

DISSERTATION

ON

Treatment of Victims in Investigation Process and Trial Proceeding

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Declaration

I certify that I am the single author of the thesis and that it has never before been submitted, in whole or in part, with another application for a degree. I certify that the thesis I submitted for the undergraduate program at East West University under the designation Law-406 (Supervised Dissertation) was written entirely by me, was the sole product of my labor, and was not submitted for consideration for any other degree or professional certification. Any materials or data that assisted in conducting this research are specifically cited and acknowledged.

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Consent Form

Consent For

The dissertation titled “Protection of Healthcare Workers Right during Pandemic in Bangladesh” prepared by Md. Ashikul Islam, ID- 2018-2-66-015 submitted to Mridul Bepari, Lecturer, Department of East West University for the fulfillment of the requirement of Course 406 (Supervised Dissertation) for LLB (Hons.) degree offered by the Department of Law, East West University is approved for submission.

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Abstract

Despite the statutory acknowledgment of crime victims being patchy and passive, their "right to meaningful access" to criminal proceedings is not adequately protected. Our nation's commitment to a fair trial is centered on several procedural protections for the offender. Under the Code of Criminal Procedure of 1898(Crpc), crime victims' rights are not better protected. Numerous specialized laws that offer a murky victim protection program have been passed throughout the years to address violence against women. The criminal justice system's institutions appear to be unaware of the suffering of crime victims. This research reveals that victim justice in Bangladesh remains elusive without a comprehensive institutional and legal framework safeguarding witnesses and victims of crimes. Thus, it is vehemently contended that victims' rights ought to be at the top of the list of our plans for criminal justice reform. As a result, it is vitally necessary to enact comprehensive victim and witness protection legislation.

Chapter -1

Introduction

‘The Penal Code’¹ and ‘Code of Criminal Procedure’² (CrPC) do not define "victim". A "victim" is an individual or group damaged physically, emotionally, financially, socially, or psychologically by criminal action. Crime victims are vital to the criminal justice system. Due to threats, intimidation, compulsion, or harassment by criminals or their associates, individuals cannot testify during the investigation or in court during the trial. Our country's laws don't adequately guarantee crime victims' right to "meaningful access to criminal processes,"³ despite their occasional and passive recognition. Our common law system gives offenders more procedural fairness, boosting their influence and participation.⁴ The constitution and international human rights instruments, such as the International Covenant on Civil and Political Rights⁵, show that we are committed to fair trials. Crime victims often can only testify as a lone witness in court.

CrPC doesn't protect victim rights adequately. To fight abuse against women, many vague victim protection laws have been created. The criminal justice system's institutions often neglect crime victims' and witnesses' demands for security, a safe place to stay, support, counseling, and legal assistance. Our criminal proceedings lack a strong institutional and legal foundation for victim protection. It's based on books, journal articles, journals, reports, and other internet sources, as well as statutes, rules, and regulations. Bangladesh's constitution guarantees a free and fair trial since it's related to democracy and the rule of law. In natural justice, even the guilty or accused are treated with dignity. The prosecution must prove beyond a reasonable doubt the defendant's guilt. The Bangladeshi Constitution stipulates that an accused "has certain rights throughout any investigation, investigation, or prosecution of the crime of which he is accused and shall be protected against arbitrary or illegal confinement," which is an essential right. Our constitution is based on the fundamental principle of “leaving hundreds of people unpunished,

¹ Act XLV of 1860

² Act V of 1898

³ Nancy Hendry, “Remarks on Access to Justice for the Victim of Domestic and Sexual Violence”, Souvenir 2015, Bangladesh Women Judges Association, pp. 48-50.

⁴ M. Shah Alam, ‘Bangladeshe ainer Sangsker o Ain Comission’, New Warsi Book Corporation, Page 122

⁵ International Covenant on Civil and Political Right (ICCPR), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

but never punishing an innocent person.” Equal rights include fair criminal representation (Article 27). Article 35 states that "no one may be convicted of a crime, except for the violation of a law in force at the time the act was classified as a crime, nor may they be punished with a penalty greater than that which may have been imposed by virtue of the law in force at the time the crime was committed." The accused is treated fairly, like other citizens.

1.1 Problem Statement

The hypothesis statement of this paper is that "Protection of the fundamental rights of victim, how it dealt by the provisions of the Constitution and existing laws in Bangladesh."

1.2 Methodology

This research relies on content analysis to draw its conclusions. Literature reviews (books, journals, annual reports, newspapers, etc.) provide the backbone of the process. The most up-to-date research on the topic has been gathered via an Internet search. This research is qualitative research. Both primary data and secondary were included. The primary data are Laws, International guidelines and some new requirements and policies. As the secondary sources are used for the analysis of the study. Secondary data has been collected by scholarly writings and documents related to the subject matter.

1.3 Thesis Question

Whether the right of the victims are protected in the trial proceeding and investigation process or not?

Are there adequate laws to protect Victim Rights?

Does any specific law is require to protect the rights of the victim?

1.4 Literature Review

Contemporary research studies on best practice in victims' interactions with the criminal justice system were identified through a comprehensive search of the academic literature. The internet

was used to find studies that were relevant to the topic. These databases were selected because of their multidisciplinary scope and their ability to house abstracts and index records for a wide variety of scholarly works, including journal articles, reports, and books. Initial searches revealed a vast literature that simply could not be thoroughly examined in the allotted period. A general Boolean search query, including "victims AND criminal justice," was used for the earliest searches. New searches using more precise keywords (such as "Victim Right" and "victim impact statements") did not turn up any additional research.

Chapter – 2

A Brief History of Victim Rights

In the 1980s, when President Reagan created the President's "Task Force" on Crime Victims, the idea gained traction.⁶ "The criminal justice system has lost a fundamental balance," says the "Task Force" study. The system created to safeguard them has overburdened them. Stop oppression.⁷

"The Task Force" examined "how crime victims were treated throughout all aspects of the criminal justice system, including police investigations, court procedures, and parole or unlawful release". "The Task Force" gave courts, police, and other criminal justice groups various suggestions. Crime victims could learn about and participate in their cases under the suggestions. The Task Force suggested changing the Constitution to protect victims' rights. The proposed amendment would have extended constitutional protections to crime victims.

Several state constitutional and legislative measures were passed after the report's release. These protections protected victims' rights in the criminal justice system, including the right to be notified of court proceedings, to attend, participate, and speak during plea negotiations and sentencing. State statutes and state constitutional "bills of rights" for crime victims implemented the ideas. Some amendments promised victims equal treatment "throughout the criminal justice process," yet many policies limited participation. Crime victims' rights advocates tried to adopt the Task Force's most sweeping suggestion after multiple state constitutional amendments were passed. The Victims' Rights Amendment was introduced at the Rose Garden in 1996. Clinton attended. The proposed amendment featured a list of victim rights, many of which were mirrored in state amendments. Congress addressed the amendment numerous times, but it was never ratified by two-thirds of both chambers. Opponents said such rights should be constitutionalized instead of the amendment's goals.⁸

⁶ Exec. Order 12,360, 47 Fed. Reg. 17,975 (Apr. 27, 1982); see also PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME, FINAL REPORT, at ii (1982).

⁷ PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME, FINAL REPORT, *supra* note 9, at 114.

⁸ Paul G. Cassell, Nathanael J. Mitchell, Bradley J. Edwards, 'Crime Victims' Rights During Criminal Investigations? Applying the Crime Victims' Rights Act Before Criminal Charges Are Filed', 2014, Volume 104

Chapter-3

Institutional and Legal Measures for the Safety of Victims

Bangladesh maintains common law.⁹ British colonial authorities authorized the Indian subcontinent's legal system based on Mughal concepts of Islamic and Hindu law and common law perspectives¹⁰ of 'justice,' 'equity,' and 'fairness' The Penal Code, the Evidence Act, and the Code of Criminal Procedure, along with a few additional specific acts, provided the legal framework for our criminal justice system's substantive offenses and criminal procedure.¹¹ A victim can file a complaint or first information report (FIR), but in actuality, they can only testify as a prosecution witness when the court summons them.

3.1 Rights of Victim Sustain by Code of Criminal Procedure 1898

Usually CrPC 1898 offers few rights towards victim. Some of them are summarized below:

(i) Filing A Lawsuit: An officer in charge of a police station can receive information from a victim about the commission of a cognizable offense in writing or orally.¹² In a police case or general register (GR) case, this is referred to as filing a FIR.¹³ Similar to this, after following all legal procedures, the Magistrate might take cognizance of an offense after receiving a victim's complaint¹⁴ of the facts constituting the offense.¹⁵ The complainant and any witnesses they may have, including the victim, must all take an oath before the magistrate when the offense is recognized as having occurred.¹⁶

⁹ M. Shah Alam, *Bangladeshe Ainer Sangskar o Ain Commission (Legal Reforms in Bangladesh and Law Commission)*, (New Warsi Book Dhaka 2016), p. 122.

¹⁰ H. M. F. Bari, *An Appraisal of Victim Protection in Bangladesh*, (Asiatic Society of Bangladesh 2016), p. 2.

¹¹ Hussain M. F. Bari, "An Appraisal of Sentencing in Bangladesh: Between Conviction and Punishment", *Bangladesh Journal of Law*, Volume 14, 2014, p. 90. Also see Shahdeen Malik, "Perceiving Crimes and Criminals: Law Making in the early 19th century Bengal", *Bangladesh Journal of Law*, Volume 6, 2002, p. 59.

¹² The Code of Criminal Procedure 1898, section 154

¹³ GR cases are those cognizable cases which are entered in the General Register in Form No. (R)3 (as found in *Criminal Rules and Orders (Practice and Procedure of Subordinate Courts) 2009*, Volume II, p. 44) in accordance with Rule 381(4) of *Criminal Rules and Orders (Practice and Procedure of Subordinate Courts) 2009*, Volume I.

¹⁴ The Code of Criminal Procedure 1898, s 4(h).

¹⁵ *ibid*, s 190(1)(a).

¹⁶ *ibid*, s 200

(ii) Rights and duties during investigation: Any person (necessarily including the crime victim) who is assumed to be familiar with the facts and circumstances of the case may be subjected to an oral examination by a police officer conducting an investigation. After adhering to all legal procedures, a magistrate notes the victims' statements or confessions during the course of an investigation.

(iii) Victim as prosecution witness in a police investigation: Any person (including the victim) who is presumed to be concerned with the facts and circumstances of the case may be compelled to an oral examination by an investigating police officer. During an investigation, a magistrate records the victims' statements or confessions after following all legal procedures. In GR case it is the duty of the concerned police officer (prosecution) to ensure appearance of the witnesses including the victim.¹⁷

(iv) Object to the offender's action: The victim is not entitled to be informed by the court when the accused files any of these motions, but he may object to the release of an accused person on bail or the return of any property taken during an investigation. He may also object to the accused's prayer in a criminal revision, appeal, or writ.

(v) Victims may receive a fine: The court may, in its discretion, rule that the victim receive all or a portion of a monetary compensation imposed as the only additional penalty. When the state is the perpetrator, the Apex Court may demand that the State give compensation for certain offenses, such as unlawful confinement and torture committed in custody, in order to exercise its writ authority over constitutional rights abuses.

In addition, The Evidence Act of 1872 expressly protects witnesses in courtrooms by outlawing cross-examination of witnesses with obscene, scandalous, or offensive questions.¹⁸ Further, the Penal Code 1860 outlines penalties for criminal intimidation of anyone, which logically includes both the victim and the witness..¹⁹

3.2 Some Other Existing Laws Regarding Victim Rights

¹⁷ *ibid*, s 171(2)

¹⁸ Evidence Act 1872, section 151, 152

¹⁹ Penal Code 1860, section 503, 506.

(i) Women & Children Repression Prevention Act:²⁰ This law, which is a unique legislative action, provides victim protection in Bangladesh. Only women and children who are victims of crimes such as kidnapping, rape, sexual harassment, etc. are protected by the law. Section 20 (6) permits a trial in secret to safeguard the privacy of the rape victim and any other witnesses to the crimes. When determining a victim's custody, the Court must take the victim's interests into account.²¹ The Judicial Magistrate may record the victim's statements.²² The safe custody of crime victims in a secure environment is guaranteed by Section 31.

(ii) Acid Offences Act:²³ The victims of crimes are protected by this statute. A victim of acid has a right to recompense from the convict.²⁴ The sum of money from the convicted person's property must be realized by the court. Such money belongs to the victim's remaining heirs in the event of her passing.

(iii) Prevention of Human Trafficking Act:²⁵ The Court may issue any order, even one that protects the victim and witness, in order to achieve justice and a swift trial. The victim may be given safe custody by the court to a government or non-government facility, or to any other location that is suited for the victim's welfare. In certain circumstances, a trial in secret is also allowed. The distinctive aspect of the Act is that the victim's testimony may be obtained by the court either directly or indirectly through the use of technology. Threats against witnesses are also made illegal by this Act.

(iv) The Domestic Violence (Prevention & Protection) Act 2010:²⁶ The Court may issue an order directing the opposing party not to interfere with the victim's right to remain in the house in response to a petition.²⁷ A victim has the right to reside in the joint house²⁸. Court may grant the victim protection in the right circumstances.²⁹ In cases of domestic abuse, the court may issue a compensation order requiring the aggrieved party to receive the equivalent amount from the aggressor.³⁰ The trial proceeding may be held in private with the parties' consent or if the court

²⁰ Act VIII of 2000

²¹ Women & Children Repression Prevention Act, section 20(4)

²² *ibid*, section 22

²³ Act I of 2002

²⁴ Acid Offence Act, section 9

²⁵ Act III of 2012

²⁶ Act of 2010

²⁷ The Domestic Violence (Prevention & Protection) Act 2010, section 10

²⁸ *ibid*, section 15

²⁹ *ibid*, section 13

³⁰ *ibid*, section 16

so determines.³¹ Enforcement Officer take the necessary actions to secure legal representation for the victim within the parameters of the Legal Aid Act.³²

(v)The Children Act 2013:³³ It gives the Children Court broad authority to provide the required orders for the victim's child's better protection. For the kid victim, some precautions may be taken to lessen fear by avoiding a face-to-face confrontation with the accused. The Children Court may order the convicted (adult) to pay compensation to the child victim of crime in appropriate cases.³⁴ Examples of such orders include shielded testimony, in camera sessions, having the child's parent or guardian present as support, withholding the child's identity, evidence by video linkage, etc.³⁵

Besides this, **Act for Control of Acid**³⁶, **Law and Order Disrupting Offences (Speedy Trial) Act**³⁷ and **Torture and Custodial Death (Prevention) Act**³⁸ also trying to protect the victim rights.

3.3 Protection measures provided by the Evidence Act and the Penal Code

The Evidence Act of 1872 makes it plain that the witnesses must be protected in the courtroom by forbidding cross-examination of the witnesses with obscene, scandalous, or offensive questions.³⁹ In addition, the Penal Code 1860 outlines penalties for criminal intimidation of anyone, which logically includes both the victim and the witness.⁴⁰

3.4 Institutional framework for victim protection

‘The One Stop Crisis Centre’ (OCC) and the ‘Victim Support Centre’ (VSC) offer assistance for

³¹ibid, section 23

³²ibid, section 6

³³ Act XXIV of 2013

³⁴ The Children Act 2013, section 39

³⁵ ibid, section 55

³⁶ Act I of 2002

³⁷ Act XI of 2002

³⁸ Act LX of 2013

³⁹ Evidence Act 1872, s. 151, 152.

⁴⁰ Penal Code 1860 , s. 503, 506

the protection of crime victims under the direction of the government. The OCC for victims of violence was formed by the Ministry of Women and Children Affairs in partnership with the other four ministries. It offers victims of violence access to medical, legal, and social services at six divisional public hospitals.⁴¹ The majority of police stations' and investigating agencies' capabilities to offer quick assistance to crime victims seem limited for a variety of reasons. It is commendable that the District Legal Aid Office (DLAO) provides legal aid to crime victims. Additionally, a large number of non-governmental organizations (NGOs) are working hard to protect the victims of heinous crimes. Popular non-governmental organizations (NGOs) advocating for victim justice within their own terms and contexts include the “Ain Salish Kendra (ASK)”, the “Bangladesh Legal Aid Services Trust (BLAST)”, the “Bangladesh National Women Lawyers' Association (BNWLA)”, and the “Acid Survivors' Foundation (ASF)”.

Chapter-4

Victim Rights and International Law

In international human rights law, procedural rights of the accused are required for a fair trial. Access to justice is a human right outlined in the ICCPR of 1966.⁴² ICCPR exclusively concerns

⁴¹ Md Abdur Rahim Mia, “Role of One Stop Crisis Centre (OCC) in protecting Women’s Rights: An Analysis with special reference to Rajshahi District”, ‘Bangladesh Journal of Law’, volume 11, 2011, page 149-174.

⁴² International Covenant on Civil and Political Right 1966, art. 14

the offender's procedural rights. It doesn't emphasize how important criminal victims' formal and substantive rights are. Over time, the necessity to emphasize victims' roles in international, regional, and national criminal litigation has grown. The UN General Assembly's 1985 Basic Principles of Justice for Crime and Power Abuse state: 'Victim should be treated with compensation and respect for their dignity.' 'Victims are entitled to the mechanisms of justice and promote redress, as provided for by national legislation, for the harm they have suffered.' State parties are required by the UN Convention against Transnational Organized Crime to safeguard victims from reprisals or intimidation.⁴³ In the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,⁴⁴ adopted by the Eleventh UN Congress on Crime Prevention and Criminal Justice, member states committed to strengthening the legal and financial framework for supporting witnesses and victims of crime and terrorism. Most of these statements fall under soft international law and don't impose responsibilities on State-parties.⁴⁵ However, as the document was accepted by a large majority of member states, it is persuasive. According to the High Court Division (HCD), international law standards and concepts can be used unless they conflict with national law.⁴⁶ The United States (1982), Australia (1994), Colombia (1997), Germany (1998), the United Kingdom (1999), South Africa (1998), Hong Kong (2000), Italy (2001), and Sri Lanka (2015) all have laws in place to protect victims. Another seminal document in the development of such laws is the 'United Nations Declaration' on 'Basic Principles of Justice for Victims of Crime and Abuse of Power', which was adopted in 1985.

Chapter-5

Analyzing the victim rights in the Criminal justice System

Nowadays, it goes without saying that the right to a fair trial requires taking into account the interests of the victim, the accused, and society as a whole. The victims of crime are typically excluded from participating in our criminal justice system beyond acting as simple witnesses. As

⁴³ General Assembly Resolution 55/25, annex I, art 25

⁴⁴ General Assembly Resolution 60/177, <https://digitallibrary.un.org>

⁴⁵ J.G. Starke QC, Introduction to International Law (Aditya Books Butterworths 1994) , Page 52-55

⁴⁶ Anika Ali v Rezwatul Ehsan [2012] 17 MLR (AD) 49, Hussein Mohammad Ershad v Bangladesh and Others [2001] 21 BLD (AD) 69.

a complainant, informant, and witness for the prosecution, the victim of a crime is vital to the administration of criminal justice. Thus, victim-protection is essential for rebuilding public trust in the criminal justice system by defending the defenseless and the victim while harshly punishing the offender. Another strategy that has gained favor is restorative justice, which aims to involve the victim in the process in order to help the offender understand the gravity of his crime, offer an apology, and ask for forgiveness. The criminal justice system is frequently criticized for its lethargy and insensitivity towards victim protection because it predominately focuses on the rights of the offender.⁴⁷ The Bangladesh Law Commission correctly notes that once the rights of the victims are recognized by law and reparation for loss of life, limb, and property is provided for in the system, our criminal justice administration will take a new route toward better and quicker justice.⁴⁸

5.1 Victim Rights and Investigation process

The term "investigation" is defined in the Code of Criminal Procedure as "any proceedings under the Code for the collection of evidence performed by a police officer or any person (other than a Magistrate) authorized by a Magistrate." The investigation's purview includes all steps taken by a police officer or a person with Magistrate authorization to gather proof of a crime. After the commission of such an offense, not before, an investigation is conducted. There is a clear line separating investigation from inquiry. Investigation is always done by law enforcement, whereas inquiry can be done by anyone.

‘The Evidence Act’, the ‘Torture and Custodial Death (Prevention) Act’, the Criminal Rule and Orders, the ‘Police Regulations of Bengal (PRB)’, the Constitution of Bangladesh, the CrPC, any applicable special laws, the Criminal Rule and Orders, the ‘Convention against Torture and other Cruel, Inhuman, and Degrading Treatment or Punishment’, and any relevant judicial precedents are all things that officers conducting investigations must abide by. But the real scenario in our country is that, in most of the cases police doesn’t abide by the Acts properly during the investigation and after that they submitted the charge sheet against the person due to the political influence or by taking bribe from the petitioner.

⁴⁷ Abdullah Al Faruque, “Victim Protection in Bangladesh: A critical appraisal of legal and institutional framework”, Bangladesh Journal of Law, Volume 13, 2013, p. 33.

⁴⁸ Law Commission, 74th Final Report on a proposed law relating to protection of victims and witnesses of crimes involving grave offences; available at <http://www.lawcommissionbangladesh.org/reports.htm>;

According to the CrPC, if a police officer receives a FIR, they must investigate the incident either in person or by sending subordinate officers. PRB also instructed the same. However, if the alleged crime is not very serious and information is provided against a specific individual, then an inspection of the purported crime scene is not strictly necessary. The ability to record an accused person's confessional statement is frequently abused because false confessions are given by suspects who have allegedly been tortured while being held by the police in order to sway the course of an inquiry.

The legal proceedings in numerous murder and rape cases have been tainted in recent years by coerced confessions, which prompted the Supreme Court's Appellate Division to issue several orders to stop it. Instead of gathering evidence through proper investigations, investigators typically ask for remand in custody so they can use torture to force the accused to make false confessions to their alleged crimes. The magistrates grant these requests and record the confessional statements after hearing the investigators' appeals. In extreme instances like murder, rape, robbery, and sedition where eyewitnesses are unavailable, investigators may request a remand for questioning. But in current days it's a habit of our police officers to seek remand for petty issues like theft and for every case.

The victims feel helpless and vulnerable; some even feel they have been victimized twice—once by the accuser and again by the judicial system authorities, who frequently ignore their demands and complaints. The victims suffer more as a result of, among other things, insensitive police questioning, poor information delivery, delays, or mysterious prosecutor decisions to drop cases.⁴⁹

In Narayangonj A father filed a missing case of her daughter and police arrested an accused on that case called Abdullah. Police tortured Md Abdullah in order to get his confession regarding a female who was allegedly raped and murdered in Narayanganj. "You can kill me, sir, but I'll still insist that I didn't kill the woman. I'm not going to disclose the truth," Abdullah informed his captors. After that, police took Confessional statement forcefully under section 164 of Crpc. Abdullah (victim) testified before the High Court that the apprehended suspects confessed to

⁴⁹ Lucia Zender, *Criminal Justice*, (Oxford University Press 2004), p. 143

raping, killing, and dumping the victim's body into the Shitalakkhya river after kidnapping her . But the girl was genuinely well and alive and appeared before the court.⁵⁰

Confessional statement recorded under section 164 of CrPC plays a significant role in administration of criminal justice. Article 35(4) of our constitution precisely states that no person shall be compelled to be a witness against himself. But the law enforcement agencies are allegedly continuing frequent infringements of this constitutional binding in the name of remand, which is designed to interrogate the accused. That shows us how much corrupted and negligent the police officers are. In the meantime the victim was in jail. His rights were violated in that process. There are two victims for every crime that is committed. The society as a whole suffers when its laws are broken, endangering the safety of its citizens, and the victim of the crime themselves suffers harm to their person or property. According to C. K. Allen, 'a crime is a crime because it consists in wrongdoing which directly and in serious degree threatens the security or well- being of the society, and because it is not safe to leave it repressible only by compensation of the party injured.'⁵¹

The HC issued the order after hearing a writ petition filed by five Supreme Court lawyers asking that the police are instructed to interview arrested people and the magistrates while recording their testimony with both audio and video equipment in order to promote transparency.

The HCD ordered two apprehended suspects in the murder case to come before it in connection with the incident of the return of the "murdered" Dilip Roy, as well as investigation officer Saifullah and the sub-inspector of Haliashahar police station. The jurists assert that, aside from severe cases, there shouldn't be any need for custodial remand, and they added that, in recent years, investigators have started to request remand even in "theft cases," abusing the provision because they have grown accustomed to using an accused person's statement as evidence in court. They claimed that using torture, threats, and other coercive measures to obtain the confessional confessions was a violation of Section 164 of the Crpc, because the accused frequently filed appeals to repudiate the confessional statements they had made. There are several instances of the criminal justice system using confessional remarks unlawfully and

⁵⁰ Rezaul karim , “ I raped and killed her:Story of forced confession, <https://www.tbsnews.net/bangladesh/crime/i-rape-and-killed-her-story-forced-confession-157696>

⁵¹ C. K. Allen, “The Nature of a Crime”, Journal of Society of Comparative Legislation, (1931, reprinted 2007), p. 233.

placing the accused on remand, frequently violating the Appellate Division's rules. Even in cases of petite larceny, suspects are kept in detention, and the current criminal justice system is abused by recording prescribed confessional comments. A case can't be examined based on a confessional statement made by the accused unless it is supported by further evidence, which investigators must obtain. Before recording the confession, the magistrates must give the accused three hours to consider whether to grant the admission or not, as it will be applicable against them. The law is still largely disregarded, though.

In another incident, Maksuda Begum, the wife of one of the defendants, Sattar Molla, provided her confessional statement as a witness to the "murder and disposal of Mamun's body." According to her testimony, her husband Sattar beat her and threatened to keep quiet about the occurrence for two years. Sattar, Maksuda's husband, said his wife made the false claim due to domestic conflicts. Mamun showed up in front of the court after being assumed dead. As the police prepared to file charges against the suspects and the court ready to issue its ruling, the legitimacy of the Narayanganj police's investigations was again called into question. In the meantime the accused of the murder case had to stay in jail without any reason.⁵² That's the clear violation of fundamental rights and showed the misery of our police department. It is the clear violation of human right and victims right as well.

In another case, a suspect in a case claimed that police violently tortured him into confessing to the rape and murder of a class V female student, who was later discovered alive in Narayanganj.⁵³ Police hung him upside down and beat him nonstop. Police asked him to make a confessional statement in front of the court and promised to set up his bail within a month if he complied with their instructions.

5.2 Victim Rights and Trial Proceeding

'In Blackstone's' famous words, "it is better that ten guilty persons escape than that one innocent suffer. The essence of criminal trial lies in that the accused is to be presuming innocent until a

⁵² Shamima Rita, "False confessions in court: Man presumed dead, found alive in Narayanganj", Dhaka Tribune , October 3 , 2020

⁵³ Shamima Rita, "Would be dead by now had I not confessed", Dhaka Tribune, <https://archive.dhakatribune.com/bangladesh/nation/2020/09/04/if-i-did-not-make-a-confession-about-raping-and-killing-that-girl-i-would-be-dead-by-now>

charge is proved against him without any reasonable doubt." But we have seen in so many cases that an innocent person suffers punishment without committing crime. Section 54 of the CrPC gives the authority to police to arrest someone without warrant. But, section 54 (1) of the CrPC, 'when a person arrested without a warrant has the right to know all the details of the offense for which he is arrested and when a person is arrested with a warrant, it must be informed or even show that warrant if needed.'

Many legal systems exist today and provide some provisions for protecting the identities of witnesses and crime victims. The legal system in Bangladesh is not an exception to this. Many laws, such as "Section 14 of the Repression of Violence against Women and Children Act of 2000", "Section 5 of the Public Interest Information Disclosure (Protection Provision) Act of 2011/Whistleblower Protection Act of 2011", and "Section 37 of the Prevention and Suppression of Human Trafficking Act of 2012", protect the identities of crime victims, witnesses, and other relevant parties. Legal guidelines on this subject typically make it an offense to publicly disclose the names, photographs, or other forms of identification of victims or witnesses.

Victims are not protected as nearly every day there will be news that the accused threatened the victims to withdraw the case or gives them life threat. Protection has essentially two grounds. Protecting the victim from unwarranted attention that can have a detrimental impact on their personal or professional life and result in further victimization is the major priority in this situation. The main concern for the victims keeping them safe from the accuser's or their loved ones' wrath. The Supreme Court's High Court Division (HCD) decided that a 'human trafficking' victim who was floundering in India had a right to be deported to Bangladesh under the official arrangements of the Government of Bangladesh. The case's citation is omitted here to avoid drawing undue attention to the victim in the case. The HCD came to the conclusion that by delaying her repatriation, the government employees had breached their fiduciary duties, citing, among other sources, Article 31 of the Constitution. The writ petitioner, the victim's father, did receive the remedy he sought, but the judgment also listed his sad daughter's name and part of his home address, which would have brought him unwarranted publicity.

Bangladesh is legally required to uphold Article 14 (Section 2) of the 'ICCPR (1966)', after ratifying it in 2000. To put it another way, an individual has the fundamental right to be presumed innocent by the state and society unless and until it is proven otherwise. Nevertheless,

we frequently apply the principle of "guilty until proven innocent"—whether through political rhetoric or public perception—which opens the door for the exploitation of the legal system as a tool by the ruling elites.

When members of the general public confuse an accused person with a convicted one, the situation deteriorates rapidly; in the worst case, the accused person faces a media trial and receives a life sentence of doubt, defamation, and disgust. A person's reputation can be damaged even if he is not in jail; all it takes is a little bit of accusation in the sphere of the public realm and our age-old gift of imagination.

The so-called presumption of innocence becomes a myth, however, when a population the size of a mediocre country sows threads of doubt into a notion that initially appears harmless. But the question remains as to whether this legal presumption is intended to reside in the minds of laymen. Yes, as it is not only a legal assumption but also a human right of every Homo sapiens under the 'Universal Declaration of Human Rights of the United Nations (UDHR)'. Article 11 of the UDHR states, "Everyone charged with a criminal offense has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all guarantees necessary for his defense." Article 35 of our Constitution similarly states, "Everyone accused of a criminal offense has the right to a public and speedy trial by an independent and impartial court or tribunal established by law." In addition, no individual accused of a crime can be compelled to testify against him. In accordance with Section 101 of the 'Evidence Act of 1872', the person who makes a criminal charge against an individual must prove the presence of the relevant facts. It should also be remembered that if someone's reputation has been damaged, an apology will not restore their pride.

In Bangladesh we often see that the media marks a person who is accused as an offender of the crime, thus the reputation and the rights are being violated of a victim. The Indian Supreme Court described media trial as "the effect of television and newspaper coverage on a person's reputation by producing a broad perception of guilt regardless of any court of law judgment"

Another interesting case which caught the nation's eye was the Holey Artisan Attack in 2016 two individuals who were unequivocally acquitted by the court, faced the wrath of citizens, particularly social media users, who came to their own conclusions about the role of these two

citizens during the attacks. Granted, the attack hit the heart of the Bangladeshi capital and indeed made us wary, and even emotional, about the importance of getting to the bottom. Yet we forgot to look at the facts and subsequently passed our own judgments.

The facts were that these two citizens, one a professor of a reputed university in Dhaka and another student of the University of Toronto, were in fact victims of the attack who were there at the wrong place at the wrong time. This was verified and ascertained during a stringent investigation by law enforcement agencies, testimonies by the survivors of this attack, and information collected by state agencies. That was clearly violation of their right. They didn't enjoy the 'Presumption of innocence' and 'Victims identity' right as well.

An OC of the Sonagazi Police Station was negligent at the feni Madrasa murder case. The OC cross-examined Nusrat after receiving a sexual assault accusation. He recorded her without her consent while asking indecent questions. He released the video online, possibly hoping it would go viral, while Nusrat's case was in the news.⁵⁴

'Anyone who shares rape victim news reports with. Images of the victim during or after the attack will be penalize two years in prison, Tk 1 lakh, or both.⁵⁵ In-camera trials for rape victims and witnesses are also allowed.⁵⁶ Camera trials are also available for child and women victims.⁵⁷ No one may print or broadcast a victim's name, photo, or identify without the Tribunal's approval. The press must uphold standards and not do unethical acts like revealing a crime victim's identity.⁵⁸ According to the 'Indian Penal Code', publishing a rape victim's name can result in two years in prison and fines.⁵⁹ The Supreme Court of India has also banned rape victims' identities, even after death.

Even the Bangladeshi Law Commission has criminalized victim identification. This illegal, unethical activity continues. Surprisingly, law enforcers don't follow these laws. The media should help them protect victims at all costs. Publishing victims' identities exposes them to

⁵⁴ Aiman R khan , What does the law say about disclosing identity of victims?, <https://www.thedailystar.net/opinion/law/news/what-does-the-law-say-about-disclosing-identity-victims-1731019>, Apr 18, 2019

⁵⁵ Women and Children Repression Prevention Act 2000, section 14

⁵⁶ ibid section 20 (6)

⁵⁷ 'Prevention of Human Trafficking Act 2012', section 25

⁵⁸ 'The Press Council Act of 1974'

⁵⁹ Section 228-A of Indian Penal Code

threats and additional victimization. People who know the victims and those who don't must work together to preserve their identities, and law enforcement officials must not forget their responsibility. The HCD issued a ban on the media publishing or broadcasting the photos and identities of rape victims, even after the victim's death.

Chapter- 6

Recommendations and Findings

“The criminal justice system” in Bangladesh is built on an adversarial system of justice. Because it places emphasis on the rights of the criminal, it is frequently criticized of being dogmatic and insensitive towards victim protection. It's general knowledge that the victims play a passive part in the current criminal justice system. The victim's demands and concerns are routinely disregarded by the accused and the judicial system authorities, leaving them defenseless and helpless; some even believe they have been victimized again. The victims suffer more as a result of, among other things, impolite police interrogation, subpar information delivery, hold-ups, or enigmatic prosecutor choices to abandon cases. Criminal litigation will suffer without institutional and statutory victim protection. ‘The Appellate Division’ also concluded that in most instances, the victim's rights had been violated when the offender was granted interim bail. When victims and witnesses aren't safeguarded, our legal system is frightening, as the Law Commission observed properly.

6.1 Findings

The following difficulties are evident when crime victims use their rights in our criminal justice system:

(a) Investigation and pre-trial challenges for victims: The investigating officer generally shows some intent that the victim feels victimized twice. Victims were sometime threatened by police officer or by accused to withdraw the case. The victim will never receive justice if the prosecution fails due to inadequate investigation. Victims don't enjoy Presumption of innocence. Victims are treated as offender. If the FIR informant isn't the victim, the victim won't receive the previously indicated information. After filing a FIR, the victim must attend to court every day to see if the perpetrator has requested bail, parole, or a criminal revision.

(b) Uncomfortable Testimony: A victim is a prosecution witness in criminal proceedings and may testify if called by the court. During a lengthy trial, the victim and other witnesses lose interest in testifying. The prosecution sometimes fails to introduce witnesses due to the victim's shifting location and ongoing trial. Due to a "local compromise," the victim of some horrible crimes, including as assaults on women, is often forced to testify for the accused. Our defective

legal system lacks witness protection. Crooks and gangsters scare victims and witnesses to keep quiet. When speaking to the abuser, the victim may feel anxious. Additionally, due to inappropriate cross-examination by the defense attorney, many victims of crimes involving violence against women become the horrific targets of extra psychological suffering. The Law Commission acknowledged that speaking in open court is uncomfortable for victims of sexual assault. Even though in-camera trials are permitted by law, judges rarely use them.

(c) Rare utilization of compensation order: The court may, in its discretion, order that all or part of a monetary fine imposed as the only or extra punishment be paid to the victim under the CrPC.⁶⁰ In reality, sentencing judges rarely use their authority, and even when they do, the compensation is inadequate. There is no chance for victim compensation, though, if the culprit is found not guilty or cannot be found. In other words, the victim status for compensation purposes only hinges on the finding of guilt. The Supreme Court, acting as the writ court for the infringement of fundamental rights, extremely infrequently orders the state to make restitution for specific crimes when it is the culprit. However, this method of compensating the victim is often ineffective due to judges' insensitivity to victims.⁶¹ The Law Commission correctly noted that the victim's right to receive “justice”, “protection”, and “compensation” for the losses he has suffered is just as fundamental as the accused's right to an attorney.⁶²

(d) The legal definition of "victim" is ambiguous: In criminal cases, victims have traditionally played a supporting role. Numerous pieces of national legislation utilize the word "victims" without providing a definition.

(e) The victim's silence at trial: In our jurisdiction, victims are often unwilling to participate in the judicial system due to worries of repeat victimization, revenge from the accused, lack of understanding or notification of their ability to make arguments, and a low conviction rate in criminal cases. If a judge can't compare the victim and the criminal, he may not be able to

⁶⁰ Code of Criminal Procedure 1898, s 545.

⁶¹ Abdullah Al Faruque, “Goals and Purposes of Criminal Law”, *Bangladesh Journal of Law*, Special Issue, 2007, p. 1.

⁶² Law Commission, 75th Final Report on a proposed law relating to payment of compensation and other reliefs to the crime victims; available at <http://www.lawcommissionbangladesh.org/reports.htm>; last accessed 01 January 2016.

establish a reasonable penalty. Because prosecutors are only chosen when needed, they may not know the victim's pain. If he's allowed to give a "victim impact statement," many victims will heal psychologically. Our criminal proceedings lack a sentence hearing.

(f) Lack of an all-encompassing law: There has been a lot of discussion about the absence of “rights” and protection for victims. There isn't a legal statute protecting victims in Bangladesh yet. However, the HCD ruled in *BNWLA v. Bangladesh Government* that the government must immediately create legislation creating a victim protection mechanism in order to adequately protect sexual harassment victims, witnesses, and those who come forward to report it. In its recommendations, the Law Commission also advocated forcefully for rules that safeguard witnesses and victims.

(g) Poor Institutional Framework: The current institutional and legal structure is insufficient and hasn't advanced. Both institutions have subpar premises and equipment in the capital. Government initiatives aren't enough. They aren't immune to institution-wide infections. The District Legal Aid Office should be considered. National and regional victim protection committees, envisioned by special laws, have not yet been constituted or shown. NGOs' protection of crime victims is admirable, but more cooperation and development are needed.

(h) Taking Advantage of Loophole in the Law: Without proper investigation police officers seek remand and on remand they forcefully take confession under 161-164 of the Crpc. Moreover, in some cases it has shown that without committing crime a person was punished in jail for 15 years! It is most heinous scenario of Victims right as well as human rights violation.

(i) Publication of Victims Identity: HCD bar the media not to publish victim's identity (rape). Even after the death of the victim one cannot publish the identity but electronic and print media often publishes pictures of victims of various crime accusations.

6.2 Recommendations

The following suggestions are made in light of the difficulties mentioned earlier with victim protection in Bangladesh:

(a) The law should be altered so that the investigating department is required to conduct a prompt search of the area and interview the victim as soon as they become aware of the

commission of heinous crimes from a source other than the victim. It can be used as the basis for a First Information Report after preliminary evaluation (FIR). As a result, it will prevent the accusers and their allies from presenting a false case. In reality, they regularly try to alter the path of the law by leaving out the unfortunate victim and their loved ones. In the end, it will speed up the victim's ability to look for justice and receive fair treatment in the criminal judicial system.

(b) Immediately after an occurrence, victims should have access to organized, methodical, free, easily obtainable, and available medical and psychosocial care and equal treatment in order to obtain justice.

(c) Some horrific crime victims, including those who have been the victims of ‘rape’, ‘kidnapping’, ‘trafficking’, ‘dacoity’, etc., may be given safeguards that prevent them from ever having to face their assailants in court. The court should permit a number of extraordinary circumstances during the trial, including the use of victim statements under Section 161 of the Code of Criminal Procedure, the presence of a witness's supporter, and the use of shielded testimony via a screen, curtain, or two-way mirror. This means that victims and witnesses can feel safe testifying without fear of retaliation. The main benefit will be psychological and emotional support for crime victims.

(d) Regrettably, judges rarely exercise their authority to give victims monetary damages. The prosecution may claim that if a defendant is found guilty and given a sentence of more than two years in jail, the trial judge must provide an explanation in his judgment as to why monetary compensation was not provided. “The Criminal Rules and Orders (Practice and Procedure for Subordinate Courts) 2009” could be updated to include such directives if necessary.

(e) Police officers take the confession under 164 of crpc forcefully and most of the time without any investigation they seek for remand. Though the Supreme Court gives some direction to follow during investigation but the authority aren’t following this. Govt. or Court should take necessary steps to solve this loophole. A law must be enacted for solving the issue.

(f) It's obligatory to follow the law to protect victims from harassment and retaliation, keep their personal information private if it needs to be, and guarantee their protection and the safety of their loved ones who testify on their behalf. The media should also be careful to keep victims of

rape, sexual harassment, and other such crimes out of the spotlight. One must constantly make clear distinctions between investigative reporting and media trials.⁶³

(g) Female doctors should examine rape victims. A female cop should investigate rape, violence against women, etc. Section 22 of the Act for the Suppression of Cruelty to Women and Children mandates a female Judicial Magistrate examine a female victim.

(h) Bangladesh can't refuse victims compensation for lack of funds. The state will pay victims of severe crimes whether the culprit is caught, convicted, or acquitted. Victims need a thorough compensation scheme. A quasi-judicial entity may supervise a victims' compensation fund. It would be helpful for the Court if there were a sliding scale for monetary damages. Conditions for providing or rescinding compensation and ineligible offences are explained. Investigation delays lead to the prosecution's failure. The state should have the ability to recoup its costs from the responsible police, with any excess going to the victim. Examining whether or not the current agencies have the means and expertise to aid victims of crime is also crucial. As a result, it's essential to safeguard one's finances.

(i) The government and non-government organizations need to take the initiative to ensure those crime victims have access to immediate and long-term medical, psychiatric, psychological, and social services and legal aid.

(j) An Authority for Victims of Crime might be established with clear mandates to promote victim justice in our area.

(k) Each jurisdiction must implement a victim justice Centre informed by the disciplinary paradigm that improves justice implementation. It could help reduce the massive backlog of pending criminal cases.

(l) There needs to be more safe houses for women and children who have been victims of violent crimes.

(m) For victims to receive justice, it is crucial that numerous government departments and organizations work together.

⁶³ Hussain M. F. Bari, "Legal Aspects of Media Trial in Bangladesh: Free Press versus Fair Trial Dilemma", *Bangladesh Journal of law*, Volume 13, 2013, pp. 89-104

Conclusion

Bangladesh's criminal justice system falls short of international standards for victim and witness protection, compensation, restitution, and rehabilitation, even though such criteria are required for the effective prosecution and trial of criminal cases. Concerns have been raised that victims and witnesses may not be protected or afforded due process rights under our current legal system. Despite our legal obligation to a speedy and fair trial, it often seems that the rights of the accused criminal outweigh those of the victim.

Our system for protecting victims and witnesses looks inconsistent, ineffective, and inadequate. If we think back 150 years to when modern criminal law was enforced in this region by British colonial authorities, we can see that victim protection was not a significant priority. Eventually, when human values, philosophies, and technologies progress, intending to shift the paradigm and balance the scales of justice, a full assessment of the Penal Code 1860, the Code of Criminal Code 1898, and the Evidence Act 1872 may be seriously addressed.

Investigators, prosecutors, judges, and probation authorities need to take the initiative to speed up victim justice within the constraints of the current legal system, despite the challenges stated above. Implementing a comprehensive law to safeguard witnesses and victims is urgently required. Raising victims' voices in criminal processes is the only way to change the abysmal status of victim protection in our jurisdiction, a state-sponsored compensation program, prompt and compassionate responses from justice sector officials to victims' concerns, the collaboration between the government and non-governmental organizations, and inventive judicial intervention. To create a climate where crimes can be reported and adequately followed through criminal procedures, a victim protection program should provide victims with a full suite of services, including physical security, psychosocial assistance, compensation, and rehabilitation. The only way to stop criminals' impunity is to ensure they can get their day in court. With more input from victims, criminal justice in Bangladesh can only improve.

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