

The implementation of women's rights to penal remedies for and protection against domestic violence in Bangladesh

A critical multi-level and multi-methodological analysis

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Table of Contents

- Preamble7
- Acknowledgements7
- Personal motivation7
- 1 INTRODUCTION8**
- 1.1 Description of theme and research questions.....8
 - 1.1.1 First research question9
 - 1.1.2 Second research question11
- 1.2 Relevance of the study.....11
 - 1.2.1 Relevance of the theme.....11
 - 1.2.2 Relevance of Bangladesh13
 - 1.2.2.1 Prevalence of domestic violence13
 - 1.2.2.2 Challenges with implementing the right to protection against and penal remedies for domestic violence on the international, national and local level.....14
 - 1.2.3 Relevance of BLAST16
- 1.3 Outline of this thesis18
- 2 METHODOLOGY AND THEORETICAL FRAMEWORK.....19**
- 2.1 Doctrinal legal research methods19
 - 2.1.1 International law20
 - 2.1.2 Bangladeshi law.....22
 - 2.1.3 Bangladeshi case law23
- 2.2 Empirical legal research methods.....23
 - 2.2.1 Participant observation.....24
 - 2.2.2 Archival research.....26
 - 2.2.3 Qualitative interviews26
 - 2.2.3.1 Preparing for qualitative interviews.....26
 - 2.2.3.1.1 Choosing respondents26
 - 2.2.3.1.2 Information letter and gathering consent27
 - 2.2.3.1.3 Creating interview guides.....27
 - 2.2.3.2 Conducting qualitative interviews27
 - 2.2.3.2.1 Location.....27
 - 2.2.3.2.2 Interpreter28
 - 2.2.3.2.3 Following the interview guide.....28
 - 2.2.3.2.4 Status as a visiting researcher.....29

2.2.3.3	Transcription, coding and analysing the interviews	30
2.2.4	Analysing secondary sources	30
2.3	Theoretical framework.....	33
2.3.1	Access to justice	33
2.3.2	Legal empowerment	35
2.3.3	Legal pluralism, vernacularisation, and indigenisation	37
3	INTERNATIONAL RIGHT TO PROTECTION AGAINST AND PENAL REMEDIES FOR DOMESTIC VIOLENCE AND THEIR EFFECT IN BANGLADESH	38
3.1	Right to protection against and penal remedies for domestic violence according to the Women’s Convention	38
3.1.1	Content of the state parties’ due diligence obligation to provide protection and penal remedies to domestic violence survivors.....	39
3.1.2	Conclusion.....	41
3.2	The Declaration on Elimination of Violence Against Women	41
3.3	Bangladesh’s accession and reservations to the Women’s Convention	42
3.3.1	Effect of Bangladesh’s reservations	42
3.3.1.1	Incompatibility with the Convention’s object and purpose	43
3.3.1.2	Specificity	43
3.3.1.3	Breach of obligation to perform treaty in good faith	44
3.3.1.4	Breach of other international commitments	44
3.3.1.5	The Women’s Committee’s comments to Bangladesh on women’s right to protection against domestic violence.....	44
3.3.2	Conclusion.....	45
3.4	System for implementing international law in domestic legislation	45
3.5	Conclusion	46
4	CONSTITUTIONAL RIGHT TO PROTECTION AGAINST FURTHER OR POTENTIAL DOMESTIC VIOLENCE OR PENAL REMEDIES FOR DOMESTIC VIOLENCE.....	47
4.1	Right to life and protection of the law	47
4.1.1	Shipra Chaudhury vs Government of Bangladesh	48
4.1.1.1	Advocacy strategy	48
4.1.1.2	The judgement’s significance for the right to protection against further or potential domestic violence and right to penal remedies for acts of domestic violence	49
4.1.2	The Microbus rape case	50

4.1.2.1	The judgement's significance for the right to penal remedies and protection against further or potential violence.....	52
4.1.3	The Marital rape exemption case	52
4.1.3.1	The case's significance for the right to penal remedies and protection against domestic violence	53
4.1.4	The Fatwa case	53
4.1.4.1	The case's significance for right to access to protection and penal remedies	55
4.2	Right to equality and non-discrimination	55
4.2.1	The Two-finger test case.....	55
4.3	Conclusion	56
5	LEGAL RIGHT TO PROTECTION AGAINST FURTHER OR POTENTIAL DOMESTIC VIOLENCE AND PENAL REMEDIES FOR DOMESTIC VIOLENCE	58
5.1	Suppression of Violence against Women and Children Act 2000.....	58
5.1.1	Types of domestic violence covered by the Suppression of Violence against Women and Children Act	58
5.1.2	Procedures for enforcement of the Suppression of Violence against Women and Children Act.....	59
5.1.3	Protection measures	60
5.1.4	Remedies under the Suppression of Violence against Women and Children Act	60
5.1.5	Barriers to implementation of the international right to penal remedies against acts of domestic violence	61
5.1.5.1	Marital rape	61
5.1.5.2	Other forms of violence	61
5.1.5.3	Overlap with the Penal Code.....	62
5.1.5.4	Unclear language	62
5.1.5.5	Limited protection of witnesses	62
5.1.5.6	Evidentiary rules	63
5.1.6	Conclusion.....	63
5.2	The Domestic Violence (Prevention and Protection) Act 2010 And Domestic Violence (Prevention and Protection) Rules 2013	63
5.2.1	Scope of the Act	64
5.2.1.1	Types of violence.....	64
5.2.2	Protection remedies under the Act.....	64
5.2.2.1	Interim protection orders.....	64
5.2.2.1.1	Standard of proof and probability.....	65

5.2.2.1.2	Breach of interim protection orders	66
5.2.2.2	Permanent protection orders.....	66
5.2.2.2.1	Standard of proof and threshold of evidence.....	66
5.2.2.3	Breach of protection orders	67
5.2.2.4	Residence orders.....	67
5.2.3	Procedure to obtain protection or residence orders	68
5.2.4	Legal barriers to protection against further or potential domestic violence	69
5.2.4.1	Limited scope	69
5.2.4.2	Premises of the Domestic Violence Act	70
5.2.4.3	No accountability mechanisms.....	70
5.2.4.4	The Domestic Violence Act’s overlap with other laws	71
5.2.5	Conclusion.....	72
5.3	Dowry Prohibition Act 2018.....	72
5.3.1	Scope of the Dowry Prohibition Act	73
5.3.2	Procedures under the Dowry Prohibition Act	74
5.3.3	Remedies under the Dowry Prohibition Act	74
5.3.4	Barriers for access to penal remedies under the Dowry Prohibition Act.....	74
5.4	The missing law.....	75
5.5	Conclusion	75
6	BARRIERS TO PENAL REMEDIES AND PROTECTION REMEDIES IN THE FORMAL JUSTICE SYSTEM.....	76
6.1	The police.....	76
6.1.1	The police’s implementation of the Domestic Violence Act	77
6.1.1.1	Gender-sensitisation.....	77
6.1.1.2	Corruption	77
6.1.1.3	Referrals	78
6.1.2	The police’s implementation of the criminal laws	78
6.1.2.1	Gender-sensitisation.....	78
6.1.3	Corruption	79
6.1.4	Conclusion.....	79
6.2	The enforcement officers	79
6.3	The courts.....	81
6.3.1	The Magistrate’s Court	81
6.3.1.1	In a timely manner	81
6.3.1.2	Cost	82
6.3.1.3	Lack of training and gender-sensitivity	82
6.3.1.4	Referrals to the family courts	83
6.3.2	The Suppression of Violence against Women and Children Tribunals.....	84

6.3.2.1	Trial in a timely manner	85
6.3.2.2	Lack of training and gender-sensitivity	85
6.3.2.3	Low conviction rate	85
6.3.2.4	Reasons for the low conviction rate in Nari O Sishu Tribunals	86
6.3.3	Conclusion.....	88
6.4	Public legal aid services.....	88
6.5	Protection services	89
6.5.1	One Stop Crisis Centres	89
6.5.2	One-Stop Crisis Cells.....	90
6.5.3	Victim support centres	90
6.5.4	Shelters.....	91
6.5.5	Conclusion.....	92
6.6	Social protection.....	92
6.7	Government and private helplines.....	92
6.8	Conclusion.....	93
7	CULTURAL CONCEPTIONS INHIBITING WOMEN’S ACCESS TO PENAL REMEDIES FOR OR PROTECTION AGAINST FURTHER OR POTENTIAL DOMESTIC VIOLENCE.....	93
7.1	Legitimisation of domestic violence	93
7.2	Social stigma	94
7.3	Fear of divorce.....	95
7.4	Domestic violence is viewed as a personal matter	96
7.5	Dowry demands are accepted.....	96
7.6	Lack of legal empowerment.....	96
7.7	Conclusion	97
8	BLAST’S USE OF LEGAL EMPOWERMENT ACTIVITIES TO PROVIDE DOMESTIC VIOLENCE SURVIVORS ACCESS TO PROTECTION MECHANISMS AND PENAL REMEDIES	97
8.1	Disseminating rights information and legal advice.....	97
8.1.1	Courtyard meetings.....	98
8.2	Paralegals	99
8.3	Income-generating training	99
8.4	Capacity building of the law enforcement	99
8.5	Litigation.....	100
8.6	Referrals to protection services	100
8.7	Out-of-court advocacy	101

8.7.1	Advocacy for legal and institutional reform under the Suppression of Violence against Women and Children Act.....	101
8.7.1.1	Conclusion.....	102
8.7.2	The advocacy prior to the Domestic Violence Act and Rules	102
8.7.2.1	Conclusion.....	105
8.7.3	Translation from international human rights to the Domestic Violence Act	105
8.7.3.1	Conclusion.....	106
8.7.4	Advocacy for better implementation of the laws.....	106
8.8	Mediation	107
8.8.1	Number of cases	107
8.8.2	Initial contact.....	107
8.8.3	Contacting the counterpart	108
8.8.4	Mediation sessions.....	109
8.8.5	Agreement	110
8.8.6	Follow-up of after reaching the agreement.....	111
8.8.7	Consequences of violating the agreement.....	112
8.8.8	Criticism of mediation in domestic violence cases	112
8.9	Conclusion	113
9	CONCLUDING REFLECTIONS.....	114
9.1	Main findings and recommendations for further studies	114
9.2	Recommendations for policymakers and legal empowerment groups	115
9.2.1	Recommendations for policymakers in Bangladesh.....	115
9.2.2	Recommendations for legal empowerment organisations	116
	APPENDIXES	116
1	Acronyms.....	117
2	Bengali and Arabic Words.....	117
3	Focus group discussions	117
4	Interviews.....	117
5	Information letter.....	118
6	Interview guide.....	121
7	Questionnaire from Monitoring and Evaluation Cell	124
	BIBLIOGRAPHY.....	131
1	Bangladeshi Acts and Rules.....	131
2	Bangladeshi judgements	133
3	International judgements.....	133
4	International treaties and conventions	134

5	Literature.....	134
6	Other national judgements	151
7	Other national laws.....	151
8	Treaty body law.....	151

Preamble

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Personal motivation

When it was time for me to decide the topic for my Master’s dissertation, I was working in the Norwegian legal aid organisation Legal Advice for Women (JURK) and had a keen interest in women’s law. Prior to this, I had lived in the People’s Republic of Bangladesh (Bangladesh) for a couple of years, learning Bangla, working at an international school in the capital Dhaka and witnessing the rise of feminism and women’s independence. In Dhaka, I saw several Bangladeshi female friends take on leadership positions in the society, but also heard stories about the prevalence of domestic violence. How come, when so many women were gaining economic independence, and sexual harassment in the public were being dealt with, domestic violence hadn’t been eradicated?¹

However, from friends and the media, I also became aware of the great efforts non-government organisations, like Bangladesh Legal Aid and Service Trust (BLAST), were undertaking to promote access to justice for women in terms of legal aid, advocacy, and research. Bangladeshi non-governmental organisations are reputed to be influential and independent of international

¹ Bangladesh Bureau of Statistics (2016) p. xxix

donors.² I was intrigued, and knew I wanted to learn more about it before I graduated from the professional study in law at the University of Oslo. I therefore looked for possibilities to research for my Master dissertation in Bangladesh. I applied for an internship at BLAST, and the application was successful.

1 Introduction

In this chapter I first provide a description of the theme and research questions. Then I explain the relevance of the study and give an outline of the thesis.

1.1 Description of theme and research questions

The theme of the thesis is the implementation of women domestic violence survivors' international rights to access penal remedies and protection mechanisms against further or potential domestic violence in The People's Republic of Bangladesh (Bangladesh). By domestic violence survivors, I refer to survivors of physical, mental, economical, and sexual violence conducted by the partner, whether it be a partner in a live-in relationship or a spouse, during or after the relationship.³

This is a multi-level research. On the international level, the thesis concerns women' international rights to penal remedies and protection against further or potential domestic violence. It also discerns Bangladesh's obligation to implement the potential rights. On the national level, it concerns how the international rights are implemented in the Constitution of the People's Republic of Bangladesh (Constitution) and relevant legislation. On the local level, it firstly concerns how the state actors implement women's rights to penal remedies or protection mechanisms in the formal justice system. This problematises the strong and weak legal pluralism in Bangladesh.⁴ Secondly, it concerns how legal empowerment strategies including alternative dispute resolutions can provide women access to penal remedies and protection against domestic violence.

I am seeking to explore domestic violence survivors' access to penal remedies and protection against domestic violence, and the existing barriers to Bangladesh's implementation of the

² Lewis and Hossain (2021)

³ Cf. Declaration on the Elimination of Violence Against Women article. 2 a). I do not address violence in the forms of forced marriage.

⁴ Strong legal pluralism is where state-law functions side by side with non-state law, and weak legal pluralism is where the state has issued different laws for different social groups. (Hellum (2017) p. 440 and Griffiths (1986) p. 5)

relevant international rights on the international, national and local level. ⁵The thesis explores domestic violence survivors' access to penal remedies and protection mechanisms in light of access to justice-literature, ⁶ and as an aspect of state parties' due diligence obligation to investigate, prosecute and punish acts of domestic violence under the Women's Convention. ⁷ It explores whether the government fulfils its obligation to provide adequate penal remedies for gender-based violence after the Women's Convention. ⁸ It also explores whether the government fulfils its obligation to protect domestic violence survivors against further or potential domestic violence, for example by issuing protection orders, when state actors know or should know about the danger of domestic violence.⁹

I also seek to explore whether legal empowerment activities can be used to overcome these barriers to penal remedies and protection mechanisms. "*Legal empowerment*" refers to "(..) *the use of legal services and related development activities to increase disadvantaged populations' control over their lives.*" ^{10 11} The primary point of reference for this is a case study of the legal services organisation Bangladesh Legal Aid and Service Trust (BLAST), based on qualitative interviews and participant observation during an internship I had there while I was writing my dissertation. BLAST is one of the leading legal services organisations in Bangladesh, and work to strengthen women's access to justice through legal aid, advocacy, mediation and other measures. ¹² The case study sheds light on the interplay between civil society organisations and the formal justice system, and on different innovative strategies that can be used to promote domestic violence survivors' legal empowerment.

My research theme can be divided into two research questions.

1.1.1 First research question

The first research question reads;

⁵ I have chosen to use the term "*survivor*" instead of "*victim*" to emphasise women's autonomy. Promoting the women's autonomy, meaning the ability to speak for themselves and choose their course of action, is an ethical standard used by non-governmental organisations worldwide. (International Centre for Research on Women (2014) p. 8) In the inter-disciplinary discourse regarding gender-based violence, "*survivor*" is often seen as the opposite to "*victim*" and preferred as the word "*survivor*" is more empowering. (Messamore and Paxton (2021) p. 6)

⁶ See section 2.3.1

⁷ Women's Committee (2017) paragraph 24 b), 40b) and Women's Convention article 2 e)

⁸ Women's Committee (2017) paragraph 24 b) Women's Convention article 2 e)

⁹ Women's Convention (2017) paragraph 24 b) and 40 b) Women's Convention article 2 e)

¹⁰ Golub (2003) p. 3

¹¹ See section 2.3.2

¹² See section 1.2.3

How are domestic violence survivors' right to access penal remedies for or protection against further or potential domestic violence implemented in the formal justice system in Bangladesh?

The objective of this question is two-fold. I aim to identify gaps in the legislation and barriers to the implementation of the legislation, that inhibit women's access to penal remedies for acts of domestic violence, and to protection mechanisms against domestic violence. I also aim to consider how the relevant rights under the Women's Convention and DEVAW are implemented. I will look for barriers on the international, and national and local level. By conducting my research, I hope to provide evidence that can be used to inform policy-making and practice in Bangladesh to overcome these barriers and increase domestic violence survivors' access to justice. ¹³

I choose to focus on access to penal and protection remedies to reflect the legal needs of women domestic violence survivors in Bangladesh. ¹⁴ A BRAC University study from 2021 found that most of the domestic violence survivors wanted the violence to end and to continue their marriage. ¹⁵ Only in cases where the violence was very serious, women tended to choose to file a case under an Act with criminal sanctions. ¹⁶ My interviewees' experience confirmed the results from Huda's study. They informed that most of the women domestic violence survivors who sought help at BLAST wanted the violence to stop, and to continue living with their husband. If the violence was very severe, they took the case to court and sought criminal sanctions. ¹⁷

"The formal justice system" refers to the relevant state-run justice institutions and law enforcement personnel, but also public legal aid and protection services. The relevant justice institutions are the Supreme Court, police, Magistrate Courts, Women and Children tribunals, and enforcement officers.

The question does not cover the family laws. Several survivors of domestic violence fear that their husbands would demand divorce if they filed a case against him for domestic violence, and therefore refrain from doing so. ¹⁸ In addition to stigma, one of the core reasons for fearing divorce is fear of economic hardship because of the regulations of division of property and maintenance after divorce. ¹⁹ However, entering a discussion of maintenance and division of

¹³ Partington (2010) p. 1003

¹⁴ Macdonald (2010) p. 494 and Commission on the Legal Empowerment of the Poor (2008) p. 14

¹⁵ BIGD BRAC University (2021b) p. 75

¹⁶ Huda (2016) p. 38

¹⁷ Interview with BLAST staff

¹⁸ Mannan (2002) pp. 17-18 and Human Rights Watch (2012) pp. 51-52

¹⁹ Huda (2016) p. 28 and Human Rights Watch (2012) pp. 51-52

property upon divorce would take too much space for this thesis, especially as Bangladesh has different family laws for Muslims, Hindus, Christians and indigenous groups.²⁰

1.1.2 Second research question

The second research question reads;

Are legal empowerment activities effective to ensure women domestic violence survivors' access to protection or penal remedies against further or potential domestic violence?

The objective of this question is to analyse whether non-legal legal empowerment activities must be combined with legal empowerment activities to overcome the barriers I identify in the first sub-question. I will do this by doing a case study of BLAST's combination of legal and non-legal measures to eliminate domestic violence, and therefore examine the question on a national and local level. My aim is that this can be used to inform legal services organisations' efforts to improve women domestic violence survivors' access to penal remedies and protection mechanisms in and outside of Bangladesh.

1.2 Relevance of the study

In this subsection I will firstly introduce the relevance of the theme, then the relevance of studying the theme in Bangladesh and lastly the relevance of doing a case study of BLAST.

1.2.1 Relevance of the theme

This thesis seeks to add to the existing research on domestic violence survivors' access to penal remedies or protection mechanisms in the formal justice system. It seeks to analyse how legal empowerment strategies can secure women access to protection and penal remedies, with a focus on efforts to strengthen the formal justice system. It also seeks to analyse how mediation can secure access to protection against further or potential domestic violence.

How to successfully implement the right to protection against and penal remedies for domestic violence and make it accessible for the domestic violence survivor is a central theme in research on women's human rights.²¹ The increase of domestic violence during the ongoing Covid-19 pandemic has made the theme even more relevant.²²

²⁰ Dr Kamal Hossain in Sara Hossain, Pereira and Huda (2018) p. XIII

²¹ Merry (2006), International Center for Research on Women, Centre for Domestic Violence Prevention and Beyond Borders (2016)

²² UN Women (2021) p. 3

Domestic violence is viewed as an especially suitable issue to research the interplay between international human rights and cultural norms in the communities because domestic violence can be legitimised by cultural norms.²³ The anthropologist Sally Engle Merry researched on the translation processes where non-governmental organisations translate human rights for them to be accepted in the local culture.²⁴ In her eyes, culture was key to a successful implementation of international rights regarding protection against domestic violence on the ground.²⁵

The theme has also been touched upon by other academicians and stakeholders, with different views of how international human rights on domestic violence can be implemented where they contradict existing cultural beliefs about domestic violence. The legal scholar Sahar Maranlou, who approached women's access to justice with a focus both on overcoming institutional barriers and legal empowerment, developed a conceptual framework for analysing women's access to justice in Iran.²⁶ She viewed culture as a barrier to women's access to justice.²⁷ The International Center for Research on Women explored using alternative dispute resolutions, outside the formal justice system, to provide justice for domestic violence survivors.²⁸ They recommended NGOs engage with traditional alternative dispute resolutions bodies to hold the latter accountable.²⁹

During the Covid-19 pandemic, domestic violence increased, and the lockdowns inhibited domestic violence survivors' access to legal services worldwide.³⁰ This has led governmental and non-governmental organisations' to bring about adaption of services to make them accessible on the agenda. The Special Rapporteur on Violence Against Women analysed the intersection between the pandemic and gender-based violence, especially domestic violence, in

²³ Merry (2006) pp. 24- 25 The Women's Committee, which is informed by research and years of country reports (Women's Convention article 18 (1)), have on several occasions emphasised the connection between patriarchal cultural notions and domestic violence. See for example Women's Convention (1992) paragraph 11

²⁴ Merry (2006) pp. 5, 221

²⁵ Merry (2006) p. 221

²⁶ Maranlou (2014) p. 1

²⁷ Maranlou (2014) pp. 124- 125

²⁸ International Center for Research on Women, Centre for Domestic Violence Prevention and Beyond Borders (2016)

²⁹ International Center for Research on Women, Centre for Domestic Violence Prevention and Beyond Borders (2016) p. 24

³⁰ UN Women (2021) p. 3

a report based on input from 274 stakeholders worldwide in July 2020.³¹ Namati³² also published a report on institutional responses to gender-based violence during the pandemic, and the role of legal empowerment groups.³³ There is a hope that this focus will result in improved access to justice for domestic violence survivors also after the pandemic.³⁴

1.2.2 Relevance of Bangladesh

How to successfully implement the right to protection against and penal remedies for domestic violence and make it accessible for the domestic violence survivor is also a central question in Bangladesh.³⁵ In this section I explain the two most important reasons for this; domestic violence is prevalent, and the implementation of the international right to access protection mechanisms and penal remedies for acts of domestic violence is limited on the international, national, and local levels.

1.2.2.1 Prevalence of domestic violence

According to a survey from 2015, 72,6 % of women had been subjects of any partner violence and 49,6 % of women had been subject to physical partner violence during their lifetime.³⁶ Shockingly, less than 3 % of the women survivors of physical or sexual domestic violence took legal action.³⁷ Making sure women can access legal remedies is therefore a central question in Bangladesh. Identifying the barriers to access to protection mechanisms and penal remedies can shed light on why the number is so low, and what can be done to increase it.

Lately, the prevalence of domestic violence has increased. As the Covid 19- pandemic reached Bangladesh in March 2020, the government declared a nationwide “*general holiday*”, from 26 March to 31 May.³⁸ This led to an increase in domestic violence. A telephone survey from *Manusher Jonno Foundation* with 17 203 women and children respondents found that 1672 women respondents experienced domestic violence for the first time during this general holiday.³⁹ A study on rural households in Bangladesh published in *The Lancet* found that the

³¹ Office of the High Commission for Human Rights (n.d.)

³² Namati is a global network of 2400 groups working on the ground to promote legal empowerment through “*paralegals, legal empowerment and primary justice seekers*”. (see Namati (n.d.b))

³³ Legal Empowerment Network et al (2021) p. 7

³⁴ Legal Empowerment Network et al (2021) p. 16

³⁵ Bangladesh is a densely populated country situated in South-Asia (Tinker (2021). It has a very strong civil society, promoting principles of democracy and human rights. (Lewis and Hossain (2021), Lewis (2003) p. 12)

³⁶ Bangladesh Bureau of Statistics (2016) p. xxviii

³⁷ Bangladesh Bureau of Statistics (2016) p. 35

³⁸ Dhaka Tribune Report (2021)

³⁹ Manusher Jonno Foundation (2020) pp. 2 and 4

majority of the women who were subject to domestic violence, experienced an increase during the lockdown.⁴⁰ These studies on the prevalence of domestic violence in Bangladesh, tell us that overcoming barriers to penal remedies and protection mechanisms will have value for a high number of Bangladeshi women.

1.2.2.2 *Challenges with implementing the right to protection against and penal remedies for domestic violence on the international, national and local level*

As I elaborate upon later in the thesis, there are many challenges to the implementation of women's rights to protection and penal remedies for domestic violence in Bangladesh on the international, national and local levels.⁴¹ Legal pluralism is one of them. In the following, I will explain some of the challenges on the international, national and local levels to demonstrate why it is relevant to study the theme in Bangladesh.

On the international level, the government made reservations to the Women's Convention articles 2, 13, 16 (1) c) and 16 (1) f) when it acceded to the convention.⁴² It later withdrew the reservations to articles 13 a) and 16 (1) f).⁴³

The government explains its reasons for maintaining its reservations to Women's Convention's articles 2 and 16 (1) f) with awareness "*about the potential movements by the Islamic fundamentalist groups against the withdrawal of the reservations.*"⁴⁴⁴⁵ This is a reference to non-formal laws. Bangladesh is a secular country,⁴⁶ but the majority of the population are Muslims.⁴⁷ And among the Muslims, there is a small minority of militant Islamists with their own cultural norms.⁴⁸

On the national level, the government and civil society are taking numerous measures to combat domestic violence.⁴⁹ To a certain extent, the international right to protection against domestic violence is implemented in the Domestic Violence Act and the Suppression of Violence against Women and Children Act, but the government's application of legislative measures is inhibited

⁴⁰ Hamadani et al (2020) p. e1386

⁴¹ See chapter 3 to 7

⁴² United Nations Treaty Series vol. 1379 (1992) p. 336

⁴³ Wadud (2021) p. 259

⁴⁴ Women's Committee (2015b) paragraph 21

⁴⁵ See how I apply the Women's Convention in section 2.1.1 and an analysis of the relevant rights in and Bangladesh's obligations under the Women's Convention in section 3

⁴⁶ Constitution article 8 (1)

⁴⁷ Tinker (2021)

⁴⁸ Mostafa (2021) p. 2036

⁴⁹ Women's Committee (2015b) paragraphs 16 and 31, Huda (2016) p. 8

by fear of provoking religious groups.⁵⁰ Religious family laws are recognised by the Constitution,⁵¹ and there are different religious family laws for Muslims, Hindus, Christians and indigenous people.⁵² Despite pressure from national women's groups and the Women's Committee, the government has not yet unified the family laws.⁵³

On the local level, women's rights to protection and penal remedies are resisted by some members of the formal justice system and members of the public.⁵⁴ This is partially because domestic violence is legitimised by the notion that women should be subject to the control of their male family members.⁵⁵ This exemplifies how non-state law impairs the legitimacy and effectiveness of state-law.⁵⁶

Additionally, there is limited trust in the formal justice system when it comes to gender-based violence.⁵⁷ This can be one of the reasons why people seek other leaders for help in domestic violence cases, and why informal dispute resolutions like *shalishes* have become so popular.⁵⁸

Shalish is Arabic for arbitration, and Persian for mediation.⁵⁹ *Shalishes* in Bangladesh are informal arbitrations or mediations. They are traditionally led by male leaders who are elected or self-appointed, mainly based on religious, political, or financial authority.⁶⁰ The numbers of *shalishkars* (members of judge panel) and which material and procedural rules they follow, vary from community to community.⁶¹ The *shalishkars* sometimes turn to imams for religious opinions, known as *fatwas*,⁶² but this practice has now been regulated by Supreme Court directives.⁶³ *Shalishkars* are criticised for seeking to preserve the existing power structures in the community.⁶⁴ The popularity of *shalishes* can be explained with the

⁵⁰ Women's Committee (2015b) paragraph 25

⁵¹ Constitution article 41 (1) and article 28 (2)

⁵² Dr Kamal Hossain in Sara Hossain, Pereira and Huda (2018) p. XIII

⁵³ Women's Committee (2015b) paragraph 25

⁵⁴ Huda (2006) p. 36, Women's Committee (2016) paragraph 18 (b)

⁵⁵ Bangladesh Bureau of Statistics (2019) p. 161 with further references, interview with BLAST staff

⁵⁶ World Bank (n.d.)

⁵⁷ Human Rights Watch (2020) p.38, Huda (2006) p. 36

⁵⁸ BIGD Brac University (2021) p. 50-51, Justice Audit (2018) no. 41, 42, 43

⁵⁹ Masum and Ara (2017) p. 70

⁶⁰ Berger (2017) p. 79, Overseas Development Institute (2016) p. 8

⁶¹ Berger (2017) p. 79-80, Siddiqi (2011a) pp. 79-80

⁶² Siddiqi (2011a) p. 80

⁶³ See section 4.1

⁶⁴ Berger (2017) p. 79, Siddiqi (2011a) p. 79

authority of the *shalishkars*, and that they are closer to the people, cost less in terms of time and money, and apply more informal procedures than the courts in the formal justice system.⁶⁵

Many of the challenges with implementing women's rights are related to legal pluralism, non-state law existing side by side with the formal state law. In light of this, I aim to explore how the rights to penal remedies and protection mechanisms are implemented on the international, national and local levels.

1.2.3 Relevance of BLAST

While there are several studies on domestic violence survivors' access to justice in Bangladesh, in the forms of penal remedies and/or civil remedies, there are few studies on the use of legal empowerment strategies to improve domestic violence survivors' access to penal remedies or protection against further or potential domestic violence.⁶⁶ I therefore attempted to fill in this gap by doing a case study of how a non-governmental organisation uses legal empowerment strategies to improve domestic violence survivors' access to justice.

What made BLAST the ideal organisation to study the use of legal empowerment strategies, is their use of both legal and non-legal activities to ensure women's legal empowerment. BLAST is one of the leading legal services organisations in Bangladesh,⁶⁷ and operates in all 64 districts with direct operations in 21. Its vision is "*to ensure access to justice for the poor and marginalised*".⁶⁸ To reach this end, the organisation's core work can be divided in legal aid, advocacy, research and capacity-building. Legal aid includes awareness raising, rights information, advice, mediation, litigation, accompaniment and referrals. Advocacy includes public interest litigation (PIL), hosting issue raising meetings at grassroots level, hosting issue raising meetings with stakeholders, drafting law proposals, making recommendations for legal amendments, arranging and attending network meetings and co-operating with the government and international and national non-governmental organisations. Research includes socio-legal research that provides the base for advocacy on legal and social reforms, analysing laws and issues raised in advocacy meetings, contributing in report writing to international monitoring bodies (eg Special Rapporteur on Violence Against Women), drafting concept notes, and so forth.⁶⁹ Capacity-building includes training of law enforcement and judiciary. Additionally, they offer income-generation, negotiation and literacy training, and help organising

⁶⁵ Masum and Ara (2017) p. 72

⁶⁶ See Naznin and Sharmin (2015), Huda (2016), Yasmin (2020 a -c), BIGD BRAC University (2021a, 2021b),

⁶⁷ Namati (n.d.a)

⁶⁸ BLAST (n.d.b)

⁶⁹ Office of The High Commission of Human Rights (n.d.) and project list 2021 (internal document)

disadvantaged communities.⁷⁰ BLAST is also a member of Namati, the global Legal Empowerment Network.⁷¹ The head office, where I interned, is in Dhaka, with research, advocacy, legal, monitoring & evaluation and training cells, in addition to project managers.

Through my internship at BLAST, I got to observe how the organisation is navigating the different institutional and cultural barriers to justice in especially family law, labour law, criminal law and land law. From what I saw, it seemed like BLAST uses international law and domestic laws without translating it to comply with religious or customary laws. Instead, they focus on strengthening the formal justice system and using legal empowerment activities.

BLAST also offers a distinct type of mediation, or *shalish*, from the other non-governmental organisations in Bangladesh.

From the 1980s, national non-governmental organisations took initiatives to reform *shalish* to make sure they operated within the human rights framework and followed due procedures.⁷² Madaripur Legal Aid Association (MLAA) was in the forefront to start training *shalishkars*, leaders who already had legitimacy in society, and others in the law and human rights standards, and lawyers in mediation.⁷³ They were followed by other organisations like Bangladesh National Women Lawyers' Association (BNWLA).⁷⁴

In contrast, BLAST's mediation is based on the MLAA-model but not community-based.⁷⁵ Its *shalish* is in shadow of the law, as BLAST strives to ensure that the mediation is "*accessible, (...) effective (...) within the framework of law and with respect for due process and principles of equality.*"⁷⁶ The mediations are led by mediators who are employed in BLAST and mostly have legal training.⁷⁷ BLAST's mediators get their authority from legal training and the link to the formal justice system.⁷⁸ The opposite party knows there is a real risk of litigation due to BLAST being a legal services organisation, which can give an incentive to attend mediation and honour the agreement, but also give the mediation a

⁷⁰ Project list 2021 (internal document) and Final Grant Narrative Report ASROI (internal document)

⁷¹ Namati (n.d.a)

⁷² Siddiqi (2011a) p. 80

⁷³ Golub (2013) pp. 76- 77

⁷⁴ Golub (2013) pp. 76- 77 and Berger (2017) p. 80

⁷⁵ Interview with BLAST staff

⁷⁶ BLAST (n.d.a)

⁷⁷ Golub (2013) p. 81

⁷⁸ Golub (2013) p.81

tendency of arbitration.⁷⁹ BLAST also trains colleagues, lawyers, community people and public representatives on mediation skill development.⁸⁰

1.3 Outline of this thesis

This thesis is divided in nine sections. In the first section I introduce the theme and relevance of my thesis. In the second section I explain the methodology and the theoretical framework I used. In the third section I establish the international human rights to protection against domestic violence by examining the Women's Convention and the Declaration on Elimination of Violence Against Women, and whether Bangladesh is obliged to follow them. In the fourth section I examine the Constitutional law in Bangladesh related to the right to protection against gender-based violence and how it has been developed. In the fifth section I analyse the laws providing protection remedies and criminal sanctions against domestic violence. For section 3 to 5 I mostly use a legal doctrinal method. In the sixth section I analyse how the laws are being implemented by the actors in the formal justice system. In the seventh section I analyse how cultural barriers and lack of legal empowerment inhibit women from seeking protection from domestic justice. In the eighth section I analyse how BLAST uses different legal empowerment activities like mediation, advocacy and issue-raising meetings to overcome these barriers. For section six to eight I use legal empirical research methods. In section 9, I conclude my dissertation.

⁷⁹ Golub (2013) p. 81

⁸⁰ Interview with BLAST staff

2 Methodology and theoretical framework

In this section, I firstly explain my overarching methodological approach to the research questions. Then I explain the doctrinal legal approach I used to analyse the laws, and lastly how I used empirical legal research methods to explore the implementation of the laws and the use of legal empowerment activities. I will address the ethical or methodical challenges connected with each different research method as I go along.

I analysed the implementation of women's right to access penal remedies and protection against further or potential domestic violence on multiple levels, and I use multiple methods. I start by exploring the international law and Bangladesh's obligations after it, then how it is implemented in the national legislation, and lastly how domestic violence survivors get access to penal remedies and protection or are empowered on the local level. I was seeking to understand the existing barriers to Bangladesh's implementation of the right to access penal remedies and protection mechanisms for domestic violence survivors and decided this was best done by consulting all three levels. I chose to use multiple methods because the different methods were useful to shed light on different aspects of my research questions.⁸¹ Legal doctrinal methods helped me identify barriers in the legislation, and legal empirical methods barrier in its implementation. I also controlled my findings with different methods and sources. For example, I asked the informants about their experiences with the police and the courts, and then controlled it with other research reports. I also controlled my legal analyses with other's analyses.

Since I was looking for barriers to the implementation of the right to penal remedies and protection mechanisms for domestic violence survivors, I undertook a critical approach to my research questions. By a critical approach, I mean that I aimed to challenge existing perceptions.⁸²

However, the reader should be careful not to generalise or draw conclusions of how widespread the ideas and practices I criticise are.⁸³

2.1 Doctrinal legal research methods

In chapter 3 to 5, I analyse international law, constitutional law in Bangladesh, and other national legislation regarding domestic violence survivors' rights to access protection and penal

⁸¹ Nielsen (2010) p. 953

⁸² Eriksen (2016) p. 21 (my translation)

⁸³ Cf. Dahl (2004) p. 57, p. 60 . See for example section 6.1, 6.2, 6.3 and section 7

remedies. My starting point was to use the doctrinal legal research method.⁸⁴ By using the doctrinal legal research method, also known as “*black letter method*”, I derived information from analysing the acts, statutes, cases, and regulations in themselves.⁸⁵ This identified ambiguity and loopholes in the laws that could inhibit domestic violence survivors’ access to penal remedies for or protection against acts of domestic violence.⁸⁶

I started by exploring international law to determine women’s international rights to penal remedies for and protection against domestic violence. Then I analysed and assessed the national legislation regarding domestic violence survivors’ rights to penal remedies or protection mechanisms in Bangladesh. I used an internal and external critical approach as I analysed the legislation.⁸⁷ I assessed the laws in light of Bangladesh’s obligations after international law, which is a form of internal criticism since I used arguments and methods from within the justice system.⁸⁸ Further, I assessed them in light of how they provided domestic violence survivors access to penal remedies or protection mechanisms, which is a form of external criticism since I relied on arguments and methods independent of the justice system when I analysed them.⁸⁹ This enabled me to identify underlying assumptions and premises that created legal barriers,⁹⁰ but also to assess the implementation of the law. Since my aim was to identify legal barriers, not to establish the law, I did not harmonise the laws with the Constitution or with international rights.

2.1.1 International law

I analysed international law to identify women’s international rights to protection against and penal remedies for domestic violence, and Bangladesh’s potential obligations. This would serve two purposes. Firstly, it would set the benchmark for women domestic violence survivor’s right to penal remedies for or protection against domestic violence after international law in Bangladesh, that I would use to assess the national legislation and its implementation. Secondly, Bangladesh’s obligations or lack thereof could be a barrier to the implementation of women’s rights in Bangladesh. To make sure my thesis was within the word-limit, I had to limit the number of international instruments I consulted.

⁸⁴ See section 3, 4 and 5

⁸⁵ Maurer School of Law (n.d.)

⁸⁶ Maurer School of Law (n.d)

⁸⁷ Eriksen (2016) p. 50-51

⁸⁸ Eriksen (2016) p. 50

⁸⁹ Eriksen (2016) p. 51

⁹⁰ Eriksen (2016) p. 51

I chose to limit my use of international instruments to The Convention on the Elimination of Discrimination against Women (the Women's Convention) and the Declaration on the Elimination of Violence Against Women (DEVAW), because they are central instruments regarding women's rights to protection against gender-based violence globally, in Bangladesh especially. Bangladesh acceded to the Women's Convention in 1984 and submitted its initial report to the Women's Committee in 1986.⁹¹ The Supreme Court frequently refers to the Women's Convention and DEVAW to interpret women's rights into the Constitution, and the women's movement refers to them in their advocacy.⁹² The central legislation concerning domestic violence, the Domestic Violence Act and the Suppression of Violence against Women and Children Act, was enacted to implement the Women's Convention.⁹³

The starting point for interpretation of the Women's Convention and the DEVAW was to interpret them "*in good faith*" and "*in light of its object and purpose*".⁹⁴

I also consulted UN Committee on the Elimination of Discrimination against Women (Women's Committee). This is the interpretive body of the Women's Convention.⁹⁵ Its general recommendations' authority as sources of international law is under debate.⁹⁶ Several factors indicate that the general observations have considerable weight as a legal source. As a starter, the nature of the Committee strengthens the authority of its general recommendations.⁹⁷ ICJ has ruled that the fact that a Committee is established to monitor the progress of a Convention or Covenant, means that "*great weight*" should be added to the Committee's interpretation of the said Convention or Covenant.⁹⁸ When the parties signed and ratified the Women's Convention, they agreed that the Committee should be established to consider the progress made in the implementation of the present Convention,⁹⁹ and that it "*may make (..) general recommendations (..)*".¹⁰⁰ Based on this, leading academics argue that the Recommendations have considerable weight in the interpretation of the Convention.¹⁰¹ In practice, national courts from common law countries such as England and India, apply

⁹¹United Nations Treaty Series vol. 1379 (1992) p. 336 and United Nations Human Rights Treaty Bodies (2021)

⁹²See section 4

⁹³ Domestic Violence Act (preamble) and Women's Committee (2004a) paragraph 51

⁹⁴ Vienna Convention on the Law of the Treaties article 31 no. 1

⁹⁵ Women's Convention article 28 (1)

⁹⁶ Freeman, Chinkin and Rudolf (2012) p. 23

⁹⁷ ICJ Republic of Guinea v Democratic Republic of the Congo paragraph 66

⁹⁸ ICJ Republic of Guinea vs Democratic Republic of the Congo paragraph 66

⁹⁹ Women's Convention article 17 no.1

¹⁰⁰ Women's Convention article 21 no.1

¹⁰¹ Freeman, Chinkin and Rudolf (2012) p. 24

General Recommendation 19 as an authoritative interpretation of the Women's Convention.

¹⁰²

Since international and national case law and literature support giving weight to the Women's Committee's General Recommendations as a legal source, I have chosen to do so. However, I interpret the General Recommendations concretely,¹⁰³ and differentiate between obligations,¹⁰⁴ and recommendations.¹⁰⁵

To understand the effect of Bangladesh's reservations to the Women's Convention, I consulted recommendations from the Women's Committee, other countries' objections and reservations, practice from other courts and monitoring bodies, and literature.¹⁰⁶

2.1.2 Bangladeshi law

I analysed the relevant Bangladeshi laws, the Constitution of the People's Republic of Bangladesh (the Constitution), Domestic Violence Act, Suppression of Violence against Women and Children Act and the Dowry Prohibition Act critically to find whether the rights to penal remedies or protection against further or potential domestic violence were successfully implemented in domestic legislation. As I analysed the laws, I also looked for legal loopholes and barriers inhibiting women's access to penal sanctions and protection mechanisms.¹⁰⁷

I chose to analyse these laws as the Domestic Violence Act provides legal basis for protection orders and residence orders, whereas the Suppression of Violence against Women and Children Act and the Dowry Prohibition Act provide penal sanctions for some forms of domestic violence. I choose not to explore the Penal Code because the Suppression of Violence against Women and Children Act is the specialised criminal law,¹⁰⁸ and it was intended to fulfil Bangladesh's obligations under the Women's Convention.¹⁰⁹ I also explore the Constitution, the supreme law in Bangladesh, as all laws that are inconsistent with the fundamental rights in the Constitution are void to the extent of their inconsistency.¹¹⁰

¹⁰² *Yemshaw v. London Borough of Hounslow* in Fredman (2013) p. 514 and *Vishaka v. State of Rajasthan* in Mehra (2013) pp. 405-406

¹⁰³ *Blaker Strand* (2019) p. 443

¹⁰⁴ See for example Women's Committee (2017) paragraph 21- 26

¹⁰⁵ See for example Women's Committee (2017) paragraph 27-55

¹⁰⁶ Especially UN Summary records, Concluding observations from the Women's Committee and Hossain (1994)

¹⁰⁷ Maurer School of Law (n.d.)

¹⁰⁸ Naznin and Sharmin (2015) p. 11

¹⁰⁹ Women's Committee (2004a) paragraph 51

¹¹⁰ Constitution article 7 (1)

I relied on official English versions of the laws where they were available, including for the Constitution, and the Domestic Violence Act and Rules. There was no official English version of the Suppression of Violence against Women and Children Act with amendments from 2003 and 2020, so I had to rely on an English translation of the 2000 version combined with articles regarding the amendments.

2.1.3 Bangladeshi case law

I consulted case law from the Supreme Court to explore Bangladesh's system for implementing international law in the domestic legislation, and women's constitutional rights. I also studied case law to explore domestic violence survivors' constitutional rights, and public interest litigation as a legal empowerment strategy. I therefore analysed the petitioners' arguments as well as the Supreme Court's reasoning.

Bangladeshi Supreme Court judgements are published in several different law reports.¹¹¹ I consulted some of the most cited reports that were available for me at the BLAST library; Dhaka Law Reports, Bangladesh Legal Decisions, and Bangladesh Law Chronicles.¹¹² Two of the cases had not been published yet. For the Two finger test case and the Marital rape exemption case (the latter has not been tried yet), I relied on press releases from the petitioners.

2.2 Empirical legal research methods

I used empirical legal research methods to explore the laws' implementation at the local level and BLAST's legal empowerment strategies, and to corroborate my analysis in the doctrinal legal research.¹¹³ I collected primary data through participant observation at BLAST, archival research, and qualitative interviews. I also consulted secondary sources to complement my primary data.

Firstly, I used empirical legal research methods to understand how the right to protection against and penal remedies for domestic violence is implemented in the legislation and by application by actors in the formal justice system. I analysed whether this fulfilled Bangladesh's obligations under the Women's Convention and whether women domestic violence survivors had access to penal remedies or protection.

Secondly, I did a case study on BLAST to explore the benefits of undertaking a legal empowerment approach to promote domestic violence survivors' access to penal remedies or protection against domestic violence. I used empirical legal research methods, participation

¹¹¹ Huda (2020b) p. 9

¹¹² Cf. Huda (2020b) p. 9

¹¹³ Nielsen (2010) p. 953

observation, qualitative interviews, archival research, and focus group discussions to understand this.

I chose to interview legal practitioners from BLAST and volunteers from Naripokkho to learn from their experience of dealing with the formal justice system, informal justice (mediation), and their other strategies to promote legal empowerment. The method of building on legal aid workers' experience to analyse how laws affect women, has long roots in Norwegian feminist legal theory.¹¹⁴ The method is built on the understanding that legal aid workers who apply the laws and meet clients, have the best idea of the challenges with legal implementation. In my case, I drew on legal aid workers' experience through participant observation and semi-standardised interviews. However, my interviews were limited in the sense that I only spoke with a small number of mediation officers, lawyers and activists, and no state representatives such as police officers or court officials. Due to the lack of representativeness, I used participant observation, archival research and analysed secondary sources to get a broader picture.¹¹⁵ This ensured validity and reliability.¹¹⁶

The most pressing methodological challenge I faced in terms of reliability, was related to my double-role as an intern and a researcher.¹¹⁷ As in most qualitative research, I, the researcher, was both the data collecting tool and the analyser.¹¹⁸ At the same time as the internship connected me with respondents and gave access to sources, it could also be hard to ensure that my research was objective and reliable. I adjusted my research questions thereafter, especially as I wanted to explore BLAST's use of legal empowerment approaches to provide women domestic violence survivors' access to protection mechanisms and penal remedies. Initially I wanted to assess their necessity, but I changed this to exploring what different activities could be used instead. I thought this made it easier to be objective. I have also strived to be transparent and detailed about the decisions I made during the research in the methodology.

2.2.1 Participant observation

Participant observation is a method where the researcher participates in the everyday-activities in the field.¹¹⁹ Being an intern in BLAST provided me a unique insight in the many-faceted legal empowerment strategies the organisation uses to improve women domestic violence survivors' access to penal remedies, or protection against further or potential domestic violence.

¹¹⁴ Jonassen (2022) pp. 3 and 5

¹¹⁵ Nielsen (2010) p. 953

¹¹⁶ Webley (2010) p. 935

¹¹⁷ I also address the double-role under section 2.2.1 and 2.2.3

¹¹⁸ Webley (2010) p. 935

¹¹⁹ University of Toronto (2021)

The benefit of this is that I was able to see how the organisation worked from the inside and learn from BLAST staff's experience as I explored the formal barriers to penal remedies or protection mechanisms. Additionally, the internship had an independent value for me, as I had wanted to intern at BLAST for years. The risk of participant observation is that it can inhibit the researchers' independence, and the people observed can alter their behaviour.¹²⁰ To mitigate the effects of this, I checked my findings from BLAST with other sources where possible. I also presented myself as a Master's student, so my colleagues knew I was there to write a dissertation. Finally, I let BLAST approve my use of internal sources before submitting the thesis.

BLAST typically accommodates international interns every summer, but I got to be a part of the organisation from March to December- the whole period I was in Bangladesh. The Covid-19 pandemic did leave its mark on the scope of participant observation, as there were long periods of lockdown and working from home. To avoid risks of infection, to myself or others, I did not conduct any field trips and returned to Norway to take Covid-19 vaccines in the middle of my research period. However, since August, the head office stayed open, and I could work from an open office landscape there.

I was invited to a couple of online community meetings under one of BLAST's projects and went to one. The meeting was online due to the pandemic, and I was presented as a researcher from BLAST. The presence of an "*outsider*" could have caused the women to change their behaviour, for example share their views less freely,¹²¹ but by presenting me as a member of the organisation I hope this effect was mitigated. In the community meeting, women raised their issues or questions, and mediation officers, lawyers and project officers in BLAST provided advice and referrals.

As an intern, I edited reports from various projects aiming to improve access to justice for various groups, including domestic violence survivors. I participated in webinars, such as a presentation of a research report by BIGD at BRAC University, to which BLAST contributed. I also participated in two international virtual roundtable meetings; one global meeting through Namati Legal Empowerment on access to justice for domestic violence survivors during the Covid-19 pandemic, and one regional roundtable regarding services to domestic violence survivors during the Covid-19 pandemic.

¹²⁰ Webley (2010) p. 937

¹²¹ Webley (2010) p. 937

2.2.2 Archival research

BLAST applies a web-based case management system to help the organisation keep track of its legal services. I was allowed to consult it to find quantitative information about BLAST's legal services.¹²² I made sure that I only consulted information that was relevant to my research.¹²³

I also learned from the donor and evaluation reports I was editing. BLAST has a wide number of projects affecting women domestic violence survivors' access to penal or protection remedies, as well as the legal aid and advocacy they do as part of their core work.

2.2.3 Qualitative interviews

Qualitative interviewing is a conversation with the objective of gathering information.¹²⁴ Focus group discussions is a form of qualitative interview, where the researcher creates open-ended questions and facilitates a discussion where the respondents also interact with each other.¹²⁵

2.2.3.1 *Preparing for qualitative interviews*

I made an ethics code for gathering and storing data in dialogue with the Norwegian Centre for Research Data (NCRD).

2.2.3.1.1 *Choosing respondents*

I used a purposive sampling strategy, as I chose respondents on a basis of experience in dealing with domestic violence cases, either through mediation or litigation, or in advocacy or legal empowerment activities.¹²⁶ The head of the legal cell at BLAST's Head Office helped me by identifying and communicating with the respondents initially. As I chose to focus on BLAST's work to improve domestic violence survivors' access to protection or penal remedies, I interviewed eleven members of the BLAST staff through seven individual interviews and one focus group discussion. The staff had different qualifications and worked in different cells and units.

My colleagues at BLAST mentioned Naripokkho as an organisation with key expertise on working with the police to improve survivors of gender-based violence's access to the formal justice system, so my choice to interview volunteers from Naripokkho came from a snowball sampling strategy.¹²⁷

¹²² Since I was an intern, I had signed a confidentiality clause.

¹²³ Cf. Berg and Lune (2017) pp.150-151

¹²⁴ Berg and Lune (2017) p. 65

¹²⁵ Webley (2010) p. 936, Berg and Lune (2017) p. 94

¹²⁶ Berg and Lune (2017) pp. 39

¹²⁷ Berg and Lune (2017) p. 39

I chose not to interview domestic violence survivors directly out of ethical considerations. I did not want anyone to relive their trauma when the experience of legal aid workers was just as relevant to identify legal gaps and barriers to the implementation of the laws. I therefore focused on access instead of perception of whether justice was achieved, and chose to interview lawyers, mediators, and activists. The professionals I interviewed could inform me about the legal gaps and practical barriers they had to navigate on behalf of their clients.

2.2.3.1.2 Information letter and gathering consent

I sent the respondents an information letter with a consent form in Bangla and English.¹²⁸ The information letter had been approved by the Norwegian Centre for Research Data (NSD) and contained information regarding the purposes of the research and what participation in the study would contain. As I was also an intern with BLAST, I emphasised that the information they provided would not impact their work situation.

2.2.3.1.3 Creating interview guides

I created one interview guide that I used for all seven interviews with mediation officers / lawyers, and customised questions for the focus group discussions and an interview with Sara Hossain, based on her work in the Shipra Chowdhury case.¹²⁹ My interviews were semi-standardised, which means that I had prepared some questions, but was prepared to follow a natural flow of the conversation and omit questions or add extra questions.¹³⁰ The questions were open-ended. As an introduction to the interviews, I had prepared a few sentences about the research and myself. I also asked the respondents whether there was anything else related to the questions they wanted to say at the end of the interview.

2.2.3.2 Conducting qualitative interviews

I conducted most of the interviews in person, and recorded them directly on an app provided by the University of Oslo.

2.2.3.2.1 Location

I carried out most of the interviews at BLAST's head office in Dhaka. It was convenient, as there were meeting rooms where we could discuss undisturbed and maintain necessary distance between as a precaution required during the Covid-19 pandemic. Some of the respondents also showed me documents that could benefit my research, since they were available at the BLAST

¹²⁸ See appendix 5

¹²⁹ See appendix 6

¹³⁰ Berg and Lune (2017) p. 69

office. The interviews with unit coordinators were carried out on Zoom. BLAST uses Zoom for internal meetings, so everyone was familiar with the digital meeting arena.

2.2.3.2.2 Interpreter

The language for most of the interviews was Bangla, and I hired an interpreter to interpret between Bangla and English. Before she started, she signed an agreement where she agreed to maintain confidentiality and interpret correctly, without interrupting.

The interpreter received the interview guides before the interview, and we travelled together from the northern part of Dhaka to the head office in central Dhaka. We both introduced ourselves at the start of the interviews, and she translated from English to Bangla and back every couple of sentences. Most of the time, I could understand parts in Bangla and the respondent parts in English, so we controlled the accuracy. The interpreter was normally not involved in the transcription process.

2.2.3.2.3 Following the interview guide

I had prepared a set of open-ended questions to touch upon the topics of mediation, interaction with the police and the courts, and the shortcomings of the formal justice system.¹³¹ I had some general questions to enable the informants to speak freely but had some specific follow-up questions under the general questions. Some informants thought the questions were unclear, and I explained them to them.

How much I dwelled on the various topics depended on the different respondents. With the mediation officers and unit coordinators I used more of the follow-up questions regarding the mediation process, and with the lawyers I used more of the follow-up questions regarding litigation. Some respondents spoke freely after the general questions, and I didn't need the follow-up questions. With the activists and the advocates, including Naripokkho, I used the interview guide as a starting point and tailored it to their different backgrounds and expertise.

Focus group discussions

Focus group discussions had the benefit that the interviewees could interact, for example build on the answers of others or remind each other of shared experiences. I had focus group discussions with Naripokkho and the Monitoring and Evaluation Cell at BLAST.

The focus group discussion with three members from Naripokkho was carried out at their office in Dhaka. It was very fitting to interview them in a focus group discussion, as I got information

¹³¹ See interview guide in appendix 6

from them as an unit representing Naripokkho, not individuals.¹³² The goal of the discussion was to learn about their views on the barriers to justice for gender-based violence and how to overcome them. I knew they were part of the Citizen's Initiative against Domestic Violence (CIDVBD), alongside BLAST, and thought it could be helpful to learn from another organisation's perspective as well. I had prepared some open-ended questions, based on the interview guide but with some adjustments. We talked about the advocacy behind the laws implemented to improve women's protection against gender-based violence, the Citizen's Initiative against Domestic Violence and the implementation of the laws. They shared the challenges they had faced as they worked to improve the formal justice system, and the conversation helped me identify barriers in the formal justice system. We also discussed their extensive awareness raising programs with women on grassroot level, and their advocacy with the government regarding implementing women's rights.

The focus group discussion with the Monitoring and Evaluation Cell was a bit improvised. I had interviewed one of the managers, but had some follow-up questions, and made an appointment to talk with the director of the cell at her office. Since there were two more in the office, and they could answer some of the questions better than her, they also signed a consent form and joined in. This way, I got a better picture of how the whole Cell works, rather than just one individual.

2.2.3.2.4 Status as a visiting researcher

Research is already one of BLAST's priorities, and the organisation is accustomed to researchers.¹³³

Still, as I was also an intern, there was a possibility that the respondents avoided giving answers that put them or the organisation in a bad light. Especially as I asked about their routines for mediation, I risked that they told me about the ideal routines instead of what they actually do. I therefore verified the interviews with BLAST's Monitoring and Evaluation Cell and the documentation in the case management system.

The fact that I come from Norway, created some initial distance but also will to display hospitality. I was able to use this to my benefits; I broke the ice by speaking some Bangla in the beginning. Many of my respondents were pleasantly surprised to know that I had been living in Bangladesh for an extensive period of time and wished to return. One of the respondents said that they were used to foreigners coming and going after a short time, and it was good that I was staying for so long. However, it cannot be ruled out that my being a foreigner coloured the

¹³² Berg and Lune (2017) p. 94

¹³³ See section 1.2.3

respondents' answers. Some explained corruption in the police or the prevalence of domestic violence in all spheres of society in Bangladesh as if I did not already know about these issues. I would go so far as to say that corruption and the prevalence of domestic violence is common knowledge in Bangladesh, so if I were considered an "insider" it would not have been mentioned in the interviews.

2.2.3.3 *Transcription, coding and analysing the interviews*

I transcribed the interviews and focus group discussions in MS Word on the University of Oslo's *Tjeneste for Sensitive Data* (service for sensitive data). I transcribed the English parts of the interviews word for word and omitted the Bangla parts of the interviews. Normally, we introduced ourselves and engaged in small-talk before I asked to start the recording, and I did not record or transcribe small-talk.

I partially relied on the four components from Sahar Maranlou to colour-code my interviews with highlighter. I coloured them after themes; matters related to the formal justice system (law, police, courts), the informal justice system (mediation), cultural barriers and legal empowerment.¹³⁴ Using theory to analyse data from interviews is known as directed content analysis.¹³⁵

The colour-coding made it easy for me to compare the interviewees' answers, for example to find out how many of the respondents found that domestic violence survivors preferred mediation, or how many of the respondents had had negative experiences with the police or the courts. How much weight I gave each interview as a source depended on the background of the person I interviewed, but also on the number of the respondents who gave similar answers.

To maintain confidentiality, I did not cite the respondents by their names, title or the date I undertook the interviews.¹³⁶

2.2.4 *Analysing secondary sources*

I consulted secondary data to supplement my doctrinal as well as my empirical research. This was especially important to confirm what my respondents had experienced as they dealt with the formal barriers to domestic violence survivors' access to protection and penal remedies, because I interviewed only a limited number of respondents.¹³⁷

¹³⁴ Maranlou (2014) p. 124-125

¹³⁵ Berg and Lune (2017) p. 183-184

¹³⁶ See list of interviews in appendix 4

¹³⁷ Cf. Nielsen (2010) p. 953

I consulted secondary sources including both qualitative and quantitative reports to examine the implementation of the rights on the national and local level. I chose to rely on the following reports, after evaluating their validity and reliability, and the authority and objectivity of the authors.¹³⁸

I relied on a 2016 report on the implementation of the Domestic Violence Act authored by Professor Shahnaz Huda from Dhaka University, in co-operation with Plan International and Bangladesh National Women Lawyers' Association and funded by USAID.¹³⁹ The purpose of the study was to shed light on the barriers to the implementation of the Domestic Violence Act, and to work towards an end to domestic violence in Bangladesh.¹⁴⁰ The researchers conducted field visits in three districts where Plan International was active and consulted secondary sources.¹⁴¹ During the field trips, they consulted enforcement officers, legal services providers, and other stakeholders, and they provided an overview of focus group discussions and the interview guide of the enforcement officers in appendixes.¹⁴² The author's academic background, and the legitimacy of the organisations supporting the study, provided authority, but it was their methodology and transparency that made the research reliable.

I also consulted an unpublished report by Taslima Yasmin from Dhaka University on the implementation of the Domestic Violence Act from 2020, commissioned by Action Aid Bangladesh.¹⁴³ She conducted 60 qualitative interviews, 20 with survivors and the rest with law enforcement personnel and others involved with domestic violence survivors' justice journey, and analysed 90 case records.¹⁴⁴ Although it is unpublished, the report is referred to in several news articles and I consulted them to corroborate my interviews with updated research on the implementation of the Domestic Violence Act by state institutions.¹⁴⁵ Without being able to read the report, I chose to rely on it because of the author's academic status, her apparently transparent methodology and the authority of newspapers and civil society actors who discussed it.¹⁴⁶

¹³⁸ Burkhardt and Macdonald (2010) in Brock University Library (2022)

¹³⁹ Huda (2016) p. 7

¹⁴⁰ Huda (2016) p. 7

¹⁴¹ Huda (2016) p. 7-8

¹⁴² Huda (2016) pp. 22-23, pp. 94-96

¹⁴³ Yasmin (2020c) in Daily Star staff correspondent (2020)

¹⁴⁴ Yasmin (2020c) in Daily Star staff correspondent (2020)

¹⁴⁵ Jahan (2022) in Daily Star staff correspondent (2020)

¹⁴⁶ Yasmin (2020c) in Prothom Alo staff correspondent (2020)

The Justice Audit provided quantitative data on the criminal justice system in Bangladesh based on a systemic inquiry.¹⁴⁷ It was commissioned by the Ministry of Law, Justice and Parliamentary Affairs, and implemented by the German Development Cooperation.¹⁴⁸

In the 2016 Justice Audit, they interviewed members of different institutions such as shelters and courts, but also built on data such as the recorded cases.¹⁴⁹ In the 2018 Citizen Household Survey, they interviewed 104 943 925 citizens, and this data for example sheds light on the prevalence of domestic violence and trust of the justice system.¹⁵⁰ The methodology was very transparent, and the implementing organisation, GIZ, objective as it neither represents the government nor civil society.¹⁵¹

The Human Rights Watch report, called “*I sleep in my own deathbed- Violence against Women and Girls in Bangladesh: Barriers to Legal Recourse and Support*”, was published in 2020. The report was based on 50 interviews, 29 of the interviewees were domestic violence survivors from six (of eight) different divisions in Bangladesh. The rest of the interviewees were women’s rights activists, lawyers and academicians.¹⁵² There were good citations and footnotes throughout the report, and the Human Rights Watch is a renown international organisation. I therefore trusted the report as reliable and objective.

The BIGD BRAC University research from 2021 consisted of case studies of twelve domestic violence survivors’ justice seeking journeys.¹⁵³ BRAC University cooperated with the legal aid organisations BLAST, Brac Human Rights and Legal Aid Services (HRLS) and RDRS Bangladesh.¹⁵⁴ The researchers used key informant interviews, in-depth interviews, and process tracking.¹⁵⁵ However, the limited number of respondents meant that there may be factors that were left out. For example, the interviews did not reflect the ethnic or religious diversity in Bangladesh.¹⁵⁶ Bearing these limitations in mind, I used this report to view the barriers to justice from the survivors’ perspective.

¹⁴⁷ Macdonald (2010) p. 495 and Justice Audit (n.d.a)

¹⁴⁸ Justice Audit (n.d.c)

¹⁴⁹ Justice Audit (n.d.a) and (n.d.b)

¹⁵⁰ Justice Audit (2018) no. 30, 31, 43

¹⁵¹ Justice Audit (n.d.c.)

¹⁵² Human Rights Watch (2020) p.2

¹⁵³ BIGD Brac University (2021b) p. 31

¹⁵⁴ BIGD Brac University (2021b) p. 31

¹⁵⁵ BIGD Brac University (2021b) p. 31

¹⁵⁶ BIGD Brac University (2021a)

The common denominator for the 2016, 2020 and 2021 research reports, is that non-governmental organisations were involved in the research or writing of the reports.¹⁵⁷ At best, this means that the non-governmental organisations working in Bangladesh secure evidence-based recommendations to policymaking. At worst, it can result in the research reports failing to problematise aspects of the non-governmental organisations' work that inhibits access to justice, because the writers are biased.¹⁵⁸ On the other side, professors from BRAC University or the University of Dhaka led the research culminating in the reports, and it is assumed they follow academic standards.¹⁵⁹ Their academic backgrounds therefore provide authority and reliability to their reports.

2.3 Theoretical framework

In the following I will introduce the three different theories I utilise in my dissertation; access to justice, legal empowerment and legal pluralism. To understand the difference between rights and reality, and the laws' impact on society, I consulted socio-legal theory.¹⁶⁰ In specific, I built my thesis on literature on access to justice and legal empowerment, from the socio-legal discipline. Additionally, I consulted theory and studies from the discipline of legal anthropology.¹⁶¹

2.3.1 Access to justice

I used access to justice- literature to analyse the implementation of women's rights to penal remedies or protection mechanisms on the local level.

My understanding of “*access to justice*” has especially been informed by Roderick Macdonald's chapter in the *Oxford Handbook on Legal Empirical Research* and a doctor dissertation by Sahar Maranlou on access to justice for women in Iran, with further references.¹⁶²

In its most narrow sense, the phrase “*access to justice*”, refers to “*access to the legal system to obtain legal redress for a legal problem*”.¹⁶³ This approach is centred on the institutions of justice, and often speaks of “*barriers to justice*”.¹⁶⁴ The idea behind the “*barriers to justice*”

¹⁵⁷ Huda (2016) p. 7, Human Rights Watch (2020) p. 65, BIGD BRAC University (2021b) p. 10, Yasmin (2020c) in Daily Star staff correspondent (2020)

¹⁵⁸ Macdonald (2010) p. 496

¹⁵⁹ Burkhardt and Macdonald (2010) in Brock University Library (2022)

¹⁶⁰ Mathiesen (2005) p. 44

¹⁶¹ Especially Merry (2006)

¹⁶² Maranlou (2014) p. 1 and Macdonald (2010) p. 493

¹⁶³ Maranlou (2014) p. 47

¹⁶⁴ Maranlou (2014) p. 47

metaphor is that justice exists somewhere, but something is hindering its deliverance.¹⁶⁵ By focusing on the judicial institutions, research identifies institutional barriers such as cost, physical accessibility of court rooms, lack of language skills, length of trials, and delays that obstruct rights-claimants' access to justice.¹⁶⁶

Maranlou found that this approach could be helpful in analysing some formal barriers to justice, such as “*lack of affordable legal representation, lack of adequate laws and regulations, delays in the justice system, weak enforcement of laws, lack of remedies provided by law, and lack of de facto protection.*”¹⁶⁷ According to Maranlou, gender-neutral barriers have to be combined with gender-specific barriers, such as lack of gender sensitivity.¹⁶⁸ Gender sensitivity means an actor's ability to recognise women's equal rights and understand gender roles.¹⁶⁹

The metaphor of “*barriers*” has been criticised for being limited, as it often excludes subjective barriers to justice such as lack of empowerment or marginalisation of groups.¹⁷⁰ Maranlou recognized that a purely state-centred approach would fail to identify specific barriers only experienced by women.¹⁷¹ She navigated around the shortcomings of the solitary focus on formal barriers, by treating it as a category and complementing it with categories of “*substantive justice*”, “*cultural norms and social context*”, and “*human agency and legal empowerment*”.¹⁷² “*Substantive justice*”, in Maranlou's terms, refers to women's equal rights being provided and protected in the legislation.¹⁷³ It is concerned with equality and non-discrimination in the black letter law.¹⁷⁴ “*Cultural barriers*” is, by Maranlou, used to refer to cultural notions or norms that inhibit women's access to justice.¹⁷⁵ An example of a cultural barrier would be stigma against women who take a case to court.^{176 177}

¹⁶⁵ Macdonald (2010) p. 510

¹⁶⁶ Maranlou (2014) p. 47, Macdonald (2010) pp. 510 – 511

¹⁶⁷ Maranlou (2014) p. 3

¹⁶⁸ Maranlou (2014) p. 131

¹⁶⁹ Maranlou (2014) p. 132

¹⁷⁰ Macdonald (2010) p. 510

¹⁷¹ Maranlou (2014) p. 124

¹⁷² Maranlou (2014) p. 124-125

¹⁷³ Maranlou (2014) p. 125

¹⁷⁴ Maranlou (2014) p. 130

¹⁷⁵ Maranlou (2014) p. 137-138

¹⁷⁶ Maranlou (2014) p. 138

¹⁷⁷ For the sake of my thesis, I deal with culture mostly in relation to barriers to women's access to protection or penal remedies against domestic violence. The concept of culture is therefore simplified. See section 7

I have chosen to categorise barriers to justice in Maranlou's four components where it's appropriate: legislation, implementation by actors in the formal justice system, cultural norms obstructing women from seeking justice, and women's legal empowerment.¹⁷⁸ From these dimensions, I will focus on some factors and their contribution to access to penal remedies or protection against further or potential domestic violence; substantive justice (whether the laws provide adequate protection/ penal mechanisms for domestic violence survivors), institutional indicators (for example the time expected for trials, distance, corruption, gender sensitisation); user-based factors (legal awareness, legal empowerment); and culture-based factors (e.g., gender bias, discriminatory traditions, discriminatory norms).¹⁷⁹

2.3.2 Legal empowerment

In this section I will introduce the legal empowerment theory. In my case study of BLAST, I seek to test the underlying notions from Stephen Golub's theory; that legal empowerment must be complemented with other empowerment activities to make sure that the laws are implemented and make a difference for the disadvantaged.¹⁸⁰

Golub is a professor in International Development and Legal Empowerment at Berkeley Law School and has over 25 years of experience on researching on legal empowerment, traditional justice systems and the rule of law in over 40 countries.¹⁸¹ He first introduced "*legal empowerment*" as an alternative paradigm to the "*rule of law orthodoxy*" in development.¹⁸² The rule of law-approach, he found, was focused on reforming the formal justice system and its institutions such as police, courts and installing principles of good governance.¹⁸³ In Golub's eyes, the rule of law approach was too top-down, failed to meet challenges of implementation of the laws, and too ignorant of the needs of the poor to make a difference for the disadvantaged.¹⁸⁴ "The disadvantaged" can refer to both the poor and other marginalised groups like women.¹⁸⁵

Golub defined legal empowerment as "(...) *the use of legal services and related development activities to increase disadvantaged populations' control over their lives.*"¹⁸⁶ It concerns

¹⁷⁸ Maranlou (2014) p. 124-125

¹⁷⁹ Maranlou (2014) p. 158- 159

¹⁸⁰ Golub (2003) pp. 3-4

¹⁸¹ Cissé, Muller, Thomas and Wang (2013) p. xviii

¹⁸² Golub (2003) p. 5

¹⁸³ Golub (2003) p. 5, 8-9

¹⁸⁴ Golub (2003) p. 3

¹⁸⁵ Golub (2012) p. 8

¹⁸⁶ Golub (2003) p.25

implementation of decent laws.¹⁸⁷ **He found that a legal empowerment approach differs from a rule of law approach in four main ways;** lawyers view the disadvantaged as partners instead of as someone that benefit from their expertise, the disadvantaged set the priorities and agenda, the priorities can be met by non-judicial strategies utilising institutions outside the narrow understanding of the justice systems, and using the law is combined with other development strategies.¹⁸⁸

Activities that can promote legal empowerment include legal services for the disadvantaged, which he defined as counselling, mediation, rights information, litigation, public interest litigation, training of community-based paralegals, advocacy for legal and policy reforms and advice on how to advocate for legal and policy reforms.¹⁸⁹ Interestingly, Golub identified a link between legal and social exclusion, and included any other activity that could increase people's control over their lives, like employment-oriented training, literacy training and group formation.¹⁹⁰ The activities should be tailored to the needs of the group.¹⁹¹ The process of legal empowerment is therefore more extensive than just providing rights information, it includes fostering the disadvantaged population's ability to use the law and remedies to solve their problems.

The distinguishing feature of a legal empowerment approach is that it revolves around increasing the disadvantaged's capacity to cover their legal needs.¹⁹² This can be done by training the rights-claimants in rights and remedies, organising in groups, and advocacy for law and rights reforms.¹⁹³ However, to actually improve the disadvantaged's freedoms to make choices, it should go hand in hand with other activities aimed at increasing their control, such as literacy training and employment training.¹⁹⁴ Additionally, it can go hand in hand with activities related to institutions in the formal justice system.¹⁹⁵

In my case study of BLAST, I explore whether a legal empowerment approach is necessary to promote access to penal remedies and protection mechanisms for domestic violence survivors.

¹⁸⁷ Golub (2012) p.23

¹⁸⁸ Golub (2003) p. 4

¹⁸⁹ Golub (2003) p. 26

¹⁹⁰ Golub (2003) p. 26

¹⁹¹ Golub (2003) p. 25

¹⁹² Golub (2003) pp. 3-4, United Nations Secretary-General (2009) paragraph 3,

¹⁹³ Golub (2003) pp.22-23, Commission on Legal Empowerment of the Poor (2008) pp. 19,22, 23

¹⁹⁴ Golub (2003) p. 26

¹⁹⁵ United Nations Secretary-General (2009) paragraph 3,

This is distinct from a limited focus on the laws and the implementation of the laws in the formal justice system by police, courts, and lawyers.¹⁹⁶

2.3.3 Legal pluralism, vernacularisation, and indigenisation

While I don't explicitly refer to legal pluralism in my thesis, understanding legal pluralism is necessary to understand the legal system of Bangladesh.

Theories of legal pluralism shed light on the interplay between formally issued state laws and non-formal laws in different social situations.¹⁹⁷ State-law or formal law, for the sake of this thesis, is defined as laws issued by the parliament or other official bodies.¹⁹⁸ Non-state law is defined as “*a body of norms produced and enforced by non-state actors*”.¹⁹⁹ As the point of reference for this thesis is the state law, non-state law refers to other cultural and societal norms that affect whether women domestic violence survivors have access to justice.²⁰⁰

In the following, I will give an overview of how Sally Merry explored how civil society organisations translated international human rights to the vernacular, to be the most effective.

The anthropologist Sally Engle Merry researched on how non-government organisations and rights activists translate human rights to make them accepted in the local communities.²⁰¹ Sally Engle Merry emphasizes that culture is key in understanding how and with what effect international law is translated into the formal legal system and how it is used by different actors in local practice.²⁰² In her view the process can be understood as a process of cultural translation.²⁰³

Merry's theories build on the notion that women's rights and known cultural terms are not mutually exclusive, but women's rights can be accepted if they are “clothed” in terms culturally accepted.²⁰⁴ Her findings were published in 2006.²⁰⁵

To describe the translation processes and the different results of them, she introduced the terms to indigenise and to make in the vernacular.²⁰⁶

¹⁹⁶ Golub (2003) p. 3

¹⁹⁷ Hellum (2017) p. 435 with further references

¹⁹⁸ Mathiesen (2005) p. 38

¹⁹⁹ Hertogh (2007) p. 4

²⁰⁰ Maranlou (2014) p. 125

²⁰¹ Merry (2006) p. 30, 34

²⁰² Merry (2006) pp. 5, 221

²⁰³ Merry (2006) pp. 5, 221

²⁰⁴ Merry (2006) p. 5

²⁰⁵ Merry (2006) p.iv

²⁰⁶ Merry (2006) p. 221

For the sake of this thesis, “*indigenisation*” will be used to describe the result of a translation process in which human rights are adjusted to the existing social and religious norms to the extent that they lose their force to implement women’s rights.²⁰⁷ If a right is indigenised, it loses its core value.²⁰⁸

The term “*vernacularised*” will be used to describe the result of a translation where the human rights are translated to comply with the underlying social or religious norms, but not to the extent that they lose their power to challenge them.²⁰⁹

3 International right to protection against and penal remedies for domestic violence and their effect in Bangladesh

In this section I firstly seek to explore the extent of which access to protection against and penal remedies for domestic violence is an international human right, with a complimentary state obligation.²¹⁰ Then I examine whether Bangladesh is obliged to fulfil this potential human right. Finally, I examine whether international obligations have direct effect in the Bangladeshi domestic legislation, or if a separate act of implementation is required.

3.1 Right to protection against and penal remedies for domestic violence according to the Women’s Convention

From a literal interpretation, the Women’s Convention is silent regarding gender-based violence.

In 1992, the Women’s Committee established that gender-based violence was a breach of several human rights and dignities, and therefore discrimination after the Women’s Convention article 1.²¹¹ Since then, the Women’s Committee has reiterated that women have a “*right to be free from gender-based violence*”.²¹² It has also specified that women have a “*right to be free from all forms of domestic violence*”.²¹³ The right to be free from gender-based violence is interdependent with other rights, such as the rights to life,

²⁰⁷ Hellebrandt and Taj (2011) p. 111

²⁰⁸ Merry (2006) p. 221

²⁰⁹ Merry (2006) p. 221

²¹⁰ My analysis is limited to the Women’s Convention and the Declaration on the Elimination of Violence Against Women (DEVAW). (see section 2.1.1). I also focused on the states’ obligations to respect women’s right to be free from domestic violence and to protect women against domestic violence, not states’ obligations to fulfil women’s right to be free from domestic violence by eliminating it. The Women’s Committee has divided states’ obligations after the right to respect, protect and fulfil, but there are no clear lines between the three categories.

²¹¹ Women’s Committee (1992) paragraph 6 and 7

²¹² Women’s Committee (2017) paragraph 15

²¹³ Women’s Committee (2005) paragraph 9.6 II a)

liberty, and equality.²¹⁴ Gender-based violence is understood as violence directed against women because they are women, or disproportionately affecting women.²¹⁵ The Women’s Committee explains that “*This violence takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.*”²¹⁶

3.1.1 Content of the state parties’ due diligence obligation to provide protection and penal remedies to domestic violence survivors

It follows from the Women’s Committee’s interpretation of the Women’s Convention that the state parties are obliged to take “*all appropriate measures to prevent as well as to investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors which result in gender-based violence against women.*”²¹⁷ The wording “*all appropriate measures*” signifies that the state parties have a margin of appreciation to decide which measures to undertake.²¹⁸

State parties are obliged to take “*all appropriate measures*” to prevent domestic violence,²¹⁹ or to protect domestic violence survivors. The choice of words “*appropriate measures*” suggest that the state parties have a margin of appreciation to choose which measures to take to protect women, but the measures must be “*effective*”.²²⁰ This means that the measures must protect women against further or potential domestic violence.²²¹ The obligation to prevent further or potential violence arises when the state party knows or should know about the risk of violence.²²² The standard of due diligence is strict, and the state can be held responsible for failing to take effective measures when a state authority knew or should know about the risk of violence.²²³ The state is recommended to assess the risk and provide protection immediately.²²⁴ The Committee further recommends that the protection measures don’t put a financial or other kind of burden on the survivor, and that the women aren’t required to take

²¹⁴ Women’s Committee (2017) paragraph 15

²¹⁵ Women’s Committee (1992) paragraph 6

²¹⁶ Women’s Committee (2017) paragraph 14

²¹⁷ Women’s Committee (2017) paragraph 24 b), Women’s Convention article 2 e)

²¹⁸ Women’s Committee (2017) paragraph 24 b), Women’s Convention article 2 e)

²¹⁹ Women’s Committee (2017) paragraph 24 b), Women’s Convention article 2 e)

²²⁰ Women’s Committee (2017) paragraph 24 b), Women’s Convention article 2 e)

²²¹ Women’s Committee (2005) paragraphs 9.2, 9.6

²²² Women’s Committee (2017) paragraph 24 b)

²²³ Freeman, Chinkin and Rudolf (2012) pp. 467- 468

²²⁴ Women’s Committee (2017) paragraph 40 b)

legal action first. ²²⁵ “*Where appropriate*” the state should issue “*eviction, protection, restraining or emergence (..) orders against alleged perpetrators*”, and impose sanctions for breaking such orders. ²²⁶ Protection orders should be issued “*without undue delay*”. ²²⁷

Firstly, the state parties are obliged to have “*laws, institutions and a system in place*” to tackle gender-based violence. ²²⁸ The Women’s Committee recommends that the states parties enact laws that criminalise all forms of domestic violence, including marital rape. ²²⁹ It also recommends that states parties enact legislation for domestic violence survivors with provisions for civil remedies like a protection order. ²³⁰ Discriminatory laws and practices, such as evidentiary practices concerning virginity, should be repealed and abolished. ²³¹ Secondly, the state is obliged to make sure the laws, institution and system “*function effectively in practice*”. ²³² The state can be held responsible if the courts or other state actors uphold gender stereotypes and therefore fail to respond adequately to reports of gender-based violence, for example by reenforcing stereotypes of how women react to violence. ²³³ Further, survivors must have *access* to the courts, which includes that the courts must be affordable, impartial, independent, competent and gender-sensitive, and offer trials in a timely manner. ²³⁴

The police, courts and service personnel in the justice system should handle cases “*in a gender sensitive manner*.” ²³⁵ There should be mechanisms for investigating and sanctioning “*inefficiency, complicity and negligence by public authorities responsible for registration, prevention or investigation of*” gender-based “*violence or for providing services to victims/survivors*.” ²³⁶ The state should provide free legal aid, financial aid, crisis centres, shelters, psychosocial and counselling services and even cover the cost of the trials if the women have financial difficulties. ²³⁷

²²⁵ Women’s Committee (2017) paragraph 40 b)

²²⁶ Women’s Committee (2017) paragraph 40 b)

²²⁷ Women’s Committee (2015a) paragraph 51 i)

²²⁸ Women’s Committee (2017) paragraph 24 b) ref. Women’s Convention article 2 e)

²²⁹ Women’s Committee (2017) paragraphs 29, 33

²³⁰ Women’s Committee (2007) paragraph 18, Women’s Committee (2004c) paragraph 242

²³¹ Women’s Committee (2017) paragraph 31 b)

²³² Women’s Committee (2017) paragraph 24 b), Women’s Convention article 2 e)

²³³ Women’s Committee (2017) paragraph 26 c)

²³⁴ Women’s Committee (2015a) paragraph 14 a) and c)

²³⁵ Women’s Committee (2015a) paragraph 15 c)

²³⁶ Women’s Committee (2017) paragraph 26 b) and c)

²³⁷ Women’s Committee (2015a) paragraph 16 b) and 17 a)

The Women’s Committee recommends that cases of gender-based violence are not “*mandatorily referred to alternative dispute resolution procedures.*”²³⁸ Further, the Women’s Committee recommends that the usage of alternative dispute resolutions is strictly regulated and allowed only when the survivor has given a free and informed consent.²³⁹

3.1.2 Conclusion

The state parties to the Women’s Convention have an obligation to ensure that women are protected against further or potential domestic violence, and that they have access to penal remedies after Women’s Convention article 2 e). This includes a recommendation to undertake all appropriate protection measures, including to issue and monitor protection orders where there is a risk of further or potential violence. The protection mechanisms, including protection orders, should be “*appropriate and accessible*”, and “*effective*”.²⁴⁰ Where the state has failed to undertake appropriate measures, and women are subject to further violence, the state parties can be held accountable after the Women’s Convention. Further, the state parties have an obligation to make sure that acts of domestic violence are investigated, prosecuted, and provided punishment against in a gender sensitive justice system.²⁴¹

3.2 The Declaration on Elimination of Violence Against Women

The Declaration on Elimination of Violence Against Women (the DEVAW) was adapted by the UN General Assembly in a resolution in Vienna in 1993 without a vote.²⁴² Since it is a resolution, which is a soft law instrument, it does not provide legally binding obligations for the state parties.²⁴³ Still, it has value as it states the consensus of all the member states of the General Assembly.²⁴⁴ Additionally, it is applicable to all members of the General Assembly and stipulates recommendations for aspects of governance such as budgeting and planning.²⁴⁵

Like General Recommendation 19, the DEVAW sets out to explain the state’s due diligence obligation regarding violence from non-state actors. Article 4 c) of DEVAW provides that

²³⁸ Women’s Committee (2017) paragraph 45

²³⁹ Women’s Committee (2017) paragraph 45

²⁴⁰ Women’s Committee (2017) paragraph 40 b)

²⁴¹ Women’s Committee (2017) paragraphs 24 b), 26 b) and c) ref Women’s Committee (2015a) paragraph 14 c) and d)

²⁴² Declaration on the Elimination of Violence Against Women (1993) title and subtitle and United Nations Research Resources (2014-2021)

²⁴³ Faruque (2021) p.44

²⁴⁴ Freeman, Chinkin and Rudolf (2012) p. 448

²⁴⁵ Freeman, Chinkin and Rudolf (2012) p. 448

state parties should “*exercise due diligence to prevent, investigate and (..) punish (..) acts of violence against women.*”²⁴⁶ The use of “*due diligence*”, suggests that the signatories have a margin of appreciation like the appreciation margin under article 2 e) of the Women’s Convention, but can be held accountable if they fail to protect women against further or potential violence. Article 4 d) of DEVAW says that state parties should develop “*penal, civil, labour and administrative sanctions (..) to punish*” acts of violence, and women should have access to the justice system and just and effective remedies.²⁴⁷

3.3 Bangladesh’s accession and reservations to the Women’s Convention

Bangladesh acceded to the Women’s Convention in 1984 and submitted its initial report to the Women’s Committee in 1986.²⁴⁸ Upon accession, Bangladesh made reservations to several of the core provisions regulating family law, namely article 2, article 13 a), article 16 (1) c) and article 16 (1) f).²⁴⁹ All reservations were grounded in a perceived conflict between the provisions in the Women’s Convention and the Quran and Sharia law.²⁵⁰ It later withdrew the reservations to article 13 a) and 16 (1) f).²⁵¹ However, the due diligence obligation to respond to violence from non-state actors is based on article 2 e).²⁵²

3.3.1 Effect of Bangladesh’s reservations

In this section I analyse the effect of Bangladesh’s reservations.

According to the permissibility school, Bangladesh’s reservations to the Women’s Convention would have no legal effect if they were impermissible, and Bangladesh would be bound by the Convention in its entirety unless it chose to leave the Convention altogether.²⁵³ There are four grounds for a reservation to an international treaty to be found impermissible; it is not compatible to the object and purpose of the Convention,²⁵⁴ it is not specific enough to

²⁴⁶ DEVAW article. 4 (1)

²⁴⁷ DEVAW article. 4 d)

²⁴⁸ United Nations Treaty Series vol. 1379 (1992) p. 336 and United Nations Human Rights Treaty Bodies (2021)

²⁴⁹ United Nations Treaty Series vol. 1379 (1992) p. 336

²⁵⁰ United Nations Treaty Series vol. 1379 (1992) p. 336

²⁵¹ Wadud (2021) p. 259

²⁵² Women’s Convention article 2 e) and Women’s Committee (2017) paragraph 24 b)

²⁵³ Krivenko (2009) p. 184

²⁵⁴ Women’s Convention article. 28 (2), mirroring Vienna Convention of the Law of the Treaties article 19 c)

clarify its scope,²⁵⁵ it breaches the obligation to perform the treaty in good faith,²⁵⁶ or it breaches other international obligations.^{257 258}

The other state parties have the main responsibility to decide whether Bangladesh's reservations to the Women's Convention is permissible or not,²⁵⁹ but according to international monitoring body standards the opinions of the Women's Committee should also be noted.²⁶⁰

3.3.1.1 *Incompatibility with the Convention's object and purpose*

Germany, Mexico, Netherland, and Sweden objected to Bangladesh's reservation on grounds that it was incompatible with the object and purpose of the treaty.²⁶¹ In 1994, in "*General Statement on Reservations*", the Women's Committee also stated that reservations to article 2 and 16 were incompatible with the object and purpose of the Women's Convention.²⁶²

3.3.1.2 *Specificity*

The scope of Bangladesh's reservation is not defined in the reservation itself. Firstly, the reservation leaves it unclear whether the reservation covers the entire provisions, or the provisions just to the extent that they are noncompliant with the Quran and Sharia laws.²⁶³ Secondly, the reservation fails to specify what the requirements under Sharia laws are, which is problematic as there are many interpretations of Sharia law.²⁶⁴ Therefore, the reservation is unlimited and has an unclear scope.²⁶⁵ Thirdly, Sharia laws and the Quran are only applicable to Muslims, as they are the only ones who follow Muslim family laws.²⁶⁶ The reservation leaves it unclear why Bangladesh's obligations should not be valid to them.

²⁵⁵ See *Belilos v. Switzerland* (1985) paragraph 55, Denmark's objection to United Arab Emirates' reservation in Women's Committee (2006) p. 36 and Germany's objection to United Arab Emirates reservation in Women's Committee (2006) p. 39

²⁵⁶ See United Nations Charter article. 2 (2) and Hossain (1994) p. 473

²⁵⁷ See Sweden to United Arab Emirates in Women's Committee (2006) p. 45 and Sweden to Thailand, Tunisia, Brazil and Bangladesh in Women's Committee (1996) p. 49

²⁵⁸ Hossain (1994) p.471

²⁵⁹ Women's Committee (1994) p.49 paragraph 24

²⁶⁰ *Belilos v Switzerland* (1985) paragraph 50 and Women's Committee (1994) p.49 paragraph 24

²⁶¹ Women's Committee (1996) pp. 42, 44, 46,49

²⁶² Women's Committee (1994) p. 49 paragraph 16-17

²⁶³ United Nations Treaty Series vol. 1379 (1992) p. 336

²⁶⁴ Freeman, Chinkin and Rudolf (2012) p. 569

²⁶⁵ Freeman, Chinkin and Rudolf (2012) p. 577

²⁶⁶ Hossain (1994) p. 472

3.3.1.3 *Breach of obligation to perform treaty in good faith*

Sweden²⁶⁷ and Mexico²⁶⁸ stated that Bangladesh's reservation would cause "*discrimination against women on the basis of sex, which would be contrary to everything the Convention stands for.*" This is a reference to the obligation to perform treaty obligations in good faith.²⁶⁹ The fact that Bangladesh made the reservations to maintain laws directly discriminating women, is so contrary to the Convention's object and purpose that it is most likely a breach of the obligation to perform treaty in good faith.

3.3.1.4 *Breach of other international commitments*

Bangladesh was already obliged to secure equality for women after United Nations Charter article 1 (3) and 55 (3), equality for women before, during and at the dissolution of marriage after United Nations Declaration of Human Rights article 16 (1) and (2), equality for women in enjoyment of civil and political human rights after International Covenant on Civil and Political Rights article 3, equality for women before, during and at the dissolution of marriage after the International Covenant on Civil and Political Rights article 23, and equal enjoyment of economic, social and cultural rights after the International Covenant on Economic, Social and Cultural Rights article 3. It can therefore be argued that Bangladesh's reservation is impermissible because it violates other commitments after international law.²⁷⁰ In its objection to Bangladesh's reservation, Mexico stated that Bangladesh was already obliged to secure gender equality after the United Nations Charter, United Nations Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.²⁷¹

3.3.1.5 *The Women's Committee's comments to Bangladesh on women's right to protection against domestic violence*

In its latest Concluding Observations to Bangladesh's latest country report, the Women's Committee called on Bangladesh's government to criminalise all forms of domestic violence.²⁷² They also recommended Bangladesh to ensure that the domestic violence survivors had "*access to immediate protection and (...) means of redress, including compensation.*"²⁷³ The Committee also called on Bangladesh to make sure that the laws regarding gender-based violence were implemented.²⁷⁴ It therefore appears that the reservation to article 2 does not

²⁶⁷ Women's Committee (2006) p. 48

²⁶⁸ Women's Committee (1996) p. 45

²⁶⁹ General principle of international law (Hossain (1994) p. 471, codified in UN Charter article. 2 (2)

²⁷⁰ Hossain (1994) p. 472

²⁷¹ Women's Committee (1996) p. 45

²⁷² Women's Committee (2016) paragraph 19 a)

²⁷³ Women's Committee (2016) paragraph 19 a)

²⁷⁴ Women's Committee (2016) paragraph 19 b)

inhibit the Committee in making recommendations to Bangladesh to fulfil the due diligence obligation after article 2 e). With regards to the reservation, the Committee recommended that Bangladesh should “*take prompt measures towards the withdrawal*” of the reservation.²⁷⁵

3.3.2 Conclusion

I conclude that Bangladesh’s reservation to article 2 was impermissible on the grounds that it was incompatible with the Women’s Convention’s object and purpose, it was unspecific, it breached the obligation to preform treaty obligations in good faith and it breached other international commitments.²⁷⁶ Regardless of the reservation to article 2 e), the Women’s Committee reviews Bangladesh’s legislation and efforts to protect women against gender-based violence from non-state actors, including domestic violence, in its Concluding Observations. I therefore choose to conclude that domestic violence survivors in Bangladesh have a right to be free from domestic violence, and the government a due diligence obligation to protect women against domestic violence, and to prevent, investigate, prosecute and punish acts of domestic violence.

3.4 System for implementing international law in domestic legislation

In the following, I will examine whether Bangladesh has a dualist or monist system for implementing international conventions in the domestic legislation. This is especially important because the government has not incorporated the Women’s Convention.²⁷⁷ According to the monist theory, international law and national law are part of the same hierarchical legal order, and international law is superior to national law.²⁷⁸ According to the dualist theory, international and national law are two different legal orders.²⁷⁹ For international law to be judicially enforceable in the domestic courts, an international law needs to be transformed or incorporated by an implementing act of the legislature.²⁸⁰ The question relies on national, not international, law.

The question of international human rights conventions’ legal effect in national law was addressed in the landmark Supreme Court case *Hussain Muhammed Ershad v Bangladesh and Others* in 2001. The Supreme Court has the authority to interpret the Constitution,²⁸¹ and its interpretations are binding for future judgements.²⁸² The case concerned whether an order to

²⁷⁵ Women’s Committee (2016) paragraph 8-9

²⁷⁶ See also Hossain (1994) pp. 471-473

²⁷⁷ Women’s Committee (2016) paragraph 7

²⁷⁸ Khair (2011) p. 50

²⁷⁹ Faruque (2021) p. 38

²⁸⁰ Azad (2021) p. 60

²⁸¹ Constitution article. 102, article. 103 and Hassan (2015)

²⁸² Constitution article. 111

impound the ex-presidents' passport was a breach of Article 31, 32 and 36 of the Constitution and the United Nations Declaration of Human Rights (UDHR) article 13, on the right to freedom of movement.²⁸³

The Court observed that the “*universal human rights norms*” were not directly enforceable in national courts,²⁸⁴ or in other words that the country had a dualist system. The Court continued to state that international norms would be legally enforceable only if they were implemented in national laws. Even if the covenants were not nationally implemented, the court should not ignore them. If domestic laws were unclear, or the legal question was not addressed, the courts should draw upon the principles in the conventions to interpret the domestic laws. However, if domestic laws were clear, the courts were obliged to respect the domestic laws. While respecting the domestic laws, the court should draw the attention of the legislature to the inconsistency.²⁸⁵

This precedent has later been applied in several judgements, such as *Bangladesh v. Sheikh Hasina and State v. Metropolitan Police Commissioner*.²⁸⁶

As these judgements has shown, Bangladesh has a dualist system. The conventions Bangladesh has acceded to, like the Women's Convention, are not applicable in national courts unless they have been implemented in national law.²⁸⁷ This constitutes a barrier for domestic violence survivors' access to protection and penal remedies, as they cannot invoke the Women's Convention directly in court. However, the line between the international and the national legal systems is in practice blurred. This is because the Supreme Court uses international instruments to interpret the Constitution, which must include the Women's Convention and the DEVAW. If the Constitution is unclear, the international law on right to protection against or penal remedies for domestic violence can be used to clarify the meaning of the relevant provision of the Constitution. Additionally, the international laws can be used to fill in gaps in domestic law.²⁸⁸ It is only where the domestic law is clear, that the international law on right to protection against or penal remedies for domestic violence will have no effect.

3.5 Conclusion

Women have a right to be free from domestic violence.²⁸⁹ The state parties to the Women's Convention have an obligation to ensure that women are protected against further or potential

²⁸³ Hussain Muhammed Ershad v Bangladesh and others (2001) 21 BLD (AD) p.71 paragraph 5-6

²⁸⁴ Hussain Muhammed Ershad v Bangladesh and others (2001) 21 BLD (AD) p.71 paragraph 2

²⁸⁵ Hussain Muhammed Ershad v Bangladesh and others (2001) 21 BLD (AD) p. 70 paragraph 3

²⁸⁶ Khair (2011) p. 64

²⁸⁷ Faruque (2021) p. 39

²⁸⁸ Professor Nurul Islam v. Government of Bangladesh and Others (2000) 52 DLR (HCD) p. 413

²⁸⁹ Women's Committee (2005) paragraph 9.6 II a)

domestic violence, and that they have access to penal remedies after Women's Convention article 2 e).²⁹⁰

Bangladesh's reservation to article 2 seems to be impermissible on several grounds, with the consequence that Bangladesh is obliged to fulfil the due diligence obligation to protect domestic violence survivors against further and potential domestic violence and provide access to penal remedies for acts of domestic violence. Regardless of whether the reservation is impermissible or not, or of the effect of impermissibility, the Women's Committee puts pressure on Bangladesh to fulfil the due diligence obligation towards domestic violence survivors.

Bangladesh has a dualist legal system and therefore requires a separate act to incorporate international law in the domestic legislation for it to be judicially enforceable. The government has not yet taken any steps to incorporate the Women's Convention or the DEVAW in the legislation. In practice, the Supreme Court has used international soft and hard law to interpret the Constitution where national laws are unclear, or to fill in legal voids.

4 Constitutional right to protection against further or potential domestic violence or penal remedies for domestic violence

In this section, I explore whether women have a constitutional right to protection against domestic violence, and whether there are any barriers to this potential right on the constitutional level. I also explore use of public interest litigation as a legal empowerment tool to secure domestic violence survivors' access to penal remedies and protection mechanisms.

²⁹¹ I do this by exploring the landmark Supreme Court cases regarding gender-based violence.²⁹²

4.1 Right to life and protection of the law

Article 32 of the Constitution provides that everyone has a right to “(..)life and personal liberty”, and all interferences must be prescribed by the law.²⁹³

Article 31 provides everyone the right to “enjoy the protection of the law” and be treated “only in accordance with the law.”²⁹⁴

²⁹⁰ Women's Committee (2017) paragraph 24 b) ref Women's Convention article 2 e)

²⁹¹ Golub (2003) p. 26

²⁹² I do not analyse cases regarding other forms of discrimination against women, such as sexual harassment.

²⁹³ Constitution article 32

²⁹⁴ Constitution article 31

4.1.1 Shipra Chaudhury vs Government of Bangladesh

In *Dr. Shipra Chaudhury and another vs Government of Bangladesh and Others* (2009), the question was whether a woman's right to life and liberty was breached by her parents. Her parents had kept her confined and tried to force her into a marriage.²⁹⁵

Advocate Sara Hossain was one of the petitioner's advocates. She argued that the right to life and liberty could not be taken away by anybody.²⁹⁶ She also argued that a marriage entered without the consent of the bride was invalid under Muslim family law, an argument she built on a judgement from a Pakistani high court in 1999.²⁹⁷

The Supreme Court held that the right to life and liberty in the Constitution article 32 was a right that could not be taken away “(...)by anybody including the parents of the deteneu (...).”²⁹⁸

The Court then stated that the international instruments, including the Women's Convention article 16, the DEVAW article 1, and the United Nations Declaration of Human Rights among others could be aids in the interpretation of the Constitutional rights, especially to “*determine the rights implicit in the rights like the right to life and the right to liberty*”.²⁹⁹ These instruments determine that everyone has the right to freely choose a spouse,³⁰⁰ coercion is an act of gender-based violence,³⁰¹ and that both parties should give “*free and full consent*” to marriage.³⁰²

The Court further explained that the parents had the right to advise their children, but the children's “*liberty enshrined in the Constitution shall mean and include her right to make decisions concerning her groom free of coercion, violence and discrimination.*”³⁰³ In other words, the forced marriage had violated the survivor's right to life and personal liberty had been breached by forced marriage.

4.1.1.1 Advocacy strategy

The case sheds light on how the advocates can adapt the international human rights framework to the domestic context as a legal empowerment strategy. Advocate Sara Hossain used Muslim

²⁹⁵ *Dr Shipra Chaudhury vs Government of Bangladesh* (2009) 29 BLD (HCD) p.184 paragraph 5-8

²⁹⁶ *Dr Shipra Chaudhury vs Government of Bangladesh* (2009) 29 BLD (HCD) p.184-185 paragraph 12

²⁹⁷ *Ms. Humaira Mehmood vs. The State, PLD 1999 Lahore 494* in *Dr Shipra Chaudhury vs Government of Bangladesh* (2009) 29 BLD (HCD) p.188 paragraph 33

²⁹⁸ *Dr. Shipra Chaudhury vs Government of Bangladesh* (2009) 29 BLD (HCD) p.186 paragraph 22

²⁹⁹ *Dr. Shipra Chaudhury and another vs Government of Bangladesh* (2009) 29 BLD (HCD) p.187 paragraph 28

³⁰⁰ Women's Convention article 16 (1) b),

³⁰¹ DEVAW article 1

³⁰² UDHR article 16

³⁰³ *Dr. Shipra Chaudhury vs Government of Bangladesh* (2009) 29 BLD (HCD) p.188 paragraph 31

family laws to support that forced marriages should be illegal,³⁰⁴ where she could have used the Women's Convention to support the same argument.³⁰⁵

The fact that advocate Hossain chose to cite a Pakistani judgement, was a strategic choice.³⁰⁶ It must mean that the Pakistani judgement has some sort of legitimacy as a legal source before the Supreme Court. The Code of Civil Procedure section 13, that concerns foreign judgements between the same parties, further support foreign judgements' value as legal sources before the Bangladeshi courts.³⁰⁷ As Pakistan and Bangladesh are both Muslim countries in South-Asia, and they were under British direct rule during the colonial era, their legal and social contexts are quite similar.³⁰⁸ The Women's Convention, on the other hand, is still controversial in some spheres of Bangladeshi society.³⁰⁹ Advocate Hossain explained that constitutional case law from other Commonwealth countries would always be relevant sources in interpreting the Bangladeshi Constitution, especially case law from countries with similar contexts.³¹⁰ The Pakistani judgement was very specific as it dealt with very similar facts as in Shipra Chaudury's situation.³¹¹ Additionally, citing the judgement was not distinct from applying the Women's Convention, because the judgement also applies CEDAW.³¹² Still, the right to choose a spouse was presented in terms that were culturally acceptable, namely Muslim family laws, and therefore gained legitimacy.

4.1.1.2 The judgement's significance for the right to protection against further or potential domestic violence and right to penal remedies for acts of domestic violence

The Supreme Court explicitly extended the Constitutional guarantees on a right to life into the private sphere, by stating that the right to life "*could not be taken away by anybody including the parents (...)*"³¹³ This signifies that the right to life cannot be taken away by a person's partner either.

³⁰⁴ Dr Shipra Chaudhury vs Government of Bangladesh (2009) 29 BLD (HCD) p.188 paragraph 33

³⁰⁵ Women's Convention article 16 (1) b)

³⁰⁶ Interview with advocate Sara Hossain 03 September 2021

³⁰⁷ Code of Civil Procedure section 13 (1)

³⁰⁸ Seghal (2020)

³⁰⁹ See for example Women's Committee (2015b) paragraph 21

³¹⁰ Interview with advocate Sara Hossain 03 September 2021

³¹¹ Interview with advocate Sara Hossain 03 September 2021

³¹² Interview with advocate Sara Hossain 03 September 2021

³¹³ Dr. Shipra Chaudhury vs Government of Bangladesh 29 BLD (HCD) p. 186 paragraph 22

Additionally, the Supreme Court chose to apply two international soft law instruments, the DEVAW and the UDHR, as aids to infer rights that were already implicit in the Constitution. The Supreme Court interpreted the right to life and personal liberty to include the right to choose whether and who to marry, and indirectly applied the international laws.

Although the Supreme Court in this case determined that the woman's right to life had to be respected even by her parents, the judgement did not address the states' due diligence obligations to protect the woman from forced marriage or other human rights violations from private actors.

4.1.2 The Microbus rape case

In the Microbus rape case, BLAST and four other human rights organisations³¹⁴ filed a petition against the Government of Bangladesh for its failure to respond to a woman's complaint of a gang rape.³¹⁵

The main question in the case was whether the government had broken their obligations to respond to complaints of rape. The incident concerned a Garo woman who was abducted from Kuril in Dhaka after work, forced into a minivan and gangraped by five men. The abduction took place around 9 pm on Thursday 21 May 2015, and she was dropped off in Uttara (another part of Dhaka) around 11 pm the same night. The woman quickly contacted the police, but initially police officers in Uttara, Gulshan and Khilket police stations refused to take her case because the incident occurred within the jurisdiction of another police station. When she reached Vatara Police Station, police officers made her wait for 3 hours before they filed a first information report of her. Her information was finally registered at 12.30 pm Friday 22 May 2015. On Friday the police referred her to the Victim Support Centre at Tejgaon, and not until Saturday they sent her to Dhaka Medical College Hospital for medical examination.³¹⁶

The Supreme Court first issued a rule nisi, where it directed the concerned authorities to frame and disseminate a circular with directives to all police stations regarding their obligation to record allegations of rape without delay and ensure that services were provided to everyone without discrimination.³¹⁷

³¹⁴ Naripokkho, Bangladesh Mahila Parishad, Jatiya Mahila Parishad, and Ain O Salish Kendra

³¹⁵ Naripokkho and others vs Bangladesh and others in 25BLC(2020) p. 659 paragraphs 1-4

³¹⁶ 25 BLC(2020) p. 659 paragraphs 9-11

³¹⁷ 25 BLC(2020) p. 659 paragraphs paragraph 12

The petitioners were not satisfied with the directives in the rule nisi and therefore filed a supplementary affidavit.³¹⁸ They claimed that the police, by refusing to file the FIR and delaying in referring the woman to a Victim Support Centre and medical examination, had breached their duties after the Suppression of Violence against Women and Children Act (WCA) section 32 and the Constitution article 27, 28 and 31.³¹⁹ They also submitted recommendations on how to amend the directives, which they claimed were too vague and failed to address all the obstacles survivors of gender-based violence face.³²⁰

The Supreme Court stated that the Constitutional guarantees of the right to life or personal liberty, equality before the law, not to be discriminated on prohibited grounds, to work in a chosen profession, and to be treated in accordance with the law, “*undoubtedly include protection from sexual harassment and assault.*”³²¹ Then the Supreme Court noted that Bangladesh was a signatory to the Women’s Convention and to the DEVAW, cited DEVAW and said it “*requires*” the State to “*exercise (..) due diligence in prevention, investigation and punishment of offences of violence against women (..)*”³²² Based on DEVAW, the Court stated that Bangladesh had an “*obligation under international law*” to provide a safe environment for women, and to “*prevent commission of any crime to the best of its ability with the aid of law enforcing agency (...)*”³²³

The Supreme Court found that the police officers in charge of the first three police stations violated section 154 of the Criminal Code because they failed to register a first information report.³²⁴ Further, they found that the Women and Children Act section 32 imposed a duty on hospitals where survivors were sent to conduct medical examination as soon as possible, not on police officers. It was silent regarding the duty of police officers.³²⁵ The Supreme finally ordered the respondents to issue and disseminate 18 reviewed directives about the obligations of the police officers to ensure that required services were provided without discrimination, until the Government made the necessary legal changes.³²⁶ To fill the loopholes in the

³¹⁸ 25 BLC(2020) p. 659 paragraphs 7, 24

³¹⁹ 25 BLC(2020) p. 659 paragraphs 7, 24

³²⁰ 25 BLC(2020) p. 659 paragraphs 31-32

³²¹ Article 32, 27, 28 and 40 in 25 BLC(2020) p. 659 paragraph 76

³²² 25 BLC(2020) p. 659 paragraph 79

³²³ 25 BLC(2020) p. 659 paragraph 82

³²⁴ 25 BLC(2020) p. 659 paragraph 51

³²⁵ 25 BLC(2020) p. 659 paragraph 56

³²⁶ 25 BLC(2020) p. 659 paragraph 84

meantime, the Supreme Court issued 18 new directives in line with the petitioners' claims and the recommendations from the Law Commission.³²⁷

However, six years later, the directives are still not distributed on all police stations and the government has not yet implemented the directives in any rules or regulations.³²⁸ The government's failure to implement the judgement constitutes a barrier to women's access both to penal remedies and protection. For the judgement to be implemented and improve the situation of gender-based violence survivors, Naripokkho does the groundwork and distributes the directives themselves. They also follow up with the police station to monitor that the directives are implemented.³²⁹ The success of public interest litigation as a tool to improve the procedural rights of gender-based survivors, and secure access to justice, seems to depend upon the implementation and non-governmental organisations capacity to follow up and monitor.

4.1.2.1 The judgement's significance for the right to penal remedies and protection against further or potential violence

The Supreme Court imposed a constitutional obligation to protect women from sexual harassment and assault upon the police, one of the key actors in the formal justice system. The Supreme Court supported this by referring to the state's due diligence obligation after DEVAW article 4 c) to prevent, investigate and punish offences of violence against women. If implemented, the directives give women better access to penal remedies for domestic violence as the police is obliged to report their complaints and provide medical examination within a set timeframe.

4.1.3 The Marital rape exemption case

In October-November 2020, marital rape created headlines in Bangladesh after a fourteen-year-old girl died because of marital rape.³³⁰ Responding to this, and to the widespread prevalence of sexual marital violence in Bangladesh, BLAST and three other non-governmental organisations³³¹ filed a PIL.³³² Criminalising marital rape was already one of the demands of the Rape Law Reform Coalition, and prior to the PIL coalition members were undertaking other advocacy strategies like making content for media and social media, and hosting dialogue meetings with representatives from civil society and government.³³³ Yet, the

³²⁷ 25 BLC(2020) p. 659 paragraph 86

³²⁸ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

³²⁹ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

³³⁰ Huda (2020d)

³³¹ BRAC, Manusher Jonno Foundation and Naripokkho

³³² BLAST, BRAC, Manusher Jonno Foundation and Naripokkho (2020)

³³³ Rape Law Reform Coalition (n.d.) and BLAST (n.d.c)

public condemnation of marital rape seemed to be the accelerating factor behind the writ petition. This shows how a public campaign paved the way for legal action, as it was the first time a case regarding domestic violence was brought before the Supreme Court in Bangladesh.

The petitioners claimed that the exemptions of marital rape in rape provisions in the Penal Code and the Suppression of Violence against Women and Children Act violated married women's Constitutional rights to protection of life and liberty, equality, non-discrimination and protection of law and liberty.³³⁴

A division of the High Court issued a Rule Nisi calling upon the Government to show cause as to why the exception clause to Penal Code section 375, and WCA section 9 (1) that allow marital rape of girls and women above thirteen years old, should not be declared in violation of article 27, article 28, article 31 and article 32 of the Constitution.³³⁵ The case is still pending.

4.1.3.1 The case's significance for the right to penal remedies and protection against domestic violence

This writ petition stands out as it is one of very few cases regarding domestic violence before the Supreme Court. The rule nisi challenges the exemption for marital rape in the Penal Code and the Suppression of Violence against Women and Children Act. If the Supreme Court finds that the legal provisions are unconstitutional, it will increase the pressure on legislators to amend them. This will give married women survivors of marital rape access to penal remedies at least on paper. For civil remedies or the right to protection, compensation or residence orders, sexual abuse by the husband is already considered as domestic violence under the Domestic Violence Act.³³⁶ This means that women who are subject to sexual violence or rape within marriage can apply for civil remedies after the Domestic Violence Act.³³⁷

4.1.4 The Fatwa case

Fatwas emerged in the public debate in Bangladesh in the 1990s.³³⁸

³³⁴ BLAST, BRAC, Manusher Jonno Foundation and Naripokkho (2020)

³³⁵ BLAST, BRAC, Manusher Jonno Foundation and Naripokkho (2020)

³³⁶ Domestic Violence Act section 3 c)

³³⁷ Domestic Violence Act section 10- 17

³³⁸ Siddiqi (2011a) p. 80 and (2011b) p. 181

A “*fatwa*” is defined by anthropologist Dina Siddiqi as “*a non-binding opinion or interpretation, issued by a recognized authority or legal scholar, on a point of Islamic law or practice.*”³³⁹ Fatwas were frequently issued against women for breaking moral or religious standards.³⁴⁰ They could be sentenced to stoning or caning to be humiliated, or to accept intervening marriages.³⁴¹

The increased number of fatwa-induced violence and the attention it received in media,³⁴² led the High Court to issue a suo moto (own initiative) ruling in 2000 that declared all fatwas illegal.³⁴³ Two religious scholars appealed the ruling.³⁴⁴ While the appeal was pending, BLAST, Bangladesh Mahila Parishad, Ain-O-Shalish-Kendra, BRAC and Nijera Kori, filed a writ petition claiming that *all* extra-judicial punishment should be declared illegal.³⁴⁵ The High Court ruled that execution of any sort of extrajudicial punishment was “*bereft of any legal pedigree*”,³⁴⁶ but left the issue of fatwas outside the scope of the judgement as the appeal was pending.³⁴⁷

In 2011 the Appellate Division of the Supreme Court issued a decision on the appeal regarding fatwas and the Supreme Court’s jurisdiction to issue suo motu without any application.³⁴⁸ The Appellate Division interpreted the Constitution, especially article 31, literally.³⁴⁹ The court decided that non-enforceable fatwas were legal, under certain conditions. They had to concern “*religious matters*”.³⁵⁰ “*Religious matters*” was not defined. Fatwas could only be issued by “*educated persons*”, must be accepted “*voluntarily*” by the person upon whom it was issued, and any coercion or influence to pressure someone to accept a fatwa was forbidden.³⁵¹ Additionally, no person could issue a fatwa that “*affects the rights, reputation or dignity*” of any person protected by the laws of the land. Fatwas also had to be consistent with formal laws.³⁵²

³³⁹ Siddiqi (2011b) p. 200 footnote 2

³⁴⁰ Siddiqi (2011b) p. 185

³⁴¹ Siddiqi (2011b) pp. 185 and 201

³⁴² Khan (2012)

³⁴³ Khan (2012) and Tayeeb and Azad vs Government of Bangladesh (2015) 67 DLR (AD) p.63 paragraph 21

³⁴⁴ Berger (2017) p. 82

³⁴⁵ BLAST and others vs Government of Bangladesh (2011) 63 DLR (HCD) p. 2 paragraph 2 and p. 4 paragraph 11

³⁴⁶ BLAST and others vs Government of Bangladesh (2011) 63 DLR (HCD) p.6 paragraph 20

³⁴⁷ BLAST and others vs Government of Bangladesh (2011) 63 DLR (HCD) p. 5-6 paragraph 19

³⁴⁸ Tayeeb and Azad vs Government of Bangladesh (2015) 67 DLR (AD) p.114-115 paragraph 334 and

³⁴⁹ Tayeeb and Azad vs Government of Bangladesh (2015) 67 DLR (AD) p. 113-114 paragraph 328

³⁵⁰ Tayeeb and Azad vs Government of Bangladesh (2015) 67 DLR (AD) p.114-115 paragraph 334 (i)

³⁵¹ Tayeeb and Azad vs Government of Bangladesh (2015) 67 DLR (AD) p.114-115 paragraph 334 (i)

³⁵² Tayeeb and Azad vs Government of Bangladesh (2015) 67 DLR (AD) p. 114-115 paragraph 334 (i-iv)

4.1.4.1 *The case's significance for right to access to protection and penal remedies*

The Supreme Court explicitly restricted the scope of the informal justice system by interpreting the Constitution. This clarified that even the informal justice system is subject to the formal, state-issued laws, and shalishes must be held in accordance with formal laws. Women's protection in alternative dispute resolutions was improved, also when it comes to the right to penal remedies and protection against domestic violence. Verdicts or agreements from shalishes must follow the formal laws, which for example means that not all cases can be subject to mediation. Additionally, women can not be imposed extrajudicial punishment or forced to accept a marriage through fatwas or regular shalishes. This increases their protection against domestic violence.

4.2 Right to equality and non-discrimination

The most important articles in the Constitution on the right to equality and prohibition of discrimination are article 27, 28 and 29.

Article 27 reads that all citizens are equal before the law and have the right to equal protection before the law and gives the state a scope to provide differential treatment for marginalised groups.³⁵³

Article 28 (1) stipulates that the state shall not discriminate on the basis of “*religion, race, caste, sex or place of birth.*” Article 28 (2) reads that all women shall have equal rights with men but is limited to “*(..) all spheres of the state and public life*”. Personal life, or in specific family laws, is therefore omitted.³⁵⁴

Article 29 provides that it should be “*equality of opportunity for all citizens in respect of employment or office*”, and that no citizen should be victim to discrimination.³⁵⁵

4.2.1 The Two-finger test case

The two-finger test, or a virginity test, is a test where doctors check the “*hymen*” of rape survivors by inserting two fingers into their vagina.³⁵⁶ It is supposed to examine whether a rape survivor has been subject to rape or is habituated with sexual intercourse.³⁵⁷ In 2013, BLAST and six other non-governmental organisations³⁵⁸ filed a public interest litigation where they argued that the two-finger-test was “*unscientific*”, had “*no forensic value*” and

³⁵³ Sheikh Abdus Sabur vs. Returning Officer, District Education Officer-in-Charge, Gopalganj (1989) 41 DLR (AD) p. 43

³⁵⁴ Wadud (2021) p. 256

³⁵⁵ Constitution article 29

³⁵⁶ Daily Star Report (2018)

³⁵⁷ Daily Star Report (2018)

³⁵⁸ ASK, Bangladesh Mahila Parishad, BRAC, Manusher Jonno Foundation, Naripokkho

“*subjected them to further trauma*”.³⁵⁹ The petitioners claimed that the two-finger-test was without lawful authority and violated the Constitution article 27, 31 and 35.³⁶⁰

During the hearing, the petitioners laid forth written opinions from forensic experts, citations from the World Health Organization, and Health Protocols from the Government of India and the Ministry of Family and Health Welfare to support that the two-finger-test was unscientific.³⁶¹ The petitioners then called on the Supreme Court to ensure that appropriate actions were taken to uphold the right to equality, to be treated in accordance with the law, and to protection against inhuman and degrading treatment.³⁶²

Finally, in 2018, the Supreme Court decided that that the two-finger test should be prohibited.³⁶³ The government was to establish a Health Care Protocol that should be adhered to at all health checks. The Women and Children Repression Prevention Tribunal should ensure that lawyers only asked questions “*necessary to ascertain any information of rape*”,³⁶⁴ and physicians/ forensic experts should not ask degrading questions to rape survivors about her previous sexual experience.³⁶⁵

4.3 Conclusion

In terms of a constitutional right to protection from domestic violence and penal remedies for acts of domestic violence, the Supreme Court has asserted that the state is obliged to prevent, investigate, and punish all acts of violence against women.³⁶⁶ The extent of this obligation in terms of protecting women against gender-based violence when state authorities know or should know about it, has not been subject to a public interest litigation. The Supreme Court has also not yet decided whether the exemption provisions for marital rape are violating the Constitution article 27, 28, 31 and 32.³⁶⁷

The judgements I analysed indicate that the Supreme Court is willing to interpret the Constitution dynamically to comply with the Women’s Convention and the DEVAW in cases

³⁵⁹ BLAST (2018) p. 1

³⁶⁰ Writ no 10663 of 2013 p 2

³⁶¹ BLAST (2018) p. 2

³⁶² BLAST (2018) p. 1-2

³⁶³ BLAST (2018) p. 1

³⁶⁴ BLAST (2018) p. 1

³⁶⁵ BLAST (2018) p. 1

³⁶⁶ Writ 5541 of 2015 pp. 35-36

³⁶⁷ BLAST, BRAC, Manusher Jonno Foundation and Naripokkho (2020)

regarding gender-based violence. In *Dr Shipra Chaudhury vs Government of Bangladesh*, the Supreme Court found that women's rights from Women's Convention article 16, DEVAW and UDHR were already implicit in the Constitution.³⁶⁸ Further, the Supreme Court stated that everyone has a right to life that must be respected even by family.³⁶⁹ This implies that the state has an obligation to protect its citizens from violations of their right to life, even when the violator is their family. In the *Microbus Case*, the Supreme Court referred to Women's Convention and DEVAW, used them to fill in a legal void, and said that the state was obliged to prevent, investigate, and punish acts of violence against women.³⁷⁰ In the *Two finger test case*, the *Marital rape exemption case* and the *Fatwa case*, neither the Supreme Court nor any parties referred to international instruments, seemingly because the Constitution from a literal interpretation already protected married women's right to penal remedies for rape and to be treated only in accordance with law.³⁷¹ The main barriers to women's access to penal remedies or protection against further or potential domestic violence lay in the implementation of the laws.

These cases are the principal cases regarding women's rights to protection against gender-based violence. And in all these cases, BLAST was a petitioner, or advocates affiliated with BLAST supported the petitioners. This shows how BLAST uses public interest litigation as a tool to expand women's constitutional rights.

The factual bases of the litigations were concrete cases or practices in Bangladesh. The rights-claimants' experiences were therefore the foundations for the litigations. Litigation served to form the laws after the needs of the rights-claimants and was an activity towards the goal of legal empowerment.³⁷²

The petitioners and lawyers supported their arguments with only Constitutional provisions where literal interpretations would be sufficient,³⁷³ and otherwise referred to international instruments or foreign judgements to interpret the Constitution. When it came to foreign judgements, the petitioners referred especially to Pakistani and Indian judgements.³⁷⁴ In the

³⁶⁸ *Dr. Shipra Chaudhury and another vs Government of Bangladesh* (2009) 29 BLD (HCD) p.187 paragraph 28

³⁶⁹ See the review of *Dr Shipra Chowdhury case*, page 00

³⁷⁰ Writ 5541 of 2015 p. 35-36

³⁷¹ BLAST (2018) p. 1-2, BLAST, BRAC, Manusher Jonno Foundation and Naripokkho (2020) and Tayeeb and Azad vs Government of Bangladesh (2015) 67 DLR (AD) p. 113-114 paragraph 328

³⁷² Golub (2003) p. 26

³⁷³ BLAST (2018) p. 1-2, BLAST, BRAC, Manusher Jonno Foundation and Naripokkho (2020) and Tayeeb and Azad vs Government of Bangladesh (2015) 67 DLR (AD) p. 113-114 paragraph 328

³⁷⁴ *Ms. Humaira Mehmood Vs. The State*, PLD 1999 Lahore 494 in *Dr Shipra Chaudhury vs Government of Bangladesh* (2009) 29 BLD (HCD) p.188 paragraph 33 and

Shipra Chaudhury vs Government case, the advocate referred to a Pakistani judgement to emphasise how forced marriages were illegal after Muslim law, to support that forced marriages were in violation of the Constitution article 32. This implies that South-Asian judgements have a special legitimacy in the Bangladeshi judiciary and can be used to improve women's rights.

5 Legal right to protection against further or potential domestic violence and penal remedies for domestic violence

In this section, I seek to explore the implementation of women's right to access protection or penal remedies for acts of domestic violence in the relevant legislation on the national level. I will do this by analysing the Nari O Shishu Nirjatan Daman Ain (Suppression of Violence against Women and Children Act), the Domestic Violence Act and the Dowry Prohibition Act, using a legal doctrinal approach. I have also conducted interviews and consulted secondary sources to complement my legal analyses.

5.1 Suppression of Violence against Women and Children Act 2000

In this subsection I will analyse the Suppression of Violence against Women and Children Act's (WCA's), scope, procedural rules and remedies, before I assess whether they provide the survivors access to justice and fulfil the requirements from the Women's Committee.

The WCA was enacted in 2000, when it repealed an act from 1995 that succeeded an act from 1983.³⁷⁵ It is a specialised criminal law that deals with violence against women and children, such as dowry-based violence, abduction and rape.³⁷⁶ The purpose of the WCA was to “*make necessary provisions for the prevention of crime against women and children.*”, and to fulfil some of Bangladesh's obligations after the Women's Convention.³⁷⁷

5.1.1 Types of domestic violence covered by the Suppression of Violence against Women and Children Act

In terms of domestic violence, the WCA is applicable to acts of domestic violence committed by corrosive or any other substances,³⁷⁸ physical violence based on dowry-demands,³⁷⁹ and marital rape if the girl child is less than 14 years old.³⁸⁰

³⁷⁵ Immigration and Refugee Board of Canada (1993), Naznin and Sharmin (2015) p. 8

³⁷⁶ WCA section 4-12

³⁷⁷ WCA preamble and Women's Committee (2004a) paragraph 51

³⁷⁸ WCA section 4

³⁷⁹ WCA section 11

³⁸⁰ WCA section 9 and Huda (2020a)

The respondents in my interviews shared that, despite the WCA's limited scope, many of the women domestic violence survivors who wanted to file a case in the formal justice system, preferred to file the case under this law. This was because of the penal remedies available in it.³⁸¹

The legal basis for the punishment of dowry-based violence is in section 11. Dowry is defined as any assets which has been "*demanded, paid or agreed to be paid*" to the groom or his family in "*condition with the smooth continuation of marital life*".³⁸² The section differentiates dowry-based violence after the severity of the offence; causing or attempting to cause death, causing or attempting to cause hurt and causing or attempting to cause simple hurt.³⁸³

In terms of domestic sexual violence, the WCA only prohibits marital rape if the victim is younger than 14 years old.³⁸⁴ This is consistent with the Penal Code 1860, which also has exception clauses allowing marital rape.³⁸⁵

The provision for acid violence is in section 4. The section prescribes capital punishment for causing or attempting to cause death by "*burner*" or "*corrosive poisonous substance*",³⁸⁶ and for damaging sight or ear, disfiguring face, breast and sexual organ.³⁸⁷ Where any limb, joint or part of the body is disfigured or damaged, the prescribed punishment is imprisonment for seven to fourteen years.³⁸⁸

5.1.2 Procedures for enforcement of the Suppression of Violence against Women and Children Act

Cases under the WCA are being processed before special tribunals popularly known as Nari O Shishu Tribunals (WCT).³⁸⁹ Since the WCA is a criminal law, the case is investigated by the police,³⁹⁰ and the Code of Criminal Procedure complements the WCA.³⁹¹ If a police officer

³⁸¹ Interview with BLAST staff

³⁸² WCA section 2 j) and Naznin and Sharmin (2015) p. 86

³⁸³ WCA section 11 and Huda (2020a)

³⁸⁴ WCA section 9 i

³⁸⁵ Penal Code section 375 and 376

³⁸⁶ WCA section 4 i.

³⁸⁷ WCA Act section 4 ii a.

³⁸⁸ WCA section 4 ii b.

³⁸⁹ WCA section 26

³⁹⁰ See for example WCA section 18

³⁹¹ WCA section 25

neglects his duties to investigate the case, the court can direct his office to take legal action.³⁹² The tribunal consists of one judge.³⁹³

The offences under WCA are cognisable.³⁹⁴ They are bailable under certain conditions, including that the complainant has been heard.³⁹⁵ Causing simple hurt for dowry was made compoundable in 2020.³⁹⁶

The testimony of the victims is, according to Supreme Court practice, sufficient evidence to convict the accused.³⁹⁷ Appeals go to the Supreme Court.³⁹⁸

5.1.3 Protection measures

Rape survivors have the right to give statement in a closed room during the trial.³⁹⁹ If the judge thinks it's fit, s/he can direct to keep the survivors in safe custody out of the jail and under Government authority.⁴⁰⁰ It is prohibited and punishable for up to two years in prison to share name or identifying information of the survivor in the media.⁴⁰¹

5.1.4 Remedies under the Suppression of Violence against Women and Children Act

The penalty for causing death or attempt for causing death for dowry is mandatory life imprisonment and a fine,⁴⁰² and the penalty for causing hurt for dowry is between five and fourteen years of imprisonment and a fine.⁴⁰³ However, a fine under the WCA is very rarely turned into compensation to the victims.⁴⁰⁴ The penalty for rape is death, including penalty for marital rape of girls under 13 years old.⁴⁰⁵

³⁹² WCA section 18 v.

³⁹³ WCA section 26 i.

³⁹⁴ WCA section 19 i

³⁹⁵ Suppression of Violence against Women and Children Act section 19 iii a

³⁹⁶ Huda (2020a)

³⁹⁷ Khan in The Daily Star Report (2021)

³⁹⁸ WCA section 28

³⁹⁹ WCA section 20 and section 9

⁴⁰⁰ WCA section 31

⁴⁰¹ WCA section 14

⁴⁰² WCA 11 (1) and (1) i. The available translation of the WCA uses the term “transportation for life” but Tania (2007) p. 207 writes that the mandatory sentence is a death sentence.

⁴⁰³ WCA section 11(1) and (1) ii.

⁴⁰⁴ Huda (2020b) p. 13

⁴⁰⁵ Huda (2020a)

5.1.5 Barriers to implementation of the international right to penal remedies against acts of domestic violence

5.1.5.1 *Marital rape*

The exclusion of marital rape of girls and women over 14 years old, is a breach of the government's obligations under the Women's Convention.⁴⁰⁶

The exclusion is in line with underlying cultural notions in Bangladesh.⁴⁰⁷ As Taqbir Huda from the Rape Law Reform Coalition noted, there seems to be a prevailing belief in Bangladesh "(..)that a wife, upon signing the marriage contract, perpetually and irrevocably consents to sexual intercourse with her husband whenever he so demands."⁴⁰⁸ By excluding marital rape of women and children over 14 years old from criminal proceedings, the lawmakers translated the right to protection against gender-based violence so it didn't challenge this belief.⁴⁰⁹ From Merry's perspective, one can therefore say that the right to protection against further or potential domestic violence was indigenised in the legislative process behind the Suppression of Violence against Women and Children Act.

5.1.5.2 *Other forms of violence*

Mental violence, economic violence and physical violence not based on dowry is omitted from the act, which means that it fails to penalise all acts of domestic violence and fulfill the obligations after the Women's Convention.⁴¹⁰

As a result, survivors of domestic physical violence not based on dowry demands, cannot seek penal remedies after the WCA. This sometimes causes women to make false claims that real acts of domestic violence is based on fabricated dowry demands.⁴¹¹ The Supreme Court has stated that cases where a woman is killed by a family member, but the dowry demands cannot be proven, should be treated under the Penal Code.⁴¹²

⁴⁰⁶ Women's Convention article 2 e) and f) ref Women's Committee (2017) paragraph 26 a)

⁴⁰⁷ Huda (2016) p. 27

⁴⁰⁸ Huda in Tithila (2020)

⁴⁰⁹ Merry (2006) p. 221

⁴¹⁰ Women's Convention article 2 e) ref Women's Committee (2017) paragraph 24 b) ref paragraph 14

⁴¹¹ Huda (2016) p. 32

⁴¹² State vs. Bahar Mia (2004) 56 DLR (HCD) p. 454 in Naznin and Sharmin (2015) p. 89

5.1.5.3 *Overlap with the Penal Code*

The WCA partially overlaps with the Penal Code from 1860. The Penal Code provides penal sanctions for physical violence, and for causing hurt in the hands or face with corrosive substances.⁴¹³

If it cannot be proved that the violence is caused by dowry demands, the offender cannot be convicted under the WCA.⁴¹⁴ In one case regarding murder for dowry, the WCT didn't find it proved that the death was caused by dowry and convicted the accused after section 302 of the Penal Code instead.⁴¹⁵ The Supreme Court found that the WCT had gone beyond their jurisdiction and put their verdict aside.⁴¹⁶ They further noted that this often happened and was detected at the appellate stage.⁴¹⁷

For the survivors or their next of kin, this can lead to judgements being dismissed and them having to go through a trial again. This impedes their rights to prosecution.⁴¹⁸ Harmonising the WCA with the definition of gender-based violence in international law can eliminate this problem in the future.

5.1.5.4 *Unclear language*

For dowry-based violence, the law does not provide the criteria to separate between causing/attempting to cause death, hurt and simple hurt.⁴¹⁹ This leaves the law vague and creates a scope for bias. Especially the lack of criteria to separate between “*attempting to cause death*” and “*causing hurt*” can cause confusion amongst the law enforcers and lead to similar cases being treated differently.

5.1.5.5 *Limited protection of witnesses*

During the trial, only victims of rape have the right to be questioned in a closed-door room.⁴²⁰ The Women's Committee recommends that statements are given privately in all cases where necessary.⁴²¹

⁴¹³ Penal Code section 319, 320 and 326a

⁴¹⁴ Naznin and Sharmin (2015) p. 80

⁴¹⁵ State v Bahar Mia (2004) 56 DLR (HCD) p. 454 in Naznin and Sharmin (2015) p.62

⁴¹⁶ State v Bahar Mia (2004) 56 DLR (HCD) p. 454 in Naznin and Sharmin (2015) p.62

⁴¹⁷ State v Bahar Mia (2004) 56 DLR (HCD) p. 454 in Naznin and Sharmin (2015) p.62

⁴¹⁸ Women's Committee (2017) paragraph 24 b) ref Women's Convention article. 2 e)

⁴¹⁹ WCA section 11

⁴²⁰ WCA section 20 and section 9

⁴²¹ Women's Committee (2015a) paragraph 18 f)

5.1.5.6 Evidentiary rules

The Women's Committee demands that the legal proceedings are adapted to the needs of the women and recommends the government to ensure that the evidentiary rules are not overly restrictive or inflexible.⁴²² Yet, in rape cases, the evidentiary rules lead to acquittals if there has been more than three days from the incident to the filing of the case.⁴²³ This strict evidentiary rule is against the recommendation, and a failure to make sure that the justice system is adapted to the needs of women.⁴²⁴

5.1.6 Conclusion

The government of Bangladesh failed to implement the rights to penal remedies for domestic violence under the Women's Convention through the WCA. This is mainly because they omitted marital rape and other forms of domestic violence, but also because of failure to install sufficient witness protection mechanisms. Additionally, unclarities in the overlap with the penal code and in the law weaken domestic violence survivors' access to the penal remedies.

5.2 The Domestic Violence (Prevention and Protection) Act 2010 And Domestic Violence (Prevention and Protection) Rules 2013

In this section I will firstly introduce the Domestic Violence (Prevention and Protection) Act (DVA), its scope, the protection remedies available and the procedures. Then I will analyse the barriers in the implementation of women's right to protection, residence and interim protection orders.

The DVA was enacted in 2010 to protect women and children against domestic violence and fulfil Bangladesh's obligations after the Women's Convention and Convention on the Rights of the Child.⁴²⁵ It was followed up by the Domestic Violence (Prevention and Protection) Rules (DVR) in 2013. They provide the legal basis for interim and permanent protection orders, residence orders, compensation orders and custody orders.⁴²⁶ The introduction of protection orders and residence orders as remedies were revolutionary in Bangladesh,⁴²⁷ and still today domestic violence survivors tend not to trust that violators will follow protection

⁴²² Women's Committee (2015a) paragraph 14 c), paragraph 51 h)

⁴²³ Huda (2021)

⁴²⁴ Women's Committee (2015a) paragraph 14 c), paragraph 51 h)

⁴²⁵ DVA preamble

⁴²⁶ DVA section 13,14,15,16 17

⁴²⁷ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

orders or that the courts will protect them.⁴²⁸ Between 2012 and 2016, only 30 797 cases were filed under the DVA.⁴²⁹

5.2.1 Scope of the Act

5.2.1.1 Types of violence

Domestic violence is defined as physical, psychological, sexual, and economical abuse.⁴³⁰ The broad definition of domestic violence is consistent with the standards from the Women's Committee and DEVAW.⁴³¹

The definition of economic violence encompasses “*deprivation or prohibiting the victim from applying legal rights to her stridhan or dower or alimony or any consideration for marriage.*”⁴³² By including the denial of access to alimony or dower as a category of economic violence, the lawmakers included a form of violence that is specific to Bangladesh. Economic abuse is not mentioned in DEVAW at all,⁴³³ but violence causing “*economic harm or suffering*” is recognised as domestic violence by the Women's Committee.⁴³⁴ Psychological abuse includes verbal abuse, threats, harassment and controlling behaviour.⁴³⁵

As one of the most important barriers in the Suppression of Violence against Women and Children Act was the failure to criminalise marital rape, it is noteworthy that the Domestic Violence Act includes sexual violence in its definition of domestic violence.⁴³⁶

5.2.2 Protection remedies under the Act

5.2.2.1 Interim protection orders

An interim protection order is a protection order that can be issued by the Magistrate when there has been filed a case for other remedies under the Act.⁴³⁷ A protection order is understood as a legally binding court order that prohibits the person it is issued against to commit more violence, contact the domestic violence survivor or take other related actions.⁴³⁸

⁴²⁸ Yasmin in Daily Star staff correspondent (2020)

⁴²⁹ United Nations Human Rights Council (2018) paragraph 85

⁴³⁰ Domestic Violence Act section 3 a)-d)

⁴³¹ Women's Committee (2017) paragraph 14, Women's Committee (2004b) paragraph 58, DEVAW article 2

⁴³² DVA section 3 d) (iii)

⁴³³ DEVAW article 2

⁴³⁴ Women's Convention (2017) paragraph 14

⁴³⁵ DVA section 3 b)

⁴³⁶ DVA section 3 c)

⁴³⁷ DVA section 13 and section 11

⁴³⁸ Cf. DVA section 14 (1) a-f)

There are certain requirements for an interim protection order. The domestic violence survivor, or someone acting on her behalf, must file a case under DVA section 11. The Magistrate then decides whether to impose the interim protection order based on a scrutiny of the documents.⁴³⁹ To impose the interim protection order, the Court must either be “*satisfied (...) that the respondent has committed or has abetted the committing of any act of domestic violence*” or be satisfied that “*there is a possibility of such violence being committed*”.⁴⁴⁰

The interim protection orders are quite practical as they do not require the defendant to appear before the court, which means that the court can decide whether to impose the protection order *ex-parte*.⁴⁴¹

Simultaneously, the Magistrates can order the defendant to show cause within seven working days as to why a permanent protection order shall not be issued against him.⁴⁴²

5.2.2.1.1 *Standard of proof and probability*

The two alternative requirements for imposing an interim protection order, are that the Magistrate is “*satisfied by examining the documents (...) that there is prima facie that the respondent has committed [domestic violence] or possibility of committing or abetting to commit domestic violence.*”⁴⁴³ “*Prima facie*” means at first sight.⁴⁴⁴ A contextual interpretation of “*prima facie*” in this section suggests that it means that the Magistrate, from a preliminary scrutiny of the documents, finds it sufficiently evident that one of the two alternative requirements is fulfilled.

For the first alternative requirement to be fulfilled, the Court must be “*satisfied*” that the respondent has committed domestic violence. The standard must be read in light of the Act being a civil act, and the balance of probabilities being the standard of proof in civil cases.⁴⁴⁵ That means that it must be more likely than not that the perpetrator has committed domestic violence.

⁴³⁹ DVA section 13 (1)

⁴⁴⁰ DVA section 13 (1)

⁴⁴¹ DVA section 13 (1)

⁴⁴² DVA section 13 (1)

⁴⁴³ DVA section 13 (1)

⁴⁴⁴ Herlitz (1994) p. 395

⁴⁴⁵ Huda (2016) p. 45

For the second requirement to be fulfilled, the Magistrate must be “*satisfied*” that there is a “*possibility of committing or abetting to domestic violence*” in the future.⁴⁴⁶ The term “*possibility*” tells us that it does not have to be likely that the perpetrator will commit or abet to domestic violence in the future; it is enough that there is a chance. It is therefore a small threshold of probability for further or potential violence that must be surpassed to impose an interim protection order. Combined with the threshold of evidence, this means that the court must find it more likely than not that it is a possibility that the perpetrator will commit domestic violence. This makes the interim protection order suitable as an emergency measure against ongoing domestic violence if it is issued promptly and respected.

5.2.2.1.2 Breach of interim protection orders

The Act does not have any provisions for the consequences of breaching an interim protection order. This may limit the efficiency of the interim protection order.

5.2.2.2 Permanent protection orders

A permanent protection order is defined in the DVA as an order prohibiting or restraining the respondent from committing domestic violence, contacting the domestic violence survivor, or committing any other act that is cited in the protection order.⁴⁴⁷

Unlike the interim protection order, it is required that the Magistrate hears both the parties before it gives the permanent protection order.⁴⁴⁸ If the defendant does not appear at the time of trial, the Magistrates can try the case ex-parte or issue a warrant of arrest.⁴⁴⁹

There are two alternative requirements to impose a protection order; either the court must be satisfied that the defendant has committed domestic violence, or the court must be satisfied that it is likely that the defendant will commit or abet domestic violence.⁴⁵⁰

5.2.2.2.1 Standard of proof and threshold of evidence

For imposing protection orders, it is a requirement that the court is “*satisfied*” that domestic violence has taken place, or it is “*likely*” that the defendant will commit or abet domestic violence.⁴⁵¹ This means that it must be more likely that the perpetrator has committed domestic violence than not, for the first alternative requirement to be fulfilled. For the second

⁴⁴⁶ DVA section 13

⁴⁴⁷ DVA section 14 (1) a-f)

⁴⁴⁸ DVA section 14 (1)

⁴⁴⁹ DVA section 26

⁴⁵⁰ DVA section 14

⁴⁵¹ DVA section 14

requirement to be fulfilled, it must be more likely than not that the defendant will commit domestic violence.

5.2.2.3 Breach of protection orders

If there is a breach of protection orders, the victim or any person acting on her behalf can apply to the court that passed the order, or to an Enforcement Officer who forwards the complaint to the mentioned court.⁴⁵² Then the perpetrator either faces imprisonment for up to six months and/ or a fine up to 10 000 taka if it was a one-time incident, or imprisonment for up to two years and/or a fine up to 1 lakh taka if it happened several times.⁴⁵³

5.2.2.4 Residence orders

Under section 15 (1) a), the court can restrain the perpetrator from the shared residence or the part where the survivor resides. This is arguably only helpful in cases where the couple lives together in a nuclear family, not when the domestic violence survivor lives with the in-laws. If there were a problem with domestic violence, the survivor would presumably not want to live with her in-laws.

Under section 15 (1) c), the Court can direct the enforcement officer to arrange a safe shelter or safe place for the victim and her child /children, during the existence of the protection order. The Court can also demand that the perpetrator secures the survivor accommodation to the same standard as their shared residence and covers rent.⁴⁵⁴

If the perpetrator solely owns the shared residence, the Court can evict him if there is no other way to secure the safety of the domestic violence survivor. If there is found another safe place for the survivor to reside, the eviction order must be revoked.⁴⁵⁵ The Court can impose any other additional conditions,⁴⁵⁶ and require the perpetrator to execute a bond with sureties that neither him nor family members would commit further acts of domestic violence.⁴⁵⁷

⁴⁵² DVR section 9

⁴⁵³ DVA section 30

⁴⁵⁴ DVA section 15 (1) d)

⁴⁵⁵ DVA section 15 (3)

⁴⁵⁶ DVA section 15 (4)

⁴⁵⁷ DVA section 15 (5)

5.2.3 Procedure to obtain protection or residence orders

The Domestic Violence Rules from 2013 contains forms that are to be kept at all police stations to make the case filing at the courts easier.⁴⁵⁸ Still, the 2016 Plan International and BNWLA study found that most police stations lacked the forms.⁴⁵⁹

The DVA obliges the police officers who come to know about incidents of domestic violence to provide victims of domestic violence information of the available remedies under this Act, and about the availability of medical services, other legal remedies, the right to free legal aid and the Enforcement officer.⁴⁶⁰ The Enforcement officer is to inform the police about the progress in the case,⁴⁶¹ and the police sometimes serves the potential residence or protection orders to the violent party.⁴⁶² The police can also be directed to provide shelter to the domestic violence survivor.⁴⁶³ The Enforcement Officer is obliged to refer the victim to a shelter home, assist her in filing a case and assist her in court.⁴⁶⁴

To obtain a protection order, the domestic violence survivor or someone acting on her behalf like an enforcement officer must file a case before a First-Class Magistrate or Metropolitan Magistrate.⁴⁶⁵ The DVA obliged the government to appoint an Enforcement Officer for each upazila, thana, district or metropolitan area.⁴⁶⁶ District and Upazila Women Affairs Officers, under the Ministry of Women Affairs, were appointed as enforcement officers in addition to their other tasks.⁴⁶⁷ The upazila level is the second lowest level of administration in Bangladesh and the country is divided in 492 upazilas.⁴⁶⁸ The enforcement officers are working under the Ministry of Women and Children Affairs,⁴⁶⁹ and subject both to the government and to the court.⁴⁷⁰

⁴⁵⁸ Domestic Violence Rules Form E and F

⁴⁵⁹ Huda (2016) p. 35

⁴⁶⁰ DVA section 4 a- f)

⁴⁶¹ DVA section 6 c) and g)

⁴⁶² DVA section 25

⁴⁶³ DVA section 15 (6)

⁴⁶⁴ DVA section 6 (1)

⁴⁶⁵ DVA section 11

⁴⁶⁶ DVA section 5 (1)

⁴⁶⁷ Interview with BLAST staff

⁴⁶⁸ Bangladesh National Portal (2021)

⁴⁶⁹ Domestic Violence Rules section 2 (d)

⁴⁷⁰ DVA section 6 (2)

After DVA, shelter homes are obliged to provide shelter upon request of the aggrieved person or on her behalf,⁴⁷¹ and medical service providers to provide medical service.⁴⁷² The Ministry of Women and Children's Affairs decide who can serve as providers after this Act.⁴⁷³

The Judicial Magistrate or the Metropolitan Magistrate have the jurisdiction to try the domestic violence cases under DVA.⁴⁷⁴ The Code of Criminal Procedure applies for the court procedure.⁴⁷⁵

For the hearing, DVA section 24 states that the Court may direct a local inquiry to find out the whether the violence took place. However, neither the Act nor the Rules clarify who should conduct the inquiry. At least in practice the already over-burdened enforcement officers conduct enquiries.⁴⁷⁶

Section 20 stipulates that the Court shall dispose of a case in 60 days and sets up further deadlines if the initial deadline is broken. In practice, the case handling time normally takes around five to nine months.⁴⁷⁷

5.2.4 Legal barriers to protection against further or potential domestic violence

5.2.4.1 *Limited scope*

The government is obliged to provide all women effective legal protection against gender-based violence.⁴⁷⁸

The scope of the DVA is limited to violence conducted by a member of the family, married or in kin.⁴⁷⁹ This excludes other partners, such as live-in partners, from the Act's scope and consequently also from the opportunity to obtain protection or residence orders. This must be seen in connection with how uncommon cohabitational relationships still are in Bangladesh,⁴⁸⁰ and as a sign of how the Domestic Violence Act was contextualised.

⁴⁷¹ DVA section 8

⁴⁷² DVA section 9

⁴⁷³ Huda (2016) p.39

⁴⁷⁴ DVA section 21 (1) and (2)

⁴⁷⁵ DVA section 22 (2)

⁴⁷⁶ BIGD BRAC University (2021b) p. 65

⁴⁷⁷ Huda (2016) p. 44

⁴⁷⁸ Women's Committee (2017) paragraph 26 a), ref Women's Convention article 2 b), c), e), f) and g)

⁴⁷⁹ DVA section 3 (1) and section 2 (2) no.11

⁴⁸⁰ See for example Joy (2010)

After a literal interpretation, divorced couples are also outside of the Act's scope. This exclusion is quite problematic as some husbands declare divorce when the women file a case under the DVA so the courts will dismiss the case.⁴⁸¹ If the husbands declare divorce during the case, which in many cases they do, the Magistrates often dismiss the case and refer it to the family courts to deal with the divorce settlements.⁴⁸²

Therefore, all women do not have legal protection against domestic violence under the DVA and the government breaches its obligations.

5.2.4.2 Premises of the Domestic Violence Act

The enforcement officers' obligations to refer women to shelters, rest on the assumption that there are sufficient shelters to provide protection to the domestic violence survivors.⁴⁸³ The same goes for the shelters' obligation to provide shelter.⁴⁸⁴ However, there are not enough shelters for domestic violence survivors in Bangladesh.⁴⁸⁵

All obligations imposed on the enforcement officers, including the obligation to assist women to file a case for protection orders, rest on the assumption that there are sufficient enforcement officers and that the domestic violence survivors know about them.⁴⁸⁶ However, this is not always the case.⁴⁸⁷ From Merry's perspectives, this is a sign that the Act was not sufficiently adapted to the structural conditions in Bangladesh.⁴⁸⁸

The failure to ensure enough services, impedes domestic violence survivors' access to their rights under the DVA.

5.2.4.3 No accountability mechanisms

Under the Women's Convention, states parties are recommended to monitor the implementation of the laws and ensure there are adequate investigations and sanctions against public authorities who fail to fulfil their obligations.⁴⁸⁹

⁴⁸¹ Huda (2016) p. 38 and interviews with BLAST staff

⁴⁸² Interviews with BLAST staff

⁴⁸³ DVA section 6 (d) and (g)

⁴⁸⁴ DVA section 8

⁴⁸⁵ See chapter 7

⁴⁸⁶ DVA section 6 (d)

⁴⁸⁷ See chapter 7

⁴⁸⁸ Merry (2006) p. 136

⁴⁸⁹ Women's Convention article. 2 e) and 2 c), Women's Committee (2017) paragraph 26 b)

As one of the interviewees noted, the consequences for neglecting the responsibilities imposed upon police officers or service providers remain unclear.⁴⁹⁰ There are no legal provisions for sanctions if an enforcement officer, service provider or policeman fails to fulfil their obligations. Although section 34 stipulates that enforcement officers who fails shall be liable for “*departmental proceedings*”,⁴⁹¹ it is unclear what a “*departmental proceeding*” involves and whether this happens.

Under the Right to Information Act, citizens have right to information from the authority.⁴⁹² This could be used to access information like how many domestic violence cases an enforcement officer has, and whether the enforcement officers fulfil their obligations.⁴⁹³ A lawyer who had tried to file a right to information application for information about the enforcement officers’ work with domestic violence survivors, said she had not received any information because there were no written records.⁴⁹⁴ Most times, nothing is written down about the case until it potentially is filed at the Magistrate’s Court.⁴⁹⁵ For the enforcement officers to be held accountable for failing their obligations to assist the domestic violence survivors, they need to have written records.

This lack of accountability mechanisms is a failure to fulfil the obligations under the Women’s Convention. Further, it decreases the incentive for police officers or enforcement officers to fulfil their obligations and the realisation of the domestic violence survivors’ rights is weakened.

5.2.4.4 The Domestic Violence Act’s overlap with other laws

There is an interesting overlap between the Domestic Violence Act and the Family Court Ordinance. The DVA authorises the Court to give custody orders,⁴⁹⁶ even though this is under the Family Court’s jurisdiction after the Family Court Ordinance.⁴⁹⁷ Additionally, the DVA section 16 provides a legal basis for compensation orders, including maintenance.⁴⁹⁸

⁴⁹⁰ Interview with advocate Sara Hossain 3 September 2021

⁴⁹¹ DVA section 34

⁴⁹² Right to Information Act section 2 and 4

⁴⁹³ Right to Information Act section 4

⁴⁹⁴ Interview with BLAST staff

⁴⁹⁵ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁴⁹⁶ DVA section 17

⁴⁹⁷ Family Court Ordinance section 5

⁴⁹⁸ DVA section 17 (5)

This creates confusion, and sometimes the Magistrate Court would refer cases directly to the Family Court.⁴⁹⁹

BLAST lawyers and paralegals, in compound cases, sometimes decide to move the maintenance claims before the family courts instead of or prior to filing a case for compensation under the DVA. This is often a strategic choice to enhance the women's agency in their homes, as the family courts have a shorter case handling time than the Magistrate and maintenance would give the women financial independence.⁵⁰⁰

If the cases are referred to the family courts, the domestic violence survivors lose the opportunity to get remedies for the acts of domestic violence. This violates their rights.⁵⁰¹

5.2.5 Conclusion

The right to protection against further or potential domestic violence is only partially implemented through the DVA. Unmarried women are exempted from the scope of the DV, and there is no accountability mechanism to ensure that the enforcement officers or other officials fulfil their obligations. Additionally, unclear overlap with the family courts derives women from the opportunity to get legal remedies.

5.3 Dowry Prohibition Act 2018

In this subsection, I explore the scope of the Dowry Prohibition Act (DPA), the remedies available and the procedural rules.⁵⁰²

Dowry is a sum of money or other property demanded or taken by the husband and/or his family from the bride's family as a condition for marriage.⁵⁰³ Demanding dowry can be a form of psychological violence and economic violence, and lead to physical violence. According to media reports, 6 057 women were victims of dowry-based physical violence in the timespan January 2001- December 2020.⁵⁰⁴

The first Dowry Prohibition Act was enacted in 1980, as a response to the spread of dowry-practice in Muslim marriages in the 1970s.⁵⁰⁵

⁴⁹⁹ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁵⁰⁰ Interview with BLAST staff

⁵⁰¹ Women's Committee (2017) paragraph 24 b), see Women's Convention article. 2 e)

⁵⁰² Dowry must not to be confused with dower.

⁵⁰³ DPA section 2b

⁵⁰⁴ Odhikar (2021)

⁵⁰⁵ Taher and Jamaluddin (2014) p. 2

The preamble of the 2018 Dowry Prohibition Act states that “(..)it is expedient and necessary to repeal and, in response to the needs of time, make afresh the Dowry Prohibition Act, 1980 (..)” One of the changes is that the Dowry Prohibition Act from 2018 specified the fine for giving or taking dowry to 50 000 taka,⁵⁰⁶ whereas the fine used to be 5 000 taka.⁵⁰⁷

5.3.1 Scope of the Dowry Prohibition Act

The definition of dowry is “(..) assets (...) demanded, or given or agreed to be given” as a requirement for marriage at the time of or before the wedding, or during the marriage as a requirement for the continuation of marriage.⁵⁰⁸

Gifts, or “*presentation given to the either party to a marriage at the time of the marriage*” were excluded from the definition of dowry in the 2018 DPA.⁵⁰⁹ The “*presentation*” is not defined, and the criteria to separate between presentation and dowry can be unclear. This can lead to dowry demands being camouflaged as expectations of gifts.⁵¹⁰ Dower (mehr), mainly money given from the grooms’ family to brides’ family according to Muslim customs and family laws, is exempted from the definition of dowry.⁵¹¹ Wives have a right to mehr under Sharia law, and it is intended to be the wives’ financial security that she can claim during or after marriage.⁵¹²

The Dowry Prohibition Act provides penal sanctions for demanding,⁵¹³ and taking dowry.⁵¹⁴ Interestingly, the Act also provides punishment for giving dowry.⁵¹⁵ For the bride’s side of the family, this means that they can be subject to penal sanctions if they report the dowry demands to the police.

⁵⁰⁶ DPA section 4

⁵⁰⁷ Dowry Prohibition (Amendment) Ordinance, 1986 (Ordinance No. XXVI of 1986) section 3

⁵⁰⁸ DPA section 2b

⁵⁰⁹ DPA section 2b compare DPA 1980 section 2

⁵¹⁰ Ahmed (2019)

⁵¹¹ DPA section 2b

⁵¹² Ferdousi (2019) p. 548

⁵¹³ DPA section 3

⁵¹⁴ DPA section 4

⁵¹⁵ DPA section 4

5.3.2 Procedures under the Dowry Prohibition Act

Cases under the Dowry Prohibition Act follows the Code of Criminal Procedure.⁵¹⁶ This means that the Court of Sessions or Court of Magistrate deal with cases under the Act.⁵¹⁷ The offences under the Act are cognizable, non-bailable and compoundable.⁵¹⁸

5.3.3 Remedies under the Dowry Prohibition Act

The penalty for demanding, giving or taking dowry is one to five years in prison, and/or a fine of 50 000 taka.⁵¹⁹ The DPA 2018 also introduced a penalty for filing a false case; imprisonment for up to five years and/ or a fine of 50 000 taka.⁵²⁰

5.3.4 Barriers for access to penal remedies under the Dowry Prohibition Act

Under the Women's Convention, the government is obliged to take legislative measures to prohibit all forms of gender-based violence.⁵²¹

The Dowry Prohibition Act from 2018 provides an exemption for gifts, which creates an opportunity to camouflage dowry demands as gifts.⁵²² The DPA also provides a high prison sentence for filing false cases, which can scare women away from filing a case.⁵²³ Already before the penal sanctions for filing a false case were introduced, there was a threshold to file this kind of cases with the police. The Justice Audit household survey from 2018 showed that only 12 % would advise someone to go to the police for a dowry case, and 30 % said they would advise the couple to solve it peacefully among themselves.⁵²⁴

The severe penalty for both giving and taking dowry, can deter the counterpart from filing a case under the Act, as they would face penalty themselves.⁵²⁵ This would work against the intended purpose of the Act and weaken women's protection against dowry demands. For the DPA to be more effective, the remedies can be amended.

⁵¹⁶ DPA section 8

⁵¹⁷ Code of Criminal Procedure section 6

⁵¹⁸ DPA section 7

⁵¹⁹ DPA section 3 and 4

⁵²⁰ DPA section 6

⁵²¹ Women's Committee (2017) paragraph 26 a) ref Women's Convention article 2 b), c), e), f) and g)

⁵²² DPA section 2b

⁵²³ DPA section 6

⁵²⁴ Justice Audit (2018) nbr. 43

⁵²⁵ DPA section 3 and 4

5.4 The missing law

The Women's Committee recommends that the states parties protect women complainants and witnesses effectively.⁵²⁶

Yet, there isn't any witness-protection legislation in Bangladesh, which means that domestic violence survivors who do file a case against their family members are not legally entitled to protection, relocation or limitation of disclosure of information about them.⁵²⁷ This results in survivors pressured from the perpetrators or their own families to withdraw cases they have filed.⁵²⁸ Fear of retaliation from the husband or his family was cited as women's main reason for not filing a case by One Stop Crisis Centre practitioners in the 2016 Justice Audit survey.⁵²⁹ The lack of witness protection legislation is therefore both a breach of the obligation to have a justice system adapted to the needs of women, and a failure to follow the recommendation.⁵³⁰

5.5 Conclusion

This analysis identified several barriers to the implementation of the Women's Convention in the relevant legislation, that impair women's access to protection orders and penal remedies.

Firstly, many domestic violence survivors have been excluded from the protection of the law. This violates the government's obligations. In the DVA, divorced women and un-married women in relationships are excluded from the definition of family. In the WCA, married women and girls above 14 years old are exempted from getting penal remedies against rape.

Secondly, the definitions of domestic violence are only partially compliant with international rights. The Suppression of Violence against Women and Children Act does not cover physical violence, unless it is based on dowry demands, or economic, mental or sexual abuse. It therefore only partially fulfils the obligations under international law. The DVA Act includes sexual, physical, mental and economic abuse, so it is quite compliant with international law. However, it omits divorcees and un-married partners.

Thirdly, the protection of witnesses and victims is very limited. There is no specific witness protection legislation. Only under the WCA a judge can direct the survivor to be kept in safe custody. Under the WCA, only rape survivors can give a witness statement within closed doors. Under the DVA, there is no provisions for witness statements.

⁵²⁶ Women's Committee (2015a) paragraph 18 g)

⁵²⁷ Human Rights Watch (2020) pp. 17-18, 60

⁵²⁸ Human Rights Watch (2020) p.10

⁵²⁹ Justice Audit (2016a) no. 12

⁵³⁰ Women's Committee (2015a) paragraph 14 c), Women's Committee (2015a) paragraph 18 g)

6 Barriers to penal remedies and protection remedies in the formal justice system

In this section, I explore the implementation of the international rights to protection against and penal remedies in the formal justice system and by state institutions on the local level.

⁵³¹This is to explore domestic violence survivors' access to penal remedies for and protection against domestic violence. My focus is limited to the police, the courts, the enforcement officers, and the protection services. I will do this by explore how the police, the Women and Children Tribunals and the Magistrate Courts implement the relevant legal provisions and international obligations, and then how the state fulfils its obligations to provide protection through service providers.

6.1 The police

In this subsection I explore whether the police fulfil their obligations to provide domestic violence survivors access to protection and penal remedies. The relevant protection mechanisms are protection and residence orders.

I will first give some general observations before I analyse how the police implements the DVA and the criminal laws.

There are around 188 760 members of the police force in Bangladesh, and 13 402 of these are women. ⁵³² There have recently been established help desks for women, children and the elderly at 663 police stations. ⁵³³ It is still too early to say whether these help desks have had an effect. Naripokkho, that monitors the police closely, informed that the help desks were set up after UN standards, and often too tall for women. ⁵³⁴ The desks therefore ended up creating an intimidating distance to the service providers, as the women had to look up. ⁵³⁵

Naripokkhos visits to police stations with women help desks revealed that the police officers were still not following the guidelines from the Supreme Court on filing first information reports of rape incidents. ⁵³⁶

⁵³¹ Women's Convention article 2 c), 2 e), Women's Committee (2015a) paragraph 14 c) and b), Women's Committee (2017) paragraph 24 b), 26b)- c)

⁵³² Bangladesh Police Women Network (2021)

⁵³³ BIGD BRAC University (2021b) p. 23

⁵³⁴ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁵³⁵ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁵³⁶ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

Some view the police as hostile and partial, and they are reputed to treat people differently based on their economic and political status.⁵³⁷ Domestic violence survivors therefore avoid reporting a case to the police due to lack of trust.⁵³⁸

In the cases the domestic violence survivors report a case, some police officers simply do not take cases of domestic violence seriously enough to file first information reports in the first place.⁵³⁹

6.1.1 The police's implementation of the Domestic Violence Act

The police are not obliged to conduct investigations under the Domestic Violence Act, but to keep the forms for filing a case before the Magistrate courts, to provide women domestic violence survivors information about the Act and refer them to the enforcement officers.⁵⁴⁰

The question is whether the police fulfil these obligations in a gender-sensitive manner, and thereby contribute to the implementation of domestic violence survivors' right to protection against further and potential violence.⁵⁴¹

6.1.1.1 Gender-sensitisation

In 2016, many police officers were unaware of the Act and its provisions.⁵⁴² This is still true today.⁵⁴³ Some police officers refuse to aid the survivor because they believe domestic violence is a personal matter to be solved within the family.⁵⁴⁴

6.1.1.2 Corruption

Some police officers encourage women to file complaints under for example Suppression of Violence against Women and Children Act, to increase possibilities for bribes, instead of the Domestic Violence Act.⁵⁴⁵ The domestic violence survivors approaching BLAST were often aware of the risk of corruption in the police, and this was one of the reasons they wanted to go for mediation.⁵⁴⁶

⁵³⁷ Huda (2016) p. 36

⁵³⁸ Human Rights Watch (2020) p.2

⁵³⁹ Human Rights Watch (2020) p. 9

⁵⁴⁰ See section 5

⁵⁴¹ Women's Committee (2015a) paragraph 14 c)-d), Women's Committee (2017) paragraph 24 b) ref. Women's Convention article 2 e)

⁵⁴² Huda (2016) p. 36

⁵⁴³ Interview with BLAST staff

⁵⁴⁴ Interview with BLAST staff

⁵⁴⁵ Huda (2016) p. 36

⁵⁴⁶ Interview with BLAST staff

6.1.1.3 Referrals

The lawyers and mediation officers I interviewed, reported that the police often failed to refer the domestic violence survivors further or deal with the case properly.⁵⁴⁷ Sometimes the police would refer the survivor to the enforcement officer, without telling her how to reach her.⁵⁴⁸ However, the informants also reported good co-operation with some police officers.⁵⁴⁹ Some police officers would refer domestic violence survivors to BLAST or other legal aid NGOs.⁵⁵⁰ Still, this was rather the exception than the rule.

6.1.2 The police's implementation of the criminal laws

The question is whether the police fulfil Bangladesh's obligation to investigate and prosecute acts of domestic violence,⁵⁵¹ which includes that the investigation has to be fair, impartial, and free of gender stereotypes and stereotyped notions of what constitutes gender-based violence.⁵⁵²

Since the Suppression of Violence against Women and Children Act and the Dowry Prohibition Act are criminal laws, the police are responsible for conducting investigations and preparing the case for court also under national law.⁵⁵³

6.1.2.1 Gender-sensitisation

From January 2010-august 2012, there were filed 109 621 complaints of violence against women with the police.⁵⁵⁴ Only 6 875 were determined to be "*fit for further proceedings*".⁵⁵⁵ Naripokkho's Shireen Huq explained that the "*(..)main difficulty is that of "establishing a prima facie case for lack of eye witnesses, evidence, etc., with the result that the accused are easily acquitted and cases are recorded as false."*⁵⁵⁶ This seems to imply that the testimony of the survivors is not counted as sufficient evidence by the police, no matter how trustworthy they are. If so, this would be against the Committee's recommendations to ensure that

⁵⁴⁷ Interview with BLAST staff

⁵⁴⁸ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhter 3 November 2021

⁵⁴⁹ Interview with BLAST staff

⁵⁵⁰ Interview with BLAST staff

⁵⁵¹ Women's Committee (2017) paragraph 24 b) ref Women's Convention article 2 e)

⁵⁵² Women's Committee (2017) paragraph 26 c) ref Women's Convention article 2 e)

⁵⁵³ WCA section 25, Dowry Prohibition Act section 8

⁵⁵⁴ Haq (2012)

⁵⁵⁵ Ibid

⁵⁵⁶ Huq in Haq (2012)

evidentiary rules are not overly restrictive.⁵⁵⁷ This also violates the government’s obligations, as it leads to false acquittals.⁵⁵⁸

BRAC researchers interviewed eight judges, nine public prosecutors and seven defence lawyers from the Nari-O-Sishu Tribunals in Comilla, Pabna and Dhaka.⁵⁵⁹ 16 of 24 respondents answered that the police did not investigate the case satisfactorily and this negatively affected the conviction order of the court.⁵⁶⁰ Some respondents said that the police did not cooperate with the public prosecutor, filed reports without proper investigations, harassed the victims and filed reports in favour of those who paid them good money.⁵⁶¹

6.1.3 Corruption

In interviews, several respondents mentioned that the police frequently asked for bribes, “*bokshish*”, or treated the case differently based on the social status of the domestic violence survivor and the perpetrator.⁵⁶² The more money or political power the domestic violence survivor’s family had; the more likely many police officers were to do a proper job. And, if the accused or the accused family paid the family off, he would not be prosecuted.⁵⁶³

6.1.4 Conclusion

My findings suggest that the police are failing to fulfil their obligations under the Domestic Violence Act and the criminal laws regarding domestic violence because of lack of gender sensitivity, corruption, and failure to fulfil their obligations to refer the survivor of investigate the case.⁵⁶⁴ This constitutes institutional barriers to women’s access to protection orders and penal remedies, and a violation of the Women’s Convention.⁵⁶⁵

6.2 The enforcement officers

In this subsection I explore whether enforcement officers help fulfil the government’s obligation to protect domestic violence survivors under the Domestic Violence Act.⁵⁶⁶ The

⁵⁵⁷ Women’s Committee (2015a) paragraph 51 h)

⁵⁵⁸ Women’s Convention (2015a) paragraph 14 c)- d)

⁵⁵⁹ Naznin and Sharmin (2015) p. 44-58

⁵⁶⁰ Naznin and Sharmin (2015) p.52

⁵⁶¹ Naznin and Sharmin (2015) p. 53

⁵⁶² Interview with BLAST staff

⁵⁶³ Interview with BLAST staff

⁵⁶⁴ This does not mean that there are no police officers who fulfil their obligations.

⁵⁶⁵ Women’s Convention article 2 e) ref Women’s Committee (2017) paragraph 24 b) and 26 c), Women’s Committee (2015a) paragraph 14 c-d)

⁵⁶⁶ DVA section 6, Women’s Committee (2017) paragraph 24 b), paragraph 26 b)

Women’s Committee recommends that state parties “*establish and implement*” multi-sectoral referral mechanisms.⁵⁶⁷

The enforcement officer is obliged to refer the domestic violence survivors to medical, legal and protection services, help the survivor file a case at the court if needed and provide a report to the court on domestic violence.⁵⁶⁸ The intention behind the enforcement officers was that they would be active and visible in society, so women would know they could go there for help.⁵⁶⁹ However, the enforcement officers, who are part of the Women’s Affairs Ministry, work on the upazila level.⁵⁷⁰ This might be one of the reasons the enforcement officers are not so well known in society.⁵⁷¹ Comparatively, the village court is at union parishad level and thereby closer to the domestic violence survivors.⁵⁷²

The enforcement officers are Women Affairs Officers under the Women’s Affairs Ministry with other duties, and have no budget allocated for the enforcing of the Domestic Violence Act.⁵⁷³ They are overburdened with work, and lack the capacity to deal with domestic violence cases.⁵⁷⁴ They even lack the financial means to cover travel costs related to follow-up of domestic violence survivors.⁵⁷⁵ Therefore, even if they take personal interest in the case, they cannot always follow them up.⁵⁷⁶ There are also some enforcement officers who lack the will to deal with domestic violence cases and therefore choose to refer them to legal aid organisations like BLAST or BRAC.⁵⁷⁷

As a conclusion, enforcement officers are not effective in assisting domestic violence survivors in accessing their remedies under the Domestic Violence Act or fulfilling their obligations under the Domestic Violence Act section 6.⁵⁷⁸ This means that the government fails in providing a successful referral mechanism.

⁵⁶⁷ Women’s Committee (2017) paragraph 40 e) ref Women’s Convention article 2 e)

⁵⁶⁸ DVA section 6 (1)

⁵⁶⁹ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁵⁷⁰ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁵⁷¹ Huda (2016) p. 37-38

⁵⁷² Sikder (2016)

⁵⁷³ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁵⁷⁴ Human Rights Watch (2020) p. 20

⁵⁷⁵ Huda (2016) p. 38

⁵⁷⁶ Interview Mediation and Capacity Building Officer 5 September 2021

⁵⁷⁷ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁵⁷⁸ Women’s Committee (2017) paragraph 24 b) , paragraph 26 b)

6.3 The courts

In this subsection I explore whether the courts are fulfilling the domestic violence survivors' right to access to courts, and to have their cases heard in a timely, gender-sensitive and impartial manner.⁵⁷⁹ I will analyse the Magistrate Court and the Women and Children Repression Prevention Tribunals separately.

6.3.1 The Magistrate's Court

The question is whether the Magistrates' Courts implement domestic violence survivors' rights to have their cases heard in timely, gender-sensitive, competent, impartial and gender-sensitive manners,⁵⁸⁰ and make sure that domestic violence survivors have access to protection and residence orders.

First class judicial magistrates have authority to try cases under the DVA outside the metropolitan areas, and metropolitan magistrates have authority to try cases under the DVA inside the metropolitan areas.⁵⁸¹ These courts also have jurisdiction to try criminal cases with sanctions up to ten years imprisonment or 5000 taka fine.⁵⁸²

Studying the implementation of the Domestic Violence Act was challenging, because most of the respondents I talked to had not filed a case under the DVA. Those of them who had, had received unsatisfactory results. In one case, the Magistrate's Court had been unaware of the DVA.⁵⁸³ In another case, the Magistrate's Court had issued a very impractical residence order and not followed up on it.⁵⁸⁴

6.3.1.1 *In a timely manner*

The Domestic Violence Act stipulates that the Magistrate shall dispose of a case in 60 days and sets up further deadlines if the initial deadline is broken.⁵⁸⁵ In practice, the case handling time normally takes around five to nine months.⁵⁸⁶ Although she could get an interim protection order in the meantime, the interim protection order is not sanctioned so there are less incentives to follow it for the perpetrator. Five to nine months is a long time to wait for a

⁵⁷⁹ Women's Committee (2015a) paragraph 14 c) – d) ref. Women's Convention article 2 c), 2 e)

⁵⁸⁰ Women's Committee (2015a) paragraph 14 c)- d) ref. Women's Convention article 2 c), 2 e)

⁵⁸¹ Domestic Violence Act (2010) section 21

⁵⁸² Rahman (2020) p. 4-5

⁵⁸³ Interview with BLAST staff

⁵⁸⁴ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁵⁸⁵ DVA section 20

⁵⁸⁶ Huda (2016) p. 44

protection order, and most likely in breach of the obligation to hear the case in a timely manner.⁵⁸⁷

6.3.1.2 Cost

If legal proceedings before the court are not affordable, cost can be a barrier to access to protection orders.⁵⁸⁸

Domestic violence survivors have to pay a small fee to file domestic violence cases before the Magistrate's Court.⁵⁸⁹ The fee is not waived for domestic violence survivors with economic difficulties,⁵⁹⁰ which is against the recommendations of the Women's Committee.⁵⁹¹ It can also be a distance to travel to the Magistrate's Court, as it is on district level.⁵⁹² For workers who live from hand to mouth, even missing a couple of days' earnings to go to court can be a barrier to reach the formal justice system, let alone cover the travel costs and pay for legal aid.⁵⁹³ The government is recommended to pay attention to the travel costs for women with low income.⁵⁹⁴ Yet, from the public and private legal aid services, only BLAST covers the transportation costs of the domestic violence survivors.⁵⁹⁵

For some women, cost is a barrier to the courts and the government has not fulfilled its obligations to make sure the courts are affordable.

6.3.1.3 Lack of training and gender-sensitivity

Many magistrates are not aware of the DVA until they are informed by lawyers or non-governmental organisations.⁵⁹⁶ Magistrates have a four-month training at the Judicial Administration Training Institute, but many begin working before taking the training.⁵⁹⁷ The only training on the Domestic Violence Act during the course is a module of a couple of hours

⁵⁸⁷ Women's Committee (2015a) paragraph 14 d)

⁵⁸⁸ Women's Committee (2015a) paragraph 14 c)

⁵⁸⁹ Interview with BLAST staff

⁵⁹⁰ Interview with BLAST staff

⁵⁹¹ Women's Committee (2015a) paragraph 17 a)

⁵⁹² BIGD BRAC University (2021b) p. 64

⁵⁹³ Khair (2004) p. 63

⁵⁹⁴ Women's Committee (2015a) paragraph 16 e)

⁵⁹⁵ BIGD BRAC University (2021b) p. 64

⁵⁹⁶ Huda (2016) p. 39 and p. 60

⁵⁹⁷ Yasmin (2020c) in Jahan (2022)

with an external expert, but this is project-based and not an integral part of the institute.⁵⁹⁸ The lack of training on gender sensitivity is a violation of women's right to a fair trial.⁵⁹⁹

As the law is new and rarely used, there are few cases to consult. A report from 2020 found that there had been at best one to two cases filed under the Domestic Violence Act in courts unless there were non-governmental organisations involved.⁶⁰⁰ Additionally, some magistrates seemed unwilling to prioritise these cases, as they were used to deal with criminal cases, and did not see the importance of domestic violence cases that seem to be more connected with family laws.⁶⁰¹ Even cases with violated protection orders were not dealt with properly, and survivors did not trust that they would be protected if anyone broke the protection order against them.⁶⁰² The reluctance to prioritise hearings of domestic violence cases was also evident during the Covid 19-pandemic, when only criminal cases, no domestic violence cases, were dealt with in virtual courts.⁶⁰³

6.3.1.4 Referrals to the family courts

Domestic violence survivors have the right to an effective remedy for the violence they suffer, and in this subsection I discuss whether the choice of court inhibits the implementation of the domestic violence survivors' rights.⁶⁰⁴

If the husband declares a divorce, the Magistrate Court often refers the case to family courts to settle the divorce.⁶⁰⁵ Yet, the family court cannot provide remedies for the domestic violence, only settle divorce and dower disputes.

Family courts and village courts operate on the Union Parishad (UP) level and are therefore the formal courts closest to the people.⁶⁰⁶ There are 4554 union parishads in Bangladesh.⁶⁰⁷ Each Union Parishad have 13 members, nine of them are elected from nine different wards, three of them are directly elected female representatives, and one is the UP chairman who is also directly elected.⁶⁰⁸

⁵⁹⁸ Yasmin (2020c) in Jahan (2022)

⁵⁹⁹ Women's Convention article 2 c), Women's Committee (2017) paragraph 26 b)- c) ref paragraph 38

⁶⁰⁰ Yasmin (2020c) in Daily Star staff correspondent (2020)

⁶⁰¹ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁶⁰² Yasmin (2020c) in Daily Star staff correspondent (2020)

⁶⁰³ BIGD BRAC UNIVERSITY (2021b) p. 71

⁶⁰⁴ Women's Committee (2017) paragraph 26 c)

⁶⁰⁵ Huda (2016) p. 53

⁶⁰⁶ Berger (2017) p. 83

⁶⁰⁷ Bangladesh National Portal (2021)

⁶⁰⁸ Berger (2017) p. 83

The family courts deal with divorce, maintenance, dower and polygamy.⁶⁰⁹ Its jury consists of the UP chairman and one representative chosen by each party.⁶¹⁰ The procedures of the family courts vary from place to place, and there is very little awareness of the regulations and monitoring of the courts.⁶¹¹ If domestic violence cases were moved to family courts, civil remedies for the domestic violence and the divorce could be settled in the same trial.

Many of the judges and enforcement officers interviewed in the 2016 report suggested moving jurisdiction over domestic violence cases to the family courts.⁶¹² The family courts are led by Union Parishad Chairmen, who may already be known to the survivors. In the Justice Audits, many reported that they would refer domestic violence incidents to the Union Parishad Chairmen.⁶¹³ The downside of the family courts is that the case handling time could be longer than it currently is.⁶¹⁴ Additionally, there are so many family courts and the panel members are frequently exchanged, so there would be an increased risk that the panel members were not trained in the laws related to domestic violence or in gender sensitivity. Interestingly, the UNDP, European Union and the Government recently suggested that the village courts could deal with domestic violence cases.⁶¹⁵ The survivors in the BRAC University study who went to the Union Parishad for mediation were put through mediation focused on preserving harmony, not on their rights.⁶¹⁶ This suggests that UP members, who are represent in both family courts and village courts, are not gender sensitised.

Although the referrals of cases from the Magistrate Court to the Family Courts restrict domestic violence survivors' access to effective remedies, there is not enough evidence to support that domestic violence cases are moved to family courts or village courts.

6.3.2 The Suppression of Violence against Women and Children Tribunals

In this subsection I explore whether the Suppression of Violence against Women and Children Tribunals (Women and Children Tribunals) are fulfilling domestic violence survivors' right to trial in a "*timely fashion*" that adheres with standards of competence, efficiency, impartiality, and gender sensitivity.⁶¹⁷

⁶⁰⁹ Berger (2017) p. 82

⁶¹⁰ Muslim Family Laws Ordinance section 2 a) 77

⁶¹¹ Ahmad (2019)

⁶¹² Huda (2016) p. 9

⁶¹³ Justice Audit Bangladesh (2018) nbr. 43

⁶¹⁴ Interview with BLAST staff

⁶¹⁵ TBS Report (2020)

⁶¹⁶ BIGD BRAC University (2021) p. 56- 57

⁶¹⁷ Women's Convention article 2 c), 2 e), Women's Committee (2015a) paragraph 14 c-d),

Women and Children Repression Prevention Tribunals (Women and Children Tribunals) have the authority to try cases under the Suppression of Violence against Women and Children Act.⁶¹⁸ Based on news reports, there are currently 95 Women and Children Repression Prevention Tribunals in Bangladesh, more than one tribunal per district.⁶¹⁹ In the districts where there isn't a tribunal, the District and Session Judge tries cases under the Women and Children Act.⁶²⁰

6.3.2.1 Trial in a timely manner

BNWLA reports that there is no record of any case being disposed off within the time limit of 180 days.⁶²¹ Some survivors withdraw the cases while waiting for trial. This can be because they decide to solve the case through an out of court settlement instead, sometimes because of pressure from the violator, other times because they want monetary compensation they could not access under a criminal law.⁶²² The right to trial in a timely manner is not fulfilled.⁶²³

6.3.2.2 Lack of training and gender-sensitivity

The tribunal judges often have a patriarchal mindset,⁶²⁴ that is demonstrated during the course of the trials and in the judgements.⁶²⁵ This violates the right to a trial free of gender stereotypes.⁶²⁶ The judges in the Women and Children Repression Prevention Tribunals only have one week of training on gender sensitisation,⁶²⁷ which is not sufficient to provide a gender-sensitive dispute resolution.⁶²⁸ The Committee also especially recommends the government to provide mandatory capacity building to judges on gender-sensitivity.⁶²⁹

6.3.2.3 Low conviction rate

A 2015 BRAC study in Comilla, Pabna and Dhaka examined the conviction rate in violence against women cases under the Nari-o-Sishu Ain 2000 from 2009-2014, in a trial-based perspective.⁶³⁰ There were altogether seven Nari-O-Sishu Tribunals in the three districts at

⁶¹⁸ Suppression of Violence against Women and Children Act section 26

⁶¹⁹ Bangladesh Sangbad Sangstadh (2019) There are 64 districts in Bangladesh.

⁶²⁰ Ministry of Finance (n.d.) p. 241

⁶²¹ WCA section 20 iii and Ali in Karim (2020)

⁶²² Naznin and Sharmin (2015) p. 54-55

⁶²³ Women's Convention article. 2 e) ref Women's Convention (2015a) paragraph 14 d)

⁶²⁴ Yasmin (2020c) in Jahan (2022)

⁶²⁵ Huda (2021)

⁶²⁶ Women's Committee (2017) paragraph 26 c)

⁶²⁷ Yasmin (2020c) in Jahan (2022)

⁶²⁸ Women's Committee (2015a) paragraph 14 d)

⁶²⁹ Women's Committee (2017) paragraph 38

⁶³⁰ Naznin and Sharmin (2015) p. 32

the time, one each in Comilla and Pabna and five in Dhaka.⁶³¹ They found that during the period 2009-2014, only 0,86 % of the cases ended in conviction.⁶³² Numbers from the Justice Audit for 2016 confirmed the decreasing trend; Out of the 41 697 cases that were disposed of by the Nari O Sishu Tribunals in 2016, only 826 ended in conviction.⁶³³ That constitutes a conviction rate of 1,9 %.

6.3.2.4 Reasons for the low conviction rate in Nari O Sishu Tribunals

The low conviction rate makes it questionable whether there are false acquittals, or cases are withdrawn, in a way that violates survivors' access to adequate and imposed remedies.⁶³⁴

There is a tendency that domestic violence survivors withdraw their cases because of pressure from the perpetrator, that increases with the time.⁶³⁵

A report by Malik implies that too harsh sentences in the Suppression of Violence against Women and Children Act, such as death sentence and lack of discretionary power, stop the judges from convicting the perpetrators.⁶³⁶ He argues that lack of proportionality in punishment therefore are partially responsible for the low conviction rates in violence against women cases.⁶³⁷ Severe punishments tend to increase the standard of proof,⁶³⁸ but threats of severe punishments do not prevent crimes if the perpetrators do not expect them to be executed.⁶³⁹ For example, the statistics on dowry- based violence does not give us grounds to say that imposing severe penalties for dowry-based violence has led to a decrease of dowry-based violence.⁶⁴⁰

On the other hand, in the 2015 BRAC study, only six of the 24 judges, public prosecutors and defence lawyers answered that the harshness of punishment was a reason for the low conviction rate in the Women and Children Tribunals.⁶⁴¹ On the contrary, they said the nature

⁶³¹ Naznin and Sharmin (2015) p.18

⁶³² Naznin and Sharmin (2015) p. 42

⁶³³ Justice Audit Bangladesh (2016c) column J cf. column M

⁶³⁴ Women's Committee (2015a) paragraph 14 c)

⁶³⁵ Human Rights Watch (2020) p. 50-51

⁶³⁶ Malik (2004) in Naznin and Sharmin (2015) p. 33

⁶³⁷ Malik (2004) in Naznin and Sharmin (2015) p. 33

⁶³⁸ Huda (2020c)

⁶³⁹ Tania (2007) p. 229

⁶⁴⁰ Odhikar (2021)

⁶⁴¹ Naznin and Sharmin (2015) p. 48

of provisions regarding gender-based violence were effective, as the mandatory death sentence left no alternative before the judges.⁶⁴²

To find the reasons behind the low conviction rate in the Women and Children tribunals, the BRAC researchers asked eight judges, six public prosecutors and seven defence lawyers to give affirmative or negative answers to their eight hypotheses.⁶⁴³ The hypotheses were that survivors filing false cases, lack of evidence, out of court settlement, weak police investigations, technicalities of law, dissatisfactory role of prosecution lawyers and harshness of punishment under the WCA contributed to the low conviction rate in violence against women cases.⁶⁴⁴ 21 of the respondents believed that false cases contributed to the low conviction rate, 19 lack of evidence, 19 out of court settlement, 16 weak police investigation, 12 case backlog, 9 technicalities of law, 7 dissatisfactory role of prosecution lawyers, 6 harshness of punishment under the 2000 Act.⁶⁴⁵ This suggests that at least false cases, lack of evidence, the parties choosing out of court settlements and weak police investigation contributed to low conviction rates. Research on rape judgements from the WCT has found that almost all cases where the survivor reported the rape more than three days after the incident, ended in acquittal.⁶⁴⁶

The lack of evidence was explained by doctors fabricating medical reports after bribes, women victims being harassed during the medical examination, lack of female doctors to do the medical report and doctors failing to meet before the court.⁶⁴⁷ For offences in Dhaka, witnesses could be unreachable because they did not have a permanent address.⁶⁴⁸ This shows how much weight the respondents gave medical evidence and witness statement, and how little weight they give the survivors' testimony or circumstantial evidence. One of my interviewees emphasised how domestic violence survivors' case depended on physical marks like bruises on their body.⁶⁴⁹

The majority of the respondents to the 2015 BRAC study also found that public prosecutors were not doing a sufficient job; they lacked education or experience, were not putting in effort unless there was political backing or a NGO involved, did not get sufficient time for the

⁶⁴² Naznin and Sharmin (2015) p.48

⁶⁴³ Naznin and Sharmin (2015) p. 57

⁶⁴⁴ Naznin and Sharmin (2015) p. 57

⁶⁴⁵ Naznin and Sharmin (2015) p. 57

⁶⁴⁶ Huda (2021)

⁶⁴⁷ Naznin and Sharmin (2015) p. 44-45

⁶⁴⁸ Naznin and Sharmin (2015) p. 61

⁶⁴⁹ Interview with BLAST staff

preparation of the case, and some even said that they seemed “*reluctant about the case unless money is there.*”⁶⁵⁰

Based on this information, the tribunals are not impartial, held in a timely manner, gender sensitive, or provide adequate remedies to the survivors.⁶⁵¹

6.3.3 Conclusion

I have found that neither the Magistrate Courts or the Women and Children Tribunals fulfil the women’s right to have their cases heard in a timely and gender-sensitive manner. I didn’t have enough information to assess whether the Magistrate Court takes impartial decisions. To my knowledge, the government does not fulfil its obligations to waive the fee for the poor in cases under DVA. Referrals from the Magistrate Court to the Family Courts derive survivors’ the chance to get remedies for the violence, and I would recommend the government to make an impact assessment of whether different courts could deal with domestic violence cases. The Women and Children Tribunals are partial and rely too much on medical evidence and too little on the testimony of the survivor. The conviction rate is so low that it suggests women don’t have access to adequate remedies through them.

6.4 Public legal aid services

The government is recommended to ensure access to “*free*” or “*low cost*” legal aid to domestic violence survivors.⁶⁵²

A domestic violence survivor can file a case under the Domestic Violence Act at the Magistrate’s Court, or report a breach of protection order, without a lawyer.⁶⁵³ Still, legal aid can be very beneficial since the police and the courts tend to take a case more seriously if the domestic violence survivor is aided by a lawyer.⁶⁵⁴ Additionally, many have difficulties filing a case with the court on their own.⁶⁵⁵

The Legal Aid Services Act from 2000 established a National Legal Aid Services Organisation (NLASO), and district legal aid offices (DLAOs) have been established in every district to provide legal aid.⁶⁵⁶ The DLAOs are state-sponsored, and provide free legal

⁶⁵⁰ Naznin and Sharmin (2015) p. 46

⁶⁵¹ Women’s Committee (2015a) paragraph 14 d)

⁶⁵² Women’s Committee (2017) paragraph 40 c)

⁶⁵³ Domestic Violence Rules section 8 and 9

⁶⁵⁴ Human Rights Watch (2020) p. 39

⁶⁵⁵ Justice Audit (2018) no. 68

⁶⁵⁶ BIGD BRAC University (2021b) p. 23

advice, representation and mediation to the disadvantaged, especially women.⁶⁵⁷ Women can be helped to seek criminal or civil remedies for acts of domestic violence.⁶⁵⁸ Digitally, the DLAOs are accessible as they can be reached on a hot line, social media or their website.⁶⁵⁹ Enforcement officers and non-governmental organisations also refer domestic violence survivors to the DLAOs.⁶⁶⁰

Applications for government legal aid are assessed after a protocol,⁶⁶¹ and the financial situation of the domestic violence survivor is a determining criterion.⁶⁶² Therefore, they risk getting their applications rejected. In a case study from 2021, that followed 12 domestic violence survivors, six cases were referred to DLAO.⁶⁶³

Several of the informants had referred clients to DLAOs, or had clients referred to them from DLAOs.⁶⁶⁴ DLAOs have a close working relationship with non-governmental organisations,⁶⁶⁵ which implies that they are believed to provide access to justice.

DLAOs seem to be providing free or low-cost legal aid to domestic violence survivors. Based on the limited information I have, I cannot conclude whether the DLAOs services are sufficient to adhere with the recommendation to provide free or low-cost legal aid.

6.5 Protection services

In this section, I explore whether the protection services fulfil Bangladesh's obligations. The government of Bangladesh is obliged to provide domestic violence survivors "*accessible, affordable and adequate services to protect women from gender-based violence.*"⁶⁶⁶ Fear of retaliation from the husband or his family, and therefore lack of protection, can stop survivors from filing a case.⁶⁶⁷

6.5.1 One Stop Crisis Centres

According to numbers from the Human Rights Watch in 2020, there are nine

⁶⁵⁷ BIGD BRAC University (2021b) p. 23

⁶⁵⁸ BSS News (2019)

⁶⁵⁹ Manusher Jonno Foundation (2021)

⁶⁶⁰ Huda (2016) p. 38 and BIGD BRAC University (2021b) p. 65

⁶⁶¹ Chowdhury (2012) p. 9

⁶⁶² BIGD Brac University (2021b) p. 65

⁶⁶³ BIGD Brac University (2021b) p. 65

⁶⁶⁴ Interview with BLAST staff

⁶⁶⁵ BIGD Brac University (2021b) p. 65

⁶⁶⁶ Women's Committee (2017) paragraph 26 b) ref Women's Convention paragraph 2 e)

⁶⁶⁷ Justice Audit (2016a) no. 12

One Stop Crisis Centres (OCCs) in Bangladesh today. ⁶⁶⁸ The centres are run by the government through the Ministry of Women and Children Affairs and located at the Medical College Hospitals. ⁶⁶⁹ The purpose of the centres is to provide all required services for women victims of violence at one place: including health care, police assistance, DNA test, social services, legal assistance, psychological counselling, and shelter services. ⁶⁷⁰ This is in line with recommendations from the Women's Committee. ⁶⁷¹

Unfortunately, many are not aware of the centres' existence or choose not to seek the centres for help in cases of violence from husband or in-laws. When asked what they would advise someone who had been hit by husband or in-laws, but not seriously injured, in 2018, only 0,01 % of the respondents said they would refer the victim to One Stop Crisis Centre. ⁶⁷² If the injury were serious, 0,1 % of the respondents said they would refer the victim to the One Stop Crisis Centre. ⁶⁷³

Even where the victims reach the OCCs, the numbers show that the centres are unsuccessful in providing legal assistance. The Ministry of Women and Children Affairs' own statistics show that the OCCs have helped 46 109 clients in total. These clients have filed a total of 12 921 legal cases up to March 2021, but only 175 cases ended with a penalty. ⁶⁷⁴

6.5.2 One-Stop Crisis Cells

There are around sixty One-Stop Crisis Cells at District Sadar Hospitals and Upazila Health Complexes in Bangladesh. ⁶⁷⁵ The cells are spread throughout the country, and their aim is to provide information on where women survivors of gender-based violence can seek health care services, police assistance, legal advice and other services. ⁶⁷⁶

6.5.3 Victim support centres

The Dhaka Metropolitan Police runs victim support centres in co-operation with non-governmental organisations. Today, there are eight victim support centres in Bangladesh. ⁶⁷⁷ In

⁶⁶⁸ Human Rights Watch (2020) p.32

⁶⁶⁹ Ministry of Women and Children Affairs (2014) p. 27

⁶⁷⁰ Ministry of Women and Children Affairs (2014) p. 27

⁶⁷¹ Women's Committee (2015a) paragraph 17 f)

⁶⁷² Justice Audit (2018) no. 42

⁶⁷³ Justice Audit (2018) no. 43

⁶⁷⁴ Multi-Sectoral Programme on Violence Against Women Ministry of Women and Children Affairs (2021)

⁶⁷⁵ Ministry of Women and Children Affairs (2014) p. 27

⁶⁷⁶ Ministry of Women and Children Affairs (2014) p. 27

⁶⁷⁷ Human Rights Watch (2020) p. 32

principle, they offer shelter for up to five days,⁶⁷⁸ but in practice they often don't allow stays beyond one night.⁶⁷⁹ In addition to safe shelter, the centres also offer medical assistance, counselling, help with the first information report and legal assistance.⁶⁸⁰

6.5.4 Shelters

The Domestic Violence Act obliges service providers to arrange for the victim to be sent to a shelter home.⁶⁸¹ Additionally, shelter homes are obliged to provide shelter upon request of the aggrieved person or on her behalf.⁶⁸²

The government runs seven Safe Custody Homes for children and women who have been subject to gender-based violence and have a case pending before the court.⁶⁸³ The safe custody homes are in six different divisions, and two of the homes are in Dhaka division. Each home has 50 beds. In addition to housing, the homes give support for safe accommodation, education, healthcare, and rehabilitation.⁶⁸⁴ Women can stay there for up to six months, with up to two children. The Safe Custody Homes require the women to get a court order to stay there.⁶⁸⁵

There are also several safe homes run by different NGOs that provide opportunities for long-term shelter.⁶⁸⁶ The Human Rights Watch estimated that there must be around 13 long-term shelters, including the safe custody homes.⁶⁸⁷ Some of these shelters have criteria for staying there, such as only accepting victims of specific forms of violence.⁶⁸⁸

In my interviews, the key informants emphasised that the lack of shelters or the distance to them made it hard to find a safe place for the domestic violence survivors. Often, they tried finding safe housing in the survivors' network.⁶⁸⁹

⁶⁷⁸ Dhaka Metropolitan Police Women Support & Investigation Division (n.d.a)

⁶⁷⁹ Human Rights Watch (2020) p. 32

⁶⁸⁰ Dhaka Metropolitan Police Women Support & Investigation Division (n.d.b)

⁶⁸¹ Domestic Violence Act section 7 (2) c)

⁶⁸² Domestic Violence Act section 8

⁶⁸³ Department of Social Services (2021). See WCA section 31

⁶⁸⁴ Department of Social Services (2021)

⁶⁸⁵ Department of Social Services (2021)

⁶⁸⁶ BLAST (2020) p. 7

⁶⁸⁷ Human Rights Watch (2020) p. 31

⁶⁸⁸ Human Rights Watch (2020) p. 11

⁶⁸⁹ Interview with BLAST staff

6.5.5 Conclusion

There are not sufficient long-term shelters for domestic violence survivors in Bangladesh, and there is too little awareness of the one-stop-crisis centres and cells for the government to fulfil its obligations.⁶⁹⁰ For women to have access to these shelters and centres, there needs to be more information available to domestic violence survivors. There should also be more shelters.

6.6 Social protection

The Women's Committee recommends giving financial aid to survivors of gender-based violence.⁶⁹¹

The Ministry for Social Welfare offers a small allowance of 300 taka a month for widows, deserted and destitute women that fulfil certain criteria.⁶⁹² This amount cannot cover living costs for a month and is just above the minimum wage for one day's work.⁶⁹³ Since women cannot trust that they will get enough financial aid to survive, the financial aid is not sufficient.

6.7 Government and private helplines

There are several helplines available in Bangladesh. The Ministry of Women's Affairs offer a helpline specially for sexual and gender-based violence.⁶⁹⁴ Additionally, there is the national emergency service helpline run by the Bangladeshi police.⁶⁹⁵ The national emergency service helpline received 769 calls regarding gender-based violence only between 26 March and 11 April 2020.⁶⁹⁶ However, BLAST has noted that the operators often don't have adequate training to provide referral services to the callers.⁶⁹⁷

⁶⁹⁰ Women's Committee (2017) paragraph 26 b) ref Women's Convention article. 2 e)

⁶⁹¹ Women's Committee (2015a) paragraph 16 b), Women's Committee (2017) paragraph 40 c)

⁶⁹² Social Security Policy Support Programme (2021)

⁶⁹³ The Daily Star staff correspondent (2021)

⁶⁹⁴ BLAST (2020) (internal document) p. 5-6

⁶⁹⁵ BLAST (2020) (internal document) p. 5-6

⁶⁹⁶ Kamal (2020)

⁶⁹⁷ Interview with BLAST staff

6.8 Conclusion

This study of the barriers for women's access to penal remedies and protection mechanisms, shows that there are severe shortcomings of state actors' implementation of national laws and the obligations under the Women's Convention on the local level.⁶⁹⁸

Among the police, lack of gender sensitivity, corruption and faulty investigation appear to be the main barriers. In the courts, the long waiting time and low conviction rates in gender-based violence cases impede women's access to remedies. The Magistrates' Courts seem unwilling to deal with domestic violence cases at all. Although the initiative to appoint enforcement officers is applaudable, it needs to be followed by a budget for the enforcement officers to fulfil their obligations. There needs to be more protection services and more information about them for the state to fulfil their obligations. The women do not have the rights to any social protection to secure livelihood if their husbands leave them because of the case.

Many of these barriers, especially with case handling time, lack of gender-sensitivity and lack of enforcement officers and protection services, could be mitigated with more resources and accountability systems.

7 Cultural conceptions inhibiting women's access to penal remedies for or protection against further or potential domestic violence

In this section I explore cultural conceptions that may inhibit women domestic violence survivors' access to penal remedies or protection.⁶⁹⁹ This is to address cultural barriers for women's access to penal remedies or protection against domestic violence, and barriers to the implementation of the Women's Convention.⁷⁰⁰

7.1 Legitimation of domestic violence

Statistics from 2011, found that 32.5 % of Bangladeshi women aged 15 to 49 thought it was acceptable for a husband to beat his wife if she burnt the food, argued with him, went out without reasons, neglected the children or refused to have sex with him.⁷⁰¹

⁶⁹⁸ Women's Convention article 2 c), 2 e), Women's Committee (2015a) paragraph 14 c) and d), Women's Committee (2017) paragraph 24 b), 26b)- c)

⁶⁹⁹ Maranlou (2014) p. 137-138

⁷⁰⁰ Women's Convention article 2 f), article 5 a), Women's Committee (2017) paragraph 7, paragraph 34

⁷⁰¹ Bangladesh Bureau of Statistics (2019) p. 161 with further references

Mannan, in field research in rural Bangladesh in 2002, found that the underlying explanation for the abuse of women was husbands perceived rights to control their wives.⁷⁰² Among his respondents, over 75 % of the women respondents thought wife-beating would be the “right” form of behaviour, if women had failed to obey her husband or made a great mistake.⁷⁰³

Hossain and Sumon identify patriarchy as a cause of domestic violence in an analysis from 2013.⁷⁰⁴ They describe Bangladesh as a patriarchal society, where “*oppression and subordination by males over females is the common feature (...) women’s position, prestige, power, etc. are generally determined and dominated by males.*”⁷⁰⁵

Rahman examined domestic violence from a criminological perspective in three different slums in Dhaka in 2019. He found that one of the reasons physical marital violence was so common was that both husband and wife copied what they had seen.⁷⁰⁶ This included the perception that women were subordinate to men and violence justifiable if she did not follow her husband’s wishes.⁷⁰⁷ This research underscores the theory that domestic violence is a manifestation of the patriarchal family structures that empower men and suppress women.

Several of the informants I interviewed for the purpose of this thesis, emphasised how domestic violence was embedded in all social classes in Bangladesh.⁷⁰⁸ Even highly educated women come to BLAST to seek mediation for domestic violence.⁷⁰⁹

These studies demonstrate that women’s inequality in the family legitimise domestic violence in Bangladesh. This can again inhibit domestic violence survivors from protesting against domestic violence.

7.2 Social stigma

A 2015 BBS and UNFPA report found that 72,6 % of women victims of domestic violence never told anyone.⁷¹⁰ Some of the most common reasons for not telling anyone was “(..)

⁷⁰² Mannan (2002) p. 5

⁷⁰³ Mannan (2002) p. 18

⁷⁰⁴ Hossain and Sumon (2013) p. 82

⁷⁰⁵ Hossain and Sumon (2013) p.79

⁷⁰⁶ Rahman (2019) p. 109

⁷⁰⁷ Rahman (2019) p. 109

⁷⁰⁸ Interview with BLAST staff

⁷⁰⁹ Interview with BLAST staff

⁷¹⁰ BBS and UNFPA (2015) p. xviii

*concern about family honour (15.6%) (..) and shame or embarrassment (7.7%).*⁷¹¹ Women who take a domestic violence case to court are stigmatised, and this prevent survivors from reporting their case.⁷¹² There prevails an idea that women who take a domestic violence case to court are bad women.⁷¹³

These reports show that fear of social stigma on themselves or the family scare women from claiming their rights.

7.3 Fear of divorce

If a domestic violence case reaches the formal justice system, the husband will in most cases file for a divorce.⁷¹⁴ Therefore, fear of divorce can keep women from filing a case and therefore be a barrier to penal remedies or protection mechanisms.

Many women fear the social and economic consequences of a potential divorce.⁷¹⁵ After a divorce, women are less likely to remarry than men, they lose face, and it can even get harder for their sisters to find husbands.⁷¹⁶ Additionally, women divorcees face considerable economic hardship.⁷¹⁷ After Muslim laws, women normally only have a right to maintenance for 90 days after the divorce.⁷¹⁸ Equal division of property upon divorce is not recognized by Muslim, Christian nor Hindu laws, nor is equal division of property upon divorce.⁷¹⁹

The fear of divorce can have dire consequences for child brides. There is an increased risk for domestic violence for girls who are married before they turn 18 years old.⁷²⁰ After international human rights, child marriages should “*have no legal effect*”, or be nullified.⁷²¹ Despite advocacy from the women’s movement, the Child Marriage Restraint Act 2017 does not stipulate that child marriages should be nullified or invalid.⁷²² This must be seen in

⁷¹¹ BBS and UNFPA (2015) p. xix

⁷¹² Huda (2016) p. 38

⁷¹³ Masud (2014)

⁷¹⁴ Huda (2016) p. 28 and interview with BLAST staff

⁷¹⁵ Interview with BLAST staff

⁷¹⁶ Khaleque (2013) p. 2

⁷¹⁷ Mannan (2002) p. 17-18 and Human Rights Watch (2012) p. 51-52

⁷¹⁸ Human Rights Watch (2012) p. 39

⁷¹⁹ Human Rights Watch (2012) p. 5

⁷²⁰ Yount et al (2016) p. 1822

⁷²¹ CEDAW article 16 (2)

⁷²² Citizen’s Initiative on CEDAW Bangladesh (2010) p. 61, Yasmin (2020a) p. 31

connection with the government of Bangladesh's reluctance to interfere with family laws.⁷²³ The family laws regulate the validity of marriages and none of them ban child marriages or state that child marriages are invalid.⁷²⁴ Child brides must therefore endure the full divorce procedure to get out of the marriage.⁷²⁵

The social stigma on divorcees, and the family laws not providing economic protection to divorcees, can stop women from speaking up about the domestic violence they face.

7.4 Domestic violence is viewed as a personal matter

The 2020 Human Rights Watch report noted that women victims and their families wanted to keep domestic violence within the family as a private matter.⁷²⁶

7.5 Dowry demands are accepted

Dowry has become a widespread custom. In the household survey by Justice Audit, 20,1 % of the respondents said that demands for dowry happened regularly in the neighbourhood and 22,9 % that it happened sometimes.⁷²⁷ This constitutes and leads to domestic violence.

7.6 Lack of legal empowerment

Lack of legal empowerment, here referring to women domestic violence survivors' ability to use the legal system to take control over their lives,⁷²⁸ constitute a barrier to remedies against domestic violence.

When asked what advice they would give someone who were seriously injured after domestic violence, less than 13 % of the selection said they would advise to go to police, 1,15 % to go to the Courts and 0,1 % to go to One Stop Crisis Centre.⁷²⁹ The 2015 BBS and UNFPA report found that 72,6 % of the women victims of domestic violence never told anyone,⁷³⁰ and only 1,1 % sought help from the police.⁷³¹ The main reasons for not telling anyone was *"(..)they did not consider it necessary to report it."*⁷³² This implies that women do not think of an act of domestic violence as a right violation with legal remedies.

⁷²³ Wadud (2021) p. 256

⁷²⁴ Yasmin (2020a) p. 27, Zahur (2014) p. 618- 619, Christian Marriage Act section 19, Dissolution of Muslim Marriages Act section 2 (vii)

⁷²⁵ Yasmin (2020a) p. 31

⁷²⁶ Human Rights Watch (2020) p. 27

⁷²⁷ Justice Audit (2018) nbr. 29

⁷²⁸ Golub (2003) p. 25

⁷²⁹ Justice Audit Bangladesh (2018) nbr. 43

⁷³⁰ BBS and UNFPA (2015) p. xviii

⁷³¹ BBS and UNFPA (2015) p. xix

⁷³² BBS and UNFPA (2015) p. xix

Another indicator that women lack legal empowerment, is that they aren't aware of the laws, or their remedies.⁷³³ The 2015 study on the implementation of the DVA found that there was a lack of awareness about the Act among the domestic violence survivors.⁷³⁴ The 2015 BRAC study on the Nari-O-Sishu Nirjatan Damain Ain also found that justice was hindered because the survivor did not understand the provisions and did what their lawyers asked them to do.⁷³⁵ A first step to improve survivors' access to penal remedies and protection mechanisms, is to inform them about their rights.

7.7 Conclusion

The cultural barriers to penal remedies and protection are especially that domestic violence is legitimised in society, misplaced social stigma on women who report domestic violence or are divorced, and that domestic violence is viewed as a private matter. Additionally, many women domestic violence survivors lack empowerment to protest the domestic violence.

8 BLAST's use of legal empowerment activities to provide domestic violence survivors access to protection mechanisms and penal remedies

In this chapter, I explore the different legal empowerment activities BLAST undertakes that provides women access to penal remedies for or protection mechanisms against domestic violence on the national or local level. The chapter explores whether BLAST bases its work on its understanding of the legal needs of domestic violence survivors. The aim is to see whether legal aid must be complemented by other legal empowerment activities to provide access to protection mechanisms and penal remedies for domestic violence survivors. Legal aid is here understood in a limited sense, as advice and litigation.

8.1 Disseminating rights information and legal advice

BLAST conducts a wide range of (mostly project-based) community programs to spread awareness about rights and remedies. These include courtyard meetings held in low-income rural areas and in urban slums and informal settlements. The majority of these engage women community members. As many individuals are illiterate, BLAST has used oral presentations like songs or theatre to convey information about the law and remedies.⁷³⁶

During the Covid-19 related lockdown, as physical meetings were cancelled or moved to online platforms and there was an increasing risk of domestic violence, BLAST expanded

⁷³³ Interview with BLAST staff, Yasmin (2020c) in Prothom Alo (2020)

⁷³⁴ Huda (2016) pp. 39, 60

⁷³⁵ Naznin and Sharmin (2015) p. 77

⁷³⁶ BLAST (2017) p. 19

their use of media to disseminate rights information.⁷³⁷ For example, they broadcast informational videos and sound clips with information on where to seek help on television, radio and social media.⁷³⁸ They also disseminated posters with helpline numbers through various social media.

One of their innovative ideas was to provide general rights information and individual legal advice using a mobile application called *Sromik Jigyasha*.⁷³⁹ Originally, the mobile application provided information on workers' rights to garment workers, but this was extended to domestic violence issues during the pandemic.⁷⁴⁰

8.1.1 Courtyard meetings

Courtyard meetings, also called issue-raising meetings or dialogue sessions, are meetings where the target group are invited to share their issues or questions in a safe forum. These issues are not necessarily of a legal nature.

Like the name suggests, it is often held in a courtyard, but BLAST moved the format to Zoom during the Covid-19 pandemic. I joined in a courtyard meeting through BLAST's PRiTIE project, with women from an area in Dhaka.⁷⁴¹ Lawyers, paralegals and project officers with non-law backgrounds from BLAST were present. From the community, there were women from different social classes. Women from the community with economic needs were compensated for their time and travel cost as an incentive to join the meeting. Initially, BLAST stressed that the women were free to raise all issues they faced or questions they had. Since the meeting was quite informal, the women had the courage to share various issues they faced. One of the issues were of harassment on the way to work. Both BLAST staff and the other women started discussing possibilities for what they could do in such situations. Another woman raised issues of domestic violence and was advised to seek mediation. An important aspect of these courtyard meetings is that the BLAST staff comes to the community, instead of community members having to come to the different BLAST clinics. This removes the gap between the community and the BLAST staff and removed the cost and time barriers to seek help at the clinic. Additionally, the women can raise issues of a more social or economic nature and are encouraged to share and discuss courses of action.⁷⁴²

⁷³⁷ Legal Empowerment Network et al (2021) p.48

⁷³⁸ Legal Empowerment Network et al (2021) p.48

⁷³⁹ Sromik Jigyasha is Bangla for "Worker's queries"

⁷⁴⁰ Legal Empowerment Network et al (2021) p. 38-39

⁷⁴¹ Courtyard meeting through the PRiTIE project 19 November 2021

⁷⁴² Golub (2003) pp. 25-26

8.2 Paralegals

BLAST trains paralegals as part of its corework under some of their projects. Training paralegals from communities is a trademark of a legal-empowerment approach.⁷⁴³ Paralegals can help collect information, facilitate courtyard meetings, organise the community, disseminate rights information, give referrals, provide legal advice, and assist survivors with accompanying them or assisting with communications to the police or in the courts. Paralegals are in some cases selected from a target group a project are trying to reach, and in others from new law university graduates. They are selected on a basis of age limit up to 40 years, willingness to volunteer and support the community members and a requirement of education minimum to 8th grade.⁷⁴⁴

Paralegals may also be able to relieve enforcement officers of some of their responsibilities under the Domestic Violence Act. If field workers from non-governmental organisations are trained in the Domestic Violence Act and the rules, they can aid domestic violence survivors in filing a case before the Magistrate's Courts.⁷⁴⁵ It is not required to be a trained lawyer to aid the survivor in filing a case before the Magistrate's Court, and paralegals can be better equipped than many lawyers to provide psycho-social support.

8.3 Income-generating training

Under one of their projects, BLAST co-operated with another non-government organisation to provide income-generating training.⁷⁴⁶ The aim of the project was to provide access to justice for urban poor, particularly women, and to that end contribute towards social justice and reducing poverty.⁷⁴⁷ Income-generating training to reach a goal of providing access to justice is in line with a legal empowerment approach that sees the connection between poverty and access to justice.⁷⁴⁸

8.4 Capacity building of the law enforcement

Through the Citizens Initiative on Domestic Violence, BLAST has prepared and conducted trainings on the laws regarding gender-based violence and the role of the police.⁷⁴⁹ The biggest challenge in training of the police is lack of resources; the non-governmental organisations cannot reach everyone, and the police officers don't carry the same

⁷⁴³ Golub (2003) p. 26

⁷⁴⁴ Grant Application of ELM p. 14 (internal document)

⁷⁴⁵ Hossain in Prothom Alo staff correspondent (2020)

⁷⁴⁶ ASROI completion presentation (internal document)

⁷⁴⁷ ASROI completion report p. 2 (internal document)

⁷⁴⁸ Commission on the Legal Empowerment of the Poor (2008) p. 25

⁷⁴⁹ Interview with BLAST staff

responsibilities for a long time.⁷⁵⁰ BLAST is currently in dialogue with different training institutes to incorporate gender sensitisation training in the training of law enforcement personnel.⁷⁵¹

Initially, the Citizen's Initiative against Domestic Violence, of which BLAST is a founding member and current Secretariat, also trained the enforcement officers in co-operation with the Ministry of Women's Affairs. BLAST provided a curriculum, but the enforcement officers lacked logistical support to attend the trainings. It was therefore often too difficult for them to attend these trainings.⁷⁵²

8.5 Litigation

Women survivors of domestic violence can apply to BLAST for free litigation support, provided by BLAST in-house staff or one of their 2,600 panel lawyers across the country.⁷⁵³ The applications are assessed on a basis of need, BLAST's capacity, and the survivors' ability to obtain legal aid elsewhere, for example from district legal aid offices.

From 01.01. 2020 to 13.12.2021, BLAST lawyers filed 67 cases through litigations under the Domestic Violence Act alone.⁷⁵⁴

However, only a minority of the cases regarding domestic violence are filed under the Domestic Violence Act. In most cases regarding dowry violence, the case is filed under the Suppression of Violence against Women and Children Act, and in some domestic violence cases the case is first filed under the Family Laws Ordinance to ensure that the women get financial relief.⁷⁵⁵

8.6 Referrals to protection services

BLAST does not have its own protection services such as shelters but cooperates with both government and non-governmental organisations who have them.⁷⁵⁶ Many of the BLAST staff I interviewed had referred domestic violence survivors to shelters, and where necessary also accompanied them there and followed up on their situation.⁷⁵⁷

⁷⁵⁰ Interview with BLAST staff

⁷⁵¹ Interview with BLAST staff

⁷⁵² Interview with BLAST staff

⁷⁵³ Interview with BLAST staff

⁷⁵⁴ Numbers elicited from the Case Management System (CMS) (internal document)

⁷⁵⁵ Interview with BLAST staff

⁷⁵⁶ BLAST (2020) p. 7 (internal document)

⁷⁵⁷ Interview with BLAST staff

8.7 Out-of-court advocacy

In this subsection I explain how BLAST uses out-of-court advocacy to improve domestic violence survivors' access to penal remedies or protection. As a legal empowerment strategy, advocacy for legal reform should be based on the needs of the disadvantaged population, in this case the domestic violence survivors.⁷⁵⁸ It should also include advocacy for better implementation of just laws.⁷⁵⁹

8.7.1 Advocacy for legal and institutional reform under the Suppression of Violence against Women and Children Act

In this sub-section I explore how BLAST advocates for legal and institutional reform under the Suppression of Violence against Women and Children Act, and whether this is based on the needs of the gender-based violence survivors and with an aim to secure better implementation of the law.⁷⁶⁰

BLAST and sixteen other non-governmental organisations formed the Rape Law Reform Coalition (the Coalition) in 2018.⁷⁶¹ The Coalition has identified ten key demands for legal and institutional reforms, including to gender sensitise the law enforcement, provide witness protection, and amend the laws in line with international human rights standards.⁷⁶²

The death of a 14-year-old girl as result of marital rape in the fall of 2020, inspired a public campaign to remove the exclusion of marital rape from the penal provisions.⁷⁶³ The Coalition was active in the public discourse and demanded that all forms of marital rape should be regarded as criminal offences.⁷⁶⁴ The rights activists argued that marital rape should be considered a crime, and that the criminal laws should be amended in line with the Constitution and international conventions.⁷⁶⁵ Members of the Coalition filed a public interest litigation regarding this, which is still pending hearing.⁷⁶⁶

⁷⁵⁸ Golub (2012) p. 9

⁷⁵⁹ Golub (2012) p. 23

⁷⁶⁰ Golub (2012) pp. 9, 23

⁷⁶¹ Rape Law Reform Coalition (n.d.)

⁷⁶² Rape Law Reform Coalition (n.d.)

⁷⁶³ Huda (2020d)

⁷⁶⁴ Tithila (2020)

⁷⁶⁵ Rape Law Reform (n.d)

⁷⁶⁶ See section 4.1.3

Around the same time, there were loud protests after another severe rape case, where the incident was filmed on social media.⁷⁶⁷ Arguably to calm some of the protesters who demanded “the highest punishment”, the government imposed the death penalty for all forms of single perpetrator rape, including for marital rape of girls under 13 years old.⁷⁶⁸ The Rape Law Reform Coalition argued that this change would not improve the women domestic violence survivors’ access to justice.⁷⁶⁹ The coalition members tried to move the focus to the structural barriers to justice for domestic violence survivors, such as stigma against rape survivors, discriminatory evidentiary rules, and lack of witness protection.⁷⁷⁰

8.7.1.1 Conclusion

The Coalition’s demands are based on the needs of the survivors, as identified through research.⁷⁷¹ They are also focused on barriers to the implementation of the laws.⁷⁷² Therefore, the advocacy under Rape Law Reform undertakes a legal empowerment approach.

8.7.2 The advocacy prior to the Domestic Violence Act and Rules

In this section I explore the advocacy prior to the Domestic Violence Act and Rules, and whether the legal reform was based on the needs of the domestic violence survivors or to secure implementation of the laws.⁷⁷³

In the early 2000s, Bangladeshi civil society took the initiative to draft a law to provide civil remedies for domestic violence.⁷⁷⁴ Part of the background was a 1995 survey conducted by Naripokkho in collaboration with WHO, that had found that mental, economic, and sexual domestic violence were widespread in the country, and an increasing number of reports of domestic violence.⁷⁷⁵ BNWLA, ASK and Bangladesh Mohila Parishad started to work to cover the legal gaps in protection against these types of violence.⁷⁷⁶ Together a number of these organisations ,including BLAST, formed the Citizens’ Initiative against Domestic Violence Bangladesh (the Initiative).⁷⁷⁷

⁷⁶⁷ Star Report (2020)

⁷⁶⁸Star Report (2020) , Huda (2020a)

⁷⁶⁹ Huda (2020c)

⁷⁷⁰ Huda (2020c)

⁷⁷¹ Huda (2020c) ref BLAST (n.d.c)

⁷⁷² Huda (2020c)

⁷⁷³ Golub (2012) pp. 9, 23

⁷⁷⁴ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁷⁷⁵ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁷⁷⁶ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁷⁷⁷ Interview with BLAST staff

Women's organisations utilised the reporting system under the Women's Committee to put additional pressure on the government. Several of them participated in the writing of a shadow report to Bangladesh's fifth periodic report and met at the Women's Committee's 653rd and 654rd meeting in 2004.⁷⁷⁸ Presumably based at least in part on the shadow report, Committee members expressed concern over the lack of domestic violence legislation, asked when domestic violence legislation would be enacted or welcomed the introduction of legislation on domestic violence.⁷⁷⁹ A representative from the Bangladeshi government argued that adequate remedies were already available to domestic violence survivors under the Suppression of Violence against Women and Children Act.⁷⁸⁰ However, the Suppression of Violence against Women and Children Act only provides imprisonment and fines as remedies.⁷⁸¹ Mahmuda Islam, from Women for Women and associated with Dhaka University at the time,⁷⁸² reported that academic circles and NGOs were putting pressure on the government to enact legislation to combat domestic violence, and that the government would act.⁷⁸³ Shahnaz Huda, affiliated with Dhaka University, explained that there was hope that the new Law Reform Commission and members from non-governmental organisations would put together a domestic violence law covering also sexual and mental abuse.⁷⁸⁴

In the concluding observations, the Committee called for the government to “*adopt specific legislation on domestic violence within a clear time frame, in order to ensure that women and girls who are victims of violence and sexual harassment have access to protection and effective redress, and perpetrators of such acts are effectively prosecuted and punished.*”⁷⁸⁵ This supported the demands that were initiated by the women's organisations.

Back in Bangladesh, the Initiative established a law drafting committee.⁷⁸⁶

The drafting committee consulted the Indian Protection of Women from Domestic Violence Act from 2005 as they were drafting the Domestic Violence Act.⁷⁸⁷ Additionally, they

⁷⁷⁸ Women's Committee (2004a) paragraph 17

⁷⁷⁹ Women's Committee (2004a) paragraph 20,37, 41

⁷⁸⁰ Women's Committee (2004a) paragraph 51

⁷⁸¹ See under “Suppression of Violence against Women and Children Act”

⁷⁸² Alston (2014) p. ix

⁷⁸³ Women's Committee (2004a) paragraph 26

⁷⁸⁴ Women's Committee (2004a) paragraph 49

⁷⁸⁵ Women's Committee (2004c) paragraph 242

⁷⁸⁶ Interview with BLAST staff

⁷⁸⁷ Interview with BLAST staff, Law Commission (2005) p. 5

consulted relevant laws from other countries, like Malaysia, but emphasised that the experiences of the Bangladeshi women formed the basis of the law.⁷⁸⁸ Some of the Indian lawyers who had practical experience with the law visited Bangladesh to cooperate with the Initiative. They explained what had worked and not in India, to make the Bangladeshi Domestic Violence Act implementable.⁷⁸⁹ One member from the law drafting committee explained that it is customary to be inspired by other South-Asian countries in the legislation process in Bangladesh.⁷⁹⁰ In addition to being the neighbouring country and sharing legal history, India has a very similar legal system to Bangladesh today with diverse family laws.⁷⁹¹

Both the Indian and the Bangladeshi Domestic Violence Act build on the Women's Convention.⁷⁹² However, the Bangladeshi Domestic Violence Act is not a mere copy of the Indian. The Bangladeshi DVA explicitly covers forms of domestic violence that are specially prevalent in Bangladesh, such as denying wives access to their dower or alimony.⁷⁹³ Since the Protection of Women from Domestic Violence Act in India was non-compoundable, all cases had to be led before the court, and it had led to husbands filing for divorce and sometimes more violence.⁷⁹⁴ Therefore, the Bangladeshi Domestic Violence Act was made compoundable so the survivor could opt to go for out-of-court mediation in appropriate cases.⁷⁹⁵

In the Initiative's draft, the DVA covered both divorcees and un-married couples.⁷⁹⁶

The then Minister of Women's Affairs, (and now Speaker) Shirin Sharmin Chaudhury, herself a lawyer, was very eager to enact a Domestic Violence Act, and supportive of the draft the coalition prepared.⁷⁹⁷ During the preparations, however, and after review by the Ministry of Law and Justice, divorced women and cohabitants were omitted from the scope of the Act.

⁷⁸⁸ Law Commission (2005) p.5

⁷⁸⁹ Interview with BLAST staff

⁷⁹⁰ Interview with BLAST staff

⁷⁹¹ Wadud (2021) p. 262 and Merry(2006) pp. 104-105, pp. 112- 113

⁷⁹² Chakraborty (2020) and Preamble to Domestic Violence Act (2010)

⁷⁹³ Domestic Violence Act section 3 d) iii

⁷⁹⁴ Interview with BLAST staff

⁷⁹⁵ Interview with BLAST staff

⁷⁹⁶ Hossain in Prothom Alo (2020)

⁷⁹⁷ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁷⁹⁸The draft passed the Parliament without any other significant changes and the Domestic Violence Act was enacted in 2010. ⁷⁹⁹

The Women's Committee welcomed the enactment. ⁸⁰⁰ The Committee' also recommended the government to ensure that survivors had “*access to immediate means of redress, rehabilitation and protection (..)*”⁸⁰¹

Initially, the lawyers faced many obstacles when they filed cases under the DVA. ⁸⁰²This led the Initiative to draft the Domestic Violence Rules, with provisions for forms and procedures. The Domestic Violence Rules passed the Parliament with substantial changes in 2013. ⁸⁰³

8.7.2.1 Conclusion

This case study shows that the advocacy behind the Domestic Violence Act and Rules was based on the legal needs of the domestic violence survivors. The advocacy was therefore a legal empowerment strategy. ⁸⁰⁴

8.7.3 Translation from international human rights to the Domestic Violence Act

In this sub-section I consider whether the Domestic Violence Act (DVA) was a process of translating the rights to civil remedies against domestic violence to the vernacular. ⁸⁰⁵

National women's organisations initiated the DVA, based on increased reports of all forms of domestic violence. Then they chose to involve the Women's Committee. This implies that the initiative was based on grassroot demands. The preamble states that the DVA was enacted to comply with Women's Convention and the Convention on the Rights of the Child, which either implies that the motivation was to implement these instruments or that the DVA got a certain legitimacy from the Women's Convention and the Convention on the Rights of the Child. Since the needs of the local domestic violence survivors was the starting point, the referrals to the international instruments were most likely intended to give the DVA legitimacy.

⁷⁹⁸ Compare Law Commission (2005) section 2 f) and DVA section 2 (8)

⁷⁹⁹ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁸⁰⁰ Women's Committee (2011) paragraph 19

⁸⁰¹ Women's Committee (2011) paragraph 20 a

⁸⁰² Interview with BLAST staff

⁸⁰³ Focus group discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar 3 November 2021

⁸⁰⁴ Golub (2012) pp. 9, 23

⁸⁰⁵ Merry (2006) pp. 5, 221

The drafting committee consulted relevant laws from other countries, including Malaysia, but emphasised that the local experiences and conditions provided the basis of the laws.⁸⁰⁶ Then the Drafting Committee was inspired by the Indian Domestic Violence Act, which was also enacted to comply with the international human rights framework and copied many parts from it. The definition of domestic violence is almost identical to the definition of violence in the Indian Domestic Violence Act, that the legislators consulted.⁸⁰⁷ Yet, the Domestic Violence Act was adapted to deal with types of economic violence specific to Bangladesh and made compoundable so the women could obtain their goals of staying in marriage.

The target group of the Domestic Violence Act was people related by marriage or kin. After the drafting committee submitted their draft to the government, divorcees and live-in partners were omitted from the legal protection under the act. “*Family*” was translated to people related by blood or marriage. This must be seen in connection with how few cohabitational couples there were in Bangladesh at the time, and the lack of social acceptance for this kind of relationship.⁸⁰⁸ The translation resulted in a limitation of the right to civil remedies for domestic violence, and the right to civil remedies were indigenised.⁸⁰⁹

8.7.3.1 Conclusion

While initiated to respond to the needs of the domestic violence survivors more than to implement international law, the Domestic Violence Act in practice serves to implement international law to a considerable degree. The drafters consulted both international law and laws from other countries. In its definition and scope, it refers to international law, but it has translated it to the context. Economic violence is specified to include dowry, and family is limited to only family by blood or marriage. This shows that the enacting of the DVA was a translation process.

8.7.4 Advocacy for better implementation of the laws

BLAST conducts extensive out-of-court advocacy with stakeholders like the office of the Inspector General of Police, the Police Academy, different police stations, and the Supreme Court (the offices of the Registrar, Supreme Court Legal Aid Committee, and Chief Justice) to improve women’s access to justice.⁸¹⁰ Recently, they demanded that the police

⁸⁰⁶ Law Commission (2005) paragraph 9

⁸⁰⁷ Protection of Women from Domestic Violence Act section 3

⁸⁰⁸ Joy (2010)

⁸⁰⁹ Merry (2006) p. 221

⁸¹⁰ Interview with BLAST staff

accommodated online filing of complaints of gender-based violence during the Covid-19 lockdown, and the demand was granted.⁸¹¹

8.8 Mediation

In this section I explore whether mediation offered by BLAST provide domestic violence survivors access to protection and empower them.

BLAST offers mediation, or *shalish*, to domestic violence survivors. The *shalish* is led by an officer who is trained in gender-sensitisation and the relevant laws, most often a woman.

Where nothing else is cited, section 8.8 is based on interview with BLAST staff.⁸¹²

8.8.1 Number of cases

BLAST received 330 applications for legal aid in domestic violence cases in 2020. Out of these, 123 cases were settled through mediation. 45 were referred to litigation, and 45 applications were dismissed. Applications were dismissed because the applicant withdraw her application, or stopped following up on the case because the case was solved in other ways or out of other reasons. There were 117 ongoing mediations at the end of 2020.⁸¹³

8.8.2 Initial contact

The domestic violence survivors who seek assistance from BLAST come from all spheres of society, but BLAST can only provide its full services based on a means and merits test. Many clients have either heard about BLAST through friends who have received legal aid from BLAST before, or they have been to legal aid camps or trainings with BLAST. As BLAST has been operating for many years, they have gained trust in society.⁸¹⁴

Most of the time, the domestic violence survivor comes to BLAST alone.⁸¹⁵ Most domestic violence survivors are women or girls. Here she is met by a staff member and initially allowed to talk about their situation without interruptions. This clarifies whether she wants a divorce or to continue the marriage.⁸¹⁶ This can take hours, and an important part of the staff's job is to decipher the important information.⁸¹⁷ Then she asks questions to identify the scope of the violence.⁸¹⁸ Sometimes the survivor does not know precisely what she wants to achieve by

⁸¹¹ Legal Empowerment Network et al. p. 57

⁸¹² See interview guide in appendix 6

⁸¹³ Numbers from BLASTs Case Management System given by head of legal cell 26 October 2021

⁸¹⁴ Interview with BLAST staff

⁸¹⁵ Interview with BLAST staff

⁸¹⁶ Interview with BLAST staff

⁸¹⁷ Interview with BLAST staff

⁸¹⁸ Interview with BLAST staff

contacting BLAST, but most times she wants the violence to stop and to continue their conjugal life peacefully.⁸¹⁹

After listening to the domestic violence survivor, the mediator informs the survivor about her rights within the marriage, and her legal options.⁸²⁰ Many of the clients were not aware of their rights prior to this meeting.⁸²¹

BLAST only offers mediation in compoundable cases, and only if the survivor prefers mediation over litigation.⁸²² One of the benefits of mediation is that it is confidential, which minimises the risk of escalating conflict and a divorce.⁸²³

In case of severe physical violence, the survivor is first and foremost encouraged to file a general diary with the police.⁸²⁴ In some cases regarding physical violence, the survivor is in dire need of financial support to cover her every day needs and she is also helped to file a case for maintenance with the family court.⁸²⁵ Cases of acid violence are dealt with in the formal justice system by panel lawyers who specialise in this kind of cases.⁸²⁶ If the woman needs a lawyer, either a BLAST staff lawyer takes the case, or she is referred to a panel lawyer or DLAO.⁸²⁷ In some cases, the women simply want counselling and advice on what to tell her husband.⁸²⁸ If the case is eligible for mediation, the survivor has to file an application for mediation.

8.8.3 Contacting the counterpart

If application for mediation is approved, BLAST sends an invitation letter by mail to the opposite party.⁸²⁹ The letter is in a welcoming tone, and it is an invitation, not a legal notice. In some cases, the letter itself causes the perpetrator to stop the domestic abuse.⁸³⁰

⁸¹⁹ Interview with BLAST staff

⁸²⁰ Interview with BLAST staff

⁸²¹ Interview with BLAST staff

⁸²² Interview with BLAST staff

⁸²³ Interview with BLAST staff

⁸²⁴ Interview with BLAST staff

⁸²⁵ Interview with BLAST staff

⁸²⁶ Interview with BLAST staff

⁸²⁷ Interview with BLAST staff

⁸²⁸ Interview with BLAST staff

⁸²⁹ Interview with BLAST staff

⁸³⁰ Interview with BLAST staff

If the party fails to respond or show up, BLAST sends up to three invitation letters before they take the case to court if the domestic violence survivor agrees. In many cases, taking the case to court means to file a case for dower or maintenance before the Family Courts.⁸³¹

To use a case study from Khulna division as an example, “*Rani*”⁸³² came to BLAST’s unit office in Khulna after hearing about BLAST from a panel lawyer. She told BLAST about the case and how her husband and in-laws had abused her and then told her to leave their home. BLAST sent an invitation letter for mediation to the opposite party. The opposite party did not respond to the first letter and did not show up at the time of mediation. BLAST sent a second letter, and the husband called BLAST to say he was feeling sick and could not come. After BLAST’s third letter, he showed up for mediation.⁸³³

8.8.4 Mediation sessions

In the mediation sessions, the mediator strives to create a welcoming environment for both parties.⁸³⁴ Since this is mediation, there is no burden of proof. There is therefore no pressure on the woman to prove her story or on the husband to defend himself. In most cases where the couple is from the middle class, the husbands show up to the mediation perhaps a little intimidated by the invitation.⁸³⁵ Other men come with a hostile attitude, and it takes time to change it.⁸³⁶

Sometimes, the party sends a representative to the mediation session. In such cases, the representative is told that they need the concerned person there for the sake of legitimacy and order.⁸³⁷ However, both parties have the option to bring a representative with them, and in some cases the mediator will use a third party to contact the counterpart.⁸³⁸

The session begins with an introduction from the mediator on what BLAST is, BLAST’s policies, and the course of the mediation sessions.⁸³⁹ They also inform the couple about the legal choices they have, and what the relevant laws say about their situation.⁸⁴⁰ Often, regardless of the couple’s educational background, this is the first time the husband hears about these laws.⁸⁴¹

⁸³¹ Interview with BLAST staff

⁸³² Rani is a pseudonym

⁸³³ Case study from JPR Half Yearly Technical Report July- December 2020

⁸³⁴ Interview with BLAST staff

⁸³⁵ Interview with BLAST staff

⁸³⁶ Interview with BLAST staff

⁸³⁷ Interview with BLAST staff

⁸³⁸ Interview with BLAST staff

⁸³⁹ Interview with BLAST staff

⁸⁴⁰ Interview with BLAST staff

⁸⁴¹ Interview with BLAST staff

Then the domestic violence survivor is encouraged to share her story of why she came to BLAST for help.⁸⁴² She shares information about the incidents that made her seek help at BLAST, and what she hopes the outcome of the mediation will be. The fact that the mediator most of the time is female, and the survivor can speak to her in private if she needs, help create an environment where the survivor can speak freely. The woman also gets to start by sharing her story. These measures are taken to reconstruct and reframe the existing power balance, by giving the woman the benefit of speaking first and having a female present. First after the domestic violence survivor has finished, the husband can speak and the dialogue starts.⁸⁴³ Both sides are heard in the process.⁸⁴⁴

The aim of the sessions is that the couple comes to an agreement themselves.⁸⁴⁵ The mediator only helps with amending it so it complies with the laws, or formulating the agreement they want.⁸⁴⁶

The mediation sessions can take place over several weeks, and often months. If there is a risk that the woman can be subject to more violence during the time of the mediation, the mediator refers the woman to shelters provided by the government or NGOs.⁸⁴⁷ They also encourage the woman to file a general diary at the police station, so it is ready.⁸⁴⁸ Cases referred by BLAST often gets priority.⁸⁴⁹

8.8.5 Agreement

Finally, the parties sign the agreement. This gives the agreement legitimacy, especially in rural areas, as people think the signature can be used against them.⁸⁵⁰

All agreements state that the parties can be held liable if they break it.⁸⁵¹ This provides incentive to respect the agreement, enhanced by BLAST's reputation to provide free litigation services.⁸⁵²

⁸⁴² Interview with BLAST staff

⁸⁴³ Interview with BLAST staff

⁸⁴⁴ Interview with BLAST staff

⁸⁴⁵ Interview with BLAST staff

⁸⁴⁶ Interview with BLAST staff

⁸⁴⁷ Interview with BLAST staff

⁸⁴⁸ Interview with BLAST staff

⁸⁴⁹ Interview with BLAST staff

⁸⁵⁰ Interview with BLAST staff

⁸⁵¹ Interview with BLAST staff

⁸⁵² Interview with BLAST staff

The content of the agreement varies from case to case. To use the same case study from Khulna as an example, Rani and her husband agreed that she could move back to her husband's home. They committed to cooperate with each other. Her husband committed to love and prioritise the children. He also committed not to impose any decision or torture his wife physically or mentally.⁸⁵³ The wife committed not to show any indecent manner. Both parties committed to be respectful of the conditions and agreed to be held liable if they were not. A month after, Rani told BLAST she was living peacefully with her husband and children.⁸⁵⁴

Since the violator signs a paper that says he will not commit further abuse and has the threat of litigation hanging over him if he breaks it, the agreement has much in common with a protection order under the Domestic Violence Act.⁸⁵⁵ Yet, the mediation allows the couple to solve their conflicts discretely, without losing face to society like they would in an open court case. The fact that the violator voluntarily signs the agreement, also adds to the legitimacy of the agreement. For the survivor, the mediation is a less costly alternative that is less likely to end in divorce. Additionally, she can add clauses of importance to her that does not have a legal nature but have a powerful and important emotional or social meaning in the agreement. An example is Rani's husband commitment to love and prioritise the children.

8.8.6 Follow-up of after reaching the agreement

BLAST cannot enforce the agreement by imposing penal sanctions directly.

Upon ending the mediation sessions, BLAST tells the domestic violence survivor to contact them again if they face further problems.⁸⁵⁶ They also leave the case open in the case management system for six months, but how they follow up the case varies from case to case. In sensitive cases, they follow it up with phone calls, letters and/ or physical visits.⁸⁵⁷ In the units, they invite all clients to a meeting every six months to review the mediation and its outcome.⁸⁵⁸

In addition to the follow up by the individual mediators and unit coordinators, BLAST has a Monitoring and Evaluation Cell at the Head Office in Dhaka. The monitoring cell follows up on 10 % of the cases settled in mediation, by choosing random cases from the case management system and checking up on them.⁸⁵⁹

⁸⁵³ Compare Domestic Violence Act section 14 a) and b)

⁸⁵⁴ Case study from JPR Half Yearly Technical Report July- December 2020

⁸⁵⁵ Compare Domestic Violence Act section 14 a) and b) and section 30

⁸⁵⁶ Interview with BLAST staff

⁸⁵⁷ Interview with BLAST staff

⁸⁵⁸ Interview with BLAST staff

⁸⁵⁹ Focus group discussion with Monitoring and Evaluation Cell 8 November 2021

They check up by physically visiting the beneficiaries and using a questionnaire to find out their experience with mediation. Each visit can take up to 90 minutes. In the questionnaire, the respondents have to respond to questions like “(..)Could you express what you wanted in the mediation session?

Are the conditions being maintained properly?

If no, mention the reason (i) Conditions are not being maintained by opponent

(ii) Maintenance is not provided regularly

(iii) Violence has not stopped yet

(iv) Money is not given according to condition

(v) Reconciled and later divorced

(..). ”⁸⁶⁰

8.8.7 Consequences of violating the agreement

If BLAST learns that an agreement has been breached, they discuss which step to take with the domestic violence survivor. In some cases, they contact the opposite party. Often, the next step is to file a case within the formal justice system. If it is a case of physical violence, they help the domestic violence survivor file a case with the police.⁸⁶¹ If it is a case of less severe physical violence or other types of domestic violence, they often file a case with the family courts for maintenance.⁸⁶² Sadly, the case handling time in both the criminal and the civil justice system is very long.⁸⁶³

8.8.8 Criticism of mediation in domestic violence cases

A study of legal aid providers of different organisations found that in some cases, the mediators would not tell the domestic violence survivors about all her legal options but immediately offer mediation.⁸⁶⁴ This is critical as it inhibits the women’s already limited agency.

I did not observe any mediations so I cannot verify the correctness of the interviews, but when asked open-ended questions most of the mediators I interviewed told me that they informed the survivors about all their legal options.⁸⁶⁵ The Monitoring and Evaluation Cell also ask the clients whether BLAST informed them of all legal options, when they interview random

⁸⁶⁰ See appendix 7

⁸⁶¹ Interview with BLAST staff

⁸⁶² Interview with BLAST staff

⁸⁶³ See section 6

⁸⁶⁴ Barr, Hassan and Islam (2014) p. 12 in Huda (2016) p. 28

⁸⁶⁵ Interview with BLAST staff

clients about their experience in dealing with BLAST.⁸⁶⁶ BLAST therefore takes measures to ensure that the survivor's agency is respected during the mediation.

8.9 Conclusion

My case study has found that BLAST undertakes various legal empowerment activities to ensure domestic violence survivors' access to protection and penal remedies, based on the needs of the domestic violence survivors. I can't conclude on whether it is *necessary* to complement legal aid with legal empowerment activities, but it seems to have many benefits. In the following I will discuss some of the benefits of the legal empowerment activities.

Legal empowerment activities are arguably more effective in overcoming legal, cultural and formal barriers to justice than legal aid alone.⁸⁶⁷ For example, income-generating training to be financially independent can mitigate the consequences of divorce and leave the women more willing to risk a divorce and protest about domestic violence. Providing rights-information, organising, and training the rights-claimants, enables them to demand the rights they already have and therefore also implement the laws. Training paralegals from the communities to aid domestic violence survivors on the preliminary stage lighten the burdens of the enforcement officers, but also of the lawyers. Training the people on the ground can also be a start to de-legitimise domestic violence and erase the cultural barriers to protection against and penal remedies for domestic violence. Additionally, it allows time for the lawyers to focus on the legal aspects of the case. Capacity-building of the law enforcement is necessary to make sure that they implement the laws.

BLAST's advocacy is informed by research to identify the needs of the gender-based violence survivors.⁸⁶⁸ It is also informed by international law and in particular the views of the Women's Committee, but in the sense that it uses the Women's Convention to strengthen its legal arguments and the Women's Committee to add extra pressure on the government. This can create legal reforms tailored to the needs of the rights-claimants.

The mediation BLAST provides has many benefits, if compared with the procedures for getting a protection order through the formal justice system. Through mediation, domestic violence survivors can get the perpetrator to agree to stop the violence, without filing a case and increase the risk for divorce. Her rights and agency are respected throughout the process. Initially, she gets to speak with a woman mediation officer if she prefers, who is trained in all the relevant laws, and choose based on her legal options that are presented to her. The mediation officer also informs both the survivor and the perpetrator about the laws at start of the mediation. During the mediation, the mediator takes measures to diminish or mitigate the underlying patriarchal structures and prevailing attitudes that inhibit women's agency and

⁸⁶⁶ Focus group discussion with Monitoring and Evaluation Cell 8 November 2021. See the Monitoring and Evaluation Cell's Questionnaire in Appendix 7.

⁸⁶⁷ See section 5, 6 and 7

⁸⁶⁸ BLAST (n.d.c.)

restore equality in the mediation sessions. The domestic violence survivor is allowed to speak first to explain why she sought BLAST for legal aid, the mediator is female and the survivor can leave the room with the mediator to speak in private. The survivor and the perpetrator make the agreement together, but the mediation officer makes sure it complies with the relevant laws. BLAST follows up the case to make sure that the woman is protected from further or potential violence and that the mediation respected women's agency.

9 Concluding reflections

This section has two parts. The first part is a summary and reflection of my main findings from the thesis. The second part consists of recommendations to policymakers and legal empowerment organisations.

9.1 Main findings and recommendations for further studies

This study aimed to explore the implementation of domestic violence survivors' rights to penal remedies and protection mechanisms on the international, national, and local levels, and to do so I had two research questions.

My first research question read; *How are domestic violence survivors' right to access penal remedies for or protection against further or potential domestic violence implemented in the formal justice system in Bangladesh today?* Based on my doctrinal legal analysis and empirical research, it can be concluded that there are several barriers to the implementation and domestic violence survivors' access to protection and penal remedies on the international, national and local level.⁸⁶⁹ The most important barriers were in the implementation of the laws on the local level. The quality of my findings was somewhat limited by lack of access to documents and informants from the state institutions. To better understand the implementation of women's rights by the state institutions on the local level, I would recommend further studies based on judgements and orders, case tracking, and interviews with state actors from the courts, police, health services and enforcement officers.

My second question read; *Are legal empowerment activities necessary to ensure women domestic violence survivors' access to protection or penal remedies against further or potential domestic violence?* By analysing BLAST's work, I found that their legal empowerment activities were suitable to improve domestic violence survivors' access to penal remedies and protection mechanisms.⁸⁷⁰ The mediation was a dispute resolution mechanism that respected women's agency and in practice implemented her right to protection from domestic violence. Further research on the impact of the legal empowerment activities is needed to measure

⁸⁶⁹ See section 3.5, 4.3,5.4, 6.7 and 7.7 for more detailed analyses

⁸⁷⁰ See section 8.9 for a more detailed analysis

whether and the extent to which they are necessary to ensure domestic violence survivors' access to penal remedies and protection.

9.2 Recommendations for policymakers and legal empowerment groups

My aim was that my research would be useful to inform policymaking in Bangladesh, and to inform organisations using legal empowerment strategies in and outside of Bangladesh. ⁸⁷¹

9.2.1 Recommendations for policymakers in Bangladesh

Based on the barriers I identified, I have the following recommendations for the policymakers in Bangladesh.

1. Amend the laws so they comply with international standards

The Domestic Violence Act should be amended to cover divorcees and cohabitational partners as well. All forms of domestic violence should be covered by the Suppression of Violence against Women and Children Act to avoid an unclear overlap with the Penal Code. Marital rape should be penalised. Witness protection legislation should be enacted. ⁸⁷²

2. Build the capacity of the law enforcement

Lack of gender-sensitivity among the police and the judges were barriers to women's access to penal remedies and protection mechanisms. ⁸⁷³As a starting point, all public officials in the formal justice system should be trained in the laws related to gender-based violence, gender sensitivity and women's lived experiences

3. Enact and enforce accountability mechanisms for the actors in the formal justice system

Allegations of negligence, corruption and lack of gender-sensitivity among the law enforcement agencies, and the survivors' subsequent lack of trust on law enforcement, was a barrier to penal remedies and protection mechanisms for women. ⁸⁷⁴ There should therefore be enacted and enforced accountability mechanisms under the DVA.

4. Provide accessible protection services for the domestic violence survivors

⁸⁷¹ See section 1.1.1 and 1.1.2

⁸⁷² See section 5.5

⁸⁷³ See section 6.1.1., 6.1.2, 6.3.3, 6.3.4

⁸⁷⁴ See section 6.1.1., 6.1.2, 6.3.3, 6.3.4

Domestic violence survivors fear reporting domestic violence because they would not have a safe shelter or financial aid if they were separated from their husbands. ⁸⁷⁵This could be mitigated if they were entitled to and able to access sufficient protection services and financial aid from the government. ⁸⁷⁶

9.2.2 Recommendations for legal empowerment organisations

I have the following recommendations for legal empowerment organisations based on my case study at BLAST.

1 Base advocacy on rights-claimants' legal needs

This ensures that legal and institutional reforms are responsive to their needs. In Bangladesh, legal empowerment organisations could consider a PIL on the government's due diligence obligation to protect domestic violence survivors against further or potential domestic violence, in light of lack of adequate protection services.

2 Train paralegals in the communities to provide legal aid at the preliminary stage

Paralegals can help domestic violence survivors' access penal remedies and protection, by locating courts and referring them to protection services. Training paralegals also lets the lawyer focus on litigation. ⁸⁷⁷

3 Only offer mediation that follows due procedures and respects women's rights in all stages of the process

Mediations in domestic violence cases are successful if they ensure the survivors' rights are respected throughout the process. Organisations that provide mediations should have an internal accountability mechanism in place to ensure that the survivors are in control of the mediation and monitor the implementation of the agreement. ⁸⁷⁸

Appendixes

Content:

- 1 Acronyms
- 2 Bangla and Arabic words
- 3 List of focus group discussions

⁸⁷⁵ Justice Audit (2016a) no. 12 in section 5.4

⁸⁷⁶ See section 6.5 and 6.6

⁸⁷⁷ See section 8.2

⁸⁷⁸ See section 8.8

- 4 List of interviews
- 5 Information letter and consent form
- 6 Interview Guide for mediation officers/ advocates
- 7 Questionnaire from Monitoring and Evaluation Cell

1 Acronyms

BLAST	Bangladesh Legal Aid and Service Trust
BNWLA	Bangladesh National Women Lawyers' Association
DEVAW	Declaration on the Elimination of Violence Against Women
DPA	Dowry Prohibition Act
DVA	Domestic Violence Act
NGO	Non-governmental organisation
PIL	Public interest litigation
WCA	Suppression of Violence against Women and Children Act
WCT	Women and Children Repression Prevention Tribunals

2 Bengali and Arabic Words

Nari	Woman
Shalish	Mediation/ Arbitration
Shalishkar	Member of the Shalish panel
Shishu	Child
Parishad	Council

3 Focus group discussions

- 1.Focus Group Discussion with Shireen Huq, Kamrun Nahar and Shahanaz Akhtar from Naripokkho 3 November 2021
- 2.Focus Group Discussion with BLAST staff from the Monitoring and Evaluation Cell 8 November 2021

4 Interviews

I had interviews with advocate Sara Hossain, and seven members of BLAST staff. The interviews were held between the 2nd and the 9th of September.

- 1.Unit Coordinator
- 2.Unit Coordinator
- 3.Advocacy officer
4. Deputy Director, Mediation and Capacity Building
5. Mediation officer

6. Staff lawyer

7. Deputy Director, Legal Cell

5 Information letter

Are you interested in taking part in the research project

“How are global human rights transplanted and translated in legal aid and advocacy against domestic violence in Bangladesh?”

This is an inquiry about participation in a research project. In this letter I will give you information about the purpose of the project and what your participation will involve.

Purpose of the project

The main purpose of the research project is to examine how human rights law is being transplanted and translated in legal aid and advocacy to protect women domestic violence survivors in Bangladesh.

The two research questions that will be examined are;

How are BLAST’s lawyers and paralegals transplanting and translating global human rights in their legal aid?

How are BLAST’s advocates localising global knowledge in their advocacy for domestic violence today?

The purpose of the qualitative interviews is to identify how paralegals, lawyers and advocates from BLAST are applying human rights law in their work.

The project is a Master’s thesis at the University of Oslo, and anonymous data from the interviews may be used in further research or advocacy work by BLAST to improve domestic violence survivors’ access to justice for domestic violence.

Who is responsible for the research project?

... will be the contact person, and conducts the study as part of her Master thesis in law at the University of Oslo. ... from the Faculty of Law at the University of Oslo is responsible for the project. The responsible institute is the Institute of Public Law at the University of Oslo.

Why are you being asked to participate?

You are being asked to participate to share your unique insight in the domestic violence survivors’ access to protection from future violence. We are talking with lawyers, paralegals and advocates from BLAST who have long experience in dealing with domestic violence cases,

and have targeted lawyers and paralegals from different parts of the country. A total of 10-15 different paralegals and lawyers from BLAST will participate in this study.

What does participation involve for you?

If you chose to take part in the project, this will involve that you are interviewed in a 30-45 minutes call over Zoom. You decide whether you want to show video in the call. The call will be recorded. The student and an interpreter will be present. Your answers will be recorded electronically and saved in the University of Oslo's data saving system for personal data.

Participation is voluntary

Participation in the project is voluntary. If you chose to participate, you can withdraw your consent at any time without giving a reason. All information about you will then be made anonymous. There will be no negative consequences for you if you chose not to participate or later decide to withdraw.

The information you give, or whether you decide to participate, will not affect your work situation at BLAST or be traced back to you.

Your personal privacy – how we will store and use your personal data

We will only use your personal data for the purpose(s) specified in this information letter. We will process your personal data confidentially and in accordance with data protection legislation.

The interpreter will assist with the interviews, but not have access to the data later.

The recording and the transcripts will be stored on TSD, the University of Oslo's server for personal data. It can only be accessed by ... and ...

The participants will not be identified by name in the Master thesis, but workplace and experience may be published in the thesis.

BLAST will have access to anonymised transcripts.

Privacy of the clients

As an informant, you are expected not to disclose any personal data of your clients. No identifiable personal data of any clients will be registered in this project.

What will happen to your data at the end of the research project?

The project is scheduled to end in January 2022. The data will then be anonymised. BLAST, Bangladesh Legal Aid and Service Trust, will have access to the anonymised data for future research or advocacy.

Your rights

So long as you can be identified in the collected data, you have the right to:

- access the personal data that is being processed about you
- request that your personal data is deleted
- request that incorrect personal data about you is corrected/rectified
- receive a copy of your personal data (data portability), and
- send a complaint to the Data Protection Officer or The Norwegian Data Protection Authority regarding the processing of your personal data

What gives us the right to process your personal data?

We will process your personal data based on your consent.

Based on an agreement with the institute of public law at the University of Oslo, NSD – The Norwegian Centre for Research Data AS has assessed that the processing of personal data in this project is in accordance with data protection legislation.

Where can I find out more?

If you have questions about the project, or want to exercise your rights, contact:

- Master student from University of Oslo... .by e-mail: or by WhatsApp
- Project supervisor at by e-mail: ... or phone ...
- The Data Protection Officer at the University of Oslo: ... , can be reached by e-mail at
- NSD – The Norwegian Centre for Research Data AS, by email: (....) or by telephone: ...

Yours sincerely,

Project Leader

Student

Professor ...

...

Consent

If you consent to participate in the project, **please send an e-mail to ...**

In the e-mail, state:

I have received and understood information about the project “*Domestic violence survivors’ access to protection mechanisms against future violence*” and have been given the opportunity to ask questions. I give consent:

- to participate in online interviews
- for information about me/myself to be published in a way that I can be recognised. This includes publication of workplace/ location of workplace. Names will not be published.

I give consent for my personal data to be processed until the end date of the project, approx. 15th of January 2022.

6 Interview guide

Interview Guide

Questions in bold are the main questions, questions in normal are follow-up questions to use if necessary.

Name of practitioner:

Occupation:

Location:.....

Consent remarks- with or without name:

Date and time of interview:

Introduction

Hi, my name is ...and with me I have my interpreter ... Thank you so much for your time. I am grateful to get to learn more about your work in helping domestic violence survivors achieve justice. Because ... is translating, it would be great if you could speak slowly and in short sentences.

This interview is for my Master thesis on protection orders and agreements against domestic violence. The interview will be anonymised, and only referred to anonymously in my paper.

Both ... and I have signed an agreement on confidentiality. We will take recordings, that will be saved in my university software for research data where only I can access it.

This is a voluntary interview, so you do not have to answer questions you are not comfortable with. Do not give personal data, such as names or too much background information, about any of the clients. I will ask quite broad questions, but if you think they are hard to answer, you can tell me. Then I will ask more specific questions. You can also go back to questions and ask them again if you want, or ask if you have any questions.

My questions are about the use of mediation and the formal justice system to stop domestic violence. I will try to divide the interview chronologically, so we first talk about the initial contact with the client, then the mediation process and finally the formal justice system. Do you have any further questions before we start?

Initial contact with the client

How long have you been providing legal aid or mediation in domestic violence cases?

- If you were providing legal aid before 2010, did the Act change the mediation or legal aid you provided?

What do the domestic violence survivors who come to BLAST want to achieve?

Do you find that they want their perpetrator punished, the violence to stop or to be compensated for the violence?

Do you know the reasons behind preferring mediation/ filing a criminal case?

Which legal recourse do you normally advise domestic violence survivors to seek?

Are the women aware of their opportunities to take the case to a formal court before they come to BLAST?

Why do you choose the formal justice system or informal mediation?

Is it different in cases with less severe or more severe violence?

Do you get many cases with dowry based violence, or cases with acid violence? If so, do you then choose to file a litigation under Nari O Sishu or Acid Control Act?

Equality in the process

Can you explain to me what normally happens in a mediation case that BLAST facilitates?

Who shows up? Where do the mediations take place?

Are both parties allowed to speak?

How do you make sure women dare to speak up?

How are women protected before and after the mediation?

Do you, as the facilitator, often make the final decision?

Do you often take proceed with formal litigation?

In your eyes, what are the advantages of alternative dispute resolutions?

What are the disadvantages of alternative dispute resolutions?

Equality in the outcome

Who suggests the solution/agreement?

In the final agreement, is there any references to the legal framework or anything?

Could I please look at an anonymous version of such an agreement, where there has been violence involved?

Do the parties normally agree at the end?

How do you ensure that the agreements are fulfilled, and the survivor is protected?

Is there standard procedures for how to follow up whether an agreement reached in mediation is fulfilled? How is it monitored? Do you co-operate with anyone (police, enforcement officers, other NGOs) about this?

Formal justice system

Have you assisted any clients in filing a form for protection orders with the police?

If yes; How was your experience?

Were the applications accepted?

What kind of investigations were made?

Did the police / magistrate issue protection order?

Why/ why not?

How would you describe the cooperation with the union parishad, or other local authorities?

How is your experience with the enforcement officers?

Do they prioritise domestic violence and protection orders?

Is there many enough?

Do they know about their responsibility under the Domestic Violence Act?

Does the enforcement officer or the Court control whether the protection order is enforced, unless someone notifies them?

Are you aware of many cases where the Court is notified about breaches of protection orders?

What is the response time if the Court is notified about a breach of protection order?

How is the women's protection ensured after a protection order has been breached and the Court been notified?

In your opinion, what can be done to improve women's access to real protection from protection orders through the formal justice system?

Conclusion

We are getting near the end of the interview.

Is there anything else you would have wanted me to ask you?

How did you think it was to be interviewed?

Can I contact you again if I have any further questions?

Thank you so much for your time.

7 Questionnaire from Monitoring and Evaluation Cell

BANGLADESH LEGAL AID AND SERVICES TRUST (BLAST)

1/1 YMCA Building, Pioneer Road, Kakrail, Dhaka -1000, Bangladesh

MONITORING AND EVALUATION CELL

Mediation Questionnaire

Questionnaire Number:

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EVALUATION OF PRESENT STATUS OF THE BENEFICIARIES

Unit -

Mediation

Litigation

Application Date:

Settlement date:

Reg. No.

Interviewee: **self /father/mother/ brother/sister/wife/ others**

Applicant's details		Opposite party's details	
Name :		Name	
Father's name		Father's Name	
Mother's name		Mother's name	
Husband/wife's Name		Husband/wife's Name	
Road /House No.		Road/House No	
Village		Village	
Post Office		Post Office	
Upzilla:		Upzilla:	
District		District	
Mobile:		Mobile:	
Age		Age	
Educational qualification	No Education=1	Educational Qualification	No Education =1
	Literacy = 2		Literacy = 2
	One to Five= 3		One to Five= 3
	PSC= 4		PSC= 4
	Six to Eight= 5		Six to Eight= 5
	JSC=6		JSC=6
	Nine to Ten= 7		Nine to Ten= 7
	SSC= 8		SSC= 8
	HSC = 9		HSC = 9
	Higher Education = 10		Higher Education = 10
Profession	Home Maker = 1	Profession	Home Maker = 1
	Student = 2		Student = 2
	Business = 3		Business = 3

	Service = 4		Service = 4
	Day Labourer = 5		Day Labourer = 5
	Worker = 6		Worker = 6
	Unemployed = 7		Unemployed = 7
	Agricultural Work = 8		Agricultural Work = 8
	Teaching = 9		Teaching = 9
Ethnicity	Bangali=1 Adibashi=2	Ethnicity	Bangali=1 Adibashi=2
Religion	Muslim = 1 Hindu = 2 Christian = 3 Buddhist = 4	Religion	Muslim = 1 Hindu = 2 Christian = 3 Buddhist = 4
Has any disability?	If yes mention the type.....	Has any disability?	If yes mention the type.....

MEDIATION RELATED QUESTIONS		
7.	Where did the Mediation take place?	(i) in BLAST office (ii) locally (iii) resolved by ourselves
8.	If in BLAST office: Date of final decision:	Total number of session:

9.	Presence of men & women in the session	(i) Male____ (ii) Female_____
10.	Could you talk in the mediation session?	(i) Yes (ii) No
11.	Could you express what you wanted in to the mediation session?	(i) Yes (ii) No
12	Are you satisfied with your participation?	(i) Yes (ii) No
13	Was there any opportunity for women to express their opinion?	(i) Yes (ii) No
14	Was the decision of the Mediation taken according to your demand?	(i) Yes (ii) No
14.1	If Yes, what were the conditions of the settlement?	(i) Settlement between husband and wife (ii) Divorce and received maintenances (iii)Divorce without receiving maintenances (iv)Received maintenance (v) Received asset/land (vi)Received compensation (vii) Others (Please Mention)
15	Are you satisfied with what you have received?	(i) Yes (ii) No
16.	Are the conditions being maintained properly?	(i) Yes (ii) No
16.1	If no, mention the reason	(i) Conditions are not being maintained by opponent (ii) Maintenance is not provided regularly (iii) Violence has not stopped yet (iv) Money is not given according to condition (v) Reconciled and later divorced (vi) others
17.	Did you receive any cash benefit through Mediation?	(i) Yes (ii) No
17.1	If yes - why did you receive this money?	(i) Dower & maintenance (ii) Maintenance (iii)value of land (iv)debt (v) unpaid wages (vi)compensation (vii) others

17.2	How much did you receive? TK.....	
17.3	What did you do with the money?	(i) maintained daily expenses (ii) purchased land (iii) leased a land (iv) started business (v) spent for medical cost (vi) spent for poultry firm (vii) purchased domestic animals (viii) maintained child education expenditure (ix) spent for second marriage (x) deposited in the bank (xi) afforded self education (xii) invested for handicraft business (xiii) repaid the loan (xiv) others
18	Is there any positive change after settlement? Please describe:	
19	(Question for divorced person) Are you married again?	(i) Yes (ii) no
20.1	Do you have income now?	(i) Yes (ii) no
20.2	If yes, what type of work you are doing?	(i) Student (ii) Business (iii) Job (iv) Day Labourer (v) Worker (vi) Agriculture worker (vii) Teaching
21.	Do you have child?	(i) Yes (ii) No
21.1	If yes, who provides your child's maintenance?	(i) Father/Mother/Brother (ii) Husband (iii) Myself
22.	Did you communicate with BLAST after settlement?	(i) Yes (ii) No
23.	How were you benefitted through the local Mediation?	(i) settlement between husband and wife (ii) divorced and received maintenances (iii) Others (Please Mention)
24.	Were you satisfied with the behaviour and service of BLAST's staff?	(i) Yes (ii) No

24.1	If not: why not satisfied? (Please describe)								
25.	Did you receive any conveyance from BLAST?	(i) Yes (ii) No							
25.1	If yes, how much you got? _(BDT)_____								
Evaluation of Past And Present Condition									
Particulars		Time of conflict				Present time			
39.1	Can you participate in family decision?	Yes	No		Yes		No		
39.2	Who are providing your maintenance?	Father /Mother /Brother	Husband	Self	Second Marriage	Father/Mother /Brother	Husband	Self	Second Marriage
39.3	Do you income?	Yes	No			Yes	No		
39.4	Do you have control over spending your earning?	Yes	No			Yes	No		
39.5	Do you suffer from any family violence?	Yes	No	N/A		Yes	No	N/A	
39.6	Who provide your children's educational expense?	Father /Mother /Brother	Husband	Self	Second Marriage	Father/Mother /Brother	Husband	Self	Second Marriage
39.7	Where do you live in?	Father /Mother	Husband	Self	Second Marriage	Father/Mother /Brother	Husband	Self	Second Marriage

		/Brother								
39.8	Can you move freely without requiring permission from husband/father/brother?	Yes	No	N/A		Yes	No	N/A		
39.9	Can you go to other institutions (e.g. NGO, Health Center etc) for services you need?	Yes	No	N/A		Yes	No	N/A		
Participation in Decision Making										
40.1	Does anyone ask your opinion while taking family decision?						(i) Yes (ii) No			
41.	Do you get attention when you express your opinion?						(i) Yes (ii) No			
42.	What kind of help BLAST can do for you?									
	Comments of interviewer:									
	Signature of interviewer:			Signature of Interviewee:						
	Position:									
	Date:									
	I give my official concern that BLAST can use my photos in their official purpose.									
	Signature of Interviewee:									

Bibliography

Content:

- 1 Bangladeshi Acts and Rules
- 1 Bangladeshi judgements
- 2 International judgements
- 3 International treaties and conventions
- 4 Literature
- 5 Other national judgements
- 6 Other national laws
- 7 Treaty body law

1 Bangladeshi Acts and Rules

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⁸⁸⁰ The judgment has not yet been published by the Supreme Court. I therefore relied on a press release produced by BLAST and confirmed it by discussing with colleagues at BLAST. See reference under Literature, BLAST (2018)

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CEDAW/Women's Convention	<i>UN Convention on the Elimination of all Forms of Discrimination against Women</i> , 1979.
CESCR	<i>International Covenant on Economic, Social and Cultural Rights</i> , New York, December 16, 1966.
CCPR	<i>International Covenant on Civil and Political Rights</i> , New York, December 16, 1966.
ECHR	<i>European Convention on Human Rights</i> , Rome 04 November 1950.
ICJ	<i>Statute of the International Court of Justice</i> , San Francisco, 1945.
UNC	<i>United Nations Charter</i> , San Francisco, 26 June 1945
VCLT	<i>Vienna Convention on the Law of Treaties</i> , Vienna, 23 May 1969.

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