.2. Applicability of the CrPC

Under Section 25 of the Act, unless otherwise provided, the provisions of the Code of Criminal Procedure of 1898 (CrPC) shall be followed regarding submission of a complaint, investigation, trial and disposal of any offence before the Tribunal.

6.3. Tribunals to be treated as Court of Sessions:

Under Section 6 (1) of the Criminal Procedure Code, 1898, there shall be two classes of Criminal Courts in Bangladesh, namely: - (a) Courts of Sessions; and (b) Courts of Magistrates. The *Nari O Shishu Nirjatan Daman* Tribunal is to be treated as a Court of Sessions applying all the powers of such a Court while trying any offence under this Act or any other offence thereof (Section 25).

6.4. Public Prosecutor:

When an act of violence covered by the Act of 2000 occurs against any child or woman, it is an offence considered to be committed against the State. The Public Prosecutor shall conduct the case on behalf of the complainant.[132] (For a detailed discussion on the Prosecutorial Services in Bangladesh see below in 8.3.).

6.5. Filing of cases under the *Nari O Shishu Nirjatan Daman* Ain, 2000:

The processes by which the system of administration of justice in Bangladesh address the occurrence of any offence covered by the *Nari O Shishu Nirjatan Daman* Ain, 2000 are set forth briefly below. Under Section 154 of the CrPC:

> Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a Police-Station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Government may prescribe in this behalf.

[132] Section 25(2).

A case under the *Nari O Shishu Nirjatan Daman Ain* may be initiated with the submission of an *Ejahar* (i.e., information related to the commission of offence) to the Officer-in-Charge (OC) of the Police station. The written report of an offence mentioned above is the well-known First Information Report or FIR which is to be recorded by the OC. If the OC believes that an offence has been committed, an investigation may be done without requiring an order from a Magistrate. If during investigation, the investigating officer reasonably suspects that a particular individual or individuals committed the offence, s/he may arrest the suspect or suspects without a warrant of arrest.[133] Under Section 27(1) of the NOSNDA, the Tribunal shall take cognizance of any offence only when it is reported in writing by any police officer not below the rank of sub-inspector, or any person empowered by the Government for this purpose.

Under Section 27(1ka), when any Police officer or authorised person refuses to record an FIR, the complainant may submit a complaint, accompanied by an affidavit, to the Tribunal. If the Tribunal, upon examination of the complainant, is satisfied as to the above, (ie, the Police has refused to receive a complaint from any person about the commission of an offence under the Act of 2000), it will, (ka): direct the magistrate or any other person, to inquire into the allegation and the person upon whom such responsibility is given will submit the report within 7 days of the order or: (kha) if not satisfied will not take further action. The responsibility to conduct an inquiry may be given to any governmental or non-government person or agency. Therefore, cognizance by the Court 'can be taken through two procedures: one upon report submitted by 'police' or by 'an authorized person' and another upon inquiry- report submitted by the 'Magistrate' or 'any other person' assigned by the Tribunal so to do.'[134]

Thus, on consideration of the inquiry report and the complaint, if the Tribunal is satisfied about the existence of a prima facie case, it will take cognizance and proceed with the trial.[135] If on receipt of the enquiry report, the Tribunal does not find a prima facie case for trial, it shall dismiss the complaint as unsubstantiated.[136]

The law gives the Tribunal the authority to disregard the inquiry report if it so thinks fits. Section 27 (1(ga) states that even if no recommendation is made in the report submitted

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[133] Huda, Shahnaz (2021). Legal Framework Analysis on the Challenging Fear of Violence; Plan International Bangladesh, November, 2021 at p.28.
[134] 7 SCOB [2016] HCD Mst. Anjuara Khanam @ Anju Vs State (M. Moazzam Husain, J).

[135] Babu Miah vs. The State 2 ALR (2013) (HCD) 338.
[136] Ibid.

regarding the commission of an offence and the taking of action, the Tribunal for the purposes of justice can, after mentioning its reasons, accept the offence for trial. [Section 27(1ga)]

The distinction between the phrases 'inquiry' and 'investigation' has been clarified by the Court in the case of Mst. Anjuara Khanam @ Anju Vs State, where it was opined that: "inquiry" 'as contemplated under section 27(1Ka)(Ka) may fairly be construed to include spot- visit and recording statements of witnesses at the field level before preparing a report to be submitted in the Tribunal. Here the inquiry- officer is either a Magistrate or 'any other person' assigned so to do by the Tribunal. It is knowledge a priori that a Magistrate is not a professional investigator. So is the case with the persons generally assigned by the Tribunal to make the inquiry, such as, the local Upa-Zila Chairman, ViceChairman (as is the case here) or a Government officer.' [137] The wording of Section 27 clearly does not include the Police within the meaning of 'any other person'. Therefore the inquiry referred to under the relevant Section cannot be undertaken by a Police Officer. However, the power of the Tribunal to involve the Police in case of complaint cases has been clarified and reinterpreted in the Anjuara case where was held that:

> the Tribunal may, if it appears after receiving the inquiry-report that the facts are not as plain and obvious as narrated in the petition of complaint and an inquiry is not enough for discovery of truth behind the offence, send the complaint petition to the local police station with direction to cause an investigation to be made by a competent police officer, other than the one who refused to accept the same, or otherwise direct any other investigating agency to investigate, and report.[138]

A Special Prosecutor of the NOSND Tribunal from Hobiganj in Workshop 1 spoke about some of the issues which arise regarding such an order for inquiry by the Tribunal when the Police is alleged to have refused to accept an FIR. 'In the majority of cases,' he said, 'the complainant or his lawyer requests that the duty to conduct the inquiry should be given to a specific agency such as the Upazilla Chairman, Upazila Education Officer, Ansar Adjutant etc. The PP noted that the workload of these persons/agencies have increased tremendously in recent times and they are completely bogged down by their own responsibilities. As a result they cannot possibly give the report within 7 days as required by law. According to him, 'they are so busy that they do not even have time to ask for an extension of time. In addition, they have no knowledge about what techniques to use when conducting an inquiry.' The recommendation

[137] 7 SCOB [2016] HCD Mst. Anjuara Khanam @ Anju Vs State (M. Moazzam Husain, J)
[138] Ibid.

was that there should be specialised inquiry as well as investigation units for GBV incidents in relevant situations. The Public Prosecutor further added that when 'the Tribunal has given any person/agency the responsibility to inquire into the truth of any allegation, the complainant has to spend a lot of time and effort trying to speed up the process and is harassed in such a manner that they get tired. Therefore, the inquiry when it is done on the order of the Tribunal, is delayed for months'. The PP opined that the Tribunal needed to be stricter in ensuring that the report is given on time.

In Abdul Hamid (Ujir) vs. State,[139] the Tribunal without complying with the stipulated provision of law i.e. without sending the matter for inquiry and without getting inquiry report directly took cognizance merely on the basis of the petition of complaint. The High Court held that the very initiation and continuation of the proceedings is an abuse of the process of the court.

6.5.1. Offences Cognizable

All offences under the NOSNDA shall be cognizable. [140]A cognizable offence is one for which, according to Sec.4 (1) (f) of Code of Criminal Procedure of 1898[141], a police officer may arrest without a warrant and which 'any officer-in charge of any police-station may, without the order of a Magistrate', investigate into.[142] Such investigation may also be commenced on the basis of an order of a Magistrate.[143] A person accused under the *Nari O Shishu Nirjaton Daman Ain* may be arrested immediately[144]

6.5.2. Offences Non-Bailable:

By virtue of Section 19 (2), offences under the Act of 2000 are non-bailable. Thus, bail shall be denied for any offence punishable under the NOSND Act, to any person directly connected to its commission or indirectly accused, if the complainant is not given an opportunity of being heard on the application for bail or the Tribunal is satisfied that there is sufficient ground for the accused to be convicted of the offence he is accused of. If the accused is a female or a child or physically disabled, and the Tribunal is satisfied that justice will not be impeded if released on bail, it may grant bail. Other than persons mentioned above, i.e. those directly or indirectly connected to the commission of the offence, any other person may be released on bail if the Tribunal considers it justifiable to do so after recording the reasons for doing so.

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[139] 67 DLR 154
[140] Section 19(1).
[141] Act No. V of 1898.
[142] The Code of Criminal Procedure 1898, s 156.
[143] Ibid.
[144] https://archive.thedailystar.net/law/2010/05/02/advocate.htm

6.5.3. Offences Generally Non-Compoundable:

None of the offences over which the Act of 2000 has jurisdiction are compoundable except for the offence under Section 11(ga). A non-compoundable offence is one which does not allow the parties to compromise the matter. Under the NOSNDA, 2000 all offences are non-compoundable except for the one mentioned.. Simple hurt caused as a consequence of dowry demands were made compoundable by Section 4 of the *Nari O Shishu Nirjaton Daman (Shangshodon) Ain* 2020 which amended Section 19(1) of the Act. In 2003, by an amendment to the Act of 2000, dowry related violence was categorised into three ---death, grievous hurt and simple hurt ---all of which, like other offences under the Act, were made non-compoundable. In 2020, as mentioned, compoundability under 11 (g) was introduced making the offence of causing 'simple hurt' due to dowry demands capable of being compromised.

6.6. Protecting the identity of the survivor/victim –Section 14 :

Section 14 of the law protects and shields the child or woman victim/survivor of violence from being identified in any newspaper or any other form of media. Any person or persons liable for infringement of this provision shall be punished with imprisonment for either description, which may extend to two years or with fine not exceeding one lac taka or both.[145]

6.7. Safe Custody - Section 30 &28(8):

The issue of safe custody of women and child victims, and at times, witnesses have been addressed by the Act of 2000 as well as by the NOSND Amendment Act of 2003. Safe custody in the context of Bangladesh has been subjected to prolonged debate and criticism. Previous to 2000, the general convention was for the relevant Court to award such custody to the police, although no specific provision was contained in any law. In the case of Rokeya Kabir (Mrs.) vs. Government of Bangladesh and others, the Court opined:

> Keeping a victim minor girl in safe custody /judicial custody has no express provision of law in support thereof but there are a series of judicial decisions of our apex court which lay the strong legal basis of judicial custody of minor victims as a matter of long practice in our legal system.[146]

However, there has been and continues to be widespread allegations of abuse of authority and further violence whilst within Police custody. The case of 14 year old Yasmin in 1995

[145] Section 14(2).
[146] 5 MLR (2000) (HC) 58.

sparked massive outrage. Yasmin was picked up by the police who assured her that she would be safely dropped off at her destination. Instead she was brutally raped and murdered. After the incident, thousands of people took to the streets and laid siege to the police station demanding punishment for the policemen behind the brutal act. In a bid to disperse the outraged crowds, police indiscriminately opened fire that killed seven and injured over 300 others.[147] Rape and sexual abuse of women, girls and boys have been and continue to be routinely reported in custody. The Act of 2000 through Section 31, introduced the concept of safe custody outside of police custody /jail and by an amendment in 2003 requires the consent of the concerned person [Section 20(8)]. Section 31 states:

> During the continuance of the trial of any offence under this Act, if the Tribunal considers it necessary that any woman or child should be kept in safe custody, it may order such woman or child to be kept in any place outside of the prison, specified by the Government for this purpose, under Governmental supervision, or in the custody of any person or organisation.

It is necessary before ordering such safe custody, to take and consider the opinion of the woman or child concerned under the amended Section 20(8) of the Act. In the Barishal Workshop, participants mentioned the problems encountered in arranging and paying for the transportation of victims and others to designated places for safe custody.

Section 9(5) punishes custodial rape and states:

> If any woman becomes the victim of rape while in police custody, the persons under whose custody the woman was when the rape was committed; each or all of such persons directly in charge of the safety of the victim of rape, unless otherwise proved, shall face punishment for the failure to provide safety. The penalty provided is rigorous imprisonment between five to ten years as well as a fine of maximum ten thousand Takas.

The amendment of 2020 to the NOSNDA 2000, also 'makes a small but significant linguistic correction to section 9(5) of the 2000 Act, which deals with custodial rape, by replacing the word "*dayi*" (responsible) with "*dayittoprapto*"(in charge). Before the amendment, under Section 9(5), any person or persons directly responsible (*dayi*) for the woman's [safe] custody was made liable to punishment for the rape of a woman in custody. After the Amendment of 2020, liability is imposed on any person or persons directly in charge of a woman's safe custody who was raped while in Police custody. .

6.8. Compensation or damages for the survivor - Sections 4(4) & 15:

The *Nari O Shishu Nirjatan Daman Ain* contains provisions for compensating the survivors or the victim's family for the loss suffered by them. The process prescribed is long and convoluted and NOSND Tribunals do not often go into it. At Workshop 2 (Barishal)

[147] https://www.dhakatribune.com/bangladesh/nation/2020/08/24/remembering-yasmin-a-tragedy-not-forgotten

participants discussed that the system of realising compensation under the Act of 2000 is complicated. They opined that the authority to collect compensation should be given to the Tribunal. In many cases the District Collector has no fund to pay compensation on behalf of the Government. In the Barishal Division, in some districts, the practice is that the District Collector has the authority to sell the property and deposit the money in the 'returnable fund' of the Government and money can be withdrawn from this fund to pay compensation.

Section 4 of the NOSNDA introduced the provision of compensation for survivors/victims of acid/corrosive, scalding, burning and poison-related crimes or for their heirs. Under sub-section (4) of Section 4, the amount of fine imposed for an offence under Section 4(4) shall be realised, in accordance with the provisions of applicable law, from the person convicted or from his existing property or in case of his death, from the property left at the time of his death. Such amount shall be given to the person who is injured physically or mentally as a consequence of the offence or in case of the death of the victim, to the successors of the deceased victim.

Section 15 of the NOSNDA provides that the Tribunal may direct that the fines imposed for offences under Sections 4 to 14 be paid as compensation or damages to the survivor of the offence or to the victim and may realise such sum from the convicted person or from his existing or future property and such claims shall take precedence over any other claims over such property. Section 16 describes the procedure for realising fine or damages. The money so collected shall be deposited to the Tribunal which shall make arrangements for such amount to be paid to the victim.

There appears to be some inconsistency between Sections 4 and 15 regarding the payment of compensation since in the former, the Tribunal is required, under the law, to pay the fines collected from the convicted person as compensation to the victim or her family. Section 15 on the other hand, speaks of the Tribunal having the authority, if it considers necessary, to deem the fines as compensation for the victim. In the latter case, it is the Judges discretion whilst in the former it is not. So the giving of compensation under Section 4 is mentioned to be both mandatory as well as discretionary.

The reality is that in the majority of cases survivors or families have to wait for years, if ever, to get any compensation at all. Again, the amount they get may be insufficient for their needs after such delay.

To get compensation there has to be a conviction but conviction rates being what they are, compensation is also rarely received. It is, in the majority of cases, as discussed above, up to the Tribunal to decide whether to convert fines into compensations. This discretion appears to be rarely exercised, in many cases due to lack of interest or even awareness of relevant actors ---i.e. judges and Prosecutors. A 2020 study by BLAST found that although the Court imposed fines on convicted rapists in 100 percent of the cases (since fine is mandatory for rape), the judge converted the fine into compensation and awarded it to the victim/survivor in less than seven percent of the cases.[148] Crucially, securing a criminal conviction may take years, if not decades, while victims of violent crime require monetary relief immediately due to the costs associated with the crime.

In 2007, the Law Commission drafted the proposed Crime Victims Compensation Act, [149]to address the inadequacies of the existing legal provisions to provide redress to survivors and family members of victims of violent crimes but no serious effort has been made to enact such legislation. The Daily Star reported on the 30st of October 2021,[150] in an article entitled 'Compensation for Rape Victims –A Scheme ever Exclusive', about the pathetic and shocking situation of an eleven year old child who had been raped at the age of five and suffered horrific injuries to her urinary tract which has left her an invalid. Her attacker has not been convicted as yet and she is yet to get justice. In the meantime her medical bills have racked up and her fisherman father is unable to bear the costs.

On February 24, 2021, the High Court issued a rule asking the government to explain why it should not be directed to outline a scheme to ensure compensation for rape victims on a WRIT petition by Children Charity Bangladesh Foundation. The petition presented the cases of three minor girls to argue the need for compensation for rape victims -- one of them was the 11 year old mentioned above. The HC gave the government one week to respond. Last

[148] Huda, Taqbir (2020). No Justice without Reparation: Why Rape Survivors Must Have a Right to Compensation, Rape Law Reform Research Reports, no. 2; Dhaka: BLAST and UN Women

[149] See Law Commission, Bangladesh (2007). Final Report on a proposed law relating to payment of compensation and other reliefs to the crime victims. https://www.lc.gov.bd/reports/75.pdf

[150]https://www.thedailystar.net/news/bangladesh/crime-justice/news/compensations-rape-victims-scheme-ever-elusive-2209391

year, Bangladesh Legal Aid Services Trust analyzed 44 rape cases and found that even though the court slapped the culprits in all the cases with monetary fines, the money was not converted to compensation in 93 per cent of the cases. Only three victims got compensation.[151]

6.9. Punishment for False Cases: Section -17:

Section 17 provides for 'Punishment for filing any false complaint etc. and states:

> If any person files or causes to be filed any case or complaint against a person intentionally and being aware that the allegations are false, such person shall be liable to be imprisoned for up to seven years and will also be liable to fine.

There have been persistent claims that the Act of 2000 is often used maliciously to harass people even when there is no offence committed. In the different workshops, the tendency to institute fabricated cases was discussed at length. In many cases, low rates of convictions as well as backlog of cases may be exacerbated due to such tendencies. Many false cases may be instituted due to past enmity or to get revenge for some political or other animosity towards someone.

From the discussions at the Workshops, it became clear that false cases may be of different kinds. The allegations may be completely false and fabricated or there may be partial falsehoods involved. Women and girls are in many cases used by others or they may themselves vindictively institute a false case to get back at someone due to personal or political enmity; land-related disputes; local power struggles and so forth. For instance, women/girls in consensual sexual relationships may bring in false allegations of rape. Lawyers may embellish the facts completely to strengthen their cases. For example, in cases of domestic violence, they may advise their clients to falsely claim that the violence committed against them was due to dowry demands when actually such demands were not the motive for the abuse, although violence has indeed taken place. At Workshop 4, OCC doctors mentioned that in a few instances, women/girls even came to the Centres with false allegations and wanted medical examinations to be done.

Several of the Tribunal Judges for the present study shared that in very many cases the female, who is the complainant, and the male, against whom a complaint has been brought, have been in a consensual relationship and the woman brings in an allegation of rape because the man has reneged on a promise to marry her. Indubitably, being in a consensual relationship does not negate that the incident she reported was indeed non-consensual at the time of its commission.

[151] https://www.thedailystar.net/news/bangladesh/crime-justice/news/compensations-rape-victims-scheme-ever-elusive-2209391

The key reasons identified in Workshop 1 for the filing of false cases include attempts to extract money from the opposite side and to take revenge for any other dispute pending between the parties. In many cases, women want to institute cases under the special Tribunal, even if they have to rely on falsehoods, since they believe that other laws are not stringent enough to give them sufficient remedy. For instance, a Judge of a NOSND Tribunal from Panchagar District thinks that the primary reasons people prefer coming to the Tribunal rather than approaching other Courts for offences that the Tribunal actually has no jurisdiction to try, is that under the NOSNDA offences are non-bailable and the penalties are stringent.

Under the law, the Tribunal can take cognizance and adjudicate any offence related to the institution of false cases only on a written application of any person. For it to be termed a false case, the court would have to hold, beyond any doubt, that the case was completely baseless, motivated and meant to injure the accused.[152] In the absence of a written complaint before the Tribunal, it has no power to allow the investigating officer to initiate a legal proceeding against the informant for making false allegations against the accused.[153]

In Nurul Huq (Md) vs. State[154], it was clarified that the *Nari O Shishu Nirjatan Daman Ain* does not empower the Tribunal to take cognizance against any person who has filed a false case or a complaint or got such a case or complaint filed by any other person. In the absence of any written complaint made by any person, the Tribunal has no authority to direct the Magistrate or any other person to file any complaint to enable it to take such cognizance with regard to the filing of false cases.[155]

From the questionnaire survey, as well as the opinions expressed by the Judges at various Workshops, it was found that in reality very few cases are actually filed under Section 17, even though plenty of false cases are instituted. Stakeholders from the Sylhet Division recommended that the Tribunals, under Section 17, should be allowed to take cognizance of offences when false cases are filed 'by the complainant or informant on the application of person aggrieved or '*suo moto*[156]*.'* According to them, if it is proved that a false case was indeed filed, punishment should be given in that very case without filing a new one.' Judges of NOSND Tribunals of Barishal said that in such cases, the Tribunal should be able to take action on the written complaint of any person. According to them, there should be an inclusion of a section similar to Section 250 of the CrPC which deals with false, frivolous or vexatious accusations. When the Tribunal is satisfied that the allegations are false, no separate case complaint should be necessary and no new evidence should be taken –only a show cause notice should be given, and then, if it is proved that a case was falsely instituted, the responsible person, if found guilty, should be punished.There may be situations when a false case has in fact been instituted and later there is compromise due to intimidation or extortion. In such cases naturally no case is filed under Section 17. In such circumstances, according to a participating Tribunal Judge, the Court should have the authority to take action for illegal settlement and for wasting the Tribunal's time. One Judge however disagreed with the

[152] https://www.dhakatribune.com/opinion/op-ed/2019/07/28/when-a-false-accusation-is-made

[153] Harabilash Mitra vs. Sanjoy Biswas 2 ALR (2013) (HCD) 154.

[154] 55 DLR 588.

[155] Ibid.

[156] *Suo moto* is a Latin term meaning of its own accord.

recommendations to give the Tribunal the authority to deal with false cases on the ground that if Tribunals were to deal directly with false cases the system would be even more overburdened.

The High Court Division having faced instances of abuse of the process of court by false prosecution to harass adversaries in view of higher punishment and stringent provisions relating to offences against women and children, cautioned the tribunal to be alert to the menace of the false charges and not to convict accused unless the charge is strictly proved by trustworthy evidence beyond all reasonable doubt.[157]Judges were of the view that the Tribunal needed to be more aware and vigilant when taking cognizance of an offence. However, as a NOSND Tribunal Judge from Manikganj shared in Workshop 4, 'we realise that a case is false much later in the process. It is not possible for a Judge to dismiss a case at the early stages due to impassioned submissions by the Prosecution, media attention and other pressures.'

False and frivolous cases cause many problems ---both for the accused and the justice system. However, the UN Women Guidelines notes that the specific provision contained in the Bangladeshi Act which provides punishment for filing a "false case or complaint" with the purpose of causing injury to the person against whom such offence is filed "may dissuade survivors from filing cases due to fear of not being believed, and there is a high risk that such provisions may be applied incorrectly and used by the defendant/offender for purposes of retaliation."[158]

7. INVESTIGATIONS, TIME LIMITS FOR INVESTIGATIONS; TRIALS, TRIAL PROCEDURES, TIME LIMITS for TRIALS and ACCOUNTABILITY; APPEALS:

One of the major criticisms and the primary reason which discourage victims of violence from approaching the special Tribunals is the long winded, lengthy -- almost interminable, processes involved which result in severe delays in getting justice. This includes the time taken to investigate the case. According to Code of Criminal Procedure, 'investigation includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by the Magistrate'.[159]

[157] Shafiqul Islam (Md.) vs. The State 50 DLR 581.

[158] Equality Now and Dignity Alliance International (2021). Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors at p.30.

[159] Section 4(l) of the CRPC 1898.

As regards the investigation, after and if an FIR is recorded, the Officer-in-Charge assigns an officer as Investigating Officer (IO). According to Dr. Abul Hossain, Former Project Director of the Multi-Sectoral Programme on Violence Against Women, MoWCA and a key informant for this study, there are two Inspectors in a Police Stations, both of whom are Class 1 officers---one sees to the overall law and order situation of the area and is in charge of the management of the Police Station known as Officer-in-Charge or the OC. The other Inspector is in charge of the investigation. For a long time, it was the demand of the civil society that there should be a separate investigation unit of the Police and as a consequence, the Home Ministry has assigned particular inspectors to have the responsibility of conducting investigations.
Under the Inspector, who is given the charge of investigation are Sub-Inspectors (SIs). The latter are responsible for the investigation of all the individual cases that are instituted. These SIs are therefore conduct investigations at the field level. The Police Regulation of Bengal clarifies that apart from constables, anyone from the rank of SI can conduct an investigation. The OC has to coordinate with the Inspector in charge of the investigation and the SIs.

7.1. Time Limits Specified by the Law Within Which Investigations are to be Completed:

Under Section 18 (1) (ka), if the perpetrator is caught red handed by the police or by any other person and handed over to them, investigation must be concluded within **15 days**. In other cases, investigation of an offence under this Act shall be completed within the period of **sixty days** from the date on which any information regarding the offence is received or from the time the Officer-in-charge or in cases, the Tribunal, passes an order for investigation.

If the Investigating Officer fails to finish the investigation within the times mentioned in Section 18(1) he shall finish the investigation within thirty days after recording the reasons for the delay and shall inform, in writing, his superior Officer or in relevant cases, the Tribunal, ordering the investigation [Section 18(2)]. If the investigation is not completed even within this extended timeline, the IO must inform the relevant authority or the Tribunal within twenty four hours of such failure. Under Section 18(4) after being so informed the person in charge or the Tribunal which has ordered the investigation may hand over the investigation to any other officer. Such Officer shall complete the investigation within **seven days** if the alleged perpetrator is in custody or, if not in custody, **within thirty days**. If, even after all such extensions, the investigation is not completed, the IO must inform the Officer-in-Charge or the Tribunal and such authority may, if satisfied that the responsibility of the delay lies with the IO, shall consider the delay to be due to the inefficiency and misconduct of the Officer and will record

such findings which shall be included in the annual confidential report of the Officer and departmental action may be taken against such person.

In Workshop 3 the above Section 18 was criticised as having certain loopholes. According to a Tribunal Judge, after all the extensions and if both IOs fail to give the report, the law does not state what will happen to the investigation, only that departmental action can be taken against the officers for their incompetence. It was also noted that, 'when the first and the second IOs cannot complete the investigation in time, usually an application for extension of time is made to the Tribunal. But the law does not say anywhere that the Tribunal Judge can extend the time---in fact it is not clear as to who will extend the time'.

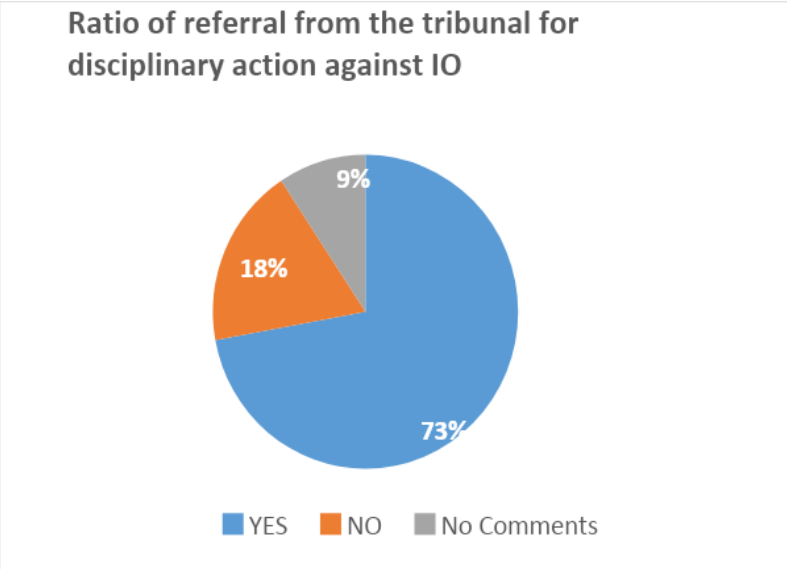
Under Section 18(8) if, after the completion of the examination of witnesses, it appears to the Tribunal that the officer investigating an offence under this Act, has with the purpose of protecting any person from being found responsible for any offence, or due to negligence in the investigation has failed to collect any evidence or has not considered any necessary evidence or has submitted the report negligently without examining proper witnesses, it may consider such negligence of the IO as incompetence or misconduct and direct the Officer-in-charge of such IO to take necessary legal measures against the IO. The Tribunal may, based on any application or on the basis of any information, direct the concerned authorities to appoint another officer in place the officer investigating the offence.[160] According to one expert:

> The law prescribes specific time limits for investigation, trial and of rape cases, yet these are not enforced and measures are hardly taken against police officers and court officials who fail to comply with these limits. The effective enforcement of these rules, and ensuring proper compliance with procedures, should also be considered when pursuing legal reform. [161]

The Chart below shows the trend in the Tribunals giving directives to take disciplinary action against the police in case of negligence and/or misconduct according to the questionnaire survey of Judges of the NOSNDTs:

[160] KII with Dr. Abul Hossain, Former Project Director of the Multi-Sectoral Programme on Violence Against Women, MoWCA.

[161] See Tawhida Khondoker Director, Bangladesh National Women Lawyers' Association (BNWLA) at Op. cit. BLAST (2019 a) at p.11.



7.2. Trial Procedure and Time Limits:

The trial process: When the trial stage is reached, the provisions of Chapter XXIII of the Code of Criminal Procedure, 1898 prescribing provisions 'Of Trials Before Courts of Sessions' shall be followed by the Tribunal. 'If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution on this behalf, the Court considers that there is no sufficient ground for proceeding against the accused, it shall discharge the accused and record the reasons for so doing'.[162] If however, 'the Court is of opinion that there is ground for presuming that the accused has committed an offence, it shall frame in writing a charge against the accused.[163] Under 265 D (2) of the CrPC, where the Court so frames a charge, the charge shall be read and explained to the accused who shall be asked whether he pleads guilty to the offence charged or claims to be tried. If the former, i.e. if he pleads guilty, 'the Court shall record the plea and may, in its discretion, convict him thereon.'[164] Under Section 265F of the CR.PC,

> If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under section 265E, the Court shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

[162] Section 265© of the CrPC.
[163] Section 265 (D) (1).
[164] Section 265 (E).

As in other trials before a Sessions court, the prosecution under the *Nari O Shishu Nirjatan Daman Ain* shall be conducted by a Public Prosecutor. After the examination of the accused, taking of all evidence, cross examinations, submissions by the accused in his defence and examination of defence witnesses if any, the Court may either convict or acquit the accused. The process is extraordinarily protracted in the context of Bangladesh due to a variety of reasons.

Section 20(2) of the *Nari O Shishhu Nirjatan Daman Ain* 2000, categorically states that after the commencement of the trial, until the completion of the trial, proceedings shall be held on each working day. The Tribunal shall complete its adjudication within one hundred and eighty days from the date the case was filed [20(3)]. If the trial is not so completed the Tribunal may release the accused on bail and if the accused is not so released, shall note down the reasons.

Section 31 ka was inserted by the *Nari O Shishu Nirjatan Daman (Shonshodon) Ain* of 2003 and provides for **Accountability of the Tribunal** and states that if a trial is not completed within the one hundred days mentioned in Section 20 sub-section (3), the Tribunal shall note down the reasons for such failure and within thirty days submit a report to the Supreme Court and send a copy thereof to the Government. After reviewing the report submitted, the relevant authorities shall take necessary action against the person or persons responsible for the case not being settled within the prescribed time [Section 31ka(3)] or Section 31ka(3)]. In Milad Hossain@Milad Uddin (Md) vs. State, the Court held:[165]

> Sections 31(Ka) (3) of the Act, 2000 incorporates that on consideration of such reports the appropriate authority shall take action against the responsible person(s) who failed to conclude the trial within the stipulated period. Although, in the Act, 2000, the appropriate authority has not been defined, but from legal parlance, we are led to hold that it is the concerned authorities of the persons, who are submitting the reports i.e. the Supreme Court, Law and Justice and Parliamentary Affairs and the Ministry of Home.

According to participants of the Sylhet Workshop, cases ready for trial face lengthy disposal time due to huge backlog of cases, difficulty in availing formal witnesses, analogue trial system, time prayer from the accused side and indifferent approach of prosecution in completing evidence taking at a stretch. The backlog of cases was further exacerbated by the COVID pandemic during which time filing of cases in the Tribunal continued. [166] However it was contended that even though the normal court activities were drastically affected due

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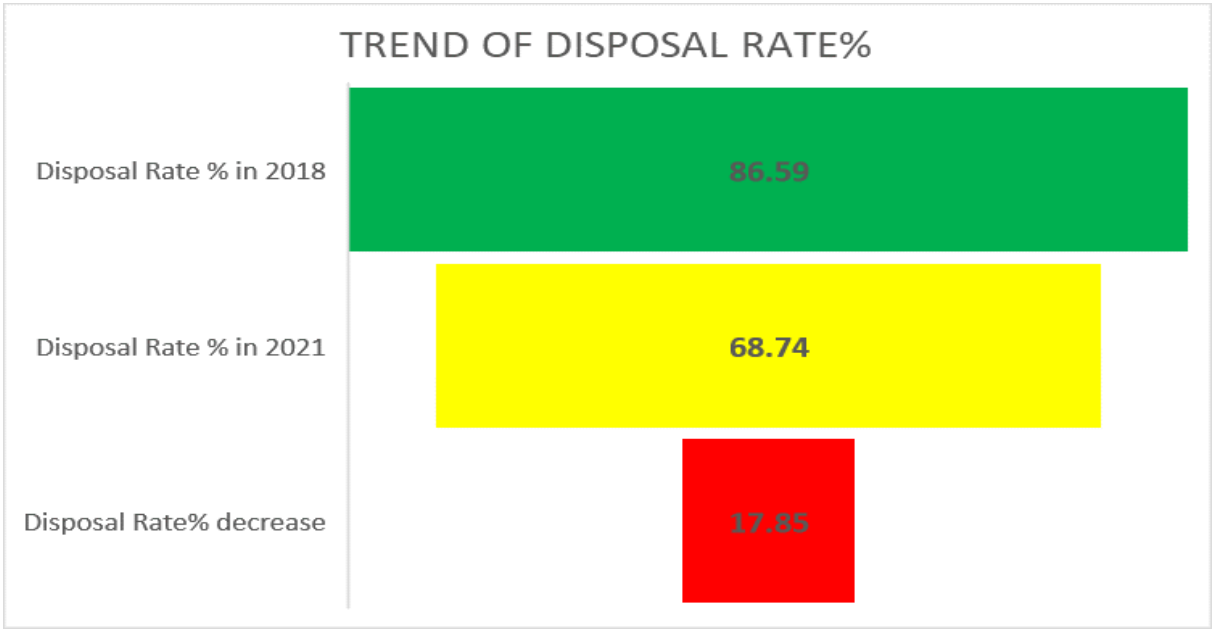
[165] 69 DLR 345.

[166] Report of the Divisional Consultation held in Sylhet; Prepared by Yasmin Begum, Additional Chief Judicial Magistrate, Sylhet.

to the pandemic, the Tribunals, despite all obstacles, continued disposing of cases and kept pace with the number of cases being filed. The following Table shows the decrease in the overall disposal rates of the Tribunals, coinciding with the pandemic.



7.3. Appeals to lie before the High Court:

Appeal against any order, judgement or punishment imposed by the Tribunal, shall lie before the High Court Division and must be made within the period of sixty days (Section 28). This study identified that one of the reasons for harassment of survivors or victims of violence even after a trial is concluded is delay in disposal of appeals at the higher Courts.

Many decisions of the Tribunals are appealed against. Stakeholders were of the opinion that there should be several separate Benches of the HCD to deal only with appeals from the judgments of the Tribunals to ensure speedy disposal of cases. It has also been noticed that in several cases different Benches of the High Court Division have given contradictory or inconsistent decisions regarding different issues under the Ain. In such cases the recommendation is the constitution of Special or Full Benches of the High Court Division to settle the matters. On the requisition of any Division Bench or whenever he thinks fit, the Chief Justice, may appoint a Special Bench consisting of three Judges, for the hearing of any particular Appeal, Rule, Revision or Application or any other question of law arising in an appeal or in any other matter.

8. CRITICAL ANALYSIS OF THE ROLE of MEDICAL SERVICE PROVIDERS and MEDICAL EVIDENCE; INVESTIGATING OFFICERS; PUBLIC PROSECUTORS and MAGISTRATES in DELIVERING JUSTICE UNDER the ACT of 2000:

There is a general lack of public confidence in the various stages of administration of criminal justice including when it comes to gender based violence. The perception is that despite laws aplenty gender based violence offenders will escape punishment. Such perception is based on reality. In a report of the Bangladesh Law Commission, it was reported that the conviction rate in the VAW cases filed under the provisions of the *Nari O Shishu Nirjatan Daman Ain* 2000 is below 10% on an average.[167] Out of almost 43,000 cases recorded by the Multi-Sectoral Programme on Violence Against Women until July 2020, less than 11,000 women filed a case and only in 160 cases a penalty was actually imposed. In other words, less than 1.5% of cases reported through the government's One-Stop Crisis Centres have ended with a penalty for the perpetrator. This data reveals the deep structural issues within the criminal justice system in Bangladesh when it comes to women's rights.[168]

It is argued that weak inter-agency justice sector responses impede effective implementation of these laws which fail to secure justice to victims of gender-based violence.[169]
Above it has been discussed in some details, the external factors which hamper women and children from accessing the Tribunals such as poverty, socio-cultural norms and so forth. In this portion of the research we delve in-depth to examine the roles, functions, lacunas, failures and practical scenarios as regards Medical Officers, Investigating Officers, Magistrate, Public Prosecutors and the Honourable Judges of the Tribunals from their own perspective and from secondary evidence.

It is of utmost importance for survivors of violence to have faith in the criminal justice system so that they are encouraged to seek legal redress. As has been elicited from this research, that because of the lack of faith in the criminal justice system which is due to a variety of factors, victims of crimes submit to illegal dispute resolutions or compromises or take the law into their own hands. It also encourages a culture of impunity amongst perpetrators and encourages people into taking the law into their own hands. The present research calls upon

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[167] The Law Commission of Bangladesh: A Report on the Amendment of Certain Sections of the *Nari O Shishu Nirjatan Daman Ain* 2000 (25/08/2010)
[168] Op. cit. Peace for Asia (2020).
[169] Op. cit. UNDP (2021).

the accumulated knowledge of justice sector actors to find answers to the reason why conviction rates are abysmally low. Public opinion at times puts the blame squarely on the Tribunals for the low rates of convictions but it is the premise of this study that there are in play many factors which are responsible for such a small number of guilty verdicts. Various studies have identified that the systematic or structural bottlenecks among the justice sector institutions in the VAW cases filed under the *Nari O Shishu Nirjatan Daman Ain* 2000 exist from the pre-trial stage to the implementation of the Tribunal's judgement.[170] Not only is the rate of convictions of the *Nari O Shishu Nirjatan Daman* Tribunals low but a study of reported cases show that many of the convictions of the *Nari O Shishu Nirjatan Daman* Tribunals were set aside or reversed upon appeal in the higher courts.

8.1. Medical Examinations and evidence:

Medical evidence provides valuable information required in most cases of gender based violence under the *Nari O Shishu Nirjatan Daman Ain*, 2000. Such evidence can be crucial in some situations to convict or to prove innocence, for example in cases of rape and other sexual violence related offences as well as offences where grievous hurt or even simple hurt is alleged. It is believed that proper collection, preservation and reporting of medical evidence considerably improves chances of conviction. An 'aspect that may have a significant and immediate bearing on facilitating women's access to justice is improving the manner in which medical evidence is collected since medical evidence is considered pivotal in the adjudication of rape cases.[171] The importance of medical evidence is to lend corroboration to other types of evidence.[172]

The stakeholders and questionnaire respondents for the present study emphasised the importance of medical evidence and the problems related to delays, proper storage as well as timely and proper production of medical certificates. 'Medical Certificates are the primary evidence to prove allegations of most offences under the Act' was the general consensus in all the workshops.

8.1.1. Provisions on Medical Examinations Contained in the Act of 2000 and other relevant directives: Law and Reality: [173]

Section 32 of the NOSNDA deals with provisions related to the medical examinations of women and child victims of violence. In addition several directives have been issued by the

[170] Op. cit. Naznin and Sharmin (2015) at p. 17.
[171] Op. cit. Basu, Asmita (2012).
[172] Mofazzal Alias Md. Mofazzal Hossain and another vs. The State, 7 BLD, HCD, 1987 406
[173] For a critical examination of the lacunas, problems and obstacles connected with medical examinations see later.

Ministry of Health as well as by the High Court Division related to medical examination of GBV survivors.

Section 32(1) of the NOSNDA, after several amendments, now reads:

> Medical examination of any person accused of any offence committed under this Act and of victims of such offences can be conducted by the use of latest technology either in Government hospitals or any non-Governmental hospital, recognized by the Government for the purpose.[174]

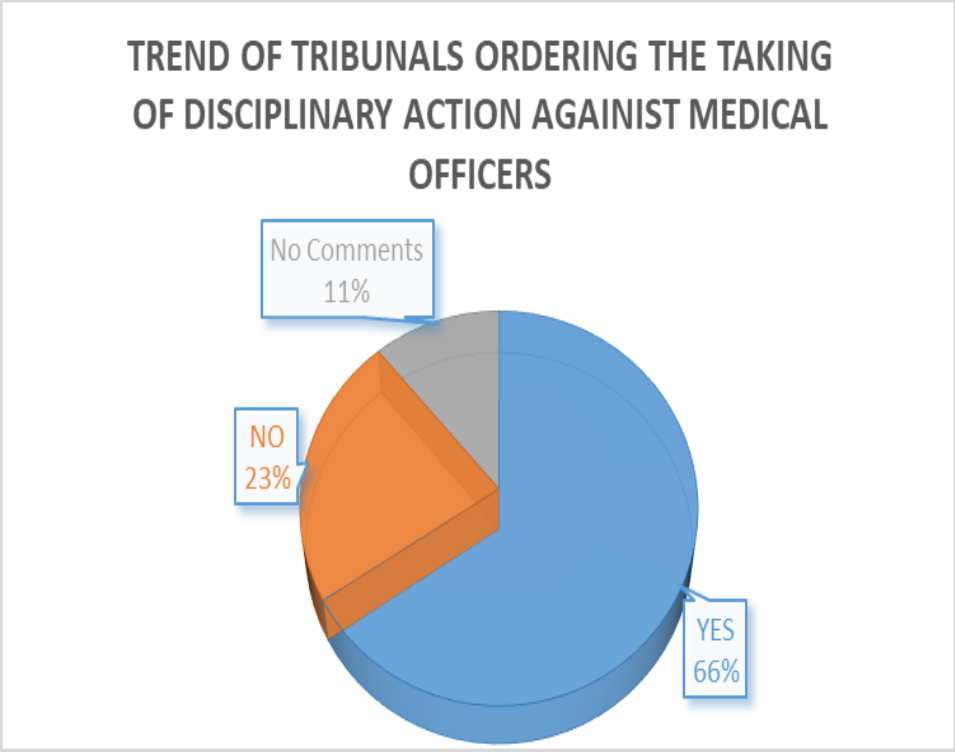
Under 32(2) when any victim of any offence committed under the Act of 2000 is produced in a medical facility, the medical officer on duty shall conduct the medical examination speedily and shall furnish a certificate to the victim as well as notify the police station of the commission of the offence. The Section requires the medical examination of a survivor of GBV to be completed as soon as the victim is produced in the hospital without specifying any particular authority requiring such examination to be done. Thus the law does not require that the Police produce the victim or for an FIR to be recorded beforehand [see Section 32 (3)]

The need for haste being of utmost importance has been underlined by almost all the stakeholders in all the Workshops under this study. In Workshop 4, the role of medical officers in ensuring victim's access to medical services; collecting evidence (*alamat*), preparing medical examination report, referral of the evidence to all stakeholders (including police, social affairs personnel, pathology, radiology and psychosocial counsellors) was discussed. At every step of the way there are a myriad of practical and real impediments which eventually impact upon the trial process and eventually on the speedy disposal of cases. Despite the clear provisions of the law stated above, realities on the ground are oftentimes very different. As mentioned above, Section 32(2) requires not only that medical examinations are to be done promptly but also that one copy of the medical certificate be given to the survivor/victim and one sent to notify the Police Station. However, in Workshop 3, the panel on Medical Examinations made clear that in reality, medical examiners/doctors, even if they conduct the examinations, very rarely supply the survivor or her family copies of reports; nor do they inform the Police Station or Thana. A Tribunal Judge, presenting on behalf of the Panel, told the assembled Justice Sector actors from Chattogram, Rajshahi and Khulna Divisions that medical examiners/doctors explain that their dereliction of duty in not supplying certificates to victims or informing Police Stations is due to the enormous pressures they are under when working at emergency departments. The medical examiners explained that although they noted down the findings of medical examinations, they did not immediately share the reports. They only did so if and when required by the IO or the Court. 'Victims often find it very difficult

[174] Translation mine.

to collect these reports', was the opinion expressed at the Workshop. Section 32 (3) contains provisions for penalties and sanctions when there is failure to conduct medical examinations within a reasonable time. After perusal of the report given as explanation for the delay, any of the authorities mentioned in the Section including the Tribunal, may hold the relevant medical officer responsible for 'negligence and misconduct'. In answer to the query, contained in the questionnaire for Tribunal Judges, as to whether they gave directives to relevant authorities to take disciplinary actions against Medical Officers in case of negligence, the majority answered in the affirmative. The Table below shows how they responded to the above question.

Chart showing the trend of the Tribunals giving directives to relevant authorities to take disciplinary actions against Medical Officers in case of negligence:

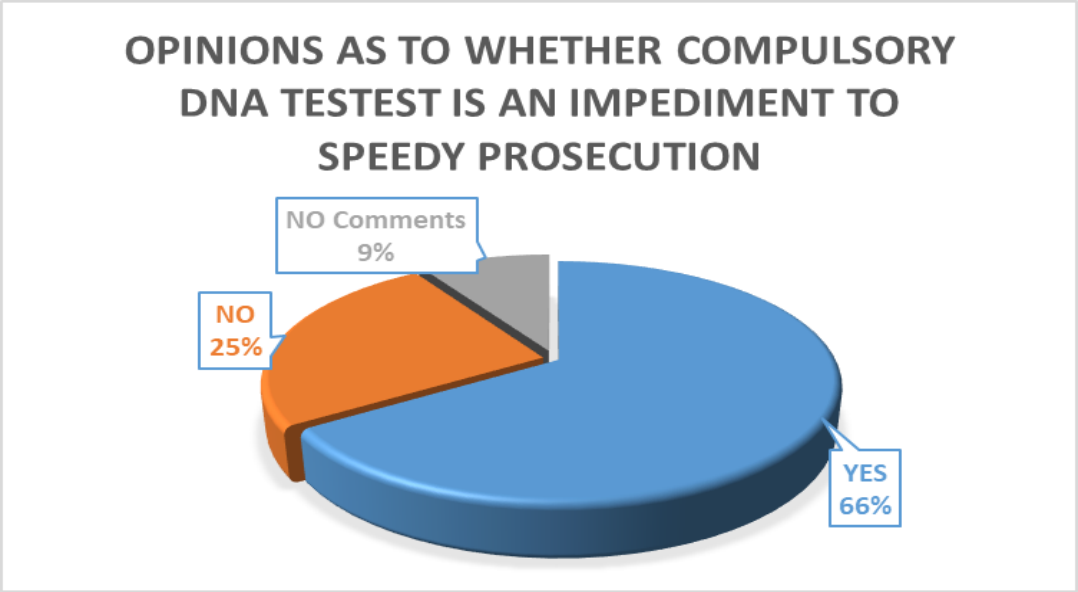


Section 32 ka was inserted by the amendment of 2020 requiring mandatory DNA tests to be done of both the accused as well as the victim/survivor of the violence, with or without their consent. This new addition has been a matter of some concern because it stresses upon the obligatory requirement of DNA tests for both the survivor as well as the alleged perpetrator. It raises important concerns about a victim-survivor's agency. Interestingly, consent is a prerequisite to DNA testing under the DNA Act, 2014

itself. The amendment appears to bypass the general rule of consent being a prerequisite for any form of DNA testing'.[175] In Workshop 3, a Tribunal Judge from the Chattogram Division shared his personal experience – when he asked doctors or medical personnel why they failed to conduct the mandatory DNA testing irrespective of whether or not the parties agree, the doctors quoted the DNA related law, which requires that tests cannot be done without consent. They medical practitioners expressed their unease and shared their concerns that if they forcefully take a DNA sample, they may be sued.
Additionally the entire process of collecting and getting the results of DNA tests is difficult and time consuming in the context of Bangladesh with its limited resources and may not be necessary for a particular offence. A Legal Aid Officer from the Sylhet Division participating in Workshop 1 expressed the opinion that it is only in exceptional cases that the time limitation imposed by the law is adhered to and the reason put forward for the delays is usually that the DNA results have not been forthcoming due to acute shortage of DNA labs. 'Everything is connected', he said, 'and therefore every single phase has to be executed properly — otherwise the process will be hindered and time of disposal of each case will be slowed down.' The recommendation given in all the Workshops was that Section 32 ka should include the phrase 'where required' or 'where applicable', since unnecessary testing will, as seen above, extend the time of submission of the medical report and lengthen the trial process.
The respondents of this study were asked whether they considered the provision inserted in 2020 for the mandatory DNA testing for both the survivor and the accused as an impediment to the speedy investigation and trial and most agreed that it was.

The Chart below shows the opinions elicited from the questionnaire survey under this study, as to the inclusion of mandatory DNA testing provisions within the NOSNDA, 2000 and whether such mandatory requirement contributed to delays:

[175] https://www.thedailystar.net/opinion/justice-practice/news/what-changes-does-the-recent-ordinance-make-our-law-violence-against-women-1990993.



In the Sylhet Workshop, this recent insertion providing such mandatory DNA testing was considered to be a gap in the existing law. In Barishal, delays both in investigations and trials were attributed to such provision and the recommendation was that the phrase 'in applicable cases' be added. In Workshop 3, the stakeholders commented that not only has DNA testing been made mandatory, the 2018 Rules to the DNA Act requires that samples must be collected in the presence of two other persons who may be doctors, lawyers, IOs, Magistrate or guardians of the survivors. Despite the Rules, rarely, if ever, are the persons mentioned present –in many cases, even the IO is absent. The sample collected therefore becomes questionable if challenged by the lawyer for the defence. Another confusion about the mandatory DNA testing is that no time limit is specified and the investigation may take more time if the DNA reports do not come in time. It was opined in Workshop 3 that there is an absence of specific time limits for reports of DNA samples to be sent and such time limit should be included by law.

The Ministry of Health and Family Welfare has at different times issued directives and guidelines regarding the conduct of medical examinations in GBV related cases. The Ministry, in 2002, issued guidelines by way of a circular (*poripotra*) to be followed while conducting medical examinations in cases of violence against women - particularly in cases of rape and acid attacks.[176] Of relevance to the issue of rape, the following directives were given:

[176] Circular issued by GoB; Ministry of Health and Family Welfare (Gender Issues Branch); No- *Shapokomo*/GI-19/97/93; Dated 16 September 2002

> If a woman or a child, who is a victim of rape or any other violence, approaches, without any police reference, any physician on duty at a government medical hospital/establishment, or at any government designated private health facility, the physician on duty (at least a medical officer) shall conduct a medical examination of the victim as per usual procedure. After completion of medical examinations, a copy of the medical certificate shall be forwarded to the concerned Deputy Commissioner and the nearest police station, and one copy shall be given to the person being examined.

Every physician and his/her clinical assistants shall provide medical services to the victimised woman and child as far as possible. According to Basu the 'effect of the guidelines is that all government and recognized facilities, whether at the district or Upazila levels may conduct medical examinations on rape victims. The second significant aspect of the guidelines is it clarifies that there is no need for a victim to first file an FIR or complaint -- i.e. initiate criminal proceedings-- before an examination is conducted. The practice in this regard has developed over the years. Prior to 1998, a court order was mandatory before such examinations were conducted. This was subsequently changed to allow the conduct of such examinations upon filing a police complaint. These guidelines mark a further step ahead."[177]

In another Circular issued by the Ministry of Health and Family Welfare in 2019, gender sensitive directives were given for the examination and treatment of GBV survivors.[178] Important amongst these are:

- In the case of offences of rape or sexual abuse, samples for chemical/DNA examinations must be collected within 48 hours and sent on for testing through the police.
- In cases of rape the two-finger tests cannot be performed. [This directive is based on a writ petition,[179] where the High Court, banned the derogatory "two-finger test" on rape victims, saying it has no scientific and legal merit. The Court held that the Two Finger Test 'is not scientific, reliable, valid and hereby prohibited in any examination of rape victim'.][180]
- For children and adolescents, speculum examinations shall not be considered essential.
- In all cases the secrecy of the victimised persons shall be maintained.

[177] Basu, Asmita (2012). Use of medical evidence in rape cases in Bangladesh. https://www.academia.edu/9384955/Use_of_medical_evidence_in_rape_cases_in_Bangladesh

[178] Circular issued by GoB; Ministry of Health and Family Welfare (Health Services Division); Gender NGO and Stakeholder Participation Unit; No. 45.05.0000.010.36.002.19.288; 21 July, 2019.

[179] BLAST vs. Bangladesh Writ Petition no. 10663 of 2013.

[180] https://www.thedailystar.net/country/hc-bans-controversial-two-finger-test-1561813

- In the Medical Certificate, use of offensive language such as 'habituated to sexual intercourse' cannot be used.

Gender NGO and Stakeholder Participation Unit of the Health Services Division of the Ministry of Health and Family Welfare, GoB with the assistance of UNFPA conducted a country-wide program on Health Sector Response to Gender Based Violence. As part of this program, Protocol for Health Care Providers, SGBV Registers, Medical Examination Forms (Male & Female),
Referral slips and informed consent forms had been sent to all Medical College Hospitals in 64 Districts and District/Sadar Hospitals and Upazila Health Complexes.[181] Uniform use of forms aims to remove incongruities in medical reports. In the Medical Report & Examination Form for Female Survivors many details are specified which must be included. This includes, for example, general Information; details of the survivor; detailed history of the incident; type of gender based violence i.e. whether sexual, physical or psychological; detailed information about the perpetrator; physical examination of the survivor including details and specifications of injury and conditions. The form specifies that examination should be done immediately, even during menstruation and preferably by a female doctor.Researchers have pointed out certain shortfalls contained within the forms circulated. In the present form where it deals with the medical examination of a rape victim the limitations are that 'it enquires only into the physical condition of the victim at the time of the examination. As a result, information such as bathing, use of sanitary napkin, urination or defecation, changing of cloth, eating or drinking, use of toothpaste, mouth wash, drugs, date of recent coitus (in applicable cases), and use of contraceptives, that in some cases could strengthen the Prosecution's case, routinely is left uncollected. Failure to collect such information in many instances has weakened the Prosecution's case.[182]Although these forms have apparently been sent to all Districts, in practice they are still not universally used. [183]

Participants of Workshops under this study highlighted the lacunas. problems and inadequacies connected to the collection of medical evidence, which eventually impacts upon proper investigation and conviction rates. If we keep in mind the directives, guidelines which are in place as well as the uniform forms provided for medical examinations, it is clear that at the grassroots level the ground reality is quite different and most requirements are

[181] See Circular issued by GoB; Ministry of Health and Family Welfare (Health Services Division); Gender NGO and Stakeholder Participation Unit; No. 45.05.0000.010.36.002.19.48; 24 January, 2021.

[182] Op. cit. UNDP and IDLO (2015) at p. 28.
[183] Ibid.

ignored. For the purposes of the present study, in each of the several workshops, in order to gauge the opinion and experiences of Divisional and District level stakeholders, one of the topics for panel discussions was the 'Role of Medical Officer and Investigating Officer'.

Lecturer of the Forensic Medicine Department; Dhaka Medical College presented on behalf of the group for panel discussions on the 'Role of Medical Officers' at Workshop 4 arranged under this study.[184] This was, as mentioned elsewhere, participated by stakeholders from the Divisions of Dhaka, ymensing and Rangpur. The panel presentation described in detail the role of a medical officer with relation to GBV.

> When a survivor comes to the hospital, the medical officer who attends to the survivor has four major roles or duties. The first is emergency medical management i.e., ensuring the survivor's access to proper medical support. This essentially means the speed with which proper medical support can be given. Emergency medical management includes emergency drug management for STD prevention and management for prevention of unwanted pregnancy.
> Secondly, medico-legal evidence collection; the collection of evidence has to be done together with emergency management. The doctor has to keep in mind that even if the condition of the survivor is serious and requires a lot of attention, collection of evidence cannot be neglected. The referral of the collected evidence to the other justice-related stakeholders is also a priority. There are several related stakeholders. One department gives support to other relevant departments e.g. the forensics department assists the OCC as does the pathology department; DNA lab, microbiology and radiology departments. All such supports are interconnected. The third role of the medical personnel is to give psychosocial support to the survivor to ensure that she does not become a burden to society. The fourth responsibility is the personal appearance of the doctor before the Court during the trial as an expert witness.

The Panel presentation, in the above Workshop, on the role of medical officers also dealt with the problems related to medical treatment of GBV survivors which are country-specific. The main points shared are as below:

> In a country such as Bangladesh with its huge population, the doctor to patient ratio lags far beyond what is ideal. One doctor has to treat hundreds of patients. We cannot treat survivors of GBV like other patients because they are emotionally and mentally traumatised. Inside they are usually shrivelled up due to the shock of the violence. Health providers include not only doctors but also nurses, health assistants and even those who do administrative work. The support system in Bangladesh is very weak and inadequate. There is a lack of universal specialised expert health set up. We may have the set up in Dhaka, which represents a model establishment, but the same is not true for other parts of Bangladesh. Generally, there is an acute lack of forensic specialists. This is true not only of most District hospitals but also Medical College hospitals, where only the head of the Department may have such experience. From the Health Sector Response we are providing training to every Upazilla health centre but cannot ensure full coverage. We cannot create expert health providers. Given the number of victims, we do not have enough medical personnel who have practical experience, forget about those who have degrees in forensics. This is a big obstacle and becomes apparent when reports go before the Courts.

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[184] Workshop 4; District Level Stakeholder Opinion Assessment Workshop; Dhaka, Mymensing and Rangpur Divisions; 11th -12th March, 2022; BRAC CDM, Savar, Dhaka.

8.1.2. Problems Identified Regarding Medical Services available to GBV Survivors and Victims:

◆ Delay in survivors coming for medical examinations:

Survivors, for many reasons, defer or try to avoid going for medical examinations. Discussing why the entire process took so long, respondents of this study were unanimous in their opinion that survivors of GBV most often delay going to medical facilities. Social and cultural constraints in many cases obstruct the survivor from going for medical examinations and valuable time is lost. In the majority of cases, the family of the victim delays or even prevents her from going to the medical facility. Such factors as well as lack of awareness of where to go and lack of confidence in the justice system prevents survivors from accessing medical facilities speedily. This lapse of time has serious consequences on the quality of the evidence collected. Examples were given at the Barishal workshop of rape survivors being made to take showers and wash their clothes. Many survivors or their families, because of fear of social approbation, may wish to hide any trace of the violence committed against them. This includes medical services.

However, in other cases, as shared by stakeholders in Barishal, the survivor may need to be sent far away to district hospitals for examination and testing, resulting in examinations after 24 hours. Lack of facilities at the local and grassroots level seriously hampers speedy collection of evidence.

Time is of the essence for the collection of medico-legal samples as well as for the prevention of STDs and unwanted pregnancies etc. Delays also occur when the survivor is brought for medical examination by the Police. At the panel presentations made at Savar at Workshop 4, according to the group working on the role of medical personnel, 'even when the Police are involved, there is delay in taking the survivor for medical examination. For example, the Police sometimes keep the victim waiting to take pictures of the crime scene instead of bringing her immediately to the hospital for treatment. So undue time is wasted. For medical management, 72 hours is very important. In most cases 72 hours have passed and we cannot send samples to the DNA lab'. Another participant at the Workshop, Medical Officer of the 250 Bed General Hospital, Nilphamari, in reply to a question as to how soon a survivor comes for examination, said clearly, 'they come after days, after weeks even after years'. However, according to law, examinations must be performed even when a 'survivor' comes after years. A survivor has that right and the doctors must conduct the examination, according to format, despite the delay and despite the fact that there is little chance of any meaningful evidence to be found.

'Even if weeks, months and years have passed the required examinations must be done although no results are likely to be found'.[185]

The survivor is thus precluded from accessing services by her family, by the community and by the influential actors of the locality. The stigma attached to sexual violence also prevents the survivor from taking the assistance which she needs and which is also necessary for the criminal prosecution of the offence committed against her. [186] If the medical examination of the victim has not been carried out soon after commission of the alleged offence, it may be very difficult or practically impossible to determine whether sexual intercourse has taken place and whether it was forced or not.[187]The discussion above has shown that in most of the medical facilities there are no medical professionals who are trained to deal with such patients.

◆ Lack of Awareness regarding the importance of speedy medical treatment and examinations:
Following from the discussion above, another issue which hinders the obtaining of medico-legal evidence is the fact that the general population is unaware of the importance of accessing medical services speedily when an incident of GBV occurs as well as of the significance of medico-legal evidence itself. They are unaware as to the need for haste and the necessity to preserve evidence.

◆ Undue pressure and corruption:
In many cases the survivor may be prevented from obtaining medical services on time due to family and societal pressures. In some cases local elites prevent survivors from accessing different services because the perpetrator is often powerful and influential. They put undue pressure on them and their families. Such pressure may be exerted on the doctors as well. The pressure may be political or personal pressure or even pressure by the media. According to the respondents of the research: 'When a survivor comes to us, even before we can give emergency assistance, the media may appear and doctors may get phone calls'. Political and other pressures continue to have an impact on the proper examination of GBV victims, taking forensic evidence and submitting correct Medical Certificates. At the Barishal Workshop a Judge of NOSND Tribunal spoke about how political pressure sometimes forces doctors to leave and to apply for transfer elsewhere

[185] Op. cit. Workshop 4.
[186] Op. cit. Equality Now and Dignity Alliance International (2021) at p.59.
[187] Op. cit. UNDP and IDLO (2015) at p.28.

Medical officer of OCC at the Dhaka Medical College, a participant of the workshop for the study, narrated how in cases of the vulnerable population, money is offered by perpetrators who are powerful and rich and accepted by the victim's family due to poverty. She recounted a case where a young domestic servant had been raped by the employer. After she started bleeding profusely, she was brought to the Dhaka Medical College OCC. She was there for a week for treatment. The Police were informed and asked to take the case ---they showed lack of interest and did not record the incident. The next day the OCC doctor found that the survivor was being released. The survivor insisted that she wanted to start legal proceedings but her father insisted on not doing so. The alleged perpetrator was quite high up ---it was obvious that the father had been offered monetary compensation. 'We actually ensured that a case was initiated', said the Medical Officer.'

There are allegations of corruption and submission of inadequate evidence against medical personnel. which impedes the trial process. Often the evidence collected and presented by both the Police and medical experts are defective, faulty and imperfect. At times these occur due to negligence while at others these errors or omissions may be intentional. Judges, Investigating Officers, Public Prosecutors at every workshop as well as in the questionnaire surveys shared that often doctors/ medical officers are unavailable or lack the requisite expertise or necessary tools to conduct sensitive examinations. For example Judges at the Workshop 2 said that Medical Certificates may contain false information or even be tampered with. At this Workshop, participants and panel discussants spoke about the dearth of doctors; lack of instruments and even the tendency to make what instruments there are unworkable.

◆ Concealing of facts and fabricating facts:

The survivor and/or her family may fabricate facts for a variety of reasons. At the Barishal Workshop, it was clarified that it is not completely unusual for there to be false accusations levelled at innocent people, A Medical Officer, who has been serving since 2018 at the OCC Dhaka, shared in Workshop 4, that while working at the OCC they have become aware of certain realities. 'We find fake cases where an untrue allegation has been made of GBV. The purpose may be to implicate someone due to enmity or even political rivalry. 'Sometimes the intention may be to get someone into trouble and implicate innocent persons. We do not refuse to give service to anyone. Young children find it very difficult to share their trauma. Sometimes the abuse is very real, but sometimes even mothers coach their young children.' This study also found that sometimes in order to make a case stronger, facts may be fabricated or conversely facts may be concealed.' Fabrication of facts by medical officers is also alleged routinely.

◆ Fear of lack of confidentiality:

At Workshop 4, it was mentioned by the group discussing the role of medical officers that survivors sometimes fear that confidentiality will not be maintained. At the local level where both the families of the victim and the perpetrator may be known, this insecurity often prevents survivors from accessing services including medical services. Sexual violence experts agree that confidentiality and privacy concerns are the most significant reasons why sexual assault crimes go unreported. [188] The doctor who is examining the survivor must possess the skills to reassure the survivor that secrecy will be maintained. One of the requirements is that the survivor's consent should be given due importance. However, the *Nari O Shishu Nirjatan Daman Ain* in Section 32(A) mandates the DNA testing of the survivor with or without her consent which results in the survivor's loss of trust which in turn may prevent her from pursuing the case.

◆Absence of doctors and lack of medical experts; discriminatory behavior of medical personnel; faulty or incorrect or absence of medical evidence:

There is a critical shortage of trained doctors with skills and expertise on medico-legal examinations of GBV survivors. The doctor-patient ratio, it was revealed at the Barishal Workshop, is drastically low.

In many cases survivors complain that there is an absence of doctors per se and they cannot get prompt service. 'Medical Officers are unavailable. or if available, are not trained in forensic examination' (Workshop 2). Sometimes necessary expertise is unavailable at the local level e.g. at the Upazila level, and rape victims are sent to District hospitals resulting in examination after 72 hours.[189] In the Barishal Workshop it was contended that in some cases no conclusive opinion is given in the Medical reports which impedes conviction. A BRAC study on the justice sector agencies of the *Nari O Shishu Nirjatan Daman* Tribunals of Dhaka, Cumilla and Pabna[190]found that some 'victims (women) get harassed while collecting medical evidence, especially victim of rape'.

[188]National Crime Victim Law Institute (2005). Confidentiality and Sexual Violence Survivors: A Toolkit for State Coalitions; The Center for Law & Public Policy on Sexual Violence, Portland at p. 9.

[189] Opinion expressed by Judge, NOSND Tribunal, Barishal Division at Workshop 2.

[190] Op. cit. Naznin and Sharmin (2015) at pp. 44-45.

In several cases the decisions of the Tribunals were set aside or reversed based on faulty medical reports or the absence of medical reports. In Md. Sobuj vs. The State[191] the alleged perpetrator was acquitted of the charge of rape as the victim had not been medically examined and neither was there any injury reported as a result of putting up resistance to save herself from rape. The Court held that the evidence on record fell below the standard required to prove the prosecution case. In Shamsul Haque (Md) vs. The State[192], the non-examination of the victim in due time was considered by the court a vital omission and the convict was acquitted.

NOSND Judge from the Chattogram Division spoke about how in many cases there are errors in the medical reports. Very often examinations and reports are done hurriedly, he explained, and ' there are mistakes and inaccuracies regarding the date of occurrence; the type of injury, the time when the injury occurred and so forth and this adversely impacts upon the case. In some cases, even when there is no external evidence of injury the medical report may state that it is a case of simple hurt; or that the injury was done with a blunt instrument etc. The requirement under Section 11(g) is that there must be clear and obvious signs of injury for it to be deemed that simple hurt was caused by the perpetrator. 'The tribunal shall not take cognizance or frame charge of an offence punishable under section 11 (Ga) or 11(Ga)/30 of the Ain, 2000 against an accused without having a medical examination certificate from Government Hospital or any private Hospital, recognized by the Government for that purpose in view of the provision under section 32 of the said Ain in support of simple hurt of the victim wife. [193]

The panel on Medical Examinations at Workshop 3 also spoke about medical examinations of rape survivors and the lacunas in medical certificates. According to the Panel: 'When a rape survivor is examined we sometimes see a *pro forma* report of an examination done half-heartedly. Apart from injuries to private parts there may be other injuries e.g. scratches on different parts of the survivor's body or cuts and grazes; but in most cases these are not reported. In some cases the medical report describes identifying marks of the survivor rather than marks of injury, which is unnecessary' or it states that no spermatozoa was detected without even conducting the examinations. Medical reports are in many cases unclear or inconclusive. The Tribunal Judge explained that the High Court judgement in BLAST

[191] 11 MLR (HCD) 2006. This was a case under the *Nari O Shishu Nirjatan (Bisesh Bidhan) Ain* 1995.
[192] 52 DLR (HCD) 2000 255.
[193] Uthpal Kumar Roy and three others vs. Meghnad Shaha and another 15 SCOB [2021] HCD 77

vs.Bangladesh (mentioned above) which banned the two-finger test has not been reported and therefore even if there are about seven to eight recommendations given by the HC, the details are not known and Tribunal Judges cannot inform the doctors because they themselves do not know the details of the Courts directives.

◆ Dearth of female medical officers':

In the Barishal Workshop, participants pointed out that the absence of sufficient female doctors for forensic examinations discourages survivors from accessing medical services. The ratio of female to male doctors is abysmal. In the cultural contexts of Bangladesh, where sexuality is a taboo subject by itself, women, especially survivors of violence are deeply uncomfortable being tested my male doctors. Due to the fact that there is a shortage of female doctors, generally survivors of gender based violence have to be treated and examined by male doctors. Many female survivors refuse such examination and treatment by male physicians, let alone the intrusive collection of medical evidence.

◆ Lack of Adequate Infrastructure:

Adequacy of infrastructure is important for ensuring the availability of confidential space for the survivor to disclose her/his experiences to the health workers without fear or shame.[194] The MoH&FW (2017) Health Sector Response to Gender Based Violence Protocol for Health Care Providers provides a comprehensive list of the infrastructural requirements; a list of logistics required for collection of forensic evidence; list of drugs, administrative supplies and even furniture which should be there at a medical facility for GBV survivors.[195] It includes details as to the 'Minimum requirements of facility readiness for GBV Survivors'.[196]A Judge of a NOSND Tribunal from Rangpur Division and a participant of the research opined:

> In our criminal justice delivery system, an important actor is the forensic department. The present picture of this department is disappointing---this department is the most neglected portion of that hospital/medical institution. Forensic doctors are not given any special skill training. The only training they have is when they studied the subject at medical schools. All medical colleges are going through infrastructural development except the forensic departments. There are no scientific apparatus to collect samples

[194] GoB (2017). Health Sector Response to Gender Based Violence Protocol for Health Care Providers; Gender, NGO and Stakeholder Participation Unit; Health Economics Unit Health Services Division; Ministry of Health and Family Welfare (MoH&FW); Government of the People's Republic of Bangladesh. http://www.heu.gov.bd/sites/default/files/files/heu.portal.gov.bd/files/418af55a_ba88_475d_aedb_faa57981c3af/2020-11-30-14-59-1c10007a49a037dff719973374fa63b6.pdf

[195] Ibid at p.16.

[196] See Annex 2. Minimum requirements of facility readiness for GBV Survivors of MoH&FW (2017) at p.69.

or preserve samples; there are no modern morgue facilities. Forensic doctors are the most ill paid.

This study found that sufficient logistical support is unavailable at the Upazilla levels. Although, in hospitals where there are operational OCCs there are adequate facilities, in most establishments there is an acute lack of infrastructural support. Barishal participants stressed that there exists a serious dearth of facilities such as forensic laboratories, DNA testing facilities, pathologies etc. Test reports are delayed which results in investigation reports being delayed. Respondents of the research opined that samples are very often not being preserved and in many instances they are tagged incorrectly or not at all. According to a representative from the Police at Workshop 4, CID has given extensive training on how to collect forensic evidence but it is unsure as to how much of such training has been retained and is being used by the Police.[197]

◆ Absence of available doctors after hours and on Government holidays:

Several respondents, including IOs and members of NGOs have noted that if any offence is committed after office hours, on weekends or holidays, survivors find it close to impossible to get a doctor to attend to them. If an incidence of GBV occurs outside of normal office hours, time is wasted in trying to locate a MO to examine the survivor. In Workshop 2 it was noted that even Medical College hospitals refuse to examine survivors after working hours. One Medical Officer noted in Workshop 4 that in such cases, even if they are called to attend a patient, there is a lack of institutional transport facilities. The situation becomes acute especially during long holidays such as Eid. Most doctors and nurses are away on holidays and only a skeletal staff is there to tend to patients. During the Eid-ul-Fitr holidays of May 2022 in Rangpur for example, most 'of the doctors, nurses and nursemaids of Rangpur Medical College Hospital (RpMC) were absent during the three days of the Eid holiday, as a result, 21 patients died due to not getting proper treatment'.[198]This obviously has an impact on survivors of violence if they try to access services. According to a respondent of this study –SI of Bhaluka Model Thana of Mymensing, there is no delay in medical examinations when the victim is found but in some cases even when the victim is there, on holidays and after hours, examinations are not conducted. When asked about problems faced on holidays and after hours he reiterated that in order to get cooperation on holidays, extra effort has to be made. Again pathologies are not open after hours or on holidays (opinion given in the Dhaka,

[197] Workshop 4; District Level Stakeholder Opinion Assessment Workshop; Dhaka, Mymensing and Rangpur Divisions; 11th -12th March, 2022; BRAC CDM, Savar, Dhaka.
[198] https://www.daily-bangladesh.com/english/country/60210

Mymensing and Rangpur Divisional Workshop), which means blood tests cannot be done on time.

◆ Problems related to Medical Officers giving expert evidence in Court:

According to a respondent Medical Officer posted in a 250 Bed General Hospital in Nilphamari,

'there is usually a long time gap between the medical examinations conducted and being summoned to give evidence in Court'. Long intervals and distance obviously has an impact on how minutely the doctor can remember the incident and other extraneous circumstances s(h)e is called upon to give evidence about.

Panellists discussing the role of Medical Officers (Workshop 2) also spoke about problems which arise when a MO is transferred elsewhere. In many cases, the MO may be posted to a different medical institution situated within another District and it may be difficult and time consuming for her to travel to her former place of employment to give evidence. Section 23 of the 2000 Act clarifies that the report of any doctor, chemist, assistant chemist, pathologist, handwriting expert, fingerprint expert, or arms expert will be admissible even if such person is unavailable due to death or inability to give evidence or because she cannot be found to and therefore cannot be deposed before the Court. The said provision also provides that the court will not convict an accused on the basis of such report only. In many cases the unavailability of official experts is not due to any of the reasons given in the above Section. In the Workshops participants spoke of unavailability of official witnesses, including Medical Officers/doctors due to time constraints, retirement or transfer and even negligence and recommended making provisions for such witnesses to be examined using digital technology.

8.2. Role of the Police/ Investigating Officer:

The police are under the administrative control of the Ministry of Home Affairs (MoHA).

Efforts have been made by the Government to make the Bangladesh Police more gender sensitive in dealing with GBV survivors. Law enforcing agencies have a crucial part to play in addressing violence against women and girls, several initiatives have been taken by the Government, with the assistance of NGOs and INGOs, to make such agencies more gender sensitive and accessible and to that end the participation of women in the Bangladesh Police has been increased at all ranks, and progressively more women are represented in positions of authority.[199]

[199] Op. cit. Huda, Shahnaz (2014).

In 2011, the Dhaka Metropolitan Police established a separate Women's division –the Women Support & Investigation Division to work in collaboration of three units, which are:
Victim Support Centre (VSC); Investigation Unit and Quick Response Team (QRT).[200] Hotline and emergency numbers have been introduced to assist women at risk e.g. 109 (Government helpline number for Violence against women); 999 (National Emergency Hotline Number) and 10921 (National helpline center for violence against women).[201]

For the present study, in each of the four Workshops, which covered every Division and most Districts of Bangladesh, one panel was dedicated to the discussion of the Role of Medical Officers and Investigating Officers. As has been discussed earlier, the investigation of a GBV incident has to be conducted by the Police and therefore they play a crucial role in the administration of justice under the NOSNDA of 2000. The crucial role of the Police in such enforcement and specifically the role of Investigation Officers in ensuring justice to survivors and victims of gender based violence was extensively examined through questionnaire surveys and participation in workshops.

The investigation done by the Police is critical in order to convict perpetrators of GBV. Police are usually the first point of contact for a GBV survivor and the quality of such first response has tremendous impact on the survivors and far reaching consequences on the trial process. Despite the importance of the role of the Police and efforts to make the service more gender friendly, there continue to be serious allegations of the lack of professionalism by the Police which hamper the conviction of perpetrators in many cases.

Allegations of the Police not accepting complaints and refusing to record them in relation to many offences including gender based violence are not rare in the Bangladeshi context. The *Nari O Shishu Nirjatan Daman Ain* 2000 itself recognizes that this situation may arise in Section 27 (1) (ka).
According to a Tribunal Judge from Chattogram Divison, despite the directive of the High Court that OCs of all Police stations have to record in writing any complaint of rape irrespective of jurisdiction, even now survivors continue to face harassment when they go to another PS. The Police are sometimes unaware of such directives. Even within their jurisdiction, Police may refuse to take a case related to GBV or be unwilling to accept an FIR,

[200] See http://dmpwsid.gov.bd/
[201] https://www.google.com/search?q=hotline+109+bangladesh+VAW&rlz=1C1CHBF_enBD912BD913&oq=hotline+109+bangladesh+VAW&aqs=chrome..69i57j33i160.9758j1j15&sourceid=chrome&ie=UTF-8

said participants of Workshop 1 and 4. In defence of this allegation, a participating Officer-in Charge of a Police Station said that they are careful before recording a FIR because if there is previous enmity between the parties or the case is filed against close relatives, the Police try to scrutinise carefully the reason behind the filing of the case. Another participant of the Workshop, an IO, said that they do their best to settle things amicably if the situation allows.

In the Workshops it became clear that survivors of gender based violence, in many instances, face harassment and lack of cooperation at their first two institutional contacts —Medical facilities and Police Stations.

In many cases, the police not only fail to assist women and girls but in many cases actively harm them.[202] Inadequate police investigation is considered by many justice sector actors as the primary reason for the low conviction rates. A Judge of a Tribunal in Narsingdi District, a respondent for this study, asserted that she considers faulty investigation as the main cause for such low rates. The Supreme Court of Bangladesh has made its displeasure clear in several cases regarding the shoddy investigation by the Police hampering conviction of real criminals. In the case of
Ali Akbar v State[203], the High Court observed:

> We have come across many cases in which due to faulty investigation, accused get benefit of reasonable doubt in spite of consistent and uniform evidence of prosecution witnesses about the occurrence. As a result, people of our country have been losing faith in the present system of administration of justice mainly due to the failure of the police to properly investigate the case and collect the evidence. It is high time that the system of the investigation of the criminal cases by the police alone should either be abandoned or completely reformed.

Participants of the study also also spoke about many issues which plague the Police force such as manpower, personnel, infrastructural and other problems. There is no specialised or separate investigating agency for gender based crimes and therefore such offences are investigated by the regular police force. In Workshop 4, lack of separate facilities for GBV survivors was pointed out. 'Colonial rules, too much reliance on confession of the accused rather than evidence oriented way of investigation and heavy workloads of law enforcing agency are major causes for lackadaisical investigation. Many officers also tend to be

[202] Op. cit. Naznin and Sharmin (2015) at p.53.

[203] Ali Akbar vs. State 4 MLR 87.

conveniently indifferent to the modern trends and technical developments of investigation techniques and human rights of the accused.'[204]

From primary study done for the purpose of this study several problems have been identified which were endorsed by secondary research.

8.2.1. Problems identified regarding Investigation of GBV Offences by the Police:

◆ Corruption, bribery and undue influence:

It has been contended by the research participants that survivors/families face numerous problems in accessing the Police as well as corruption at every stage. In the Sylhet Workshop, in the Panel discussion on the Role of the Police, the presenter noted that even if a survivor manages to reach the Police after facing many social and economic hurdles several constraints come into play which make the role of the law enforcement mechanism questionable. They noted that bribery, corruption and political pressure during the investigation has a severe adverse effect on women's access to justice. This is especially true when the alleged perpetrator is economically or politically powerful. As a Judge of a Tribunal in Manikganj noted, 'in the context of Bangladesh, the perpetrator is usually the son, nephew etc. of someone powerful —the *Matbor*, Chairman, Member etc. and the Police denies recording the case and asks the survivor to go directly to the Court.' As a consequence a survivor of GBV, who is already severely traumatised, as well as her family try to avoid the trouble and harassment of going to the Police. In some sensational cases, it was shared by a respondent, that the IOs are pressurised by the media to give biased reports.

The reports of corruption and misdeeds of the Police are reiterated by most researchers. For example, in another study, it was noted that South Asia experiences high rates of corruption within the police; in 2021, 37% of those who had contact with the Bangladesh police had paid bribes.[205] Survivors from Bangladesh (as well as India) also suspected that the perpetrator in their case had bribed the police in exchange for delaying the investigation or refraining from arrest. They also reported that police officers even filed false counter-cases or criminal

[204] Hussain Mohmmad Fazlul Bari (2015). "An Appraisal of Criminal Investigation in Bangladesh: Procedure and Practice", Journal of the Asiatic Society of Bangladesh, Humanities 60 (2015), pp.139 -159 at p. 139.

[205] Ibid at p.45.

allegations against the survivor after receiving bribes or pressure from the perpetrator or his community.[206]

In this study it was also found that in instances there are pressures on senior Police Officials to give the responsibility of investigation to particular agencies who may be more favourably disposed towards the accused.

◆ Lack of knowledge or use of forensic technology and violation of human rights:

Major technological advancements have taken place in criminal investigations. Use of digital technology in all sectors, including the judiciary, also became popular during the COVID pandemic. The provision of DNA testing has been incorporated in the NOSNDA, 2000 and the Evidence Act of 1872 has been amended to ensure admissibility of digital or electronic evidence. Representatives from the Police participating in Workshop 4 gave an outline of recent innovations which have been introduced by the Police. These include PIS (Police Personal Information System) which provides information as to the location of Police witnesses; DNA Data Bank which has information on approximately 55,000 persons who have been connected to criminal activities and AFIS (Automated Fingerprint Identification System) for the identification of criminals through the use of sophisticated and enhanced fingerprint detection technology. It was claimed by Police Representatives present at Workshop 4 that Police are being trained in proper collection, tagging and preservation of evidence and that the DNA Rules are very specific and detailed. However, it continues to be widely perceived that despite training as to modern forensic investigation, human rights and gender sensitivity, Police in Bangladesh continue to rely on methods which violate the rights of the accused. Torture as means to extract confessions is allegedly routinely used as a short cut. In 2013, the Torture and Custodial Death (Prevention) Act 2013[207] was passed to address such extra judicial actions which are a clear violation of the Constitution of Bangladesh. Several authors have reiterated that the 'Bangladesh Police requires torture to extort bribes and maintain the 'bribe chain' that extends from the lowest ranking constable to the highest officer in the chain of command'.[208] In fact, in practice subordinate police officers are given the tacit approval from higher ups as to the acceptability of such illegal methods.

◆Delays related to collection of forensic evidence:

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[206] Ibid.

[207] Act No. 50 of 2013.

[208] Siddiqui, Muhammad Sazzad and Hosen, Gazi Delwar (2013). "Torture During Police Remand: Laws and Practices" in Human Rights and Governance: Bangladesh; Edited by Md. Shariful Islam (Editor); Asian Legal Resource Centre Hong Kong pp. 173 -188 at p.176.

It has been discussed above that there is an absence of proper technological knowhow as to the collection of forensic evidence. It has also been found that the Police delay in collecting DNA and other evidence due to negligence. In case of victims, they are not produced in time for crucial medical or DNA tests.The prescribed time restrictions placed by the provisions of the Nari O Shishu Nirjatan Daman Ain as regards investigation are not followed. As mentioned many times, when the Police have to collect samples themselves, they do not do so properly and neither do they preserve the evidence correctly. A Tribunal Judge from the Dhaka Division spoke of the dearth of proper equipment for sample collection and there being no separate sample preservation room. The Police are also unaware in many cases about the provisions of the law, the relevant Rules and the directions of the Higher court. Another Judge from the Dhaka Division spoke about the lacuna of law which prescribes time limits for investigation but not for medical examinations or providing Medical Certificate or DNA report. This inevitably delays the investigation.

◆Non-production of witnesses in time:

Although the CrPC in Section 172(2) provides that it shall be the responsibility of a Police Officer to adduce witnesses, in practice they are not produced on time which contributes to the delay of the trial process. According to a Tribunal Judge from the Dhaka Division, Police Officers, even if they are repeatedly asked, do not produce witnesses on time.

◆ Negligence and delays by the IO:

Majority (75%) of the respondents of the questionnaire survey, undertaken for this study, blamed the negligence of the IOs for the delay in investigation, submission of report and resultant delay of the trial. In the Barishal Divisional Workshop, stakeholders opined that Investigating Officers lack sufficient technical or investigative skills. The Public Prosecutor of Khulna, for example, mentioned that in complaint registered cases, the investigation report was sometimes not sent to the court on time. According to a NOSND Tribunal Judge from Jhenaidah, the negligence of the Police sometimes means that they:

> .....do not even visit the crime scene; they bring the witness to the police station and prepare the investigation report without even listening to them. They do not investigate thoroughly into the occurrence; instead they prepare their reports based on insubstantial and flimsy information.

Delays in conducting the police investigation and trial can increase the likelihood of survivors being pressured into extra-legal settlements, result in increased contradictions between the statement given to the police and testimony given in court (due to passage of time) and, above

all, cause more trauma and emotional stress to the survivor.[209] It was found in this study that delays may also be due to the time it takes while forwarding reports from one Police Officer to another or to another department.

◆ Gender insensitivity of the Police with regard to SGBV especially in case of sexual violence: As it was pointed out elsewhere in the study, socio-cultural notions of chastity and 'good vs. bad women/girls' are omnipresent which results in victims of sexual violence being held responsible for the violence committed against them. Likewise, the Police are not immune from such misogynistic and patriarchal notions. It was the general opinion expressed during the course of this study, that Investigating Officers are not trained or professional, especially as regards GBV cases and are often insensitive towards women survivors. At the Panel presentation on the role of the Police at the Barishal Workshop, one of the reasons identified as to why survivors avoid reporting GBV was that 'Police Stations are not female friendly'.

The tendency to put the blame on survivors of GBV, especially sexual violence continue to be the norm across South Asia and was described by the participants of this research to be one of the primary reasons discouraging victims to report the crimes committed against them. This attitude of victim blaming also appears to be prevalent amongst the first responders i.e. the Police. 'Such gender biases also impact the impartiality and fairness of the investigation in rape cases. For instance, police officers who engage in victim-blaming also often refuse to register the complaint, or do not take the criminal investigation seriously'.[210]

The dreadful case of Nusrat Jahan Rafi, an 18/19 year old Madrassa student from Feni, a small town, is a case in point and caused massive countrywide outrage. In 2019, Nusrat courageously went to the Police to report and file a complaint about the sexual harassment she faced from the headmaster of her Madrassa. At the Police Station, she was filmed by the OC on his phone as she described the ordeal.'[211] Nusrat can be seen crying, visibly distressed, and trying to hide her face with her hands.[212] The policeman is heard calling the complaint "no big deal" and telling her to move her hands from her face. [213] About a week or so later

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[209] Op. cit. Equality Now and Dignity Alliance International (2021). at p.37
[210] Ibid at p. 34.
[211] https://www.bbc.com/news/world-asia-47947117
[212] Ibid.

[213] http://www.buzzfeednews.com/article/kassycho/nusrat-banglandesh-sexual-harassment-fire-madrasa

Nusrat was tricked into going to the roof of a school building, where she was doused in kerosene and set her on fire. She later died from her fatal injuries.

◆ Scarcity of female Police Officers:

There is a critical dearth of female officers in Police Stations which discourage women and children from accessing them. In Workshop 4, one of the problems identified as to why survivors of violence hesitate to access the Police is such shortage. As with doctors, female police officers are essential to ensure that the female survivors feel comfortable during an acutely stressful time. The High Court has also given a directive that there should be female police not below the rank of constable in every police station.

Although the necessity of female police officers is stressed, especially to deal with GBV, in reality there is an acute dearth. Until August of 2021 the number of female Police Officers stood at a total of 13,402 i.e. a mere 17.10% of the force.[214] This number includes Police Officers at all levels starting from Constable to Deputy Inspector General. According to newspaper reports of March 10th 2022, Specialized Women Help Desks have been established in 15 police stations.[215] Although on paper there are supposed to be separate desks for females in Police Stations, in reality the situation is different, was opined in the Barishal Divisional Workshop. In this Workshop, as in all others, the necessity for women friendly Thanas was stressed. On April 10th 2022, According to Police Headquarters (PHQ), to mark the birth centenary celebrations of Bangabandhu, one-stop service desks for women, children, those with disabilities and the elderly, have been launched at all 659 police stations across the country. This service is said to include a separate room at every police station, in which a woman sub-inspector with a handful of trained women officers will provide service around the clock. [216] 'These officers have a room to rest on the upper floor of the station, so that the desks never remain unattended.'[217]

◆ Frequent transfer of investigating officers:

In the questionnaire survey, several respondents pointed to the transfer of IOs in the middle of investigations as a reason for the delay in investigation. Often during the trial, the IO who was investigating a case, is no longer available because he has been transferred to some other Police Station. A Judicial Magistrate, responding to the questionnaire also mentioned that when an IO gets involved and acquainted with a case and afterwards gets transferred, it

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[214] http://www.bpwn.org.bd/

[215] https://www.thedailystar.net/supplements/unfpa-supplement/closing-the-gaps-gender-equality-the-role-the-bangladesh-police

[216] Ibid.

[217] Ibid.

hampers and delays the investigation. A new officer has to start afresh and this delays the entire process.

◆ Insufficient funds, low pay, lack of facilities and heavy work burden of the Police Forces:

Research participants attributed shoddy investigation by IOs to the huge caseloads they are assigned to. According to them, individual IOs are often given the responsibility of investigating several cases at the same time and cannot give attention to any particular case.

At the lower levels of Police administration, police personnel are underpaid and live in almost unlivable conditions. At the entry level, there are allegations of the necessity of paying huge bribes to secure jobs which impoverishes the families of those seeking entry. 'Life in the police force is difficult and unrewarding for most officers. Working conditions are deplorable. Many officers are overworked, the transfer system has become a major source of corruption within and out of the police, and salaries are abysmal, even by local standards'.[218]

Corruption after they manage entry into the force is a way to regain money spent on initial bribes as well as to attain a better standard of living. Unfortunately, this adversely impacts upon those who are victims of violence and are seeking justice from the system. The Police are therefore susceptible to influence and corruption. Again, one Investigating Officer may be given the charge to investigate several cases and cannot do justice to any properly.

◆ Lack of separate investigation unit:

Respondents for this study have consistently blamed the fact that there is no separate investigative agency to deal with specific cases such as those related to GBV for delays associated with cases before the Tribunal. For cases related to gender based violence, gender sensitivity is essential and needs particular training. The Police have a heavy burden of official duties and cannot investigate sensitive cases e.g., of rape with the patience and persistence required. For this reason, justice sector actors participating in Workshop 1 suggested that 'adequate numbers of police personnel have to be appointed to investigate VAW cases so that workload cannot be used as an excuse for the delayed submission of police reports.'

◆ Lack of Infrastructure and technical knowhow and technical infrastructure:

[218] International Crisis Group (2009). Getting Police Reform on Track; Asia Report N°182 – 11 December 2009 https://www.refworld.org/pdfid/4b22758b2.pdf

Following from the above, not only are separate units to deal with GBV necessary but it must be ensured that they possess adequate skills. In Workshop 1 it was recommended that 'specialised agencies have to be developed to investigate GBV cases with members having necessary knowledge as to technology, collection of scientific and digital evidence and *alamot*'.The Police themselves suffer from lack of infrastructure and funds. There is also a lack of transport or funds for transport for the Police; it becomes difficult for them to visit scenes of crime. The criminal justice system in Bangladesh is essentially impoverished: crime is underreported and poorly investigated by the police.[219] In Workshop 4, it was noted that there is 'no fund allocation for IOs — neither for their own transportation nor for transportation costs necessary for sending survivors to Victim Support Centres'.

◆ Testimony of IOs –Lack of skills to give expert testimony and lackings in the system:
Above the negligence and delays of IOs in conducting the investigation was discussed. In addition to their responsibilities related to the investigation, they are required to give expert testimony during the trial process which is of utmost importance. 'Investigating officers also feel reluctant to give testimony during trial though the court issues all possible processes,' was the opinion of Public Prosecutors participating in this study.
In some cases they fail to show up or if attending, are not well versed as regards the facts; in others, undue pressure from powerful people make them reluctant to give testimony.

In the Sylhet Divisional Workshop as well as in other Workshops, the non-availability of public or formal witnesses was described as one of the causes which prolonged the trial process. Investigation Officers, when they are under employment, get travel allowance to appear as witnesses. Despite this they still may not be available for giving testimony due to different reasons such as heavy work load, lack of sufficient manpower in Police Stations.

If an IO has been transferred elsewhere, it is time consuming for him/her to attend one particular trial and be absent for his/her investigative duties regarding other cases.

Stakeholders at the Workshops also spoke about IOs who had retired from the force. When an IO has retired, he is not given travel expenses to appear and give evidence and thus is not interested in doing so. In Workshop 1, Judges opined that retired official witnesses need to be given encouragement and incentives to ensure their attendance in Court. In all the Workshops, emphasis was given on the introduction of provisions ensuring admissibility of digital evidence of official witnesses. The general and consistent recommendation was that

[219] https://www.lawyersnjurists.com/article/14450/

there should be application of information technology especially for examining formal witnesses. In Workshop 2 there was additional recommendation that the contact numbers of IOs should be included in the Police Report.

◆ Illegal compromise in cases of non-compoundable Offences:

Throughout the research, a cross section of respondents spoke about the pressures from a variety of interested parties, even in cases where compromise is not permitted by law, to compromise a matter. This may happen at different stages of the process—before a complaint is made to the Police station or afterwards and even after a case has been instituted. In Workshop 1 one of the main reasons identified which facilitated the acquittal of the accused was compromise between the parties. In the same Workshop it was suggested that 'there should be specific provisions contained within the law to punish those facilitating compromise of heinous kinds of violence committed against women.'

In some cases after an incident of GBV and even if the survivor approaches the Police, there may be compromise between the parties based on threats or promise of monetary compensation. In Dhaka, a Tribunal Judge spoke of cases where the IOs, when they go to investigate the allegations of an offence, are caught off guard and are surprised to find that the complainant herself or her family are no longer interested in pursuing the matter further. In Workshop 1, a Tribunal Judge from the Sylhet Division recollected a case where even though a girl had eloped, her parents had instituted an abduction case. The girl had even given a statement under Section 22 of the Act. Afterwards the matter was compromised locally and the IO could do nothing. 'Local pressure and *aposh* hampers the proper role of I.Os,' said the Judge. In certain cases, the Police themselves are accused of facilitating the compromise or *aposh* for financial gains or under pressure. In the Barishal Workshop, a Tribunal Judge was critical of and spoke strongly regarding the role of certain Police personnel who sometimes get involved in such illegal compromise instead of facilitating the institution of criminal cases which is their duty.

8.2.2. High Court Directives Related to the Police:

The High Court Division of the Supreme Court of Bangladesh in 2016, in a judgement on a writ petition filed by Naripokkho and Others vs. Bangladesh and Others,[220] issued guidelines related to the proper handling of rape cases by all stakeholders including law enforcement

[220] Naripokkho and Others vs. Bangladesh and Others; Writ Petition No. 5540 of 2015.

personnel, i.e. the Police.The case involved the gang-rape of an indigenous woman from the Garo community in her early twenties in a moving microbus where she was gang raped by five men. The survivor and her family were refused assistance from four police stations until finally they managed to institute a rape case at one Police Station under the NOSNDA. Subsequently, five human rights NGOs [221] filed a Public Interest Litigation by way of a Writ Petition against the Secretary, Ministry of Home Affairs, the Inspector General of Police, the Dhaka Metropolitan Police Commissioner and the OCs of several Police Stations, for violation of fundamental rights of the victim.[222]

The two member bench of the High Court of Bangladesh gave the directions in the full verdict on Feb 18, 2016, which was released in April.[223] The Directives include verbatim:[224]

1) Every information relating to commission of cognizable offence including rape, sexual assault or like nature shall immediately be reduced to writing by the officer-incharge of a police station irrespective of the place of occurrence without any discrimination whatsoever and without causing any delay.

2) Also, a designated website should be opened enabling the informant to register his/her complaint online.

3) The statute should contain specific provision dealing with refusal or failure of the officer concern of the respective police station without sufficient cause to register such cases.

4) Every police station must have round the clock a female police officer not below the rank of a Constable. On receipt of the information of the offence of rape or sexual assault the duty officer recording the information shall call the female police officer present at the police station and make the victim and her family members comfortable.

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[221] Naripokkho, Bangladesh Mahila Parishad, Jatiyo Adivasi Parishad, Bangladesh Legal Aid and Services Trust (BLAST) and Ain O Salish Kendro (ASK).
[222] https://www.blast.org.bd/issues/gender/515-gangrape
[223] See https://bdnews24.com/bangladesh/2018/05/28/high-court-dishes-out-18-directives-to-protect-rape-victims
[224] 10 SCOB [2018] HCD Naripokkho & ors. Vs. Bangladesh & ors. (Farah Mahbub, J) 140.

5) At all stages the identity of the victim should be kept confidential.

6) To keep a list of female social workers who may be of assistance at all police stations.

7) The statements of the victim should be recorded in the presence of a lawyer or friend nominated by her, or a social worker or protection officer.

8) The victim should be made aware of her right to protection from the State and to give any information she requests on the matter.

9) The duty officer immediately upon receipt of the information shall inform the Victim Support Centre.

10) Interpretation services should be provided where necessary especially for women or girls with disabilities who are victims of rape or sexual assault.

11) After reducing the information into writing, the Investigating Officer along with the female police official available, shall escort the victim for medical examination without causing delay.

12) The Victim Support Centre should be discreet and should at all times have all the facilities required for the recovery of the victim.

13) In all rape cases or cases of sexual assault chemical/DNA tests are required to be conducted mandatorily.

14) The DNA and other samples should be sent to the concerned Forensic Science Lab or DNA Profiling Centres with 48(forty-eight) hours of the alleged occurrence.

15) Any failure of duty on the part of the investigating agency in collecting the report or causing the victim to be taken to the nearest hospital for medical examination would be punishable offence.

16) The investigating officer shall endeavour to complete the investigation at an earliest.

17) There should be wider dissemination of the national line number on violence against women, girls or children namely 10921 through visual, audio as well as in the print media including designated websites.

18) In addition to the above, to establish an office in every Metropolitan City for the purpose of providing necessary security, medical, chemical and counselling assistance and secured protection for the victim.

Upon the Court's Order of, the Inspector General of Police issued a circular providing guidelines to police officers while dealing with cases of violence against women and children.[225]

8.3. Analysing and Critiquing the Role of Public Prosecutors:

The Police who investigate a case and the Judges of the Tribunals who adjudicate guilt or innocence are important stakeholders of the criminal justice system. Equally important are the Public Prosecutors whose duty is to present the case so as to convince the Judge to convict by presenting the facts of the case, adducing evidence and so forth.

The Criminal Procedure Code of 1898, under Section 492(1) provides the Government with the authority to appoint public prosecutors generally, or for any specified class of cases, in a particular area. Special Prosecutors are appointed for cases under the *Nari O Shishu Nirjatan Daman.* There has been concern regarding the process of recruitment of prosecutors. Unlike the recruitment of Police officers and members of the Judiciary, there is no such recruitment system for public prosecutors. As a result, there is no officially prescribed selection criteria for public prosecutors that is based on merit and qualifications, nor is there any permanent service regulation to ensure their efficiency and accountability.[226] The Law and Justice

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[225] For link to full judgment see https://www.blast.org.bd/content/judgement/Judgment-of-gange-rape-in-microbus-writ-5541-of-2015.pdf and 10 SCOB [2018] HCD Naripokkho & ors. Vs. Bangladesh & ors. (Farah Mahbub, J) 140.

[226] Huda, Taqbir (2022). Where is our independent Prosecution Service; The Daily Star https://www.thedailystar.net/opinion/justice-practice/news/where-our-independent-prosecution-service-2997216

Division of the Ministry of Law, Justice and Parliamentary Affairs has the administrative control and management of the Public Prosecutors Office.[227] The appointment and terms and conditions of service of Public Prosecutors, Special prosecutors are under the Solicitor Wing[228] of the Law and Justice Division.

8.3.1. Problems and Concerns identified regarding Public Prosecutors:

Some of the concerns and problems identified by respondents of this study include:

▲ Low Remuneration and lack of full time employment of Public Prosecutors:

Public Prosecutors in Bangladesh are critically underpaid. The fees of Public Prosecutors is abysmally low which means that for the purpose of their livelihoods they are more interested in their own private practice and getting private clients. This also means that they are susceptible to corruption and because they are not appointed full-time they are often accused of trying to further their private practice through their position as Public Prosecutors. Again, because they are not properly financially compensated for cases, Public Prosecutors are disinterested in investing enough time and effort in cases under the NOSNDA. Prosecutors, Additional and Assistant Public Prosecutors receive a paltry sum of money as daily fees during the time they are trying a case ---approximately 500 to 250 Takas for the Prosecutors and Additional Prosecutors and 200 Takas for the Assistant Prosecutors. The Prosecutor and Additional Public Prosecutors also receive a monthly allowance of about 1500 to 2000 Takas.

▲ Prosecutors are overburdened with cases:

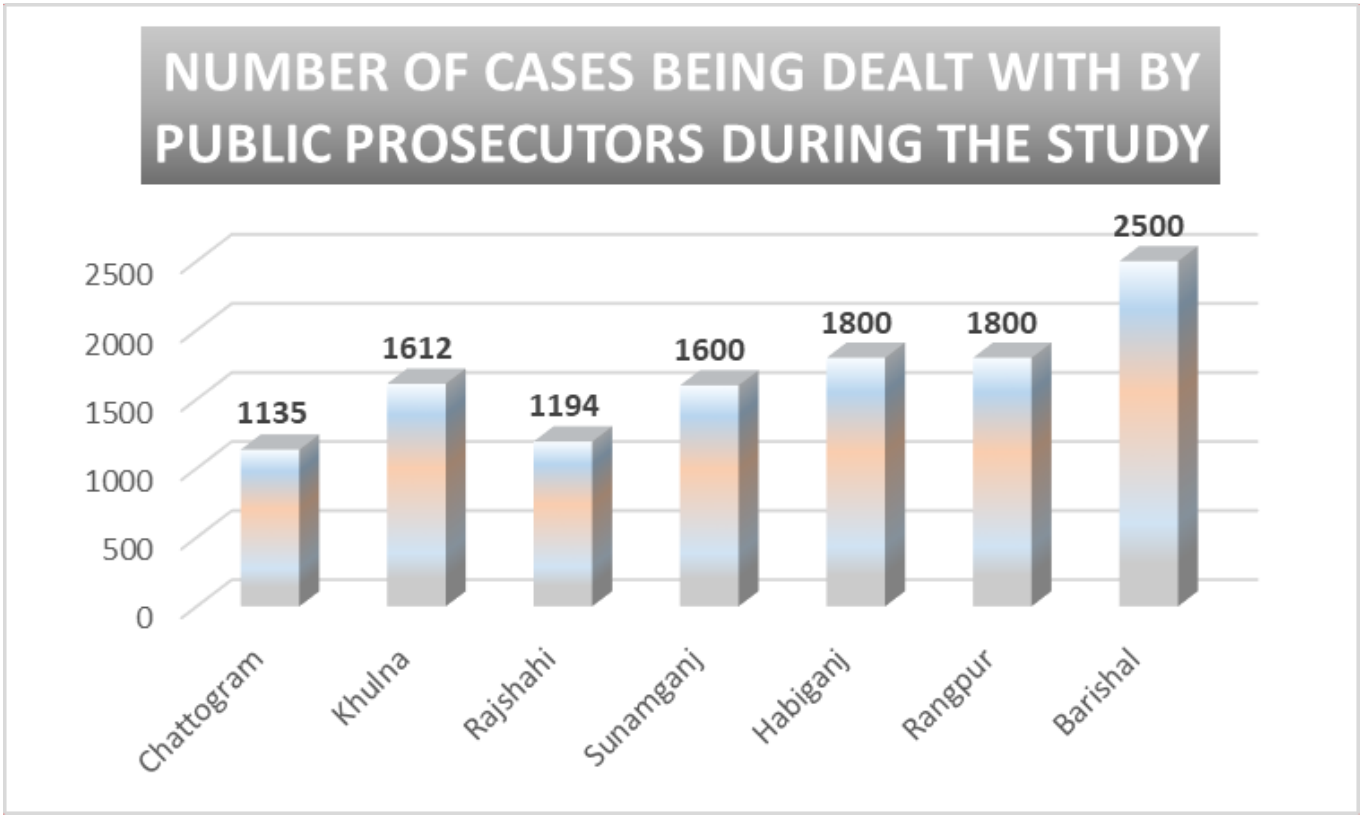
When asked how many cases a Prosecutor was involved in during the present period, the answers obtained from the questionnaire survey elicited startling numbers such as 1800 cases (NOSND Tribunal 1 and 2, Habiganj); 1194 (NOSND Tribunal 1, Rajshahi); 1612 ((NOSND Tribunal 1, Khulna); 1,800 ((NOSND Tribunal 2, Rangpur) to give a few examples. This means that the Prosecutor cannot give proper attention to each case that s/he is prosecuting. 'Public Prosecutors are on an average performing the duty of prosecuting approximately 2000 cases.' was the opinion shared in Workshop.

Below, as illustrations, the Table shows the number of cases Special Public Prosecutors, from different Districts, who participated in the questionnaire survey, were dealing with during the

[227] http://old.lawjusticediv.gov.bd/static/about_us.php

[228] http://solicitor.lawjusticediv.gov.bd/?q=en

study period:



▲Lack of an independent public prosecution service:

There is no separate and independent institutionalised body to appoint Public Prosecutors based on merit and fair competitive examinations which results in inexperienced and unskilled lawyers being appointed often on partisan considerations. Thus even though after the establishment of the Bangladesh Judicial Service Commission in 2007, judges are recruited through a merit based system, no such recruitment process exists for public prosecutors. The Government has been mulling over the introduction of an independent prosecution service for many years. The Law minister Anisul Huq had been quoted as saying that the government has decided in principle about public prosecutors and government pleaders to introduce an independent prosecution service in phases. A discussion is on to hand over the responsibility of recruiting public prosecutors to the Bangladesh Judicial Service Commission. [229]

At present, there is no officially prescribed selection criteria for public prosecutors that is

[229] https://www.newagebd.net/article/20660/article/35972

based on merit and qualifications, nor is there any permanent service regulation to ensure their efficiency and accountability.

▲ Lack of operational cooperation between Prosecutors and Investigative agencies:

This study showed that allegedly there is no pre-trial conference between the Public Prosecutor and investigating officer and most investigating officers have no knowledge of the law of evidence and the PPs do not prepare them. It also appears that investigating officers are conveniently indifferent to the importance of statements made under section 161 of the CrPC.

▲ Lack of contact and coordination between Prosecutors, survivors and witnesses:

It has been alleged that Public prosecutors are often not properly trained in criminal law and fail to contact witnesses or ensure that the latter are aware that they are expected to appear in court and to ensure that they have the means to travel safely.[230] Delays in the trial process may be due to the failure of PPs to ensure attendance of witnesses or to consult with them before the trial. Many prosecutors are said to know the details of the case only when the trial takes place and have often had no meeting with the survivor or her family.

Survivors, victims and other prosecution witnesses also have no idea as to what has been written during the investigation as their statements because such statements are never read over to them and in fact many of them are illiterate. Workshop 2 panellists spoke about witnesses not being prepared by the PP before deposing. In Barishal Divisional Workshop, in the panel presentation on the role of Public Prosecutors it was observed:

> The role of PPs have come under scrutiny. There are allegations that they sometimes send back witnesses due to corruption followed by unwillingness. They rarely consult with the witnesses or refresh their memories before deposition which has an unfavourable impact on the case. There are also allegations regarding how they behave with the witnesses.

Thus in practice, there is no effective pre-trial meeting between the prosecutor and the prosecution witnesses which puts the witnesses in a compromised position during trial.

In this study, Public Prosecutors' contended that 'complainants, victims and other witnesses in many cases give evidence contrary to what is contained in the *Ejahar* or FIR.' The PPs who participated in this study spoke about how, on many occasions and on their personal initiatives, they try to ensure the presence of witnesses. According to a Public Prosecutor,

[230] Op. cit. Human Rights Watch (2020).

NOSND Tribunal 2, Rangpur: 'I collect the number of the complainant from the *Ezahar* and personally contact her to keep her updated about the case. On my personal initiative, I give notice to the witnesses as well as the complainant.'

In Workshop 1, it was discussed that for ensuring due attendance of witnesses, PPs used to, and in some cases still, contact the concerned Thana and in other cases have to personally contact the informant/complainant to appear before the tribunal. It was suggested that summons should be sent through email or SMS for easy communication. Again, PPs, in Workshop 1, shared that they have to refresh the memory of the witnesses before the hearing, but most of the time they fail to do so due to delayed attendance of witnesses and 'their ignorance'.

▲Public Prosecutors are political appointees and have political allegiances which at times conflicts with their duties to represent their clients:

This study has found that there exists a wide belief that Public Prosecutors, instead of being recruited based on merit and experience, are appointed on the basis of party affiliation and political loyalty. Therefore there is no permanent prosecution system in Bangladesh. Whenever a party forms the government, all prosecutors are removed and replaced by a new group.[231] Some do not have enough knowledge or experience to try cases under the NOSNDA and this lowers the rate of convictions. Lack of effective procedure to screen and appoint prosecutors sometimes generates embarrassing situations. For example, in June 2007, a lawyer accused of a murder was appointed public prosecutor in Naogaon district. He was appointed by the district magistrate with the law ministry's approval. [232] According to the 7th Five Year Plan of the Government, it plans to institute a 'permanent attorney service to provide adequate, prompt and expert service. In principle, 'Primarily 70% of this attorney service appointment will be from registered advocates which will be selected by the Government. The Remaining 30% will be recommended by the Judicial Service Commission to appoint.

▲ Unprofessionalism, corruption, lack of interest and bias:

Public prosecutors who are responsible for conducting the case on behalf of the complainant are often criticised as being unprofessional, disinterested, biased and at times corrupt. In Workshop 2, it was alleged that Public Prosecutors only want to deal with cases where there is a chance to make money. In Workshop 3 a Tribunal Judge strongly recommended that there needs to be specific rules regarding the appointment of PPs. According to her, ``PPs in

[231] https://www.thedailystar.net/frontpage/the-perils-prosecution-108724

[232] https://www.thedailystar.net/frontpage/the-perils-prosecution-108724

general only have two functions; one to vehemently oppose the bail petition and secondly as regards argument to say 'as per record'.....'If there is a good Public Prosecutor a case may take a 180 degree turn and conviction becomes much easier'.

Public Prosecutors are often said to favour economically and politically powerful perpetrators over the interests of the victims. Due to the lack of independent prosecutorial services, often less capable advocates are engaged as prosecutors. Inefficiency of prosecutors means that they sometimes fail to ensure justice for their clients i.e. survivors of gender-based violence, since the onus is on the prosecution side to prove the case. This in effect means that the State fails to ensure justice since under the criminal justice system, offences under the Act of 2000 are all offences against the State. As an example of their unprofessionalism, justice sector stakeholders for this study in Workshop 2 mentioned that there is also an inherent bias toward any person who is a member of or affiliated with the political party which the PP supports and who may be the accused in a case before the Tribunal. In the 2rd Workshop, Barishal Division, stakeholders commented:

> Prosecutors are required to take everyday preparation for all the cases they are responsible for prosecuting as they are there to prove the case. However, in many cases they are absent during trial, not vigilant while producing oral, documentary and material evidence before the court. Sometimes they return witnesses due to corruption followed by unwillingness. In many cases they fail to refresh the memory of the witness before deposition, resulting in failure of the case. Questions also arise as to their behavior towards witnesses. They are sometimes even alleged to play a role in arranging '*aposh*'or compromise between the parties and taking money from both sides.[233]

Allegations of corruption against Prosecutors are not rare. Every survivor interviewed for a Human Rights Watch report who was assigned a public prosecutor told Human Rights Watch that they were forced to pay prosecutors in order to pursue the case, whether in direct bribes or because the officials asked for money to obtain necessary documentation. Prosecutors in Workshop 1, it was discussed, are also responsible for delays in the process due to their indifferent approach in completing evidence taking at a stretch.

▶Lack of gender sensitivity of Public Prosecutors:

The strength of purpose and the courage that it takes a survivor of GBV to access the Tribunal can only persevere if she is given the necessary support by her lawyer---in this case the Public Prosecutor. It is essential that the Prosecutors have a gender sensitive and non-judgmental attitude. It needs to be ensured that Prosecutors are more gender-sensitive, and address concerns for rape survivors in giving evidence, particularly in a congested and male-

[233] Report on Workshop 2; Prepared by Yasmin Begum, Additional Chief Judicial Magistrate, Sylhet.

dominated court-room.[234] Women and girls who are victims of violence, including acid attacks, face barriers in filing police complaints, disinterest or abusive behaviour from prosecutors.[235] 'Public prosecutors meant to advocate for victims through the process are poorly trained, often not invested in the job, and at times corrupt'.[236] Prosecutors also do not take advantage of Section 20 (6) of the NOSNDA which allows for the trial of offences under Section 9 behind closed doors (trial in camera).

▶ Lack of infrastructural support for the Prosecutors:

The Public Prosecutors lack infrastructural support and separate office spaces. In most Districts, Prosecutors have no assigned rooms of their own and have to talk to clients and witnesses in front of the accused. In the Workshops for this study, participants also reiterated that lack of infrastructural and logistic support for public prosecutors resulted in non-documentation, non-examination of witnesses and non-accountability. For example, according to the Public Prosecutor of Cox's Bazaar, 'I don't have any separate restroom; if any official witness comes to give the statement, I have to take them to the Judge's room in case they need to use the restroom. I cannot also provide security to the witnesses, there is no waiting room, no service desk ---basically there are no facilities at all.'[237]

▶ Lack of proper storage and evidence management:

The participants of the Workshop were unanimous in their opinion that PPs should play an active role in marking exhibits of documents, *alamot* and have a proper appraisal of case dockets.

Evidence management is an integral part of the criminal justice system.[238] Proper storage and maintaining the chain of custody of evidence is essential. Unfortunately, in the Bangladeshi context the system of such management is in shambles and in some cases a low rate of convictions may be attributed to such mismanagement. 'Property room' or 'evidence room' of police stations is commonly known as Malkhana in our subcontinent – which is a warehouse used to store seized items suspected to be connected to a crime.[239] According to a report of the Daily Star:' Valuable evidence is frequently stored in open roadsides, rooftops, makeshift

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[234] Bangladesh Legal Aid and Services Trust (BLAST) (2019 a). Conference Report RAPE LAW REFORM IN BANGLADESH; DHAKA, 8 December 2018 at p. 17.

[235] Op.cit. Human Rights Watch (20202) at p. 37.

[236] Op.cit. Human Rights Watch (2020) at p.45.

[237] Personal Interview with Md. Faridul Alam; Public Prosecutor, Cox's Bazaar.

[238] https://www.thedailystar.net/law-our-rights/news/need-proper-malkhana-management-criminal-justice-system-2204266

[239] Ibid.

tin-shed structures, corridors, or staircases in or near police stations.[240] This research heard of evidence being stored without labels and often destroyed or rendered unusable. In the case of DNA evidence crucial in rape cases, improper handling is also alleged although the Rules under the Deoxyribonucleic Acid (DNA) Act, 2014 provide detailed guidelines as to how such evidence is to be preserved. In 2020 the Government through a gazette notification[241] set up a DNA Laboratory Management Department (Odhidoptor) by virtue of the powers conferred upon it by Section 20 (1) of the DNA Act of 2014. The above Department is to be operated under the Ministry of Women and Children Affairs (MOWCA) with an advisory panel of specialists to supervise its activities for the purpose of testing and preservation of DNA samples.[242]

8.3.2. Responses of Public Prosecutors, contained in the questionnaire survey as to the causes behind the backlog of cases:

- Delay in obtaining DNA and other forensic reports.
- Prolonged investigation processes.
- Delay in submitting investigation reports.
- Procrastination of the concerned authorities in filing the charge sheet.
- Tribunals overloaded with an excessive number of cases.
- Insufficient number of Judges
- PPs lack communication with witnesses who have no mobiles or whose numbers are not available.
- Government witnesses not appearing on time due to their busy schedules as well as due to being transferred elsewhere or even retired.
- Witnesses are reluctant to appear and testify or get involved.
- Negligence of police authorities to produce witnesses.
- Delay in serving process to compel attendance of witnesses.
- Witnesses are not found especially when the trial takes a long time and sometimes, even if found, not arriving in time to depose.
- Without the process to appear as witnesses being served, the witnesses are not eager to appear of their own accord.
- No arrangement for travel allowance or payment of other incidental costs for the witnesses.
- No arrangements for waiting rooms and other conveniences such as wash rooms for the witnesses or even the complainants.

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[240] Ibid.

[241] GoB (2020 b). Ministry of Women and Children; Notification; Cell Division; S, R, O. No -212-ain/2020; 27th July 2020,

[242] https://bdnews24.com/bangladesh/2020/08/13/bangladesh-opens-a-new-unit-to-run-dna-tests

- Witnesses being influenced by a strong and powerful accused, preventing them from appearing in court and/or testifying in support of the defence case.
- After being released on bail, the defendant's side is reluctant or disinterested to appear on time.
- Lack of interest of the PPs and defence lawyers to cross-examine witnesses.
- Lack of security of the witnesses.
- Parties losing interest due to prolonged prosecution processes.
- The accused absconding.
- Unnecessary adjournments on the application by the accused.
- Settlements outside of the court.
- Pressure on survivors by local Chairmen, Members and politically powerful people not to access the formal justice system
- Middle men/ brokers and touts affecting/influencing/misguiding the parties.
- Change of address of the complainant without notification.
- Lack of facilities for the Public Prosecutors---no separate rooms to talk to clients etc.

8.4. Role of the Magistrates under the NOSNDA,2000:

Magistrates are important stakeholders under the *Nari O Shishu Nirjatan Daman Ain*, 2000. Under Section 18 an investigation of an offence under the Act shall be completed within the period of sixty days from the date, any information regarding the offence is received or the Magistrate passes the order for investigation. Under Section 22, if the Investigation Officer, while arresting an accused on the spot, considers that the statement of a person who is acquainted with or is an eye-witness of the offence, is needed to be immediately written by the Magistrate, he can request a first class Magistrate, in writing or otherwise, to take the written statement of the person. The Magistrate shall take the statement on the spot or any other proper place and send it to the investigating officer or person to produce it before the Tribunal along with the investigation report.

The Magistrates participating in this study described shortly the responsibilities they performed under the NOSNDA. Under the law, during the investigation, the Magistrate under Section 22 takes the statements of the victim/survivor and the witnesses (as mentioned above), S(h)e records the voluntary confessional statement of the accused under Section 164 of the CrPC, if any, and settles applications for remand. The Magistrate also sends women and children who are the sufferers/survivors/victims to adequate shelter or safe custody.

Under Section 27(1)(ka), in cases where the Police has refused to accept a complaint from a survivor, the Tribunal may direct the Magistrate or any other person to investigate an offence and report within 7 days.

In the case of Sirajul Islam @ A Suban vs. The State [243]and others , it was held by the Court that:

> The intention of the legislature as reflected in section 27 (1)(Ka) is to empower the tribunal to direct "any Magistrate" or "any person" excluding any police officer to enquire and report within 7 working days. The expression "any person" in section 27 (lKa)(Ka), according to our view, does not include any "police officer" but it includes any public officer or any private individual or any other responsible person of the society upon whom the tribunal may have confidence to get the enquiry conducted in respect of the complaint lodged before the tribunal and submit report within seven working days.

In the questionnaire survey of Magistrates, they were asked to identify the reasons for delays in investigation of offences under the Act of 2000. 100% of participants said the delay in getting DNA and Medical Reports was the main reason while about 72% of the participants blamed negligence and lack of skilled IOs. Amongst other reasons that were mentioned include: frequent transfer of the investigating officer; delay in arresting the principal accused; delay in getting DNA reports; delay in getting the chemical examination reports of the murder weapon; delay in collecting evidence and the delay in rescuing the survivor;

8.4.1. Bail granting authority of Magistrates under the Act of 2000:

There appears to be some confusion related to the bail giving authority of the Magistrate under the NOSNDA, 2000. Although the Act gives the Tribunal the power to grant bail, it fails to clarify the Magistrate's powers regarding bail.

The apparent lack of authority of the Magistrates to deal with bail matters has come under challenge by our superior Courts. In several cases it has been reiterated that the Magistrate has no authority under the *Nari O Shishu Nirjatan Daman Ain* to grant bail and that it is only the Tribunal which has such authority. For example, in the case of Md. Nurul Islam Babul vs. The State,[244] the High Court Division held that no Magistrate or Court, other than the *Nari O Shishu Nirjatan Daman* Tribunal, is empowered to deal with any application for bail even at

[243] 1 ALR (2012) (HCD) 162.
[244] 24 BLD (HCD) 205.

the pre-trial stage, that is to say, before taking cognizance of any offence under the *Nari O Shishu Nirjatan Daman Ain,* 2000, a special law. The same was reiterated in the case of Shahjahan (Md) and others vs. The State. [245] Contrarily, two other Benches of the High Court Division in the cases of Fajlur Rahman and others vs. The State and Sabuj Ahmed (Md) @ Ahmed Shamim Sabuj vs. The State,[246] held that before taking cognizance of any offence, the concerned Special Court or Tribunal has no jurisdiction whatsoever to entertain any application for bail and at the pretrial stage, the Metropolitan or Judicial Magistracy has the authority or jurisdiction to entertain the same. The right of the Magistrate to grant bail was clarified in the decision given by a Full Bench in The State (Petitioner) vs. M. Wahidul Haque and others (Opposite-parties)[247] where the Court held:

> (A)t the pre-trial stage, that is to say, from the date of lodgment of the FIR with the concerned Police Station till taking cognizance of the offence by the Senior Special Judge under section 4(2) of the Criminal Law (Amendment) Act, 1958, the Judicial or Metropolitan Magistracy is empowered to entertain, deal with and dispose of any application for bail of an accused in a case .....under section 497 of the Code of Criminal Procedure. Similarly at the pre-trial stage, in the absence of any express or implied prohibition in any other special law, the Metropolitan or Judicial Magistracy may entertain, deal with and dispose of any application for bail of an accused under section 497 of the Code. In case of rejection of his application for bail, he may move the Court of Session by filing a Criminal Miscellaneous Case under section 498 and thereafter in case of failure before the Court of Session, he can move the High Court Division under the self-same section 498 of the aforesaid Code for bail.

8.4.2. Magistrate's role regarding remand and confession:

A Magistrate is responsible for the recording of the voluntary confessional statement or the judicial confession of the accused under Section 164 and 346 of the CrPC. The latter Sections contain guidelines as to taking of 'any statement of confession'. The High Court has clearly held that: 'Provisions under Section 164 and 364 of the Criminal Procedure Code are mandatory and required to be strictly followed to make a confession voluntary and true and fit for reliance for convicting the accused on his confession'.[248] Again, in the case of Hafizuddin vs. State, the Magistrate did not give warnings before recording the confession and time for reflection. The Magistrate also failed to inform the accused that they would not be sent to police custody after making the confessional statements. It was held that 'the confessional statements, in such facts and circumstances, are neither voluntary nor true'.[249]

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[245] 19 BLC (HCD) 372.

[246] 17 BLT (HCD) 192 and 23 BLC (HCD) 199.

[247] Criminal Revision (SUO MOTU) NO. 246 OF 2018. Heard on 26.07.2018, 09.08.2018 and 11.10.2018. Judgement on 06.12.2018

[248] Abul Hossain vs. The State 46 (1994) DLR (HCD) 77

[249] Hafizuddin vs. State 42 DLR (HCD) (1990) 397

It is alleged that the confession is made initially to the Police on remand who thereupon produces the accused before the Magistrate. A police officer makes a prayer for 'remand' stating that the accused is involved in a cognisable offence and for the purpose of interrogation 'remand' is necessary.[250] Halim posits that even though in sub-section (2) of section 167 of CrPc it is not mentioned that 'remand' can be allowed for the purpose of interrogation, at present, the practice is that an accused is taken on 'remand' only for the purpose of interrogation or for extorting information from the accused through interrogation. He adds: 'There is no proper guideline as to when such prayer should be accepted and when rejected by the Magistrate and this legal lacuna gives both the police officer and Magistrates power to abuse the same.'[251] According to Rule 458(a) of the Police Regulations of Bengal (PRB) 1943, police officers are required to mandatorily submit the Form of applications for Remands [Regulation 458] by BP Form No. 90; Bengal Form No.5261 whenever they seek remand for a detainee. This study found that in most instances such procedures are not followed properly. Again, allegations of torture in remand persist and it is the responsibility of the relevant actors to follow as far as partical the guideline laid down by the High Court Division in Blast vs. Bangladesh[252]. The directives as they apply to Magistrates are as follows:

- While producing the detained person before the Magistrate under Section 61 of the CrPC, the police officer must forward reasons in a forwarding letter under Section 167 (1) of the CrPC as to why the investigation could not be completed within twenty four hours and why s/he considers the accusation and information to be well founded
- On perusal of the forwarding letter, if the Magistrate satisfies him/herself that the accusation and information are well founded and materials in the case diary are sufficient for detaining the person in custody, the Magistrate shall pass an order of detention and if not, release him/her forthwith
- Where a person is released on the aforesaid grounds, the Magistrate shall proceed under 190(1)(c) of the CrPC against the Officer concerned under Section 220 of the Penal Code.
- Where the Magistrate orders detention of the person, the Officer shall interrogate the accused in a room in a jail until a room with glass wall or grille on one side within sight of lawyer or relations is constructed

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[250] https://archive.thedailystar.net/law/2006/07/04/index.htm
[251] Ibid.
[252] 55 DLR (2003) 363

- In any application for taking accused in custody for interrogation, reasons should be mentioned as recommended
- The Magistrate while authorizing detention in police custody shall follow the recommendations laid down in the judgment
- The police officer arresting under Section 54, or the Investigating Officer taking a person to custody or the jailor must inform the nearest Magistrate about the death of any person in custody in compliance with these recommendations
- The Magistrate shall inquire into the death of any person in police custody or jail as per the recommendations.

8.5. Defence Lawyers:

The Constitution of Bangladesh in Article 35 (3) declares

> Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial Court or tribunal established by law.

Under Article 33(1), an accused shall not 'be denied the right to consult and be defended by a legal practitioner of his choice'.

Due to a mistrust of the justice system there has been an increase in vigilantism and people taking the law into their own hands. Apart from other stakeholders, lawyers for the defence i.e. lawyers who defend the accused, play a crucial part in the justice system. When the perpetrator is aware of his rights and is financially solvent he retains a capable lawyer. In some special circumstances defence lawyers are assigned by the court. Again, in others, indigent or poor persons accused of GBV may apply for government legal aid and under the Legal Aid Services Act of 2000, defence lawyers may be assigned to the accused. The defence lawyer's role is to argue on behalf of the defendant for his acquittal.[253] Having a defence lawyer to defend oneself is one of the key ingredients of fair trial and due process of law. However, defence lawyers in many cases take advantage of their clients who know nothing about the law.

According to Dr. Abul Hossain, a Key Interviewee for this study, survivors or families of victims are less than eager to take the legal route and the blame for this also lies on lawyers.

[253] http://lawyersclubbangladesh.com/en/2021/08/08/role-of-prosecution-and-defense-lawyer-in-criminal-justice-system/

According to Dr. Hossain, 'the world of lawyers is another facet which has an important effect on why people avoid the formal system. Most people cannot afford expensive lawyers who may not have ample experience and knowhow. When the petition or '*arji'* is written, an inexperienced lawyer may include many irrelevant issues which come within the jurisdiction of different Courts---Family Courts, Magistrate Courts, the NOSND Tribunal and thus the whole issue becomes very complicated.'

Legal ethics play an important role in regulating legal practice and the legal profession in every country and these refer to the core values that should guide the lawyer in fulfilling his professional responsibilities.[254] In the Sylhet Divisional Workshop, mistrust in the justice delivery system was attributed to amongst other reasons the lack of professionalism and social responsibility of defence lawyers. According to several participants of this study, lawyers for the defence sometimes ask survivors of GBV scandalous questions making them 'puzzled and re-victimized'. In other cases, it was opined by justice sector actors in Workshop 1, that defence lawyers, 'waste time in cross examining witnesses by filing time petition and subsequently filing recall petition,' In all the workshops it was opined that the lawyers Code of Conduct should be strictly maintained. Respondents in Workshop 3 opined that defence lawyers in some cases ask absolutely irrelevant questions. They need to be trained as to what decorum should be maintained.

The Bangladesh Bar Council Canons of Professional Conduct and Etiquette[255] is the Code which all lawyers in Bangladesh are supposed to abide by. Such Code of Conduct is seldom followed or even known by all lawyers. There are frequent concerns expressed that many lawyers do not abide by the Code of Conduct and often there are allegations of misconduct, breach of ethics and wrongdoing of lawyers. Faruque gives a long list of allegations of practices which many lawyers in Bangladesh engage in. He writes:
According to the lawyers, judges and legal experts, the following unethical legal practices are found amongst legal practitioners in Bangladesh:

> taking up cases concealing conflict of interest; bribing judges and other officials in the judiciary; deliberate distortion of facts; taking up cases without appreciating that they do not have necessary expertise on the matter; despite taking fees, lawyers do not work for the clients; taking gratification from the opposing side; assisting or advising clients who are themselves involved in payment of bribe and other unlawful

[254] Faruque, Dr. Abdullah Al (2021b)." An Empirical Study on Unethical Legal Practices in Bangladesh and Suggested Remedial Measures" in Dhaka University Law Journal, 2021, 32(2), 87-102 at p. 87.
[255]https://www.barcouncil.gov.bd/disciplinary-jurisdiction/conduct-of-ethics-of-lawyers/#:~:text=An%20Advocate%20shall%20not%2C%20in,a%20copy%20thereof%2C%20address%20a

> gratifications; using affiliation with the ruling party in order to gain leverage in judicial proceedings; informing clients about having personal relation and access to particular judge(s), and on that basis, guaranteeing a win in a case and obtaining excessive fees; providing incomplete, incorrect and negligent advice; charging higher fees and demanding fees as and when an advocate wishes on various vague grounds.....[256]

The above list is only the tip of the iceberg and there are many other unethical practices which lawyers are accused of. In Workshop 2 it was remarked that lawyers are non-cooperative,'especially when the lawyer is a male he cannot feel the pain of the victim'.

Defence lawyers may also contribute to the backlog of cases. A Judge of a NOSND Tribunal participating in Workshop 4, suggested that individual cases should be scrutinised to see what the actual status of a case instituted in a Tribunal is and whether compromise, which happens in many cases, between the parties has already taken place. 'Such cases,' the Judge opined, 'should be disposed of to reduce the massive backlog which is clogging the system'. As discussed elsewhere, defence lawyers often prolong the case by seeking unnecessary adjournments for financial gain. Examples were given where the accused was not informed that the case had been dismissed. There have been cases instituted by the wife against the husband alleging dowry related violence where later on they had reached a compromise and were living together as husband and wife. The husband continued to give *hazira* in the Court not knowing that the case had in effect become infructuous because his lawyer had not informed him of the matter.

The Bar Associations of different Districts should be proactive to ensure that defence lawyers adhere to a Code of Conduct. The Bangladesh Bar Council in the past conducted trainings for lawyers but at present no such training is given. An accessible, transparent judicial complaint process and remedial and punitive sanctions for violation of code of conduct is required for ensuring lawyers accountability.[257] In reality, the provisions of the Code 'are seldom observed and are hardly complied with by many lawyers in their day-to-day professional conduct. In Bangladesh, after enrollment as an advocate, in fact, there is nobody to monitor the lawyers' activities except the Bar Council. The District Bar Associations are not well equipped to monitor the unethical practices of the lawyers.[258]

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[256] Op. cit. Faruque (2021b) at p. 92. .
[257] Op. cit. Faruque (2021b) at p.88.
[258] Ibid at p. 94.

There are many unethical practices that emerged in the last few decades which have not been addressed in the Bar Council Canons of Professional Conduct and Etiquette and the Bar Council Canons are not adequate and comprehensive enough to encompass all aspects of unethical practice which are observed today in Bangladesh.[259]

The defence lawyers are also adversely affected by practices in the judicial system over which they sometimes have no control. In the case of Bangladesh, the most disappointing part is when the accused is labelled as a criminal by general perception even before the starting of prosecution.[260]

The need to pay speed money at different stages of the trial also impacts the defence. As regards what documents are available to the defence, Advocate Shomaji, as KI interviewee for this study, explained that after the charge sheet has been submitted all the prosecutorial documents are public documents and the accused lawyer is entitled to get all documents. They can get certified copies'. However, it appears that extra costs as speed money are often needed for the collection of such documents which ultimately becomes a burden on poor litigants, since the lawyer has no control over such expenses. Coerced confessional statements also impact upon the defence. 'Pretrial detention is often lengthy, and many defendants lack counsel. Suspects are routinely subject to arbitrary arrest and detention, demands for bribes, and physical abuse by police'[261]Defense lawyers need to be more pro-active in court when application is made for remand in order to try and protect their client from torture and other coercions.

8.6. Examining and Evaluating the Role of *Nari O Shishu Nirjatan Daman* Tribunals:

Section 26(2) of the NOSNDA provides that the Tribunal under the Act shall consist of one Judge who shall be appointed by the Government from amongst District or Session Judges. The Tribunal shall for all purposes be considered to be a Sessions Court and shall follow the provisions of the CrPC, 1898.

[259] Ibid at p. 89.
[260] https://nilsbangladesh.org/ensuring-natural-justice-by-right-to-defend/
[261] https://freedomhouse.org/country/bangladesh/freedom-world/2022

At present there are approximately 101 Judges working as *Nari O Shishu Nirjatan Daman* Tribunal Judges. The Tribunal has been granted 'wide discretion' by the Act of 2000. For example, under Section 27(1 Ga), the Tribunal can assume cognisance even if the Police Report, as contemplated by Section 173 Cr PC exonerates the accused. This discretionary power is meant to prevent abuse or bias by investigators, which are not uncommon. As the records reveal, the police in the case in hand transmitted a negative report i.e. a Final Report, and hence, under Section 27 (1ga) read with section 27(1), the tribunal had discretion to assume cognisance even though the report was in the negative (Md. Mokbul Hossain Molla vs. The State).[262] A full Bench of the High Court held that for the purpose of power of the tribunal there is no different between "এজাহার"[263] and "অভিযোগ"[264]: the power of the tribunal is extra-ordinary on taking cognizance of the offence (Anjuara Kahanam vs. The State)[265]. Again, in this same case it was held that under the Ain, the Tribunal is more powerful than that of ordinary courts in taking cognizance of offences.

Despite the best intentions of the Legislature, the Tribunal has not been able to ensure justice to survivors and victims of gender based violence as was contemplated when the Act of 2000 was enacted. Neither has it been successful in deterring potential offenders. The purpose of this study has been to unearth the reasons for the delays and low conviction rates. According to Freedom House 2022, 'Individuals' ability to access the justice system is compromised by endemic corruption within the courts and severe case backlogs.[266]

The failure of the justice system to deliver justice to the victims of GBV is attributed commonly to the members of the Judiciary although in reality, as has been discussed in some detail in this study, the failures including delays and backlogs are attributable to a cross-section of actors and institutions which impede upon the proper functioning of the Judiciary. Therefore, in spite of laws to prevent, punish and deter gender based violence, ineffective responses from a wide variety of justice sector actors hamper the successful implementation of statutory laws. Despite this the Tribunal, in public perception, is held singularly responsible for the failures of the NOSNDA to deliver justice.

According to Transparency International Bangladesh, the: 'judicial system in Bangladesh suffers from lack of adequate funding, poor salary allocations for judges, lack of disciplinary

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[262] 6 ALR 2015(2)196.
[263] *Ejahar* or First Information Report.
[264] *Obhijog* or complaint.
[265] 5 CLR 2017 (HCD) 226; 68 DLR 466.
[266] https://freedomhouse.org/country/bangladesh/freedom-world/2022

and accountability mechanisms and lack of transparency, all of which contribute to corruption in the sector. The judiciary also lacks independence from political influence which leaves it vulnerable to manipulation and use for corrupt purposes and undermines anti-corruption efforts in the sector.'[267] In spite of the formal separation of powers, the judiciary remains bound to the executive. Lower levels of the judiciary remain heavily politicized.[268]

Tribunal Judges are bogged down by a huge number of cases and it becomes close to impossible for them to follow procedures regarding holding the trial of a particular case on each working day or finishing the entire process within six months as mandated by Section 20 of the Act. The Tribunals are also hampered with having to deal with cases under the Children Act 2013, the Acid Offences Prohibition Act, 2002 and the law related to human trafficking. The Honourable Judge presenting on the cause of delays in Workshop 3, spoke about the impossibility of completing a trial within the time limit specified by the Act due to several reasons. According to the Panel in Workshop 3, discussing the causes of backlog of cases and delays: 'NOSND Tribunals are conferred with the additional responsibility of acting as Shishu Adalat or Child Courts,[269] which has to deal with many different offences wherever children are involved – for example those related to trafficking, cyber crimes, crimes under the Penal Code, crimes related to drugs/intoxicants and so forth. 'Whenever children are involved, as Children's Court 'everyone has to give extra effort and follow the law which prescribes that lawyers cannot wear their black coats and even Judges cannot wear their robes, all of which takes time to arrange.' One participant Judge spoke about the impossibility of ensuring speedy disposal of cases considering the fact that each Tribunal Judge has to deal with approximately 2000 cases. She suggested that the Rules need to be made which shall specify the maximum number of cases a Judge can be involved with.

Under Section 18 (6) and (8) of the NOSNDA, in cases of the IOs delay in submitting the crucial investigation report due to some negligence or incompetence or worse, or if the Tribunal believes that the investigation report has been submitted in such a manner and with the intention of saving someone from the liability of the offence or by producing a person as witness who should be produced as the accused, or without examining an important witness, the Tribunal is given the power to order the authority under which the investigating officer is

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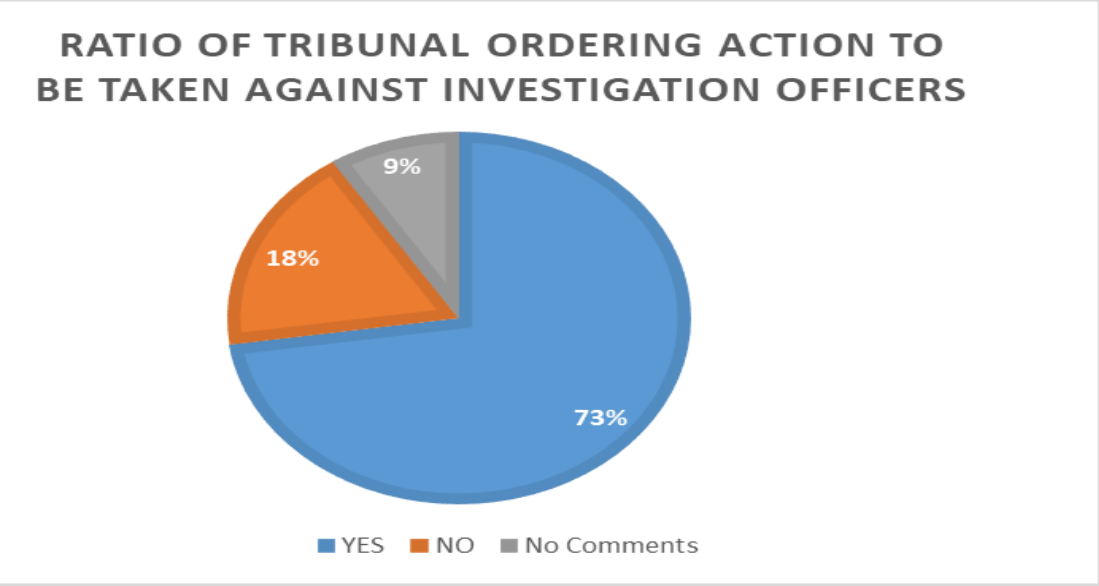
[267] https://www.u4.no/publications/overview-of-corruption-within-the-justice-sector-and-law-enforcement-agencies-in-bangladesh.pdf

[268] https://bti-project.org/en/reports/country-report/BGD

[269] By an amendment in 2018 of the Children Act of 2013, provision was introduced for the setting up of one or more children Courts in each district. However, under Section 16(2) of the Children Act 2013, every *Nari O Shishu Nirjatan Daman* Tribunal within its own jurisdiction shall be considered to be a Children's Court.

working to take suitable steps for negligence as incompetence or in places, misconduct. However, apart from giving such directives or orders to the supervisory authority, the Tribunal itself cannot take any punitive steps.

The questionnaire survey, represented by the Table below, shows the trend of Tribunal Judges giving orders for disciplinary action to be taken:



The Judges of Tribunals need to be proactive in ensuring that the authorities have indeed taken strong action against such rogue IOs and MOs. In cases of serious negligence, corruption and other intentional negligence of duty, the Tribunal should be given the authority to impose some punishment on IOs and MOs, however negligible. The Judges also need to protect survivors, witnesses and even the alleged perpetrators of GBV from being harassed by the Police, the PPs or in cases by the defence lawyers.

8.6.1. Bail granting authority of the Tribunal:

Section 19 Sub-sections (3) and (4) of the NOSNDA 2000 clearly gives the Tribunal the power to grant bail. However, there is confusion as to when the Tribunal is empowered to hear such bail petitions. One view is that the *Nari O Shishu Nirjatan Daman Ain* 2000 does not provide for the procedure of granting bail by the Tribunal during the investigation stage of the proceedings. It is contended that the *Nari O Shishu Nirjatan Daman* Tribunal can hear bail matters only after the submission of the report of the police; before such a report is submitted,

the bail granting power remains within the jurisdiction of the Magistrates, even though this is not specifically mentioned in the Act of 2000. It follows from the general provision contained in the Code of Criminal Procedure, under which the Magistrate has the power to grant or withhold bail. However, in several case judgments, the authority of the Tribunal to hear bail matters even before the investigation is complete has been upheld. This view was supported by the Appellate Division's judgement, [270]where it was held that any criminal case begins from the lodging of the first information report and therefore the concerned Court or Tribunal should have jurisdiction to hear bail matters from the very beginning of the case. The *Nari O Shishu Nirjatan Daman Ain* 2000 does not clarify its position regarding Tribunals bail giving authority which keeps open the scope of confusion in this regard.

8.6.2. Limited Powers of the Tribunal under Section 27 to take cognizance of offences under the Act.

The Tribunal cannot normally directly take cognizance of any offence under Section 27 and the victim/survivor does not ordinarily have direct access to the Tribunal. One Tribunal Judge in Workshop 1 questioned the fact that his Court cannot be accessed directly. He asked:'If a second class Magistrate can take cognizance, as a District Judge, why cannot I do so?' Miscellaneous cases can be instituted against an order of a Magistrate to the District Court and after settlement of the issue it goes back to the Magistrate and once it is ready then it comes to the Tribunal. 'Miscellaneous cases against any order of the Magistrate relating to the Ain should lie before the Tribunal,'he opined.

In the case of *Amin Uddin (Md) vs. State,*[271] the *Nari-o-Shishu Nirjatan Daman* Tribunal of Brahmanbaria directly took cognizance of an offence on the basis of a complaint and convicted the accused. The High Court quashed the conviction on the reasoning that it was based on an inappropriate procedure of trial. The HCD observed that under Section 27(1) of the *Nari O Shishu Nirjatan Daman Ain* 2000, Tribunals cannot take direct cognizance of an offence under the Act. The Brahmanbaria Tribunal was directed to send the complaint of the CR Case to Thana to be treated as first information report as the Police report is to be submitted u/s 173 of the Code of Criminal Procedure.[272]

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[270] 29 DLR SC 236 and 13 BLD (AD) 94.
[271] (2006) 58 DLR.
[272] See also Op. cit. Naznin and Sharmin (2015) at p.64.

The general view of the NOSDND Tribunal Judges, participating in this study, was that Section 27 should be amended giving direct access to the Tribunal so that the Tribunal can take cognizance of offences similar to *S*ection which deals with 'Cognizance of offences by Magistrates'. Another opinion shared by the stakeholders was that since the Tribunal is a cognizance court, there should be special Magistrates under each tribunal.

8.6.3. Lack of Supervisory, monitoring and other powers of the Tribunal:

The Tribunal cannot take any action against any wrongdoing or negligence of the Investigating Officer or Medical Officer since they have no supervisory powers of monitoring them. The participants of the study were of the opinion that the Tribunal should be given this power. Other suggestions include 'introducing provisions so that the Tribunal itself can take steps against police for flawed investigation reports and doctors for faulty medical examination reports'.

Miscellaneous cases are instituted against orders of the Magistrates in the Courts of the District or Sessions Judge. For example, if the Magistrate does not give bail, the appeal is made to the latter Court in the form of a miscellaneous case and if bail is given by this Court, the Tribunal is absolutely ignorant as to what is going on. According to a participating PP of a Nari O Shishu Nirjatan Daman Tribunal, Rajshahi District:If the miscellaneous case was done in the Tribunal, then it would be aware of what is going on.[273]

8.6.4. Infrastructural inadequacies and shortages:

In all the Workshops the issue of staff and other shortages of the NOSND Tribunals was highlighted. Tribunal activities are being severely handicapped due to such shortages, was the opinion expressed. A Rajshahi Tribunal Judge spoke of acute staff shortages, which sometimes means he has to even do the menial work in his Court. One Judge spoke of shortages in the Tribunals set up in the Chittagong Hill Tracts.

A NOSND Tribunal Judge spoke about inconsistencies in the system of record keeping[274]. 'In different Districts different types of Registers are maintained, The system should be harmonised according to the Rules which must be made. More importantly we have no separate record room for the Tribunal. In fact, the PP has kept two cupboards of papers in my Court. There must be specific guidelines as to who will supply the নথি or records/documents'. One recommendation which came from Workshop 3 was that there

[273] PP Nari O Shishu Nirjatan Daman Tribunal, Rajshahi.
[274] Workshop 3.

should be a separate building in each District for NOSND Tribunals. This should be a self-contained space with separate special Public Prosecutors; an Officer-in-Charge in charge of a team of SIs; medical service providers and even two or three Magistrates under each Tribunal.

8.6.5. Summing up the reasons for delays and low rate of convictions according to the Judges of the Nari O Shishu Nirjatan Daman Tribunals:

According to the questionnaire survey of the Judges the reasons for delays at different stages of the process leading up to the trial of an offence under the NOSNDA 2000 is shown below with percentages to demonstrate the importance placed on specific reasons. Apart from these other causes have been added based on the participation of Tribunal Judges at the 4 Workshops. Percentages have not been assigned to these additional causes.

❖ **AT THE PRE-TRIAL STAGE:**

☞Delay in accessing the system including delay in accessing the Police to report GBV or seeking assistance from medical facilities
56%

☞Delay of the Police in accepting FIRs or refusal to accept. **14%**

☞ Expenses involved in the filing of cases.
14%

☞ Pressure on survivors by local Chairmen, Members and politically powerful people not to access the formal justice system **30%**

☞Lack of awareness as regards the laws and processes involved of the survivors or families of victims
5%

☞ Not securing the place of occurrence and not preserving the evidence properly
7%

☞ Not receiving Medical Certificates on time **14%**

❖ **AT THE INVESTIGATION STAGE:**

☞ The investigating Officer or other relevant officer's lack of expertise as regards the investigating process

28%

☞ The enthusiasm of IOs in arresting the accused is greater than their enthusiasm when it comes to investigating the offence

9%

☞Delay in visiting the place of occurrence and collecting evidence. In cases all the evidence is not collected or sent at the same time. Incorrectly collecting the evidence or failure to preserve evidence properly

28%

☞ Delay in sending victims of GBV speedily for medical examination

23%

☞Delay in obtaining the DNA and collecting other forensic evidence and delay in getting the reports **35%**

☞Delay in submitting investigation reports

70%

❖ **AT THE TRIAL STAGE:**

☞Shortage of the number of Judges

30%

☞Judges overwhelmed by the number of cases **35%**

☞Judges of the NOSND Tribunals, in many cases, have to deal with cases under the Children Act 2013 and also with trafficking and acid related offences in places where no separate specialised courts exist which makes it impossible to follow the time frame fixed by the law. **19%**

☞ Lack of evidence and witnesses

14%

☞ Inexperienced and ad-hoc prosecutors being employed

33%

☞ Judges in some cases not utilising their time in Court properly and not being sincere **9%**

☞Delay in serving process to compel attendance of witnesses

21%

☞Delay in witnesses deposing before the Court

37%

☞ Lack of interest and delay of defence lawyers to cross-examine witnesses

16%

☞Non availability of experienced defence lawyers in important or sensational cases

9%

☞ Unwillingness and lack of eagerness of witnesses to appear as witnesses on the own accord without process being served

5%

☞Lack of security of the survivors/family of victim and/or witnesses **14%**

☞Lack of knowledge of witnesses as to what is contained in the FIR/complaint

7%

☞Delay in producing real evidence in Court

☞ Seeking of unnecessary adjournments by both the Prosecution as well as the defence

❖ **AFTER TRIAL STAGE:**

☞The enthusiasm with which the Police arrest the accused before the trial is absent when they have to apprehend the convict after the judgement is pronounced and punishment process is issued for arrest. In some cases arrest warrants are not issued or are delayed.

5%

☞Judgment not speedily made effective 44%

☞ Delay in giving judgement after hearing arguments under Section 342 of the CrPC from the accused's side 5%

☞ Lack of interest and action in arresting convicted people who are on the run or absconding. 21%

☞ Complicated process to obtain compensation

14%

☞ The long appeal processes before a judgement can be finally executed

9. SOCIO-LEGAL-STRUCTURAL BARRIERS to ACCESS to JUSTICE in the *NARI O SHISHU NIRJATAN DAMAN* TRIBUNALS:

There exists a multitude of laws aimed to counter violence against women and children in Bangladesh. The reality however is that such gender based violence continues unabated. Violence against women and girls remains endemic and pervasive. Not only are women in Bangladesh subjected to public violence but even within their homes they live endangered lives.[275]

The *Nari O Shishu Nirjatan Daman Ain* 2000, contains provisions for numerous death penalties and other stringent penal sanctions. The harsh punishments provided appear to have had no deterrent effect on perpetrators. Women and children continue to be victimised by increasing violence. The law continues to be criticised not only for being unable to prevent violence but also the abysmally low rates of convictions. The purpose of this study is to discuss, discover, clarify the issues which negatively impact upon the capacity of the special Tribunals to deliver justice; address the consistent low rate of convictions and to find out the loopholes within the NOSNDA.

Despite guarantees of equality before law and equal protection of law guaranteed by the Constitution, access to the formal justice system is limited and victims of gender based violence find it inhibitive to approach the formal system of justice. Women and children avoid accessing the formal system for a variety of reasons which include poverty and economic reasons; socio-cultural contexts which frown upon women going to Court; familial and societal inhibitions; patriarchy; illiteracy and lack of awareness of rights; inherent defects of the law; lengthy and burdensome processes; corruption and so forth. Not 'only is the criminal justice system failing women and girls who have survived gender-based violence, but that additional

[275] Huda, Shahnaz (2014). Unpublished Draft of Alternative report to the UN CEDAW Committee; Reporting to Treaty Bodies under BNHRC CDP; UNDP; Bangladesh National Human Rights Commission.
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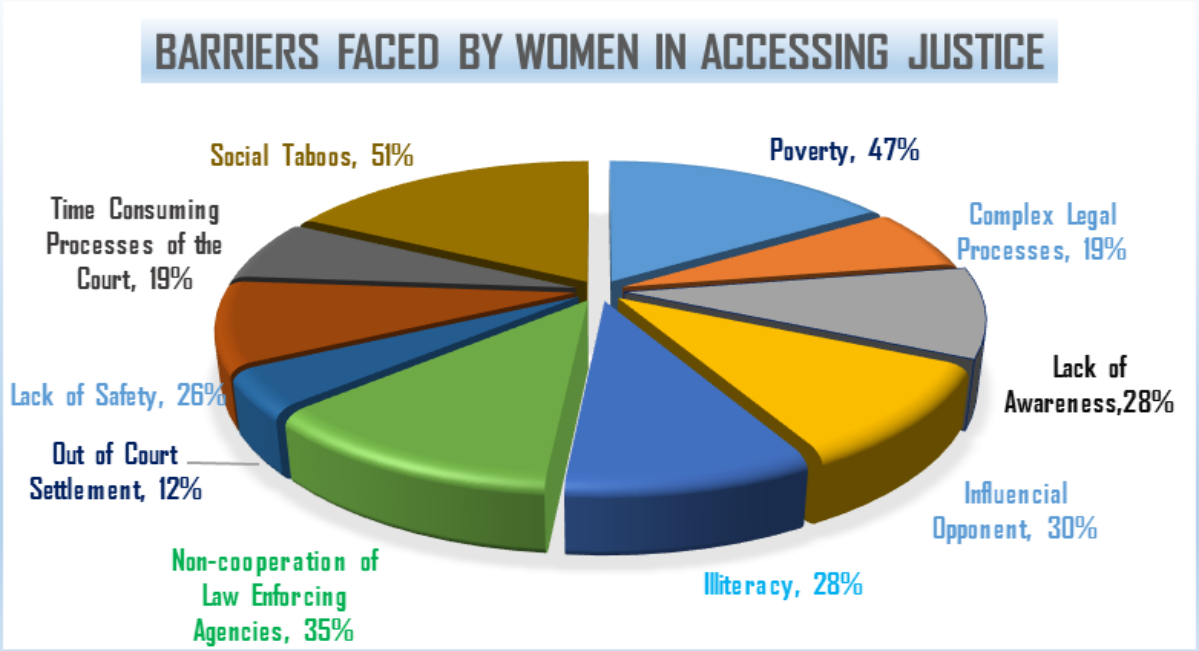
failures in response, protective measures, and services seriously hinder survivors' ability to access the justice system in the first place.[276]

Even though different actors connected to the criminal justice system have been held responsible for the failure to protect women from violence and to punish perpetrators of violence, there are also many outside forces which prevent women from accessing the formal system and which prevent them from obtaining justice when they do take the assistance of such system. The socio-cultural contexts which persecute the survivors/victims of gender based violence are manifold. Added to these are other legal, practical and infrastructural factors which deny them justice. Even though factors which are common for all Bangladeshis such as poverty, lack of legal awareness, illiteracy are not specific to women, in reality they impact women more than men. A combination of social and institutional barriers aggravates women's difficulty in accessing justice institutions, across income quintiles, education levels and ethnic groups, creating higher barriers at entry, high attrition, and making women more vulnerable during the judicial process.[277] In addition, barriers such as discriminatory laws and social stigma are gender specific and increase the access gap.

The following Chart represents the reasons identified in the present study by the Judges of the *Nari O Shishu Nirjatan Daman* Tribunals as being barriers to women and children accessing the special Tribunals.

[276] Human Rights Watch (2020). "I Sleep in My Own Deathbed" -- Violence against Women and Girls in Bangladesh: Barriers to Legal Recourse and Support.
https://www.hrw.org/report/2020/10/29/i-sleep-my-own-deathbed/violence-against-women-and-girls-bangladesh-barriers

[277] Marchiori, Teresa (2015). A Framework for Measuring Access to
Justice Including Specific Challenges Facing Women; Report commissioned by UN Women
realized in partnership with the Council of Europe at pp.6-7
https://docs.google.com/viewerng/viewer?url=https%3A%2F%2Fbangladesh.justiceaudit.org%2Fwp-content%2Fuploads%2F2018%2F07%2FA-framework-for-measuring-access-to-justice-including-specific-challenges-facing-women.pdf



9.1. Patriarchy, Pervasive sexual violence culture and survivor blaming:

The socialisation process of men and women in Bangladesh underscores the supremacy of men over women. In workshop 2, stakeholders from Barishal Division opined that when an event of GBV occurs, the victim does not always get support from her family because the whole society continues to be patriarchal. Sylhet Divisional stakeholders in Workshop 1 agreed and spoke about how the attitude of people within the society continues to be patriarchal. They mentioned that social and economic subordination of women within the patriarchal society they live in, leads to re-victimization during investigation, trial and even afterwards. The Panel discussants in Sylhet claimed that there is less reporting of violence due to strong social and cultural norms, illiteracy and even failure to understand that an offence has been committed.

From birth until death, patriarchal culture is interwoven within society's worldview. The gendered socialisation processes in Bangladesh which every girl, adolescent woman and adult woman goes through at different stages of her life exemplifies the gender divide and the vastly different expectations society imposes on women as compared to men. In Bangladesh, women's employment and earning opportunities have increased but most members of the male community refuse to accept the advancement of women, said a Tribunal Judge from the Sylhet Division.

The lifelong patriarchal socialisation process is deeply embedded within the persona of a female and has a deep impact when she becomes the victim of gender based violence

whether it is private or public violence. When a woman or girl is subjected to violence she is very often blamed for 'deserving the violence' and when it comes to sexual violence, victim blaming becomes even more acute.

The years of negative socialisation processes deeply impacts upon the reactions of the victims. Even in the West, it has been accepted that '(s)exual assault is overwhelmingly a gendered crime and women's responses to sexual assault are deeply shaped by gender socialization. Sexual assault is also an intensely private crime that is caught up in and reflects social expectations about gender roles and sexuality.[278] In Workshop 2, it was pointed out that GBV victims live in fear of being judged by society. In the context of a society such as ours, rape survivors are not treated with the care they require and are traumatized throughout. In all the workshops under this study in the panel discussions on the 'barriers to access to justice,' the participants were vocal in attributing lack of access to the formal system to socio-cultural norms and patterns.

9.2. Stigma surrounding sexual violence:

Women and girls are considered to epitomise the honour or *izzat* of the family as well as being responsible to maintain the norms of the *shamaj* i.e. the society they belong to. As was reported in Workshop 3, 'when any misadventure takes place, society and even family withdraw their support and they hold the survivor back from going to the authorities.' Any attack on the virtue of a female is considered largely to be somehow linked to the patterns of behaviour of the survivor herself, who is more often than not blamed for not conforming to rules expected of a 'good' girl. The widespread practice of victim blaming is strongly rooted within Bangladeshi society and was even recognized by the law of Evidence until recently. 51% of the Judges who participated in the questionnaire survey identified 'social taboos' as a barrier to accessing justice systems in case of GBV.

It was reported that in a video documentary on rape in Bangladesh in which several men who were interviewed, including police officials, community leaders, and religious clerics, by and large 'laid the blame on women for majority of the rape incidents because of the indecent dress and unrestrained physical movement and personal activities of females'.[279]

[278] https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf

[279] Harvard International Review (HIR) (2021). Rape in Bangladesh: An Epidemic Turn of Sexual Violence; https://hir.harvard.edu/rape-in-bangladesh-an-epidemic-turn-of-sexual-violence/

As a consequence of a cultural worldview which imposes blame on victims of sexual violence, a natural stigma attach to women and girls who survive sexual violence. According to Maleka Banu, general secretary of Bangladesh Mahila Parishad, "In this society, we do not throw blame at the rapists; instead we are obsessed with attacking the rape survivors."[280] The family of rape victims understandably weigh the pros and cons of what actions to take when an act of violence takes place. Therefore there is a natural 'family reluctance to take legal action due to the immense, misplaced, social stigma surrounding victims of sexual violence.[281]

The participants of the Workshops were unanimous in their opinion that the shame associated with sexual violence is intensely traumatic by itself and survivors and their families would rather pretend the incident never occurred. Families of rape survivors are disinclined to approach either law enforcement or the legal system, both of which institutions are not considered to be user friendly. Lack of available and easy to reach psychosocial services mean that the survivor and her family prefers non-formal settlement of the offence. Despite rape and other such types of violence being strictly non-compoundable and not amenable to compromise, the majority of cases are settled outside the Court.

9.3. Out of Court Settlements of offences contrary to the law:

Participants of this study, including Judges, Prosecutors, Magistrates and others opined that although offences under the *Nari O Shishu Nirjatan Daman Ain* are non-compoundable [except under Section 11(ga)] in very many cases parties' compromise rather than access the formal Courts. Difficulties in accessing the formal system has caused informal justice systems to proliferate. Survivors of gender based violence are very often forced to seek redress of the violence committed against them through informal methods. In Workshop 1, a Tribunal Judge of a District spoke about the 'local muscle group's influence to mediate the issue'. In Workshop 4 participants also agreed that victims and their families find it hard to resist the influence of the powerful people of the locality.

According to Dr. Abul Hossain,[282] a Key Informant or this study:

> Women and girls who are victims of violence have the inclination to avoid the formal system. In our social context, after the occurrence, female victims of violence, usually consult with male family members who discourage them from going to the police or taking other legal recourse due to the hassle involved. They say that the case will take a long time and that they will not get any result or any justice from going to the formal

[280] https://www.dhakatribune.com/bangladesh/2021/12/23/rape-in-bangladesh-3-incidents-logged-daily-in-2021

[281] Huda, Taqbir and Titir, Abdullah (2018). Why Rape Survivors Stay Out of Courts: Lessons from Paralegal Interventions; Bangladesh Legal Aid and Services trust (BLAST).

[282] Dr. Abul Hossain, Former Project Director of the Multi-Sectoral Programme on Violence Against Women, MoWCA

> justice system. The victim is told three things .....Firstly, they will suffer during the process of trying to get justice since the offence will be difficult to prove ... there is the question of evidence and witnesses. Secondly, the atmosphere of the Court is not congenial for women and the process will involve going to and fro from the Court multiple times. Thirdly---the long windedness is a major discouraging factor. Again, after such a long and difficult process, if the victim fails to get justice what is the use of all the trouble? The only outcome will probably be that enemies will be created during the process. Even when rape survivors and their families overcome the stigma and wish to take action they may be met with violent suppression from influential community leaders, usually because the rapist is someone they want to protect. So the next best alternative is informal settlement.'[283]

The most popular of the informal and traditional alternative dispute resolution mechanisms is known as *Shalish,* which has been favoured for generations in Bangladesh. Survivors of GBV and their families often have to submit to such informal mediation or compromise due to sheer helplessness and lack of options in the belief that they will at least get some redress. The latter involves cash transactions or agreements by the perpetrator to marry the survivor of violence. Out of court settlements are often considered to be the most convenient of solutions given the protracted nature of legal disputes. Due to the stigma and desire to 'protect' the 'family honour', families of rape survivors wish to pursue a quick, economic and discrete remedy which does not result in much publicity.[284] In a 2016 Justice Audit survey of One-Stop Crisis Centers, case workers said that court cases usually took between five to six years to resolve whereas illegal settlements can be concluded in a matter of months.[285]

Even in cases of offences which cannot legally be settled through informal means, they continue to be consistently used. For example, in cases of rape and other grievous cases of VAW which may even lead to death, perpetrators often avoid prosecution and victims are compelled to settle out of court. Even after a case is instituted and the victimised woman manages to reach the Court, out-of -court settlements are not rare even in the case of non-compoundable offences. The questionnaire survey for this study shows that even Judges of Tribunals are aware of such alternative dispute resolutions which, in case of non-compoundable offences, are against the law. 'Out of court settlements occur mainly due to threat, social barriers and sometimes the victim's lack of willingness to continue the lengthy procedure of trial. Besides, as most of the victims before the *Nari O Shishu* Tribunal are poor, monetary gratifications from the accused act as a reason for out-of-court settlement.'[286] When asked to identify the causes behind the dismal conviction rates, several judges blamed the tendency to compromise. For example, Judges of NOSND Tribunals from Shariatpur,

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[283] Ibid.

[284] Op. cit. Huda, Taqbir and Titir, Abdullah (2018) at p.7.

[285] Op. cit. Human Rights Watch

[286] Op. cit. Naznin and Sharmin (2015) Ibid at p.55.

Panchagarh, Shariatpur and many other Districts identified settlement between the parties as a major cause of lack of conviction.

9.4. Culture of Impunity:

Patriarchal society by itself creates a culture of impunity where perpetrators may be considered to be driven to commit acts of violence, especially sexual violence due to the behavior, attire or conduct of the victims. Impunity in Bangladesh derives from a myriad of factors, including economic and political power. As was mentioned earlier in this study, according to a Judge of a Tribunal in Manikganj 'in the context of Bangladesh, the perpetrator is usually the son, nephew etc. of someone powerful —the *Matbor*, Chairman, Member. The survivor and her family weigh the consequences of going to the Police or the Court and usually find that settlement is the most practical choice for them. Even if survivors manage to reach the Court, 'they routinely face threats and reprisals (especially if the accused is from an influential background), causing them to abandon the prosecution'.[287]Impunity afforded by power restricts the survivors' right to access her rights and take recourse of the legal system.

9.5. Poverty:

In all of the workshops arranged under this study, poverty was considered to be an especially pertinent reason not only responsible for the inability or disinterest of the survivors/victims' families to access the legal system but in many cases for the violence itself. This is especially true if the perpetrator is economically and politically powerful which renders the victim helpless. If the survivor is a poor villager, she faces trouble from the very beginning e.g. in accessing the Police. At every step of the way the survivor needs to spend money which she and her family cannot afford. 'People are poor and illiterate and are unaware of their rights. Money is needed at every stage. Even to do a General Diary (GD) speed money has to be given. If we cannot get rid of such practices, we can never ensure easy access to justice'-- said a Tribunal Judge from Chattogram. According to a Workshop participant, 'If the perpetrator is powerful then the victim is helpless'.

47% of the Judges of the Tribunals who participated in the questionnaire survey opined that poverty plays an important barrier which stops the system being considered. Women in Bangladesh remain particularly vulnerable to living in poverty and socially prescribed roles have limited women's access to economic resources such as capital, skills and marketing

[287] https://www.blast.org.bd/rapelawreform

know-how.[288] Violence against a woman and her economic situation is directly related. Although GBV cuts across economic lines, poorer women in most cases are more vulnerable. In Workshop 1, a Tribunal Judge from a District within the Sylhet Division said that existing economic instabilities, e.g. financial hardship within the family results in impatience, cruelty and leads to GBV.

The present research overwhelmingly suggested that 'economic insolvency poverty acts to impede women from accessing the formal legal system.'[289] The myriad of costs involved in seeking legal redress, including extraneous costs related to frequent travel and long winded processes discourage women from approaching the Tribunal in cases of violence. It has long been appreciated that poverty affects women differently and more adversely than men. Bangladeshi women's participation in work outside the home and her income earning capacities may have increased, but in general most women cannot spare resources to fund cases in the Courts. Poverty also means that women are less likely to take actions to leave their marital homes and have no means to escape situations of violence. Poverty also encourages child marriages, abandonment and the creation of female-headed households. A tragic case was described in a Workshop organised for this study which starkly brought to light how poverty made survivors and families helpless. A mother had instituted a case under the Ain against her husband for the rape of their daughter. The alleged rapist was in jail but after a few weeks, the complainant mother herself wanted her husband out on bail since he was the only earning member of the family and he was needed to provide sustenance for the family.

9.6. Lack of Security:

Nari O Shishu Nirjatan Tribunal Judges opined that lack of safety was an important impediment which prevented women from reporting crimes committed against them. In Workshop 1, one of the reasons for women not seeking formal assistance was mentioned as 'fear of reprisal by powerful actors'. In Workshop 4, in a Panel Presentation, the non-appearance of witnesses in time was identified as another cause of delay and one of the primary causes of such non-appearance was the lack of security of witnesses. In workshop 1 a Judge of a NOSND Tribunal under the Sylhet division spoke about the threats or influence from the defence side which prevents prosecution witnesses from coming to testify. In a study conducted by Human Rights Watch a survivor of acid violence, said that she never felt safe

[288] Asian Development Bank (ADB) (2004). Bangladesh Gender, Poverty and the MDGs; Manila.
[289] Workshop 1.

reporting the violence her husband committed against her during their 12-year marriage because she did not trust the police to respond properly, and feared that it would only enrage her husband and place her at further risk because she had no support.[290]

A victim of violence, especially if it is domestic violence, only accesses the system if she is at such a stage that her back is against the wall and she cannot continue within the marriage. Many women who access the Legal Aid Services of the Government are forced to agree to alternative dispute resolutions due to the fact that she has no place to go. When the perpetrator is someone who is politically and economically powerful the survivor's security is at stake if she initiates legal proceedings. Survivors who decide to seek justice from the formal courts may be forced to withdraw their cases due to the power and influence of the perpetrators. The State is unable to provide safety and security to survivors, victims or witnesses due to lack of infrastructural inadequacies. The number of safe shelters is woefully inadequate. There are approximately 22 government run shelters including one-stop crisis centres, safe homes and victim support centres.[291]

9.7. Illiteracy and Lack of Legal Awareness:

In the Sylhet Divisional Workshop, Tribunal Judges spoke of the general lack of awareness regarding laws against GBV as well as information relating to available legal assistance. In Workshop 4 stakeholders also spoke of the lack of knowledge and awareness and stressed on the need to incorporate knowledge of certain GBV related laws within the school curriculum. Illiteracy and lack of legal awareness has been identified in this study as being one of the core causes which impede women's access to the formal justice system. 28% of the Judges identified it as cause for victimised survivors to avoid the legal process. Quite simply, victims of gender based violence do not know what their rights are and what remedies they are entitled to. They do not know who to turn to or where to go.

Although Government legal aid services have been made available at the local levels, such as the Union and Upazila levels, Legal Aid Committees are not consistently functional. Added to this is the fact that the members of such local level governance institutions are generally those who are also connected to informal justice mechanisms as Arbitrators and therefore more eager to point victimised women towards these mechanisms rather than the formal legal system.

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[290] Op. cit. Human Rights Watch (2020).

[291] https://bangladesh.justiceaudit.org/national-data/regional-services/victim-services/

The Act of 2000 provides for severe penalties, including the death penalty in several cases. However, the deterrent effect of such punishments do not seem to have any effect on potential perpetrators because they are not aware of the consequences of their acts. Impunity coupled with lack of awareness has dangerous consequences. Therefore, not only potential victims of crimes but potential perpetrators need to be made aware of GBV laws. Many NGOs have taken on the task to increase legal awareness but unless a woman or girl is herself in a position of risk, the need to know about rights and remedies are less important. Workshop participants said that victims are usually unaware of where to go and what to do and that results in delays in reporting which has an impact on the prosecution. Government help lines are proving effective and awareness of the existence of these needs to be broadened.

9.8. Interference, influence and meddling of powerful local and political actors:

In all the workshops, it came across forcefully that interference of powerful actors within society often prevented survivors or their families from taking recourse to the law. In Sylhet 'fear of reprisal by powerful actors' was mentioned; in Barishal, participants spoke about 'local pressures resulting in failure of the victim to take recourse to the legal system and further, if a case is filed, the lack of security of victims/survivors/their families as well as of witnesses. Of these factors, illicit political meddling in sexual lawsuits is arguably the most common in hamstringing the judicial system.[292] Many political demagogues back up rapists on the grounds that they are politicians' relatives, nurtured or hired hooligans, or political bedfellows.[293]

10. LEGAL AID SERVICES PROVIDED by the STATE and by NGOs:

The Legal Aid Services Act of 2000[294] provides for legal aid for litigants who are incapable of seeking justice due to financial insolvency, destitution, absence of empowerment and for various socio-economic conditions. Legal aid is available to both survivors as well as the accused. Legal Aid Services Policy of 2014 contains a list of persons entitled to legal aid irrespective of financial means. They include victims/ aggrieved persons of domestic violence or in danger of domestic violence as well as women and children victims of acid violence.

[292] Ibid.
[293] Ibid.
[294] Act No. VI of 2000.

Thus state-funded legal services are provided by the National Legal Aid Services Organization (NLASO) which oversees District Legal Aid Offices (DLAO). Each office is run by a District Legal Aid Officer (DLA Officer). The services provided by NLASO are complemented by non-governmental organisations (NGOs), the largest of which are BLAST, BRAC and Madaripur Legal Aid Association (MLAA)[295]. NGOs, which provide legal services through medication and also help survivors of GBV to get the services that exist. In the FGD, representatives of different NGOs shared that they cooperate with victims and survivors to go to the police station for lodging the FIR and when necessary help with referrals to victim support centres and provide links to any support provided by the other partner NGOs. In cases under the NOSNDA, it is the PP who runs the prosecution but in some cases NGO lawyers also assist in the prosecution with the permission of the Tribunal. The presence of representatives of NGOs ensure that survivors of gender based violence are taken seriously with regard to lodging of FIRs as well as services such as medical examinations. Several NGOs also provide shelter support to victims of GBV. From this study it has been found that there is lack of awareness and information about available State funded legal aid services and therefore there should be awareness raising regarding such aid (Workshop 1) and that there should be information provided regarding Legal Aid Services as well as legal rights of women and children in the national curriculum.

11. DIGITIZATION of CERTAIN ASPECTS of the ADMINISTRATION of CRIMINAL JUSTICE UNDER the *NARI O SHISHU NIRJATAN DAMAN:*

There was unanimous agreement by the respondents of this study that at certain stages of a trial, digitization will drastically cut down on the time of trial and remove barriers as to access. This was felt possible especially after the judiciary started using digital and virtual court processes during the COVID crisis. In Workshop 4, a Tribunal Judge spoke of the law enacted in 2020 i.e. আদালত কর্তৃক তথ্য-প্রযুক্তি ব্যবহার আইন, ২০২০ or the Use of Information Communication Technology By The Court Act, 2020.[296] According to him, 'we know this law has been enacted but the practice directives have so far not been made by the High Court. The latter should take prompt measures for such directives to be issued for IOs, MOs and Magistrates. After submitting an investigation report, the CD becomes a public document'.

[295] https://bangladesh.justiceaudit.org/national-data/key-measures/legal-aid/
[296] Act No.11 of 2020.

As a barrier during trial in the Sylhet Workshop, manual evidence recording system was quoted as well as manual taking of evidence in all cases. Delays in the examination g of expert witnesses, for example Medical Officers and Investigation Officers deposing in Court, has a big impact on the time of the trial. Chronic shortage of such officers means that when they go to testify in Court, their entire offices are short of one staff. Again, although such expert witnesses are paid their travel expenses while still employed, when they have retired they are not paid for their travel.

Experts at the Workshops opined that if expert witnesses could give their testimony virtually, it would hasten the trial process. However, for such virtual testimony to be accepted there needs to be changes introduced within the Evidence Act of 1872.

The Government of Bangladesh recognizes an imminent need for digitization of the judiciary.[297]

This digitization will cover all the necessary equipment for the judges and court staff, hardware and connectivity support and relevant software support.[298] The Law and Justice Division has planned to undertake a development project valuing Tk. 2690 crore to develop ICT infrastructure, supply hardware and install connectivity with the help of Bangladesh Computer Council.[299] The Evidence Act has been updated but makes no clear reference allowing for acceptance of digital evidence. DGHS 2 is said to be creating a software where the medical examination forms will be scanned and sent directly on to different stakeholders. However, according to the respondents of this research, the majority of the Medical Officers are not using the forms distributed by the Government.

12. ENACTMENT of VICTIM And WITNESS PROTECTION LAW and PROVIDING for SHELTERS, SAFE HOMES, and ACCOMMODATION SERVICES:

A variety of protections are afforded by the Constitution and various laws to alleged perpetrators of a crime and rightly so. An accused has the right of being considered innocent until proven guilty; the right to an adequate defence; right to a speedy and public trial and so forth. On the other hand, the victim or survivor is the one who suffers all the consequences

[297] Op. cit. Eighth Five Year Plan (2020) at p.178.
[298] Ibid.
[299] Ibid.

of the offence committed against her with little safeguards. 'The victim of a crime also plays a very important role in the administration of criminal justice both as a complainant/informant and also as a witness for the prosecution.'[300] The testimony of a victim at the stage of investigation and during trial of the case in court specially (sic) when the crime is a crime of violence against women and children, can be said to be the best piece of evidence that can be used against the accused.'[301]

In the Workshops, participants discussed the need to ensure the safety, security and convenience of survivors as well as witnesses. In Workshop 4, panellists spoke about the lack of survivor and witness safety and security and that one of the greatest barriers to survivors and victims accessing the formal system was their feeling of insecurity. In Workshop 1, participants said that there is an absence of physical and social security for both victims and witnesses before and after the filing of the case. In many cases, victims turn "hostile" or stop cooperating with the criminal process as a result of threats received from the perpetrator.[302]It was also added by stakeholders that measures need to be taken against hostile witnesses.

The vulnerabilities of survivors/victims and witnesses has been underscored in each Workshop. At the same time, the need for victim and witness protection was emphasised in this study.

Lack of safety prevents many survivors from accessing the legal system. Fear of backlash prevents a survivor from firstly even reporting the crime to the Police. However, even if she manages or has to report the crime committed against her to the Police, the threats ensure that she does not cooperate with the investigation. Lack of safety continues to be a threat all throughout the process. At the trial stage, the intimidation persists. 'After the completion of investigation, when regular cases are started against the offenders, the victims then as witnesses are again subjected to threats, intimidation and coercion by the accused party or their associates preventing them from coming before the court or tribunal to give their evidence at the stage of trial of the case'.[303] Victims and witnesses, especially in cases where the offences are punishable by the strictest of punishments including life imprisonment or the death penalty, face serious lack of security and risk of harm in the context of Bangladesh. Survivors of GBV and their families report threats and aggression by or on behalf of the

[300] Law Commission, Bangladesh (2006). Final Report on a proposed law relating to protection of victims and witnesses of crimes involving grave offences at p.1. http://www.lawcommissionbangladesh.org/reports/74.pdf
[301] Ibid.
[302] Op. cit. Equality Now and Dignity Alliance International (2021) at p.51
[303] Op. cit. Law Commission, Bangladesh (2007) at p.1.

perpetrators. This is especially serious in cases when the perpetrator is powerful and dissuades the survivor and her family from approaching the legal system. After weighing the pros and the cons of going to the Tribunal, as far as the survivor is concerned, the odds are stacked against pursuing legal remedies. Survivors and their families are often forced not to report the offence or to withdraw the case after it has been filed. Such intimidation may force them to accept a compromise or compensation or in cases of rape –even agree to a marriage with the rapist. According to the Law Commission:

> Victims are nowadays vulnerable to threats, intimidation, coercion and harassment by the offenders or their associates preventing the victims from testifying before the investigating officer at the stage of investigation or from giving evidence before the courts and tribunals at the trial of the case.[304]

In Bangladesh there are no laws which specifically provide for the protection and security of victims and witnesses. It is now widely accepted that justice cannot be administered effectively without due recognition of the rights and interests of the victims.[305]
The importance of legal provisions to ensure the protection of victims and witnesses has long since been felt and the Law Commission prepared Bills relating to such proposed legislation in 2006 with a revised version in 2011.[306] Not only is the enactment of laws or inclusion of provisions within existing laws for the protection of victims and witnesses a dire necessity , practical implementation of such law/provisions has to be ensured.

For protection of survivors and witnesses, in some cases there may be the need for them to be relocated, temporarily or even permanently to safe shelters. There is a scarcity of shelter services, safe homes and accommodation services with necessary facilities for victims of GBV in Bangladesh..Such services are few and far between. In many cases, when there is the urgent need for services, due to these being situated at a distance or even in a different district/division, it is not possible to ensure that the woman/girl or other GBV victim reaches safety immediately. Again 'even when they exist, their quality is such that they are 'unable to ensure rehabilitation of victim women' opined a Tribunal Judge in Workshop 1. In Workshop 2 participants pointed out the practical problems which exist regarding transportation facilities

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[304] Op. cit. Law Commission, Bangladesh (2006) at p.1.

[305] Faruque, Dr. Abdullah and Rahaman, Md. Sazzatur Rahaman (2013). "Victim Protection in Bangladesh: A Critical Appraisal of the Legal and Institutional Framework" in 13: 1 & 2 (2013) Bangladesh Journal of Law; pp.32-35 at p 35.

[306] See http://www.lawcommissionbangladesh.org/reports/74.pdf

(1) Law Commission, Bangladesh (2006). Final Report on a proposed law relating to protection of victims and witnesses of crimes involving grave offences

(2) Law Commission, Bangladesh (2011). Final Report on the Terms and Conditions on the Proposed Law for the Protection of Victims of Grave Offences and Witnesses

and costs necessary for the secure transportation to safe homes, Victim Support Centres etc. and suggested that systems need to be in place for the providing of such costs and facilities on a permanent basis and not on an ad-hoc basis.[307] The recommendation was that there needs to be safe homes in each district or at least each Division.

The Victim Support Center (VSC) project started in 2009 under the Police Reform Program of the UNDP. At present there are such centres in all divisions except for Mymensing. There is also one in Rangamati. Considering the necessity, the number of safe shelter facilities and safety nets are woefully inadequate and must be strengthened. The shelters that do exist often allow only short-term stays of a few days, and most shelters have specific criteria for who can use them, excluding some survivors from any access to shelter.[308] To reiterate, under the Department of Social Services, there are 6 Safe Homes in 6 Districts --- Faridpur, Bagerhat, Barishal, Sylhet, Rajshahi and Chattogram which provides shelter to women, children and adolescents who have come into contact/conflict with laws such as the Children Act 2013 and the NOSNDA 2000 and others.[309] These are supposed to provide safe shelter, residential services, maintenance, education facilities, healthcare and so forth. Certain NGOs such as Bangladesh Mahila Parishad, ASK and BNWLA also provide shelter services. The number of safe havens and facilities are woefully inadequate given the number of survivors who are in need of services.

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13. RECOMMENDATIONS:

13.1. Recommendations Related to Medical Examinations and Medical Service Providers:

- Appointment of medical experts/health providers with skills in forensic examinations.
- Appointment of medical experts/health providers with knowledge of dealing with survivors of GBV.

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[307] Report of Workshop 2; prepared by Yasmin Begum, Additional Chief Judicial Magistrate, Sylhet.

[308] https://www.hrw.org/news/2020/11/25/why-it-so-difficult-bangladeshi-women-get-justice

[309] http://www.dss.gov.bd/site/page/fd7fbd4a-ee0c-4417-9200-a1984894130f/%E0%A6%B8%E0%A7%87%E0%A6%AB%E0%A6%B9%E0%A7%8B%E0%A6%AE-%E0%A6%93-%E0%A6%B8%E0%A6%B0%E0%A6%95%E0%A6%BE%E0%A6%B0%E0%A6%BF-%E0%A6%86%E0%A6%B6%E0%A7%8D%E0%A6%B0%E0%A7%9F-%E0%A6%95%E0%A7%87%E0%A6%A8%E0%A7%8D%E0%A6%A6%E0%A7%8D%E0%A6%B0

❖ Raising of public awareness by all Government agencies and media outlets as social service announcements as regards the need for urgency in accessing medical services in cases of violence against women and children.

❖ Ensuring sufficient numbers of and fully equipped facilities to provide initial medical support and services to GBV victims as well as for the collection of medico-legal evidence.

❖ Arranging for the existing system of Community clinics, with grassroots reach, to provide services to GBV victims through inter-Ministerial coordination.

❖ Ensuring proper preservation of forensic evidence by all concerned.

❖ Ensuring proper storage facilities for evidence preservation in all Divisions/Districts.

❖ Amendment of Section 32 (ka) to remove confusion and inconsistencies with the DNA Act 2014 and Rules and to save time.

❖ Ensuring that DNA Labs after receiving samples send in reports as speedily as possible.

❖ Continuous training to be imparted to medical officers and other relevant medical personnel on how to write medical reports in clear, accurate and detailed manner for use by the Court.

❖ Ensuring gender balance in the various trainings given by the MOHFW's on the protocol for collection of medico-legal evidence to doctors and medical officers.[310]

❖ Establishment of DNA labs in all Divisions and thereafter at District levels.

❖ Ensuring that the Ministry of Health's Protocol for the collection of medico-legal evidence is made accessible to human rights defenders.[311]

❖ Allowing for the admissibility of expert testimony of Medical Officers through the use of digital or electronic technology in order to ensure prompt testimony by official witnesses; shortening the time for investigation and trial as well as ensuring that medical facilities are not left unattended.

Although the Evidence (Amendment) Act of 2022 makes digital evidence and electronic evidence legal, allows for the admissibility of digital records, signatures and so forth, it does not contain any provision allowing digital testimony of official or expert witnesses.

❖ Provision for online medical test reporting and issuing of Medical Certificates online should be introduced. [312]

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[310] Op. cit. BLAST (2019) at p.17.
[311] Op. cit. BLAST (2019) at p.17.
[312] Report on Workshop 4; Prepared by Yasmin Begum, Additional Chief Judicial Magistrate, Sylhet.

❖ Arrangement for TA and DA provisions as well as transport facilities, where necessary, for doctors for after-hour services.

❖ Hospital infrastructure development and budgetary allocation for such development which include purchase of proper medical kits and chemical collection kits.

❖ Ensuring the uniform use of prescribed forms and reports in all hospitals and medical facilities.

❖ Prescribing time limits within the law for completion of medical examinations, issuing of Medical Certificates, DNA testing and reporting.

❖ Introducing proper action in case of false or incorrect Medical Certificate which will include departmental and punitive action for negligence; corruption; intentional delays of medical service providers.

13.2. RECOMMENDATIONS Related to Police Investigations

❖ Ensuring the independence of IOs and removing the scope of undue pressures which hamper investigation.

❖ Introducing provisions for the State to provide for the expenses related to DNA testing of survivors and victims.

❖ Effective training on all aspects of gender based violence and gender sensitive investigation.

❖ Introduction of online filing of GBV cases in all Police Stations so that affected persons can access any Police Station and if necessary cases will be referred to relevant Police Stations for renumbering and investigation.

❖ Ensuring both departmental and punitive actions against officers for intentional delays and flaws committed during investigation of any GBV case.

❖ Ensuring specialised desks in every Thana or Police Station for GBV survivors and their families.

❖ Developing specialised agencies to investigate VAW cases having necessary knowledge as to the technology necessary for the collection of scientific and digital evidence.

13.3. RECOMMENDATIONS Related to the Public Prosecutorial Service

❖ Increasing the budgetary allocation for the public prosecution system.[313]

❖ Setting up of a permanent prosecution service with adequate salary, separate offices and supporting staff.

❖ Arranging of continuous and specialised training of PPs on the *Nari O Shishu Nirjatan Daman Ain* and directives of the Supreme Court. as well as gender sensitivity training to address concerns of GBV survivors.

❖ Ensuring that if a witness is present her/his evidence is taken on that day.

❖ Ensuring accountability of prosecutors through a monitoring mechanism which may consist of annual performance reports of the functioning of PPs to be sent to the Solicitors Wing which ensure supervision and monitoring.

❖ Complete overhauling of the prosecution services and ensuring professional lawyers with expertise in criminal law and jurisprudence prosecute cases of gender based violence efficiently and with full attention.

❖ Introducing digital issuance of processes through sms/ WhatsApp
email for easy communication.

❖ Providing necessary logistical and infrastructural support for Public Prosecutors.

13.4. RECOMMENDATIONS regarding role of Magistrates:

❖ Specific guidelines need to be in place as regards the power of the Magistrates regarding custody, bail, remand, investigation and monitoring.

❖ Recognizing the Magistrates authority to monitor, control and supervise the investigation being conducted by the IO.

❖ Ensuring Judicial Magistrates power to assess the age of the accused and settle the bail petition of the juvenile offender and send him to relevant custody for juveniles.

13.5. RECOMMENDATIONS regarding Defence Lawyers:

❖ Ensuring adoption of good practices by lawyers under the monitoring of the Bar Council of Bangladesh.

❖ Arranging ongoing training by the Bangladesh Bar Council for all lawyers who become advocates after passing their Bar Examinations.

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[313] https://www.brac.net/latest-news/item/1342-strengthening-the-public-prosecution-system-to-ensure-justice-for-sexual-and-gender-based-violence

❖ Advocating for proactive Bar Associations of different Districts to deal with allegations of misconduct seriously.

❖ Introducing through the Bangladesh Bar Council and the Bar Associations, a system of licence renewal every two years after enrollment based on an Advocate's performance reviews, including complaints if any.

❖ Introduction of a system of financial penalties apart from disbarment, for unethical practices.[314]

❖ Integration of Legal Ethics in the Curriculum of all Law Schools of Bangladesh.[315]

❖ Ensuring a minimum of medico-legal and forensic training for defence lawyers defending alleged perpetrators under the *Nari O Shishu Nirjaton Daman Ain*, 2000.

13.6. RECOMMENDATIONS as to LAW REFORMS:

★ Defining, clarifying and/or expanding the following terms and phrases:

'CHILD' in Section 2(ta)

'CORROSIVE/POISONOUS/BURNING SUBSTANCE in Section 4

RAPE under Section 9; inclusion of rape against males; dead bodies (necrophilia)

Expanding the meaning of grounds which causes **সম্ভ্রমহানি**/DISHONOUR or LOSS OF PRESTIGE under Section 9ka

Defining or redefining certain concepts related to sexual violence: Necessity to include verbal abuse, physical assault, outraging modesty, harassment within the ambit of section 10

শ্লীলতাহানি/dishonour, molestation or violation of modesty under Section 10

SIMPLE HURT in Section 11(ga)

★ Amendment of Section 7 related to abduction to include punishment of murder after abduction

[314] Ibid.
[315] Ibid.

★ Different slabs or tiers of punishment to be introduced while punishing rape, gang rape: Section 9

★ Omission of Section 11 (g) from the Ain and bringing the offence within the ambit of the Dowry Prohibition Act of 2018

★ Provision for Mandatory Death Penalty in Section 11(ka) to be omitted

★ Need for recognition of domestic violence of grievous nature or death for causes other than dowry demands. Section 11

★ Provision necessary for implementation, monitoring and uncomplicated modes of payment of maintenance of child born as a consequence of rape: Section 13(1)

★ Provision for taking cognizance of and punishment for filing false cases to be expanded allowing the Tribunal, in certain cases, to take action *suo moto* under Section 17

★Enactment of Victim and Witness Protection Laws and providing for shelters, safe homes and accommodation services

★ Empowering the Tribunal with supervisory, monitoring and penalising authority over all actors involved

★Amendment of Section 27 giving Tribunal wider powers to take cognizance of offences under the Act.

★ Removing the Tribunals additional jurisdiction to act as Children Court and Anti-Human Trafficking Tribunal

★ Recommendations for several and separate benches of the High Court Division with the jurisdiction to deal with appeals from NOSNDTs

★ Settling confusions as regards inconsistent decisions by the different benches of the HCD by setting up Special/Full Benches

Other recommendations

★ To formulate Rules immediately under Section 33 of the NOSNDA
★ Appointment of more Judges

12. Conclusion:

It continues to be extensively reported by the media, by scholars, authors, researchers, activists and in reports of NGOs that the number of convictions by the *Nari O Shishu Nirjatan Daman* Tribunals is remarkably low, especially given the horrendous data related to GBV which is a daily reality.

The general public perception which persists is that perpetrators of crimes, including gender based violence, often escape liability and are not subjected to punishment. This perceived idea of impunity of criminals erodes the faith in the justice system. 'Closely linked to the lengthy duration of trials is the uncertainty of the case status. Survivors, particularly from Bangladesh suggested that conviction of the perpetrator could provide respite to their ordeals as rape survivors in society. This perception of justice is intrinsically linked to their ideas of safety, honour, shifting the blame from themselves and a legal sentencing in recognition of the violence they were subjected to by the perpetrator.'[316]
The undeniable truth, it was agreed by the participants of this study, is that although the number of disposal of cases is not small at the Tribunals, very few of the accused are found guilty after the full trial of the cases. This study demonstrates that there is a concurrence of opinion amongst all justice sector actors as regards the primary reasons for the low rate of convictions. To reiterate, these include compromise between the parties, unavailability of witnesses, negligence of the prosecution and defective investigation and medical reports including destruction of *alamot* due to delayed reporting of the incidents.[317] In Workshop 1, the barriers restricting or limiting taking recourse to court of justice was said to include absence of good practices by police or medical practitioners and other justice sector agencies, uncertainty as to disposal of cases, unfriendly court environment for women and very formal court procedures beyond the idea of litigants.

The primary purpose of special laws to address violence against women and children is to combat, prevent, punish and deter violence against women and children. The implicit purpose

[316] Op. cit. Equality Now and Dignity Alliance International (2021) at p.59.
[317] Workshop 1, 2, 3 and 4.

is to ensure speedy, efficacious remedy of GBV cases and to ease the access to justice for those who have been affected. Unfortunately, these aims seem to be frustrated at every step of the process and some academics have questioned the necessity of having specialised Tribunals. According to Dr. Mahbubur Rahman, a Key Interviewee for this study, generally Tribunals in criminal matters are not common and most countries establish such special Tribunals for civil matters. The constitution of such Tribunals is usually different from other Courts. For example, the Labour Appellate Tribunal of Bangladesh under the Labour Act of 2006 of Bangladesh and Tax Appellate Tribunal under the Income Tax Ordinance, 1984 may be referred to as a quasi-judicial body. This Labour Appellate Tribunal consists of sitting as well as retired Judges and the Tax Tribunal Appellate Consists of a President and such other judicial and accountant officers as the Government decides. Members of the Taxes Appellate Tribunal may include sitting or former Commissioner of Taxes, Chartered Accountants, Cost and Management Accountants or income tax practitioners. There is no scope under the NOSNDA at present to include non-judicial or retired personnel. Out of the box solutions may also be considered. According to Justice Khairul Haque,[318] 'District Judges who have retired, having good reputations and service records may be involved in a Pilot project whereby they can be contracted into service even after retirement, to be in charge of dealing with appeal cases. These former members of the Judiciary already have the expertise and their work will be limited to only dealing with appeals.' This will require changes in the law and logistical support but a *Nari O Shishu Nirjatan Daman* Appellate Tribunal, composed of such persons, situated at Divisional levels may successfully lessen the backlog of cases. Dr. Shahdeen Malik, another key interviewee of the present study, suggests that such Tribunals may be empowered in the same manner as retired Public Servants to undertake contractual employment under the Bangladesh Service Rules, 2018. This will require addition/changes to the Judicial Service Rules, 2007. Appellate Tribunals may be constituted with two or more retired District Judges who may be empowered to hear bail appeals for rejection of bails by the Magistrates or Tribunal Judges as well as appeals against convictions of or less than ten years imprisonment [e.g. under Sections 4(2)(kha); 4(3);17; 9(4)(kha); 9(5); 9A and 10].

Time and again respondents have bemoaned the lack of suitable number of Judges. Such appointments, as well as infrastructural developments need finances. The budget on the justice sector has not seen any remarkable increase in the past decades. Renegotiation of this very important aspect of governance is crucial. The Bar Council also needs an infusion of finances. The Council needs to focus on the quality and not on quantity of enrollment of

[318] Personal interview with A. B. M. Khairul Haque, Chairman, Law Commission of Bangladesh.

lawyers and a strict monitoring of the activities of lawyers and adherence to the Code of Conduct.

The poor, powerless and marginalised are more prone to becoming victims of GBV. However their access to justice is constrained due to varied causes and factors discussed throughout this research. Solving all the problems faced by the specialised Tribunals may not be possible all at once, but certain steps need to be taken immediately. It is of utmost necessity that a consolidated and holistic approach must be agreed upon by all stakeholders. A multi-sectoral and inter-Ministerial approach is urgently required. For example, health services for victims of violence may be provided at the very lowest levels at Community clinics; the Women Affairs Officers at the District and Upazilla levels, who already provides assistance to women may be linked up more effectively with the legal aid services offered by the State as well as with services offered by non-governmental organisations. The first point of contact with the formal system i.e. the Police need to be closely monitored to ensure they are providing the services to GBV victims and survivors and also that no corruption or human rights violations occur. All the different services and facilities mentioned above come under separate Ministries of the GoB.

Victims and survivors in a setting where there is a scarcity of resources rarely seek recourse to the formal justice system due to societal, cultural and economic reasons. Violence against women in this setting is intertwined with poverty and gender-inequality; inequities in the legal framework and weaknesses and corruption in both formal and informal institutions at the local level which also discourage abused women and other victims from seeking recourse and decrease the likelihood of a favorable outcome when they do.[319] There needs to be policy planning to identify priorities which needs to be addressed first.

[319] Schuler, Sidney Ruth; Bates, Lisa M.; Maselko, Joanna and Islam, Farzana (2006). Women's Rights, Gender-Based Violence and Resource Seeking in Rural Bangladesh; Bangladesh Human Rights Advocacy Rights Program, Center for Civil Society and Governance; Academy for Education Development (AED) and USAID at p. 01.

Bangladesh did not meet all its MDG commitments on gender equality.[320] In key areas of women's and girls' lives, particularly with respect to violence, poverty, and early marriage, the signs of "empowerment" have been less evident than continuing powerlessness and discrimination, reflecting the persistence of certain patriarchal norms and practices, despite the significant changes marked by the MDG achievements.[321] Bangladesh is at the cusp of having achieved relative success in realising the Millennium Development Goals, and endeavouring to attain the Sustainable Development Goals 2030. In order to achieve gender equality as envisaged by the SDGs, concerted efforts are necessary to ensure gender justice and true empowerment by establishing a violence free environment for all genders and providing access to justice for all.

The objective of this research was to identify & analyse existing barriers in laws, the challenges for GBV survivors to access justice, to review the role and response of the justice sector from a judicial perspective to make the stronger implementation of current legislation and policies and to make the justice system of Bangladesh more effective and responsive in a way that can be conducive to address and redress gender-based violence.[322]

As has been shown, the challenges are multi-faceted and multifarious. Not only is legal reform necessary, but socio-cultural beliefs which puts the onus on the survivor of violence as being responsible for the violence committed against them, needs to be addressed holistically. This study is unique in the fact that the need for change has been acknowledged by the most important of all stakeholders themselves which is shown by their enthusiastic participation. Changes need to be introduced and sustained within all institutions which are responsible for the implementation of the laws which aim to address gender based violence. The different actors, institutions and agencies which are a part of administering justice must undergo a comprehensive makeover. This will not only ensure that victims and survivors get justice, which is their right, but also ensure that future GBV is deterred. This in turn will restore people's faith in the formal justice system.

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[320] Hossain, N. (2021). "The SDGs and the Empowerment of Bangladeshi Women" in The Palgrave Handbook of Development Cooperation for Achieving the 2030 Agenda; Chaturvedi, Sachin; Janus, Heiner et al (Editors). Pp.453–474; Palgrave Macmillan at p. 457.
https://doi.org/10.1007/978-3-030-57938-8_21

[321] Ibid.

[322] Op.cit. Bangladesh Women Judges Association (BWJA) (2020). Outline of Research Study of BWJA and UNDP Joint Initiatives to Address Increasing Trend of Gender-Based Violence In Bangladesh: A Critical Evaluation of Role and Response of Justice Sectors; Research Proposal [Technical].

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APPENDIX 1
Table showing the participants attended divisional consultations from 2021 - 2022:

Participants List of Divisional Consultations

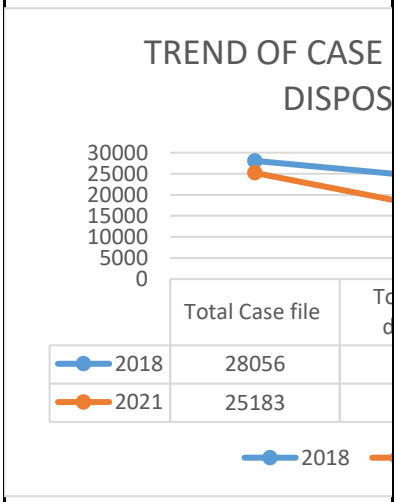
Sl.no	Name	Designation	Division/District
	Sylhet Divisional Consultation - 18th and 19th of November 2021		

1.	Md. Mohitul Haque Enam Chow	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal,	Sylhet
2.	Shamima Afroz	Judge (District & Sessions Judge)Nari o Shishu Nirjatan Daman Tribunal	Moulovibazar
3.	Md. Halim Ullah Chowdhuri	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal - 3	Hobiganj
4.	Ziauddin Mahmud	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal - 2	Hobiganj
5.	Sudipto	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal - 1	Hobiganj
6.	Md. Jakir Hosen	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Sunamganj
7.	Abul Hasem Mollah	Public Prosecutor Nari o Shishu Nirjatan Daman Tribunal - 1 & 2	Hobiganj

8.	Rashida Saida Khanom	Public Prosecutor Nari o Shishu Nirjatan Daman Tribunal	Sylhet
9.	Adv. Nantu Rai	Public Prosecutor Nari o Shishu Nirjatan Daman Tribunal	Sunamganj
10.	Yasmin Begum	Additional Judicial Magistrate Chief Judicial Magistrate Court - Sylhet.	Sylhet
11.	Md. Mamunur Rahman Siddique	District Legal Aid Officer - Sylhet	Sylhet
12.	Shompa Jahan	District Legal Aid Officer - Hobiganj	Hobiganj
13.	Asma Begum	Judicial Magistrate Judicial Magistrate Court – 01 - Hobiganj	Hobiganj
14.	Tahmina Haque	Judicial Magistrate Judicial Magistrate Court – 03 - Hobiganj	Hobiganj
15.	Sulekha De	District Legal Aid Officer - Sunamganj	Sunamganj

16.	Muminun Nesa Khanom	Senior Judicial Magistrate 2nd Senior Judicial Magistrate Court - Moulovibazar	Moulovibazar
17.	Hosne Ara Begum	Senior Judicial Magistrate 4th Judicial Magistrate Court Moulovibazar	Moulovibazar
18.	Sarkar Hasan Shahriar	District Legal Aid Officer - Moulovibazar	Moulovibazar
19.	Sarmin Khanom Nila	Metropolitan Magistrate Chief Metropolitan Magistrate Court Sylhet	Sylhet
	Barisal Divisional Consultation - 28th and 29th of January, 2022		
20.	Md. Mizanur Rahman	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Pirojpur
21.	Nurul Alam Mohammad Nipu	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Bhola
22.	M.A. Hamid	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Jhalokati

23.	Md. Mainul Haque	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Patuakhali
24.	Md. Hafizur Rahman	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Barguna
25.	Md. Abu Shameem Azad	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Barisal
26.	Poly Afroz	Metropolitan Magistrate	Barisal
27.	S.M. Mahfuj Alom	Judicial Magistrate	Barisal
28.	Sharmin Sultana Sumi	Judicial Magistrate	Barisal
29.	Pallabesh Kumar Kundu	Judicial Magistrate	Pirojpur
30.	Muhammad Munir Hossain	Senior Judicial Magistrate	Barisal
31.	Md. Kamrul Azad	Judicial Magistrate – Mothbaria	Pirojpur
32.	Abul Kalam Azad	Senior Judicial Magistrate	Jhalokati
33.	Md. Ali Hayder	Judicial Magistrate	Bhola
34.	Md. Sultan Mahmud Milon	Judicial Magistrate	Bhola

35.	Md. Nuru Mia	Senior Judicial Magistrate – Monpura	Bhola
36.	Mohammad Ashiqur Rahman	Senior Judicial Magistrate	Patuakhali
37.	Shovon Shahriar	Judicial Magistrate – Kolapara	Patuakhali
38.	 Md. Mamunur Rahman	Judicial Magistrate – Golachipa	Patuakhali
39.	Md. Nahid Hosen	Judicial Magistrate	Barguna
40.	Rezoana Afrin	District Legal Aid Officer	Barisal
41.	Faizur Rahman	District Legal Aid Officer	Pirojpur
42.	Md. Amirul Islam	District Legal Aid Officer	Jhalokati
43.	Fayzul Haque	Public Prosecutor Nari o Shishu Nirjatan Daman Tribunal	Barisal
	Khulna, Chattogram, and Rajshahi Divisional Consultation – 4th - 5th of March, 2022		

44.	Begum Ferdous Ara	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Chattagram
45.	Mohammad Abdur Rahim	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Cox's Bazar
46.	Mohammad Abdullah al Mamun	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Cumilla
47.	Begum Jannatul Ferdous Chowdhury	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Chandpur
48.	Mohammad Sadequr Rahman	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Brammanbaria
49.	Mohammad Samsuddin Khaled	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Noakhali
50.	Mohammad Osman Haider	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Feni

51.	A, E, AM Ismail Hossain	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Rangamati
52.	Mohammad Saifur Rahman Siddiq	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Bandarban
53.	Abu Taher	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Khagrachori
54.	Mosammat Dilruba Sultana	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Khulna
55.	Md. Golam Azam	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Satkhira
56.	S.M.Saiful Islam	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Bagerhut
57.	Pronoy Khumar Das	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Magura

58.	Chad Mohammad Abdul Alim Al Raji	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Jhinaidah
59.	Sana Md. Maruf Hossain	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Narail
60.	Sayeed habibul Islam	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Kustia
61.	Begum Musrat Zerin	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Chuadanga
62.	Md. Tahidul Islam	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Meherpur
63.	Md. Hasanur Zaman	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Rajshahi
64.	Md Ayez Uddin	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Chapainawab ganj

65.	Md. Imdadul haq	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Nator
66.	Md. Hayder Ali Khandaker	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Naugaon
67.	Nur Mohammad Shariar kabir	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Bagura
68.	Shaikh Mohammad Nasirul Haq	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Shirajganj
69.	Md. Koushik Ahmmad Khandakar	Senior Judicial Magistrate	Chattagram
70.	Nayan Bishwash	Senior Judicial Magistrate	Khulna
71.	Abu Taleb	Senior Judicial Magistrate	Rajshahi
72.	Khandar Ariful Alam	Public Prosecutor	Chattagram
73.	Alakananda Das	Public Prosecutor	Khulna
74.	Rashedunnabi Ahsan	Public Prosecutor	Rajshahi
	Dhaka, Mymensing and Rangpur Divisional Consultation – 11th - 12th of March, 2022		

75.	Begum Shamsun Nahar	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Dhaka
76.	Begum Taniya Kamal	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Manikganj
77.	Begum Meherunnessa	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Narshingdi
78.	Mosammat Rukshana Begum Happy	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Gajipur
79.	Md Solaiman	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Kishoreganj
80.	Begum Khaleda Yeasmin	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Rangpur
81.	Prodip kumar Ray	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Faridpur

82.	Almas Hossen Mridha	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Gopalganj
83.	A Salam Khan	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Sariatpur
84.	Md. Rafizul Islam	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Mymensing
85.	Mohammad Rofiqual Islam	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Jamalpur
86.	Md. Akhtaruzzaman	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Sherpur
87.	Md Rokonuzzaman	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Rangpur
88.	Md Tarik Murshed Siddiky	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Lalmonirhat

89.	Mohammad Abdur Rahman	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Gaibandha
90.	Md Sarifuddin Ahmed	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Dinajpur
91.	Amlan Kusum Jishnu	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Kurigram
92.	Md Gholam Faruque	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Thakurgaon
93.	Md Mansur Alam	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Nilphamari
94.	Md Mehedi Hussan Talukder	Judge (District & Sessions Judge) Nari o Shishu Nirjatan Daman Tribunal	Panchagarh
95.	Mohammad Shekh Sadi	Chief Metropolitan Magistrate Court	Dhaka
96.	Md Imam Hasan	Chief Judicial Magistrate Court	Mymensing

97.	Krishna Kamal Roy	District Legal Aid Officer	Rangpur
98.	Ali Akter Jahangir Hossain	Public Prosecutor Nari o Shishu Nirjatan Daman Tribunal	Rangpur
99.	Badar Uddin Ahmed	Public Prosecutor Nari o Shishu Nirjatan Daman Tribunal	
100.	Dr. Rushdana Rahman	Dhaka Medical College Hospital	Dhaka
101.	Dr. Fahmida Nargis	Dhaka Medical College Hospital	Dhaka
102.	Dr. Sabina Yasmin	Dhaka Medical College Hospital	Dhaka
103.	Dr. Khaleda Akter	OCC, Dhaka Medical College Hospital	Kurigram
104.	Dr. Ms. Jakia Sultana	General Hospital	Nilphamari
105.	Dr. Ummal Wara khan Chowdhury	OCC, Mymensing Medical College Hospital	Mymensing
106.	Dr. A.H.M Abu Sufian	Mymensing Medical College Hospital	Mymensing
107.	Md.Motiur Rahman	Bangladesh Police (Bhaluka PS)	Mymensing
108.	Prasun Kanti Das	Bangladesh Police	Mymensing

109.	Md. Anisur Rahman	Bangladesh Police (Court Police)	Rangpur
110.	Md. Manibur Rahman	Bangladesh Police (Pirganj PS)	Rangpur
111.	Rumana Akhter	Bangladesh Police (Forensic, Police HQ)	Dhaka
112.	Md Jafor Hossain	Bangladesh Police (DC - Prosecution, DMP)	Dhaka

APPENDIX 2

Table showing *Nari O Shishu Nirjatan Daman Ain* Case Status of 2021(Source: SC Registrar's Office):

Nari O Shishu Nirjaton Case Status										
January 1, 2021 to December 31, 2021										
SL	District	Initial Case	Filed Case	Case Found	Total Case	Disposal	Transfer	Under trial	Under trial for more than 5 years	Stay upon the direction of HCD
1	Dhaka (9 tribunal)	17994	4120	1639	23753	4335	125	19293	2788	209
2	Narayangonj	2375	466	666	3507	497	0	3010	495	17
3	Gazipur	5201	309	925	6435	464	69	5902	2127	15
4	Manikgonj	1820	227	81	2128	200	70	1858	313	15
5	Munshigonj	1440	423	0	1863	90	0	1773	54	17
6	Norsingdi	1822	383	0	2205	62	60	2083	0	0
7	Tangail	3078	701	431	4210	965	0	3245	633	0
8	Kisoregonj (2 tribunal)	3094	977	64	4135	580	29	3526	572	33
9	Faridpur	2124	312	392	2828	895	1	1932	179	10
10	Rajbari	1151	0	640	1791	598	0	1193	135	29
11	Gopalgonj	2455	396	326	3177	522	0	2655	184	4
12	Sariatpur	385	279	371	1035	808	0	227	0	9
13	Madaripur	1457	1044	0	2501	764	0	1737	465	15
14	Chattogram (7 tribunal)	12942	2098	1707	16747	2561	191	13995	3139	141
15	Cox's Bazar	8061	1398	447	9906	2507	0	7399	545	13
16	Rangamati	567	95	56	718	69	4	645	242	0
17	Bandarban	653	123	0	776	25	17	734	0	0
18	Khagrachari	474	26	99	599	41	0	558	219	1
19	Noakhali (2 tribunal)	6775	522	443	7740	1071	23	6646	1214	21
20	Feni	1990	547	159	2696	988	7	1701	254	10
21	Laksmipur	2332	966	0	3298	459	270	2569	35	6
22	Comilla (3 tribunal)	5754	4695	201	10650	3934	8	6708	650	19
23	Brahamanbaria (3 tribu	5434	2195	0	7629	1794	0	5835	1296	18
24	Chandpur	2017	447	486	2950	4	716	2230	270	13
25	Rajshahi (2 tribunal)	1757	629	360	2746	114	109	2523	279	13
26	Chapainawabgonj	477	416	541	1434	255	541	638	8	7
27	Nawga (2 tribunal)	3995	1055	904	5954	641	6	5307	1222	8
28	Natore	1987	199	230	2416	245	2	2169	770	7
29	Bogra (2 tribunal)	3169	1000	89	4258	605	0	3653	1394	29
30	Joypurhat	488	114	268	870	271	4	595	6	7
31	Pabna	1746	254	227	2227	319	3	1905	531	3
32	Sirajgonj (2 tribunal)	4836	1615	0	6451	1181	8	5262	249	7
33	Khulna (3 tribunal)	3381	727	132	4240	1080	8	3152	1073	39
34	Bagerhat (2 tribunal)	2290	276	349	2915	1215	18	1682	954	43
35	Jashore (2 tribunal)	1125	327	199	1651	539	0	1112	242	11
36	Kustia	523	188	273	984	233	1	750	12	5
37	Jenaidah	1685	792	0	2477	629	0	1848	149	2
38	Sathkhira	2747	1077	0	3824	577	0	3247	230	16
39	Chuyadanga	719	104	132	955	56	61	838	105	2
40	Magura	1234	635	0	1869	345	20	1504	171	7
41	Narail	578	165	5	748	137	0	611	99	3
42	Meherpur	648	252	45	945	285	0	660	37	1
43	Barishal	2565	488	447	3500	680	4	2816	2042	37
44	Bhola	5777	1406	11	7194	1671	0	5523	2138	12
45	Potuakhali	2451	736	211	3398	505	0	2893	561	28
46	Jhalokathi	467	131	0	598	92	7	499	42	31
47	Pirojpur	849	82	282	1213	268	0	945	51	8
48	Barguna	2496	810	0	3306	1081	0	2225	35	23
49	Sylhet	2807	245	476	3528	218	0	3310	667	30
50	Sunamgonj	1747	434	0	2181	231	0	1950	249	0
51	Moulovibazar	2315	94	0	2409	164	118	2127	337	8
52	Habigonj (3 tribunal)	5694	1013	516	7223	1412	820	4991	517	6
53	Rangpur (3 tribunal)	5674	1124	0	6798	1269	11	5518	3051	6
54	Gaibandha (2 traibunal)	3102	195	388	3685	570	11	3104	1363	15
55	Kurigram	1962	254	0	2216	332	0	1884	191	5
56	Nilfamari	3942	1287	0	5229	697	0	4532	1497	9
57	Lalmonirhat	1809	97	314	2220	212	0	2008	235	7
58	Dinajpur	3672	1276	0	4948	673	0	4275	530	17
59	Dakurgaon	1326	139	205	1670	243	12	1415	597	10
60	Panchogor	622	612	0	1234	449	2	783	70	8
61	Mymensing	2008	239	869	3116	538	0	2578	158	18
62	Jamalpur (2 tribunal)	2411	715	66	3192	645	14	2533	482	20
63	Sherpur	1597	1264	0	2861	1068	5	1788	0	0
64	Netrokona	3286	806	0	4092	521	15	3556	481	33
	Total	**183359**	**46021**	**16672**	**246052**	**46499**	**3390**	**196163**	**38634**	**1156**

Questionnaire for Investigating Officers

1. How long have you been working in your current position as an Investigation Officer in the Police Department?

2. How many cases have you been assigned to investigate for offences under the Prevention of Women and Child Abuse Act 2000 in the last four years?

3. In the last four years how many cases have you completed investigations for organized crime under the Women and Children Repression Prevention Act, 2000?

4. How much time do you usually need to investigate a case, when the accused person is arrested in the investigation process?

5. How much time is required to complete the investigation of the case under the Prevention of Women and Child Abuse Act 2000, if the accused is not arrested?

6. What are the processes of preservation of evidence collected from the victims?

7. How many cases have you testified in the court, that you investigated in past four years?

8. How much time do you take to send the victim to the doctor for medical examination after receiving the responsibility of investigation? Is there any delay? If so, what is the reason?

9. Do you get proper assistance you need to examine the victim after the office hours of the medical facility? If not, then what do you think the reason is?

10. How do you ensure the preservation of semen samples from the scene of a rape case?

11. What kind of evidence do you preserve in case of combustible, corrosive (acid related), and toxic substance-related violence?

12. The High Court has directed that DNA and other necessary samples must be collected and sent to the forensic lab within 48 hours of the incident - Can you follow this direction? If not, then what is the reason?

13. What are the reasons for not being able to complete the investigation within the time limit set by the law?

14. What is the mechanism to ensure accountability/punishment exists in the police force for the failure to complete investigations within the stipulated time? If so, what is the rate of application?

15. Do you think the Prosecution (PP) has a role to expedite your work (police)?

16. Do you think some kind of co-operation framework between PP and investigating officers would help improve the current situation? In that case, what kind of effective cooperation do you expect from the Public Prosecutor?

17. What kind of obstacles do you face giving testimony as a witness?

Questionnaire for Judicial Magistrate

1. What are the functions of the Judicial Magistrate during the investigation stage of a case filed under the Prevention Women and Child Abuse Act 2000? In addition, what other areas do you think the role of judicial officers is necessary?

2. What are the reasons of long pending investigation for a case filed under the Prevention of Women and Child Abuse Act, 2000?

3. Total number of applications filed under the Domestic Violence (Prevention and Protection) Act, 2010 in the court of your jurisdiction from the year 2018 to 2021 (January-December):-

Questionnaire for Public Prosecutor

1. How many cases of Women and Child Abuse Prevention Tribunal currently you are involved as public prosecutor?

2. What are the main causes of long pendency of cases under the Prevention of Women and Child Abuse Act, 2000?

3. What are the procedures you follow to ensure the presence of the witness in the case long pending in the Tribunal?

4. a) The Tribunal should start introducing the digital methods to ensure witness appearance and remove other existing hurdles (delay of serving the summons etc.) in pending cases - what is your opinion on this?

b) In your opinion, what are the other proceedings of the tribunal where digital systems can be used?

5. As per section 20 of the Act, the proceedings shall continue on every working day from the commencement of the hearing of the case till its conclusion. What steps do you take to ensure this provision?

6. It is considered that the rate of the conviction under the Act is relatively low due to various factors. What are the reasons for such a relatively low conviction rate in your opinion?

7. a) Do you examine the witness before producing them in a Tribunal for recording testimony in a pending case?

b) What difficulties do you face in examining the witness before recording testimony by the tribunal?

8. What are your recommendations for improving the service rendered by the prosecution side??

Questionnaire for Medical Officer

1. How long have you been working in your current position?

2. Did you receive any training on medical examinations of women/child victims of violence?

3. If so, what kind of training was that?

4. Are you aware of the government circular published in September 2002 regarding the medical examination of victims? If so, then what are the most important points of this circular you think?

Topic	Year	Victims Number
(a) Directly appeared to you before going to the police	2018	
	2019	
	2020	
	2021	
(b) Referred to the police -	2018	

	2019	
	2020	
	2021	

5. Do you use the prescribed form prepared by the Health Ministry in the year 2020?

6. Describe the procedure for medical examination of victims of the following crimes –

a) Rape; b) Other form of violence against women and children.

7. What was the of victims of following crimes –

8. How long do you take to complete a medical exam?

9. If the victim directly comes to you, as per the law, do you give her a copy of the medical certificate after the examination?

10. In your opinion, what are the problems of giving testimony at the tribunal?

11. What is the procedure, if a victim comes for examination after the official hours?

12. What kind of problems (including logistics) do you face conducting the medical examination of a victim?

13. How do you collect DNA samples from accused persons and on whose request?

14. What kind of arrangements do you have in your institution for receiving and storing DNA sample and evidence?

15. What kind of treatment do you give to the victim in addition to physical examination?

16. Usually how long a rape victim takes to come for a medical examination after the crime?

Questionnaire for Judge, Nari-o-Shishu Nirjaton Daman Tribunal

1. Total number of cases filed under the Act, 2000 in your Tribunal from 2018 to 2021 (January-December).

2. Total number of cases disposed of in your Tribunal from the year 2018 to the year 2021 (January - December).

3. Number of cases in which the accused was convicted against the cases prosecuted in your tribunal from the year 2018 to the year 2021 (January – December).

4. The number of cases in which the accused was acquitted among the cases disposed of in your tribunal from the year 2018 to the year 2021 (January - December).

5. What was the main reason for acquitting the accused? (More than one reason is acceptable)

a) Compromise between parties.

b) Absence of witness.

c) Error in investigation

(d) Negligence of the prosecution.

e) Other.

6. Which of the following types of cases are most often filed in your tribunal? (Multiple reasons acceptable)

a) Rape.

b) Attempt to rape.

c) Torture or death for dowry.

d) Physical or sexual abuse.

e) Kidnapping.

7. Possible reasons for the increase of violence and torture against women.

8. Describe major barriers to access to justice for women victims of violence.

9. Describe Major constraints in ensuring speedy/timely justice.

a) Filing or pre-trial stage.

b) Investigation phase.

c) Trial stage.

d) Post-Trial Phase.

10. How can police contribute to ensure speedy/timely justice?

11. What should the prosecution do to ensure speedy/timely justice?

12. How does a defendant's lawyer contribute in ensuring speedy trial?

13. What are the key contributions that a judge can offer in order to ensure speedy trial?

14. If negligence of Police is found in proper investigation of the case and failure to produce witness before tribunal in due time, as a Judge of the Tribunal do you give any instruction/order to the concerned authorities to take disciplinary action as per law?

A) Yes

b) No

15. If negligence of a Medical officer is found in the medical examination and investigation process, as a Judge of the Tribunal do you give any instruction/order to the concerned authorities to take disciplinary action as per law?

A) Yes

b) No

16. Do you have any recommendations on the adoption and application of disciplinary measures/actions in response to the questions No. 14 and 15 above?

17. What do you think, are the existing laws adequate to prevent violence against women and children? If not then what are the drawbacks of existing laws?

18. As per section 20 of the Act, the proceedings of a case shall continue on every working day from the commencement of the hearing of the case till its conclusion. Is it possible to ensure this provision in all cases? Please describe the reasons if not possible.

19. Whether it is possible to complete the trial within the prescribed period of law? Reasons if not possible –

20. Do you think it is necessary to include a new or expanded definition of rape in the Act, 2000?

21. The Nari o Shishu Nirjaton Daman Amendment Act No. 20 of 2020 amended the punishment under section 9(1) by “death sentence or life imprisonment”. What is your opinion about whether the trend of rape crime will decrease through this?

22. Under Section 11(a) of the Act, 2000, the existing penalty for death caused for dowry is punishable by death sentence (Mandatory death penalty). What is your opinion on whether the provision of death penalty for such offences has reduced the rate of crime?

23. What do you think, is it required to increase the age limit of child under the Act, 2000 from 16 to 18 years?

24. The Act, 2000 has punishment provision for the offenses of kidnapping/abduction under section: 7 and ransom under Section: 8. Do you think that causing death after kidnapping/abduction should also be punishable under this Act?

25. The provisions for acid crime are the same in both the Nari o Shishu Nirjaton Daman Act, of 2000, and the Acid Crimes Act, of 2002. What do you think, whether it would be appropriate to exclude those offenses from the Nari o Shishu Nirjatan Daman Act, 2000, and thereby decrease the number of pending cases in the tribunal?

26. The newly added provisions of mandatory DNA testing of the accused and the victim of crime in each case under section: 32(a) is an obstacle to the speedy investigation and trial of the case? What do you think?

27. Is there any case filed in your tribunal against the offence of filing false case under section 17 of the Act, 2000 from 2018 to 2021 (January - October).

28. What do you think, what are the reasons for filing false case under the Nari o Shishu Nirjatan Daman Act, 2000?

29. What do you think about the use of the Usage of ICT in Court Act 2020 আদালত কর্তৃক তথ্য-প্রযুক্তি ব্যবহার আইন, ২০২০ by the tribunal to resolve pending cases?