TO THE UN SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUNCES

## Submission For the UN SRVAW’s Thematic Report on Rape as a Grave and Systematic Human Rights Violation and Gender-Based Violence against Women

**RESPONSE TO QUESTIONNAIRE ON CRIMINALIZATION AND PROSECUTION OF RAPE

Rape Law Reform Coalition (RLRC)[[1]](#footnote-1)**

## 20 May 2020

**Summary:** This submission is made by the Rape Law Reform Coalition (RLRC), which comprises of leading human and women’s rights organisations in Bangladesh, working collaboratively to draft reform proposals on rape legislation and campaign for rape law reform. The submission is prepared by Bangladesh Legal Aid and Services Trust (BLAST**),** theSecretariat of the RLRC, with support and input from sixteen other members of the RLRC. BLAST is a non-governmental legal services organization working across the whole of Bangladesh, and draws upon its experience of 25+ years in providing direct legal services, including to women and girls who are survivors of sexual and gender based violence (SGBV), as well as conducting research advocacy and strategic litigation on gender equality and gender-based violence.

The submission consists of responses to the questionnaire and provides links to publications by members of RLRC on review of existing laws on rape and their application in practice. Given time limitations, it does not address in detail how individuals experience intersectional discrimination with respect to their ethnicity, caste, disability, location or other status, including statelessness in terms of securing justice for rape, nor does it address particular barriers in terms of access to necessary support services – including health (and mental health) livelihood and emergency shelter. This submission also does not address additional challenges being faced in such cases in the context of the outbreak of the COVID-19 pandemic and its response, where movement restrictions and office and court closures and limited online facilities are inhibiting both reporting and prosecution.

**About RLRC**: RLRC comprises of the following seventeen member organisations: Acid Survivors Foundation, Action Aid, Ain O Salish Kendra (ASK), Bangladesh Mahila Parishad (BMP), BLAST, Bangladesh Women Lawyers Association (BNWLA), Bondhu Social Welfare Society, BRAC, Care Bangladesh, Justice for All Now (JANO), Bangladesh, ICDDR,B, Manusher Jonno Foundation (MJF), Naripokkho, Women with Disabilities Development Foundation (WDDF), We Can, Women for Women, Young Women's Christian Association.

Members of RLRC, namely ASK, BMP, BLAST, BNWLA, BRAC, Naripokkho and WDDF, support individual rape victims /survivors, by assisting them with reporting cases, or with providing assistance to the prosecution, or making referrals- through community based paralegals and lawyers - to the Government run Victim Support Centres and One Stop Crisis Centres, as well as the hotlines operated by the Multi-Sectoral Programme on Violence against women. Through PILs, and subsequent judgments and orders from the Supreme Court, 5 member organisations of the RLRC (ASK, BLAST, BMP, BRAC, MJF and Naripokkho) successfully challenged the use of the highly discriminatory “[two finger test](https://blast.org.bd/issues/gender/488)” on rape complainants, and also the [mandatory death penalty for rape](https://www.blast.org.bd/issues/301), both of which were declared to be unconstitutional. 4 members of RLRC (ASK, BLAST, BMP and Naripokkho) also successfully filed a PIL which led to [eighteen landmark directives](https://www.blast.org.bd/content/pressrelease/26-04-2018-Press-Release_English.pdf) being issued by the Supreme Court obligating police officers to respond to rape victims without delay or discrimination irrespective of the general jurisdiction of a particular police station and setting safeguards on the collection of medico-legal evidence. More recently, 4 member organisations of RLRC (BLAST, BRAC, MJF and Naripokkho) have filed a PIL [challenging the legality of marital rape](https://blast.org.bd/content/pressrelease/04-11-2020-Press-Release-marital-rape-ENG.pdf) of women and girls aged above thirteen.

RLRC was formed in 2019 as part of the [**Rape Law Reform Now Campaign**](http://www.blast.org.bd/rapelawreform), with the recognition that that a concerted effort between relevant stakeholders is of utmost importance to ensure justice for rape. As part of the Campaign, a series of seminars and conferences have been held and research reports and policy briefs have been published, to highlight protection gaps in the procedural and substantive laws on rape which obstruct justice for rape survivors in Bangladesh and require urgent reform. To this end, RLRC acts as a pressure group for building momentum on key reform demands of the campaign, with support from among others, UN Women. Advocacy and awareness activities are conducted at both the policy and grassroots level using the vast collective networks of the organisations who are part of the Coalition.

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**Definition and scope of criminal law provisions**

**1.     Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.**

|  |
| --- |
| **Penal Code, 1860** |
| [**Section 375. Rape**](http://bdlaws.minlaw.gov.bd/act-11/section-3231.html) | A man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions: Firstly. Against her will. Secondly. Without her consent. Thirdly. With her consent, when her consent has been obtained by putting her in fear of death, or of hurt. Fourthly. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly. With or without her consent, when she is under fourteen years of age. Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception. Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape. |
| [**Section 376. Punishment for Rape**](http://bdlaws.minlaw.gov.bd/act-11/section-3232.html) | Whoever commits rape shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. |
| [***Nari o Shishu Nirjatan Daman Ain*, 2000**](http://bdlaws.minlaw.gov.bd/act-835.html) **(amended 2003)(**[**Suppression of Violence against Women and Children Act, 2000**](https://evaw-global-database.unwomen.org/en/countries/asia/bangladesh/2000/prevention-of-cruelty-against-women-and-children-act-2000)**, amended 2003)[[2]](#footnote-2)** |
| **Section 2. Definitions** | (e) ‘Rape’ means rape as defined under section 375 of the Penal Code 1860 (Act XLV of 1860) subject to section 9 under this Act. |
| **Section 9.Punishment for rape or death in consequence of rape** | (1) If any man commits rape on a woman or a child, he shall be punished with rigorous imprisonment for life and with fine.Explanation: If any man has sexual intercourse without lawful marriage with a woman over the age of sixteen, against her will or with her consent obtained, by putting her in fear or through fraud, or with a woman under sixteen years of age with or without her consent, he shall be said to commit rape.(2) If in consequence of rape or any act by him after rape, the woman or the child so raped, died later, he shall be punished with death or with transportation for life and also with fine not exceeding one lakh taka. (3) If more than one man rapes a woman or a child and that woman or child dies or is injured in consequence of that rape, each of the gang shall be punished with death or rigorous imprisonment for life and also with fine not below one lakh taka.(4) Whoever attempts on a woman or a child:(a) to cause death or hurt after rape, shall be punished with rigorous imprisonment for life and also with fine.b) to commit rape, shall be punished with imprisonment for either description, which may extend to ten years but not less than five years rigorous imprisonment and also with fine.(5) If a woman is raped in the police custody, each and every person, under whose custody the rape was committed and who were directly responsible for safety of that woman, shall be punished for failure to provide safety, unless otherwise proved, with imprisonment for either description which may extend to ten years but not less than five years of rigorous imprisonment and also with fine. |

**2.     Based on the wording of those provisions, is the provided definition of rape:**

a.     **Gender specific, covering women only**: YES

b.     **Gender neutral, covering all persons**: NO

c.      **Based on the lack of consent of victim**: YES

d.     **Based on the use of force or threat**: YES[[3]](#footnote-3)

e.     **Some combination of the above**. YES

f.       **Does it cover only vaginal rape?**  YES / (Although the text refers only to ‘sexual intercourse’ and ‘penetration’ ie is not limited further, case law has defined it in this limited way, to cover only vaginal rape)

g.     **Does it cover all forms of penetration?** /NO. If yes, please specify. (Although the text refers only to ‘sexual intercourse’ and ‘penetration’ ie is not limited further, case law has defined it in this limited way, to cover only vaginal rape)

h.     **Is marital rape in this provision explicitly included**? YES (only for wives under thirteen years of age)

i.      **Is the law silent on marital rape?** NO (Marital rape is explicitly exempted from the definition of rape for wives aged thirteen and above)

j.       **Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included**? It is only covered where the wife is below a certain age. [[4]](#footnote-5)

k.      **Is marital rape excluded in the provisions, or is marital rape not considered as a crime?**   It is only considered as a crime where the wife is below thirteen years of age.

**3.     Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it**.

While the laws on rape do not exclude criminalisation in such cases, a complication is created in terms of intersections with the laws on child marriage, which allow for underage marriage in certain instances, and exclude criminalisation of the male.

**4.     What is the legal age for sexual consent?**

The age of sexual consent is set at sixteen as per section 9(1) of the Nari O Shishu Nirjatan Daman Ain, 2000, raising it from fourteen, as provided for earlier under section 375 of the Bangladesh Penal Code 1860.

It is unsettled whether this higher age of sexual consent under section 9(1) of the 2000 Act applies to all forms of sexual intercourse, or whether it only applies in cases of non-spousal sexual intercourse. This is because section 9(1) opens with ‘If any man has sexual intercourse *without lawful marriage*’, it is unclear whether ‘without lawful marriage’ is an overarching qualifier for the entirely of section 9(1) (and therefore the higher age of sexual consent). If section 9(1) were interpreted as setting a higher age of sexual consent for spousal intercourse as well, it would appear to clash with the marital rape exception clause in section 375 of the Penal Code 1860. A report commissioned by the National Human Rights Commission argues that ‘the Act of 2000 does not seem to be applicable to a married girl under the age of 16 because the Penal Code provides that sexual intercourse by a man with his own wife who is of thirteen years of age or above will not constitute rape’.[[5]](#footnote-7)

**5.     Are there provisions that differentiate for sexual activity between peers? If so, please provide them.**

No, there are no such provisions in the laws on rape. However, see the comments above regarding the Child Marriage Restraint Act. Further, see comments made in reported judgments regarding sexual activity between peers.[[6]](#footnote-8)

**6.     Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.**

|  |  |  |
| --- | --- | --- |
| **Section of Nari O Shishu Nirjatan Daman Ain** | **Form of Rape** | **Criminal Sanction** |
| 9(1) | Single perpetrator rape not causing death of the victim | Imprisonment for life or death penalty and fine. |
| 9(2) | Single perpetrator rape causing death of the victim  | Death penalty or imprisonment for life and also fine of at least one lac taka (100,000 Bangladesh Taka (BDT)) |
| 9(3) | Gang rape | Death penalty or imprisonment for life and fine of at least one lac taka (100,000 BDT) |
| 9(4)(a) | Attempt to cause death after rape | Imprisonment for life or death penalty and fine |
| 9(4)(b) | Attempt to rape  | Imprisonment of either description, which may extend to ten years but not less than five years rigorous imprisonment and fine |
| 9(5) | Failure to prevent rape which occurred in police custody  | Imprisonment for either description which may extend to ten years but not less than five years of rigorous imprisonment and fine. |

**7.     What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?**

Under criminal law,[[7]](#footnote-9) rape victims/ survivors do not have a right to reparation or compensation per se, but may only receive compensation as a matter of judicial discretion if three conditions are met: if the criminal conviction is secured and upheld (on appeal), if the court imposes a fine as part of the sentence and if the court exercises its statutory discretion to convert the fine into compensation for the victim. This offers little relief in practice since conviction rates for rape remain low[[8]](#footnote-10) and when a rapist is convicted, in practice, the court seldom exercises its discretion to turn a penalty of fine into an award of compensation.[[9]](#footnote-11) A study by BLAST found that the trial court converted fine into compensation in less than seven percent of rape cases, and in all but one of these cases the conviction was overturned on appeal and therefore the award of compensation did not sustain.[[10]](#footnote-12)

Rape victims may bring a civil action for damages in tort law. However, given the procedural hurdles of filing such claims – with prolonged delays, and the requirement of depositing substantial costs, rape complainants have not filed such actions. We are not aware of any reported case regarding a rape victim suing for compensation in civil law. However, a sexual harassment complainant did sue her company for damages in tort in 2003 (with the Supreme Court recognising in an interim ruling that an action in tort against a company definitely lies for sexual harassment), but trial in the case is still ongoing.[[11]](#footnote-13) Precedent set by this case may potentially open the door to more tort litigation for rape victims.

Rape victims may sue for public law compensation under Article 102(1) of the Constitution, for rape amounting to breach of the fundamental rights to life for example. The Children’s Charity Foundation Bangladesh, together with BLAST, had filed such a claim in relation to rape of a woman by police officers in 2019, whereby the High Court Division of the Supreme Court of Bangladesh had issued a show cause rule. [[12]](#footnote-14) However, subsequently, the victim did not appear in court or pursue the claim for compensation.[[13]](#footnote-15)

 **Aggravating and mitigating circumstances**

**8.     Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**

There are no sentencing guidelines applicable in Bangladesh. However, some factors have been developed in case law. As the punishment for single perpetrator rape has been a mandatory life sentence (prior to the amendment in October 2020), judges have no sentencing discretion in this regard. Judges may consider aggravating circumstances when dealing with other forms of rape, such as rape causing death of victim, or gang rape. In such cases, judges have referred to aggravating circumstances to impose the death penalty instead of life imprisonment (the only two sentences they are allowed to give by law). Aggravating factors as developed in case law tend to be minority of the victim, brutal method of murdering the victim[[14]](#footnote-16) and commission of gang rape.

a.      **Is rape by more than one perpetrator an aggravating circumstance?** Yes

b.     **Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference)** Yes (in cases of custodial rape)

c.      **Is rape by spouse or intimate partner an aggravating circumstance?** No.

**9.     Does the law foresee mitigating circumstances for the purposes of punishment? If yes, please specify**.

Yes the law does foresee mitigating circumstances to some extent. However, as discussed above, since judges can only ever award either of two sentences provided for under statute (life imprisonment or death penalty), mitigating circumstances (as developed in case law) typically are only pleaded and considered in rape cases in the context of possible imposition of the death penalty. In such cases, the age of the accused, his lack of criminal record and time spent in a condemned cell have been considered as mitigating factors to commute the death penalty to a sentence of life imprisonment.

**10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? If so, at what stage and what are the consequences***?*

No.

1. **Regardless of the law, is reconciliation permitted in practice and what is the practice in this regard?**

Yes, reconciliation is permitted in practice in the form of *shalish* (traditional and informal process of alternative dispute resolution, usually by elders, almost invariably men). *Shalish* remains widespread in both urban and rural areas, and out-of-court settlements through this informal community based process are reported in rape cases. Due to the immense social stigma attached to rape victims, coupled with the prevailing attitudes within families and communities to uphold “family honour”, which is perceived as being besmirched in such cases, rape survivors are often pressured by their families to pursue this quick, economic and discreet “remedy” in some cases receiving ‘compensation’ from the perpetrator, in others being coerced into marriage with him. The fact that court cases take years, if not decades, to reach a conclusion and tend to be costly (even when legal aid is received, as complainants have to travel to courts ) and can generate publicity and therefore further stigmatisation for victims. [[15]](#footnote-17) Community leaders who conduct the *shalish*, may also receive a portion of the settlement amount and have a clear financial interest in keeping the cases out of court.

Although rape is not a compoundable offence, women’s rights lawyers argue that it is quite common for parties in rape cases to seek adjournments of hearings, to use the delays to try and resolve the matter out of court and also file affidavits stating that a compromise is preferable.[[16]](#footnote-18) Courts have reportedly on many occasions, allowed out of court settlements between parties by fixing a time and date for such “*aposh*” [settlement] to take place.’[[17]](#footnote-19)

**11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator?** **If yes, please specify.**
NO.

a.     **if the perpetrator marries the victim of rape?** NO (again see the intersections with the Child Marriage Restraint Act 2017)

**b.      if the perpetrator loses his “socially dangerous” character or reconciles with the victim?**

No.

**Prosecution**
**12. Is rape reported to the police prosecuted ex officio (public prosecution)?**Yes.

**13.  Is rape reported to the police prosecuted ex parte (private prosecution)?**No.[[18]](#footnote-20)

**14.  Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?**
No. But as noted above they occur in practice.

**15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?**
No. But as noted above they occur in practice.

**16. Please provide information on the statute of limitations for prosecuting rape.**

Original criminal cases are not subject to any limitation period in Bangladesh.[[19]](#footnote-21)

**17. Are there provisions allowing a child who was the victim of rape to report it after reaching adulthood?**
No.[[20]](#footnote-22)

**18.  Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses?  If yes, please specify.**
There is no such mandatory requirement in statutory law. However, in practice, courts have tended to place strong probative value on medical evidence and witnesses who can corroborate the victim’s testimony. Judges often look for proof of force or signs of resistance in the medical report to infer lack of consent.[[21]](#footnote-23) Although there is case law which establishes as a general rule that conviction in rape cases can be made solely on the testimony of the rape victim, corroboration is deemed necessary when the rape complainant is found to be ‘unreliable’.[[22]](#footnote-24) Given the frequent use of character evidence in rape cases, whereby the defense counsel seeks to undermine the credibility of the rape complainant, this general rule is not commonly upheld in practice.[[23]](#footnote-25) Mandatory DNA testing of both the survivor and the accused in line with the provisions of the DNA Act 2014 has been introduced in the 2020 Amendment to the Suppression of Violence Against Women and Children Act 2000.[[24]](#footnote-26) This test may be done "with or without their consent", which seems to suggest that even if a victim survivor refuses a DNA test, they may still be compelled to undergo it.[[25]](#footnote-27)

**19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial?**
No.

**20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? If yes, please specify.**
Yes there are some procedural provisions in criminal law to this effect. Section 20(6) of the Nari O Shishu Nirjatan Daman Ain 2000 (amended 2003) introduced the option of in-camera trials for rape, upon application from the victim or at the discretion of the court. However, it is not clear how often this is implemented in practice. Other provisions in the 2000 Act which prevent publication of the name of the victim, and also provide for her to seek shelter in ‘safe custody, are aimed at preventing re-victimisation. While provisions restricting issuance of bail are also perceived by some as protective of victims, their use in practice has also given rise to fair trial concerns.

**War and/or conflict**

**21.  Is rape criminalized as a war crime or crime against humanity?**
Yes.[[26]](#footnote-28).

**22.  Is there a statute of limitations for prosecuting rape in war or in conflict contexts?**No.

**23. Is there explicit provision excluding statutes of limitation for rape committed during war and armed conflict?**
No.[[27]](#footnote-29)

**24.  Has the Rome Statute of the International Criminal Court (ICC) been ratified**?
Yes.

**Data**

 **25.  Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.**

**Police Statistics**

Official data in this regard is not easily publicly available. The [annual crime statistics](https://www.police.gov.bd/en/crime_statistic/year/2019) in the Bangladesh Police website include rape within an umbrella category of ‘Woman and Child Repression’ and are not disaggregated. The data included in the Justice Audit Bangladesh (commissioned by the Ministry of Home Affairs and Ministry of Law, Justice and Parliamentary[[28]](#footnote-30) Affairs) does include data on rape cases, but has not been updated. However, reports citing official statistics collected from police headquarters are often published by daily newspapers in Bangladesh. For instance, according to Bangladesh Police statistics as reported by The Daily Star, the leading English newspaper of the country, 6,321 rape cases were filed across police stations in the country in 2019, while this figure was 5,123 in 2018.[[29]](#footnote-31) Table 1 shows the rape statistics from Bangladesh Police as reported by three leadings newspapers and also [Justice Audit Bangladesh](https://bangladesh.justiceaudit.org/), which was a massive data collection initiative sponsored by GIZ and supported by the Ministry of Law.[[30]](#footnote-32)

**Table 1: Compilation of Reported Police Statistics on Rape in Bangladesh**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Year** | [**New Age**](http://www.newagebd.net/article/72764/bangladesh-sees-nearly-13-rapes-every-day) | [**Justice Audit**](https://docs.google.com/spreadsheets/d/1RYRJHjoxJo6z2IOJNgzr3iao6-mOyIRGArBsf5m3sxM/edit#gid=877486980) | [**Prothom Alo**](https://en.prothomalo.com/bangladesh/Punishment-in-only-60-of-4541-rape-cases) | [**Daily Star**](https://www.thedailystar.net/frontpage/news/rape-incidents-rose-19pc-last-year-1869925) |
| 2019 | - | - | - | 6321 |
| 2018 | 3949 | - | - | 5123 |
| 2017 | 3995 | - | - | - |
| 2016 | 3728 | 3726[[31]](#footnote-33) | 3648 | - |
| 2015 | 3930 | 3929 | 3622 | - |
| 2014 | 3695 | 3692 | 3647 | - |
| 2013 | - | 3648 | 3891 | - |

**NGO Sources**

Data from NGO sources is available, usually based on a compilation of news reports, eg those by the human rights group, [Ain o Salish Kendra](http://www.askbd.org/ask/), or the national women’s organisation, [Bangladesh Mahila Parishad](http://mahilaparishad.org/), or the [Kapaeeng Foundation](https://www.kapaeeng.org/), among others. It is not clear if all of these cases are reported to the police or prosecuted.[[32]](#footnote-34) While data specific to conviction in rape cases is not readily available, a 2015 study by BRAC, a development organisation, found that between 2009 and 2014, a total of 37,915 cases, including rape cases, were filed in Suppression of Violence Against Women and Children Tribunals in three districts (Dhaka, Comilla and Pabna) alone.[[33]](#footnote-35) Of these, 22,073 cases were disposed by the Tribunals and only 186 ended in convictions, making the conviction rate as astonishingly low as 0.86%.[[34]](#footnote-36)

**Other**

**26.  Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.**

**Barriers to Justice for Marginalised Communities:** The general barriers to reporting and prosecution – in terms of stigma, distance, cost (coupled with lack of awareness and access to information) - are further exacerbated for those facing discrimination or exclusion due to ethnicity, disability, gender identity, statelessness or other status, There are particular challenges in place for the Rohingya community for example, These issues are not discussed in detail here, due to time constraints. See for example, on some experience of women with disabilities seeking justice for rape : BLAST and Handicap International[, Good Practice Report on Access to Justice for Persons with Disabilities in Bangladesh](https://www.blast.org.bd/content/publications/MIW-Report-English-PWD.pdf), (2015).

**Non-recording of complaints:** There are concerns that rape complainants may be turned away when seeking to make complaints at police stations **–** which continue to arise despite the directions in the [*Naripokkho and others*](https://www.blast.org.bd/issues/gender/515-gangrape) case discussed in the introduction above**.**

**Lack of Witness Protection:** Since acts of rape typically involve a power disparity between the victim and the rapist, when a victim seeks to report an incident, or to seek justice in court, she and her family may be met with violence or threats from the rapist, and his more powerful family and connections. These threats and the risk of further harm often leads to victims and their families abandoning efforts to seek justice, or making a complaint at the police station or court, or giving a statement during investigation, or failing to appear at court hearings. Although the Law Commission of Bangladesh drafted a [Witness Protection Law](http://www.lawcommissionbangladesh.org/reports/74.pdf) as far back as 2006, providing for specific safeguards to be put in place rape complainants, no measures have been taken by the Commission or the Ministry of Law to date to our knowledge, to hold public consultations on these proposals or to review and finalise them so that relevant legislation can be enacted.[[35]](#footnote-37) The lack of a comprehensive and effective witness protection system means that many rape cases that are successfully initiated are eventually abandoned and frustrated.

**Use of Character Evidence:** [Section 155(4) of the Evidence Act, 1872](http://bdlaws.minlaw.gov.bd/act-24/section-5271.html) specifically allows defence lawyers to adduce character evidence against the rape complainant in order to show that she was of a ‘generally immoral character’ with the intention of undermine her credibility as a witness. This acts as one of the biggest hurdles in rape prosecutions since defence lawyers reportedly frequently use this provision to shift the entire focus of the trial onto the victim’s sexual history or lifestyle, by asking her degrading and invasive, and irrelevant, questions in open court, in an attempt to impute ‘immoral’ behaviour, causing humiliation and re-traumatisation in the process.[[36]](#footnote-38)

**Rape charges in cases of consensual relationships**: See for more detail on this, and how the inclusion of breach of promise cases within the definition of rape, has resulted in denials of rights to choice in marriage, in Dina Siddiqi, [Crime and Punishment: Laws of seduction, consent and rape in Bangladesh](https://www.academia.edu/1293979/Crime_and_Punishment_Laws_of_Seduction_Consent_and_Rape_in_Bangladesh)’ (2011)

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1. Responses prepared by Taqbir Huda, Research Specialist, BLAST, (taqbir@blast.org.bd) and edited by Sara Hossain, Honorary Executive Director, BLAST (sara@blast.org.bd). Thanks to Dr. Dina Siddiqi for comments. [↑](#footnote-ref-1)
2. The following sections draw upon on an [unofficial English translation](http://iknowpolitics.org/sites/default/files/prevention_act_bangladesh.pdf) of the *Nari o Shishu Nirjatan Daman Ain*, 2000 (Suppression of Violence Against Women and Children, 2000) by the International Knowledge Network on Women in Politics (iKNOW Politics). Some changes have been made by BLAST, especially to the explanation clause, in line with changes made by the 2003 and 2020 Amendments to the 2000 Act, not reflected in the translation by iKNOW Politics. [↑](#footnote-ref-2)
3. Use of threat or force is one of the recognised circumstantial descriptions in the definition of rape in section 375 of the Penal Code 1860, not an express requirement in the legislation itself. However, in practice, proof of force is often sought in the medical evidence to infer lack of consent. [↑](#footnote-ref-3)
4. It is included in the definition of rape only for wives under the age of thirteen. But NB marriage of a girl under 18 is a criminal offence (see Child Marriage Restraint Act 2017) [↑](#footnote-ref-5)
5. [Lyal S. Sunga and Kawser Ahmed, A critical appraisal of laws relating to sexual offences in Bangladesh: A Study commissioned by the National Human Rights Commission (2015), UNDP and IDLO, 11-12.](https://www.idlo.int/sites/default/files/pdfs/publications/Study%20Report%20on%20Sexual%20Offences%20Sunga-Ahmed%20Nov%202015%20for%20BNHRC.pdf) [↑](#footnote-ref-7)
6. See for example: *Sanjay Kumar Biswas vs. State* 68 DLR (2016) (HCD) 185, paras 25-26, where the judge remarks: ‘Here I feel tempted to recall a comment of the aforesaid case of *Jayanti Rani* that: "*If a full grown girl consents to the act of sexual intercourse on a promise of marriage and continues to indulge in such activity until she becomes pregnant, it is an act of promiscuity on her part." Here, in the case, there was no charge of abduction. The prosecutrix reached the bedroom of the romeo, on her own accord and stayed there for quite few days. Meanwhile they two came out and once again went back to the refuge of the appellant. Amidst such free mixing, it is presumed that these two adults, man and woman, amicably indulged in sexual intercourses*.’ [↑](#footnote-ref-8)
7. Namely [section 545, Code of Criminal Procedure 1898](http://bdlaws.minlaw.gov.bd/act-75/section-22125.html) and section 15 (read with section 16) of the Nari O Shishu Nirjatan Daman Ain 2000. [↑](#footnote-ref-9)
8. For example, a recent study by Prothom Alo, the highest circulation national newspaper, found that out of the 4,277 violence against women cases (the vast majority of which were rape cases) disposed in Nari-O-Shishu Nirjaton Domon Tribunals (the Special Tribunals on Violence against Women) in Dhaka district between 2002 and 2016, the accused was sentenced to punishment in less than 3% of the cases. See: [Quratul Ain Tahmina and Probon Bhowmik, ‘*Shaja Matro Tin Shotangsho: Dhaka Nari O Shishu Nirjaton Domon Tribunal*’ (Punishment in Only 3% of Cases: Suppression of Violence against Women and Children Tribunal, Dhaka) Prothoma (2018).](https://www.prothoma.com/tahmina-pranab/saja-matro-3-sotangso) See also: [Crimes against women and the issue of justice (2019), The Daily Star](https://www.thedailystar.net/law-our-rights/news/crimes-against-women-and-the-issue-justice-1810696) (since the cited study by Prothoma is in Bangla, this newspaper article summarises the key findings in English). [↑](#footnote-ref-10)
9. [Taqbir Huda, ‘Beyond Criminal Justice: Towards Tort Liability for Sexual Violence against Women’ (2017) Bangladesh Journal of Law 201, 202-208.](https://www.academia.edu/42969159/Beyond_Criminal_Justice_Towards_Tort_Liability_for_Sexual_Violence_Against_Women) [↑](#footnote-ref-11)
10. Taqbir Huda, ‘No Justice without Reparation: Why Rape Survivors Must Have a Right to Compensation’ (Rape Law Reform Research Reports no. 2), BLAST and UN Women (2020). [↑](#footnote-ref-12)
11. Ibid at 217-219. [↑](#footnote-ref-13)
12. For a summary of the show cause rule see: [Taqbir Huda, ‘State liability to pay compensation for rape: A necessary ruling’, The Daily Star (15 March 2019).](https://www.thedailystar.net/opinion/law/news/state-liability-pay-compensation-rape-necessary-ruling-1715395) [↑](#footnote-ref-14)
13. [M. Moneruzzaman, Rape victim declines to appear at HC hearing to claim compensation, New Age (21 April 2019)](https://www.newagebd.net/article/70474/rape-victim-declines-to-appear-at-hc-hearing-to-claim-compensation). [↑](#footnote-ref-15)
14. In *Md. Ershad Ali Sikder vs. The State* 9 MLR (AD) 355, the apex court held that the sentence of death is the appropriate where the death is caused with ‘extreme brutality'. [↑](#footnote-ref-16)
15. [Taqbir Huda and Abdullah Titir, ‘Why Rape Survivors Stay Out of Court: Lessons from Paralegal Interventions’ (2018) Bangladesh Legal Aid and Services Trust (BLAST), 7.](https://www.blast.org.bd/content/publications/Why-Rape-Survivors-Stay-Out-of-Court-2018.pdf) [↑](#footnote-ref-17)
16. Per Advocate Nina Goswami, Senior Deputy Director, Ain O Salish Kendra (ASK). See: [Taqbir Huda and Abdullah Titir ‘Rape Law Reform in Bangladesh: Conference Report’ (2018) Bangladesh Legal Aid and Services Trust (BLAST), 15.](https://www.blast.org.bd/content/publications/BLAST-RLR-Conference-Report.pdf) [↑](#footnote-ref-18)
17. Ibid. [↑](#footnote-ref-19)
18. However, a victim can appoint a lawyer to assist the prosecutor with consent of the public prosecutor. [↑](#footnote-ref-20)
19. Preamble read with [section 3, Limitation Act, 1908](http://bdlaws.minlaw.gov.bd/act-details-88.html). [↑](#footnote-ref-21)
20. This is not required since there is no limitation period to file rape cases. [↑](#footnote-ref-22)
21. [Lyal S. Sunga and Kawser Ahmed, A critical appraisal of laws relating to sexual offences in Bangladesh: A Study commissioned by the National Human Rights Commission (2015), UNDP and IDLO, 32](https://www.idlo.int/sites/default/files/pdfs/publications/Study%20Report%20on%20Sexual%20Offences%20Sunga-Ahmed%20Nov%202015%20for%20BNHRC.pdf). [↑](#footnote-ref-23)
22. See for example: *Jahangir Hossain vs. The State* (1996) BLD (HCD) 238, where the High Court Division of the Supreme Court of Bangladesh stated “*In a sex offence case there is no legal bar in believing the sole testimony of the prosecutrix, nay, she must prima facie be believed, except in a rarest of rare cases where she is found unreliable, the necessity of corroborative evidence will arise and that the legal custom of insisting on corroboration in every case or alternatively of stating the reason for waiving such corroboration is not applicable in our country*". [↑](#footnote-ref-24)
23. There are many cases where the use of character evidence and consequent moral policing of victim means that her sole testimony is considered doubtful. See for example: *Tariqul Islam vs. State* 14 BLT (HCD) (2006) 407. For more details on the use of character evidence in rape cases, see response to question 26 below. [↑](#footnote-ref-25)
24. Section 32A, Nari O Shishu Nirjatan Daman Ain 2000 (Suppression of Violence Against Women and Children Act 2000). [↑](#footnote-ref-26)
25. Ibid. [↑](#footnote-ref-27)
26. Section 3(2)(a), [The International Crimes (Tribunals) Act, 1973](http://bdlaws.minlaw.gov.bd/act-435.html). [↑](#footnote-ref-28)
27. This is not necessary as there is no limitation period for the filing of original criminal cases, including the filing of rape cases, within or outside the context of war. [↑](#footnote-ref-29)
28. Justice Audit Bangladesh, 2018: <https://docs.google.com/spreadsheets/d/1RYRJHjoxJo6z2IOJNgzr3iao6-mOyIRGArBsf5m3sxM/edit#gid=877486980> [↑](#footnote-ref-30)
29. <https://www.thedailystar.net/frontpage/news/rape-incidents-rose-19pc-last-year-1869925> [↑](#footnote-ref-31)
30. For a complete breakdown of national crime statistics according to Justice Audit Bangladesh, including rape, see: https://docs.google.com/spreadsheets/d/1RYRJHjoxJo6z2IOJNgzr3iao6-mOyIRGArBsf5m3sxM/edit#gid=877486980 [↑](#footnote-ref-32)
31. Cf heading titled ‘no. of new cases filed during reporting period\_2016’ which is 3734. Not clear how this differs from the heading 'Rape\_2016'.  [↑](#footnote-ref-33)
32. See for example Ain o Salish Kendra, Rape Archives, <http://www.askbd.org/ask/category/hr-monitoring/violence-against-women-statistics/rape/> [↑](#footnote-ref-34)
33. [Atia Naznin and Tanjina Sharmin, ‘Reasons for the Low Rate of Conviction in the VAW Cases and Inconsistencies in the Legislative Frameworks’ (2015) BRAC University Press, 42](http://dspace.bracu.ac.bd/xmlui/bitstream/handle/10361/4185/COVER%20PAGE%2C%20JUNE%207%2C%202015.pdf?sequence=1&isAllowed=y). Given that this number only covers three of the 64 districts in Bangladesh, the actual figure for the entire country is likely to be much, much higher. [↑](#footnote-ref-35)
34. Ibid at 42. [↑](#footnote-ref-36)
35. [Taqbir Huda and Abdullah Titir ‘Rape Law Reform in Bangladesh: Conference Report’ (2018) BLAST, 15.](https://www.blast.org.bd/content/publications/BLAST-RLR-Conference-Report.pdf) [↑](#footnote-ref-37)
36. Thompson Reuters Foundation, [Character Evidence in Rape Trials: A Comparative Stud of Rape Shield Laws and the Admissibility of Character Evidence in Rape Cases](https://www.trust.org/publications/i/?id=7c70a653-6c85-4734-981b-72a1de7db614), 2015; [Fatama Shuvra – ‘‘Shotira’ Kyabol Dhorshon Hoy’: Bangladesher Procholito Ainey Narir Proti Dhorshoner Mamlai Charitrik Shakkher Byabohar Bishoyok Gobeshona [‘Only the “Pure” are Raped’: Study on the Use of Character Evidence under Bangladesh’s Existing La](https://www.blast.org.bd/content/publications/Character-Evidence-Report-Sotiri-Kabol-Dhorshon-Hoy.pdf)w, BLAST; [Taqbir Huda, ‘Between ‘Virtue’ and ‘Immorality’: Why Character Evidence Must be Prohibited in Rape Cases’ (2019), BLAST and UN Women](https://blast.org.bd/content/publications/Rape-Law-Reform-Between-Virtue-and-Immorality.pdf). [↑](#footnote-ref-38)