



Public Prosecution System in Bangladesh:

The Issues of Justice for
Violence against Women
and Girls



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Executive Summary

Although the Government of Bangladesh (GoB) has passed numerous legislations to prosecute crimes related to violence against women, the conviction rate remains extremely low—indicating a severe lack of accountability within the justice system (Gibson, 2022). According to Human Rights Watch (2022), the government's response to violence against women in Bangladesh remains insufficient. Activists and attorneys for women's rights recognised substantial gaps in compliance, coordination, and awareness (Human Rights Watch, 2020). Furthermore, there is a significant literature gap regarding bottlenecks in the prosecution of sexual and gender-based violence (SGBVs) in Bangladesh and the most critical areas for reform. Therefore, to identify the primary existing deficiencies and best practices and to develop survivor-centric reform ideas, BRAC commissioned out this study.

Both quantitative and qualitative approaches were adopted in the study. The primary data sets of the study were court case analysis, focus group discussions (FGDs), and key informant interviews (KIs). A total of 16 FGDs and 73 KIs were conducted with the

relevant respondents. More importantly, 385 court cases resolved by the Nari O Shishu Nirjaton Daman Tribunal from 1st January 2021 to 30th September 2022 were analysed. This study was essentially focused on the Tribunal cases because most cases of SGBV (abduction, sexual harassment, rape, attempted rape, violence for dowry, ransom for women and girls, incitement to the suicide of women and girls, etc.) are being prosecuted by the Tribunal.

For the offences under the Nari O Shishu Nirjaton Daman Ain, violence against women and girls (VAWG) survivors can lodge an Ejahar at the police station under section 154 of the Criminal Procedure Code. If the officer-in-charge (OC) of the respective police station refuses to consider the case, the survivors may file a complaint with the tribunal. Upon receiving such information, the tribunal may initiate a trial or may send it to the police station for investigation or forward it to the relevant authority for local or judicial enquiry.

The study found that among 385 resolved court cases, about 44% were rape crimes, while 37% were dowry-related crimes. About 37% of survivors

were under the age of 18, and most of them were rape victims. Most FGD respondents indicated that their cases were not considered cognizable offences by the police station. Moreover, key informants pointed out that in most cases, the survivors don't show the medical certificate at the police station at the time of complaint lodging, which makes it very difficult to obtain actual medical evidence and causes the facts to become fabricated.

As found by the study team, the average duration for investigation was 193 days, and about 39.5% of cases took more than 120 days for investigation, whereas an average of 268 days was taken for enquiry. KII and FGD respondents raised the issue of non-cooperation with victims by investigation officers (IOs). Furthermore, the poor investigation has been classified as one of the prime reasons for low convictions in VAWG cases. Some KII respondents mentioned that lack of knowledge of the concerned laws and directives of the higher courts are other reasons for procrastination in enquiry.

The study shows that 984 people were implicated in all 385 resolved cases analysed under this study. After the

charge hearing, charges were filed against 479 defendants, and 505 accused were discharged. A total of 36 defendants were convicted, and 443 accused were acquitted. The conviction rate is 3.66%.

After analysing the time duration from the complaints lodged to the charge frame, it was found that it took an average of one year and eleven months to frame the charge. According to the KII respondents, the plaintiffs were not cooperative with public prosecutors or assistant prosecutors (PP/APPs). However, FGD participants argued that the inefficiency of state-appointed lawyers and flawed investigations results in a low conviction rate. Poor knowledge of criminal laws and the politicisation of the public prosecutor's office have also been held responsible for hampering legal proceedings.

Among the 385 cases, judgments were passed in 326 cases, the accused was convicted in 28 cases, and 298 cases resulted in acquittals. On average, it took about 2,349 days (about six years and five months) to conclude the trial. Study results show that 21% of cases (68) took more than ten years to complete their trials, while 9% took eight to ten years. Most KII respondents raised the issue of witnesses not showing up at scheduled

trial dates, causing the most delay. However, the state parties have also been referred to as careless. The FGD respondents stated there is no sitting arrangement for the litigants, no separate women's washroom, breastfeeding place, etc.

Additionally, the study reveals that several VAWG-related laws have substantive inconsistencies and complexities, as pointed out below:

- The Nari O Shishu Nirjaton Damon Ain (2000) does not address assault and violence within marriage unless triggered by dowry or torture.
- Although instances of false allegations are evident, the tribunal cannot sue the false petitioner.
- Tribunal Judges cannot take cognizance at the first instance of a complaint by the prosecution.
- The definition of rape within the Criminal Procedure Code (CrPC) discriminates between married women and transgender persons.
- Because most of the VAWG occurs privately without direct evidence, it is difficult to establish all charges beyond a reasonable doubt as required by Evidence Law.

- Lack of concerted coordination among Ministries and Departments, like MoHA and MoLJPA, often adversely affects the prosecution and trial of VAWG cases.
- The survivors must rely on two laws to deal with dowry-related offences.
- Bangladesh lacks dedicated legislation or programme for witness protection.
- The absence of forensic experts in all districts and upazilas.

Finally, the study made recommendations to minimise the scope for wilful negligence in the investigation process by the police. Furthermore, it suggests that promoting mass awareness, establishing a women's help desk in the police station, organising periodic training on communication mechanisms, setting up an 'Independent Judicial Investigating Agency', recruiting judicial magistrates, and ensuring women-friendly court environments can provide justice for the victims of violence against women.

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List of **Acronyms**

AC

Assistant Commissioner

ADR

Alternative Dispute Resolution

BLAST

Bangladesh Legal Aid and Services Trust

CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women

CR

Complaint Register

DC

Deputy Commissioner

FGD

Focus Group Discussion

GBVH

Gender-based Violence and Harassment

GR

General Register

HRW

Human Rights Watch

KMP

Khulna Metropolitan Police

MoLJPA

Ministry of Law Justice and Parliamentary Affairs

RMP

Rajshahi Metropolitan Police

VAW

Violence against Women

ACR

Annual Confidential Report

AgCon

Agile Consultants

BNWLA

Bangladesh National Women Lawyers Association

CMP

Chattogram Metropolitan Police

CrPC

Criminal Procedure Code

DMP

Dhaka Metropolitan Police

FIR

First Information Record

GDP

Gross Domestic Product

GRO

Grievance Redressal Officer

IO

Investigating Officer

LR Manual

Legal Remembrance Manual

OC

Officer-in-charge

SGBV

Sexual and Gender-based Violence

VAWG

Violence against Women and Girls

ADC

Additional Deputy Commissioner

ASK

Ain o Salish Kendra

BRAC ASC

BRAC Advocacy for Social Change Programme

COVID-19

Coronavirus Disease of 2019

CS

Charge Sheet

DNA

Deoxyribonucleic Acid

FY

Fiscal Year

GoB

Government of Bangladesh

HCD

High Court Division

KII

Key Informant Interviews

MoHA

Ministry of Home Affairs

PP

Public Prosecutor

UN

United Nations

WHO

World Health Organization



CHAPTER 1

Introduction

1.1. Background

Development is viewed as a holistic process encompassing human, infrastructural, ecological, and socio-political progress. As a result of sustained economic growth over decades, Bangladesh has seen impressive growth in several socio-economic indicators. Bangladesh, for instance, has the lowest gender disparity among South Asian nations, according to the Global Gender Gap Report 2022 of the World Economic Forum. Additionally, declining maternal mortality rates, decreasing fertility rates, and increasing gender parity in school enrolment can also be mentioned as other vital achievements.

While Bangladesh's government has made significant progress against gender-based violence, it is still insufficient overall. Bangladesh's criminal justice system has several criticisms to ensure proper prosecution and trial of the offences of gender-based violence (GBV). The challenges are police corruption, negligence and bias of the justice actors, poor witness protection, delays in justice, case backlogs, inaccessibility to case information, and failures to accommodate people with disabilities (Dhaka Tribune, 2022). United Nations Special Rapporteur for Violence against

Women also identifies that the main challenges to investigating, prosecuting, and punishing offenders of violence against women are related to the lack of coordinated criminal justice responses, absence of expertise and adequate mechanisms for conducting credible investigations, lack of comprehensive redress mechanisms; and a lack of clear grasp of the root causes or magnitudes of violence against women (n.d.).

Systemic power inequalities and gender disparity are key pretexts for violence against women in Bangladesh. Gender-based violence may thus be viewed as another symptom of ingrained gender norms and conventional notions of women's societal roles and duties. Though the government has passed several legislations to prevent violence against women, the conviction rate for perpetrators remains extremely low in Bangladesh, revealing a significant lack of accountability (Gibson, 2020). Human Rights Watch 2022 also said that only 160 women out of around 11,000 who made legal claims through the government's One-Stop Crisis Centres had their offender successfully convicted. Given such a low possibility of a successful judicial conclusion, this is not only frustrating for the individual victims but also discouraging people who have suffered from violence and wish to come

forward to disclose their experience of victimisation (Gibson, 2020).

On the other hand, evidence claims that over 70% of married women and girls in Bangladesh have suffered intimate relationship violence, whereas over half reported that their spouses have abused them physically; however, most of the women never notified anybody about the assault. Only 3% took legal action (Human Rights Watch, 2022). Moreover, survivors seeking help are often turned down by their families, community, and the police and may face even greater risk if compelled to return to their abuser. Without a structured and accessible system for case filing, limited access to information and legal representation has made women more vulnerable to corruption and abuse, which is apparent from the fact that Bangladesh has around 3.7 million outstanding judicial cases (Human Rights Watch, 2022).

In addition, Gibson (2022) argued that during the COVID-19 pandemic, Bangladesh faced an alarming shadow pandemic regarding an escalation in violence against women. Since the start of a nationwide lockdown in March 2020, women in Bangladesh have reported a nearly 70% rise in mental, physical, and sexual assault, most often by their

husbands, compared to the number of crimes reported in March and April of the previous year. In another research, Jahan (2021) claimed that young women and girls with disabilities endure up to ten times more violence than women and girls without disabilities worldwide, and Bangladesh is no different.

However, there is very little literature on the public prosecution system and its functionality in providing justice for VAWG instances. No significant study has revealed the justice needs and experiences of SGBV survivors in Bangladesh. Hence, minimum reflection has been made from the literature to understand the critical gaps and to identify the areas of reform. Therefore, BRAC aims to carry out this study to identify existing gaps and even the best practices of the public prosecution system in connection to VAWG cases and recommend a survivor-centric reform mechanism. It is highly expected that the findings and recommendations of this study will be used to undertake evidence-based lobbying for strengthening the public prosecution system.

1.2 Objectives of the study

The study's overall objective was to identify the weak areas of the public prosecution system with specific recommendations for survivor-centric legal and institutional reform. The specific objectives of the study were:

- To identify key existing weaknesses as well as best practices of the public prosecution system concerning VAWG cases and formulate survivor-centric reform recommendations;
- To outline the main institutional challenges the SGBV survivors encounter when seeking justice and to identify the key obstacles relating to the investigation, medical examination, and trial in VAWG cases;
- To delineate the key influencing factors behind the low rates of conviction and reform measures to address the challenges; and
- To sensitise and influence stakeholders on the urgent need to reform and strengthen the public prosecution system to ensure justice for VAWG survivors.

1.3 Scope of the study

The study was conducted in 16 districts of six divisions of the country. It has identified the main challenges in ensuring smooth, speedy investigation and trial for VAWG cases. In this regard, the study also attempts to identify the critical reasons for low conviction rates and existing weaknesses/pitfalls in the public prosecution system concerning VAWG cases. Hence, the purpose of this assessment is to recommend legal or policy-level reform to address these gaps to strengthen the public prosecution system to ensure justice in VAWG cases.



CHAPTER 2

Methodology

2.1 Data collection process

Both quantitative and qualitative approaches were used in the study. Published articles, study reports, various laws and strategies, action plans, journal articles and unpublished documents were reviewed as secondary sources of evidence. For the primary data, quantitative and qualitative information were collected; hence resolved court cases were used as the primary data for this study. Moreover, focus group discussions (FGDs) and key informant interviews (KIIs) were also accomplished as part of the primary data collection methodology.

The key informant interviews (KII) were conducted with the judges, public prosecutors,

defence lawyers, forensic doctors, officer-in-charge (OC-Investigation), investigation officers (IOs), officials from solicitor wing (MoLJPA), DC (Prosecution), ADC/AC (Prosecution), court inspectors/GRO, women's rights activists, criminal trial expert lawyers, officials from police headquarter. The focus group discussions (FGDs) were conducted with survivors. The FGDs, KIIs & case study guidelines contained open-ended questions. Instructions for follow-up questions were also provided in the FGD and KII guidelines. Experienced data collectors were employed for conducting FGDs and KIIs. Moreover, the enumerators were trained on the study's objectives and relevant checklists/guidelines. A pre-test was done, and the

checklists were adjusted accordingly for the final data collection process. During field data collection, quality was ensured by cross-checking the policy at different levels.

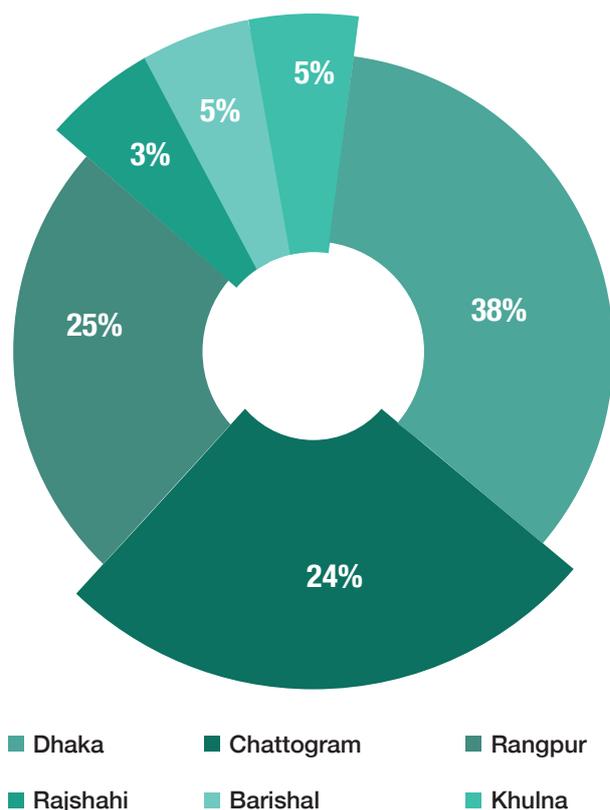
16 FGDs were conducted with several homogenous groups in 16 districts—one district each. The identical groups included mainly VAW survivors seeking justice and VAW survivors whose court cases were currently pending. In every FGD, 6 to 8 persons participated to share their experience on the prosecution system of Bangladesh. A total of 73 KIIs were conducted to supplement the study. The KII respondents were selected from all practitioners and expert stakeholders around the prosecution system of Bangladesh.

SL. No.	Category of respondents	No. of respondents	Location
1	Judge, Nari O Shishu Nirjaton Daman Tribunal	8	8 districts from 8 divisions
2	Prosecutor, Nari O Shishu Nirjaton Daman Tribunal	8	8 districts from 8 divisions
3	Defense Lawyer, VAW Cases	8	8 districts from 8 divisions
4	Forensic Doctor	4	8 districts from 8 divisions
5	OC (Investigation)	8	4 districts from 8 divisions
6	Investigation Officer, VAW cases	4	8 districts from 8 divisions
7	Officials from Solicitor Wing, MoLJPA	1	Dhaka
8	DC (Prosecution), DMP	3	Dhaka Metro City
9	ADC/AC (Prosecution), CMP, RMP, KMP	8	Three Metropolitan Cities
10	Court Inspector/GRO	4	16 districts from 8 divisions
11	Women Rights Activist	3	Dhaka
12	Women Rights NGOs	4	Dhaka
13	Criminal Trial Expert Lawyers	3	From four districts
14	Officials from MoLJPA	3	Dhaka
15	Officials from Police Head Quarter	15	Dhaka
	Total	73	

Table 1: Participants category of KII

Lastly, the documents of 385 court cases resolved by the Nari O Shishu Nirjaton Daman Tribunal from the six divisional courts were considered the main quantitative data source. The court case documents were randomly collected from the six administrative divisions of the country. The collected cases were those resolved by the tribunal from 1st January 2021 to 30th August 2022. Among 385 cases, 146, 93, 95, 20, 18, and 13 were collected from Dhaka, Chattogram, Rangpur, Khulna, Barishal, and Rajshahi divisions. The Nari O

Shishu Nirjaton Daman Tribunal were chosen purposively for this study because, according to section 3 of the Act, regardless of any other legislation currently in force, the provisions of this Act shall have precedence. Consequently, among all the laws and tribunals created by the government, most of the offences under the purview of VAWG and GBV are covered by this Tribunal. Moreover, the Tribunal is the oldest specialised court to conduct prosecution and trial of VAWG and the highest number of cases resolved by this Tribunal.



2.2 Precautions for COVID-19 and practices during field work

We were firmly committed to protecting our team members and the surrounding communities by emphasising strong practices around harm reduction, including distancing and good hygiene. In this regard, we took the following initiatives:

All the team members were informed that we aimed to protect themselves and the surrounding communities. We aimed to help them understand what COVID-19 is, how it spreads, and how they could catch and infect others. We prepared the team to share information about the preventive practices they had adopted.

- Wearing masks correctly was mandatory during data collection, travelling, and staying outside the accommodation.
- We supplied an excellent quantity of masks, soap, and hand sanitiser that upholds at least 60% alcohol to the team members.
- The study team used private or more isolated transportation rather than mass public transport.
- All the team members used extra precautions while interviewing the elderly and sick persons.

Some of the other measures were taken:

- Maintain a distance greater than 1.5 metres
- Where necessary, team members could opt out of the interviews with the elderly and/or coughing and/or immune-compromised rather than taking extra caution.
- The team members practised taking interviews with scripts and role-play sessions.
- When possible, enumerators called ahead to assess the situation before visiting a home and workplace for an interview.

Finally, it was decided that if any one of the team would become sick or had a higher temperature or cough, they would go on sick leave immediately, and another team member would replace them.

2.3 Data analysis and report writing

The consultant team analysed the data considering the needs and expectations of the report to be developed. The analysis was conducted as per the study themes. For quantitative data analysis, the 385 resolved court cases were categorised in terms of the nature of the

offences conducted. In line with the study's objectives, data analysis was carried out to estimate the time spent at different legal procedures stages and determine the factors (i.e., institutional challenges) responsible for the conviction rate.

The qualitative data were mainly used for the in-depth analysis of the research topic. Qualitative data collected for the study were analysed using MS Excel following six steps: [a] transcription, [b] organising and reviewing, [c] coding, [d] analysis, [e] interrogation and [f] triangulation. All notes, responses, and comments had been transcribed at the beginning. After transcription, the consultants organised the data, and after that, the organised data were coded. The coded data had then been analysed to identify patterns and trends. The next step was the interrogation, where the explanation and exceptions were identified. Finally, the study attempted to validate the findings from qualitative data with the results generated from quantitative analysis at the triangulation stage. A descriptive-analytical report has been developed based on literature review and data collected through court case analysis, KIs and FGDs.

2.4 Ethical issues

The ethical considerations are an essential aspect of any research. Anyone or any institution did not hamper the data used in the study. Participants were informed about the purpose of the study, and informed consent was received prior to data collection. Confidentiality was maintained strictly when field activities were conducted. The data were not manipulated, and the research assistant/associate was directly under the supervision of a critical expert.

2.5 Limitations of the study

- During the study, the weather was scorching and humid; hence implementing field activities was challenging.
- Conducting face-to-face interviews with the judges was notably challenging as it took a long time to get their appointment.
- Collecting resolved Court cases by the Nari O Shishu Nirjaton Daman Tribunal from the eight divisional cities was particularly challenging.
- Bringing together the required respondents for conducting FGDs, especially when interviewing the survivors, was a difficult task.



CHAPTER 3

Literature Review

According to the World Health Organization (2022), there is widespread violence against women worldwide, which is also considered a severe public health issue that must be addressed immediately. That is, 35% of women worldwide have been sufferers of non-partner sexual violence or intimate relationship abuse involving physical and/or sexual assault. Almost one-third (30%) of all women in relationships have been subjected to physical and/or sexual violence by an intimate partner. In comparison, 7% have been sexually assaulted by someone other than a spouse. Furthermore, women who have been physically or sexually assaulted are at risk of developing various major health issues. Data also reveal that women who have experienced this form of abuse are 2.6 times more likely to suffer from depression or anxiety and 2.3 times more likely to develop alcohol use disorders.

Nussbaum (2005) stated that no reasonable woman is ever completely free of the fear of violence. Alarming, even where women have legal equality, threats from family, sexual harassment, and actual violence frequently prevent them from effectively participating in social or economic activities. Violence or the fear of violence impacts every aspect of a woman's aptitude to realise her human

potential. In contrast, obstructions imposed by the market, local governments, or private individuals are not typically regarded as violating human rights. In addition to the apparent legal reform and enhanced law enforcement measures, one must also explore how to mobilise one's skill to assist another in dealing with abuse through empowering women.

According to the UN resolution adopted by the general assembly, violence against women comprises any act of gender-based violence that causes or is likely to cause physiological, sexual, or psychological discomfort or discomfort to women, as well as threats of such actions, coercion, or the arbitrary restriction of liberty, whether in public or private life. In Section 3 of the Domestic Violence (Prevention and Protection) Act, 2010 of Bangladesh, domestic violence has also been defined as "Physical abuse, psychological abuse, sexual abuse or economic abuse against a woman or a child of a family by any other person of that family with whom the victim is or has been in family relation".

Nearly two out of three women have experienced gender-based violence at some point in their lives in Bangladesh, which has been a severe social, cultural, and

economic problem, and even though domestic violence is frequent in the country, it is severely underreported (Sustainable Development Goals Fund, 2022). According to BBS (2015), ever-married Bangladeshi women are the most common victims of different forms of abuse. Around half (49.6%) of ever-married Bangladeshi women have experienced controlling behaviour, and around 48.4% have endured physical assault. Emotional and sexual violence were also prevalent at 28.7% and 27.3%, respectively. Economic violence has been experienced by 11.4% of married women respondents over their lifetime. Furthermore, nearly three out of every five married women (57.7%) had encountered some combination of physical, sexual, or emotional abuse. In contrast, 54.2% of married women have experienced a variety of physical and/or sexual violence during their lifetime.

According to Ain o Salish Kendra (ASK), 1,627 women were victims of rape and gang rape across the country in 2020. The number of reported rapes was 1,413 and 732, respectively, in 2019 and 2018. ASK data derived from mainstream media sources shows that 201 women suffered sexual harassment in various contexts in 2020. Moreover, domestic abuse claimed the lives of 554 women

in 2020, where the number was 423 in 2019. In contrast, 218 women were victims of dowry-related violence, and 27 women were victims of acid assaults in 2020 (Kabir et al., 2021). Although there is minimal empirical evidence in the workplace, gender-based violence and harassment (GBVH) are also common in both the official and informal sectors (Yasmin, 2020).

In a study conducted by CARE Bangladesh (Siddique, 2011) it was estimated that in 2010 at least BDT 8,105 crore or 1.18% of the GDP of Bangladesh was spent directly by Bangladeshi families that experienced domestic abuse. Estimates of household income loss came to BDT 5,966 crore or 0.87% of the GDP. When the direct expenses and lost revenue at the individual and family levels were added together, it was revealed that in 2010 around 2.05% of the GDP or nearly all of the government spending on the health and nutrition sector, was wasted. Additionally, the Government of Bangladesh spent BDT 137.24 crore or roughly 0.12% of the overall government budget for FY 2009-2010 on programmes and actions to reduce violence against women.

In line with the articles (1-16) of CEDAW that delineate the agenda for national action, the GoB has implemented significant legislation during the

Article	CEDAW principles	Inconsistent legal measures
9	Equal rights to change or retain the nationality of men and women	Under the Citizenship (Amendment) Ordinance (2008) and the Citizenship Amendment Act (2009), unlike men, Bangladeshi women cannot claim citizenship for their foreign husbands.
15	Shall accord women equality with men before the law	In marriage deeds, the witness of 2 women is counted as equivalent to that of one man.
16-1(c)	The same rights and responsibilities during marriage and its dissolution	The government has put reservations about this clause.
16/1(b)	The same right is to choose a spouse and enter into marriage only with their free and full consent	The Muslim 'marriage deed' (Nikah Namah) in rule 05 requires woman to declare whether she was married before, but a man is not necessary to do so.
16-1 (b)	The same rights and responsibilities with regard to guardianship, ward ship, trusteeship and adoption of children	According to the Guardianship and Wards Act (1890), a Muslim woman can become the custodian of the children. Still, she cannot claim guardianship as, in all circumstances, the father is the natural and legal guardian of the children.
16(2)	Make the registration of marriage compulsory	In existing personal laws, there is no provision for Hindus and Christians to register their marriages.

Table 2: Inconsistencies of legal provisions with CEDAW principles

last two decades to prevent and ensure legal retribution for violence against women and girls. The Acid Offence Prevention Act (2002), the Acid Control Act (2002), the Nari O Shishu Nirjaton Daman Ain (2000), the Domestic Violence (Prevention and Protection) Act (2010), the Dowry Prevention Act (2018), the Child Marriage Restraint Act (2017), and many other laws are examples. Simultaneously, the Government of Bangladesh has established Safe Shelters,

One-Stop Crisis Centres, and Victim Support Centres. However, in a few instances, existing legislation has gaps and limitations that limit its effectiveness in safeguarding women's interests (Begum et al., 2011).

Even the passage of the law and the availability of legal assistance cannot immediately improve the status of women. At the same time, the aid procedure is cumbersome, and most women are ignorant of

this option (Ahmed and Tarannum, 2019). Women rights activists and lawyers also agreed that there are notable gaps in enforcement, coordination, and awareness (Human Rights Watch, 2020). Furthermore, the Bangladesh Bureau of Statistics (2015) revealed that only about 2.3% of domestic violence victims seek legal action, and only about a 1% possibility they will receive a legal reprieve.

Victims are discouraged from seeking assistance due to the police officers' disregard for their responsibilities at the police station and their hesitation to press charges (Rati and Ferdush, 2021). Other than that, Human Rights Watch (2020) attributed the low rate of legal remedy receipt to a variety of other factors, including a lack of legal aid and services, poor investigation, failures in prosecution, a lack of witness protection, case backlogs, a lack of access to case information, and so on.

Ahmed and Tarannum (2019) argued that violence against women is one of the most underreported crimes, and thus the reported statistics are grossly underestimated in Bangladesh. Women often avoid legal proceedings despite experiencing different acts of abuse, such as domestic violence, rape, dowry murders, sexual harassment, suicide, forced marriage, trafficking,

financial and psychological exploitation, etc., out of fear of being harassed and stigmatised by police, judges, and society. On top of that, it is often challenging for poor, illiterate, and disadvantaged rural women to consider taking legal action due to the legal expenditures involved, including attorney's fees, court fees, and other incidental charges.

Bangladesh National Women Lawyers' Association (BNWLA) (2012) also claimed that law enforcement officers' attitudes are not only oblivious to gender but also occasionally aggressive against women and children, and the country's current legislative framework does not include any compensation against state brutality. In addition, the lack of a comprehensive government database on violence against women also makes addressing the issue exceedingly challenging.

On the other hand, Rati and Ferdush (2021) explained that most of Bangladesh's laws are Common Law jurisdictions based on British norms that may or may not be relevant in today's Bangladesh. Therefore, the parameters of several crimes' definitions should be expanded. For instance, the appropriation of a working wife's income by their spouse should be included in the definition of dowry. Moreover, the criminal justice system also

advances slowly because someone pulls on the road of justice at every step. Similarly, Yasmin (2020) pointed out that while the term "sexual harassment" is relatively new, Bangladesh still relies on the Penal Code of 1860 as the critical penal legislation to protect women from physical and sexual assault.

Even though there exist laws prohibiting VAW, many women are unable to exercise their rights because they lack knowledge of the legislation and a grasp of its "review" or "preview" after enactment. Additionally, investigations into cases under the Nari O Shishu Nirjaton Daman Ain, 2000 (Amendment 2003) are frequently delayed. In many instances, the backlog of cases involving abuse of women and children is made worse by the glacial speed of justice.

Moreover, Human Rights Watch (2020) claimed that judicial officials frequently show bias and corruption toward victims. Public prosecutors who are expected to represent them throughout the process are usually inexperienced and incompetent since they are sometimes appointed politically. As a result, they frequently fail to properly collaborate with the investigating police to obtain evidence or guarantee that witnesses appear in court as needed. Furthermore, because public prosecutors are not

full-time employees, they usually lack accountability, are disinterested in their jobs, and are sometimes corrupt.

So, inconsistencies and loopholes in current legislation and insufficient implementation impede efforts in Bangladesh to prevent violence and ensure justice for survivors of VAWG. Consequently, extensive policy research is required to identify the primary existing deficiencies and best practices of the public prosecution system in connection with VAWG cases and to develop survivor-centric reform ideas that can be used to undertake evidence-based lobbying for improving the public prosecution system.



CHAPTER 4

Theoretical and
Institutional Framework

To understand the challenges and obstacles in applying and implementing the Nari O Shishu Nirjaton Daman Ain, 2000 (from now on referred to as Ain) and the gaps of the Ain, sufficient understanding of the legal framework and procedure is crucial. Any woman can be a survivor of any type of gender-based violence those are under the substantive jurisdiction of the Ain such as sexual harassment, rape, attempt to rape, dowry-related violence, etc. In that case, she can file a case under the Ain at Nari O Shishu Nirjaton Daman Tribunal (from now on will refer to as Tribunal) or can file an ejarah in the Police Station.

When filing a VAWG case, the first thing a survivor needs to do is reporting the incident to the neighbouring police station. The OC of the police station treats the report as ejarah, and he will record the ejarah in the FIR (First Information Record) form (BP Form No.27). Later on, the FIR will be sent to the competent judicial magistrate court (Cognisance Court) under S-27 (1) of the Ain.

If the police station refuses to take the case as FIR, the concerned party can directly file a case in the court (herein Tribunal) by filing a complaint. For a complaint case, the survivor must submit an affidavit and a complaint admitting the fact. The survivor has to appear before the

Tribunal and make a statement. After hearing the statement of the survivor, if satisfied, the Tribunal will direct a magistrate or any other person (not police) to enquire into the complainant and the person referred. The magistrate shall investigate and submit the report to the tribunal within seven days. The court will accept the case and proceed with further proceedings under S-27(1ka).

Investigation:

The concerned IO (investigating officer) shall complete the investigation within 15 days if the police arrest the accused. If the accused is not arrested, the investigation shall be completed within 30 days. If the investigation is not completed within the prescribed time, the tribunal must be informed within 24 hours of the completion of the specified time, explaining the reason. The tribunal may increase the time or order the investigation to be conducted by another officer. The investigation shall be completed within seven days of issuing such an order.

Taking cognizance:

In a complaint case, a summon or warrant of arrest will be issued to produce the accused in court. However, no summon or warrant of arrest needs to be issued in the case of GR cases. If the police submit Charge Sheet (CS), the case will be sent to the appropriate court (i.e., the Tribunal).

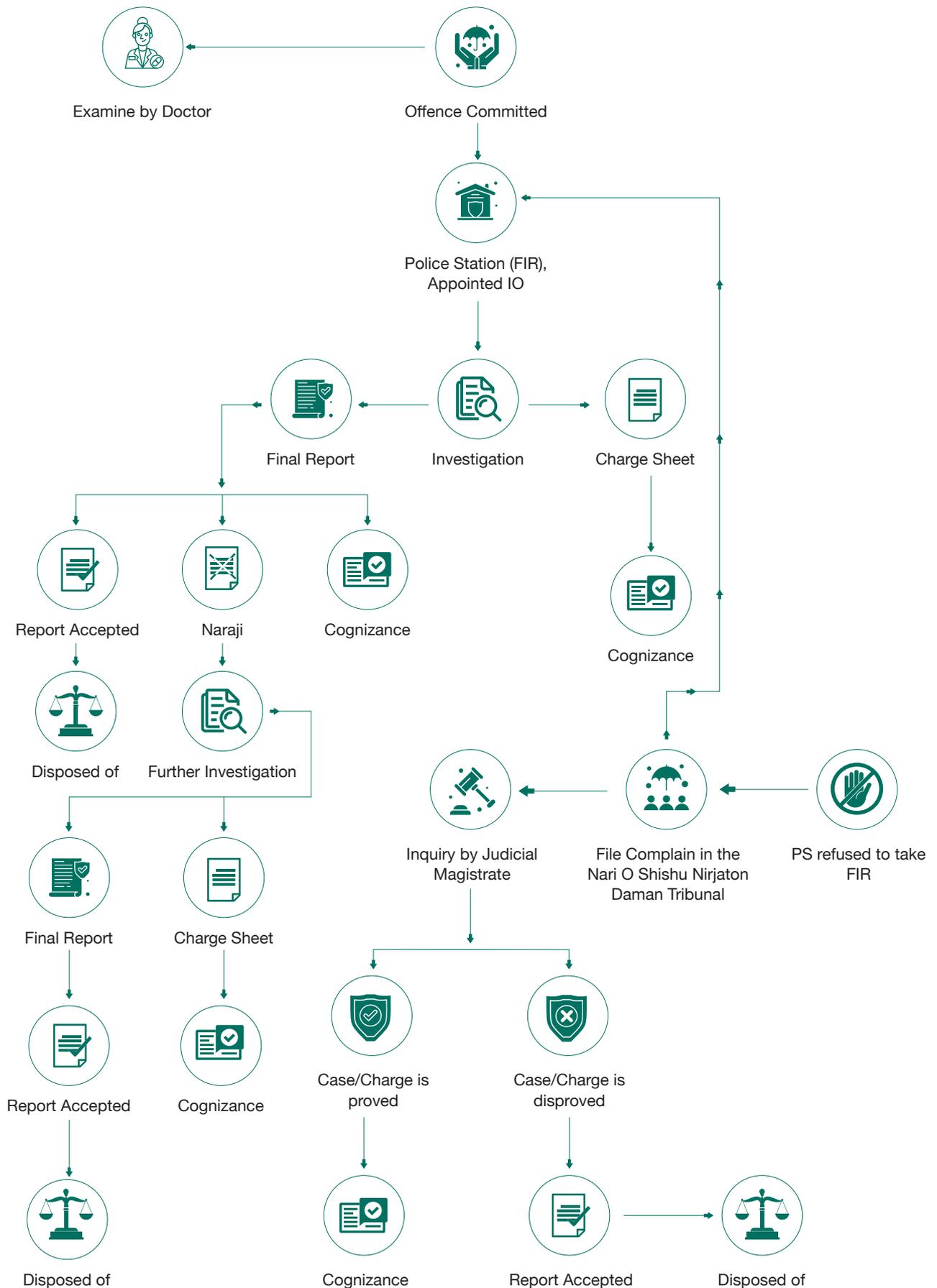
Charge framing:

Once the case is forwarded to its end, the tribunal will fix a date for the accused's appearance. The tribunal will describe the charge(s) to the accused, and the accused may plead guilty or deny the charge(s). The tribunal framing the charge will continue with further proceedings.

Trial:

According to the Ain, the tribunal shall complete the trial within 180 days. If the tribunal fails to dispose of the case within 180 days, it shall submit a report to the Supreme Court within 30 days stating the reason(s).

Figure 2: Legal procedure of the Nari-o-Shishu Nirjaton Daman Ain, 2000



Punishment:

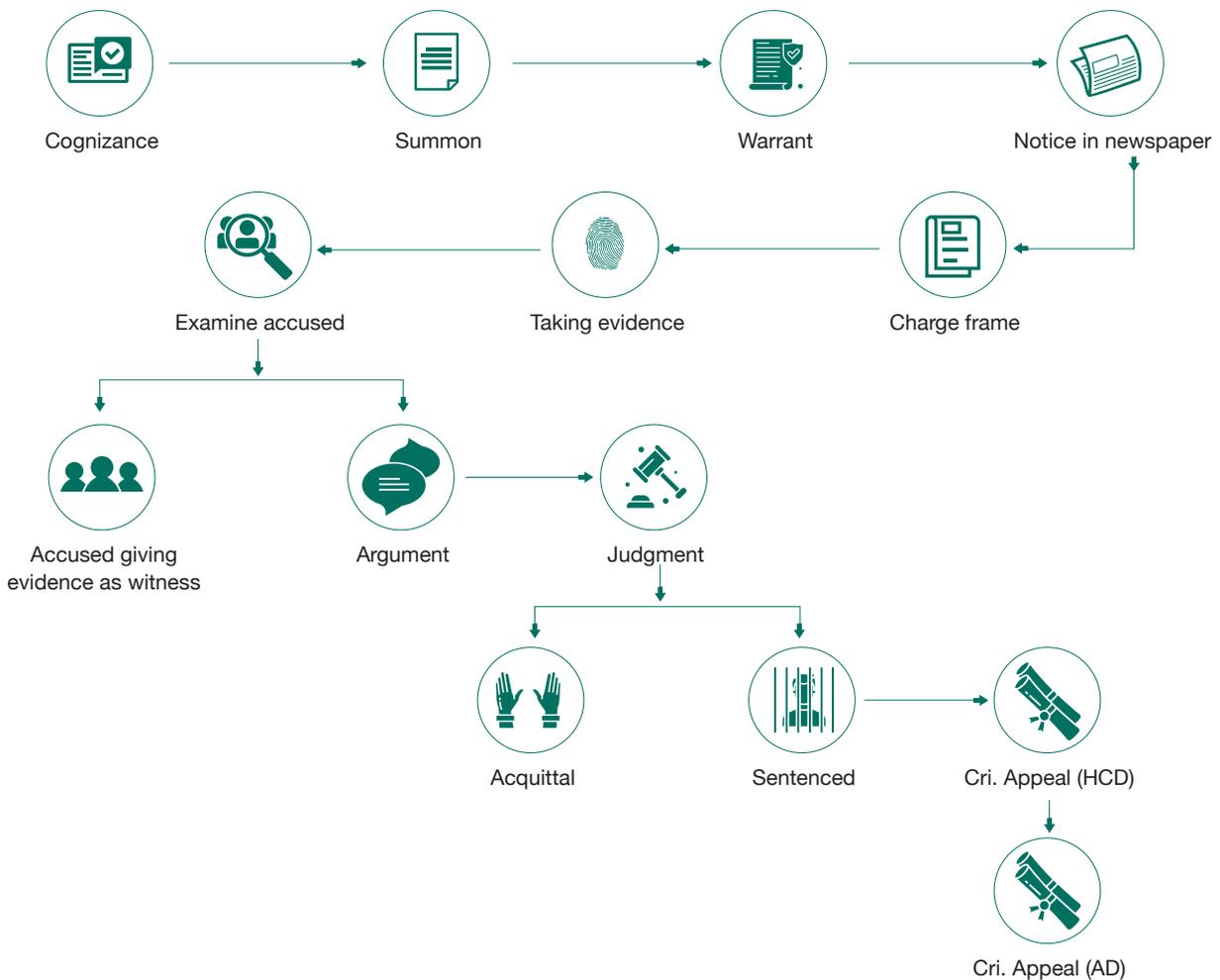
If the allegations are proven, the maximum punishment under the Ain can be the death penalty. There is also a provision for life imprisonment or sentences of other terms or fines. Besides, under S-17 of the Ain, anyone filing a false case will also be punished.

Appeal:

Under S-28 of the Ain, any party aggrieved by the order/judgement/ punishment passed or imposed by the tribunal may appeal to High Court Division (HCD) within 60 days of the said order, judgement, or penalty. Overall, the lengthy trial process

related to violence against women cases reflects weakness in applying and implementing these laws. In this case, not taking proper and timely steps to protect the victims and witnesses and the mysterious involvement of the concerned parties, and the lengthy trial process leads to further harassment.

Figure 3: Trial process under the Nari O Shishu Nirjaton Daman Ain, 2000





CHAPTER 5

Study Findings

5.1 Complaint lodging

A survivor of VAWG, particularly for the offences under the Ain, can lodge an ejarah in the police station under section 154 of the CrPC. The officer-in-charge (OC) of the respective police station may take the ejarah in cognizance and may fill out the FIR form. After accepting the ejarah, the respective OC can forward the FIR to the respective judicial magistrate having jurisdiction and can start the investigation of the FIR. After having an investigation report, the judicial magistrate will forward the case to the respective tribunal.

If the OC refuses to accept the ejarah, the survivors can file the complaint case with an affidavit to the respective tribunal under

section 27 (1) ka of the Ain. The tribunal may take cognizance of the complaint and start a trial or the tribunal may send the same for local or judicial enquiry. After having the enquiry report, the tribunal can start the trial of the case.

All the cases come before the tribunal through the general register (GR) and the complaint register (CR). The GR cases are those registered in the police stations and CR cases are those registered in the tribunals directly. Among the 385 cases, 61% (235) were filed as GR cases and 39% (150) were filed as CR cases before the tribunal.

Many FGD respondents who were either survivors of pending or resolved cases indicated that their cases were not considered cognizable offences by the police station and therefore were not allowed to file a police report. They had to file a CR with the tribunal. Similarly, several KII respondents also recapitulated the same acquisition. As outlined by a key informant, an OC (Investigation), in most cases, the survivors don't show up at the police station right away, which makes it very challenging to obtain actual medical evidence and a defence lawyer further added that such delay by the survivors causes the facts to become fabricated.

"My husband beat me for dowry and I went to police station, they didn't receive my case."

- Rabeya Begum, Bhola

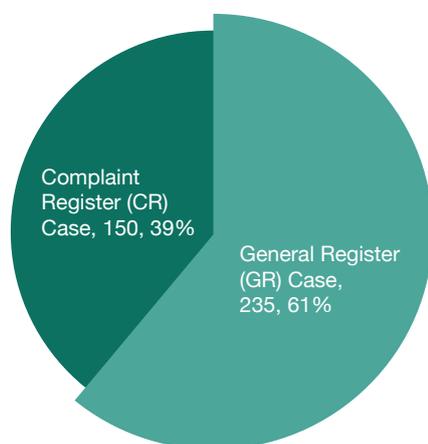


Figure 4: Number of cases lodged before the Tribunal

While lodging a case at the police station, survivors face several challenges. First, there is a social challenge where family members and relatives hesitate or fear filing a complaint with the police station or the court. Secondly, institutional challenges where the institution is sometimes reluctant to take the complaint due to gender insensitivity, the powerlessness of the complainant, and biases of the respective duty offices. Thirdly, fear and social stigma – the fear

of being re-victimised. And fourthly, their poor economic status as most survivors have no or very minimal earnings and mainly depend on others for their livelihood.

In this regard, it needs to be mentioned that on 25 May 2015, being aggrieved by the gang rape of a woman waiting for a bus on 21 May 2015, and the delay in receiving the said case by the Police Station, BLAST, Nari Pokkho, Bangladesh Mahila Parishad, Jatio Adivasi Parishad, and Ain O Salish Kendra filed a Public Interest Litigation (Writ Petition No. 5541/2015) before the Hon'ble High Court as to why action should not be taken against those responsible for delay in receiving the case and sending the abused woman for treatment and medical examination and why compensation should not be given to the abused woman.

On 18 April 2018, after hearing all the concerns, the High Court Division of the Supreme Court pronounced a full judgement with the necessary 18 directives to ensure the justice and protection of women victims of rape and violence. The directives are:

1. Every information relating to the commission of a cognizable offence, including rape, sexual assault, or like nature, shall immediately be reduced to writing by the officer-in-charge 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 registrar their complaint online;
3. The state should contain a specific provision dealing with refusal or failure of the officer concerned of the respective police station without sufficient cause to registrar such cases;
4. Every police station must have round the clock a female police officer, not below the rank of 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 survivor and her family members comfortable.
5. At all stages, the identity of the victim should be kept confidential;
6. To save a list of female social workers who may be of assistance at all police stations;
7. The statement of the survivor should be recorded in the presence of a lawyer or friend nominated by her, or a social worker or protection officer;
8. The survivor 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 survivors 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 survivor 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 survivor
13. In all rape or sexual assault cases, chemical/DNA tests are to be conducted mandatorily;
14. DNA and other samples should be sent to the concerned Forensic Science Lab or DNA Profiling Centre within 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 survivor to be taken to the nearest hospital for medical examination would be a punishable offence;
16. The investigating officer shall endeavour to complete the investigation at the earliest;

17. There should be wider dissemination of the national line number on violence against women, girls, or children, namely 109 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 to provide the necessary security, medical, chemical, and counselling assistance and secure protection for the survivor.

The Hon'ble Court also directed the relevant authority to strictly follow and observe the above guidelines until the Parliament enacts required legislation on the subject matter. However, most of the officials from the police stations are not aware of

these directions, though these directions have the same force as law according to the Article 111 of the Constitution. Interestingly, any rule or regulation does not specify how such High Court Directives should be communicated with all concerns.

The study team obtained detailed court documentation for 152 of the 385 instances. While reviewing the court records, it was found that 44 of the complainants were male and 108 were female. The male complainants were 41 years old on average, whereas the average age of the female complainants was 29 years. An intriguing discovery was that around 70% of the complainants (106) were survivors, while the remaining

30% (46) were survivors' relatives, such as their father, mother, and brother. However, all of the survivors were girls of varying ages. Around 37% of the survivors were youngsters under the age of 18, with the majority of them being rape victims. Six rape survivors were under ten, and 33% were between 11 and 17. Most survivors (45%) were between 18 and 30, with 16% aged between 31 and 45.

Under the Ain the offences are abducting women and children (S-7), restraining women and girls for ransom (S-8), rape [S-9(1)], rape with murder [S-9(2)], gang rape [S-9(3)], rape with an attempt to murder [S-9(4)Ka], attempt to rape [S-9(4)Kha], rape in police custody [S-9(5)], abetment of suicide (S-9Ka), sexual harassment (S-10), murder and or attempt to murder for dowry [S-11(Ka)], grievous hurt for dowry [S-11(Kha)], simple hurt for dowry [S-11(Ga)], mutilation of a child to beg or sale of organs (S-12), revealing the identity of victimised women and children in the media (S-14) and filing false cases or complaints (S-17). While analysing the offence pattern of the tribunal cases, it was interesting that most cases were filed either for rape or for dowry. The pattern of the offence of the 385 cases is provided in the below matrix.

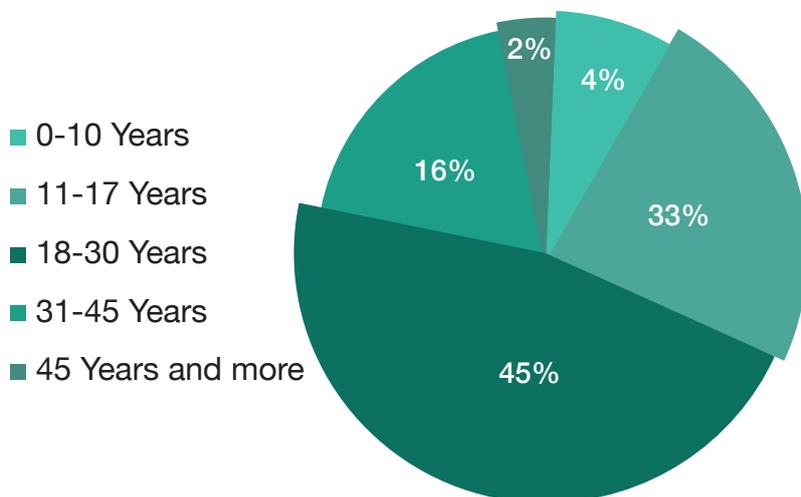


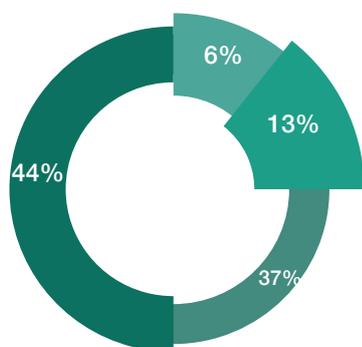
Figure 5: Age distribution of the survivors

SL. No.	Name of the offence	Number of cases
1	Abduction (S-7)	47
2	Restrain women and girls for ransom (S-8)	1
3	Sexual harassment (S-10)	25
4	Rape [S-9(1)]	98
5	Rape with murder [S-9(2)]	1
6	Gang rape [S-9(3)]	5
7	Rape with attempt to murder and attempt to rape [S-9(4)]	39
8	Abetment for suicide (S-9Ka)	1
9	Murder and attempt to murder for dowry [S-11(Ka)]	9
10	Grievous hurt for dowry [S-11(Kha)]	8
11	Simple hurt for dowry [S-11(Ga)]	150
12	Filing false cases or complaints (S-17)	1
	Total	385

(Resolved within 1st January, 2021 to 30th September, 2022)

Table 3: Types of VAWG-related offences lodged before the Tribunal

In a broad category, we can explain that about 44% of the cases were filed as rape crimes, followed by 37% of dowry-related cases. Of the other cases, 13% were abductions, and 6% were sexual harassment cases before the tribunal.



■ Abduction ■ Sexual Harassment
 ■ Dowry related Crime ■ Rape Crime

Figure 6: Types of offences before the Tribunal

The statistics presented are based on the number of crimes that have been reported by the plaintiffs, whereas it is often argued that a significant proportion of crimes are not reported by the survivors. A women's rights activist argued that the investigating officers' lack of proper training and insensitiveness towards women may have contributed to distrusting the law enforcement body.

5.2 Investigation and inquiry

The investigation procedures for offences under the jurisdiction of the tribunal have been outlined within the Ain. However, in addition to the procedure prescribed in the Ain, the Criminal Procedure Code (CrPC) is also applicable where there is no specific provision in the Ain. The Ain provisioned that the investigation officer shall resume the investigation within 15 working days if the accused is caught red-handed by the police or by any other person during the commission of the offence. In other cases, the investigation officer shall resume the investigation within 60 working days after receiving the information or order of investigation from the concerned officer, authorised

officer, or the tribunal. Suppose the investigating officer fails to conclude the investigation within 60 working days due to a valid reason. In that case, he/she will inform his/her respective supervisor or the tribunal in writing and will resume the investigation within the next 30 working days.

However, if the investigating officer cannot complete the investigation within the next 30 working days, he/she will inform his/her controlling officer or the tribunal within 24 hours of the expiry of the said period. The controlling officer or the tribunal may transfer the charge of the investigation to any other officer. As per Section 18 of the Nari O Shishu Nirjaton Daman Ain 2000, the newly charged officer shall resume the investigation within seven working days from the date of receipt of the order if the accused is caught red-handed by the police or by any other person and handed over to the police during the commission of the offence; and in other circumstances within the next 30 working days. That is, in case the accused is caught red-handed by the police or by any other person during the commission of the offence and then handed over to the police {Section 18(1)(a)} of the said Ain. The investigation should be completed within a maximum of 52 (15 + 30 + 7) working days and in other cases {Section 18(1)(b)} within a maximum of 120 (60 + 30 + 30) working days.

Suppose any investigation is not completed within the period prescribed in the Ain and the controlling officer or the tribunal, after reviewing the explanation report of the IO, may decide that the IO is responsible for not completing the investigation. In that case, it will be considered as inefficiency and misconduct, which will be incorporated in the annual confidential report (ACR). In the appropriate case, measures should be taken against him according to the service rules. After reviewing the investigation report, the tribunal may direct the person as a witness instead of the accused. Further, after resuming the examination of all witnesses and evidence, if it appears to the tribunal that the IO submitted the investigation report without collecting proper evidence or by exempting any person from the charge, the tribunal may direct the IO's superior authority to take legal action against them.

While analysing the cases, it was found that judicial or local enquiry was conducted on 257 cases, and the respective police station submitted investigation reports before the tribunal for 109 cases. It was further found that the lowest number of days required for submitting an investigation report was 13 days, and the highest number of days needed to complete an investigation was 7,420 days (about 20 years four months).

The average number of days needed to carry out an investigation was 193 days, but the duration's median value or central tendency was 96 days. Among the 257 cases, 66 cases (26%) were investigated within the prescribed time (60 days). For 57 cases (about 22%) the investigation took an extended 30 days as permitted by the Ain in special circumstances. The investigation of 32 cases (about 12.5%) was concluded within

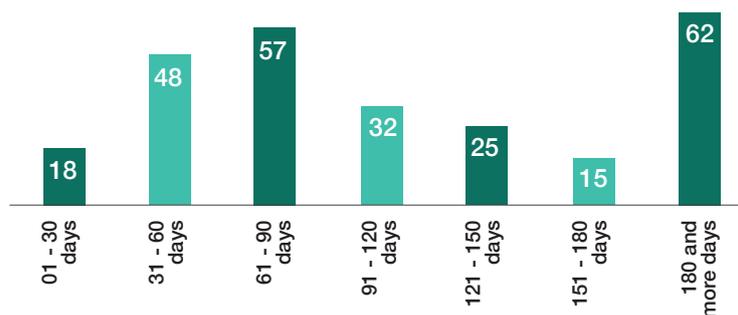


Figure 7: Working days required for investigation

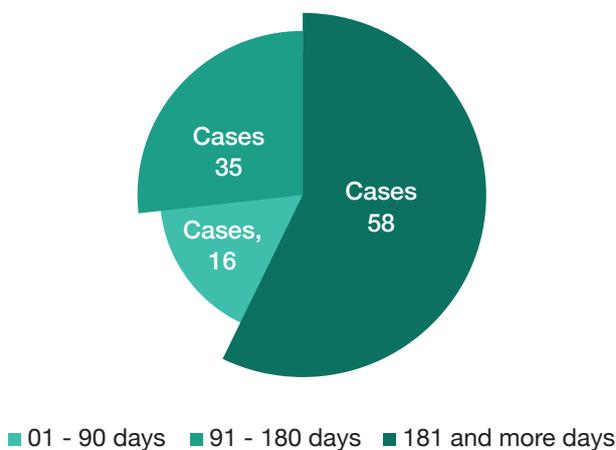
120 days as provisioned for special circumstances. The investigation of the remaining 102 cases (about 39.5%) was completed within 121 days or more, which contradicts the provisions made in the Ain.

As mentioned, judicial or local inquiries were conducted in the case of 109 cases out of the 385 cases reviewed. A minimum of 18 days were required to complete the local and judicial inquiry, whereas the highest number of days needed was 4,225 days (11 years 7 months). On average, 268 days were spent on the inquiry. However, the central tendency

or median value for inquiry is 102 days. An inquiry report was submitted for 38 cases within 60 days, 24 cases within 61 to 120 days, 12 cases within 121 days to 180 days, 4 cases within 181 days to 240 days, 5 cases within 241 days to 300 days, and 26 cases require more than 300 days. It was found that among the 152 cases, only 5 cases filed Naraji petitions before the tribunal against the police investigation report.

While outlining the challenges under this particular act, the KII and FGD respondents focused on some issues. Most respondents questioned the integrity of the Investigating Officer (IO) and the non-cooperation of the investigating officer with victims/survivors. A defence lawyer emphasised that poor investigation is one of the prime reasons for low convictions in VAWG cases. Similarly, a Tribunal Judge argued that the investigating officers often lack integrity and knowledge of the laws. According to a criminal trial lawyer, the investigating officer usually does not dig deeply into the matter and frequently fails to adequately record the victim's statement or conduct medical and DNA tests.

The respondents also said that investigating officers lack substantive knowledge of the concerned laws and possess a very scant understanding of higher court decisions on investigation and related issues. A defence lawyer claimed that the Deputy Commissioners, who oversee the case, sometimes lack complete knowledge of the law. A Tribunal Judge delineated that judicial magistrates cannot conduct proper inquiries in CR cases due to their workload with cognisance courts. Furthermore, investigative officers have been accused of



numerous other misdeeds by the KII participants, including a lack of commitment and accountability towards their responsibility and emotional torture and harassment of plaintiffs by the human rights activists.

KII respondents also mentioned that lack of infrastructure and insufficient IOs are other reasons for procrastination in investigations, which results in the investigation not being completed within time. A Special Public Prosecutor delineated that court proceedings are disrupted whenever Investigation Officers (IOs) are transferred or changed mid-way. As a result, cases are drawn out and continue to move year after year. Additionally, a Tribunal Judge pointed out that there are only two DNA testing machines in Bangladesh and no DNA testing laboratories available at the district level that can examine rape, resulting in procrastination in the investigation as it takes three to four months to conclude each DNA testing.

5.3 Prosecution

Section 492 of the CrPC authorises the Government to appoint Public Prosecutors (PP). The text of this Section is:

“492(1) The Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

(2) The District Magistrate may, in the absence or the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below such ranks as the Government may prescribe in this behalf to be Public Prosecutor for the purpose of any case.”

Section 25(2) of the Nari O Sishu Nirjaton Daman Ain, 2000 states that the person conducting the case on behalf of the Tribunal complainant shall be deemed the Public Prosecutor.

To operationalise the appointment of PP and other law officers of the State, a Manual was adopted in 1960, which is called the Legal Remembrance Manual 1960 (LR Manual). However, it is an archaic compilation of several regulations adopted during the British India and Pakistan period, and there is no direct reform in the Manual. However, the Ministry of Law, Justice and Parliamentary Affairs supplemented the Manual with several scattered circulars.

According to the provisions of section 492 of the Code of Criminal Procedure, 1898 and Legal Remembrance Manual (LR Manual), 1960 PP, Special PP, and Additional PP are appointed from advocates having at least 10 (ten) years of legal practice experience in the lower courts and APPs are appointed from advocates having at least 5 (five) years of legal practice experience in the lower court. There are no recruitment rules in this regard—generally, PPs/Special PPs/Addl. PPs are appointed by the government, and when the tenure of a government ends, such appointments are cancelled, and the new administration appoints a new PPs/Special PPs/ Addl. PPs/APPs.

As no formal competitive recruitment process exists, the key informants pointed out that the PPs, Addl. PPs and APPs are generally recruited by MoLJPA based on the GO letters issued by local MPs. After examining the CV of the incumbent lawyers, MoLJPA gives an appointment letter. Besides, the remuneration of the PPs/Special PPs/Addl. PPs/APPs is minimal, compelling them to compromise their services. The number of PPs/Special PPs/Addl. PPs/APPs currently work all over Bangladesh, and their remuneration/fees are as follows:

Designation	Nos.	Retainer Fee	District Town	Divisional Town
PP	67	Monthly	12,000/-	15,000/-
		Per hearing	300/-	600/-
Special PP	176	Monthly	12,000/-	15,000/-
		Per hearing	300/-	600/-
Additional PP	474	Monthly	9,000/-	12,000/-
		Per hearing	300/-	500/-
APP	2646	Monthly	4,000/-	6,000/-
		Per hearing	150/-	250/-

Table 4: Type and number of recruited PPs and their remuneration

The matrix shows 67 PPs, 176 Special PPs, 474 Additional PPs, and 2,646 Assistant PPs all over the country. However, the ratio of women PPs or Special PPs, Additional PPs, and Assistant PPs is very low. 99 Nari O Shishu Nirjaton Tribunals are in place throughout the country, including nine Nari O Shishu Nirjaton Tribunals in Dhaka. Nine Special PPs and 15 Assistant PPs work in the

tribunals in Dhaka. But only one Special PP and 6 Assistant PPs are female.

Nine hundred eighty-four people were charged in all 385 cases while filing. After the charge hearing, the charge was framed against 479 accused and 505 accused were discharged at the charge hearing. Upon resuming the trial, 36 accused were convicted, and 443 were

acquitted. One accused died during the trial, and the case was filed in 2010. It was observed that a number of accused were acquitted due to the compromise between the victims and accused during the trial of the cases. In terms of the ratio of accused persons versus convicted persons, the conviction rate is 3.66%.

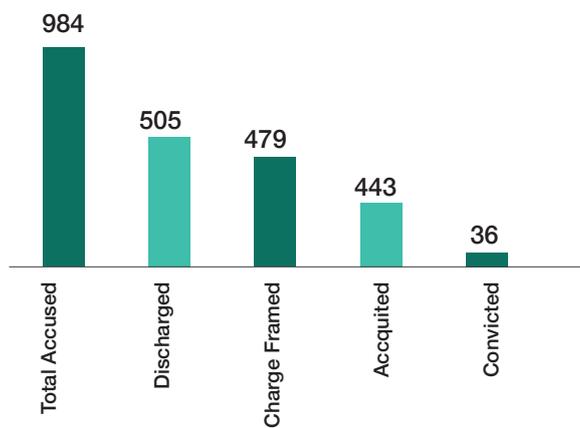


Figure 7: Working days required for investigation

However, if the case number is considered, among the 385 cases, only 28 cases were convicted, and 59 cases were discharged at the charge framing stage. The result of the remaining 298 cases was an

acquittal. However, a number of cases were acquitted due to a compromise between the accused and survivors during the trial stage of the cases. Approximately 7.27 per cent of cases result in a conviction

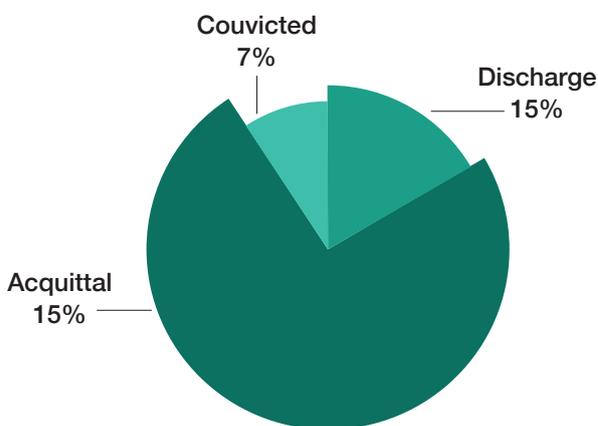


Figure 10: Conviction rate in terms of the cases filed

In analysing the period of discharged cases, it was found that, on average, it took two and a half years (897 days) to remove an accused from the complaint. It was found that the most extended amount of time needed to exonerate an accused was eleven and a half years (4,256 days); however, the central tendency or median value for the duration of the discharge is 614 days. About 25% of discharged cases took more than 3 years to discharge, while 34% were discharged within one year, 24% were discharged in two years and 17% took more than two years to be resolved.



Figure 11: Period of discharged cases

Similarly, the time span of the charge frame against the accused was also analysed. Among the 385 cases, charges have been filed against the accused in 326 cases. After analysing the time duration from the complaint lodging to the charge frame, it was found that it took an average of about one year and eleven months to frame the charge against the

them and advised them on how to talk before the tribunal. The survivors also informed that PPs/APPs communicated with them over the phone before the case hearing. Although, some FGD respondents urged that the PPs/APPs did not cordially accept them and were not advised properly by the PPs or APPs.

The respondents also raised that sometimes the plaintiffs are not cooperative with PPs/APPs. As a Special Public Prosecutor stated, the survivors are often unaware of the prosecution system and rarely collaborate with prosecutors. Moreover, in CR cases, the private lawyers are not cooperative with the PPs/APPs. Another major challenge raised by the KII respondents is that the information and communication flow between IOs and PPs/APPs is not functioning correctly.

A Tribunal Judge further delineated that prosecution appointment is questionable as advocates of mediocre qualities are getting appointed. Regrettably, the partisan considerations that motivate public prosecutors' (PPs) appointments have become a systemic problem. The state-appointed lawyers' inefficiency and flawed investigations contribute to the low conviction rate.

Poor knowledge of criminal laws and the politicisation of public prosecutors' offices severely hamper legal proceedings against alleged criminals and terrorists. Attempts were made to make the public prosecution service non-partisan, but that initiative didn't get anywhere. The last caretaker government also attempted to promulgate an ordinance that would allow for a

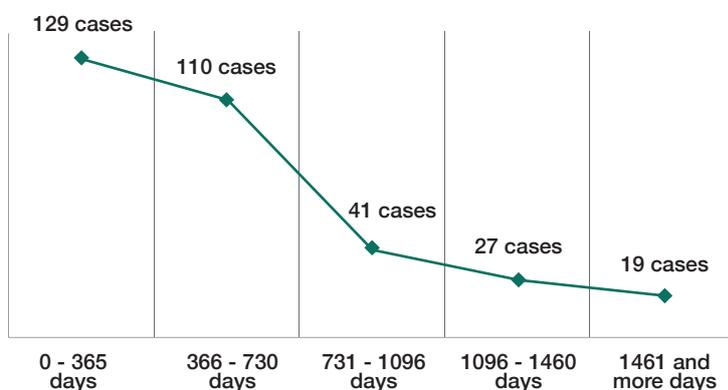


Figure 12: Time span of charge frame

defendant; however, the central tendency or median value for charge frame duration is 375 days. The charge has been filed within one year for 129 cases (39.5%), one to two years for 110 cases (33.7%), two to three years for 41 cases (12.5%), three to four years for 27 cases (7%) and more than four years for 19 cases (5.8%).

While analysing the qualitative responses, most FGD respondents notified that PPs or APPs communicated with

The KII respondents implied several challenges to the prosecution system too. Firstly, due to the insufficient honorarium, the integrity of the PPs/APPs is often questioned. It is an open secret that the parties (survivors or accused) must pay PPs/APPs. Public prosecutors have also been accused of emotionally torturing and harassing plaintiffs by a women's rights activist. According to an advocate, prosecutors often do not study the case or review documents properly.

permanent attorney department and stipulate specific criteria that an individual would have to possess to be deemed qualified to hold such a position. That move also resulted in nothing. Unless the quality of prosecutors is ensured, the prosecution system is unlikely to see much improvement.

Compared to the number of courts/tribunals, the number of PPs (474) and APPs (2,646) is excessive. However, The services received are insufficient and of low quality, especially compared to the numbers. Case management, in particular, is inadequate and lacks accountability. To overcome this condition, the post of District Prosecution Coordinator may be established in each district while maintaining the current prosecution system. The District Prosecution Coordinator shall not represent as an advocate in any court/tribunal but instead will be responsible for managing the distribution of cases among PPs/Special PPs/Addl. PPs/APPs (disbursement/withdrawal) will monitor monthly/periodical/yearly functions (disbursed/ received/ disposed of) and ensure receipt of statements, storage in the digital process, and accountability. He can be entrusted with conducting arbitration, mediation, ADR, etc. A Deputy Solicitor of MoLJPA highlighted that the

District Attorney Service is under process and once it is established the prosecution system will be quickened.

A human rights activist also raised the issue that the number of judges appointed in proportion to demand is significantly low. Experienced and qualified retired district and session judges can be appointed on a trial basis to the proposed post of District Prosecution Coordinator. Presently, $2646 + 683 = 3329$ APPs/AGPs are working, which is more than required. Therefore, reducing the number of APPs/AGPs and creating the posts of District Prosecution Coordinators will not increase the financial expenditure of the government.

Another Special Public Prosecutor stated that the IOs seek to manage both the plaintiff and the accused, and dowry cases under Section 11(ga) are frequently compromised as a result of various inducements from the accused. A defence lawyer claimed that one of the reasons for the compromised settlement was the plaintiff's poverty, instability, and powerlessness. A Tribunal Judge argued that the lack of legal knowledge of concerned parties and the provision for high punishment in-laws often forces parties to compromise the cases and settle outside the court; hence the acquittal rate is significantly increased.

Other than that, a district and sessions Judge of the tribunal also identified an insufficient number of IOs and PPs as prime problems. The Special Public Prosecutors of the Tribunal were vocal about the issue that inadequate office space for PPs frequently causes difficulties in storing case records and other papers; hence, tribunal judges have recommended that logistics support should also be increased in the tribunals.

Key findings

- A total of 984 people were accused
- Charges were framed against 479 accused
- 505 accused were discharged
- 36 accused were convicted
- 443 accused were acquitted
- The conviction rate is 3.66%
- Only 28 cases resumed with conviction
- 59 cases were discharged
- 298 cases were acquittal
- About 7.27% of cases resumed with a conviction
- Dowry cases are frequently compromised due to various inducements from the accused.
- No formal competitive recruitment process for PPs, Special PPs, Addl. PPs and APPs in place

- Based on the GO letter from local MPs the MoLJPA appoints the PPs, Special PPs, Addl. PPs and APPs
- Remuneration and per hearing fee of the PPs/Special PPs/Addl. PPs/APPs is very minimal
- Due to the minimal honorarium, the integrity of the PPs/APPs is questioned
- Parties have to pay to the PPs/APPs
- Information and communication flow and cooperation channels between IOs and PPs/APPs are missing
- Inadequate office space for PPs frequently causes difficulties in storing case records

5.4 Trial

Before explaining the trial process of the tribunal, it is essential to note that generally, a principal or direct accused who has committed an offence punishable under the Ain cannot secure bail without complying with two pre-conditions - hearing the complainant on a bail petition and satisfaction by the tribunal judge that there are no reasonable grounds for conviction. However, if the defendant is a woman or a

child or physically sick or infirm, the Tribunal, applying its discretion, may release the accused on bail. Thus, these provisions show that the Ain intends to be harsher towards the accused of VAWG offences. In Section 19 of the Ain, an amendment was made in 2020 that the offences referred to in Section 11(ga) shall be compoundable, meaning simple hurt for dowry will be compoundable.

As stated in Section 20 of this Ain, all offences under this Ain will be heard by the tribunal, and once the tribunal begins hearing the case, it will continue each working day until the case is resolved. The Tribunal shall complete the proceedings within one hundred and eighty days from receipt of the case for trial. If the tribunal cannot conclude the trial within 180 days, it may release the accused on bail. If the Judge of the tribunal transfer without completing the trial of a case, the Judge in his place will try the case from the stage at which it was left. It will not be necessary to re-examine the witness, but the replaced Judge may do so if they believe it is in the interest of justice. The trial of the rape-related offences (Section 9) may be held on camera on the application of any person or if the Tribunal, at its discretion, thinks fit. If a child is accused of committing an offence under this Ain or is a

witness to the offence, the Children Act 2013 provisions will be followed as far as possible.

Suppose the tribunal has reasonable grounds to believe that the suspect is absconding or concealing information to avoid arrest or surrender for trial, and there is no possibility of his immediate arrest. In that case, the tribunal may pass an order notifying the defendant to surrender within the next 30 days in at least two Bangla daily newspapers. If the accused fail to appear before the tribunal within the said period, the tribunal may conclude the case trial without the defendant's presence. If any accused is present and is released on bail, the tribunal need not issue a notice of surrender, and the trial will proceed in their absence.

When any physician, chemical examiner, assistant chemical examiner, blood examiner, handwriting expert, fingernail expert, or firearms expert employed by the government provides a report after examining or analysing during the proceedings and later on, he/she has died or is unable to appear before the court as a witness or cannot be located or the attempt to produce him before the tribunal would involve delay, expense or inconvenience at the trial stage, then his signed examination report can be considered as

admissible evidence. However, the tribunal cannot punish the accused based on the said report alone.

Officer-in-charge (OC) of the respective police station is responsible for the execution of a summons or warrant of a witness and for producing the said witness in the Tribunal for the trial of any offence under the Ain. It is mandatory to send a copy of the witness summons to the respective Superintendent of Police (SP) or Police Commissioner through registered mail with acknowledgement along with the witness. Suppose the police officer wilfully fails to execute any summons or warrant issued under this section. In that case, the tribunal may deem it as inefficient and direct that further action be taken by the controlling authority. To ensure the accountability of the tribunal, it was provisioned

that if the tribunal could not conclude the trial of the case within 180 days, the tribunal should send a report to the Supreme Court within 30 days explaining the causes and a copy of that report to the government. Similarly, the respective PP and police officers should send a report to the government within 30 days and a copy to the Supreme Court. After analysing the submitted report, the appropriate authority may take action against the responsible person. Previously, the Ain provisioned medical examinations only for victims. Nevertheless, the amendment (2020) provided medical tests for the accused and victims. Similarly, the recent amendment also introduced mandatory DNA exams for the accused and victims. Among the 385 cases, 326 have been resolved after hearing the parties. The

accused were found guilty in 28 cases and were acquitted in 298 cases. It was found that the lowest time required to resume the trial was 87 days (about three months), and the highest time was 9,049 days (24 years, nine months, and 19 days). It took the Tribunal about 2,349 days (about six years and five months) to conclude the trial of the cases on average. The median or central tendency of the duration of a case was 1,580 days (4 years and four months). Using a timescale analysis, a very frustrating trend has been discovered where 21% of cases (68) took more than ten years to finish their trial. About 19% (62) of the cases were concluded within 3 months to 2 years.

While analysing the 28 convicted cases, it was found that 11 cases were convicted for simple hurt for dowry under section 11(ga), 9 cases were convicted for rape under section 9(1), 2 cases were convicted for attempt to rape under section 9(4) (kha), one case was convicted for rape with an attempt to murder, one case was convicted for rape with murder under section 9(2), one case was convicted for death for dowry under section 11(ka), one case was convicted for gang rape under section 9(3) and one case was convicted for abduction under section 7 of the Ain.

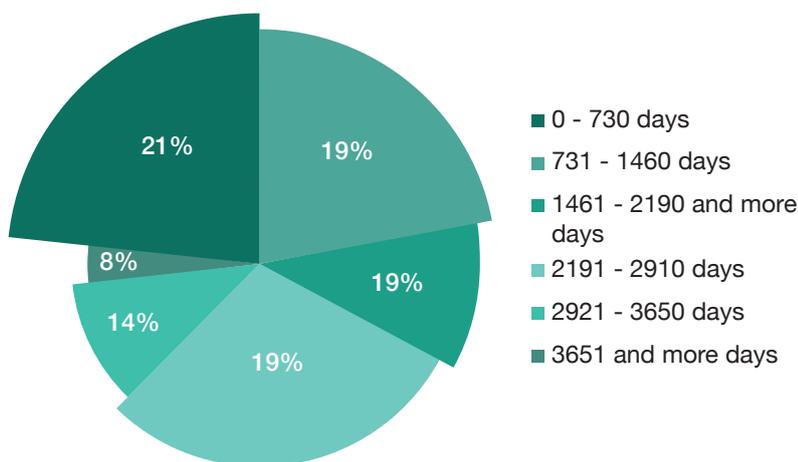


Figure 13: Time spent during trial

In the 11 cases convicted under section 11(ga), 11 accused were sentenced to two years of rigorous imprisonment with a fine in 10 cases, and one person was sentenced to one year of rigorous imprisonment with a fine in the other case. Of the 9 cases convicted under section 9(1), 3 involved abduction charges, and 6 involved only rape charges. In the cases with only rape charges, all six convictions were life imprisonment with BDT 2-3 lac fines, and in the three cases

penalty with a fine. These three cases were under sections 9(2), 9(3), and 11(ka), and eight people were convicted of death in these cases. Below is a summary of the convicted cases.

The KII and FGD respondents described the state parties as careless in presenting witnesses and lacking a proper understanding of the case. Additionally, the summons and notices to the witnesses are not appropriately served during the

witness does not turn out on the scheduled day. A Tribunal PP interviewed replied that the victim is often reluctant to appear before the court once they get married. One of the key informants revealed that the lack of a witness protection system also discourages witnesses from appearing before the court due to insecurity even though the police submit a charge sheet; hence enactment of an enforceable Witness Protection Act has also been recommended by a member of a bar association.

One of the Tribunal Judges pointed out that during judicial proceedings, victims frequently change the deposition given to the magistrate under Section 22. Moreover, the prosecution often cannot provide sufficient evidence because the parties involved compromise their cases outside court. KII respondents focused that survivors and eyewitnesses sometimes forget the actual incident due to the slow investigation process, due to which the survivor's statement under section 22 contradicts the deposition or the statement under section 7 of the medical report.

SL	Offence & Section	Cases	Convicted	Comments
1	Simple hurt for dowry demand u/s-11(ga)	11	12	11 persons were convicted of two years of rigorous imprisonment with a fine, and one person of one-year rigorous imprisonment with fine
2	Rape u/s – 9(1)	6	6	Six persons were convicted of life imprisonment with fine
3	Rape and abduction u/s – 7/9(1)	3	5	Five persons were convicted of 14 years imprisonment with fine
4	Attempt to Rape u/s-9(4)kha	3	3	Three persons were convicted of five years imprisonment with fine
5	Rape and attempt to murder u/s-9(4)ka	1	1	Ten years imprisonment and 3 lac taka fine
6	Gang rape u/s-9(3)	1	6	Six persons were convicted of death sentence with 2-3 lac taka fine
7	Rape and murder u/s-9(2)	1	1	Death sentence with 1 lac taka fine
8	Death for dowry demand u/s-11(ka)	1	1	Death sentence with 1 lac taka fine
9	Abduction u/s-7	1	1	14 years imprisonment with fine
	Total	28	36	

Table 5: Details of convicted cases

with rape and abduction charges, the convictions were 14 years imprisonment with fines. In three cases, the conviction was the death

trial. According to the KII respondents, the biggest problem with the trial process results from the witness failing to appear on the scheduled dates. Moreover, the proper

Additionally, the expert KII respondents raised the issue of court staff. The Court has a limited number of staff and they are not skilled at case

management either. Moreover, the tribunal's human and other resources are insignificant, which also hinders proper and speedy adjudication. The court environment is also another concern. Most FGD respondents said there is no sitting arrangement for litigants, and women litigants face multiple problems in court premises. There are no separate women's washrooms, breastfeeding places, etc. According to the respondents, another issue is that many false allegations are filed before the tribunal, and exaggerated allegations occupy a considerable amount of the Tribunal's time and contribute to a large case backlog. Although cases of false claims are observable, a Tribunal Judge articulated that the tribunal has no authority to sue fraudulent petitioners.

Besides that, a defence lawyer further explained a critical problem with the Evidence law. The law demands direct evidence and the claim to be proven beyond a reasonable doubt to establish criminal allegations. As most VAWG cases (e.g., rape, sexual assault, domestic violence by husband, etc.) happen privately where there is no direct evidence, it becomes difficult to establish all charges beyond a reasonable doubt. The 'two-finger test' has been conducted for a long time in the medico-legal examination of

women and girls who are survivors of rape. The test is unscientific, inhumane, degrading, and grossly violates fundamental rights. ASK, BLAST, BRAC, Bangladesh Mahila Parishad, Nari Pakkho, MJF, and two researchers challenged the validity of the so-called 'two-finger' test on 10 October 2013 by filing a Public Interest Litigation (Writ Petition No. 10663 of 2013) in the High Court Division seeking cancellation of the examination. In its judgement, the Hon'ble High Court Division on 12 April 2018 prohibited the two-finger test and issued eight (8) directives. The directives are-

1. The two-finger test is unscientific, unreliable, and illegal, and the two-finger test is prohibited in the examination of rape victims;
2. Concerned authorities of the State will arrange to deliver the Protocol named 'Health Response to Gender-Based Violence- Protocol to Health Care Provider' to all forensic experts, physicians who conduct medical (medico-legal) examinations of rape victims, police officers who investigate cases of rape and women and child abuse, public prosecutors and lawyers;
3. Doctors will give an opinion on rape in the medical (medico-legal) examination certificate of a rape victim, but in no way use

disparaging words, such as habituate in sexual intercourse, and no questioning of the rape victim about her past sexual relations;

4. A rape victim should be sent to a gynaecologist for examination of any deep wounds in the genitals;
5. A child or an adolescent girl should not be examined 'per speculum examination' unless there are signs of external injury;
6. 'Bi manual' examination has no relation with the two-finger test. It is a gynaecological test and cannot be performed on a rape victim;
7. Trained doctors and nurses should be appointed for the medico-legal examination of rape victims. At the time of this examination, the presence of female police, a female relative should be ensured as per convenience and a female doctor should examine as per convenience. The doctors and forensic experts on duty will protect the privacy of the rape victim during the examination;
8. The Tribunal for the Prevention of Violence against Women and Children will ensure that the lawyer does not ask any question that undermines the dignity of a rape victim in court;

Based on these directions, the police authorities and the Ministry of Health and Family Welfare (MoHFW) have sent a circular to all concerned. In the meantime, the MoHFW has developed a comprehensive medico-legal examination report form for GBV survivors, which will produce three copies of the report at a time. One copy will be preserved in the medical record room, one copy will be provided to the police, and another copy will be provided to survivors. However, the study could not find any such form in 385 cases. The MoHFW has also developed a consent form for survivors in compliance with the 'Health Response to Gender-Based Violence - Protocol for Health Care Providers'. The forensic experts, however, informed us that there are insufficient expert forensic physicians in all the districts and upazila levels and that medical graduates are not

interested in post-graduate training in forensic medicine because it is a complex and uncertain career path. In replying to the compliance of HC directives, the forensic experts informed that the Ministry has circulated the directives to all hospitals and medical colleges. Still, there is no mechanism to monitor HC directives' compliance.

While exploring the human resource capacity of the tribunal, it was found that the tribunal employs less staff than other tribunals of a similar nature. In 2002, eleven (11) Nari O Shishu Nirjaton Daman Tribunal was established for the first time, and four posts (Stenographer, Bench Assistant, Jarikarok, and MLSS) were created in addition to the post of a Judge. The following table shows the human resource status of the three similar special tribunals.

However, when the 'Jananirapotta Bighnokari Oporadh Daman Tribunal' (Tribunal for Suppressing Crimes Prejudicing Public Safety) was established in 2000, nine posts (Administrative Officer, Najir, Stenographer, Bench Assistant, Shrestha Assistant, Record Assistant, Accounts Assistant, Driver, Jarikarok and MLSS) were created in addition to the post of a Judge. Similarly, in 2000 when fourteen (14) Special Judge Courts were established, six posts were created in addition to the Judge of the court. The Nari O Shishu Nirjaton Daman Tribunal lacks staff, resulting in delayed case dispositions due to the lack of court staff.

Post	Nari O Shishu Nirjaton Daman Tribunal	Divisional Special Judge Court	Speedy Trial Tribunal
Administrative Officer	No	Yes	Yes
Najir	No	Yes	No
Stenographer	Yes	Yes	Yes
Bench Assistant	Yes	Yes	Yes
Shrestha Assistant	No	No	Yes
Record Assistant	No	Yes	No
Accounts Assistant	No	Yes	No
Driver	Yes	Yes	Yes
Jarikarok	Yes	Yes	Yes
MLSS	Yes	Yes	Yes

Table 6: Comparative analysis of staffing in three Special Tribunals of Dhaka

Stages	Challenges	Reason behind
Complaint lodging	<ul style="list-style-type: none"> • Police are reluctant to consider a complaint a cognizable offence and refuse to lodge an FIR. • Survivors fabricate and/or suppress facts. • The police are not adequately informed about the legal and procedural developments the Higher Court has outlined in its directives. • Gender sensitivity is not always exercised by police personnel. 	<ul style="list-style-type: none"> • Lack of accountability of the police • Political or pressure from influential individuals • Lack of legal knowledge of police personnel • The communication mechanism of Higher Court directives is not specified by any rules or regulations. • Lack of training on gender sensitiveness
Investigation and inquiry	<ul style="list-style-type: none"> • The very lengthy investigation process • Insincerity and non-cooperation of IOs with survivors • IOs' often lack integrity and knowledge of the concerned laws • IOs' failure to adequately record the survivor's statement or conduct medical/DNA tests • No DNA testing laboratories available at the district level 	<ul style="list-style-type: none"> • Lack of accountability of the IOs • Insufficient IO and lack of infrastructure • Transfer of IOs causes a delay in the investigation • Judiciary magistrates cannot conduct enquiries properly due to their workload
Prosecution	<ul style="list-style-type: none"> • The conviction rate is low. • Inefficient PP, Special PP, Addl. PP and APPs are recruited based on political considerations. • Survivors were not advised properly by the PP or APP • Parties must bribe the PP/APPs to seek their attention • Inadequate office space for PPs • Dowry cases are frequently compromised 	<ul style="list-style-type: none"> • No formal competitive recruitment process for PP, Special PP, Addl. PP and APPs • Lack of accountability • Remuneration and per hearing fees for PP/Special PP/Addl PP/APP is very minimal. • In our country's system, there is no information, communication flow, nor any channel for coordination between IO and PP/APPs.
Trial	<ul style="list-style-type: none"> • The summons and notices to prosecution witnesses are not properly served • The prosecution witnesses do not appear on time • During trials, victims often change the deposition given to the magistrate • The inability of the prosecution to provide sufficient evidence as the parties involved compromise cases outside of court • False allegations and exaggeration of facts consume time 	<ul style="list-style-type: none"> • Lack of a witness protection system • Victims and eyewitnesses sometimes forget the actual incident due to slow investigation. • Due to the delay in the process, survivors lose their attention • The Tribunal does not have the authority to prosecute a false petitioner • Direct evidence to establish criminal allegations is often unavailable as VAWG is often committed in a private setting • Lack of expert forensic physicians in all districts and upazilas • Lack of court staff challenges proper and speedy adjudication

Table 7: Factors responsible for low conviction rate



CHAPTER 6

Urgency to Strengthen the
Prosecution System

The Nari O Shishu Nirjaton (Special Provisions) Act, 1995, was enacted to speed up the prosecution of crimes of violence against women and children and the punishment is increased as prescribed in the Penal Code. Due to various levels of public opinion, the Act of 1995 was repealed and the more effective Nari O Shishu Nirjaton Daman Ain, 2000 was adopted. As the number of crimes related to violence against women and children did not decrease, the Suppression of Nari O Shishu Nirjaton Daman (Amendment) Act, 2003 was enacted to amend sections 2, 9, 20, 27; Sections-9A and 31A are added, and Sections-10, 11, 13, 18, 19, 32 are substituted. However, crimes related to violence/abuse against women and children are increasing rather than decreasing. It is believed that the main reason for this is the low punishment rate. Therefore, it is imperative to strengthen the prosecution system to address the low conviction rates for crimes committed against violence against women and children.

According to the provisions of Section 27(1) and 27(1A) of the Nari O Shishu Nirjaton Daman Act, 2000, there are two types of cases. In addition, according to the provisions of Section 27(1c) of the said Act, the Nari O Shishu Nirjaton Daman Tribunal can accept crimes.

1. Section 154 of the Code of Criminal Procedure, 1898 provides for the receipt of cases by the police station, and section 190 provides for the receipt of cases by the competent magistrate. By section 156(3), any magistrate empowered under 190 may order such an investigation as mentioned below. According to the provision, he can investigate the case at the police station. Suppose the offence relates to abuse of women and children. In that case, the investigating officer shall submit the investigation report to the Nari O Shishu Nirjaton Daman Tribunal as per the provisions of Section 27(1) of the Ain. The competent Magistrate shall forward the enquiry/investigation report completed under the provisions of Section 202 of the Code of Criminal Procedure, 1898, to the tribunal under Section 205(c) of the said Act. Based on the report thus received, the tribunal will take the offence as per the provisions of Section 27(1) of Ain.

2. Section 27(1A) of the Ain states that if a complainant/complainant has failed to request a police officer or authorised person to take charge of any crime, the complainant is examined by the tribunal (judge), who,

if satisfied, may direct a magistrate or any other person to enquire into the complaint.

If the tribunal (judge) is satisfied after examining the complainant, a provision can be made to refer the complaint for ADR rather than for investigation. In case of failure of ADR, provision can be amended/added directing any magistrate or any other person other than police/magistrate (judicial) to investigate the complaint. The Suppression of Violence against the Ain does not say anything in detail about police officers or empowered persons. However, it can be assumed that the police officer is the officer-in-charge of the concerned police station, but who is the authorised person? It is not clear. It may be assumed, however, that the authorised person is the competent magistrate of the area concerned; the matter must be clarified in the law.

Criminals are not punished in the absence of proper evidence. The onus is on the prosecution to present evidence to the tribunal. But no power has been conferred on the tribunal to adjudicate cases of negligence, wilful/intentional inefficiency on the part of the prosecution as provided in the case of IO, the person conducting the case on behalf of the complainant in the

Tribunal shall be deemed to be the Public Prosecutor-Section-25 (2).

The Ain is the primary law to tackle the VAWG in Bangladesh. Although the law prescribes the punishment of most forms of VAWG, the definitions of these offences are outlined in the Penal Code of 1860. The Ain also established a separate Tribunal to try these offences. There are currently 95 Tribunals throughout the country. In addition to the provisions of CrPC, the Ain has prescribed some special procedures for investigation and trial, including the specified timeframe. In this case, there is an excellent dilemma since the prescribed investigation period is not a "mandatory" period; instead, it is a "directory" period, as explained by the Higher Court.

An additional confusing and time-consuming provision in the Act relates to the duration of investigations. It states that if the investigation is not completed within an additional 30 working days (in case of special circumstances with a valid reason), the investigating officer shall inform their controlling officer or Tribunal within 24 hours of the expiration of the said period. The controlling officer or tribunal may then transfer the charge of the investigation to another. After receiving the case, the

newly appointed officer must complete the investigation within seven days if the accused is caught red-handed and within 30 days in other cases. However, the Ain is silent if the replacement officer cannot investigate within the prescribed period.

Several laws related to VAWG are inconsistent and complex, as revealed by the study. As for dowry-related offences, survivors must rely on two pieces of legislation. Violence for demanding dowry is regulated by the Nari O Shishu Nirjaton Daman Ain, 2000, whereas survivors can only seek remedy under the Dowry Prohibition Act 2018.

Similarly, for sexual harassment, though the substantive definition of sexual harassment in the Ain is not exhaustive, survivors have to seek remedy under the Nari O Shishu Nirjaton Daman Ain, 2000, while if sexual harassment takes place in educational institutions and workplaces, the survivors have to seek remedy under the High Court guideline. Additionally, VAWG's definition of several offences has flaws, e.g. the definition of rape discriminates against married women and transgender people. These substantive inconsistencies impact the prosecution and trial of the offences.

As mentioned by several study participants, the actors involved in the investigation, prosecution, and trial of the VAWG cases are not fully aware of the laws and recent juridical development. Further, most actors are insensitive to gender, and their mindset influences their responsibilities, which ultimately goes against the VAWG survivors.

The IOs are under the police department of MoHA. In contrast, the Prosecutors are loosely regulated by the Solicitor Wing of the MoLJPA and the Judges are held by the Supreme Court and MoLJPA. A lack of concerted coordination among Ministries and Departments often adversely affects the prosecution and trial of VAWG cases.

According to the provisions of section 20(2) of the Nari o Shishu Nirjaton Daman Act of 2000, the hearing of the case in the Tribunal shall continue continuously until its conclusion. The Tribunal shall complete the proceedings within one hundred and eighty (180) days from receipt of the case for trial following section 20(3) provisions. In the case of trial, this provision is not always observed. Other than the loopholes mentioned above, there are numerous ambiguities in the legal domain of the country. As outlined by the key informants

and the participants of focus groups, the loopholes can be listed below:

- Bangladesh lacks a dedicated legislation or programme for witness protection, which is a significant impediment to getting legal redress in situations of gender-based violence.
 - There are no government-run rehabilitation facilities for acid attack survivors and private initiatives cover the largest portion of their medical care.
 - Women are particularly vulnerable to abuse in Bangladesh due to a shortage of safe shelters, a lack of awareness of One-Stop Crisis Centres, a lack of capacity in Victim Support Centres, case backlogs, police corruption and negligence, failures in the investigation, and other factors.
 - Since there is no centralised, coordinated system for tracking court proceedings, survivors have difficulty getting information about the proceedings.
 - Women in Bangladesh frequently lack access to legal counsel and accurate information, making them especially susceptible to abuse and corruption.
 - The Nari O Shishu Nirjaton Damon Ain, 2000, does not address assault and violence within marriage unless triggered by dowry or torture.
 - The parameters of certain offences should be broadened; for example, the definition of rape should also include “marital rape” and assault and violence within marriage, as there are no such provisions in Bangladesh law.
 - Under the Ain, women often find it very difficult to prove verbal and emotional abuse, let alone physical torture, unless there is substantial injury.
 - The anomaly between consent and marriage age is another disputed issue within the law.
 - The survivors and law enforcement appear to be unaware of the Nari O Shishu Nirjaton Daman Ain, 2000, or their legal rights under the act.
 - The Domestic Violence (Prevention and Protection) Act has several shortcomings in defining and penalising domestic violence since courts may only issue orders of limited security, residence, and compensation under the Act.
 - Domestic abuse is confined to individuals in a "family connection" under the Domestic Violence (Prevention and Protection) Act of 2010, excluding persons in intimate partner relationships outside of marriage.
 - Domestic Violence (Prevention and Protection) Act, 2010 cases are considered compoundable, which means they can be addressed outside of court, which is often a valid option to escape sentencing.
- The Dowry Prevention Act, 2018 excludes "gifts" given at weddings from the definition of dowry, leaving room for demands.
- The Dowry Prevention Act, 2018 also allows for five years imprisonment and a fine of up to BDT 50,000 for making false allegations about dowry demands, and the legislation criminalises both giving and receiving dowry, which may discourage individuals from reporting incidents.



CHAPTER 7

Conclusion and
Recommendations

Undoubtedly, the law is a gatekeeper for survivors to access justice. Almost all the participants in the present study indicated that VAWG survivors face many obstacles. For legislation to have the desired effect, it must be coherent and implementable in the real world. From a practical perspective, the severity of punishment may deter people from violating laws, but the certainty of conviction depends on its implementation. Equally, celerity in response to law violations strongly affects the administrative and judicial mechanisms.

Based on the study findings and the suggestions from study participants, the consultant team has framed a set of recommendations to ensure access to justice for VAWG survivors. These recommendations have been categorised according to the steps of the criminal justice system in Bangladesh for improving the prosecution of VAWG-related crimes.

Complaint lodging of VAWG offences:

- Mass awareness is needed on the available remedies against VAWG so that the survivors can lodge a complaint to the police station and Courts/Tribunals.
- Ensure the women's help desk is managed by the women police personnel in all police stations and set up a monitoring mechanism from district police to monitor these women's help desks.
- As many study participants said that the police station rejected their Ejahar and later filed the case in the tribunal with an affidavit; thus, a mandatory provision needs to be introduced that the police station should write the cause of rejection in the Ejahar.
- Periodic training on communication mechanisms with all levels of police personnel and a monitoring mechanism to oversee compliance with the directives and precedents should be ensured.

Investigation of VAWG offences:

- The Nari O Shishu Nirjaton Daman Ain, 2000 is silent when the IOs fail to resume the investigation within the stipulated timeframe prescribed in the Ain. This is a paradox as there are no accountability provisions in the Ain. There should be an accountability system in place with legislative authority as well as a departmental accountability mechanism.
- Suppose the investigation officer is responsible for the non-completion of the investigation work within the said period. In that case, provisions can be incorporated within the Ain where it should be recorded in the ACR for his or her inefficiency and misconduct and in appropriate cases, departmental action shall be taken as per service rules {Section-18(6)}.
- The tribunal should adequately exercise the powers conferred by Section 18(6) and 18(8) of the Ain to minimise the scope for negligence and wilful inefficiency in the investigation by the police.

- Considering the workload and the diversified field of work, police personnel cannot fully concentrate on crime investigation as an aid to the judiciary. As a result, participants in the study suggested setting up an 'Independent Judicial Investigating Agency' like other countries, which the judiciary would supervise.
- Technological advancement adversely impacts the occurrence of crime. However, our investigation system for crimes, including VAWG-related crimes, is not based on modern technology, particularly in rural areas. Therefore, providing modern technological support to IOs and developing online/virtual communication platforms among investigation authorities, prosecution, and courts will facilitate the judicial process.
- Due to the lack of judicial magistrates and the massive workload of the magistrates, they cannot conduct Judicial Enquiry properly. Increasing the number of judicial magistrates will facilitate proper enquiry.
- Appointing and posting necessary human resources for the Women and Child Abuse Prevention Tribunal, such as Administrative Officer, Accountant cum Cashier, MLSS/Umedar, etc.

- The IOs should be provided with proper training on tools and techniques of investigation, legal subject matters, and legal documentation.

Prosecution of VAWG offences:

- Establishing a permanent prosecution service is needed to ensure the proper prosecution of offences, including VAWG.
- The accountability and transparency of the prosecutors need to be incorporated in a legal framework, and a higher authority needs to supervise the whole prosecution system based on this legal framework.
- While prosecutors are considered government law officers, their current remuneration is meagre. Hence, this remuneration structure should be revised.
- Prosecutors should be appointed competitively based on their qualifications and skills.
- Periodic training and capacity-building programmes need to be organised to develop the skills and capacity of the prosecutors.

Trial of the VAWG offences:

- Cases in which the punishment is less than seven years might be tried by magistrates instead of a session judge.
- Judges of the tribunal should have the authority to take cognizance of complaints at the first instance.
- Suppose a provision is added to the Nari O Shishu Nirjaton Daman Ain of 2000 which requires the learnt counsel for the prosecution to direct the controlling authority to take appropriate legal action against him in case of wilful negligence as inefficiency or misconduct. In that case, the scope of such an act will be minimised.
- If the provision of Section 20(2) of Ain is not followed by the tribunal, which requires that the hearing (taking of evidence) will continue continuously every working day until it is concluded. The case will be disposed of expeditiously within 180 days. Then it shall be recorded in the ACR of the judge as negligence or inefficiency.
- The number of Nari O Shishu Nirjaton Daman Tribunals is insufficient compared to pending cases.

The trial process can be expedited by establishing Nari O Shishu Nirjaton Daman Tribunals or Additional Tribunals and assigning judges to every 500 cases.

- The Tribunals have an acute shortage of court staff like Seresthadar, Jarikarok, Accountants, etc. To speed up the resolution of cases, it is imperative to appoint staff.
- Women and child-friendly court environments need to be ensured.
- As all of the justice seekers of the Tribunal are either women or children, a separate washroom and a breastfeeding zone are a must in the court.

Substantive legal reforms:

- The definition of rape in the Penal Code has several drawbacks. In addition, the definition of sexual harassment in Nari O Shishu Nirjaton Daman Ain is not exhaustive; thus, an amendment is needed.
- Dowry-related offences should be put under the same umbrella. Now, dowry claims and dowry violence are covered by separate laws.

- The Prosecution System in Bangladesh needs to be institutionalised through new legislation. This legislation should establish a permanent prosecution system delineating the qualifications and skills of the prosecutors, a competitive appointment system, the role and responsibilities of the prosecutors, an accountability and monitoring system for the prosecution, and terms and conditions of the prosecutors' service.
- A separate and specific rule/regulation must be enacted to frame the coordination and collaboration mechanism between the investigation and prosecution departments. The framework should specify the duties and responsibilities of the investigator and prosecutor from when a complaint is filed.
- Separate legislation to protect the rights of the survivors and witnesses of the crimes is needed to ensure the prosecution of VAWG offences. Bangladesh Law Commission has drafted a bill titled the Victim and Witness Protection Act. Civil Society Organisations (CSOs) and women's rights activists have been calling for such an Act for the last

two decades. The Act should delineate all rights of crime survivors and witnesses.

Areas to concentrate on by the advocates of gender equality:

- Raising mass awareness of the available remedies against VAWG so survivors can raise their voices to ensure justice.
- Promoting the activation of the women's help desk in all police stations.
- Liaison with local-level police officials to ensure adherence to the Higher Court directives on VAWG cases and may monitor the application of these directives.
- Advocacy to establish an 'Independent Judicial Investigating Agency' under the judiciary.
- Advocacy for developing an online/virtual complaint filing platform and an online coordination platform among investigation authorities, prosecutions, and courts.
- Advocacy to appoint the necessary personnel for the tribunals.

- Advocacy to establish a permanent prosecution service and competitive mechanism for appointing PP/Special PP/Addl PP/APPs.
- Advocacy to enact a separate and specific rule/regulation to institutionalise the coordination and collaboration mechanism between investigation and prosecution departments.
- Advocacy to enact a law on Victim and Witness Protection.
- Liaison with the tribunal to ensure a women and child-friendly court environment.

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ANNEX–A: GLOSSARY

BRAC

BRAC is an international development organisation based in Bangladesh. In order to receive foreign donations, BRAC was subsequently registered with the NGO Affairs Bureau of the Government of Bangladesh. BRAC is the largest non-governmental development organisation in the world.

VAWG (Violence Against Women And Girls)

The term VAWG means any act of gender-based violence that results in physical, sexual, or psychological harm to women and girls including threats of such acts whether occurring in public life or private life.

Complaint

Complaint means the allegation made orally or in writing to a magistrate with a view to his taking action. The allegation is that some individual, known or unknown, has committed an offence.

AgCon

As a private consultancy firm, AgCon provides consultancy services.

Violence

Violence means the use of physical force on a person/s that result/s in or is likely to result in injury, physical harm, or death to another person/s.

FIR

It stands for First Information Report. It is a government-prescribed form (BP form No. 27) used to record information pertaining to the commission of a cognisable offence by an officer-in-charge (OC) or any other police officer under his direction when presented to him verbally or in writing.

C.R. Case

A case initiated on the basis of a complaint petition is generally classed as a C.R. case i.e. Complaint Register Case.

Offence

Offence means any act or omission that is punishable by any law for the time being in force.

Ejahaar

A statement regarding cognisance of offence given to the officer-in-charge (OC) of a police station either orally or in written form is known as Ejahaar.

GD

It stands for 'General Diary'. A GD entry is made when any kind of complaint regarding a non-cognisable offence is lodged. It is registered as an FIR if the police believe there is some prima facie evidence that a cognisable offence has been committed.

G.R. Case

A case initiated based on an FIR is known as a G.R case i.e. General Register Case.

Trial

The judicial process in accordance with law whereby the question of guilt or innocence of the person accused of any offence is determined.

Judgment

It is the statement of the court describing the brief facts, issues in dispute, the decision thereon, and the reasons for that decision.

Judge

Here Judge means the honourable Judge (District and Session Judge) of the Nari O Shishu Nirjaton Domon Tribunal.

Witness

The word 'witness' may be defined as any person including a child, who is or may be required to make a statement or give evidence or who has made a statement or given evidence, in any investigative or judicial proceedings in relation to the commission of an offence.

Appeal

A legal proceeding by which a case is brought before a higher court for review of the decision of a lower court.

DNA

DNA is made up of molecules called nucleotides. Each nucleotide contains three components: a phosphate group, which is one phosphorus atom bonded to four oxygen atoms, a sugar molecule, and a nitrogen base. The four types of nitrogen bases are adenine (A), thymine (T), guanine (G), and cytosine (C), and together, these serve as the "letters" that make up the genetic code of our DNA.

Acquittal

An acquittal is a formal declaration by a court that someone who was charged with a crime is innocent.

Tribunal

A judicial body/court established to adjudicate special cases.

Nari o Shishu Nirjatan Damon Tribunal

A declaration that after enquiry/investigation no prima facie evidence was found to proceed against the accused and is released from court without further action.

Prosecutor

Prosecutor is the person who conducts the case on behalf of the government.

Defence Lawyer

A defence lawyer is a lawyer who represents the defendant/accused in a legal proceeding.

Children

Children mean any person under the prescribed age. The prescribed age is 16 under Nari O Shishu Nirjaton Doman Ain, 2000, and 18 under Shishu Ain, 2013.

Gender Advocate

Gender advocates can be men, women, individuals, or organisations who lobby for gender equality as part of their assigned roles purely out of personal motivation and choice.

Public Prosecutor

A public prosecutor is a person appointed by the government to conduct cases on its behalf, which includes any person acting under the supervision of a public prosecutor.

Solicitor Wing, MoLJPA

It is an organ of the Ministry of Law, Justice, and Parliamentary Affairs' Law and Justice Division, and it has the authority to designate a public prosecutor.

Bangladesh Mahila Parishad

Bangladesh Mahila Parishad (BMP) is a voluntary non-government mass women's organisation committed to achieving women's human rights, empowerment, and gender equality.

Legal Constraint

Legal constraint means all constraints created by ordinances, circulars, rules, and other statutes.

Forensic Pathologists/ Doctor

Forensic pathologists, or medical examiners, are specially trained physicians who examine the bodies of people who died suddenly, unexpectedly, or violently. The forensic pathologist is responsible for determining the time, cause (the ultimate and immediate reasons for the cessation of life), and manner of death (homicide, suicide, accidental, natural, or unknown).

Bangladesh Mohila Samity

Bangladesh Mohila Samity is a voluntary development organisation that has been working for the welfare of women since the very birth of Bangladesh.

Sexual Harassment

Sexual harassment is a type of harassment involving the use of explicit or implicit sexual overtones, including unwelcome and inappropriate promises of rewards in exchange for sexual favours.

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