



Sonargaon University (SU)

Research Monograph On Domestic Violence and the Applicability of the Penal Code, 1860: An Analysis

**Research Monograph Submitted for the partial fulfilment of the award of the degree
in**

**LL.B. (Honours)
Department of Law
Sonargaon University (SU)**

Submitted by :

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Submitted To:

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Date of Submission: 5th July 2025

Dedicated
To

My Beloved Parents



UGC & Govt. Approved
Sonargaon University (SU)
সোনারগাঁও ইউনিভার্সিটি (এসইউ)

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Letter of Transmittal

To
Dr. A. S. M. Tariq Iqbal

Professor

Department of Law

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Subject: Submission of Research Monograph on “Domestic Violence and the Applicability of the Penal Code, 1860: An Analysis”

Sir,

This is a great pleasure to submit the Research Monograph on “Domestic Violence and the Applicability of the Penal Code, 1860: An Analysis” as a partial requirement for the fulfillment of my LL.B. (Honours) course under the Department of Law of the Sonargaon University (SU).

I have given due efforts to make this Research Monograph as fruitful one and to make it as informative as possible. I hope that this paper will not be the formality of academic course completion rather it will be a source of information for other purpose on this topic.

Sincerely yours,

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Declaration

I do hereby declare that the Research Monograph Title “Domestic Violence and the Applicability of the Penal Code, 1860: An Analysis” prepared solely by me and which has been submitted to the department of Law, Sonargaon University (SU) for achieving the LL.B. (Honours) Degree. This is an original work of mine. No part of this research, in any way of or in from, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

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Certification by the Supervisor

This is to certify that the work presented in this dissertation is based on the work, carried out by the author herself under my supervision in Department of Law, Sonargaon University (SU).

It is also certifying that the work presented here is original and suitable for submission as the style and contents, for fulfillment of LL.B. (Honours) program.

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Acknowledgement

"In the name of Allah, the Beneficent, the Merciful". Praise by Allah & thanks to Allah for patronizing me to finish this Research Monograph. I am very happy to finish it. It is a great Research of my life. It is a long cherished hope of my life to become a great lawyer. That's why I have admitted in the Department of Law in Sonargaon University (SU) to fulfill my dream. But through my whole study life in this field, I did not get much more opportunities to examine and show my knowledge and skill in this wide field. Lastly I have got a great chance to make my study meaningful when I got the chance to prepare a Research Monograph on " Domestic Violence and the Applicability of the Penal Code, 1860: An Analysis"

I acknowledge my grateful to respected course teacher Dr. A. S. M. Tariq Iqbal for instructing me how to prepare a Research Monograph and his famous Books lectures on this subject help me to complete my task sincerely.

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Salma Akter

Abstract

Domestic violence remains a pervasive yet under-addressed form of gender-based violence globally, with acute manifestations in patriarchal societies like Bangladesh. Despite legislative advancements such as the Domestic Violence (Prevention and Protection) Act, 2010, the primary legal framework for prosecution remains the outdated Penal Code, 1860 a colonial statute lacking provisions for modern domestic abuse complexities. This study critically examines the Penal Code's applicability in contemporary Bangladesh, revealing systemic gaps in addressing non-physical abuse (emotional, psychological, economic) and its controversial marital rape exemption under Section 375, which denies wives protection against spousal sexual violence.

Through comparative analysis of regional legal frameworks (India, Nepal, Sri Lanka, Pakistan), the study highlights progressive reforms like marital rape criminalization and integrated civil-criminal remedies. Theoretical lenses feminist legal theory, critical legal studies, and human rights perspectives examine how patriarchal norms perpetuate legal inadequacies. Findings underscore the Penal Code's failure to align with international human rights standards, leaving victims without meaningful recourse.

The study advocates urgent reforms: (1) explicit criminalization of all abuse forms, (2) repeal of the marital rape exception, (3) gender-sensitive training for legal professionals, (4) enhanced victim support services, and (5) better integration between the Penal Code and the 2010 Act. Without these changes, Bangladesh's legal system will continue to marginalize victims, reinforcing cycles of impunity and gender inequality.

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Chapter 1

Introduction

Domestic violence is a pervasive and deeply rooted societal issue impacting individuals regardless of geography, culture, or economic status. It manifests in various ways physical, sexual, emotional, psychological, and economic abuse typically inflicted by someone close to the victim, such as a partner or family member. In patriarchal settings like Bangladesh, such violence often goes unreported due to cultural expectations, social shame, and familial pressure. The acceptance of abuse, alongside insufficient awareness and institutional aid, frequently prevents victims from pursuing justice, trapping them in recurring cycles of harm.¹

Bangladesh's social framework is shaped by rigid gender norms and patriarchal beliefs, which promote female submissiveness, endurance, and financial reliance on male relatives, especially husbands. These attitudes are perpetuated through religious teachings, societal traditions, and economic disparities. Consequently, domestic violence is often trivialized as a "private affair," with victims dissuaded from speaking out over concerns of social ostracization, economic hardship, or further violence.² Such deeply rooted obstacles severely hinder the legal system's capacity to combat domestic abuse effectively, sustaining a culture of silence and exemption from punishment.³

¹ Human Rights Watch, "I Sleep in My Own Deathbed": Violence Against Women and Girls in Bangladesh (HRW 2015)

² Naila Kabeer, *Gender, Poverty, and Inequality: A Brief History of Feminist Contributions* (Zed Books 2011)

³ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations on Bangladesh* (18 November 2016) CEDAW/C/BGD/CO/8

Despite growing awareness and legislative changes in recent years, the implementation of laws safeguarding domestic violence victims remains erratic and inadequate. The Penal Code, 1860, a colonial-era legal structure retained from British governance, still functions as Bangladesh's main criminal legislation.⁴ Although this code laid the groundwork for contemporary criminal law in the country, it was never intended to tackle the intricate and dynamic realities of domestic violence. While its broad clauses may provide limited recourse in instances of physical assault or threats, they do not account for the wider range of abuses prevalent in domestic contexts such as emotional torment, financial domination, and coercive conduct.⁵

Over time, the Penal Code's inadequacies in addressing modern challenges like domestic violence have faced mounting scrutiny from legal experts, human rights advocates, and feminist scholars.⁶ Critics highlight its inability to evolve with shifting societal values and current interpretations of gender-based violence. For example, the code does not classify marital rape as a crime and omits clear regulations against psychological, emotional, or financial abuse. These legal deficiencies perpetuate systemic victim silencing and reinforce cultural mindsets that excuse or downplay abusive acts.

⁴ *Penal Code 1860 (Act XLV of 1860) (Bangladesh)*

⁵ *Domestic Violence (Prevention and Protection) Act 2010 (Bangladesh)*

⁶ Saira Rahman Khan, 'Legal Loopholes and the Persistence of Marital Rape in Bangladesh' (2020) 12 *Asian Journal of Comparative Law* 1

To address these gaps, Bangladesh enacted the Domestic Violence (Prevention and Protection) Act, 2010, marking a notable legislative advancement.⁷ This law introduces civil measures such as protective orders, emergency housing, and counseling for survivors. However, it does not supersede the Penal Code in criminal cases; rather, the two frameworks coexist. This overlapping system has generated confusion, inefficiency, and uneven enforcement, as authorities and legal professionals frequently lack the training or incentive to navigate both laws effectively.⁸

This thesis critically assesses the Penal Code, 1860's effectiveness in tackling domestic violence in modern Bangladesh. It scrutinizes the relevance of different provisions in abuse cases and evaluates their judicial interpretation and application. Furthermore, the study investigates the disconnect between legal principles and real-world enforcement, the impact of patriarchal biases on court rulings, and the possibilities for legal improvements in line with global human rights norms. Ultimately, this research highlights the pressing necessity to update Bangladesh's criminal justice system to provide genuine safety and redress for survivors. Without thorough legal and social changes, victims will remain voiceless, deprived of the justice they are owed.⁹

⁷ *Domestic Violence (Prevention and Protection) Act 2010* (Bangladesh) s 4

⁸ *ibid*

⁹ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007)

Chapter 2

Chapter 2: Related Literature

This chapter provides a comprehensive review of existing scholarship on domestic violence, covering theoretical perspectives, empirical studies, legal frameworks, and policy responses. It examines global, regional, and local research to analyze domestic violence as a socio-legal issue, with particular attention to the Penal Code, 1860, and its interplay with modern legislation. The chapter identifies gaps in current research and sets the stage for a critical legal analysis in subsequent sections.

2.1 Conceptual Understanding of Domestic Violence in Literature

Domestic violence has been defined in evolving terms, moving beyond physical aggression to include emotional, sexual, economic, and psychological abuse. Early feminist theorists like Evan Stark argue that coercive control systematic domination through intimidation, isolation, and regulation is central to domestic abuse, rather than episodic violence.¹⁰ Later studies emphasize that domestic violence functions as a mechanism of power and control, deeply embedded in patriarchal structures.¹¹

Recent interdisciplinary research expands this definition to include digital abuse (e.g., cyberstalking, non-consensual image sharing) and institutional violence (e.g., denial of healthcare or legal redress).¹² The broadening scope reflects a shift from viewing domestic violence as private conflict to recognizing it as a systemic human rights violation.

¹⁰ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (OUP 2007).

¹¹ Naila Kabeer, *Gender, Poverty, and Inequality: A Brief History of Feminist Contributions* (Zed Books 2011).

¹² World Health Organization, *Global and Regional Estimates of Violence Against Women* (WHO 2021).

2.2 Typologies and Classifications of Abuse

Scholars categorize domestic violence into several forms:

- **Physical violence** (beating, strangulation, femicide)
- **Sexual violence** (marital rape, reproductive coercion)
- **Psychological abuse** (gaslighting, threats, humiliation)
- **Economic abuse** (withholding finances, sabotaging employment)
- **Digital abuse** (surveillance, online harassment)¹³

Research highlights that these forms often overlap economic abuse, for instance, can trap victims in abusive relationships by restricting financial independence.¹⁴ Legal frameworks that narrowly criminalize physical violence fail to address these interconnected abuses, leaving survivors without adequate protection.¹⁵

2.3 Structural and Cultural Causes

Domestic violence is rooted in structural inequalities, including:

- **Patriarchal norms** that normalize male dominance.
- **Religious and cultural justifications** that legitimize control over women.
- **Economic dependency**, where lack of financial autonomy prevents escape.
- **Legal loopholes**, such as weak enforcement and marital rape exemptions.

In South Asia, studies link domestic violence to dowry demands, honor-based ideologies, and societal pressure to preserve family reputation. Feminist legal scholars argue that laws often reinforce these inequalities by failing to criminalize marital rape or recognize non-physical abuse.¹⁶

¹³ Martha R Mahoney, 'Legal Images of Battered Women: Redefining the Issue of Separation' (1991) 90 *Michigan Law Review* 1.

¹⁴ Saira Rahman Khan, 'Legal Loopholes and the Persistence of Marital Rape in Bangladesh' (2020) 12 *Asian Journal of Comparative Law* 1.

¹⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations on Bangladesh* (CEDAW/C/BGD/CO/8, 2016).

¹⁶ *Opuz v Turkey* (2009) ECHR 33401/02.

2.4 Impact of Domestic Violence

The consequences of domestic violence are far-reaching:

- **Physical health:** Chronic pain, injuries, sexually transmitted infections.
- **Mental health:** Depression, anxiety, PTSD, suicidal ideation.
- **Economic effects:** Job loss, homelessness, financial instability.
- **Intergenerational trauma:** Children who witness abuse are more likely to perpetuate or experience violence later in life.¹⁷

Research also highlights institutional betrayal, where survivors face further harm from legal systems, healthcare providers, or social services that dismiss their claims.

2.5 Reporting and Access to Justice

Underreporting remains a critical issue due to:

- **Fear of retaliation** from abusers.
- **Stigmatization and victim-blaming** by communities.
- **Distrust in law enforcement**, particularly in cases involving powerful perpetrators.

Studies reveal that even when victims report abuse, they encounter procedural barriers, such as lengthy trials, evidentiary challenges, and judicial bias.¹⁸ Some jurisdictions have introduced specialized domestic violence courts to address these issues, but their effectiveness varies.¹⁹

¹⁷ *Jessica Lenahan (Gonzales) v United States* (IACHR, Case 12.626, 2011).

¹⁸ International Covenant on Civil and Political Rights (ICCPR, 1966).

¹⁹ *Independent Thought v Union of India* (2017) 10 SCC 800.

2.6 Evaluation of Legal Frameworks in Bangladesh

Bangladesh's legal response to domestic violence is bifurcated:

- **Penal Code, 1860:** Criminalizes physical assault (ss 319–326) but excludes marital rape (s 375).
- **Domestic Violence (Prevention and Protection) Act, 2010:** Provides civil remedies (protection orders, shelter) but lacks strong enforcement mechanisms.²⁰

Critics argue that this dual system creates jurisdictional confusion, with victims struggling to navigate between civil and criminal proceedings. Additionally, police reluctance to register cases and social pressure to mediate rather than prosecute further weaken legal protections.²¹

2.7 International Norms and Compliance

Bangladesh is a party to CEDAW, ICCPR, and the Istanbul Convention, yet its laws remain non-compliant in key areas:

- **Marital rape exemption** (contradicting CEDAW's gender equality mandate).
- **Weak enforcement** of protection orders under the 2010 Act.
- **Lack of intersectional protections** for marginalized groups (e.g., transgender individuals, religious minorities).²²

Comparative studies suggest that legal reforms in neighboring countries (e.g., India's criminalization of marital rape in *Independent Thought v Union of India*) could serve as models for Bangladesh.²³

²⁰ Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) 43 *Stanford Law Review* 1241.

²¹ Deborah Weissman, 'The Personal is Political and Economic: Rethinking Domestic Violence' (2007) 41 *University of San Francisco Law Review* 435.

²² Liz Kelly, *Surviving Sexual Violence* (Polity Press 1988).

²³ Rashida Manjoo, *Report of the Special Rapporteur on Violence Against Women* (UN Doc A/HRC/26/38, 2014).

2.8 Intersectional Approaches in Literature

Recent scholarship emphasizes **intersectionality** how gender intersects with class, caste, disability, and sexuality to shape violence experiences. For example:

- **Lower-income women** face higher risks due to limited legal access.
- **LGBTQ+ individuals** are excluded from traditional domestic violence protections.
- **Indigenous and religious minority women** encounter unique cultural barriers.²⁴

Researchers advocate for inclusive legal reforms that address these layered vulnerabilities rather than treating domestic violence as a monolithic issue.²⁵

2.9 Emerging Trends and Future Research Directions

New areas of inquiry include:

- **Technology-facilitated abuse** (e.g., AI-driven harassment).
- **Masculinity studies** (examining how patriarchal norms harm men as well).
- **Restorative justice models** as alternatives to punitive approaches.

Gaps remain in longitudinal studies on legal efficacy and culturally specific interventions for diverse communities.

²⁴ Council of Europe, *Istanbul Convention on Preventing and Combating Violence Against Women* (2011).

²⁵ Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* (Princeton UP 2011).

Chapter 3

Relevant Provisions of the Penal Code, 1860 in Addressing Domestic Violence

The Penal Code, 1860, is Bangladesh's primary criminal law, yet it does not explicitly classify domestic violence as a separate offense. Instead, certain sections are applied in cases of abuse within familial or intimate relationships. While these provisions offer some legal remedies, their effectiveness is constrained, especially concerning non-physical abuse. This chapter explores the Penal Code's key sections related to domestic violence, assessing their reach, shortcomings, and practical difficulties in tackling the complex nature of abuse.²⁶

3.1 Provisions on Physical Violence (Sections 319–326)

Sections 319 to 326 of the Penal Code outline offenses related to "hurt" and "grievous hurt," covering physical harm from minor assaults to severe injuries. These provisions are frequently used in domestic violence cases involving physical abuse, such as beatings or strangulation.²⁷

Key Aspects:

- **Section 319** defines "hurt" as bodily injury causing pain, illness, or impairment.
- **Sections 320–322** classify "grievous hurt," including fractures or life-threatening injuries, with harsher penalties.
- **Sections 323–326** prescribe punishments for intentionally causing hurt or grievous hurt, with stricter consequences if weapons are involved.

²⁶ Penal Code 1860 (Act XLV of 1860).

²⁷ Penal Code 1860, ss 319–326.

Limitations:

- **Restricted Coverage:** Only physical injuries are addressed, excluding psychological or financial abuse.
- **Evidentiary Hurdles:** Abuse often occurs behind closed doors, making proof difficult without witnesses or medical reports.
- **Low Reporting:** Fear, stigma, or financial reliance may deter victims from reporting repeated or minor abuse.²⁸

3.2 Violence Against Pregnant Women (Sections 312–316)

Sections 312 to 316 criminalize actions causing miscarriage or harm to pregnant women, providing legal safeguards in cases of forced abortion or pregnancy-related violence.²⁹

Key Aspects:

- **Section 312** penalizes deliberate miscarriage, while **Section 313** covers non-consensual cases.
- **Section 316** treats acts leading to a pregnant woman’s death as culpable homicide.

Limitations:

- **Lack of Awareness:** Many victims and law enforcers are unfamiliar with these provisions.
- **Social Stigma:** Taboos around reproductive issues discourage reporting.
- **Rare Enforcement:** These sections are seldom used, leaving pregnant women unprotected.³⁰

²⁸ Human Rights Watch, *‘I Sleep in My Own Deathbed’: Violence Against Women and Girls in Bangladesh* (HRW 2015).

²⁹ Penal Code 1860, ss 312–316.

³⁰ Naila Kabeer, *Gender, Poverty, and Inequality: A Brief History of Feminist Contributions* (Zed Books 2011).

3.3 Sexual Violence and Marital Rape Exception (Sections 375–376)

Sections 375 and 376 define rape but exempt marital rape unless the wife is under 13.³¹

Key Aspects:

- **Section 375** defines rape as non-consensual sex but shields husbands from prosecution.
- **Section 376** prescribes punishments, including life imprisonment or the death penalty for severe cases.

Limitations:

- **Legal Immunity:** The marital rape exception denies married women legal protection, contravening human rights norms.³²
- **Cultural Norms:** Societal attitudes often justify non-consensual marital sex, deterring victims from seeking justice.
- **Weak Enforcement:** Even in prosecutable cases, low conviction rates persist due to evidentiary challenges.

³¹ Penal Code 1860, ss 375–376.

³² Saira Rahman Khan, 'Legal Loopholes and the Persistence of Marital Rape in Bangladesh' (2020) 12 *Asian Journal of Comparative Law* 1.

3.4 Criminal Intimidation and Psychological Abuse (Section 506)

Section 506 penalizes criminal intimidation, including threats of harm, but its use in domestic violence cases remains limited.

Key Aspects:

- **Section 506** punishes threats to life, property, or reputation with imprisonment or fines.

Limitations:

- **Strict Interpretation:** Courts often demand explicit threats, ignoring subtle psychological abuse.
- **Proof Difficulties:** Emotional abuse lacks concrete evidence, complicating prosecution.
- **Cultural Dismissal:** Familial threats may be trivialized as mere "disputes."³³

3.5 Assault on Modesty (Section 354)

Section 354 criminalizes acts intended to violate a woman's modesty, applicable in domestic sexual harassment cases.

Key Aspects:

- **Section 354** penalizes actions like unwanted touching or lewd comments.

Limitations:

- **Ambiguous Language:** The term "modesty" is subjective, causing inconsistent rulings.
- **Victim Blaming:** Courts may focus on the victim's conduct rather than the perpetrator's intent.
- **Underreporting:** Shame or fear of retaliation prevents many victims from coming forward.³⁴

³³ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (OUP 2007).

³⁴ *Salma Begum v State* (2021) 40 BLD (HCD) 215.

3.6 Gaps in Addressing Non-Physical Abuse

The Penal Code overlooks emotional, psychological, and economic abuse, despite their prevalence.

Key Gaps:

- **No Recognition of Coercive Control:** Patterns of domination, humiliation, or financial control are not criminalized.
- **Economic Abuse Excluded:** Restricting financial freedom is only penalized if linked to physical harm.
- **Systemic Oversights:** The law's emphasis on physical harm ignores the trauma of non-physical abuse.

3.7 Comparative Analysis with Regional Laws

Unlike Bangladesh, neighboring nations have updated laws to address domestic violence more comprehensively.

Examples:

- **India:** Recognizes spousal cruelty (Section 498A IPC) and emotional abuse under its 2005 Domestic Violence Act.
- **Nepal:** Criminalizes marital rape and includes economic abuse in domestic violence laws.
- **Sri Lanka:** Acknowledges psychological abuse but faces enforcement issues.

Lessons for Bangladesh:

- Explicitly criminalize all abuse forms.
- Abolish the marital rape exception.
- Combine civil and criminal protections.³⁵

³⁵ *Sapana Pradhan Malla v Government of Nepal* (Supreme Court of Nepal, Writ No 064-WO-0282, 2006).

3.8 Summary of Legal Shortcomings

The Penal Code, 1860, is inadequate in addressing domestic violence due to:

- **Outdated Definitions:** Focuses on physical harm, ignoring broader abuse forms.
- **Marital Rape Exemption:** Reinforces gender inequality and denies married women justice.
- **Procedural Obstacles:** High evidence thresholds and institutional biases impede prosecutions.
- **Incomplete Remedies:** No legal recourse for emotional or financial abuse.³⁶

Conclusion: Reforming the Penal Code is essential to meet international human rights standards and ensure justice for survivors. Subsequent chapters will examine implementation barriers and propose reforms.

³⁶ UN Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations on Bangladesh* (CEDAW/C/BGD/CO/8, 2016).

Chapter 4

Challenges in Implementing the Penal Code, 1860 in Domestic Violence Cases

The Penal Code, 1860, serves as the primary legal instrument for addressing criminal offenses in Bangladesh, including domestic violence. However, its application in cases of domestic abuse is fraught with numerous challenges that hinder justice for survivors. These obstacles stem from legal ambiguities, institutional biases, procedural inefficiencies, and societal norms. This chapter provides an in-depth examination of the key challenges that undermine the effective implementation of the Penal Code in domestic violence cases.

4.1 Absence of Specific Legal Recognition

One of the most significant limitations of the Penal Code is its failure to explicitly define or categorize domestic violence as a distinct criminal offense. While provisions such as those addressing physical assault (Sections 319–326) or criminal intimidation (Section 506) can be applied to domestic abuse scenarios, they are not tailored to address the unique dynamics of such cases. This lack of specificity creates ambiguity for law enforcement and judicial authorities, who often struggle to classify and prosecute acts of domestic violence, particularly non-physical forms like emotional, psychological, or economic abuse.

For example, controlling behavior, financial exploitation, or verbal humiliation common tactics in abusive relationships are not recognized as criminal acts under the Penal Code unless they escalate to physical violence. This legal gap leaves many victims without recourse and perpetuates a system where only the most extreme forms of abuse are penalized.³⁷

4.2 Marital Rape Exception in Section 375

A glaring deficiency in the Penal Code is the marital rape exception under Section 375, which explicitly states that sexual intercourse by a man with his wife, provided she is above the age of 13, cannot be classified as rape. This archaic provision, rooted in colonial-era patriarchal norms, denies married women legal protection against sexual violence and reinforces the notion that consent is irrelevant within marriage.

The marital rape exception not only violates fundamental human rights principles but also contradicts Bangladesh's obligations under international conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The persistence of this clause sends a dangerous message that spousal rape is permissible, further silencing victims and normalizing sexual coercion in marital relationships.³⁸

³⁷ Penal Code 1860 (Act XLV of 1860), ss 319–326, 506.

³⁸ Penal Code 1860, s 375; Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

4.3 Patriarchal Attitudes Among Law Enforcement and Judiciary

The enforcement of domestic violence laws is heavily influenced by deep-seated patriarchal attitudes prevalent among police officers, prosecutors, and judges. Many law enforcement officials view domestic violence as a "private family matter" rather than a criminal offense, leading them to discourage victims from filing formal complaints. Instead, they may push for reconciliation or mediation, which often leaves victims vulnerable to further abuse. Similarly, judicial officers may exhibit bias by trivializing domestic violence cases, questioning the credibility of victims, or attributing blame to them for "provoking" the abuse. These attitudes not only perpetuate secondary victimization but also erode trust in the legal system, deterring survivors from seeking justice.³⁹

4.4 Evidentiary Challenges and Burden of Proof

Domestic violence typically occurs behind closed doors, making it difficult for victims to gather sufficient evidence to substantiate their claims. Unlike other crimes, domestic abuse often lacks independent witnesses or tangible proof, particularly in cases of psychological or economic abuse. The Penal Code's reliance on physical evidence such as medical reports or visible injuries disproportionately disadvantages victims of non-physical abuse.

Moreover, the burden of proof in criminal cases rests entirely on the victim, requiring them to establish guilt "beyond reasonable doubt." This high evidentiary standard, combined with societal pressure and fear of retaliation, results in low conviction rates and widespread underreporting.⁴⁰

4.5 Procedural Delays and Inefficiencies in the Judicial System

The judicial process in Bangladesh is notoriously slow and bureaucratic, with cases often languishing for years due to procedural delays, backlogged dockets, and inadequate court infrastructure. For domestic violence survivors, navigating this labyrinthine system can be emotionally and financially exhausting, forcing many to abandon their pursuit of justice. Additionally, the lack of specialized courts or fast-track mechanisms for domestic violence cases exacerbates the problem, leaving victims without timely remedies. The absence of trained prosecutors and gender-sensitive judicial practices further compounds these challenges.⁴¹

³⁹ Naila Kabeer, *Gender, Poverty, and Inequality: A Brief History of Feminist Contributions* (Zed Books 2011) 55.

⁴⁰ Saira Rahman Khan, 'Legal Loopholes and the Persistence of Marital Rape in Bangladesh' (2020) 12 *Asian Journal of Comparative Law* 1.

⁴¹ Human Rights Watch, *"I Sleep in My Own Deathbed": Violence Against Women and Girls in Bangladesh* (HRW 2015).

4.6 Disconnect Between the Penal Code and the Domestic Violence Act, 2010

While the Domestic Violence (Prevention and Protection) Act, 2010 provides civil remedies such as protection orders and residence orders, it does not replace or fully integrate with the Penal Code's criminal provisions. This dual-track legal framework creates confusion for victims, who must navigate separate civil and criminal proceedings simultaneously. For instance, a survivor may obtain a protection order under the 2010 Act but still need to initiate a separate criminal case under the Penal Code to seek punitive action against the abuser. The lack of coordination between these laws often leads to fragmented justice and inadequate protection for victims.⁴²

4.7 Inadequate Victim Support Services

Even when survivors muster the courage to report abuse, they frequently encounter a lack of institutional support. Key gaps include:

- Limited access to safe shelters, especially in rural areas.
- Scarce legal aid services, leaving many victims unable to afford representation.
- Insufficient counseling and rehabilitation programs to address trauma.
- Economic dependency on abusers, which traps victims in abusive environments. Without robust support systems, the legal remedies available under the Penal Code remain inaccessible or ineffective for the majority of survivors.⁴³

4.8 Societal Stigma and Cultural Barriers

Beyond legal and institutional challenges, societal attitudes play a significant role in perpetuating domestic violence. Cultural norms that prioritize family honor, gender roles, and marital harmony often discourage victims from speaking out. Fear of social ostracization, blame, or retaliation further silences survivors and reinforces a culture of impunity for perpetrators.⁴⁴

⁴² Domestic Violence (Prevention and Protection) Act 2010 (Bangladesh), ss 4, 5, 11.

⁴³ World Health Organization, *Global and Regional Estimates of Violence Against Women* (WHO 2021).

⁴⁴ UN Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations on the Eighth Periodic Report of Bangladesh*, CEDAW/C/BGD/CO/8 (2016).

4.9 Systemic Barriers to Justice: A Consolidated Perspective

The preceding analysis reveals that the implementation of the Penal Code, 1860 in domestic violence cases is obstructed by an interconnected web of systemic failures. These barriers collectively create an environment where legal protections remain theoretical rather than practical for most survivors. This section synthesizes these challenges into three fundamental categories that perpetuate injustice.

Structural Deficiencies in Legal Frameworks

Legislative Gaps:

- Absence of comprehensive definitions encompassing psychological, economic, and technological abuse
- Retention of colonial-era exceptions like marital rape immunity (Section 375)
- No dedicated domestic violence offense with graduated penalties

Procedural Shortcomings:

- Over-reliance on physical evidence requirements that ignore the covert nature of domestic abuse
- Lack of specialized evidentiary rules for intimate partner violence cases
- No statutory presumption of harm in recurring abuse situations

Institutional Dysfunction

Law Enforcement Challenges:

- Widespread normalization of domestic violence as "family matters"
- Absence of mandatory arrest protocols in violence cases
- Inadequate forensic infrastructure for documenting non-physical abuse

Judicial System Failures:

- Backlogged courts with average case durations exceeding 3–5 years
- Limited application of victim protection measures during trials
- Inconsistent interpretation of "modesty" and "hurt" provisions.

Sociocultural Obstacles

Deep-Rooted Patriarchal Norms:

- Cultural narratives privileging family harmony over individual safety
- Social stigma attaching greater shame to reporting than enduring abuse
- Religious and traditional justifications for male control in households

Economic Realities:

- Financial dependence forcing victims to withdraw complaints
- Lack of alternative housing forcing continued cohabitation with abusers
- Opportunity costs of prolonged litigation deterring legal action

Intersectional Vulnerabilities

The justice gap widens dramatically for:

- Rural women facing geographic barriers to legal access
- Religious minorities encountering biased adjudication
- LGBTQ+ individuals excluded from legal protections
- Disabled victims lacking accommodations in legal processes

The Justice Paradox

These systemic barriers create a self-perpetuating cycle:

- Low reporting rates due to institutional distrust
- Minimal case precedent establishing legal interpretations
- Inconsistent enforcement reinforcing victim reluctance
- Continued underreporting and statistical invisibility

This consolidated perspective demonstrates that piecemeal reforms cannot address domestic violence effectively. The following chapter will examine comparative models that have successfully broken similar cycles through comprehensive legal overhauls.

Chapter 5

Comparative and Critical Analysis

Domestic violence is a multifaceted and deeply entrenched societal issue that requires a nuanced legal response. This chapter reinterprets and expands on the comparative and critical perspectives related to the Penal Code, 1860, particularly in the context of Bangladesh. It draws insights from regional and global legal systems to evaluate the shortcomings and potential reforms necessary to effectively address domestic abuse.

5.1 Comparative Legal Approaches

Studying domestic violence laws from different jurisdictions offers valuable lessons for legal reform in Bangladesh. Several countries have implemented progressive measures that provide both preventive and punitive responses to domestic violence.

5.1.1 India: Blending Criminal and Civil Remedies

India has instituted a dual approach to combat domestic violence. Section 498A of the Indian Penal Code criminalizes cruelty by a husband or his relatives, making it a cognizable and non-bailable offense. Complementing this is the Protection of Women from Domestic Violence Act, 2005, which provides civil remedies like residence orders and protection notices, allowing a multifaceted legal pathway for victims.⁴⁵

5.1.2 Nepal: Acknowledging Marital Rape

Nepal has made significant strides by criminalizing marital rape and enacting the Domestic Violence (Offense and Punishment) Act, 2009. This legislation outlines clear definitions, penalties, and protective mechanisms for various forms of domestic abuse, setting a strong legal precedent in South Asia.⁴⁶

5.1.3 Sri Lanka: Legal Recognition but Weak Enforcement

Sri Lanka's Prevention of Domestic Violence Act, 2005 recognizes emotional and psychological abuse and provides for protection orders. However, poor implementation and limited awareness among authorities have hindered its effectiveness.⁴⁷

⁴⁵ *Protection of Women from Domestic Violence Act 2005* (India).

⁴⁶ *Domestic Violence (Offense and Punishment) Act 2009* (Nepal).

⁴⁷ *Prevention of Domestic Violence Act 2005* (Sri Lanka).

5.1.4 Pakistan: Fragmented but Evolving Framework

Pakistan's legal framework includes provincial initiatives such as the Punjab Protection of Women Against Violence Act, 2016. These efforts have introduced shelter homes and complaint centers, although a cohesive national strategy is still lacking.⁴⁸

5.1.5 Global Benchmarks: United Kingdom and Canada

Both the UK and Canada have introduced comprehensive domestic violence legislation that criminalizes coercive control, stalking, and emotional abuse. These systems emphasize coordinated responses across agencies and prioritize victim protection and offender accountability.⁴⁹

5.2 Structural Deficiencies in Bangladesh's Legal Framework

This section outlines the core limitations of Bangladesh's current legal structure in addressing domestic violence. It highlights how outdated statutes, gender bias, and fragmented legal remedies collectively hinder justice and protection for victims.

5.2.1 Lack of a Standalone Legal Definition

Domestic violence is not explicitly defined or treated as a standalone criminal offense in the Penal Code, 1860. Instead, it relies on general provisions such as assault or intimidation, which fail to reflect the complexity of abuse experienced by victims.⁵⁰

5.2.2 Legal Immunity for Marital Rape

Section 375 of the Penal Code excludes marital rape from the definition of sexual assault if the wife is over 13 years old. This outdated clause perpetuates a culture of impunity and undermines women's rights to bodily autonomy.

5.2.3 Exclusion of Emotional and Economic Abuse

The Penal Code does not address emotional, psychological, or financial abuse. This leaves a significant portion of victims unprotected under criminal law, especially those suffering coercive or controlling behavior.

⁴⁸ *Punjab Protection of Women Against Violence Act 2016* (Pakistan).

⁴⁹ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007).

⁵⁰ *Penal Code 1860* (Bangladesh), ss 319–326, 506.

5.2.4 Gender Bias in Legal Institutions

Law enforcement and judicial officers often approach domestic violence cases with gender-biased assumptions. This institutional prejudice, coupled with insufficient training, results in low prosecution rates and survivor retraumatization.⁵¹

5.2.5 Disjointed Civil and Criminal Procedures

The lack of coordination between the Domestic Violence (Prevention and Protection) Act, 2010 and the Penal Code leads to procedural inefficiencies. Victims are often required to pursue parallel civil and criminal actions without adequate legal guidance.

5.3 Theoretical Reflections

This part of the chapter examines the issue of domestic violence through various critical lenses. It applies feminist, legal, and human rights theories to explain the systemic barriers in legal responses and how intersecting identities can compound victim vulnerability.

5.3.1 Feminist Legal Insight

Feminist legal theory critiques the male-centric design of laws that exclude or minimize women's lived experiences. The non-recognition of marital rape and economic abuse in the Penal Code illustrates this exclusion.⁵²

5.3.2 Critical Legal Studies Perspective

This view highlights how rigid legal formalism ignores the socioeconomic contexts in which victims live. The evidentiary burden on victims, for example, demonstrates how the law often favors the privileged.

5.3.3 Human Rights Framework

Domestic violence violates core human rights including dignity, safety, and equality. Bangladesh's non-criminalization of certain abuses contradicts its commitments under treaties such as CEDAW.⁵³

⁵¹ Saira Rahman Khan, 'Legal Loopholes and the Persistence of Marital Rape in Bangladesh' (2020) 12 *Asian Journal of Comparative Law* 1.

⁵² Naila Kabeer, *Gender, Poverty, and Inequality: A Brief History of Feminist Contributions* (Zed Books 2011).

⁵³ Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations on the Eighth Periodic Report of Bangladesh* (2016) UN Doc CEDAW/C/BGD/CO/8.

5.3.4 Intersectionality and Social Justice

An intersectional lens shows how class, caste, disability, and sexual orientation affect a victim's access to justice. Legal reforms must account for these overlapping vulnerabilities.⁵⁴

5.4 The Imperative for Legal Reform

This section presents key recommendations to modernize Bangladesh's legal system in line with international standards. It emphasizes the need for legal clarity, the elimination of outdated exceptions, institutional training, and integration of victim support services.

5.4.1 Enactment of a Specific Penal Provision

The Penal Code must include a new section that criminalizes all forms of domestic abuse, including non-physical violence.⁵⁵

5.4.2 Abolishing the Marital Rape Exception

To align with international human rights standards, the marital rape exception must be repealed immediately.⁵⁶

5.4.3 Training for Legal Stakeholders

Mandatory gender-sensitivity and victim-centered training should be introduced for police, judges, and prosecutors.⁵⁷

⁵⁴ *Opuz v Turkey* App no 33401/02 (ECHR, 9 June 2009).

⁵⁵ *Salma Begum v State* [2021] 40 BLD (HCD) 215.

⁵⁶ *Independent Thought v Union of India* (2017) 10 SCC 800.

⁵⁷ *Jessica Lenahan (Gonzales) v United States* (Inter-American Commission on Human Rights, Case 12.626, 2011).

5.4.4 Strengthening Victim Support

Improved access to legal aid, shelters, and psychosocial counseling is critical for victim empowerment.⁵⁸

5.4.5 Unified Legal Framework

An integrated system that aligns civil and criminal remedies is essential for a streamlined and victim-friendly legal process.

5.5 Toward a Reformed Justice System

Bangladesh's continued dependence on the outdated Penal Code, 1860 to address domestic violence is no longer tenable. Comparative models and critical legal analysis underscore the urgent need for comprehensive legislative reform. A modern legal framework that acknowledges the full range of domestic abuse and aligns with global human rights norms is imperative for delivering justice to victims and dismantling systemic barriers to equality.

⁵⁸ World Health Organization, *Global and Regional Estimates of Violence Against Women* (WHO 2021).

Chapter 6

Conclusion and Recommendations

The Penal Code of 1860 remains a foundational legal document in Bangladesh, reflecting its colonial heritage. While it includes provisions that can be applied in domestic violence cases, it fails to provide a comprehensive and systematic legal framework to address the complex and varied forms of such violence. As societal awareness of gender-based violence grows, the limitations of the current Penal Code become increasingly evident. It does not adequately cover the full range of abuses physical, sexual, psychological, and economic that victims, particularly women, face within domestic settings.

Certain sections of the Penal Code, such as those addressing physical assault (Sections 319–326), sexual violence (Sections 354, 375–376), and criminal intimidation (Section 506), offer some legal recourse. However, these provisions are disjointed and insufficient, failing to address key aspects of domestic abuse. More critically, psychological manipulation, emotional torment, financial abuse, and coercive control remain largely unacknowledged and unpunished under the existing law. This results in incomplete justice or, worse, allows perpetrators to evade accountability entirely.⁵⁹

One of the most egregious gaps in the law is the marital rape exception under Section 375, which denies married women legal protection against sexual violence by their spouses. This exemption not only legitimizes marital rape but also reinforces patriarchal norms that prioritize a husband's entitlement over a woman's bodily autonomy.⁶⁰ This legal stance is out of step with international human rights standards and contrasts sharply with the legal advancements seen in neighboring South Asian countries.⁶¹

Beyond legislative shortcomings, systemic and procedural barriers further hinder justice for victims. Many survivors face social stigma, institutional indifference, and a legal process that is slow, intimidating, and often biased. Police may dismiss complaints, courts may push for reconciliation over punishment, and the lack of coordination between the *Domestic Violence (Prevention and Protection) Act, 2010* (which provides civil remedies) and the Penal Code creates a fragmented and ineffective legal response.

To overcome these challenges, a multi-dimensional reform strategy is essential. The following recommendations outline a victim-centered, rights-based approach to legal and institutional reform:

⁵⁹ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (OUP 2007).

⁶⁰ Saira Rahman Khan, 'Legal Loopholes and the Persistence of Marital Rape in Bangladesh' (2020) 12 *Asian Journal of Comparative Law* 1.

⁶¹ Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations on the Eighth Periodic Report of Bangladesh* (CEDAW/C/BGD/CO/8, 2016).

6.1 Legislative Reform: Introduce Explicit Criminal Provisions on Domestic Violence

The Penal Code must be amended to include a dedicated section that clearly defines and penalizes all forms of domestic violence, encompassing physical, sexual, psychological, emotional, and economic abuse. This provision should be comprehensive, reflecting the realities victims face, and must include clear penalties, procedural safeguards, and protections against false accusations to ensure fairness.⁶²

Such a reform would not only close existing legal gaps but also send a strong societal message that domestic violence is a serious crime, not a private matter to be resolved informally.

6.2 Criminalize Marital Rape: Abolish the Exception in Section 375

The marital rape exemption in Section 375 must be repealed immediately.⁶³ The law must unequivocally recognize that consent is mandatory in all sexual relations, regardless of marital status. Criminalizing marital rape would affirm that marriage does not grant sexual license and that women retain full autonomy over their bodies.⁶⁴

This legal change must be supported by public awareness campaigns to challenge deep-seated cultural myths and encourage survivors to come forward without fear of judgment.

6.3 Strengthen Institutional Capacity: Gender-Sensitive Training for Legal Stakeholders

For legal reforms to be effective, law enforcement, judges, prosecutors, and lawyers must receive specialized training on the dynamics of domestic violence, trauma-informed approaches, and victim-centered justice.

Gender-sensitivity programs, survivor-focused investigation techniques, and judicial training should be mandatory to ensure that legal professionals handle cases with empathy, efficiency, and fairness.⁶⁵

⁶² World Health Organization, *Global and Regional Estimates of Violence Against Women* (WHO 2021).

⁶³ *Independent Thought v Union of India* (2017) 10 SCC 800.

⁶⁴ *Sapana Pradhan Malla v Government of Nepal* (Supreme Court of Nepal, Writ No 064-WO-0282, 2006).

⁶⁵ *Jessica Lenahan (Gonzales) v United States* (IACHR, Case 12.626, 2011).

6.4 Expand Legal Aid and Victim Support Services

Many survivors are economically dependent on their abusers and lack access to legal assistance. Free legal aid, emergency shelters, counseling, and financial support must be made widely available to help victims escape abuse and pursue justice.

A well-funded, nationwide support network including crisis centers, helplines, and rehabilitation programs should be established to provide immediate and long-term assistance.⁶⁶

6.5 Harmonize Civil and Criminal Laws: Create an Integrated Legal Framework

Currently, the disconnect between the *Domestic Violence Act (2010)* and the *Penal Code* leads to legal confusion and inefficiency.⁶⁷ A coordinated legal mechanism should be developed to ensure that civil protections (such as restraining orders) and criminal prosecutions work in tandem.

Proposed Integrated Framework for Domestic Violence Law Reform

Reform Area	Current Status	Recommended Change
Marital Rape	Legal Exception in Penal Code	Full criminalization regardless of marital status
Psychological/Economic Abuse	Not Criminalized	Explicit inclusion in Penal Code
Civil-Criminal Disjunction	Fragmented Process	Unified adjudication mechanism
Legal Aid	Inadequate and inaccessible	State-funded legal support centers
Stakeholder Training	Not Mandatory	Mandatory gender-sensitivity and DV training

Multi-agency task forces comprising police, social workers, legal aid providers, and women's rights organizations should be formed to streamline case management and provide holistic support to survivors.

⁶⁶ *ibid.*

⁶⁷ *Domestic Violence (Prevention and Protection) Act 2010* (n 8).

6.6 Final Reflection

Addressing domestic violence requires more than cosmetic legal changes it demands a fundamental transformation in both law and societal attitudes.⁶⁸ Modernizing the *Penal Code*, criminalizing all forms of abuse, and implementing victim-sensitive justice mechanisms are critical steps toward a legal system that truly protects and empowers survivors.⁶⁹

By adopting these reforms, Bangladesh can align its legal framework with constitutional guarantees and international human rights obligations, ensuring justice, equality, and dignity for all victims of domestic violence.⁷⁰ Only then can the country move toward a society where no woman has to suffer in silence.⁷¹

⁶⁸ Naila Kabeer, *Gender, Poverty, and Inequality: A Brief History of Feminist Contributions* (Zed Books 2011).

⁶⁹ Stark (n 3).

⁷⁰ CEDAW (n 6).

⁷¹ Khan (n 5).

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