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The Law of Rape in Bangladesh: Challenges and Regulatory Review

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Rape is a problem that has spread to every sphere of society and is growing uncontrollably day by day. Today our state law, judiciary, and law enforcement agencies have failed to prevent the problem of rape in society. At present, not only women but also children, the elderly and men are being raped. Rape was observed in law enforcement, educational institutions, government and non-government offices, social service organizations, etc. In our society, the idea of marital rape of women in married life is being heard a lot. Victims have to go through various complications to get a cure for rape. Due to this very few, victims get the right justice in the end in the right way. As a result, rape is increasing day by day. We need to change state laws and laws and enforcement agencies related to rape. If necessary, the issue of new additions to the law should be given priority. Significant changes need to be made in state law. Policies need to be formulated to govern law enforcement agencies and the judiciary. To ensure the legal rights of the victims of rape. The law will provide legal and social protection to rape victims. Policies need to be formulated to prevent misuse of the law. Legal action must be taken to ensure proper justice for the victims. Necessary changes in the law will prevent rape and abuse of the law in society. This research paper will add more detail to the definition of rape and identify flaws in rape law in our country. Will fix the identified errors in a certain way. The research paper will link specific actions of the judiciary and law enforcement agencies in rape cases to the law.

Keywords: *rape, rape law, women's protection.*

STATEMENT OF THE PROBLEM

Rape has become an epidemic problem of the present time. The number of rapes is increasing day by day. In Bangladesh, women, children, and even men are being raped. Bangladesh's law enforcement agencies are on the verge of failure to prevent rape. If we look at the statistics for the last 20 years, it is seen that this increase is irresistible. According to data gathered from various social organizations such as Odhikar, Ain-O-Shalish Kendra, and Bangladesh Mohila Parishad, 622 people were raped in 2001¹, which gradually increased to 1,413 in 2019² and 1,626 in 2020. The irresistible increase in the number of rapes over a long time raises current questions about state law and law enforcement agencies and all concerned management that have failed to prevent rape.³ We need to find the problem very quickly and solve it very quickly. Otherwise, it is not possible to prevent this deterioration of our society. There are certain laws in Bangladesh to prevent rape. My research will deal with the interpretation of rape under that law, the application of the Rape law, the lack of the Rape law, the law enforcement agencies, the judiciary, and the abuse of the law. The issue of protecting the rights of rape victims under Bangladesh's rape law will also be discussed.

RESEARCH OBJECTIVES

The main objects of my research are as follows:

- To analyze the existing rape situation and to specify the reasons for the increase in Bangladesh.
- To analyze the existing laws and legal system of Bangladesh to prevent rape.
- To identify gaps and challenges related to rape law and the legal system in Bangladesh.
- To recommend probable legal solutions and regulatory reforms.

¹ 'Rape: January 2001-December 2019' (*Odhikar*) <https://odhikar.org/wp-content/uploads/2020/02/Statistics_Rape_2001-2019.pdf> accessed 23 February 2023

² *Ibid*

³ Bangladesh Legal Aid and Services Trust, *RAPE LAW REFORM IN BANGLADESH* (2018)

RESEARCH QUESTION

The main objects of my research are as follows:

How is the rape law in Bangladesh enough to give legal protection to the victims of rape?

Hypo research: In this research, discussing rape in state law and mentioning which are not included in the definition of rape and identifying gaps in state law where the proper functioning of the judiciary and the role of law enforcement agencies through law enforcement are highlighted.

LITERATURE REVIEW

Jennifer Ann (2013)⁴ writes an Online Journal “A Comprehensive Literature Review of American Sexual Assault Cultural and the Status of Women’s Self-Defense” In During the discussion of this issue, the author emphasized the importance of rape, violence against women in their society, and women's self-defense as a way to solve this problem. The author does not discuss the legal application in his writing which I have discussed in my research.

Van der Brugges and others (2014)⁵ in his article “A review of the literature relating to rape victim blaming: An Analysis of the impact of observer and victim characteristics on the attribution of blame in rape cases” In his discussion, Author explained that by analyzing the character of a rape victim, the woman is being blamed in all contexts and the criminal gang is taking legal advantage. But there is no way to get rid of that context which will be important in my research and I will show that women's character discussion is not important in rape cases.

⁴ Jennifer Ann Just, ‘A Comprehensive Literature review of American Sexual Assault Cultural and the Status Women’s Self-Defense’ (*Scholar Works at University of Montana*, 2013)

<<https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1278&context=etd>> accessed 23 February 2023

⁵ Van der Brugges & Ors, ‘A review of the literature relating to rape victim blaming: An analysis of the impact of observer and victim characteristics on attribution of blame in rape cases’ (2014) 19(5) *Aggression and Violent Behavior* <<https://doi.org/10.1016/j.avb.2014.07.008>> accessed 23 February 2023

Mohammed Jahirul Islam (2019)⁶ stated that “Socio-psychological Conditions of the Rape Victims: An Exploratory Study of Tangali District, Bangladesh” The author reveals in his writings that most of the vulnerable sections of our society and those whose economic condition is in crisis are victims of incidents like rape and they are being humiliated, deprived, mentally disturbed in various ways and the society is not accepting them. But the author has not made any legal discussion about the safety of these lower-class people. In this research, I will mention the legal role of ensuring the safety of all those classes of people.

Jerich M Hocketton and others (2015)⁷ Research Article of A Systematic Literature Review of Rape Victims versus Rape Survivors: Implications for Theory, Research, and Practice.’ Discussed here that a woman who is a victim of rape is emotionally barred from society in the aftermath of rape. After being raped, our society does not accept him but she has to be harassed in various ways. Even if a victim of rape gets a legal solution, after the rape he has to go through various unfavorable environments in society which the law fails to solve. In this research, I mentioned the legal role of a rape victim in protecting her later life.

M E Khan and others (2010) In his online journal ‘Situation analysis of care and support for survivors at the first point of contact in India and Bangladesh’, The author mentions in their article that in our society, if a woman is a victim of rape, she has to go through the legal process and medical examination, so there discusses how the victim should be treated. But here the author fails to give any legal solution which I have mentioned in my research.

⁶ Mohammed Jahirul Islam, ‘Socio psychological study on Rape Victims. An Exploratory Study on Tangail Districts Bangladesh’ (*Researchgate*, 2019) <https://www.researchgate.net/publication/334108674_Socio-psychological_Study_on_Rape_Victims_An_Exploratory_Study_on_Tangail_Districts_Bangladesh> accessed 06 March 02023

⁷ Jericho M Hockett & Donald A Saucier, ‘A Systematic Literature Review of “Rape Victims” versus “Rape Survivors”: Implications for Theory, Research, and Practice’ (*Researchgate*, July 2015) <https://www.researchgate.net/publication/280051149_A_Systematic_Literature_Review_of_Rape_Victims_Versus_Rape_Survivors_Implications_for_Theory_Research_and_Practice> accessed 06 March 02023

METHODOLOGY

My research has been done through detailed analysis. My research discusses and analyses the social context of Bangladesh, the interpretation of the rape law, the enforcement agencies, the concerned agencies, the complexity of the judicial system, etc to ensure the rights of rape victims. Data have been collected from primary sources and secondary sources to complete the research to prevent rape in Bangladesh. Information from online media, news portals, online desks, statistics, etc was gathered to complete the research. The research can assist in looking for solutions to issues like rape in the contemporary social environment. This study has been done through the analytical method. My research has been done following qualitative and quantitative methods. Relevant legal provisions and various necessary information have been collected from various sources

Primary sources include state law, statutory provisions, the constitution, and all related laws and the context of law enforcement agencies and the judiciary. In addition to collecting secondary information from various books and discussing the misuse of laws and statutory provisions, various national and international journals will be followed in the respective regions. Data will be presented in this study based on different research work. Some sources, statistics, newspapers, and articles will follow as sources. Data from various websites will also be used in the research.

CONCEPTUAL ANALYSIS AND BACKGROUND OF THE STUDY

What is Rape?

Generally, Rape is a form of sexual assault or usually a form of sexual harassment. Rape is any act of sexual intercourse or another sexual intrusion without the consent of a person. Rape can be caused by physical force, other forms of coercion, or abuse of power. During sexual intercourse, one has to do the work by being forced by another person against one's will.⁸

⁸ Carol E Tracy et al., 'Rape and Sexual Assault in the Legal System' (*Women's Law Project*, 2013) <<https://www.womenslawproject.org/wp-content/uploads/2016/04/Rape-and-Sexual-Assault-in-the-Legal-System-FINAL.pdf>> accessed 06 March 2023

According to the Penal Code, Chapter XVI of Section 375 defines rape⁹. This section defines rape as having sexual intercourse with a woman in five situations such as sexual intercourse without a will, sexual intercourse without consent, consensual sexual intercourse by fear of death or injury, consensual sexual intercourse when the woman believes that the person is her legal husband but the person knows that he was not her legal husband, sexual intercourse with consent and without consent would not matter if the woman was less than fourteen years of age. In other words, even if a woman under the age of fourteen agrees to have sex, it also will be rape. It is further added in this section that penetration will be sufficient to constitute a crime of sexual intercourse or rape. There is an exception in this section, the exception being that sexual intercourse by a man with his wife would be considered rape if the wife is under thirteen years of age.

And the Nari-O-Sisu Nirjaton Domon Ain Section 9(1) also refers to rape if a man marries a woman over the age of sixteen without her consent or through intimidation or fraudulently obtaining her consent, or with a woman under the age of sixteen. If he has sexual intercourse with or without her consent, then he will be considered to have raped the woman.

In **Najim Uddin (Md.) v State**¹⁰ case it has referred to consensual sexual intercourse will not be counted as 'Rape'. Consensual sexual intercourse will not count as 'Rape' under section 375 and will not provide punishment under Nari-O-Sishu Nirjaton Domon Ain, 2000 under section 9 (1). The circumstances of this case do not attract Section 375 of the Penal Code. Thus the mischief of section 9 (1) is not attracted.

In the case "**Sanjay Kumar Biswas v State**"¹¹ provide judgment was given in favor of the appellant. In the case, the court said, both the accused and the victim were adults. The sexual intercourse took place with the consent of both. The case lacked coercion or fraudulent behavior. The accused was excused from the case as there was a lack of evidence of rape in the case.

⁹ Bangladesh Penal Code 1860, ch XVI, s 375

¹⁰ *Najim Uddin (Md) v State* DLR 235 (2017)

¹¹ *Sanjay Kumar Biswas v State* DLR 185 (2016)

CURRENT SCENARIO OF RAPE IN BANGLADESH

Considering the various statistics, it can be seen that the number of rapes is gradually increasing in Bangladesh. Although the government has taken various important steps to curb the number of rapes it is not having much effect on this number. Various social media and national and international organizations have repeatedly presented their numbers of statistics to the government through their surveys so that the government can try to solve it. Now the following figures are presented in various tables, charts, and graphs given below:

The Statistic of Bangladesh Mohila Parishad:-

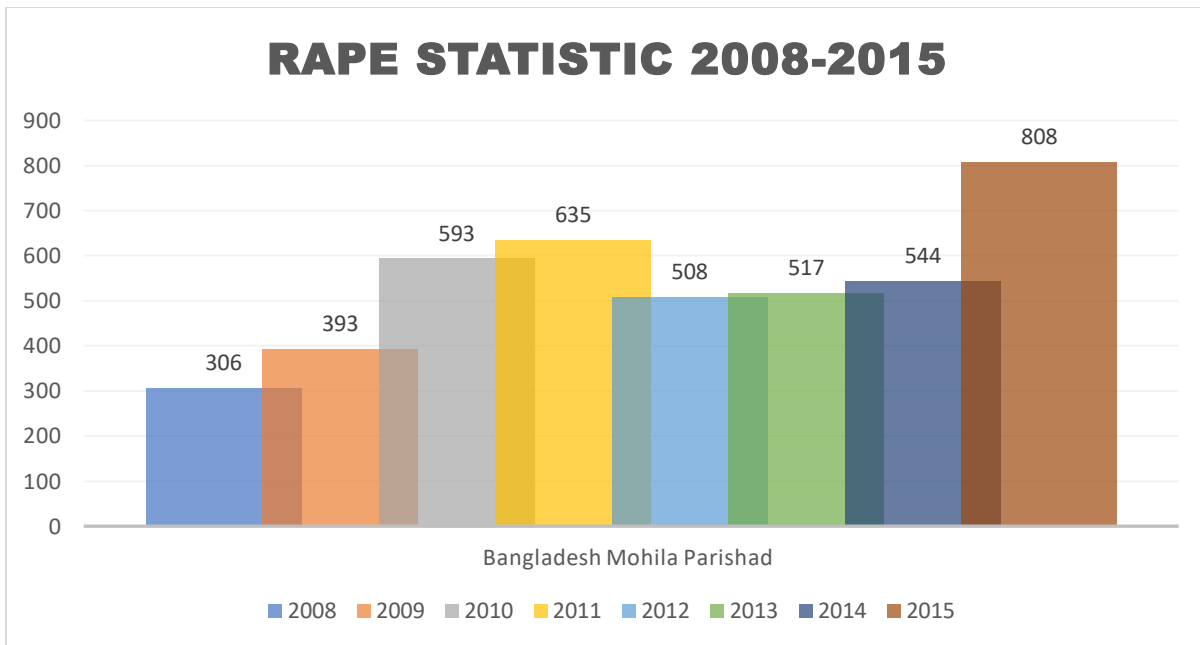


Figure: Bangladesh Mohila Parishad Rape Statistics 2008-2015¹²

The number of rapes is gradually increasing. The statistics of Bangladesh Mahila Parishad¹³ based on the information published by 14 national dailies say, 306 victims of rape in 2008, 393 victims of rape in 2009, 593 victims of rape in 2010, 635 victims of rape in 2011, 508 victims of rape in 2012, 517 victims of rape in 2013, 544 victims of rape in 2014, 808 victims of rape in 2015¹⁴.

¹² 'Main Page' (Bangladesh Mohila Parishad) <<http://mahilaparishad.org>> accessed 15 February 2021

¹³ *Ibid*

¹⁴ *Ibid*

The statistics of Ain O Shalish Kendra:-

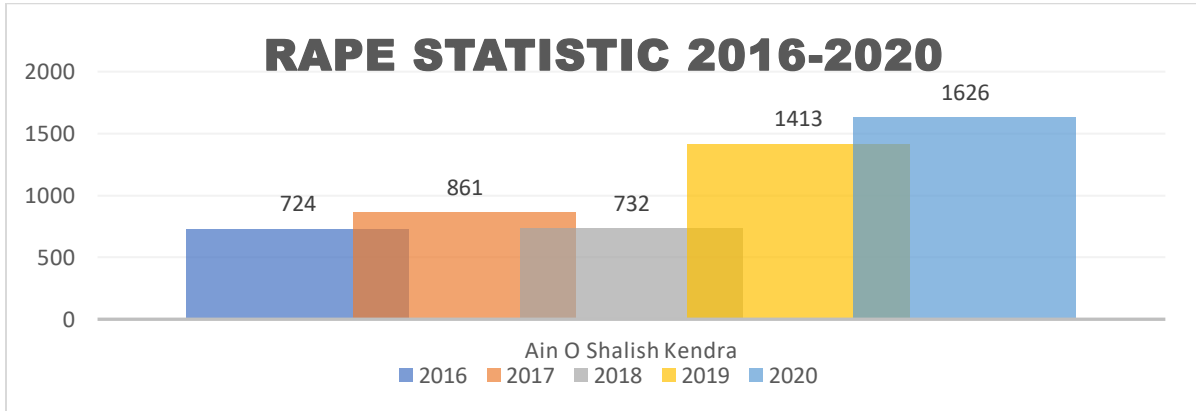


Figure: Ain-O-Shalish Kendra Rape Statistics 2016-2020¹⁵

The statistics of Ain O Shalish Kendra¹⁶ were 724 victims of rape in 2016, 861 victims of rape in 2017, 732 victims of rape in 2018, 1413 victims of rape in 2019, and 1626 victims of rape in 2020¹⁷. According to the data, from 2016 to 2020, violence against women is on the rise. Which has mentioned the statistics of certain organizations.

The statistic for Rape from January 2001 to December 2019:-



Figure: Odhikar Rape Statistic 2001 to 2019

¹⁵ Ain O Salish Kendra (ASK), 'Rape Statistics2016-2020' (OHCHR) <<https://www.ohchr.org/sites/default/files/2022-01/bangladesh-1-ask.docx>> accessed 11 February 2021

¹⁶ Ibid

¹⁷ Ibid

Statistics of rape from 2001 to 2019 are shown in three parts such as; there are statistics on women, statistics on children, and another number where it is not possible to determine the age. Among the above-mentioned statistics of rape are 622 in 2001, 1350 in 2002, 1336 in 2003, 896 in 2004, 907 in 2005, 639 in 2006, 459 in 2007, 454 in 2008, 456 in 2009, 559 in 2010, 711 in 2011, 805 in 2012, 814 in 2013, 666 in 2014, 789 in 2015, 757 in 2016, 783 in 2017, 635 in 2018, and 1080 in 2019. According to the data, from 2001 to 2019, a total of 14718 rapes have taken place.

The statistic for Rape from 2011 to 2019:-

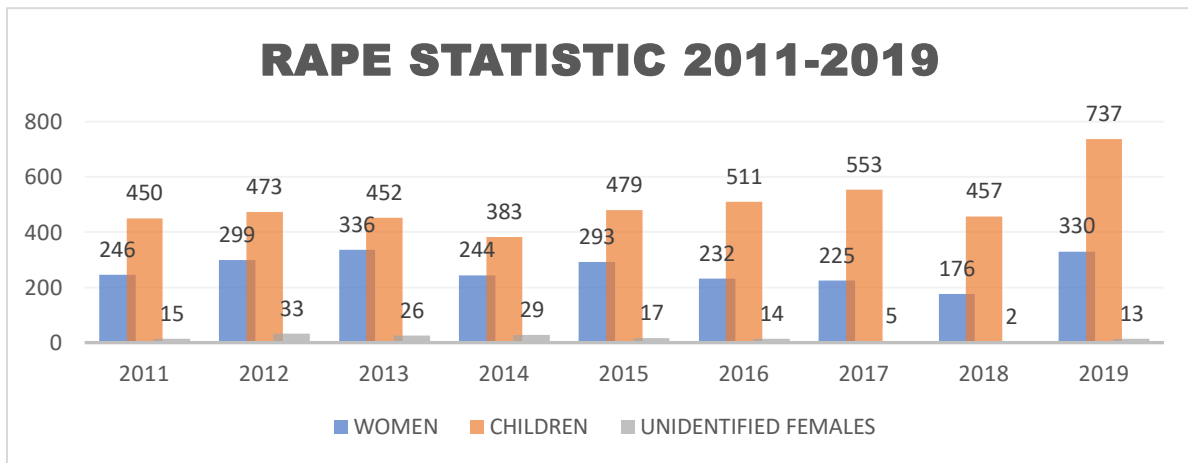


Figure: Odhikar Rape Statistics 2011 to 2019

In the above data, the data for rape statistics of women, children, and those whose age could not be determined from 2011 to 2019 has been highlighted through statistics. As per data, 246 women and 450 children and 15 unidentified females were raped in 2011, 299 women and 473 children and 33 unidentified females were raped in 2012, 336 women and 452 children and 26 unidentified females were raped in 2013, 244 women, 383 children, and 29 unidentified females was rape in 2014, 293 women and 479 children and 17 unidentified females was rape in 2015, 232 women and 511 children and 14 unidentified females was rape in 2016, 225 women and 553 children and 5 unidentified females was rape in 2017. 176 women and 457 children and 2 unidentified females were raped in 2019, and 330 women and 737 children and 13 unidentified females were raped in 2019. From 2011 to 2019, there have been more cases of child rape than women.

The statistic for Rape from 2001 to 2010

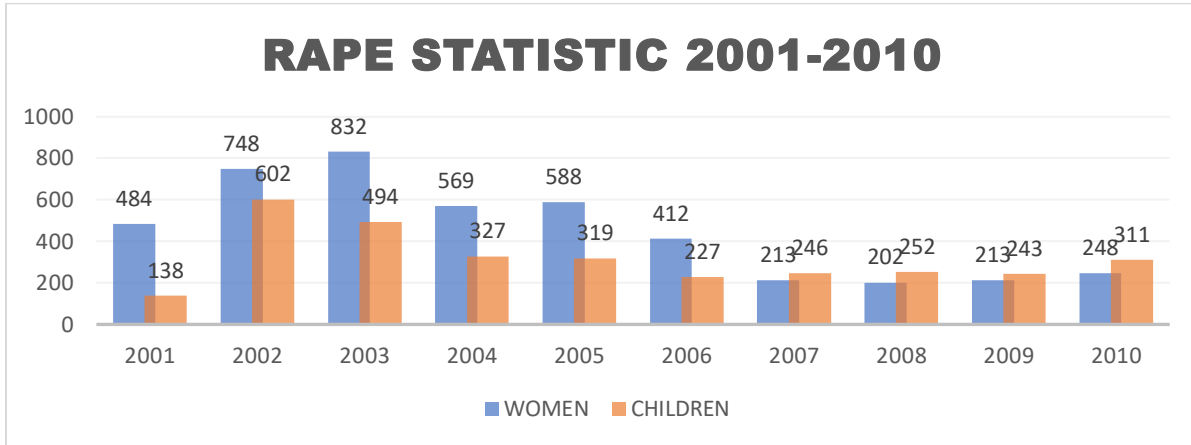


Figure: Odhikar Rape Statistic 2001 to 2010

The above data shows the statistics of rape of women and children from 2001 to 2010. The data included 484 women and 138 children who were raped in 2001, 748 women and 602 children who were raped in 2002, 832 women and 494 children were raped in 2003, 569 women and 327 children were raped in 2004, and 588 women and 319 children were rape in 2005. 412 women and 227 children were raped in 2006, 213 women and 246 children were raped in 2007, 202 women and 252 children were raped in 2008, 213 women and 243 children were raped in 2009, 248 women and 311 children were raped in 2010. From 2001 to 2010, women were more likely to be raped than children.

The Curve for Rape Statistic from 2001 to 2019:-

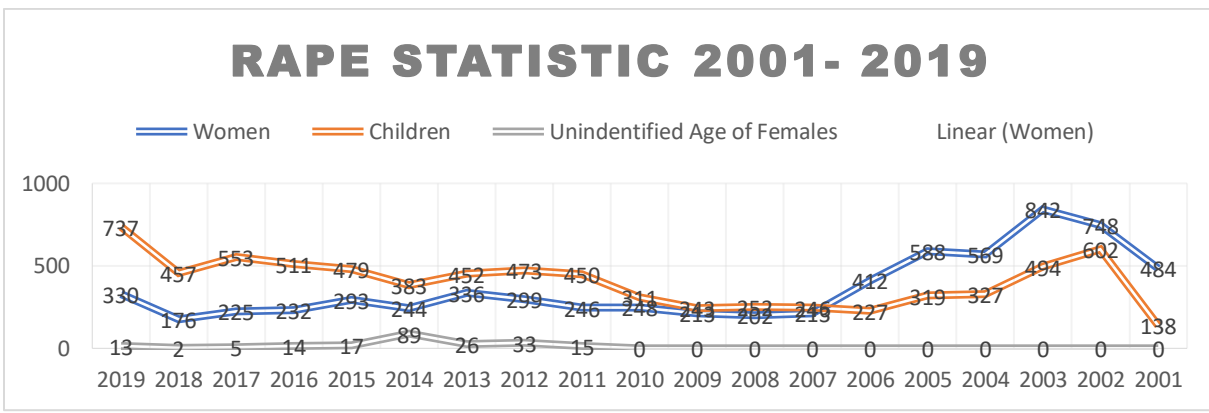


Figure: Odhikar Rape Curve Statistic 2001 to 2019

Based on the above data, it can be seen that the total number of rapes from 2001 to 2019 was 14718. There was a total of 622 rapes in 2001 of which 434 were women and 138 were children. This is a total of 622 victims which is the lowest in the last 15 to 20 years. According to the data mentioned in 2002, the highest number of 1350 people have been raped in Bangladesh. Out of 1350 people, 748 were women, and 602 were children. The total number of rapes is 1350 which is more than in the last 20 years. In 2012 total rapes were 805 and of which 299 were women and 473 were children and 33 victims were not determined to be their age in 2019 total rape incident occurs 1080 and of which 330 were women and 737 were children and 13 victims was not determined age. The number of rapes in Bangladesh is increasing which is a threat to society.

The statistic for Gang Rape from January 2007 to December 2019:-

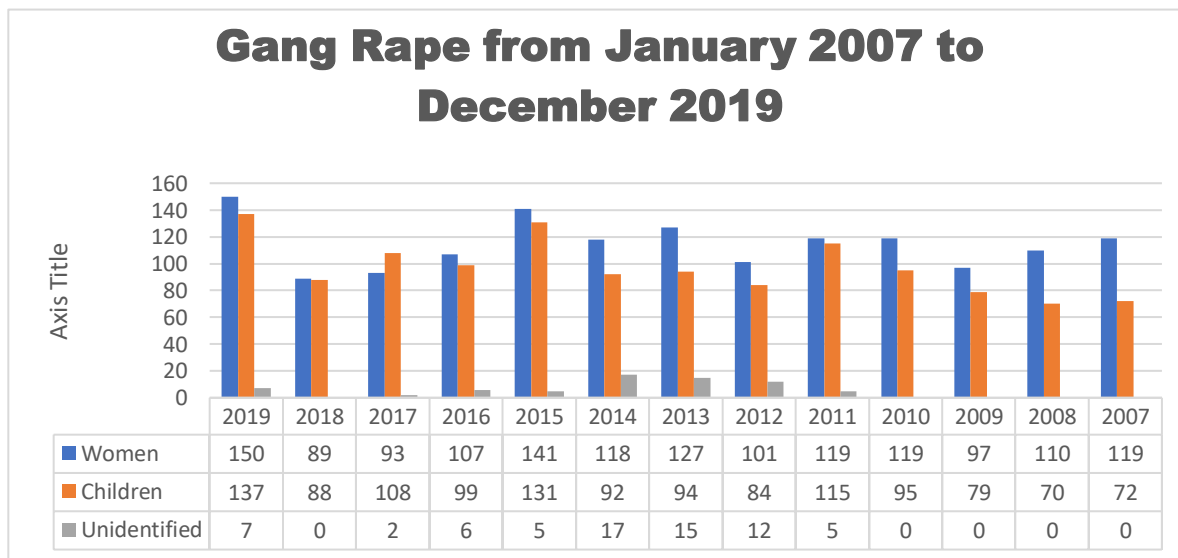


Figure: Odhikar Rape Statistic for Gang Rape from 2007 to 2019

The data above shows the statistics of rape of women, children, and those whose ages cannot be ascertained from 2007 to 2019. According to the data, A total of 294 rape victims including 150 women and 137 children and 7 unidentified women were reported in 2019, A total of 177 rape victims, including 89 women and 88 children, were reported in 2018, A total of 203 rape victims including 93 women and 108 children and 2 unidentified women were reported in 2017, A total of 212 rape victims including 107 women and 99 children and 6 unidentified women were

reported in 2016, A total of 277 rape victims including 141 women and 131 children and 5 unidentified women were reported in 2015, A total of 227 rape victims including 118 women and 92 children and 17 unidentified women were reported in 2014, A total of 236 rape victims including 127 women and 94 children and 15 unidentified women were reported in 2013, A total of 197 rape victims including 101 women and 84 children and 12 unidentified women were reported in 2012, A total of 239 rape victims including 119 women and 115 children and 5 unidentified women were reported in 2011, A total of 214 rape victims, including 119 women and 95 children, were reported in 2010, A total of 176 rape victims, including 97 women and 79 children, were reported in 2009, A total of 180 rape victims including 110 women and 70 children were reported in 2008, A total of 191 rape victims including 119 women and 72 children were reported in 2007. From 2007 to 2019, a total of 2823 rape victims including 1490 women, 1264 children, and 69 unidentified women.

The curve for Gang Rape Statistics from 2007 to 2019:-

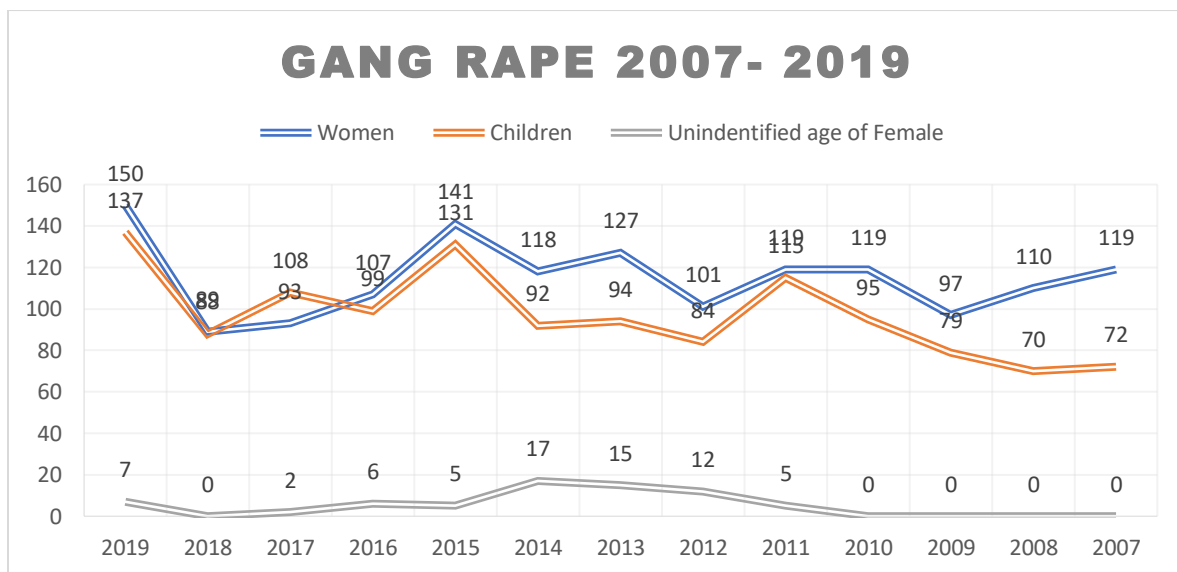


Figure: Odhikar Curve for Gang Rape Statistics 2007 to 2019

Based on the above data, it can be seen that the total number of gang rapes from 2007 to 2019 was 2823. There was a total of 176 gang rapes in 2009 of which 97 were women and 79 were children. This is a total of 176 victims which is the lowest in the last 10 to 12 years. According to

the data mentioned in 2019, the highest number of 294 people have been gang raped in Bangladesh. Out of 294 people, 150 were women, 137 were children and it was not possible to determine the age of 7 people. The total number of gang rapes is 294 which is more than in the last 10 years. The number of gang rapes in Bangladesh is increasing which is a threat to society.

Statistic for Rape by Law Enforcement Agencies:-

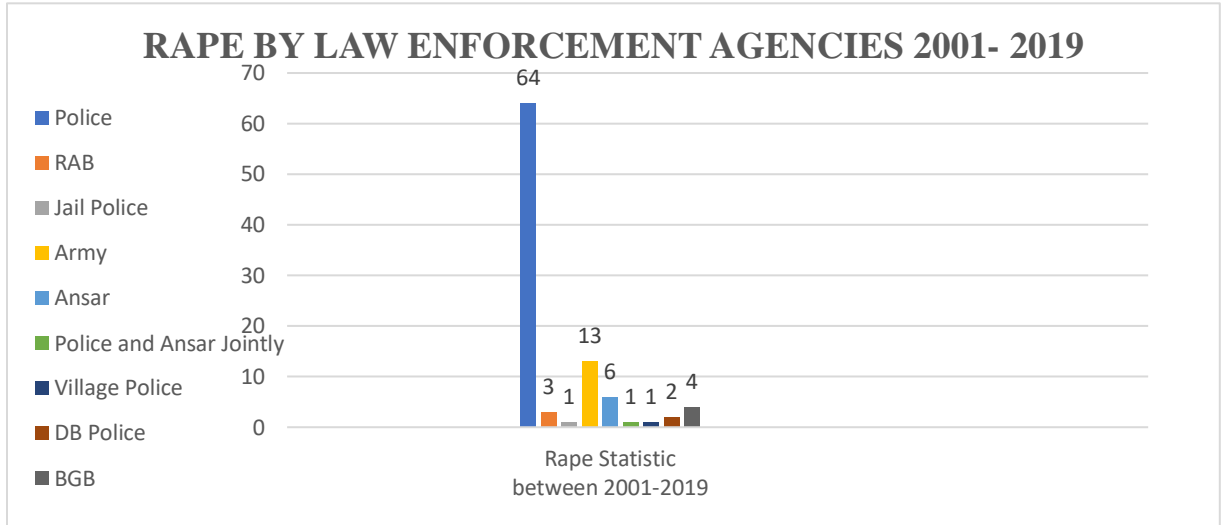


Figure: Odhikar Statistic for Rape by Law Enforcement Agencies (2001-2019)

According to the data from 2001 to 2019, there have been incidents of rape among law enforcement agencies. Law enforcement agencies include Police, RAB, Jail Police, Army, Ansar, Police and Ansar jointly, Village Police, DB Police, and BGB. A total of 95 people were raped between 2001 and 2019. Of these, 64 are from Police, 3 from RAB, 1 from Jail Police, 13 from Army, 6 from Ansar, 1 from Police and Ansar jointly, 1 from Village Police, 2 from DB Police, and 4 from BGB. It is worth mentioning the number of rapes among the police in the mentioned statistics.

REASONS FOR INCREASING RAPE SITUATION IN BANGLADESH

Reasons for the increasing rape situation in Bangladesh are given below:

- Social and economic class inequality in our society is one of the contributors to the increase in rape.

- Inequality between men and women, the subordinate attitude of women towards men, and disrespect towards women increase rape in society.
- Most women in our society are not aware of themselves. Women in rural areas do not know about their protection under our state law. It is also often seen in urban areas that women do not know the legal context very well. As a result, women are not able to protect themselves from rape.
- In many cases, law enforcement agencies are failing to fully enforce the law in cases such as rape. The lack of coordination between law enforcement agencies and the judiciary is an important issue. Which requires the necessary processes to solve and an increase in overall awareness which can solve¹⁸.
- The failure to properly enforce the law, the complexity of the judiciary, and the distrust of criminals towards the judiciary which is increasing rape.
- Young people are frustrated by the increasing complexity of today's society which is leading to an increase in crime among them which is another reason for the increase in rape.¹⁹
- Women are blamed for the rape. As a result, in many cases, the victim loses confidence in legal remedies which have an impact on the judiciary²⁰. All these things benefit a rapist, in which the rapists are acquitted in various ways. This in turn increases the crime propensity in society which increases rape. Because of the complexity of the justice system, perpetrators feel that their crimes will not be tried which is increasing the rape.
- Rape is on the rise due to free association between boys and girls and parents not monitoring their sons and daughters.

¹⁸ Bangladesh Legal Aid and Services Trust (BLAST), 'Conference Report 'RAPE LAW REFORM IN BANGLADESH' (BLAST, December 2018) <<https://www.blast.org.bd/content/publications/BLAST-RLR-Conference-Report.pdf>> accessed 06 March 02023

¹⁹ *Ibid*

²⁰ Van der Bruggen & Amy Rose Grubb, 'Rape victim blaming: An analysis of the impact of observer and victim characteristics on attribution of blame in rape cases' (*Researchgate*, November 2014) <https://www.researchgate.net/publication/264426732_A_review_of_the_literature_relating_to_rape_victim_blaming_An_analysis_of_the_impact_of_observer_and_victim_characteristics_on_attribution_of_blame_in_rape_cases> accessed 06 March 02023

- An easy opportunity to watch porn online which is addictive to pornography is increasing rape in society.
- There is inadequacy in the police force which results in the police also failing to perform their proper duties. The effect of this is on the police investigation which later benefits the criminals.
- These range from family members' reluctance to take legal action against a complainant due to fears of impending rape, their inability to deal with opposition from influential community leaders, pressure to participate in informal arbitration, and out-of-court settlement.
- The rise in rape cases is due to extreme moral decay, the availability of pornographic images on mobile phones, the proliferation of drugs, the limitations of rape-related laws, obstruction of justice, delays in justice, and some cases lack of justice.

All of these issues prevent the proper implementation of the law, which in turn leads to an increase in the incidence of rape in society.

THE EXISTING LAWS AND LEGAL SYSTEM OF BANGLADESH FOR PROTECTING RAPE

Women's Protection and Rape Laws: Many forms of rape have evolved in existence such as marital rape, male rape, child rape, homosexuality, and rape of people of the same sex but our law is silent on many issues. The laws of our country usually seek to control criminal organizations by imposing high punishments, on the one hand, it is a wrong approach, and on the other hand along with the law, communication, technology, training, law enforcement, and the formation of judicial courts. There are several laws for protecting rape in Bangladesh which are listed below:

- Nari-O-Sishu Nirjaton Domon Ain, 2000;
- Penal Code 1860.

Above mentioned laws have discussed the interpretation of rape and the rape justice system and the punishment for rape. Paribarik Shohinshota (Protirodh O Surokkha) Ain, 2010 /

Domestic Violence (Prevention and Protection) Act, 2010 related law that also plays a role in preventing violence against women.

Paribarik Shohinshota (Protirodh O Surokkha) Ain, 2010 / Domestic Violence (Prevention and Protection) Act, 2010 - In a family where every man is sheltered, a woman is seen to be a victim of violence from her family. Since a woman is much weaker physically and more muscular than a man, the dominance of men over women is seen everywhere. Violence against women is more prevalent through immodesty and sexual abuse as rape. In this act section 3(c) mentions that "Sexual abuse" also includes sexual behavior that harms the dignity, honor, or reputation of the victim. So I mentioned this law here.

CERTAIN PUNISHMENTS UNDER RAPE LAWS

Law of Rape, Punishment under different laws in different contexts in the laws of Bangladesh is discussed given below -

- **The Penal Code, 1860**

Punishment for Rape: Under section 376 of the Penal Code, rape is punishable by maximum life imprisonment and fine, and the same punishment if a person rapes his wife under the age of twelve. However, if they rape a woman between the ages of twelve to thirteen, they can be sentenced to a maximum of two years in prison or a fine, or both²¹. (Section 376).

Unnatural offenses: Male rape, homosexuality, and others under Section 377 of the Penal Code deal with unnatural offenses²². If a person has sexual intercourse with a man, a woman, or an animal against the laws of nature, he or she will be sentenced to life imprisonment, or ten years of rigorous or non-rigorous imprisonment, and with a fine. (Section 377)

- **The Nari-O-Sishu Nirjaton Domon Ain, 2000**

²¹ Bangladesh Penal Code 1860, ch XVI, s 376

²² Bangladesh Penal Code 1860, ch XVI, s 377

Penal Code is our general law, but we also have a special law called "Nari-O-Sishu Nirjaton Domon Ain, 2000". This law has been enacted due to the prevalence of violence against women. Due to the procedural reasons of this law, almost all the allegations of rape are made to the Nari-O-Sishu Nirjaton Domon Tribunal under the Nari-O-Sishu Nirjaton Domon Ain, 2000". In the wake of a spate of rapes in 2020, the government quickly drafted an amendment to the Nari-O-Sishu Nirjaton Domon (Amendment) Ordinance, 2020 in response to the will of the people. Where the maximum punishment for rape is death. Punishment under "The Nari-O-Sishu Nirjaton Domon Ain, 2000 given below -

- Nari-O-Sishu Nirjaton Domon Ain, 2000²³ which deals with the punishment of rape, death by rape, etc has been said. According to this section 9, if a man rapes a woman or a child, he will be sentenced to death or life imprisonment, and in addition to that, he will be punished with an additional fine (Section 9)²⁴.

In the case **Sree Pinto Pal v State**²⁵ case was accused of raping a 17-year-old girl. The victim's father filed a case under Section 9 (1) of the Nari O Shishu Nirjatan Daman Ain 2000 against Pinto Pal for forcibly abducting and raping the victim. Which is fully proven in the trial court. The trial court convicted Pal under Section 9 (1) of the Act 2000 for rape and sentenced him to life imprisonment and a fine of 5,000 tk.

- If a raped woman or child dies as a result of rape or other misconduct by a person after the rape, the person will be sentenced to death or life and rigorous imprisonment and an additional fine of at least one lakh taka (Section 9)²⁶.

In the case of **Uzzal Alias Hossain v State**²⁷, a teenager was gang raped by the accused. During the gang rape, the accused took pictures and threatened to see the victim's father so that he would not file any case. The victim committed suicide in self-respect when the accused refused to return the relevant pictures. The trial court found the accused guilty under section 9 (2) of the

²³ Nari-O-Sishu Nirjaton Domon Ain 2000, s 9

²⁴ *Ibid*

²⁵ *Sree Pinto Pal v State* 30 BLD (HCD) (2010) 220

²⁶ Nari-O-Sisu Nirjaton Domon Ain 2000, s 9

²⁷ *Uzzal Alias Hossain v State* 59 DLR (HCD) 505

Nari O Shishu Nirjaton Domon Ain, 2000. Because Victim later died of involvement in the rape-related matter.

- If more than one person gang rapes a woman or a child and the woman or child is killed or injured as a result of the rape, each person will be sentenced to death or life imprisonment and an additional fine of one lakh taka (Section 9)²⁸.

The case **State v Bidhan Chandra Roy**²⁹ discusses murder as gang rape. Under Nari-O-Sishu Nirjaton Domon Ain, 2000, section 9(3), if a victim is gang-raped and killed, then he will be tried. In the case, the court said that to convict the accused under Nari-O-Sishu Nirjaton Domon Ain, 2000, section 9 (3), the court has to prove that the victim died after being raped by more than one person. However, in this case, it failed by the prosecution had to prove the death as a result of gang rape, so the accused was sentenced under the penal code.

- If a person attempts to kill or injure a woman or child by raping her, he is liable to death or life imprisonment, in addition to the fine, and if a person attempts to rape, he is liable to imprisonment for a term not exceeding ten years but not less than five years. It will be punishable and will also be punishable with additional fines (Section 9)³⁰.
- If a woman is raped while in police custody, the person or persons who committed the rape while in custody were directly responsible for the custody of the raped woman, she or they each, unless proven otherwise, for a failure of custody, not more than ten years. He will be punishable with a minimum of five years of rigorous imprisonment and an additional fine of at least ten thousand takas (Section 9)³¹.

Composition and Jurisdiction of the Court: The Code of Criminal Procedure, 1898 under section 6 mentions the types of criminal court. Section 28 (c) of the Code of Criminal Procedure provides that any offense committed under the Penal Code shall be tried in the Court prescribed under Column 8 of the 2nd Schedule. So according to this, trial courts for offenses under Sections

²⁸ Nari-O-Sisu Nirjaton Domon Ain 2000, s 9

²⁹ *State v Bidhan Chandra Roy* 66 (HD) DLR 500 (2014)

³⁰ Nari-O-Sisu Nirjaton Domon Ain 2000, s 9

³¹ *Ibid*

376 and 377 will be: Chief Metropolitan Magistrate, Chief Judicial Magistrate, or Additional Chief Judicial Magistrate and specially empowered by the Government on that behalf. The Nari-O-Sishu Nirjaton Domon Tribunal will be formed in each district under section 26 of the Nari-O-Sishu Nirjaton Domon Ain, 2000. All offenses under Nari-O-Sishu Nirjaton Domon Ain will be tried in this said tribunal.

Process duration of investigation and trial: Although there is a separate tribunal to try rape cases, there is no specialized system for investigation. According to Section 18 of the Nari-O-Sishu Nirjaton Domon Ain, 2000, the investigation must be completed within 90 days.³² Otherwise, the reasons for not completing the investigation must be recorded and the concerned regulatory authority or the tribunal ordering the inquiry must be informed. The law also mentions a specific time frame for the trial of rape cases. Nari-O-Sishu Nirjaton Domon Ain, Section 20 of the 2000 Act states that the tribunal must complete the trial within 180 days of receiving the case.³³ If the trial starts again, it should be continued every working day till it is over. If no decision is reached within this period, the tribunal will have to submit a report to the Supreme Court within 30 days stating the reasons; a copy of which must be sent to the government.

Legal Proceeding: The trial of a criminal case has to be done through several stages. Since rape is a criminal offense, the trial of a rape case will be conducted through a criminal process. Therefore, we can say that according to the criminal case, the trial of the rape case will be completed through three stages. These three processes are the Pre-Proceeding stage / Pre-Trial, Proceeding stage / Trial, and Post Trial. These three stages are discussed below:

1. Pre-Proceeding stage / Pre-Trial: The legal process will start from this stage after the rape has taken place. At this stage, the entire work will be the responsibility of the police. At this stage, the police will investigate the incident. The tasks at this stage are mentioned below:

³² Nari-O-Sisu Nirjaton Domon Ain 2000, s 18

³³ Nari-O-Sisu Nirjaton Domon Ain 2000, s 20

- After being raped, the victim will go to the police station and file a case through FIR. If the police deny lodging an FIR then the victim can go to court direct and file a case.
- Once the case is filed, the police will start investigating the incident and the police will maintain the diary during the investigation.

FIR is not a substantive piece of evidence, it is the information or document based on which police will start their investigation. In this stage police search for finding out more clues and physical evidence linking to the commission of the offense. This stage of the proceeding is the state of collection and selection of evidence. Police will collect and retain evidence in the following forms:

- Seizure list which will contain the list of all physical evidence; and
- Statements recorded under section 161 of the Criminal Procedure Code.

The role of evidence at this state is passive, it is the performance of the investigation at this stage, which will build up or cement the whole pace of the subsequent course of trial and conviction or acquittal. The case **Naripokkho and Others v Bangladesh and others**³⁴, provided some important observations about filing a rape case with the police station. Such as:

- The information and complaints of victims of sexual harassment should be recorded without delay and any discrimination.
- A female duty officer who is not below the rank of constable in each police station should record the victim's complaint and take immediate action and be tolerant of the victim's family.
- The identity of the victim should be kept secret.
- The victim's statement should be recorded in the presence of his or her nominated lawyer or friend or social worker or security officer. The legal rights of the victim should be made aware and any kind of request can be made if necessary.

³⁴ *Naripokkho & Ors v Bangladesh & Ors* Writ Petition 5541 of 2015

2. Proceeding stage / Trial: After investigating at the pre-trial stage, if the police do not find the truth of the allegation in the name of the accused, the complainant will file a final report and Naraji Petition in court. And if a complaint is found in the name of the accused, then a charge sheet will be given. After receiving the charge sheet, the case will be sent to the trial court. We already know that the rape cases will be tried in the Nari-O-Sishu Nirjaton Domon Tribunal constituted under Section 26 of the Nari-O-Sishu Nirjaton Domon Ain. The trial at this stage is shown below:

Opening of the Prosecution Case - Trial, the Prosecution Lawyer will present the case to the court by describing the whole incident that happened to the victim, and the Prosecution Lawyer will be able to say what information will prove the accused guilty.

Pre-trial Hearing / Discharge before Framing of Charge - The court will release the accused here if the involvement of the accused in the rape charge in the pre-trial hearing is not found in the investigation report by the police.

Framing of Charge - If the police report finds the involvement of the accused in the rape case, then the court will frame the charge against the accused.

Examination in Chief and Cross Examination - The prosecution Lawyer will present various witnesses, data, and evidence to prove the rape case and will prove it. Many witnesses are needed to prove a rape case. For example, medical certificate and DNA certificate is important as information, and all these certificates can be taken as evidence by a doctor who has done them medically.³⁵

Under Section 161 of the Code of Criminal Procedure 1898, the police took the statement of a witness from the vicinity of the scene which was presented to the court by the Prosecution Lawyer as a witness. During the interrogation of the case, the accused often blamed himself. Under Section 164 of the Code of Criminal Procedure 1898, if an accused has given a confessional statement in compliance with the rules, it is important evidence for this case. Under Section 164

³⁵ Dr. Md Abdur Rahim Mia, 'Role of Doctors in the Criminal Proceeding of Bangladesh with Special Reference to Women's Access to Justice' (2013) 7(5) IOSR Journal of Humanities and Social Sciences 1

of the Code of Criminal Procedure 1898, if the accused wants to plead guilty or make a confessional statement, the evidence of the accused must be taken in writing in the presence of the Magistrate as per the provisions of Section 364 of the Act. Defendant's testimony will be conclusive proof as per Section 4 of the Evidence Act, of 1872. The testimony of the magistrate who testified, in this case, is important evidence before the court.

Summing Up / Closing of the Prosecution and Defence Case - The prosecution lawyer and defense lawyer's witness testimony is over, i.e. examination in chief and cross-examination is over. The accused will be punished or will not be punished.

Judgment of Acquittal or Conviction - At the end of the full trial, if the allegation of the accused person is proved, he will be punished and if the complaint is not proven, he will not be punished. If convicted here, the judge will punish according to the law.

3. Post-Proceeding stage / Post-Trial: If the allegation of the accused is not proven then all the allegations against the accused will be dismissed and the accused will be released from the case. The court will send the release paper of the accused to the jail authorities. And if the allegation of the accused is proven, the court will order the jail authorities to accept all the allegations against the accused and punish the accused.

Provisions in case of rape by the husband: The crime of rape by a husband is very sensitive. Section 561 of the Code of Criminal Procedure, 1898 lays down special provisions for inquiry, investigation, trial, and other matters after receiving a complaint of rape by the husband. Section 561 mentions that the case of rape by the husband shall be handled by the Chief Metropolitan Magistrate or the Chief Judicial Magistrate. That is, no one other than the Chief Metropolitan Magistrate or the Chief Judicial Magistrate can handle the case of rape by the husband. Section 561 also provides that no one below the rank of Inspector of Police has jurisdiction to investigate a complaint. That is, someone of the lowest rank of police inspector will investigate the case.

GAPS AND CHALLENGES REGARDING RAPE LAWS IN BANGLADESH

Lacking Rape Definition: The definition of rape in the Penal Code, section 375 under our criminal law has given precedence to gender discrimination. Under this section, only rape of women has been given priority, and in some cases, children. Although the Penal Code mentions penetration in the definition of rape, it is not defined in any way. Moreover, the definition of consent in this definition fails to explain how consent can be proved. As a result, the Code of Criminal Procedure still requires evidence of physical resistance to rape. Although the law mentions women and female children, it does not mention the issue of deadly sexual violence against male children.³⁶ If there is sexual violence against men, these cases can only be accepted by the court as cognizable cases under "unnatural offenses".

The above-mentioned rape law has failed to ensure that sexual offenses against transgender people are prosecuted under the rape law. Rape cases do not recognize marital rape in this definition.³⁷ Fraudulent promises of marriage are not addressed as rape in our provisions and deceptive cohabitation is somewhat addressed but does not include rape. This definition of the penal code does not constitute rape if a married child of 13 years of age or older has consensual sexual intercourse with her. Which is in opposition to the country's child marriage control law.

Delay in handling the case: There are several important reasons for the delay in rape cases. The law sets a time limit for the investigation and trial of rape cases. The case is delayed when it is not possible to complete the investigation and trial within the stipulated time. This is discussed below:

1. Investigation: When a rape case is filed in a police station or court, the first thing that matters is the investigation. Section 18 of our Nari-O-Sishu Nirjaton Domon Ain, 2000 sets the scope of the investigation at 90 days.³⁸ If it is not possible to complete the investigation within 90 days as stipulated in the law, the reason for not completing the investigation should be recorded and the concerned controlling authority or the tribunal ordering the investigation should be

³⁶ Bangladesh Legal Aid (n 18)

³⁷ *Ibid*

³⁸ Nari-O-Sishu Nirjaton Domon Ain 2000, s 18

informed. It can be seen that the investigation of most of the cases cannot be completed within 90 days. Failure to complete the investigation on time will hurt the progress of the ongoing case. In other words, the case has become slow. The main reasons for not being able to complete the case within the stipulated time are- insufficient investigation officers, and reluctance to investigate the rape case. If the investigation is not completed on time, then there is no need for strict accountability under the law. As a result of not giving accountability, the law did not allow them to take any action against them.

2. Trial: The law specifies the time frame for the trial of rape cases. The trial must be completed within 180 days as per Section 20 of Nari-O-Sishu Nirjaton Domon Ain, 2000.³⁹ Once the trial has started in court, it has to be continued every working day till it is over. If the rape case is not disposed of within 180 days, the tribunal will have to submit a report to the Supreme Court within 30 days stating the reasons and send a copy to the government. The main reason for mentioning 180 days in the law was to settle rape cases in a speedy trial. But due to various complications of the judicial process, the case is not being disposed of in time.

One of the weak points in the investigation of rape cases is that the police, along with many other cases, investigate cases of rape or abuse of women and therefore it takes a long time. Now the problem is that the person who is doing the investigation is taking time to investigate. He has been taking time many times and then maybe giving a charge sheet in court.

3. The complexity of witnesses and evidence: The main complication of a rape case is proving a rape case. Witnesses and various types of evidence are required to prove the allegations in court according to the judicial system. If it is not possible to ensure the presence of witnesses in time, the normal pace of the case is hampered. The major complication in rape cases is that witnesses cannot be present promptly. The main reason behind the absence of witnesses in their court is insecurity. There is no law or provision in the law to ensure the safety of witnesses. Appropriate legislation and its enforcement are needed to ensure witnesses appear in court.

³⁹ Nari-O-Sisu Nirjaton Domon Ain 2000, s 20

If a woman is raped, she has to collect information from three places - the police station, hospital, and court. These three places are involved in the judicial process after the incident of rape. Usually, these three places are the main obstacles in the rape trial process. Data from these three places play a role in proving rape.

4. Liability to prove allegations: Legally the allegation of rape has to be proved by the complainant in the relevant court and all the relevant evidence before the court has to be as true and credible as possible. But if a woman who is professionally involved in prostitution alleges rape, her statement on the matter is not considered sufficient. She has to prove the rape allegations with very strong evidence. The counsel for the accused used that opportunity as a weapon. Defendant's lawyer questioned the victim's past sexual experience. When the complaining woman has to narrate her experience of being raped in the courtroom, there are curious eyes and smiles and jokes all around.⁴⁰ Defendant's lawyer tried to prove in court that the victim was a bad character and had voluntarily consented to the incident.

5. Reluctance to handle the case: After the rape, in most cases, the family is forced to keep the matter secret for fear of socialization. Also, many people do not take refuge in the law for fear of the rapist. However, due to police-medical harassment, various problems in court, and the complexity and length of the case, many do not want to take legal recourse. Again, many women are not getting their due legal rights because they do not know the law properly.⁴¹ Even though they know all this, they do not want to be vocal in asserting their rights or seek refuge in the law due to various problems. Rape mainly works for various reasons including protection of women's self-esteem or family status, public shame, fear of being rotted in society, worries about future life, the threat of death or insecurity, and harassment.

CONCLUSION

There is a need to reduce the incidence of violence and rape against women. Rape and torture can be reduced if appropriate steps are taken to prevent rape. But it is never possible to bring

⁴⁰ Van der Brugges (n 5)

⁴¹ Nowsher Ali & Ors, 'Rape in Rural Bangladesh' (2015) 3(1) Delta Medical College Journal 1

this heinous crime to zero. No country in the world has been able to do that. Rape also regularly occurs in developed, educated, and civilized countries. In countries where corruption is absolutely zero, the standard of civilization is very high, and education, initiation, economy, and social justice are admirable, various forms of violence against women have not stopped.

It will not be possible to answer the single reason why rape has increased in our society. One of the causes of violence against women is the distorted mentality in the patriarchal society of considering women as weak and women as objects of enjoyment. However, I think the institutional weakness of the state and society is responsible for the sudden increase rape in society.

FINDINGS

There are several reasons for the increase in rape in our society have been highlighted in different places in my research. The main reasons for the increase in rape are as follows:

- How rape is defined in the prevailing law of Bangladesh i.e. Penal Code, Section 375 clearly states that rape can only be committed to a woman and it will happen through a man. The issue of male rape is not mentioned here.
- Penetration is sufficient to consider sexual intercourse in the case of rape described in section 375 of the Penal Code. But nowhere is 'penetration' explained. In many cases, it is not possible to prove rape as there is no definite explanation for the 'penetration' of the law.
- The Nari O Sishu Nirjaton Domon Tribunal was formed in 2000 to crack down on violence against women and children. The definition of 'child' in this law does not apply to any particular gender, and any child under the age of 16 will be applicable under this law.
- Under the Nari O Sishu Nirjaton Domon Ain 2000, if a child under the age of 16 is a victim of rape or sexual abuse, the accused will be tried under this Act. But if someone over the age of 16 has been raped, the law is ambiguous.

- The patriarchal concept prevalent in every branch of our society is still broad. The criminal justice system, such as the police, the courts, the prosecution, and the prisons, retain patriarchal, feudal, and colonial elements.
- There has no process for special training about what kind of evidence to gather in a rape case, how to preserve evidence, and what to look for to complete the medical examination of the victim and the accused. The administration is not experienced in case management.
- The major complication of the rape case is that the case is pending in the high court after the trial in the lower court. The name of the appeal hangs year after year. As a result, the trial does not end in an era.
- A lot of time is wasted on the complexity of the investigation and trial of rape cases. As a result, the law has not had a very good effect on the prevention of rape in our society.
- Rape cases are not negotiable. However, if a rape case is settled amicably, the court often plays a silent role. Which is a big obstacle to our judicial process.
- Uncontrolled technology, drug addiction, and simple methods of online pornography are increasing the crime trend among the youth. As a result, rape is increasing in society.
- Just as control over the use of smartphones is important, filtering systems need to be introduced to control the consumption of low-quality cultural elements on smartphones.
- If there is not much progress in the trial of rape cases, in most cases the accused gets bail. In many cases, the victim loses interest in handling the case because the trial process takes so long.
- Defendants in rape cases take bail by taking various benefits of the law. After taking bail, the accused went to the area and obstructed the victim and witnesses in handling the case. Threatens the victims not to handle the case. This led to the inhumane torture of the victims.
- The investigating officer has to investigate more than one case at a time. As a result, investigations into rape cases are hampered or cannot be properly investigated. This affects justice.
- Witnesses in rape cases need to appear in appropriate courts. However, in most cases, witnesses do not appear in court properly. As a result, a lot of time is wasted in managing

the case. The victim and the victim's parents later lost interest in handling the case. Many do not even want to sue for economic weakness.

- A medical certificate is important in rape cases. However, in many cases, the medical examination of the victim is abnormally delayed, which results in loss of symptoms, incorrect writing of the medical report, incorrect writing of the victim's age report, etc. Which affects the fair trial process of the case.
- DNA testing of rape victims and accused has been made mandatory. Most of the district headquarters hospitals in the country do not have a system to determine the age of the victims. In many cases, DNA testing is not done. The medical report submitted to the court is not provided to the victim. As a result, the evidence of the case is destroyed, which is a big obstacle to the judicial process.

RECOMMENDATIONS

Rape laws need to be reformed. In addition to enforcing strict laws to get rid of social problems or to control heinous crimes such as rape and violence against women, citizens need to develop moral values. Below are some probable solutions:

1. The definition of rape law needs to change, such as –
 - The definition of rape should give equal importance to violence against women and violence against men.
 - Violence against men and transgender must be linked to the definition of rape.
 - The rape law must provide a legal explanation of penetration.
2. The age limit of children under Section 375 of the Penal Code and Nari O Sishu Nirjaton Domon Ain should be fixed at 18. Whereas it has been fixed under Section 4 of the Sishu Ain / Children Act 2013.
3. All are equal in the eyes of the law according to the Constitution. If children, women, men, and transgender are raped here, the punishment must be ensured in the same way for the same crime.

4. Specific rules have to be formulated for conducting investigations and trials for the supervision of rape cases.

5. The Nari O Sishu Nirjaton Domon Tribunal should appoint specially trained judges and make arrangements for special training regularly.

6. A specific monitoring committee should be formed in each district of Bangladesh to supervise rape cases –

- The Monitoring Committee will play an overall role in ensuring the investigation of rape cases, the due date of the trial, the presence of witnesses, and the safety of witnesses.
- The monitoring committee will be headed by the Additional District Magistrate of each district, the Additional Superintendent of Police (Administration), a representative of the Civil Surgeon, and the Public Prosecutor of the concerned tribunal.
- The Public Prosecutor of the tribunal concerned with the rape case will be in charge of coordinating the committee and will send monthly reports to the Supreme Court, Home, and Law Ministries on the activities of the committee. In districts where there is more than one tribunal, the public prosecutors of all the tribunals will be included in the monitoring committee.

7. Nari O Sishu Nirjaton Domon Ain, the provision of 180 days for trial is not being implemented. The trial of the case has to be completed within 180 days from the date of receipt of the case for trial as per the law. And these will be reported under the supervision of the monitoring team.

8. Strong monitoring needs to be put in place to ensure that investigations and trials are completed on time and that legal provisions are properly complied with.

9. If the investigation and trial are not completed within the stipulated time, the matter should be brought under the purview of the law to take action against the culprits through a speedy legal process.

10. Witnesses play an important role in rape cases, so the Witness Protection Act needs to be enacted.
11. The monitoring committee will have to be held accountable if the state fails to present the witness in court without a valid reason on the due date.
12. The Monitoring Committee will also oversee the issuance of summons on witnesses promptly.
13. Compromising or attempting to compromise a rape case should be considered a severely punishable offense by enacting a law.
14. The role of the police is very important in the context of rape. It is highly recommended that the police treat women who have been raped and tortured sympathetically. The police should bring such cooperative measures under the law to mitigate the victim's trauma response.
15. If an official witness such as a magistrate, police, doctor, or other expert does not appear to testify without satisfactory reason after receiving the summons on the due date, the tribunal should bring it under the purview of law by recommending departmental action against that witness and ordering withholding of salary if necessary.
16. At least one DNA lab needs to be replaced in every government medical college hospital in Bangladesh. Where DNA testing of rape victims and all accused can be completed in a short time. And there should be a system to determine the age of the victim of rape.
17. There will be at least one trained female doctor in each district Sadar Hospital or Medical College Hospital to prepare medical examination and report of the raped woman. Making rape reports, etc. so that it can be done efficiently.
18. The pressure to investigate multiple cases on a police officer delays the investigation of a rape case. Rape cases should be supervised directly by the police super office in each district. Training needs to be arranged among the police to investigate rape cases. Laws need to be enacted on all these issues.

19. Special training needs to be arranged for the judges in charge of The Nari O Sishu Nirjaton Domon Tribunal. The training must include medical grounds, understanding the mental state of the rape victim, understanding the code of conduct of the accused, etc.

20. Victims of rape need to bring their social security issues under the law. The biggest challenge after the rape of a rape victim is to live in his society. Therefore, the victim of rape should be brought under the law by regulating the issue of social security.

21. When a victim is raped, he or she is emotionally traumatized. To order to bring the rape victim back to her normal life, a rehabilitation center should be set up under the rule of law to treat her. In other words, the law must provide for the rehabilitation of rape victims.