

# NO JUSTICE WITHOUT REPARATION

WHY RAPE SURVIVORS MUST  
HAVE A RIGHT TO COMPENSATION

TAQBIR HUDA



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# FOREWORD

Violence against women (VAW) is one of the most serious human rights violations entrenched in gender based discrimination, systemic sexism and patriarchal structures. It is an expression and manifestation of gender inequality and power imbalances between women and men and is reinforced by harmful social norms and gender biases.

Violence against women also brings severe economic loss for society as a whole. In Bangladesh, it has been estimated that the cost of violence against women in 2010, was 14,348 crore BDT, according to a 2010 study by CARE Bangladesh. This included direct and indirect costs and amounts to 2.05% of GDP in 2010.

The Government has taken a number of steps to tackle VAW starting from ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopting specific laws to prevent and respond to VAW, and establishing multi-sectoral services. Yet, VAW is still rampant in Bangladesh and survivors are rarely finding redress.

Impunity remains one of the biggest challenges, where perpetrators are not always held accountable and the blame is often shifted to the survivor for what she said, how she was dressed or for her 'character'. If women truly have the right to live free of violence, then it is the obligation of every state to make sure their rights are fully protected and fulfilled.

According to international law, states must exercise due diligence and ensure that they have taken all

reasonable measures to prevent, investigate and punish all forms of violence against women, including in the family and domestic unit.

In its recommendations, the CEDAW Committee specifies that states should ensure that remedies are adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered and that remedies should include, as appropriate, restitution, compensation, and rehabilitation.

Global good practices suggest that as an overall, legislation should include a statement on the rights of rape and other SGBV survivors. It must promote survivor's safety, agency, and assistance, and prevent their re-victimisation.

Compensation for SGBV survivors should be a matter of right and not left to judicial discretion as it currently is under Suppression of Violence Against Women and Children Act 2000. The existing framework has offered little respite to rape survivors in practice, as Chapter 3 of this report shows. It is therefore critical to ensure that the legal framework for compensation for survivors of rape and other forms of SGBV is strengthened in Bangladesh in line with the reform proposals set out in this report.

Even though compensation will never be enough to repair the damage, the trauma and the long term consequences suffered by SGBV survivors, it is the bare minimum that ought to be provided as reparation to survivors.



**Shoko Ishikawa**  
Country Representative  
UN Women in Bangladesh

# PREFACE

This year marks the twentieth anniversary of the *Nari O Shishu Nirjaton Domon Ain* 2000, the Suppression of Violence against Women and Children Act. During this time, the Government of Bangladesh has undertaken commitments to further gender equality and reduce sexual and gender-based violence through the adoption of the Sustainable Development Goals (SDG) Agenda, in particular SDGs 5 and 16, and through adoption or amendment of a range of other laws, on domestic violence, child marriage and human trafficking.

In practice, however, a number of gender discriminatory laws, practices and procedures remain in place. Within this context, non-government organisations, activists, lawyers, and the media, alongside survivors themselves, continue to call for much-needed reforms to ensure justice without delay or discrimination.

In this context, BLAST has convened the *Rape Law Reform Now* campaign to identify protection gaps in existing laws which perpetuate impunity in cases of rape. The Rape Law Reform Coalition was established as part of this campaign and brought together a range of organisations who have collectively formulated a set of demands for necessary legal and institutional reform.

Research is central to this reform campaign. The Rape Law Reform Research Reports, linked to the campaign, are intended to generate evidence-based advocacy for reform. The first publication in the series in November 2019 focused on the need to limit admissibility of character evidence of the complainant in rape prosecutions. This publication focuses on an often-ignored aspect of justice for rape survivor, the need for reparations, and in particular compensation.

We are grateful to UN Women and Global Affairs Canada, for supporting this series as part of the Combatting Gender Based Violence (CGBV) Project. We are also grateful to the Danish International Development Agency (DANIDA) for supporting our work since its inception and enabling us to draw on the wealth of experience and expertise of colleagues who have stood in support of victims and survivors in their search for justice, along with the survivors themselves. We hope this report encourages lawmakers, lawyers, academics and activists alike to refocus some much needed attention to ensuring that every rape survivor has effective access to remedies and to reparation.



**Sara Hossain**

Honorary Executive Director  
BLAST

# ACRONYMS

<b>AD</b>	Appellate Division, Supreme Court of Bangladesh
<b>ADC</b>	Appellate Division Cases
<b>AOCA</b>	Acid Crime Prevention Act, 2002 ( <i>Acid Oporadh Niyontron Ain, 2002</i> )
<b>BDT</b>	Bangladeshi Taka
<b>BLAST</b>	Bangladesh Legal Aid and Services Trust
<b>BLC</b>	Bangladesh Law Chronicles
<b>BLD</b>	Bangladesh Legal Decisions
<b>BLT</b>	Bangladesh Law Times
<b>CCB</b>	Children's Charity Bangladesh
<b>CJM</b>	Chief Judicial Magistrate
<b>CMRA</b>	Child Marriage Restraint Act, 2017 ( <i>Ballo Bibaho Nirodh Ain, 2017</i> )
<b>CrPC</b>	Code of Criminal Procedure 1973 (India)
<b>CVCA</b>	(Draft) Crime Victims Compensation Act (Bangladesh)
<b>CVCF</b>	Crime Victim Compensation Fund (India)
<b>DC</b>	Deputy Commissioner/ District Collector
<b>DEVAW</b>	Declaration on Elimination of Violence against Women
<b>DLAC</b>	District Legal Aid Committee
<b>DLR</b>	Dhaka Law Reports
<b>DLSA</b>	District Legal Service Authority (India)
<b>DVA</b>	Domestic Violence (Prevention and Protection) Act 2010 ( <i>Paribarik Shohingshota (Protirodh o Shurokkha) Ain, 2010</i> )
<b>HCD</b>	High Court Division, Supreme Court of Bangladesh

<b>HTA</b>	The Prevention and Suppression of Human Trafficking Act, 2012 ( <i>Manob Pachar Protirodh O Doman Ain, 2012</i> )
<b>HTP</b>	Human Trafficking Prevention
<b>JATI</b>	Judicial Administration and Training Institute
<b>MLR</b>	Mainstream Law Reports
<b>MOWCA</b>	Ministry of Women and Children Affairs
<b>MLJPA</b>	Ministry of Law, Justice and Parliamentary Affairs
<b>NALSA</b>	National Legal Services Authority (India)
<b>NLASO</b>	National Legal Aid and Services Organisation
<b>PDRA</b>	Public Demands Recovery Act, 1913
<b>PLD</b>	Pakistan Law Decisions
<b>RTI</b>	Right to Information
<b>SCC</b>	Supreme Court Cases (India)
<b>SLSA</b>	State Legal Service Authority (India)
<b>SGBV</b>	Sexual and Gender-Based Violence
<b>SRVAW</b>	Special Rapporteur on Violence against Women, its Causes and Consequences
<b>UN</b>	United Nations
<b>VAW</b>	Violence against Women
<b>VAWCA</b>	Suppression of Violence against Women and Children Act, 2000 ( <i>Nari O Shishu Nirjaton Doman Ain, 2000</i> )
<b>VCS</b>	Victim Compensation Scheme (India)
<b>VSC</b>	Victim Services Committee
<b>WVCF</b>	Women Victim Compensation Fund (India)

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# EXECUTIVE SUMMARY

Ensuring justice for rape victims and survivors in Bangladesh has mostly been understood and pursued in punitive terms. While ensuring punishment of the perpetrator is important, redress for the rape survivor is seldom discussed. The objective of this report is to restore the balance in the discourse on justice for rape, so the urgent necessity of granting monetary remedies to the rape survivor becomes clear. To this end, the report highlights the inadequacy of the existing provisions on compensation for rape, and offers a reform proposal, drawing on examples from other laws relating to sexual and gender-based violence (SGBV) in Bangladesh and notably, the more comprehensive compensation framework for rape in our neighbouring jurisdiction, India.

## Key Findings:

- Out of the 46 reported rape cases under Suppression of Violence against Women and Children (Special Provisions) Act 1995 (*Nari O Shishu Nirjaton Doman (Bishesh Bidhan) Ain 1995*) analysed in this report, the Court imposed a fine as part of the sentence in less than 20% of the cases but awarded compensation in none of these cases.
- Statutory provisions on compensation for SGBV, including rape, were first introduced in Bangladesh law by the Suppression of Violence against Women and Children Act 2000 (*Nari O Shishu Nirjaton Doman Ain 2000*), which repealed the 1995 Act. The new law provided for a mandatory sentence of a fine in all cases of rape. Therefore, out of the 44 reported rape cases under the 2000 Act analysed in this report, the Court imposed a fine as part of the sentence in every case.
- Crucially, the Suppression of Violence against Women and Children Act 2000 did not provide any standalone right to compensation. Instead it provided for the Court to exercise its discretion when and whether to convert an order of fine into an award of compensation. The Court exercised its discretion to convert the fine into compensation in only three out of the 44 cases. However, the Supreme Court acquitted the convicts in two out of these three cases, therefore the award of compensation sustained in only one case.
- The average amount of fine imposed in rape cases rose from being less than 4,700 BDT under the 1995 Act to around 28,000 BDT under the 2000 Act, in large part due to the minimum amount of fine being set at 100,000 BDT for rape leading to murder and gang rape by the later law. However, the Court did not impose fine above this minimum limit in any of the cases analysed in this report, indicating that 100,000 BDT is treated as a ceiling rather than a baseline in practice.

- Analysis of the five main laws on SGBV shows that the statutory framework for reparation and/or compensation can have up to four dimensions: (i) compensation payable by the offender in criminal law, (ii) damages from the offender and other responsible parties in civil law, (iii) financial assistance from a state-administered fund and (iv) compensation payable by and following disciplinary action against a public officer for breach of duty.
- The redress framework under the Prevention and Suppression of Human Trafficking Act, 2012 is the strongest, as it provides for all four of these aspects of reparation and/or compensation. It is weakest under the Suppression of Violence against Women and Children Act 2000, which covers rape, since this law only includes one aspect (which too is further weakened by the fact that compensation is a matter of judicial discretion, not a statutory right).
- The compensation framework for rape in India is much more comprehensive and most notably includes a state-administered Victim Compensation Fund to provide redress to victims of violent offences. This fund includes a sub-scheme, for a Women's Compensation Fund, which sets guidelines on compensation for victims of sexual offences and acid violence. Victims can apply for compensation from this scheme irrespective of whether prosecution has been successful or at all possible.
- In 2007, the Law Commission of Bangladesh drafted a Crime Victim Compensation Act (similar to the Indian scheme) which, if enacted, would oblige the state to establish a Crime Victims Compensation Fund and a Victim Services Committee in every district. The Committee would be under the control and supervision of the Ministry of Law. Victims of a closed list of violent offences (including rape) would be able to apply for compensation from the Fund as a matter of right, independently of any criminal prosecution.

### Key Recommendations to the Government:

- **Amend Section 15 of the *Nari O Shishu Nirjaton Domon Ain 2000*** so compensation is a matter of right and not a matter of judicial discretion.
- **Enact the draft Crime Victims Compensation Act** so that a Crime Victim Compensation Fund is established in every district, from which victims of violent crime may apply for compensation as of right, independently of any criminal proceedings. Within the Fund, introduce a sub-scheme and guidelines for SGBV victims (with special emphasis on rape).
- **Provide training on restorative justice through the Judicial Administration and Training Institute to *Nari O Shishu Nirjaton Domon* Tribunal judges** on principles of victimology which recognise the importance of compensating victims of violent crimes and the scope for utilising their powers under Section 15 of the 2000 Act to award compensation to rape survivors.

# 1. INTRODUCTION

Following media reports on rape allegations, calls to ensure justice for rape are regularly raised by civil society and the wider public. These demands for justice for rape victims tend to focus on the issue of punishment.<sup>1</sup> The need to ensure redress for the victim is all but forgotten.<sup>2</sup>

There is rarely any accompanying demand on ensuring rape survivors are adequately redressed for the harms suffered, as part of the justice response, such as by being granted compensation or reparation. Rape survivors, like victims of severe human rights violation, are likely to face an array of diverse harms that incarceration does nothing to address. These harms may be physical (e.g. bruises, scars and genital wounds) and mental (depression, post-traumatic stress disorder, anxiety).<sup>3</sup>

Seeking professional treatment for these injuries may cause the survivor to incur hefty medical expenses, more so given mental health services are limited and costly. The injuries may lead to the survivor losing employment, causing a loss of earnings and inability to care for dependents. When combined with the misplaced social stigma that rape survivors face, coupled with the mental harm, these may lead to an overall loss of enjoyment of life.

In this context, this report identifies compensation as a necessary form of reparation for rape victims and survivors. The methodology applied in conducting research for this report is described in the second chapter.

The third chapter lays out the scope of seeking compensation for rape in the existing legal framework, by discussing provisions and case law in criminal law, tort law and public law in turn, while also discussing the importance of ensuring compensation to rape and other SGBV survivors under international law. The fourth chapter then discusses the scope of seeking compensation under special laws for certain forms of SGBV, namely acid violence, domestic violence, human trafficking and child marriage.

To highlight the key reform needed i.e. state compensation fund for rape survivors, the draft Crime Victim Compensation Act proposed by the Law Commission is analysed in the fifth chapter along with the compensation framework for rape in neighbouring India (most notably, the Women Victim Compensation Fund). The sixth chapter sets out the recommendations for legal and institutional reform.

## 2. METHODOLOGY

This report draws on a desk review of relevant legislation in Bangladesh and analysis of reported Supreme Court judgments.

The laws reviewed in the third chapter are the Code of Criminal Procedure 1898, *Nari O Shishu Nirjaton Doman (Bishesh Bidhan) Ain* 1995 (Suppression of Violence against Women and Children (Special Provisions) Act 1995) and the *Nari O Shishu Nirjaton Doman Ain* 2000 (Suppression of Violence Against Women and Children Act 2000 VAWCA).

The third chapter also presents findings on the frequency with which fines and compensation were ordered in rape cases based on 99 reported Supreme Court judgments relating to 90 rape cases. Of these, 46 were rape cases filed under Section 6 of the 1995 Act, while 44 were rape cases filed under Section 9 of VAWCA.<sup>4</sup> A list containing necessary information about these 90 cases can be found in Appendix II.

In sourcing these judgments, we scanned six of the oldest and most-cited law reports in Bangladesh: Dhaka Law Reports (DLR), Bangladesh Legal Decisions (BLD), Bangladesh Law Times (BLT), Bangladesh Law Chronicles (BLC), Mainstream Law

Reports (MLR) and Appellate Division Cases (ADC), covering a 24 year period from 1995 to 2019.

These judgments are a subset of the primary dataset on which the Rape Law Reform Research Reports series is based. As the focus of this report (namely the third chapter) is on how the existing compensation framework for rape has functioned in practice, we only included those judgments relating to decided cases i.e. where the Tribunal had concluded the trial.

For the dataset of this report, we excluded Supreme Court judgments relating to pending cases, i.e. where the case came before the Supreme Court on procedural matters (such as quashment or bail applications etc.), while trial was still ongoing, and cases where the Supreme Court had ordered the Tribunal to conduct a retrial. We also excluded discharged cases i.e. where the Supreme Court had discharged the defendant while trial was still pending.

The laws reviewed in the fourth chapter are provisions relating to compensation and monetary relief in the Acid Crime Prevention Act 2002, the Domestic Violence (Prevention and Protection) Act 2010, the Prevention and Suppression of Human Trafficking

Act 2012 and the Child Marriage Restraint Act 2017.

In the fifth chapter, the draft Crime Victim Compensation Act proposed by the Law Commission of Bangladesh in 2007 has been reviewed, along with the relevant provisions on compensation for rape in India, namely Section 357 and Section 357A of the Code of Criminal Procedure 1973 and the 'Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes 2018'.

In sixth chapter, the recommendations have been formulated in light of discussions with relevant stakeholders in various events held as part of *Rape Law Reform Now* campaign. These include but are not limited to the expert consultation on 'Redress for Rape: Ensuring Punishment, Deterrence and

Reparations' held on 10 November 2018; the fourth session in the National Conference on Rape Law Reform held on 08 December 2018 and virtual meetings held with the Rape Law Reform Coalition, a coalition of human rights organisations working on ensuring justice for rape, including an advisory committee comprising experts on justice for SGBV and rape.

The stakeholders in these meetings included but were not limited to: former District Court and Supreme Court judges, Supreme Court and District Court lawyers, legal academics, women's rights activists from groups such as Ain o Salish Kendra, Bangladesh Mahila Parishad, Bangladesh National Women Lawyers' Association, BRAC, Naripokkho, researchers, including those from the Law Commission of Bangladesh.

## 3. LEGAL FRAMEWORK

Compensation for human rights violations, be it rape or otherwise, remains a largely non-existent remedy in Bangladesh. This can primarily be attributed to the underdevelopment of tort law, and civil liability for human rights more broadly.

Even where the state has recognised the importance of providing a remedy for victims of violent crimes, such recognition has typically been limited to introduction of compensatory provisions within criminal legislation. This remains true for legislation on rape, as the first section of this chapter shows, drawing on case law, why the existing legal framework on compensation for rape is severely inadequate.

The second and third sections look at alternative mechanisms on compensation for rape, such as tort law and public law. The fourth section analyses supplementary jurisprudence discussing important aspects about compensation for rape. The final section looks at the state's obligations under international standards to provide redress for violence against women, including rape.

### 3.1 Criminal law

#### 3.1.1 Introduction of compensation for rape under VAWCA

The need for compensating rape survivors was recognised by late A.K Badrul Huq J. in *Al Amin vs. State*<sup>5</sup>, a case under the *Nari O*

*Shishu Nirjaton (Bishesh Bidhan) Ain*, 1995, where he stressed:

*'Mere punishment of the offenders of sexual assault cannot give much solace to the victim and her family members. Adequate monetary compensation..may redress the wrong and damage caused to the victims and the family members... This has to be awarded independently having no nexus with the provision of imposition of fine embodied in the Penal Code and the same has to be inserted in the Ain itself. A permanent mode of compensation has to be worked out. The Government may consider the matters under observations.'*

In February 2000, roughly a year after the judgment in *Al Amin*, VAWCA was introduced. It repealed the 1995 Act and replaced it as the main legislation on violence against women and children.<sup>6</sup> It currently deals with four main forms of SGBV: dowry violence, abduction, rape and sexual 'oppression'.<sup>7</sup>

As shown in Table 1, VAWCA recognised six different offences relating to rape, and made fines mandatory as part of the sentence for all of them. In contrast, in the

**Table 1: Punishment for offences relating to rape in VAWCA**

Section	Form of Rape	Punishment
9(1)	Single perpetrator rape	Life imprisonment or death penalty <b>and fine</b> .
9(2)	Single perpetrator rape causing death of the victim	Life imprisonment or death penalty <b>and fine</b> of <b>at least 100,000</b> BDT
9(3)	Gang rape	Life imprisonment or death penalty <b>and fine</b> of <b>at least 100,000</b> BDT
9(4)(a)	Attempt to cause death after rape	Life imprisonment or death penalty <b>and fine</b>
9(4)(b)	Attempt to rape	Imprisonment for up to 10 years <sup>8</sup> <b>and fine</b>
9(5)	Failure to prevent rape which occurred in police custody	Imprisonment for up to 10 years <sup>9</sup> <b>and fine</b>

preceding 1995 Act, Section 6 did not even prescribe a fine as part of the punishment for rape.

Further, for the two most severe forms of rape, (rape causing death and gang rape), VAWCA introduced a minimum fine of 100,000 BDT. This was a new approach. Earlier criminal laws typically either remained silent about the fine amount, or where they mentioned any amount, it was provided as a cap, or maximum limit.<sup>10</sup>

The general law provides that, when the amount of fine is not specified in statute, the offender’s liability is unlimited but any fine imposed ‘shall not be excessive’.<sup>10</sup>

Sections 15 and 16 of VAWCA expressly contain provisions for compensation for victims of offences against women and children covered by the Act.<sup>12</sup> These two provisions are the first express reference to compensation for violence against

women and girls, and reflect a welcome shift in legal approaches to ensuring victims’ wellbeing.

Section 15 of the Act empowers the Court to convert an order of fine to compensation for the victim of an offence covered by Act, or any other aggrieved person (such as the family members of a murdered rape victim). This amount can be realised from the convict’s existing property, and if that is not possible, then from his future inheritable property.

Section 16 of the Act lays down the procedure for realising the fine as damages. The District Collector, more commonly known as the Deputy Commissioner (DC), is to first produce a list of properties owned by the convict, including both moveable and immovable properties. The DC can then realise the sum either through attachment or auction of the property.

**Table 2: Orders for Fines and Compensation in Rape Cases**

Law	Total no. of cases where the Court:		
	convicted the accused	imposed a fine	converted the fine into compensation
<b>1995 Act</b>	46	9 (19.6%)	0 (0%)
<b>VAWCA</b>	44	44 (100%)	3 (6.8%)

### 3.1.2. Limits to compensation for rape under VAWCA

#### 3.1.2.1 No right to compensation

As Table 2 shows, since VAWCA made fines mandatory for rape convictions, the Court imposed fines in all 44 reported rape cases under the law analysed in this report. This can be contrasted with the reported rape cases under the 1995 Act (which did not make fines mandatory in rape convictions), where the Tribunal imposed a fine in only 9 out of 46 cases (19.6%). Therefore, there has been a remarkable increase in the imposition of fines in rape cases (over 80%), following the mandatory requirement under Section 9 of VAWCA.

While the provisions on fine and compensation in VAWCA mark an important and positive change, crucial gaps remain. Firstly, the victim has no right to compensation. Rather, this issue is left to the Court's discretion. As Table 2 shows, while the Court imposed a fine in all 44 rape cases, it converted the fine into compensation in only three cases.<sup>13</sup>

Before VAWCA came into force, the Court already had the

discretion to award compensation under Section 545 of the Code of Criminal Procedure 1898 which allowed Criminal Courts to convert an order of fine into an award of compensation in any given criminal case. Therefore, Section 15 and Section 16 of VAWCA do not technically improve the position of the victim beyond the earlier law; they merely specify powers of the Tribunal which it, as a Criminal Court, generally had. However, since this general power under the 1898 Code was seldom exercised by Criminal Courts,<sup>14</sup> the introduction of compensatory provisions specifically in VAWCA can be seen as legislative encouragement towards the Tribunal to award compensation in cases of violence against women and children.

Yet as Table 2 shows below, the Tribunal exercised its power to award compensation very rarely, in less than seven percent of cases. This suggests that due to the express provision for compensation in VAWCA, there was a slight, though not insignificant, change in judicial behaviour in relation to compensation for rape. If Section 15 had granted victims a right to

compensation, so that every mandatory order of fine on conviction could also be considered as compensation to the victim, then the outcome could have been quite different. Rape victims and survivors would then no longer have had to rely on judges to exercise a discretion in their favour - particularly as Courts have rarely chosen to do so. In all 44 cases under VAWCA where a fine was imposed, the amount of fine would have gone to the rape survivor or an aggrieved person, instead of the state. This also goes against Huq J's specific warning about ensuring that award of compensation does not have any 'nexus with imposition of fine' was not taken into account by lawmakers when enacting VAWCA.

### 3.1.2.2 Amount tends to be low

Another major pitfall of compensation for rape in criminal law is the quantum of fines, which tends to be limited. This is because fines in criminal law, unlike damages in civil law, are not meant to be proportionate to the harm that has been sustained by a victim of a wrong. As the amount of compensation is directly equivalent to the amount of fine imposed, this poses a significant limitation.

**Table 3A: Average Amount of Fine in Rape Cases under the 1995 Act**

Section	No. of Cases	Average amount of fine
6(1)	7	4,571
6(2)	1	5,000
6(3)	1	5,000
<b>Overall</b>	<b>9</b>	<b>4,667</b>

**Table 3B: Average Amount of Fine in Rape Cases under VAWCA**

Section	No. of Cases	Average amount of fine
9(1)	32	414,297
9(2)	3	100,000
9(3)	4	100,000
9(4)(b)	3	5,667
<b>Overall</b>	<b>42<sup>15</sup></b>	<b>27,964</b>

As Table 3 shows, the average amount of fine under the 1995 Act was less than 4,700 BDT, but has increased to around 28,000 BDT under VAWCA, in large part due to the minimum amount of fine being set at 100,000 BDT for Sections 9(2) and 9(3).

Nevertheless, even the increased average quantum of fine under VAWCA is clearly too inadequate an amount to be treated as compensation for rape.

Additionally, in the seven cases under Sections 9(2) and 9(3), where the minimum of 100,000 BDT was applicable, the quantum of fine never went above the minimum, thereby indicating that the Court has tended to treat the minimum amount of fine set by Sections 9(2) and 9(3) of VAWCA, as the maximum amount in practice.

### 3.1.2.3 Award depends on conviction

Finally, compensation in criminal law depends on not only the rape survivor being able to prosecute the perpetrator, but also on being able to secure a conviction. These two prerequisites are largely limiting given that a study found

that, on average, over 90% of rapists never faced any legal consequences in Bangladesh, while another study found conviction rates in rape cases to be less than three percent on average in the three *Nari O Shishu Nirjaton Domon* Tribunals in Dhaka over a period of 15 years.<sup>16</sup> These statistics underscore why it would be inadequate to only provide for compensation for rape survivors in criminal law alone.

### 3.1.2.4 Inaccessible in practice

In the first quarter of 2019, BLAST made Right to Information (RTI) applications under the RTI Act 2009 before 26 *Nari O Shishu Nirjaton Domon* Tribunals across the country, seeking information relating to compensation for rape. The questions posed were:

*How many rape cases were filed before this Tribunal in the period between 1 January 2017 and 31 December 2019?*

*Has compensation been ordered out of fine in any of the cases? If so, please provide us a copy of the judgment of the case(s).*

Out of the 26 Tribunals, only 5 responded to our RTI applications. As shown in Table 4, while 1,058 rape cases were filed before these five Tribunals in the given two year period, compensation was granted in only one case. Compensation may not have been ordered in the remaining 1,057 cases for any number of reasons: either because the accused was not apprehended or was discharged, trial is still ongoing or even if concluded, the accused was acquitted or the Tribunal did not order compensation as part of the sentencing.<sup>17</sup> Whatever the reason may be, what is clear from the findings of the RTI is that compensation under VAWCA is almost never accessible to a rape complainant when they need it the most.

**Table 4: Summary of responses received from 5 Tribunals**

Name of Tribunal and District	No. of rape cases filed	No. of cases where comp. given	Date of Response
<i>Nari O Shishu Nirjaton Domon</i> Tribunal - 1, Bogura	235	1	27.02.2019
<i>Nari O Shishu Nirjaton Domon</i> Tribunal - 2, Bogura	217	0	07.03.2019
<i>Nari Shishu Nirjaton Domon</i> Tribunal - 2, Dinajpur	347	0	25.03.2019
<i>Nari O Shishu Nirjaton Domon</i> Tribunal, Patuakhali	119	0	26.02.2019
<i>Nari O Shishu Nirjaton Domon</i> Tribunal, Tangail	140	0	09.04.2019

In one district, Tangail, there was one case in which compensation was granted to the victim's family but the Tribunal did not provide us with a copy of the judgment. However, in February 2018, according to press reports, in the case of a woman gang raped in a moving bus in August 2017, the Tribunal ordered the bus to be given to her family as compensation when convicting the rapists.<sup>18</sup> According to recent reports, compensation had not been paid to the victim's family three years later.<sup>19</sup>

### 3.1.3 Case law on compensation for rape

In the case of *Md. Wasim Mia and another vs. The State*<sup>20</sup> the Tribunal convicted Wasim Mia for the rape of a minor girl with hearing and speech impairments who had been tied to a tree, along with his aide, Wafiz Mia under Section 9(1) of VAWCA. It sentenced them to life imprisonment and to pay a fine of 10,000 BDT each, which was to be treated as compensation for the victim.<sup>21</sup>

Pursuant to Section 15 of VAWCA, the Tribunal also stated that if the fine could not be realised from the convicts' existing property then it should be realised from any future inheritable property.<sup>22</sup>

The HCD allowed an appeal by Wafiz Mia, finding him 'not guilty of the charge levelled against him'.<sup>23</sup> However, it rejected Wasim Mia's appeal and upheld his conviction.<sup>24</sup> In so doing, A.K. Badrul Huq J. stated:<sup>25</sup>

*'[The] Tribunal responded to society's cry for justice in imposing appropriate punishment...and, also, awarding compensation as a solace to victim...though, compensation in the circumstances cannot be a solace as because victim...lost her most precious article which is her chastity.'*

Huq J.'s statement reflects the problematic social tendency of questioning the suitability of compensating victims of sexual violence (as opposed to victims of other violent offences), since loss of 'chastity' is not only perceived as the primary harm facing rape survivors but also one that money can never fix. This is contrary to Huq J.'s robust judgment in *Al Amin*<sup>26</sup> where he had stressed the urgent need to establish compensation as a remedy for rape survivors due to the diverse harms they face.

In the end, the victim never received even this nominal sum of compensation as the AD acquitted Wasim Mia on a second appeal.<sup>27</sup> The AD held that the HCD had failed to consider the fact that neither the victim nor her mother deposed against the appellant.<sup>28</sup> The AD also found that the HCD had wrongly relied on a finding of the victim's 'hymen [being] ruptured' in the medical report as a sign of rape, considering 'the fact that on attaining puberty "[the h]ymen" may become ruptured'.<sup>29</sup>

In *Sohel Rana vs. The State*,<sup>30</sup> the Tribunal convicted a man of rape, under Section 9(1), sentencing him to life imprisonment and to pay a fine of 50,000 BDT. It ordered that 40,000 BDT out of this be paid as compensation to the victim, following sale of the convict's property. On appeal, the HCD acquitted the accused, as it held that the woman had consented to sexual intercourse with the man on a number of occasions on the promise of marriage.<sup>31</sup> Although the accused was found to have breached that promise, such breach did not amount to rape.<sup>32</sup>

Both these cases highlight that the fine imposed, even when treated as compensation, can be quite inadequate, as little as 10,000 BDT. This occurs because Section 9(1) does not stipulate any minimum amount, unlike Section 9(2) - regarding rape causing death - or Section 9(3) concerning gang rape.

The two cases also illustrate how difficult it is to secure compensation following a criminal prosecution. On the one hand, the amount is nominal, and limited to whatever is provided by the law. On the other hand, since convictions are so difficult to secure and then to be sustained on appeal, the chances of receiving compensation reduce alongside the low conviction rates.

In *Uzzal alias Elias Hossain vs. State*,<sup>33</sup> four armed men abducted and then gang raped a teenage girl, and took photos of her naked body. They then threatened to

release these photos if the girl or her family took legal action. The girl's father, after being told of the incident, went to the parents of the four men and demanded that the photos be returned. However, they verbally abused the father and alleged that his daughter was of a 'bad character'. After these failed attempts at recovering the photographs and on the fourth morning after the rape incident, the girl committed suicide by ingesting poison 'in order to preserve her self-esteem and honour'<sup>34</sup>

The Tribunal convicted the men under Section 9(2) of VAWCA, for rape causing death of the victim, sentenced them to death and to each pay a 100,000 BDT fine. It ordered that the fine be converted into compensation for the victim's father. If the convicts failed to pay the fine, the DC was 'directed to realise the fine in accordance with Section 15 of VAWCA and to expeditiously hand over the fine amount to the victim's father'.<sup>35</sup> Only one of the four men, Elias Hossain, appeared before the Court during trial while the remaining three were tried and convicted in absentia by the Tribunal.<sup>36</sup>

On appeal, the HCD found that although the rape was established beyond reasonable doubt, a causal link between the rape and the suicide was not sufficiently established and therefore modified the conviction of the four men from under Section 9(2) to one under Section 9(1) instead. In so doing it also modified the sentence: from the death penalty to life imprisonment. It reduced

the compensation order from 100,000 BDT to 25,000 BDT. It is not clear why the HCD reduced the compensation order along with the modified conviction. One possible explanation could be that since the offence under Section 9(1) is less severe than Section 9(2), the compensation awarded could be less (even though 100,000 BDT is the bare minimum for the latter).

It is also implicit from the HCD judgment and the reduction in compensation award that despite the DC being directed to realise compensation, it was likely that the victim's father was yet to receive compensation even though the HCD judgment was being given over four years after the Tribunal's judgment.<sup>37</sup>

Therefore, even in the three rare cases where compensation was awarded for rape under Section 9 of VAWCA, the compensation award had sustained in only one case (i.e. *Elias Hossain*<sup>38</sup>), as the convicts were acquitted at the appellate level in the other two cases.

### **3.1.4 Maintenance of child born following rape under VAWCA**

Under VAWCA, the only situation where the state assumes financial responsibility in consequence of a woman or girl's rape is when there is a child born due to the rape. While the child may remain in the care of the mother or maternal relatives, the state has a mandatory duty to pay for the child's maintenance under Section 13 of VAWCA.<sup>39</sup> If the child born is male, then the maintenance is

payable till he attains the age of twenty one years, while, in case of a female child, the duty extends over and beyond the age of twenty one, until she gets married.<sup>40</sup> In case of a child born with disabilities, the state is required to pay maintenance until they are able to support themselves.<sup>41</sup> The amount to be paid for child maintenance by the government is to be determined by rules, but no such rules yet exist in relation to VAWCA.

Furthermore, the government may recover from the convicted rapist the maintenance amount payable to any child under Section 13.<sup>42</sup> Like the recovery of compensation under Section 15, if it is not possible to recover the amount from the existing assets of the rapist, it will be recoverable from the assets that he will own in the future.<sup>43</sup>

In *Motiur Rahman Mithu vs. The State*<sup>44</sup> a young girl who was working as a domestic helper was raped by her employer's brother. The perpetrator threatened her with death if she disclosed the matter to anyone, and as he was the son of the Union Parishad (UP) Chairman of her locality, she kept the matter secret out of fear. However, she later became pregnant and gave birth to a son.

After she eventually sought justice, the Tribunal convicted Motiur under Section 9(1) of VAWCA, sentenced him to imprisonment for life and to pay a fine of 20,000 BDT while also directing him to pay 2,000 BDT per month as the maintenance of the son, until he attained the age

of 21, under Section 13 of VAWCA. The total amount of maintenance payable amounted to 504,000 BDT in total, which is thoroughly inadequate. The judgment does not discuss whether the convict kept paying the maintenance, or even how the money ought to be transferred to the victim every month. It appeared that the convict was not in prison, and therefore the HCD ordered his surrender.<sup>45</sup> This case is the only available example from the judgments analysed under VAWCA, where a rapist has been ordered to pay maintenance.

### 3.2 Tort law

Rape victims may bring a civil action for damages in tort law. They may sue the perpetrator for trespass to person, namely the torts of battery, assault and false imprisonment. Alternatively, they may sue relevant third parties, for example, for negligence. So for instance, they may sue the occupier of a building in which the rape took place on the basis that the failure to prevent rape from taking place amounted to a breach of duty to keep all visitors to the building (such as the victim) safe from harm. In certain circumstances, victims may sue the employer of the perpetrator, arguing that they are vicariously liable for the intentional tort committed by their employee. Given the underdevelopment of tort law in Bangladesh and procedural hurdles, such compensation claims remain extremely rare.

There is no reported instance of any rape complainant having filed a tort action in Bangladesh to

date. However, in *British American Tobacco Bangladesh (BATB) vs. Begum Shamsun Nahar*,<sup>46</sup> a sexual harassment complainant sued the company for damages in tort in 2003. The case came before the Supreme Court on a procedural matter. The Court recognised in an interim ruling that an action in tort against a company lies for sexual harassment. This trial is still ongoing.

It took eleven years for the claimant in this case to be able to establish the maintainability of the case.<sup>47</sup> This shows why it is crucial to provide a statutory right to compensation so that a sexual violence survivor could sue for compensation in a Civil Court and not be required to spend over a decade in litigation to prove a cause of action and maintainability of their claim.

A statutory right to compensation should be enforceable against the perpetrator, and also against third parties who owe a duty of care to the rape survivor to ensure their safety. So when a rape occurs within a workplace or any premises, the employer or property owner could be held liable to pay compensation for their failure to prevent rape from taking place (negligent supervision or inadequate security).

### 3.3 Public law

Rape victims may also sue for compensation in public law for the breach of constitutionally guaranteed fundamental rights through enforcing their right to relief under Article 102(1) of the

Constitution. The Children's Charity Bangladesh (CCB) Foundation, together with BLAST, had filed such a claim in relation to the alleged rape of a woman by police officers in 2019.

On 11 February 2019, a woman, aged 22, filed a rape case in Sauria Police Station in Manikganj, against two police officers.<sup>48</sup> On 6 February 2019, the complainant went to the Police Station along with her aunt to meet a Sub-Inspector who had borrowed a sum of money from the aunt some years back.

The Sub-Inspector, along with an Assistant Sub-Inspector, reportedly took the two women to a nearby Rest House (a government owned building) on the pretext of returning the money. However, upon reaching their destination the police allegedly separated the two women by locking them up in adjoining rooms. They then allegedly drugged the complainant with *yaba* (a combination of caffeine and methamphetamine) and took turns raping her.

The women were finally freed and allowed to leave the building on the morning of 8 February 2019 but the officers allegedly threatened to "kill them in a crossfire" if they spoke a word about the incident to anyone.

The woman filed a complaint against the officers, and a probe committee was immediately established by the Superintendent of Police, Manikganj, to investigate

the matter. As the committee found proof of the allegation, the two police officers were arrested on 12 February 2019.

Based on reports of this incident published in various national newspapers, BLAST and CCB Foundation jointly filed a writ petition on 17 February 2019, impleading the Secretary, Ministry of Home Affairs (MOHA), the Inspector General of Police (IGP), the Superintendent of Police, Manikganj, the Officer in Charge (OC) of Sauria Police Station, the manager of the Sauria Rest House and others, challenging their culpable failure to prevent this heinous offence by state officials, and demanding that they pay compensation to the victim for such failure.<sup>49</sup> The two accused police officers were also impleaded in the writ.

The petitioners argued that the gang rape and confinement of a young woman by two police officers was not only a violation of her right to life and personal liberty guaranteed by Article 32 of the Constitution but also of her right to protection of law guaranteed by Article 31 of the Constitution, as the alleged perpetrators were the very state officials whose job it was to uphold the law. They argued that the state ought to be held vicariously liable for the action of the two police officers, and prayed for the respondents to pay 5 million BDT as compensation to the survivor. Additionally, they sought interim compensation of 100,000 BDT from the MOHA and IGP.

On March 10, 2019, the HCD issued a rule nisi, admitting the petition, and directing the respondents to explain why they should not be ordered to pay compensation of 5 million BDT to the rape survivor “for the gross violation of her human rights”.<sup>50</sup>

This marked the first time the HCD has formally recognised that the act of rape could constitute a violation of fundamental rights, and that the state could be liable to pay compensation in such a case. The HCD also directed the government to outline a scheme or guideline which ensures that state controlled buildings (a rest house, police station or public place) are adequately secure for women, girls and children. It directed the government to submit a report on the steps taken for protection and safety of girls, women and children from sexual abuse across the country, within four weeks. The next hearing was scheduled for 18 April 2019.

While there are many examples of compensation claims being filed in public law for other forms of rights violations such as illegal detention and even for case where private actors are primarily being held culpable, e.g. deaths arising from road crashes and industrial accidents, the same is not true for SGBV, such as rape.

Therefore this case presented an opportunity to conceptualise (custodial) rape not only as a crime by the perpetrator, but also as a breach of the state’s duty to ensure basic protection to citizens, especially women and girls who constitute the vast majority of rape victims.

However, the survivor and her family did not wish to appear before the Court. They feared that Supreme Court litigation would generate further publicity, and lead to increased (though misplaced) social stigma, and that the case would drag on for years. The HCD indicated to the public interest petitioners’ lawyers that the next hearing in this case could only be scheduled after the outcome of the pending criminal case was determined.

While compensation for rape in tort law or criminal law would never be an issue before the Court if the victim or their family members/ dependents did not themselves pursue the claim, the same is not true for public law. Due to the expansion of public interest litigation in Bangladesh, it is possible to seek compensation under the writ jurisdiction for the breach of fundamental rights, and lawyers often do so, increasingly only on the basis of newspaper reports. Whether or not a rape victim wishes to seek compensation in public law, is something that ought to first be ascertained.

More generally, this case exemplifies how rape survivors and their families may prefer a monetary remedy that can be received quickly and discreetly. The failure of the law in providing rape survivors and their families with such a remedy is precisely what leads to the vast majority of rape cases being settled out of court.<sup>51</sup>

### 3.4 Additional Case Law on Compensation for Rape

In *State vs. Secretary, Ministry of Law*<sup>52</sup> news about a seven year old girl held in judicial custody in a safe home by order of a Chief Judicial Magistrate (CJM) was brought to the attention of the HCD by a child rights organisation called Aparajeyo Bangladesh. The parents of the girl 'were willing and capable of keeping her' but were denied access to the safe home.<sup>53</sup> Finding this incident 'rather disturbing', the HCD issued a suo moto rule against the CJM and other concerned public authorities to show cause why the child should not be released from the safe home run by the Department of Social Welfare where she was being held.<sup>54</sup>

Dr. Naim Ahmed, who represented Aparajeyo, argued that that the 'insensitive and illegal acts' of state functionaries caused 'irreparable' psychological harm to the child and therefore she should be compensated by the state. He noted the existence of Section 15 of VAWCA which allows compensation to be obtained through any fine levied on the perpetrator but that it 'usually results in no benefit to the victim'.<sup>55</sup> Therefore, he argued that there ought to be a system of compensating the victim 'other than by the offender' such as through a state compensation fund.<sup>56</sup>

The HCD observed that Dr. Ahmed was 'unable' to produce any compelling leads 'as to how in the criminal jurisdiction compensation might be awarded to a victim who undoubtedly suffered mental and

physical trauma and hardship as a result of erroneous action of the learned Magistrate'.<sup>57</sup> Nevertheless the Court went on to state:

*'..we would **strongly recommend** that the Government should **seriously consider disbursement of compensation** in cases of this nature.'*

Compensation for rape was also stressed by the International Crimes Tribunal in the context of war time rape survivors and victims:<sup>58</sup>

*'Modern approach of victimology acknowledges that a crime victim has [a] **right to be adequately compensated, rehabilitated and repaired.** From humanitarian point of view, there has been no scope to disagree that the victims of crimes especially the victims of war time rape must have something like '**reparation**' or '**compensation**' that can reduce their continuing sufferings and trauma..'*

Ultimately the Tribunal held it could not order compensation without statutory sanction. It instead urged the government to take an 'immediate initiative of forming 'Reparation/ Compensation Scheme/Board for war time rape victims'.<sup>59</sup>

### 3.5 The Due Diligence Standard in international law

The Declaration on the Elimination of Violence against Women (DEVAW) adopted by the United Nations General Assembly in 1993, along with other international instruments, sets a clear due diligence standard for against which state obligations and responses to Violence Against Women (VAW) can be measured.<sup>60</sup> This standard comprises four dimensions: (i) prevention of VAW, (ii) protection from VAW, (iii) investigation, prosecution and punishment of the perpetrators of VAW and (iv) providing victims adequate compensation and reparations.<sup>61</sup>

While the first three limbs are frequently discussed in the human rights discourse of Bangladesh, the need to provide reparations to victims and survivors of VAW remains an unrealised objective, especially in relation to rape, as we have seen. Article 4(d) of the DEVAW places strong emphasis on ensuring redress for VAW, along with punishment by specifically requiring states to:

*‘Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just*

*and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms.’*

In 2006, Yakin Erturk, then UN Special Rapporteur on Violence against Women, its Causes and Consequences (SRVAW), noted in her report analysing the implementation of the due diligence standard in the global context, that reparations aspect of the said standard ‘remains grossly underdeveloped’.<sup>62</sup> She elaborated on the state obligation to ensure reparations for VAW:

*‘The obligation to provide adequate reparations involves ensuring the rights of women to access both criminal and civil remedies as well as the establishment of effective protection and support services for women survivors of violence. Compensation for acts of violence against women may involve the award of financial damages for any physical and psychological injuries suffered, for loss of employment and educational opportunities, for loss of social benefits, for harm to reputation and dignity as well as any legal, medical or social costs incurred as a consequence of the violence.*

*States are also required to ensure that women victims of violence have access to appropriate **rehabilitation** and support services. The notion of **reparation** may also include an element of restorative justice.'*

In 2010, Rashida Manjoo, then UN SRVAW further added: <sup>63</sup>

*'According to the DEVAW and other human rights instruments, **States have a duty** to ensure that victims of violence **receive compensation**, regardless of whether the relevant acts were committed by **State or non-State actors**. A failure to comply with **any aspect** of the **due diligence** obligation constitutes a **human rights violation**.'*

In the report on her official mission to Bangladesh in 2013, the Special Rapporteur noted the inclusion of compensatory provisions in VAWCA and the Domestic Violence Act 2010.<sup>64</sup> She reiterated that the duty to provide effective remedies includes women's right to access remedies in both civil and criminal law, while also ensuring the existence of effective protection, support and rehabilitation services.<sup>65</sup>

By way of evaluation she stressed the shortcomings of the existing

framework and the need for the government to take greater responsibility:<sup>66</sup>

*'Under existing legislation, compensation can be provided only to the victims who use the formal justice **system**...The **involvement of victims** in the design of the reparation and rehabilitative measures is a crucial aspect of **transformative remedies**... the **Government**, as the **ultimate duty-bearer**, retains responsibility for the fulfilment of **due diligence obligations**.'*

The Special Rapporteur made a number of recommendations to the Government of Bangladesh, including on the need to ensure remedies as an aspect of accountability: <sup>67</sup>

*'[The government should] take effective measures to ensure access to justice and **effective remedies** for all women and girl victims of violence, in particular: (i) Ensure that all cases of violence against women are dealt with by formal judicial mechanisms so that victims can access **effective remedies**. Empower relevant law enforcement agencies to **respond promptly** to incidents of violence against women.'*

## 4. COMPENSATION UNDER OTHER SGBV LAWS

A number of criminal laws on SGBV enacted after VAWCA have incorporated more extensive provisions on compensation. These include but are not limited to: the Acid Offence Control Act 2002 (AOCA), Domestic Violence (Prevention and Protection) Act 2010 (DVA), The Prevention and Suppression of Human Trafficking Act 2012 (HTA) and the Child Marriage Restraint Act 2017 (CMRA).

### 4.1 Compensation for acid violence under AOCA

AOCA grants victims of acid violence the right to be compensated from any fine realised under the Act either from the convicted person's existing property or his/her estate.<sup>68</sup> In case of death of the victim, the right to compensation extends to their heirs.<sup>69</sup> Like VAWCA, the process of realising the fine rests on the DC, who is to realise the sum through attachment and/or sale by auction of the offender's moveable and immovable property.<sup>70</sup> The money is to then be deposited in the Acid Crime Prevention Tribunal, which must 'take steps to give such money to the affected person'.<sup>71</sup>

### 4.2 Compensation for domestic violence under DVA

The DVA grants a domestic violence victim the right to file a claim for compensation before a Court for six types of harms. These are personal injury, financial loss, trauma, psychological damage,

property damage and even the 'possibility of such damage or loss as a result of domestic violence'.<sup>72</sup> Such an application may be made before any Court within the local jurisdiction of where the applicant ordinarily or temporarily resides, where the respondent resides or where the domestic violence occurs.<sup>73</sup> The Court has to dispose of the application within six months of receipt.<sup>74</sup> The award of compensation is to be made on a reasonable scale.<sup>75</sup> In determining the amount of compensation, the Court may also assess the actual loss or damage with the assistance of a person or organisation, by factoring in the following harms and costs:<sup>76</sup>

- *the pain and suffering and physical or mental injury suffered by the victim*
- *the cost of medical treatment for such injury*
- *temporary or permanent effect of such injury*
- *any loss of earnings, present and prospective, arising therefrom*
- *the amount and value of the property taken, transferred, destroyed or damaged*
- *reasonable expenses incurred by or on behalf of the victim in securing protection from violence*

A copy of the compensation order is to be sent to the Officer in Charge of the local police station of the respondent,<sup>77</sup> along with the concerned ‘higher authority’ of the respondent if they are an employee of an organisation.<sup>78</sup>

In the event of failure to pay compensation, the Court may direct the respondent’s employer or debtors to directly pay the compensation to the victim or to deposit the amount into the victim’s bank account from a portion of wages, salaries or debt the respondent is entitled to.<sup>79</sup>

The process of realising a compensation order is subject to Public Demands Recovery Act, 1913 (PDRA).

#### **4.3 Compensation for human trafficking under HTA**

The HTA lays down by far the most extensive framework for providing monetary relief in Bangladesh for victims of violent crime. It allows victims to recover monetary relief from four sources, as described below.

Firstly, it establishes Anti-Human Trafficking Offence Tribunals which have the power to order an offender to pay ‘a reasonable amount of compensation’ in addition to any fine imposed, or convert any order of fine into compensation, payable to the victim of human trafficking.<sup>80</sup>

Such compensation has to either be collected by the Tribunal directly or in line with the provisions of the PDRA.<sup>81</sup>

When determining the amount of compensation, the Tribunal, like the DVA, must factor in:<sup>82</sup>

- *the costs of physical and mental **treatment** of the victim*
- *costs of necessary **transportation** or temporary **housing***
- *loss of **income** and **suffering***
- *the physical or emotional **injury** and the **gravity** of **distress***

Secondly, HTA recognises the duality of criminal and civil proceedings by specifically reiterating that the victim has a right to file a civil suit for compensation in any Civil Court for the ‘actual sufferance or legal injury’ caused by the offence under the Act.<sup>83</sup>

Thirdly, HTA establishes a Human Trafficking Prevention Fund to provide financial assistance to victims.<sup>84</sup> This is financed through government grants and by local authorities, individuals, institutions and money received from any “other source to prevent and suppress human trafficking”. If someone obtains property as a result of committing any offence under the Act, the Tribunal may, upon conviction, confiscate such property and deposit it in the Human Trafficking Prevention (HTP) Fund.<sup>85</sup>

Fourthly, where any complaint is proved against any public officer

for abuse of public power or failure to discharge legal duties under the Act, the concerned public authority (under whom the officer is employed) is bound to take “disciplinary punitive action” against them. Such action may be in line with service rules if the Tribunal so recommends. The Tribunal also has the power to order the officer to pay “adequate compensation”.<sup>86</sup> While it is not expressly stated to whom this compensation would be paid, arguably it could be paid to the victims of the officer’s breach of duty.

Finally, HTA requires the investigating officer, person or organisation rescuing the victim to inform them of their ‘right to compensation and legal aid’ and additional benefits under the Act.<sup>87</sup>

Therefore, a trafficking victim can potentially receive compensation and monetary relief from four parallel sources under HTA: compensation from the offender in a criminal case, damages from the offender in a civil case, financial assistance from the HTP Fund and compensation from a public officer

for breach of their duties. This is precisely the kind of multifaceted monetary redress that could also be afforded to rape survivors.

#### **4.4 Compensation for child marriage under CMRA**

The CMRA, unlike VAWCA, makes it mandatory for any and all money realised from fines imposed on any person for offences committed under the Act, to be paid to the victim of a child marriage as compensation.<sup>88</sup>

However, since Section 7(2) of the CMRA also criminalises minors who willingly contract marriages illegally, fines imposed for offences under this subsection are not treated as compensation, and instead go to the government treasury.<sup>89</sup>

There are two other limiting factors regarding compensation under CMRA. Firstly, the fine is not made mandatory as part of the sentencing. Secondly, fine amounts are capped at 10,000, 50,000 or 100,000 BDT, for the five offences under the Act.<sup>90</sup>

## 4.5 Comparing the scope of compensation in the five key SGBV laws

**Table 5: Provisions for compensation in SGBV laws**

Name of Act	Form(s) of SGBV covered by the Act	Whether statutory provisions exist for receiving compensation through:				Whether fine must be treated as compensation
		Criminal case	Civil case	State fund	Disciplinary action	
<b>VAWCA</b>	Abduction, rape, sexual oppression, dowry violence	YES	NO	NO	NO	NO
<b>AOCA</b>	Acid violence	YES	NO	NO	NO	YES
<b>DVA</b>	Domestic violence	YES	YES	NO	NO	NO
<b>HTA</b>	Human trafficking	YES	YES	YES	YES	YES
<b>CMRA</b>	Child marriage	YES	NO	NO	NO	YES

As Table 5 illustrates, a human trafficking victim is statutorily entitled to compensation and monetary redress from the greatest variety of sources, while a victim of domestic violence may receive it from two sources.

For victims of all other forms of SGBV (e.g. acid violence, child marriage and rape etc.), statutory remedies of compensation will only be available in a criminal case. Importantly, however, while

compensation from fines are mandatory under AOCA and CMRA, this remains discretionary under VAWCA.

Therefore victims and survivors of rape (and other forms of SGBV covered by VAWCA such as abduction, sexual oppression and dowry violence) are in the least favourable position in terms of monetary redress under the existing legal framework.

# 5. TOWARDS A REFORM PROPOSAL

## 5.1 The Draft Crime Victims Compensation Act

In 2006, the Law Commission noted the inadequacy of existing laws to provide redress to victims of violent crime and drafted a Crime Victims Compensation Act (CVCA) to fill this void. The CVCA primarily obliges the state to create a Crime Victims Compensation Fund in each district from which victims of a closed list of violent offences (including rape) can apply for compensation, as a matter of right.

The fund would be managed by a Victim Services Committee (VSC), which would have to be established in the office of the District and Sessions Judge in every district and supervised by the Ministry of Law, Justice and Parliamentary Affairs (MLJPA).<sup>91</sup>

Every application for compensation would be heard by the VSC, who would decide not only whether to grant compensation, but also the quantum, recipients and the mode in which it is to be paid (i.e. lump sum or periodic payments).<sup>92</sup>

In determining the quantum of compensation, the VSC must take into account a number of factors:<sup>93</sup>

- *expenses incurred by the victim or his/her dependants;*
- *loss of earning power as a result of the victim's total or partial incapacity;*

- *economic loss to the deceased victim's dependants;*
- *lost wages or loss of support;*
- *medical, funeral and burial costs;*
- *the need for financial aid; and*
- *any other relevant matters*

Most importantly, the award of compensation is to be made independently of apprehension, prosecution or conviction of the alleged perpetrator.<sup>94</sup>

The CVCA also clarifies that the award of compensation is not to be seen as a price of compromise between the parties<sup>95</sup>, as it often is, even in the case of non-compoundable offence.

The funding of the CVCF remains somewhat vague as the CVCA provides for government contributions to the fund as one of two mandatory sources of financing, but does not specify which line ministry would have to budget for this.<sup>96</sup>

The other mandatory source is fines, forfeited bail bonds and penalties which can be realised from those convicted of the violent offences covered by the Act.<sup>97</sup> Optional sources include: voluntary contributions, donations or grants from any individual or organisation and any other source.<sup>98</sup>

## 5.2 The Indian Example

The compensation framework for rape in India, and violent crimes more broadly, can serve as a useful example for Bangladesh to follow. While compensation in criminal law is much the same as Bangladesh, notably there also exists a state compensation scheme.<sup>99</sup>

### 5.2.1 Compensation in criminal law

The Criminal Courts of India, like Bangladesh, are empowered to convert an order of fine into an award of compensation to remedy any loss or injury caused by the offence in cases where compensation would also be recoverable in Civil Courts.<sup>100</sup>

The Criminal Courts may also award compensation to the victim to be paid by the convicted offender even when adjudicating offences where the prescribed sentence in law does not include a fine.<sup>101</sup> If the victim then sues for compensation in civil law over the same matter, the Civil Court must take into account the compensation awarded by the Criminal Court.<sup>102</sup>

### 5.2.2 Victim Compensation Scheme

In 2009, India amended the Code of Criminal Procedure 1973 (CrPC) to obligate every state to establish a 'Victim Compensation Scheme' (VCS) to provide relief to those who have suffered loss or injury due to the wrong (including victims and their dependents) and also require rehabilitation.<sup>103</sup>

The trial court adjudicating the criminal case may make a recommendation for compensation to the District Legal Service Authority (DLSA) or State Legal Service Authority (SLSA) as appropriate and the latter will then fix the amount of compensation.<sup>104</sup> The trial court may make this recommendation for compensation to be paid to the victim from the scheme where it is of the opinion that the compensation paid out of the fine is inadequate or where the criminal case has resulted in acquittal or discharge.<sup>105</sup>

The Indian VCS system therefore recognises and addresses the pitfalls that exist in the Bangladeshi framework, namely that compensation realised through fine can only be awarded if there is a conviction (which remains extremely rare), and the amount itself can be inadequate since fines tend to be nominal.

If the victim has been unable to identify or trace the offender, they may directly make an application to the SLSA or DLSA for compensation.<sup>106</sup> The SLSA and DLSA are duty bound to conduct and complete an inquiry and award compensation within two months of receiving the recommendation from the trial court or application from the victim.<sup>107</sup>

The SLSA or DLSA, may also order free medical care to be provided to the victim or 'any other interim relief' which is deemed appropriate.<sup>108</sup>

The duality of the victim's entitlement to compensation from the perpetrator through a fine levied under the offences of rape in the Penal Code 1860 and compensation payable by the government through the compensation scheme in the CrPC is specifically recognised. The important difference however lies in the fact that compensation from fine remains discretionary, while compensation from the state is mandatory, as noted by the Supreme Court of India in *Mohd. Haroon and Ors. vs. Union of India (UOI) and Others*:<sup>109</sup>

*'No compensation can be adequate but as the State has failed in protecting such serious violation of fundamental rights, the State is duty bound to provide compensation, which may help in victims' rehabilitation.'*

The Court also noted that:<sup>110</sup>

*'..the obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. [Given] the mental trauma that the victim suffers due to the commission of such heinous crime, rehabilitation becomes a must in each and every case.'*

In 2015, India's Ministry of Home Affairs set up a Central Victim Compensation Fund to help realise the objectives of the VCS and issued guidelines as to the administration and financing of it.<sup>111</sup> It set 3 lakh INR as the minimum compensation amount for rape and 50,000 INR for sexual assault excluding rape.<sup>112</sup>

### *5.2.2.1 Women Victim Compensation Fund*

In 2017, the Supreme Court of India directed the National Legal Services Authority (NALSA) to set up a committee to prepare 'Model Rules for Victim Compensation' specifically for sexual offences and acid attacks, given the uniqueness of the harms that flow from these offences.<sup>113</sup>

In April 2018, NALSA drafted and submitted a sub-scheme titled 'Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes', which was then promptly approved by the Supreme Court in May 2018.<sup>114</sup> This was to operate as a sub-scheme within the existing VCS, while a 'Women Victim Compensation Fund' (WVCF) would operate as a 'fund segregated for disbursement for women victim' out of the Central Victim Compensation Fund and State Victim Compensation Fund.<sup>115</sup>

**Table 6: Compensation specifically payable for sexual violence in the Schedule to WVCF**

SL	Form of Rape/ Injury	Minimum Compensation (in INR)	Maximum Compensation (in INR)
2	Gang Rape	500,000	10,0000
3	Rape	400,000	700,000
4	Unnatural Sexual Assault	400,000	700,000
11	Pregnancy on account of rape	300,000	400,000

As shown in Table 6, the Schedule to WVCF established lower and upper limits for compensation relating to rape, so any victim or survivor would be entitled to at least 400,000 Indian Rupees (INR), while a victim or survivor of gang rape would be entitled to at least 500,000 INR.

Crucially, the scheme also stipulates additional compensation for varying degrees of harm suffered in consequence of the crime, such as 100,000 to 200,000 INR for grievous physical or mental injury requiring rehabilitation. Furthermore, extra compensation

in the range of 100,000 to 500,000 INR would also be payable for loss of any limb or part of the body leading to a permanent disability, depending on the percentage of disability.<sup>116</sup>

Therefore, if a particular victim's harms are covered by more than one contingency, such as a gang rape victim who suffers grievous physical injuries requiring rehabilitation and also becomes pregnant, then the amount of compensation payable would be cumulative, with 900,000 INR being the minimum and 1,600,000 INR being the maximum.

## 6. RECOMMENDATIONS

### To the Government of Bangladesh

- Amend the *Nari O Shishu Nirjaton Doman Ain 2000*:
  - Section 15 so that compensation for victims/survivors is a matter of right and not a matter of judicial discretion.
  - Section 9 so 100,000 BDT is prescribed as a minimum compensation for all forms of rape.
  - Section 15 so victims and survivors of offences under the Act are able to file compensation claims in Civil Court, not only against the perpetrator but also against relevant third parties who owed a duty of care towards them.
- Enact the draft Crime Victim Compensation Act, recommended by the Law Commission
- Establish a Crime Victim Compensation Fund in every district, where victims and survivors of violent crimes may apply for compensation as of right, independently of any criminal proceedings. Within the fund, introduce a scheme and guidelines for SGBV victims (with special emphasis on rape).

### Ministry of Women and Children Affairs and Ministry of Law, Justice and Parliamentary Affairs

- Introduce a sub-scheme for SGBV (with special emphasis on rape) within the Crime

Victim Compensation Fund, to be co-funded by MOWCA and MLJPA as part of their gender responsive budgeting obligations, in addition to the financing already receivable as per the statutorily prescribed sources of the Fund. This sub-scheme should operate using guidelines specifically developed for SGBV victims, taking into account their particular circumstances.

- Empower District Legal Aid Committees (DLAC) to operate as application centres and make compensation payments utilising mobile banking methods.

### Judicial Administration and Training Institute (JATI)

- Conduct training on restorative justice for *Nari O Shishu Nirjaton Doman* Tribunal judges across the country on modern principles of victimology which recognise the importance of compensating victims of violent crimes and the scope for utilising their powers under Section 15 to award compensation to rape survivors.

### To Civil Society

- Incorporate demands for reparation and compensation into advocacy for rape law reform and justice for rape.
- Support calls for the enactment of the draft Crime Victims Compensation Act.

# NOTES

- <sup>1</sup> “MPs call for killing rapists in crossfire,” *Dhaka Tribune*, January 14, 2020.
- <sup>2</sup> “‘Hang the Rapist’, DU protesters shout slogan,” *The Daily Star*, January 7, 2020.
- <sup>3</sup> The forms of physical and mental injuries mentioned are just examples, and are in no way meant to be seen as exhaustive. Due to the lack of any such study being undertaken in Bangladesh, we may refer to a study on the economic cost of sexual violence survivors from the United States: Carin Perilloux, Joshua D. Duntley & David M. Buss, “The Costs of Rape,” *Arch Sex Behaviour* 41 (2012): 1099. For a study on the cost of domestic violence of women, see: Kaniz Siddique, *Domestic Violence against Women: Cost to the Nation* (Dhaka: CARE Bangladesh, 2011).
- <sup>4</sup> For six cases there were two or more reported judgments as decisions of both the High Court Division and the Appellate Division were reported. As a result the total number of judgments (99) exceeds the total number of cases (9 by nine).
- <sup>5</sup> (1999) 19 BLD (HCD) 307.
- <sup>6</sup> VAWCA, Section 3 read with the Preamble.
- <sup>7</sup> VAWCA, Sections 7, 9, 10 and 11 respectively. VAWCA also deals with three other offences: holding a woman or child hostage for ransom (Section 8), instigating a woman’s suicide (section 9A) and mutilating a child for begging (Section 12). Additionally, VAWCA covers acid violence (section 4) but acid related offences are generally governed by the Acid Offence Control Act, 2002, while VAWCA’s provisions on trafficking of women and children (Sections 5 and 6) have been repealed by Section 47 of the Prevention and Suppression of Human Trafficking Act, 2012.
- <sup>8</sup> Can be of either description but not less than five years rigorous imprisonment.
- <sup>9</sup> Ibid.
- <sup>10</sup> The Penal Code 1860, for instance, specifies a maximum fine amount for 65 offences.
- <sup>11</sup> Penal Code 1860, Section 61.
- <sup>12</sup> Namely, offences covered by Sections 4-14 of VAWCA.
- <sup>13</sup> These three cases are discussed in Section 3.1.3.
- <sup>14</sup> Muhammad Mahbubur Rahman, *Criminal Sentencing in Bangladesh: From Colonial Legacies to Modernity*, (Leiden: Brill, 2017), 196 citing Abdullah Al Faruque, “Goals and Purposes of Criminal Law,” *Bangladesh Journal of Law*, Special Issue (2007): 25. See also: Hussain Mohammad Fazlul Bari, ‘An Appraisal of Victim Protection in Bangladesh’, *Journal of the Asiatic Society of Bangladesh* (Hum.) 61, no. 2 (2016): 183, 198.
- <sup>15</sup> The total number of cases is 42 here instead of 44 as the Tribunal had acquitted the defendant in one case while the amount of fine imposed was not mentioned in another case. See: Appendix II.
- <sup>16</sup> Emma Fulu et al., *Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative Findings from the UN Multi-country on Men and Violence in Asia and the Pacific*, (Bangkok: UNDP, UNFPA, UN Women and UNV, 2013), 45; Qurratul Ain Tahminn & Pronab Bhowmik, *Shaja Matro 3 Shotangsho: Dhakar Nari O Shishu Nirjaton Domon Tribunal (Punishment Only 3 Percent: Dhaka’s Suppression of Violence Against Women and Children Tribunals)*, (Dhaka: Prothoma, 2018).
- <sup>17</sup> *Nari O Shishu Nirjaton Domon Tribunal - 2*, Bogra clarified that no punishment had been ordered in any of the 217 cases to begin with.
- <sup>18</sup> Tangail Correspondent, “Woman killed after ‘gang-rape’ on bus,” *The Daily Star*, August 30, 2017; ‘4 transport workers to die for rape and murder of law student Rupa,” *The Daily Star*, February 12, 2018.

- <sup>19</sup> Rezaul Karim, 'Rupa murder: Two years on, hope of compensation fading', *The Business Standard*, January 14, 2020.
- <sup>20</sup> 23 BLD (HCD) 2003 621.
- <sup>21</sup> Ibid, para. 10.
- <sup>22</sup> Ibid.
- <sup>23</sup> Ibid, para. 42 read with para. 46. It is not clear why the HCD did not alter the order of conviction to one suitable for Wafiz Mia, for example, under Section 30 of VAWCA, which states that anyone who instigates or abets a person to commit an offence under the Act, would be sentenced to the same punishment as the offender. Notably, the AD judgment in this case (59 DLR 51) mentions that charges were framed under Section 9(1) read with Section 30 of VAWCA against the two accused, but the HCD judgment does not mention Section 30. Therefore, while the investigation officer got the charge-sheet correct, the Tribunal made a technical error by not ordering conviction of Wafiz Mia under Section 30, for which the HCD ultimately acquitted him.
- <sup>24</sup> However, the HCD acquitted the co-convicts who had aided the fugitive in committing rape.
- <sup>25</sup> Ibid, para. 45.
- <sup>26</sup> (1999) 19 BLD (HCD) 307.
- <sup>27</sup> *Wasim Mia (Md.) vs. State* 59 DLR (AD) (2007) 51.
- <sup>28</sup> Ibid, para. 3 read with para. 21.
- <sup>29</sup> Ibid, para. 3 read with paras. 13 and 21.
- <sup>30</sup> (2005) 57 DLR (HCD) 59.
- <sup>31</sup> Ibid, para. 27.
- <sup>32</sup> Ibid.
- <sup>33</sup> (2007) 59 DLR (HCD) 505.
- <sup>34</sup> Ibid, para. 1.
- <sup>35</sup> Ibid.
- <sup>36</sup> Ibid.
- <sup>37</sup> The Tribunal judgment was dated 9.10.2002 while the HCD one was dated 28.11.2006.
- <sup>38</sup> (2007) 59 DLR (HCD) 505.
- <sup>39</sup> VAWCA, Section 14(1).
- <sup>40</sup> VAWCA, Section 14(1)(d).
- <sup>41</sup> Ibid.
- <sup>42</sup> VAWCA, Section 14(3).
- <sup>43</sup> Ibid.
- <sup>44</sup> (2015) 35 BLD (HCD) 656.
- <sup>45</sup> Ibid, para. 23.
- <sup>46</sup> (2014) 66 DLR (AD) 80.
- <sup>47</sup> For an overview of the case see: Taqbir Huda, "Beyond Criminal Justice: Towards Tort Liability for Sexual Violence Against Women," *Bangladesh Journal of Law* 17, no. 1 and 2 (2017): 201, 217.
- <sup>48</sup> Information presented about the facts of this case are primarily based on the following news reports: Manikganj Correspondent, "Two cops face rape allegation," *The Daily Star*, February 13, 2019; Manikganj Correspondent, "2 Manikganj cops held," *The Daily Star*, February 14, 2020; "HC rule on compensating Manikganj rape victim," *The Daily Star*, March 10, 2019; M. Moneruzzaman "Rape victim declines to appear at HC hearing to claim compensation," *New Age*, April 21, 2019.
- <sup>49</sup> *BLAST and CCB Foundation vs. Bangladesh* (Writ Petition no. 1809 of 2019) in file. Information presented about the writ is based on KIIs with Abdul Halim, Advocate, Supreme Court of Bangladesh held on 21 October 2020 and Ayesha Akhter, Advocate, Supreme Court of Bangladesh on 19 November 2020, who represented the petitioners in the case and communicated with the complainant and her family.
- <sup>50</sup> Ibid, *Rule Nisi* dated 10 March 2019 issued by the HCD Bench comprising of Mr. Justice Moeenul Islam Chowdhury and Mr. Justice Md. Ashraful Kamal.
- <sup>51</sup> See for example: Taqbir Huda & Abdullah Titir, *Why Rape Survivors Stay Out of Court: Lessons from Paralegal Interventions* (Dhaka: BLAST, 2018).

- <sup>52</sup> *State vs. Secretary, Ministry Of Law, Justice & Parliamentary Affairs And Others* (2010) 30 BLD (HCD) 369.
- <sup>53</sup> *Ibid*, para. 2.
- <sup>54</sup> *Ibid*.
- <sup>55</sup> *Ibid*,
- <sup>56</sup> *Ibid*.
- <sup>57</sup> *Ibid*, para. 52.
- <sup>58</sup> *The Chief Prosecutor vs. Syed Md. Qaiser* ICT-BD [ICT-2] Case No. 04 of 2013, para. 979.
- <sup>59</sup> *Ibid*, paras. 980-983.
- <sup>60</sup> Article 4(c) of the DEVAW, General Assembly resolution 48/104 of 20 December 1993 is often cited as having imposed the due diligence standard. See: UN Commission on Human Rights, Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Yakin Ertürk, E/CN.4/2006/61, para. 14 (January 20, 2006). The wording of the Due Diligence Standard has seen slight alterations over the course of various reports by the UN SRVAW, but nevertheless these are understood to be the basic elements.
- <sup>61</sup> *Ibid*. See also: DEVAW, Article 4(d).
- <sup>62</sup> UN Commission on Human Rights, E/CN.4/2006/61, para. 55.
- <sup>63</sup> UN Human Rights Council, Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo, A/HRC/14/22/Add.1, para. 12 (June 2, 2010).
- <sup>64</sup> UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum: Mission to Bangladesh (20-29 May 2013), A/HRC/26/38/Add.2, para. 57 (1 April 2014).
- <sup>65</sup> *Ibid*, para. 79.
- <sup>66</sup> *Ibid*, paras. 80-82.
- <sup>67</sup> *Ibid*, para. 86(b).
- <sup>68</sup> AOCA, Section 9.
- <sup>69</sup> *Ibid*.
- <sup>70</sup> AOCA, Section 10. Reference is also made to any process determined by any rules passed subsequent to the Act, or in the absence of such rules, any procedure prescribed by the Tribunal.
- <sup>71</sup> AOCA, Section 10.
- <sup>72</sup> DVA, Section 16(1).
- <sup>73</sup> DVA, Section 16(1) read with Sections 11 and 12.
- <sup>74</sup> DVA, Section 16(2).
- <sup>75</sup> DVA, Section 16(3).
- <sup>76</sup> DVA, Section 16(4).
- <sup>77</sup> DVA, Section 16(7).
- <sup>78</sup> DVA, Section 16(8). This obligation applies to any authority, be it a government non-government, semi-government or an autonomous organisation.
- <sup>79</sup> DVA, Section 16(9).
- <sup>80</sup> HTA, Section 28(1) and 28(2).
- <sup>81</sup> HTA, Section 28(3).
- <sup>82</sup> *Ibid*.
- <sup>83</sup> HTA, Section 39.
- <sup>84</sup> HTA, Sections 40 and 42.
- <sup>85</sup> HTA, Section 27(3).
- <sup>86</sup> HTA, Section 43(2).
- <sup>87</sup> HTA, Section 34(2).
- <sup>88</sup> CMRA, Section 13(1).
- <sup>89</sup> CMRA, Section 13(2).
- <sup>90</sup> CMRA, Sections 5-9.
- <sup>91</sup> CVCA, Section 6.
- <sup>92</sup> CVCA, Section 9.
- <sup>93</sup> CVCA, Section 12(1).
- <sup>94</sup> CVCA, Section 12(2).
- <sup>95</sup> CVCA, Section 12(3).

- <sup>96</sup> CVCA, Section 13(2)(a).
- <sup>97</sup> Section 13(2)(d), CVCA.
- <sup>98</sup> Sections 13(2)(b) and (c), CVCA.
- <sup>99</sup> Victims in India may also sue for compensation in public law, but that is not covered in this section. See for example: *The Chairman, Railway Board vs. Chandrima Das* (2000) 2 SCC 465, where the Supreme Court upheld the Calcutta High Court's direction to pay 10 lakhs INR as compensation to a rape victim, who was a Bangladeshi National.
- <sup>100</sup> CrPC, Section 357(1)(b).
- <sup>101</sup> CrPC, Section 357(3).
- <sup>102</sup> CrPC, Section 357(5). Namely, compensation paid under section 357, CrPC.
- <sup>103</sup> CrPC, Section 357A(1), inserted by Act 5 of 2009, s. 28 (w.e.f. 31-12-20
- <sup>104</sup> CrPC, Section 357A(2).
- <sup>105</sup> CrPC, Section 357A(3).
- <sup>106</sup> CrPC, Section 357A(4).
- <sup>107</sup> CrPC, Section 357A(5).
- <sup>108</sup> CrPC, Section 357A(6).
- <sup>109</sup> 5 SCC 252, para. 87.
- <sup>110</sup> *Ibid*, para. 88.
- <sup>111</sup> Government of India, Ministry of Home Affairs, Central Victim Compensation Fund (CVCF) Guidelines.
- <sup>112</sup> *Ibid*, Annexure 1 (Minimum Amount of Compensation), Items 2 and 5.
- <sup>113</sup> *Nipun Saxena vs. Union of India* Writ Petition (Civil) No. 565 of 2012 (Order dated 12 October 2017).
- <sup>114</sup> 'NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes - 2018'.
- <sup>115</sup> Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes 2018, Section 2(g) read with Section 3.
- <sup>116</sup> Schedule to the Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes 2018.

# APPENDIX I: LEGISLATION ON COMPENSATION FOR SGBV

Penal Code, 1860	
<b>Section 63.</b> Amount of fine	Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but <b>shall not be excessive</b> .
<b>Section 375.</b> Rape	<p>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:</p> <p>Firstly. Against her will.</p> <p>Secondly. Without her consent.</p> <p>Thirdly. With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.</p> <p>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.</p> <p>Fifthly. With or without her consent, when she is under fourteen years of age.</p> <p>Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.</p> <p>Exception. Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.</p>
<b>Section 376.</b> Punishment for Rape	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.
Code of Criminal Procedure, 1898	
<b>Section 545.</b> Power of Court to pay expenses or compensation out of fine	<p>(1) Wherever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-</p> <ol style="list-style-type: none"> <li>a. in defraying expenses properly incurred in the prosecution;</li> <li>b. in the payment to any person of <b>compensation for any loss or injury</b> caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;</li> <li>c. when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser, of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.</li> </ol> <p>(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.</p>

<b>Suppression of Violence Against Women and Children (Special Provisions) Act, 1995 (Nari O Shishu Nirjaton Domon (Bishesh Bidhan) Ain, 1995)<sup>1</sup></b>	
<b>Section 2.</b> Definitions	<p>(c) "rape" shall have the same meaning as in section 375 of the Penal Code (Act XLV of 1860):</p> <p>Provided that, for carrying out the purposes of this Act, for the word "fourteen" in the fifth sub-paragraph, and for the word "thirteen" in the sub-paragraph with the superscription "Exception", of the said section 375, shall, in both cases, be substituted for the word "sixteen"</p>
<b>Section 6.</b> Punishment for rape	<ol style="list-style-type: none"> <li>(1) Whoever rapes any child or woman shall be punishable with death or lifelong imprisonment.</li> <li>(2) Whoever causes the death of any child or woman in or after committing rape shall be punishable with death.</li> <li>(3) Where more than one person rape any child or woman, each of them shall be punishable with death or lifelong imprisonment.</li> <li>(4) Where more than one person jointly cause the death of any child or woman in or after committing rape, each of them shall be punishable with death.</li> </ol>
<b>Section 14.</b> Penalty for abetment of offences	<p>Whoever abets any offence punishable under this Act shall, if such offence is committed in consequence of the abetment, be punishable with the punishment provided for the offence.</p>
<b>Suppression of Violence against Women and Children Act, 2000 (VAWCA) (Nari O Shishu Nirjaton Domon Ain, 2000)<sup>2</sup></b>	
<b>Section 2.</b> Definitions	<p>(e) 'Rape' means rape as defined under Section 375 of the Penal Code 1860 (Act XLV of 1860) subject to the provisions of Section 9 of this Act.</p>
<b>Section 9.</b> Punishment for rape or death in consequence of rape etc.	<ol style="list-style-type: none"> <li>(1) If a man rapes a woman or a child, he is liable to death penalty or rigorous life imprisonment and shall also be liable to fine.  Explanation- If a man has sexual intercourse with a woman over the age of 16 (sixteen years) without her consent, or by intimidation or fraudulently obtaining her consent, or with a woman under the age of 16 (sixteen years) with her consent or without consent, if so, he will be considered to have raped the woman</li> <li>(2) If a raped woman or child dies as a result of being raped by a person or any other activity after that rape, in that case the person shall be punishable by death or by life imprisonment and shall also be liable to a fine of not less than one lakh taka.</li> </ol>

<sup>1</sup> As there is no official translation of the *Nari o Shishu Nirjatan Daman (Bishesh Bidhan) Ain, 1995*, the Sections of the Act included in this appendix is sourced from an unofficial English translation prepared by the South Asia Institute (SAI) of Heidelberg University, as part of the The Heidelberg Bangladesh Law Translation Project, available at: <https://www.sai.uni-heidelberg.de/workgroups/bdlaw/1995-a18.htm>

<sup>2</sup> As there is no official translation of the *Nari o Shishu Nirjatan Daman Ain, 2000*, the Sections of the Act included in this appendix is an unpublished and unofficial English translation prepared by BLAST, which draws on the unofficial translation by the International Knowledge Network on Women in Politics (iKNOW Politics), available at: [https://iknowpolitics.org/sites/default/files/prevention\\_act\\_bangladesh.pdf](https://iknowpolitics.org/sites/default/files/prevention_act_bangladesh.pdf). The 2003 and 2020 Amendments to the Act are not reflected in the translation by iKNOW Politics.

	<p>(3) If more than one person gang rapes a woman or child and the woman or child dies as a result of the rape or is injured, shall be punishable by death or by life imprisonment, shall also be liable to a fine of at least one lakh taka.</p> <p>(4) If any person causes any woman or children-</p> <p>a. Attempts to cause death or injury by rape may be punishable by death penalty or rigorous life imprisonment and shall also be liable to fine;</p> <p>b. Attempts to rape, the person shall be punishable with imprisonment for a term not exceeding ten years but not less than five years and shall also be liable to fine. If a woman is raped while in police custody, the person or persons in whose custody the rape took place, unless proven otherwise, such person or persons who were directly in charge for the custody of such raped woman, shall be liable to imprisonment for a term not exceeding ten years, but not less than five years, and a fine not exceeding ten thousand taka.</p> <p>(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 in charge of [ensuring] the custody 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.</p>
<p><b>Section 15.</b> Realization of fine from inheritable property in future</p>	<p>The Tribunal may, <b>if necessary, treat the fine</b> imposed by it <b>as compensation</b> for the person who has been harmed due to the offences mentioned in sections 4 to 14 of this Act and if it is not possible to recover the fine or compensation from the convicted person or from his existing assets, it will be recoverable from the assets he will be the owner or inheritor of in the future and in such cases the claim for the aforesaid fine or compensation shall prevail over any other claims on the said property.</p>
<p><b>Section 16.</b> Procedure for realizing fine or damage</p>	<p>If any fine is imposed under this Act, the Tribunal may direct the Collector of the district concerned, in the manner prescribed by the rules or in the absence of such rules, in the manner prescribed by the Tribunal, to direct seizure and auction sale or direct auction sale without seizure of the immovable or movable properties after preparing a list of such properties of the accused and deposit the proceeds in the Tribunal and the Tribunal shall arrange for the payment of such money to the person affected by the offence.</p>
<p><b>Section 30.</b> Punishment for incitement or abetment of offence</p>	<p>If any person provides incitement to commit an offence under this Act and as a result of that incitement the offence is committed or an attempt to commit that offence is made or if a person abets another person in committing an offence under this Act then the person inciting or abetting the offence shall be punishable with the punishment prescribed for the commission of the offence or attempt to commit the offence.</p>
<p><b>Acid Offence Control Act, 2002 (AOCA) (<i>Acid Oporadh Domon Ain, 2002</i>)<sup>3</sup></b></p>	
<p><b>Section 9.</b> To give money realized as fine to the affected person</p>	<p>The money realized as fine under this Act from the convicted person or from his existing properties or, in the case of his death, from the properties left out at the time of his death, shall be given to the heirs of the person died in consequence of the offence or the person affected physically or mentally, as the case may be, or in the case of death of that person, to his heirs.</p>

<sup>3</sup> Official English translation of AOCA published in Bangladesh Gazette, Extraordinary, February 28, 2008, 1271-1281, available at: <http://www.clcbd.org/document/284.html>.

**Domestic Violence (Prevention and Protection) Act, 2010 (DVA)**  
*(Paribarik Shohingshota (Protirodh O Shurokkha) Ain, 2010)<sup>4</sup>*

<p><b>Section 10.</b> Procedure for realization of fine or compensation</p>	<p>If any fine is imposed under this Act, the Tribunal may give direction to the collector of the concerned district to attach and sell by auction or without attachment to sell by auction directly enlisting the movable or immovable property of the accused and to deposit the sold out money to the Tribunal in the manner prescribed by rules or in the absence of such rules in the manner prescribed by the Tribunal and the Tribunal shall take steps to give such money to the affected person.</p>
<p><b>16. Compensation order</b></p>	<ol style="list-style-type: none"> <li>(1) If there is any personal injury or financial loss or trauma or psychological damage or damage to movable or immovable property or any possibility of such damage or loss as a result of domestic violence, she may file a claim for compensation either along with the application under section 11 or separately later on.</li> <li>(2) The Court shall dispose of the application submitted under sub-section (1) within 6 (six) months of it's receipt.</li> <li>(3) The Court, in the process of disposal of the application submitted under sub-section (1), after giving the parties opportunity of being heard, subject to the provisions of subsection (4), award such monetary compensation as it deems reasonable.</li> <li>(4) Before disposal of the application submitted under sub-section (1), the Court may give responsibility on a person or any organization to find out the actual loss or damage and during the hearing of the claim for such compensation may take into consideration the following facts:             <ol style="list-style-type: none"> <li>a. the pain and suffering of the victim and the nature and extent of the physical or mental injury suffered;</li> <li>b. the cost of medical treatment for such injury;</li> <li>c. temporary or permanent effect of such injury;</li> <li>d. any loss of earnings, present and prospective, arising there from;</li> <li>e. the amount and value of the movable or immovable property taken or transferred or destroyed or damaged;</li> <li>f. reasonable expenses already incurred by or on behalf of the victim in securing protection from violence.</li> </ol> </li> <li>(5) The Court may pass an order against the respondent for the maintenance of the victim as well as her children, if any, which is adequate, reasonable and consistent with the standard of living of the victim.</li> <li>(6) The Court may order a lump sum payment or monthly payments of maintenance, if it deems fit.</li> <li>(7) The Court shall send a copy of the compensation order made under this section to the concern parties and to the Officer in Charge of the police station within the local limits of whose jurisdiction the respondent ordinarily resides or stays.</li> <li>(8) If the respondent is an employee of government, non-government, semi-government or an autonomous organization, then a copy of the compensation order shall be sent to the higher authority of the respondent.</li> <li>(9) If the respondent fails to pay the compensation according to the order made under subsection (3), the Court may direct the employer or a debtor of the respondent, to directly pay to the victim or to deposit in her bank account a portion of the wages or salaries or debt due to or accrued to the credit of the respondent.</li> <li>(10) The compensation imposed under this section may be realized according to the provisions of the Public Demands Recovery Act, 1913 (Bengal Act III of 1913).</li> </ol>

<sup>4</sup> English translation of the DVA published by the Ministry of Women and Children Affairs, Government of Bangladesh, available at: [https://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc\\_7c82\\_4aa0\\_98a6\\_8672334b235c/Domestic%20Violence%20Act%20English.pdf](https://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc_7c82_4aa0_98a6_8672334b235c/Domestic%20Violence%20Act%20English.pdf)

<b>Section 21.</b> Trial	(2) In granting the compensation order the Judicial Magistrate or Metropolitan Magistrate shall have no pecuniary jurisdiction.
<b>The Prevention and Suppression of Human Trafficking Act, 2012 (HTA)</b> <i>(Manob Pachar Protirodh O Domon Ain, 2012)<sup>5</sup></i>	
<b>Section 28.</b> Order of compensation by the Tribunal.	<p>(1) Where an accused person is convicted of an offence of committed under this Act, the Tribunal may pass an order to the accused to pay the victim of the offence of human trafficking a reasonable amount of compensation in addition to fine imposed by it, and, any such compensation shall be recovered by the Tribunal directly or, if necessary, in accordance with the provisions of the Public Demands Recovery Act, 1913 (Bengal Act No. III of 1913).</p> <p>(2) If the Tribunal only passes an order of fine, without passing the order of compensation under sub-section (1) it may order that the whole or any part of the fine so imposed be provided to the victim of trafficking or to the victim.</p> <p>(3) The amount of compensation passed under sub-section (1) shall be determined at the discretion of the Tribunal, and while awarding compensation, it shall take into consideration the matters regarding the costs of physical and mental treatment of the affected person, costs of necessary transportation or temporary housing, lost income, sufferance, the actual or emotional injury and the gravity of the distress.</p>
<b>34. Providing with information to the victims and to the public generally.</b>	<p>(1) The Victim of human trafficking shall be entitled to be informed by the Government or police or, as the case may be, non-government organizations of the actions taken against the traffickers and of the stages of the concerned criminal case at least once in a month.</p> <p>(2) The investigating officer or the person or organization identifying and rescuing the victim of human trafficking shall at once inform the affected person of his rights to compensation and legal aid and of other benefits available under this Act.</p>
<b>39. Right to institute civil suit for compensation</b>	Without prejudice to the right to institute criminal proceedings, and besides any criminal proceeding initiated, the victim or the victim of human trafficking may sue for compensation in any Civil Court for his actual sufferance or legal injury resulting from the offence committed under this Act or for the breach of any contract concerned to the offence.
<b>40. Financial assistance to the victim of human trafficking</b>	Without prejudice to the right or opportunity to receive legal aid from any non government organization or under the Legal Aid Services Act. 2000 (Act No. VI of 2000), the Government may provide financial assistance to the victim of human trafficking or to the victim from the fund established under this act.
<b>45. The application of the principle of equality and the provision to prevent abuse of power</b>	<p>(1) In dealing with the accused, victims and witnesses under this act, the principle of equality shall be followed and no body shall be discriminated against.</p> <p>(2) If any complain against any public officer or employee for abusing public power or failing in discharging his legal duties under this Act is proved. the employing authority shall, at the recommendation of the Tribunal, take disciplinary punitive actions against him in accordance with the service rules and the Tribunal may also pass order against such person for paying adequate compensation.</p>

<sup>5</sup> Official English translation of HTA published in Bangladesh Gazette, Extraordinary, 4 August 2013, 6795-6814, available at <https://www.ecoi.net/en/document/1028974.html>

<p><b>27. Seizure, freeze and confiscation of property and extra-territorial injunction.</b></p>	<ol style="list-style-type: none"> <li>1) The Tribunal may, upon an application by any person or of its own motion, at any stage of the trial pass an order to seize, freeze or confiscate any movable or immovable property which has been acquired by the accused person through the commission of an offence under this Act.</li> <li>(2) The Tribunal may pass an order to attach any house, land or vehicle if it has reasons to believe that such house, land or vehicle has been or is being used for committing or attempting any offence under this Act.</li> <li>(3) If any person is convicted of an offence under this Act, the Tribunal may confiscate the property acquired by the convict through the commission of the offence, and the property so confiscated shall be deposited to the Human Trafficking Prevention Fund.</li> <li>(4) For the interest of the trial of any offence committed under this Act, the Tribunal may issue an order to freeze and attach the proceeds of crime located in a foreign country and any property subsequently acquired by the accused person through such property and if the order is violated, the accused shall be punished with rigorous imprisonment for a term not exceeding 5 (five) years and with fine not less than taka 20 (twenty) thousand.</li> </ol>
<p><b>Child Marriage Restraint Act, 2017 (CMRA)(<i>Ballo Bibaho Nirodh Ain, 2017</i>)<sup>6</sup></b></p>	
<p><b>Section 13.</b> Payment of compensation</p>	<ol style="list-style-type: none"> <li>(1) Money realized under this Act from imposition of fine shall be paid as compensation to the aggrieved party.</li> </ol> <p>Explanation: For the purpose of sub-section (1), “aggrieved party” means the party of a child marriage who is a minor.</p> <ol style="list-style-type: none"> <li>(2) Notwithstanding anything contained in sub-section (1), fine realized under sub-section (2) of section 7 shall be deposited to the government treasury.</li> </ol>

<sup>6</sup> Official English translation of CMRA published in: Bangladesh Gazette, Extraordinary, 17 December 2017, 17853-17859, available at [https://www.dpp.gov.bd/upload\\_file/gazettes/24072\\_79782.pdf](https://www.dpp.gov.bd/upload_file/gazettes/24072_79782.pdf)

# APPENDIX II: LIST OF ANALYSED CASES

## Abbreviations

<b>Aq</b>	The defendant was acquitted at the appellate level
<b>CC</b>	Whether or not fine was converted into compensation by the Tribunal
<b>C</b>	The defendant was or remained convicted at the appellate level <sup>1</sup>
<b>DP</b>	Death penalty
<b>F</b>	Amount of fine imposed by the Tribunal (in BDT)
<b>LI</b>	Life imprisonment
<b>O</b>	Outcome of the case after the (latest) reported judgment by the HCD or AD
<b>S</b>	Section relating to rape of NSNDA under which Tribunal convicted and/or tried the case <sup>2</sup>
<b>P</b>	Punishment defendant was sentenced to by the Tribunal
<b>Y</b>	Number of years of rigorous imprisonment

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<sup>1</sup> In some cases there is more than one defendant, and at the appellate level one or more of them may be acquitted while one or more are convicted. In such cases, we have only listed an acquittal in the outcome column if all defendants are acquitted at the appellate level. Therefore, if all but one defendant is acquitted at the appellate level, it would still be listed as a conviction in the outcome column as the conviction was still upheld for at least one defendant.

<sup>2</sup> The Tribunal occasionally orders a rape conviction alongside conviction under another section of the 2000 Act or 1995 Act (usually for the offence of abduction, under section 7 of VAWCA or section 9 of the 1995 Act). As the focus of this report is on rape cases, the lists below do not include information about convictions for offences other than rape, and for abetment of rape related offences.

SI	Case Name	Citation	S	District	Tribunal Decision		CC	O
					P	F		
<b>Cases under the Nari O Shishu Nirjaton Domon Ain 2000 (VAWCA)</b>								
1	<i>Md. Wasim Mia and another vs. The State</i>	(2003) 23 BLD (HCD) 621						
	<i>Md. Wasim Mia vs. The State</i>	(2006) 3 ADC (AD) 589	9(1)	Netrokona	IL	10,000	Yes	Aq
	<i>Wasim Mia (Md) vs. State</i>	(2007) 59 DLR (AD) 51						
2	<i>Md. Shahidul Islam vs. State</i>	(2004) 56 DLR (HCD) 35	9(1)	Dhaka	LI	10,000	No	Aq
	<i>The State vs. Shahidul Islam</i>	(2006) 3 ADC (AD) 834						
3	<i>Abu Taher vs. State</i>	(2005) 10 BLC (HCD) 32	9(1)	Sylhet	LI	20,000	No	C
4	<i>Firoz Chokder vs. The State</i>	(2006) 11 MLR (HCD) 115	9(1)	Chandpur	LI	1,000	No	Aq
5	<i>Fatema Begum, daughter of Azizer Rahman vs. Aminur Rahman, son of Afser Ali and others</i>	(2005) 25 BLD(HCD) 342	9(3)	Lalmonirhat	Aq	-	No	C <sup>3</sup>
	<i>Aminur Rahman and others vs. Fatema Begum and the State</i>	(2008) 13 MLR (AD) 249						
6	<i>Sohel Rana vs. State</i>	(2005) 57 DLR (HCD) 591	9(1)	Rangpur	LI	50,000	Yes <sup>4</sup>	Aq
7	<i>Suroj Ali (Md) vs. State</i>	(2005) 10 BLC (HCD)292	9(1)	Netrokona	LI	1,000	No	C
8	<i>Suren Bairagi vs. The State</i>	(2005) 13 BLT (HCD) 483.	9(1)	Bagerhat	LI	20,000	No	Aq
9	<i>Abdul Kader (Md.) Vs The State</i>	(2006) 11 MLR (HCD) 196	9(1)	Sirajgonj	LI	5,000	No	Aq
10	<i>Uzzal alias Hossain vs State</i>	(2007) 59 DLR (HCD) 505	9(2)	Rajshahi	DP	100,000	Yes	C <sup>5</sup>
11	<i>Monwar Mallik vs. State</i>	(2007) 59 DLR (HCD) 301; (2009) 17 BLT (HCD) 25.	9(1)	Rajbari	LI	5,000	No	Aq
12	<i>Khairul (Md) Vs. State</i>	(2007) 12 MLR (HCD) 409; (2008) 16 BLT (HCD) 480; (2008) 13 BLC (HCD) 303.	9(1)	Lalmonirhat	LI	5,000	No	Aq
13	<i>Roni Ahmed Litonvs. State</i>	(2009) 61 DLR (HCD) 147	9(1)	Sylhet	LI	50,000	No	Aq
14	<i>Zitu Ahsanvs. State</i>	(2007) 59 DLR (HCD) 528	9(1)	Narayanganj	LI	5,000	No	Aq
15	<i>Abdul Halim (Md) vs. State</i>	(2008) 60 DLR (HCD) 393	9(1)	Naogaon	LI	5,000	No	Aq
16	<i>Forkanuddin (Md.) vs. State</i>	(2008) 13BLC (HCD) 316	9(1)	Chittagong	LI	10,000	No	C
17	<i>Mostafa vs. State</i>	(2008) 13 BLC (HCD) 894	9(1)	Dinajpur	LI	500	No	Aq
18	<i>Shafiqul Islam vs. State</i>	(2008) 13 BLC (HCD) 694	9(1)	Sherpur	LI	20,000	No	C
19	<i>Kamal Hossain (Md) alias Md Kamal Pramanik vs. State</i>	(2009) 61 DLR (HCD) 505	9(1)	Natore	LI	10,000	No	Aq <sup>6</sup>
20	<i>Sree Pintoo Pal vs. The State</i>	(2010) 30 BLD (HCD) 220	9(1)	Naogaon	LI	5,000	No	Aq
21	<i>Md. Tariqul Islam vs. The State</i>	(2010) 7 ADC (AD) 626	9(4)(b)	Meherpur	5Y	5,000	No	C
22	<i>Kazi NurunNabi Parag vs. State</i>	(2010) 15 BLC (HCD) 518; (2010) 15 MLR (HCD) 84; (2011) 19 BLT (HCD) 205.	9(1)	Satkhira	LI	20,000	No	Aq

<sup>3</sup> On appeal, the HCD convicted five of the eight defendants, sentencing each of them to life imprisonment and a fine of 10,000 BDT. However, the fine was not treated as compensation. The order of acquittal for the three remaining defendants was maintained.

<sup>4</sup> 40,000 out of the 50,000 BDT fine was to be treated as compensation.

<sup>5</sup> On appeal, the HCD changed the conviction from section 9(2) to 9(1) and reduced the order of fine (and therefore compensation) from 100,000 to 25,000 BDT.

<sup>6</sup> However, subsequently, a leave to appeal against the acquittal by the HCD was granted by the AD. See: *State vs. Kamal Hossain* (2012) 9 ADC (AD) 709.

23	<i>Rehana Begum vs. State</i>	(2011) 63 DLR (HCD) 548	9(3), 30 <sup>7</sup>	Natore	LI	100,000	No	C
24	<i>Ayub Ali Sheikh alias Buna vs. State</i>	(2011) 63 DLR (HCD) 55	9(1)	Rajbari	LI	10,000	No	Aq
25	<i>State vs. Noor Islam and others</i>	(2011) 16 MLR (HCD) 141	9(3)	Jessore	DP	100,000	No	C
	<i>The State vs. Noor Islam and others</i>	(2014) 11 ADC (AD) 807						
26	<i>Nazmul Islam alias Nazu vs. State</i>	(2011) 63 DLR (HCD) 460	9(1), 13	Chandpur	LI	5,000	No	Aq
27	<i>Md. ShafiqKha vs The State</i>	(2012) 64 DLR (HCD) 418	9(1)	Rajbari	LI	10,000	No	Aq
28	<i>Abdul Haque Dakua and Ors. vs. State</i>	(2012) 17 BLC 257	9(4), 30	Jhalakathi	7Y	10,000	No	C
29	<i>State vs. Bidhan Chandra Roy and another</i>	(2014) 66 DLR (HCD) 500; (2013) 33 BLD (HCD) 359	9(3)	Dinajpur	DP	100,000	No	C <sup>8</sup>
30	<i>Aku Gazi and Ors. vs. The State and Ors.</i>	(2014) 19 BLC (HCD) 171	9(1), 30	Dhaka	LI	20,000	No	C
31	<i>The State vs. Siddiqur Rahman</i>	(2015) 12 ADC (AD) 574	9(2)(3)	Dhaka	DP	Not mentioned	No	C <sup>9</sup>
32	<i>State represented by the Deputy Commissioner, Noagaon vs. Md Palash</i>	(2015) 20 BLC (AD) 348	9(1)	Naogaon	LI	5,000	No	Aq
33	<i>Ibrahim Dewan vs. State</i>	(2016) 21 BLC (HCD) 813	9(1)	Munshigonj	LI	20,000	No	C
34	<i>Md. Alauddin vs. The State</i>	(2017) 25 BLT (HCD) 175	9(4)(b)	Bogra	5Y	2,000	No	Aq
35	<i>Manik vs. The State</i>	(2016) 21 BLC (AD) 243, (2015) 35 BLD (AD) 63	9(2)	Meherpur	DP	100,000	No	C
36	<i>Motiur Rahman vs. State</i>	(2015) 35 BLD (HCD) 656	9(1)	Moulvibazar	LI	20,000	No	C
37	<i>Sanjay Kumar Biswas vs. State</i>	(2016) 68 DLR (HCD)	9(1)	Kushtia	LI	5,000	No	Aq
38	<i>Najim Uddin (Md.) vs State</i>	(2017) 69 DLR (HCD) 235	9(1)	Chittagong	LI	50,000	No	Aq
39	<i>Md. Zamal Sheikh vs. The State And Anr.</i>	(2017) 37 BLD (HCD) 246; (2017) 25 BLT (HCD) 100.	9(1)	Munshigonj	LI	10,000	No	Aq
40	<i>Aynal Haque vs. State</i>	(2017) 37 BLD (HCD) 577	9(1)	Manikganj	LI	20,000	No	C
41	<i>State vs. Saiful Islam (Md.) and Ors.</i>	71 DLR 549 (2019)(HCD)	9(3)	Jhenaidah	DP	100,000	No	C
42	<i>Horon alias Mohin Uddin vs. State</i>	(2018) 70 DLR (HCD) 524; (2018) 26 BLT (HCD) 247	9(1)	Laxmipur	LI	20,000	No	Aq
43	<i>Md. Pintu vs. The State</i>	(2019) 27 BLT(HCD) 83	9(1)	Chuadanga	LI	10,000	No	Aq
44	<i>State vs. Md. Sahedul Islam Sheikh</i>	(2019) 71 DLR (HCD) 74	9(2)	Sirajgonj	DP	100,000	No	C

<sup>7</sup> The Tribunal had sentenced three men under section 9(3) of the 2000 Act, while also sentencing a woman under section 9(3) read with section 30 of the 2000 Act for aiding in the crime.

<sup>8</sup> On appeal, the HCD converted the rape conviction to one under sections 302 and 34 of the Penal Code 1860, as it found no evidence of rape.

<sup>9</sup> The AD altered the order of conviction to section 9(2) of the 2000 Act, while the death penalty was commuted to life imprisonment by the HCD.

Cases under the <i>Nari O Shishu Nirjaton Domon (Bishesh Bidhan) Ain 1995</i>								
1	<i>Seraj Talukder vs. The State</i>	(1998) 6 BLT (HCD) 82; (1998) 3 BLC (HCD) 182	6(1)	Bhola	LI	None	No	Aq
2	<i>Al Amin and others [incl. Rajib Kamrul Hassan] vs. State</i>	(1999) 19 BLD (HCD) 307; (1999) 7 BLT (HCD) 89	6(3)	Barisal	10Y	5,000	No	C
	<i>Rajib Kamrul Hasan and others vs. State</i>	(2001) 53 DLR (AD) 50, (2001) 21 BLD (AD) 46						
3	<i>Badal and another vs. The State</i>	(1999) 19 BLD (HCD) 527	6(1), 6(3)	-	LI	5,000	No	C
4	<i>State vs. Azad Miah</i>	(2000) 5 BLC (HCD) 304	6(2)	Comilla	DP	None	No	C
5	<i>State vs. Rahim Sikder</i>	(2000) 5 BLC (HCD) 466	6(2)	Chandpur	DP	None	No	C
6	<i>The State vs. Md. Joyal Abedin and Ors.</i>	(2000) 8 BLT (HCD) 376	6(4), 14	Gaibandha	DP	None	No	C
7	<i>The State vs. Md. Moinul Haque and others</i>	(2001) 21 BLD (HCD) 465	6(2)	Rangpur	DP	None	No	C
8	<i>Biplob vs. State</i>	(2001) 6 BLC (HCD) 632	6(1), 6(2)	Munshiganj	LI	None	No	Aq
9	<i>Hobi Sheikh and Ors. vs. State</i>	(2004) 56 DLR (HCD) 383	6(1), 14	Madaripur	LI	None	No	Aq
10	<i>State vs. Harish</i>	(2002) 54 DLR (HCD) 473	6(4)	Narsingdi	DP	None	No	Aq
11	<i>Abdus Sobhan Biswas vs. State</i>	(2002) 54 DLR (HCD) 556, (2002) 22 BLD (HCD) 575	6(1)	Rajbari	LI	None	No	C
12	<i>State vs. Moslem</i>	(2003) 55 DLR (HCD) 116	6(2)	Manikgonj	DP	None	No	C
13	<i>Mobarak Hossain alias Mobarak vs. The State</i>	(2004) 56 DLR (AD) 26; (2003) 23 BLD (AD) 175	6(3)	Rajshahi	LI	None	No	C
14	<i>Hossain Shially vs. State</i>	(2004) 56 DLR (HCD) 637	6(1)	Barisal	LI	5,000	No	Aq
15	<i>Md. Dulal vs. The State and another</i>	(2004) 9BLC(AD)232, (2004) 24 BLD (AD) 212	6(1), 14	Barguna	LI	1,000	No	Aq
16	<i>Md. Abdur Razaque vs. The State</i>	(2004) 24 BLD (HCD) 14, (2004) 56 DLR (HCD) 511	6(1)	Netrokona	LI	None	No	C
17	<i>Md. Masud Mia vs. State</i>	(2004) 56 DLR (HCD) 352	6(2)	Gaibandha	LI	None	No	Aq
18	<i>State vs Md. Awal Fakir</i>	(2004) 56 DLR (HCD) 647	6(2)	Narail	DP	None	No	C
19	<i>State vs. Mozam and Ors.</i>	(2004) 9BLC (HCD) 163	6(4), 14	Naogaon	DP	None	No	Aq
20	<i>State vs. Sukur Ali</i>	(2004) 9 BLC (HCD) 238	6(2)	Manikgonj	DP	None	No	C
	<i>BLAST vs. Bangladesh</i>	(2010) 63 DLR (HCD) 10; (2010) 30 BLD (HCD) 194						
	<i>BLAST vs. Bangladesh, represented by the Secretary, Ministry of Home Affairs, Dhaka and Ors.</i>	(2015) 67 DLR (AD) 185 (2015) 35 BLD (AD) 178; (2015) 23 BLT(AD) 160; (2015) 12 ADC (AD) 245;						
	<i>BLAST and Ors. vs. Government of Bangladesh and Ors.</i>	(2016) 68 DLR (AD) 1; (2016) 24 BLT (AD) 10;						
21	<i>Md. Moynul Hoque (Crl. P. No. 162 of 2001), Md. Abdus Satter (In Crl. P. No. 171 of 2001) vs. The State</i>	(2004) 24 BLD (AD) 127; (2004) 56 DLR (AD) 81	6(4)	-	DP	None	No	C
22	<i>Nuruddin and Ors. vs. The State</i>	(2005) 13 BLT(HCD)424	6(3)	Noakhali	LI	None	No	C
23	<i>Md. Tariqul Islam vs. The State</i>	(2006) 14 BLT(HCD)407	6(1)	Meherpur	LI	None	No	Aq
24	<i>Mazharul vs. State</i>	(2005) 10 BLC (HCD) 209	6(1)	Mymensingh	LI	None	No	Aq

25	<i>Masud Rana (Md.) vs. State</i>	(2007) 12 BLC (HCD) 196	6(1)	Rangpur	10Y	5,000	No	C
26	<i>Billal Miah and Ors. vs. State</i>	(2008) 13 BLC (HCD) 681	6(1), 14	Kishoreganj	LI	None	No	Aq
27	<i>Abdus Satter vs. The State</i>	(2005) 25 BLD (HCD) 625	6(1)	Barishal	LI	None	No	Aq
28	<i>Sobuj (Md.) vs. State</i>	(2006) 11 BLC (HCD) 246	6(1)	Naogaon	LI	None	No	Aq
29	<i>Rubel vs. The State</i>	(2006) 14 BLT (HCD) 560	6(2)	Chandpur	LI	5,000	No	Aq
30	<i>The State vs. Md. Roushan Mondal @ Hashem</i>	(2006) 26 BLD (HCD) 549	6(2)	Jhenaidah	DP	None	No	Aq
31	<i>State vs. Shahidul Islam alias Shahid and others</i>	(2006) 58 DLR (HCD) 545	6(2), 14	Dhaka	DP	None	No	Aq
32	<i>Safazuddin and another vs. The State</i>	(2007) 27 BLD (HCD) 321	6(1)	Dhaka	LI	None	No	Aq
33	<i>Shahin and others vs. The State</i>	(2007) 27 BLD (HCD) 448, (2008) 28 BLD (HCD) 41	6(1)	Shatkhira	LI	None	No	Aq
34	<i>Hareshuddin Pramanik (Md.) vs. State</i>	(2008) 13 BLC (HCD) 310	6(1)	Naogaon	LI	None	No	C
35	<i>Abdul Majid (Md.) vs. State</i>	(2008) 13 BLC (HCD) 52	6(1)	Jessore	LI	None	No	Aq
36	<i>Fazlu alias Fazla vs. The State</i>	(2008) 28 BLD (HCD) 659	6(1), 14	Netrokona	LI	None	No	Aq
37	<i>Abdul Latif (Md.) vs. State</i>	(2009) 14 BLC (HCD) 784	6(1)	Kushtia	LI	None	No	Aq
38	<i>A. Razzak Mollah vs. State</i>	(2016) 68 DLR (HCD) 488	6(1)	Pirojpur	LI	10,000	No	Aq
39	<i>Nazrul Gazi Alias Nazrul Islam vs. The State</i>	LEX/BDHC/0129/2012	6(1)	Khulna	LI	None	No	Aq
40	<i>Nazrul Islam vs. State</i>	(2013) 18 BLC (HCD) 114	6(1)	Dinajpur	10Y	1,000	No	C
41	<i>Minnat alias Minnat Ali alias Minhaz Ali vs. State</i>	(2014) 22 BLT (HCD) 314	6(1)	Tangail	LI	None	No	Aq
42	<i>The State vs. Mostafizur Rahman and Ors.</i>	(2015) 12 ADC (AD) 369	6(1), 14	Rajbari	LI	5,000	No	Aq
43	<i>The State vs. Ekramul Hoque Bachchu</i>	(2014) 11 ADC (AD) 858	6(1), 14	Chittagong	DP	None	No	Aq
44	<i>Rokibur (Md.) vs. State</i>	(2015) 20 BLC (AD) 217	6(4), 6(3)	Rajshahi	DP	None	No	C
45	<i>The State vs. Haris</i>	(2017) 14 ADC (AD) 785; (2019) 71 DLR (AD) 15	6(2), 6(4)	Narsingdi	DP	None	No	C
46	<i>Syed Sajjad Mainuddin Hasan vs. State</i>	(2018) 70 DLR (AD) 70	6(2), 14	Dhaka	DP	None	No	C

This report focuses on an often-ignored aspect of ensuring justice for rape, the need to provide reparation (in particular, compensation), to rape survivors. It analyses case law and legislation on compensation for rape and other forms of sexual and gender based violence (SGBV) in Bangladesh to explain how the existing framework by and large fails to ensure compensation for rape survivors.

The main reform proposal this report advocates for is the establishment of a state compensation fund to redress all victims of SGBV, through the enactment of the draft Crime Victims Compensation Act. It is the second installment in the **Rape Law Reform Research Reports** series, launched as part of our **Rape Law Reform Now** campaign, to highlight issues in procedural and substantive laws on rape which obstruct justice for rape survivors in Bangladesh, with recommendations for reform.



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**For free legal advice call BLAST's Hotline: 01715220220**

**National Legal Aid Hotline: 16430**

**National Helpline for Violence Against Women: 109**