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Women's Access to Justice in Intimate Partner Violence in Bangladesh: A Legal Perspective

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Abstract

The number of intimate partner violence against women is increasing in Bangladesh. The remedy for intimate partner violence victims from social, legal, and psychological aspects requires proper research and practical action with remedy ensuring women's rights in modern times. The existing legal system of Bangladesh, in these respects, lacks adequate access to justice for women victims of intimate partner violence. So, their social, economic, psychological, and sexual issues are somehow ignored to be embodied in the relevant laws of the country for ensuring justice for the deprived group of people like women. In other words, their sufferings remain static, and they have no hope of a healthy, happy, and balanced life. More surprisingly, this victim group is neither aware of the problem involved with their life nor they are proactive in having an effective remedy thereon. Employing qualitative research methodology, the study aims to determine the effectiveness of existing legal remedies for the prevalent present social problem of intimate partner violence against women so that access to justice can be ensured.

Keywords: Intimate Partner Violence (IPV), Access to Justice, Legal, Remedy, Bangladesh.

1. Introduction

Intimate partner violence (IPV) is a common social problem in Bangladesh. The law relating to intimate partner violence prevailing in Bangladesh is not the only effective measure to resolve this problem. It is said that law is just and fair when access to justice is ensured to the victim. Access to justice for the victim especially the women in intimate partner violence is not ensured for many reasons- legal constraint is one of them. Therefore, the women victim specially suffers physically, mentally, economically and psychologically without having any remedy legally in one side, and the victim also becomes reluctant to have the remedy because of the social stigma and the social pressure on the other side. Besides, it is more challenging for the poor women IPV victims. As a result, access to justice becomes very impractical for the women victim of intimate partner violence in Bangladesh. The research will envision to explain access to justice and intimate partner violence from Bangladesh perspective, analyze the IPV laws to examine access to justice from legal perspective in Bangladesh and will provide a conclusion.

2. Access to Justice

Access to justice is considered as Judiciary protection of people's rights and the right to redress before a court of law or tribunal that can ensure independence and impartiality in the administration of law (Francesco, 2007). The phrase access to justice has been used in a variety of perspective and having no clear meaning in any national or international legislation. It makes able to file a complaint with the court and having the right to a reasonable trial and an effective remedy (Ashiquzzaman, 2023). Traditionally, the phrase access to justice means allowing all marginalized groups in society access to the formal legal processes and structures. This involves overcoming social obstacles like language barriers, ignorance of one's legal rights, and intimidation by the legal system and its institutions, in addition to financial and legal barriers (Ashiquzzaman, 2023). Access to justice is defined as “a cross-cutting right that must be understood and interpreted in line with other principles such as equal recognition before the law” and that it “enables and enhances other rights such as the right to health as it guarantees judicial and administrative protection of that right (Gutterman, 2022).” The foundation of this concept is the fundamental notion of *ubi jus ibi remedium*, which states that any right that is violated must have a right to a remedy (Peter, 2005). In liberal democracies, the right to access justice is closely linked to the social responsibilities of lawyers. When a citizen lacks access to justice, they are unable to protect their rights through the State's administrative and legal systems (Collin & Daniel, 2020). It refers to the mechanisms by which people can address issues of substantive and procedural justice by approaching the courts, attorneys, legislators, judges, and administrative bodies (Begum & Saha, 2017). As the notion of access to justice is fundamentally founded on the principle of equality, which calls for the required institutional arrangements so that everyone has equal access to the legal system (Begum & Saha, 2017).

Access to justice has different aspects: social, economic, geographical, legal and psychological. The social aspect relates to educating individuals and groups about their legal rights, empowering them to exercise their rights and access legal assistance (Ashiquzzaman, 2023).

The ability approach-which indicates that the legal system is affordable for average people- refers to the economic aspect of access to justice (Ross, 1997). Geographical aspects indicate that the locations of judicial institutions should be dispersed so that the general public can easily access them. Thus, for the legal system to be accessible, there needs to be a reasonable amount of decentralization. The characteristics of the judicial system itself is referred to as the legal aspect of access to justice. If legal standards are incomprehensible, discriminatory against women, and anti-poor, it will be difficult for people to obtain justice from the legal system. Legal writings and

procedure should be comprehensible to the general public in order to support an accessible legal system (Begum & Saha, 2017).

3. **Intimate Partner Violence (IPV)**

Domestic abuse committed against the other spouse or partner in an intimate relationship by a current or former spouse or partner is known as intimate partner violence, or IPV (Connie, 2009). IPV can take many different forms, such as verbal, physical, emotional, financial, and sexual abuse. The World Health Organisation (WHO) describes intimate partner violence (IPV) as “any behavior in an intimate relationship, including acts of physical aggression, sexual coercion, psychological abuse, and controlling behaviors, that causes physical, psychological, or sexual harm to those in the relationship (Krug, Dahlberg, Mercy, Zwi & Lozano, 2002).”

The typical profile of intimate partner violence involves a history of economic coercion combined with a pattern of assaultive and coercive behaviors by a current or past intimate partner, including physical, sexual, and psychic attacks (UNiTE Working Group, 2019). IPV is defined as “behaviour in an intimate relationship that causes physical, sexual or psychological harm. This includes physical aggression, sexual coercion, and psychological abuse and controlling behaviours”(Alessandra, Sarah, Claudia & Manuela, 2016).

A pattern of behavior in any relationship that is used to obtain or keep control over an intimate partner is known as domestic abuse, sometimes known as “domestic violence” or “intimate partner violence.” Abuse can take the form of threats or acts that are physical, sexual, emotional, financial, or psychological and are intended to affect another person (United Nations, n.d.). This covers all actions that terrify, threaten, manipulate, cause pain or embarrassment, or damage or wound someone. Any ethnicity, age, sexual orientation, religion, or gender can experience domestic abuse. It can happen in many different kinds of partnerships, such as marriage, cohabitation, or dating. People from all educational and socioeconomic backgrounds are impacted by domestic abuse (United Nations, n.d.).

According to United Nations, domestic abuse includes different forms of abuses like sexual abuse, physical abuse, emotional abuse, psychological abuse, financial abuse, stalking (Gupta, 2023). Intimate partner sexual assault refers to coercing them into performing a sexual act against their will. Physical abuse includes any act of biting, pinching, burning, strangling, grabbing, shoving, kicking, punching, or slapping someone in an attempt to do them harm. Punching walls, slamming

doors, and flinging objects are examples of physical abuse as well. Undermining someone's sense of self-worth by persistent criticism, gaslighting, name-calling, social isolation, activity monitoring, and attempts to stop them from working or engaging in enjoyable activities is known as emotional abuse (Gupta, 2023). Psychological abuse includes intimidating, manipulating, or threatening to harm the victim or others close to them. Financial abuse is keeping tabs on the individual's expenditures, tracking their spending, and exercising control over joint finances. Financial abuse can also involve keeping a partner from working, going to school, or making other financial progress (Gupta, 2023). A pattern of behavior meant to harass, annoy, intimidate, or hurt someone is called stalking. A person who is being stalked may engage in actions like making repeated phone calls, sending them gifts or letters, following them around, or figuring out how to spy on them at work or home. Cyberbullying, harassment, abuse, stalking, threats, and manipulation of a close partner through email, social media, dating apps, and other digital platforms is known as online abuse (Gupta, 2023).

4. Intimate Partner Violence in Bangladesh

Intimate partner violence prevalent in Bangladesh is a common phenomenon though the state is taking different initiatives to change its legal and social architecture. The women are in a vulnerable position in intimate partner relationships as the data shows the scenario of violence against them is alarmingly high. According to the World Health Organization (WHO), about 1 in 3 (30%) of women globally are being the victim of physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime (World Health Organization, 2024). In Bangladesh, the prevalence of lifetime physical and/or sexual intimate partner violence is 54.2 % (UN Women, n.d.). Bangladesh Bureau of Statistics (BBS) reports that the proportion of ever-married women aged 15+ experiencing intimate partner physical and/or sexual violence at least once in their lifetime (Bangladesh Bureau of Statistics, 2016). On the other hand, the male partners facing domestic violence is being also the headline of some reports (Dewan, 2019).

However, the violence faced by male or females for being in intimate relationships is unexpected in any civilized society. Surprisingly, Intimate partner violence is treated as trivial and private matter in the patriarchal society of Bangladesh (Tithi, 2018). The impact of IPV on the mental health of the victim is acute i.e. depression, post-traumatic stress disorder, insomnia, substance abuse, and suicide attempt, and the physical health includes physical injury, chronic pain, different kinds of headaches, gynecologic problems, sexually transmitted diseases, etc. (Khan, 2019). When Children are the victims of domestic violence or witness domestic violence, they fall at

serious risk of physical and mental health problems. The consequence of direct and indirect domestic violence on them can be both short and long-term.

5. Access to justice for IPV Victims Under the Laws of Bangladesh

As a member state of main international human rights documents like Universal Declaration of Human Rights (UDHR), 1948, International Covenant on Civil and Political Rights (ICCPR), 1966, International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, Convention on the Rights of the Child (CRC), 1989 Bangladesh is taking some legal measures to recognize and acknowledge women human rights including not to be violent against women and children physically, mentally, economically and sexually. The constitution of People Republic of Bangladesh gives emphasis on the principle of non-discrimination based on sex in part-III.

5.1. The Domestic Violence (Prevention and Protection) Act, 2010: Legal Acknowledgement of Intimate Partner Violence

To comply with the international obligation, Bangladesh has passed the Domestic Violence (Prevention and Protection) Act, 2010 (Effects of Domestic Violence on Children, 2022). But, the remedies for victims can be availed from different laws albeit the said special law. Only women and children can be the victim, not the male. Section 3 of the Act while defining “domestic violence” includes for the first time (Yasmin, 2014) “physical, psychological, sexual, or financial abuse against a woman or child of a family by any other member of that family with whom the victim is, or has been, in family relations.” Though it is possible to prove the physical and economic violence applying law of evidence and criminal law of Bangladesh, there is no prescribed standards to prove other abuse like psychological and sexual abuse among the intimate partner when the woman is in partnership residence with her husband.

The remedies that the victim can avail under sections 10-17 of the Act are certain orders (civil remedy) in response to a victim's application, including residence orders, support orders for the victim and/or children, and custody orders for minors. The Act has not criminalized the offenses except the punishment for noncompliance of the order of the court and false complainers (Yasmin, 2021) which may lead to the more destructive consequence for the victim towards dissolution of marriage in the society- where protection is absent in the law (Mamun, 2020). Effectiveness of this law can be very easily determined by evaluating the report that 72% of Bangladeshi women have never told anyone about their experiences with domestic abuse, despite the fact that over 66% of them had experienced it. Furthermore, there is only a 3.1% chance that cases will be

resolved in the victim's favor and a 32% chance that they will be dismissed (Ibrahim, 2018). Interestingly, the enforcement officer and service provider who are in responsibility to deal with the domestic violence case, are not well-trained concerning counseling and sensitization, which by the way has not been provided for in the Act, that futile the effectiveness of the Act.

5.2. The Dissolution of Muslim Marriages Act, 1939

The victim (Muslim women) can also go for dissolving the marriage under section 2 of the Dissolution of Muslim Marriages Act, 1939. A Muslim married woman is entitled to have decree for dissolving the marriage in a number of grounds- some of which are related to intimate partner violence though does not include all areas as defined in the Domestic Violence (Prevention and Protection) Act, 2010. More specifically, section 2 (viii) (a) of the Dissolution of Muslim Marriages Act, 1939 (viii) states that if a Muslim married women is treated with cruelty by her husband, that is to say,- ‘habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment’- she can seek divorce. Here, the mentioned provision is related with Physical and psychological abuse as included in the definition of domestic violence in the Domestic Violence (Prevention and Protection) Act, 2010. Again, Section 2 (viii) (d) of the Dissolution of Muslim Marriages Act, 1939 corresponds to economic abuse against the married women of the Domestic Violence (Prevention and Protection) Act, 2010. However, regarding sexual abuse, the Act is silent though the married women has the option of dissolving marriage through *Khula* form where married woman requires to scarifies financial benefits (paying compensation to husband).

But in Bangladesh a Hindu women don’t have a right to dissolve the marriage under *Dayabagha* School (One of the schools of Hindu Law predominantly practiced in Bangladesh and West Bengal, India) except temporary separation of residence. Under the Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946, Hindu married women are entitled to separate residence and maintenance on some grounds. The term ‘cruelty’ in section 2(2) of the Act correspond to the physical and mental abuse in intimate relation on which ground the married women claim for separate residence and maintenance, -not the dissolution of marriage. The law is silent regarding other form of abuse though by the term ‘any other justiciable cause’ may be explained in that line.

On the other hand, generally divorce is not permissible under Christian religious law. The Divorce Act 1869, one of the oldest pieces of legislation prevailing in Bangladesh had done some limited intervention in allowing the divorce in very exceptional circumstances (Joy, 2020). The divorce for Christian women is very complex with limited grounds where the approval of higher court is

prerequisite. Here, the women need to prove adultery along with cruelty when she files petition for approval of dissolution of marriage. So, on the sole ground of cruelty the Christian married women is unable to go for divorce. Therefore, the woman victim of intimate partner violence cannot dissolve the relationship to safe herself easily.

5.3. The Code of Criminal Procedure, 1898 and The Penal Code, 1860

The victim can file complaints with the police against the perpetrator under the Code of Criminal Procedure, 1898 for violence against women and seek legal remedy through the court. The Penal Code, 1860 as the substantive criminal law of Bangladesh criminalizes different forms of violence against women, including rape, sexual harassment, and violence relating to dowry etc. (Legal and Consultancy Services Bangladesh, 2023, para 6). But intimate partner violence has not been recognized as offence separately in the Act. As regards Physical abuse like murder, heart, grievous heart, wrongful confinement etc. The Penal code recognizes these types of acts as offence and prescribes penalty thereof. But, as regards psychological, economic and sexual abuse the code silent. For example, rape in marriage is not recognized as a crime unless the bride is under the age of 13(Naved, Talukder, Masson & Yount, 2017). Technically in case of cheating for which the partner is being the victim of emotional abuse, can file complaints against the perpetrator for which punishment is not that much severe i.e. whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both under Sections 415 and 417 of the Penal Code, 1860.

5.4. The Suppression of Women and Children Repression Act, 2000

Moreover, the Suppression of Women and Children Repression Act, 2000 contains sections 5, 6, 7, 8, 9, 9A, 10, 11, 12, and 13 describing offences and punishment for the crime of violence against domestic oppression on women and children. Except physical abuse other form of abuses are not covered by the Suppression of Women and Children Repression Act, 2000.

5.5. The Dowry Prohibition Act, 2018 and the Acid Crime Control Act, 2002

And also, some other laws like The Dowry Prohibition Act, 2018, and the Acid Crime Control Act, 2002 embodies in sections 36, 41 and 42 provisions relating to offence against women. But unfortunately, intimate partner violence is not under control by those auspicious laws of Bangladesh. For example, according to Section 3 of the Act, it is illegal for any partner to demand a dowry from the other directly or indirectly (Manir, 2020). Such an offence is punishable by a fine of not more than 50,000 (fifty thousand taka) or by imprisonment for a maximum of five

years, but not less than one year, or by both. Section 4 of the Act states that it is illegal for any party involved in a marriage to give, accept, aid in the giving or taking of dowry, or to agree to give or take dowry. Such an infraction is punishable by imprisonment for a maximum of five years, but not less than one year, a fine of up to 50,000 (fifty thousand taka), or both. One new aspect of the punishment provisions in the new law is that, unlike the similar portions of the previous law, the maximum fine amount is now capped at less than \$50,000 (Manir, 2020).

In Bangladesh, a framework for advancing gender equality and defending women's rights is provided by the National Women Development Policy, 2011 (Legal and Consultancy Services Bangladesh, 2023, para 6).

6. Option of Counseling by Law Enforcement Body

Counselling provides a secure area for women to talk, process, and establish safety plans despite experiencing ongoing abuse at home (Medecins Sans Frontieres [MSF], 2017). How to deal with these issues and live a healthier physical and mental life, whether at the partner's house or somewhere else. Not only does counselling help women re-engage with their families, but it's also beneficial for the kids (MSF, 2017). So, concerning the negative impact of psychological abuse upon children and women it is stated that

“Unfortunately, when mums are stressed by violence from their partner, they often become abusive to the children. Studies have shown that growing up in violent households is devastating for children’s development: they can’t focus in school, they become aggressive and suffer the same as if they were being abused directly. So these children are the next generation of traumatized family members who are more likely to go on and repeat these patterns (MSF, 2017).”

The one & only Victim Support Centre (VSC) of Bangladesh was launched on 17 February, 2009. Lady police officers administered this VSC that is open for 24 hours for all types of lady & child victims. Police as well as 10 NGO’s give their service in VSC (Dhaka Metropolitan Police, n.d.). It gives the service to the victims from police stations as well as the direct complainants. Here legal aid, psycho-social counseling and emergency medical support are given to the victim after Considering the complaint & need of the victim. After maximum 5 days shelter victims are referred to the NGO’s if long term shelter is needed (Dhaka Metropolitan Police, n.d.).

However, to reduce the psychological negative impact upon women and the others, no legal provision is available in Bangladesh. On the other hand, there is no national counseling center in Bangladesh to serve the intimate partner violence victims.

7. Mediation and Arbitration:

Community members and non-governmental organization practitioners emphasized the vital significance of Bangladesh's customary informal legal system known as “*shalish*”, which involves presiding over small panels of powerful local leaders to settle community disputes, including those involving marriage (Naved et al., 2017). But in most situations, this reliance on informal arbitration places the burden on the woman to put up with abuse and stay with her violent husband in order to preserve his family's social standing (Naved et al., 2017). Additionally, there is proof that these procedures are corrupted. For instance, a male informant in Mymensingh said that bribes are occasionally made and accepted in order to guarantee that reports are never submitted. Additionally, bribes are used to "throw" or even reverse decisions, making women appear dumb. Moreover, the spouse "bribes the influential people in that meeting/arbitration to bend the decisions to husband's favor" when it appears that *Shalish* would rule in favour of a woman. Due to their fear of their husbands, as well as the possibility of criticism and a loss of family dignity, many women choose not to come out and seek justice (Naved et al., 2017).

8. Conclusion

In different large-scale surveys of Bangladeshi women, it is found that a remarkable number of women experiences some form of intimate partner violence in the years. Furthermore, 61% of Bangladeshi men who participated in the survey strongly agreed with the assertion that “there are times when a woman deserves to be beaten” (MSF, 2017). They are unaware that this is a particular kind of abuse. They believe that the husband has the moral right to beat them and that doing so is appropriate’(MSF, 2017). This unaware position of women also boost the rate of intimate partner violence in Bangladesh at one side, and on the other side the role playing indicator is women's vulnerable socio-economic position. More specifically, women in violent situations also have very few options. Families might not have enough money to support them, and the majority do not have resources to live freely (MSF, 2017). Even in situations when money is not an obstacle, being a divorced woman in Bangladesh carries a great deal of shame, which can make even seemingly simple tasks like getting a place to live challenging. Many women are forced into abusive relationships due to a lack of options, which often leave them alone and unable to cope (MSF, 2017). Moreover, when they seek for access to justice, they stand on a position of helplessness in most of the cases for the limitation prevailing in the legal system of Bangladesh. In many cases i.e. mental, economic abuse, there is no effective remedy for the IPV victims. The special laws are not also exhaustive to ensure justice to the victims. Furthermore, there are gaps

in the implementation of laws and policies, in particular. It is said that 'there are good laws but the implementation is weak, rates of conviction are low' (Naved et al., 2017).

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