

IN SEARCH OF JUSTICE

Untold Tales of Domestic Violence Survivors



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1 March 2022

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GIZ Bangladesh

March 2022

Jointly published by

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Supported by

German Federal Ministry for Economic Cooperation and Development (BMZ) and the UK
Foreign, Commonwealth & Development Office (FCDO)

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Printed by | Color Line

Citation suggestion

Sultan, M., Akter, M., Mahpara, P., Pabony, N. A., Tasnin, F., Hossain, S., Titir, A., Siddiki, E. J., & Antor, S. I. (2022). In search of justice: Untold tales of domestic violence survivors. BRAC Institute of Governance and Development, BRAC University & Rule of Law Programme, GIZ Bangladesh.

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Acknowledgements

The year 2022 marks 50 years of German Development Cooperation in Bangladesh, and this publication is a part of commemorating the 50-year partnership, focusing on the complex justice-seeking journeys taken by domestic violence survivors. The research would not have been possible without the kind support of the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA) and assistance from key individuals and organizations, and we would like to extend our sincere gratitude towards them for their valuable contributions.

The research team is grateful to the three partner organizations: Bangladesh Legal Aid and Services Trust (BLAST), BRAC Human Rights and Legal Aid Services (HRLS),* and RDRS Bangladesh, and their respective focal points and field staff for providing necessary information, knowledge, and time in coordinating the fieldwork and adding value to the research. Acknowledgements to BLAST colleagues—Ayesha Akter, Md. Borkot Ali, Sharmin Akter, Sifat-E-Nur Khanam, Sipra Goswami, and Taposhi Rabaya—for their legal comments and input. We would like to thank BIGD’s communication team, especially Zarine Anan Khondoker and photographer Fahad Kaizer. The team wishes to express its high appreciation to the Rule of Law Programme of GIZ Bangladesh, supported by the German Federal Ministry for Economic Cooperation and Development (BMZ), and the UK Foreign, Commonwealth & Development Office (FCDO) for their excellent guidance, especially from their Policy and Research Unit and Communications Team in taking the research and publication forward. We would like to acknowledge Dr Faustina Pereira, Head of Legal Empowerment and Sustainable Development, Centre for Peace and Justice, BRAC University, and Dr Mirza M. Hassan, Head of the Governance and Politics Cluster, BIGD, who have previously contributed to the design and analysis of the first phase research report. We are indebted to the women and their families, whose case studies we have presented, for their time and patience in sharing their stories, experiences, joys, and sorrows with us.

*Now known as the Social Empowerment and Legal Programme (SELP).



■ Rina's father speaking to an RDRS animator.



I. Introduction¹

| Background

Domestic violence (DV) remains pervasive across Bangladesh. While there are remedies for domestic violence in place—protective and punitive measures—and institutional mechanisms for responses, access to justice remains a challenge. Women and girls often lack agency and decision-making power, in particular, over financial resources and property rights, and lack equal rights, including inheritance. Most have limited opportunities to exercise consent and choice in relationships, and lack equal rights in entry to, during, and on exit from marriage, including with regard to reproductive decision-making and custody of children. These challenges have been heightened in the pandemic with movement restrictions and lockdowns, and consequent closure of services, both formal and informal, including legal services. Critically, many frontline services with a community-based presence and specialized paralegals and lawyers closed operations during the lockdown. Law enforcement agencies were compelled to prioritize lockdown enforcement in the first phase. While courts operated both virtually and in person, they prioritized bail hearings and injunctions, and heard few cases of domestic violence or family matters.

A research study titled "Access to Justice During COVID-19 for Survivors of Domestic Violence" was carried out by the BRAC Institute of Governance and Development (BIGD), BRAC University. It was commissioned by the Rule of Law Programme, GIZ Bangladesh, on behalf of the German Federal

¹ Introduction by Maheen Sultan, Sara Hossain, and Marufa Akter

Ministry for Economic Cooperation and Development (BMZ) and the UK Foreign, Commonwealth & Development Office (FCDO), and carried out in collaboration with three non-governmental organizations (NGOs), namely BRAC, Bangladesh Legal Aid and Services Trust (BLAST), and Rangpur Dinajpur Rural Service (RDRS) Bangladesh. A related report (Sultan et al., 2021a) and a policy brief (Sultan et al., 2021b) have also been produced.

The original research was undertaken between November 2020 and April 2021 to understand the experiences of domestic violence survivors in seeking justice during the pandemic, their coping mechanisms, how they sought to deal with adversity and their complex justice journeys during COVID-19. The study aimed to examine the lived experiences of vulnerable married women with limited education and financial means, who had faced violence by their husbands and in-laws and sought assistance from legal service providers. Despite the challenges due to COVID-19, the three legal service NGOs adapted their services, and innovated a transition to online services and communications, including ramping up helplines and encouraging collaboration between government and NGOs. These NGOs' existing networks and relationships with clients, communities, and authorities on the ground meant that they could continue to respond even during the pandemic. The study looked at their responses to domestic violence survivors.

This report presents the twelve case studies drawn from the wider study, exploring in depth each woman's complex justice journey during the pandemic, focusing on three districts—Rangpur, Mymensingh, and Patuakhali. It is intended to allow readers—academics, practitioners, and those supporting women and girls who are survivors of domestic violence—to reflect on their individual and institutional roles and responsibilities, and to strengthen strategies of response. Since community intervention is critical to addressing domestic violence, the study also highlights the community's role during crises, and what more can be done at the community level to provide speedy and adequate support for women survivors of domestic violence. It is hoped that it will also assist law enforcement agencies, lawyers, and judiciary and legal service organizations to reflect on their role and develop strategies of response to address the challenges and gaps identified and to meet the needs and aspirations of survivors. Finally, it is hoped that the case studies will provide a starting point for rethinking sustainable development practices, including more collaborative approaches, strengthening outreach programs for domestic violence survivors in times of crisis, and making adjustments in the formal and informal justice systems.

The present report may be read jointly with the report *Access to Justice During COVID-19 for Survivors of Domestic Violence*, which provides an overview and analysis of the findings, and the related policy brief of the same title, which highlights the policy recommendations arising from these case studies. The report also stands alone as a representation of the voices of each individual woman survivor and the complexities of their justice journey in seeking redress for domestic violence.

We have seen that DV has been exacerbated during the COVID pandemic, which has continued longer than anybody expected. Violence against women (VAW) runs the risk of becoming more invisible in times of calamity, crisis, and disasters. This makes it even more important to keep the spotlight on women seeking access to justice for the violence they are facing when designing recovery and rehabilitation programs. Therefore, this report seeks to highlight their challenges, sufferings, as well as agency and the support they receive from multiple sources, including families, so that their experiences inform interventions, programs, and policies.

Methodology

The twelve case studies presented here, of women and girls who are survivors of domestic violence², are based on repeated individual in-depth interviews (IDIs), interviews of persons associated with each survivor, and process documentation by the three legal service organizations associated with this study, BLAST, BRAC, and RDRS. The transcripts of twelve IDIs (in two phases in late 2020 and early 2021) and ninety-two key informant interviews (KIIs) were used as sources of data to prepare the case studies. To supplement the information, the case studies were reviewed by the relevant NGO staff. There was also a follow-up visit and interview in the second half of 2021 with each of the respondents to fill any remaining gap in information and to update the status of each case. The case studies were then reviewed again by the research team at BLAST to integrate a legal analysis in identifying the gaps and barriers in accessing support mechanisms, constraints to women's exercise of agency, and strengths and weaknesses in responses from the community, NGOs, and state institutions.

The experience of the domestic violence survivors, as reflected in this study with service providers, whether government or non-governmental, was mixed. Some of these service providers went beyond their mandate to be helpful and supportive, while others reportedly had to be incentivized to fulfill their official functions. These case studies illustrate both realities.

The relevant legal commentary on each case has been provided within separate text boxes and the full legal note can be found in the Annexe. This note only relates to the consideration of queries relating to the twelve case studies in the BIGD/BLAST/BRAC/RDRS study, and to cases concerning women from across Bangladesh who married under Muslim law. It does not discuss specific issues relating to remedies for domestic violence for women married under Hindu or Christian personal law or customary law or the Special Marriage Act.

² Pseudonyms have been used throughout the research to protect the identity of the domestic violence survivors and their family members.

| Key Findings

This report's key findings focus on where and from whom survivors sought assistance, which agencies or individuals they found more accessible or effective, and the nature of protection they secured, as well as what worked and what did not to respond to survivors' needs in relation to existing laws, institutions, and practices. The report also discusses the role of certain key actors—family members (parents, siblings, and extended family), neighbours, community elders, political party members, local government officials, NGOs (legal service providers along with their paralegals or community animators, and women's groups), law enforcement agencies, lawyers, court officials, and judges. We have not discussed the role of enforcement officers, social welfare officers, or health workers, although they are relevant to a holistic domestic violence response, because none of the women survivors referred to them.

The failure to meet dowry demands was the main trigger for domestic violence. The law prohibits taking or giving dowry at the time of, or before, a marriage or during the existence of a marital relationship and penalizes the offender with a minimum of one year and a maximum of five years in prison and a maximum fine of fifty thousand taka (far less than the sums usually demanded as dowry) (see the Dowry Prohibition Act, 2018, and for cases filed before 2018, see Nari O Shishu Nirjaton Domon Ain [NSNDA], 2000). However, in the study, most of the women and their parents or siblings, were compelled to provide dowry at the time of marriage and also faced subsequent demands during the marriage. Both the bride's and groom's families saw the giving and receiving of dowry as socially acceptable, despite the clear prohibition in law. Conflicts arose, escalating rapidly into violence, when the bride's family was unable to pay the amount of dowry even if both parties had agreed upon it during the marriage. Notably, in Ayesha's case, when her parents could not pay the demanded dowry, her husband and in-laws tied her up and attempted to cut her throat. In other cases (such as in those of Afroza, Fatema, Meena, and Beauty), even if they or their family paid the originally agreed amount, they still faced repeated pressure from the husband and in-laws to pay more, and consequent violence.

Child marriage is a form of and contributing factor to domestic violence. Some mediators and family members interviewed observed that a young and immature girl becoming a wife and having to fulfil the household and

sexual duties involved would lead to conflict and dissatisfaction on both sides. Most women survivors interviewed were married before eighteen. In all cases, their parents either did not disclose their daughters' actual age at the time of marriage or its registration, or the marriage registration certificate did not reflect her actual age. Arranging or registering an underage marriage are criminal offences, and anyone accused can be arrested without a warrant by the police; if found guilty, they can face imprisonment and fines (Child Marriage Restraint Act, 2017). However, such marriages remain valid, and both parties have rights against each other, including the woman/girl being entitled to maintenance and accommodation. A child marriage can be annulled, or declared to be void, as if it never existed, but only if it has not already been consummated. For many women and girls, divorce carries a stigma and negative social and financial consequences, with few or no alternatives in terms of economic survival or physical security; so they remain in child marriages even when they become abusive, and parents also do their utmost to continue such marriages. In Beauty's case, several attempts were made to stop her marriage by the community, but her parents married her off secretly outside the village. By the time a community animator arrived to rescue her, it was too late, and the marriage had already taken place. Consent for marriage is a matter of serious concern in underage marriages. A child is not legally competent to consent or, in most cases, mature enough to understand the meaning of marriage, the rights and responsibilities involved, and to take an informed decision. However, under some religion-based personal laws (including Hindu and Muslim personal laws), child marriages remain valid, and a girl's parent or guardian can give consent on her behalf. Women who had been married as a child or young girl, often felt they were dependent economically and psychologically on their husbands. This bond and dependence on the husband may be particularly difficult for women to question or break. For many of the women, the huge power imbalance in the relationship, given the difference of age and experience, also makes it much harder to question the fact of such a marriage and, in particular, any ensuing violence.

The responses of women survivors' parents and siblings were critical to their accessing support. Parents and siblings played supportive roles during women's justice-seeking journey, providing advice, mental support, accompaniment, and reaching out to people to help access community *shalishes*, NGO services, clinics, hospitals, or even courts. They provided shelter and financial support even where their own financial situation was precarious. Families, particularly parents, tried to meet the financial demands

made by these women's in-laws, hoping to ensure the continuation of their marriage and reduce the intensity of the abuse. In Afroza's case, her mother was the most vocal in insisting on seeking protection against violence as a priority and advising on ways to do this. In Rina, Ayesha, and Komola's cases, family members rescued the women from hostile and abusive environments, physically accompanying them back to their parental homes, or sending money to allow them to return on their own. Rina's family rescued her when she was tied up and about to be killed by her husband and in-laws. Brothers and also sisters (those who were working independently) also helped women to escape by providing a route to getting a job and an alternative means of survival outside the marriage and marital home.

Most women survivors in this study preferred to seek help first from their family and then the local community, rather than any part of the formal justice system. For most women, community members were the first point of contact after their families. They sought assistance from a wider group as the violence escalated. In most of the case studies, women approached community actors such as neighbours and community leaders—e.g., *matobbars* or teachers—from the village (almost invariably male and older). It was observed that some non-traditional community leaders, such as political party members, a relative in the army, or landlords of the low-income settlements where the women were living, also took a role, indicating possible changes in power structures and relations. Interestingly, religious leaders played no role in any of these cases. Some of the women survivors expressed their sense of shame in talking or complaining about sexual abuse and violence in marriage. Given the social consequences and financial costs they perceived as associated with seeking recourse in the formal justice system, that is, the law enforcement agencies or courts, women prioritized community actors as their best recourse. Community actors were active in mobilizing support for respondents, arranging or conducting informal *shalish* or meetings, or performing the role of negotiators. They not only took part in dispute settlement but also referred women to individuals or institutions providing legal services.

Paralegals/community animators performed a range of roles in resolving disputes and, in many cases, secured redress from perpetrators. Paralegals and community animators are NGO staff responsible for assisting poor and vulnerable justice seekers both in the community and in the court. They acted as *shalishkars* and as “facilitators” by showing women the pathways for seeking justice, including by referring or accompanying them to available

services, such as the hospital, law enforcement agencies, or lawyers. In a few instances, they encouraged women survivors to seek justice by taking legal steps, to ensure the women's protection and to bring to account their abusive husbands. In the case of Beauty and Fatema, they accompanied the women and their family members to different service providers, and helped them in filing applications or complaints.

Most women in the study made repeated attempts along with their families to resolve the conflict, by ending the violence and staying in the marriage.

Women survivors made multiple attempts and efforts in multiple spaces to ensure an end to conflict and violence and to continue their marriage. For most women and their families, the continuation of marriage was the top priority, especially where children were involved. Breakdown of marriage was seen as a failure, a misfortune, and something to be avoided at almost any cost. The strength of social norms around marriage—combined with the lack of material support on its breakdown and lack of social or economic alternatives—meant most women in the study were willing to endure repeated violence, and to give repeated chances to their abusive husbands and in-laws, in order to stay in the marriage. Some women, such as Sadia and Reshma, believed that they could repair their marital relationship and end their husband's violence and aggression towards them and their children by threatening to or actually convening a shalish—whether through the local government or through an NGO—or filing a case in court. Interestingly, in both cases, the women's relationships with their husbands continued even while they were seeking action against them, with the husband visiting the wife at her parental home and spending the night together, and in some cases, the wife returning to her marital home. In Sadia's case, she resumed the relationship when she and her husband moved back to Dhaka, and also withdrew the cases she had filed against him. Other women, such as Komola, once it was clear that reconciliation was impossible, pursued the court cases to hold their husbands to account, ensure their punishment, and also to secure reparation, through the recovery of the dower money. Some of the women who went to court saw it as a strategy to intimidate or pressurize their in-laws to allow them to return to the in-laws' house. For example, Reshma and her family believed that the court would help them resolve the conflict, by enabling her to return to her husband and compelling him to stop abusing her.

Having limited alternatives to income and accommodation and security outside marriage is a key constraining factor for women to seek redress against domestic violence. Lack of education, lack of income, their natal family's resource constraints, norms around marriage, and the concept of social security of being a married woman limited most women's ability to demand or seek redress for the violence they experienced in marriage. Many women avoided seeking justice through the formal system, fearing it would reduce the chance of the marriage continuing, and preferred to resolve disputes in the community. Women repeatedly said their main demand was "ami bhaat khabo" (literally, I want to eat rice), signifying that they wanted to continue the marital relationship, which involves eating together (but more starkly perhaps also pointing to the marriage as the only means of economic survival). They saw the home they built after their marriage as their "shongshar" (their family and world) with the various material possessions they accumulated, and they claimed that the "shoshur bari" (in-laws' home) was their home by the right of their marriage. The women in the study who had children did not have any source of livelihood outside marriage. While the option of earning a livelihood by migrating to a city, or abroad, and working in a factory is now open to many women in Bangladesh, it is still not widely sanctioned socially, and married women working outside the home is still in many cases seen as a source of disgrace. As a Union Parishad (UP) chairman commented,

“

If a woman loses her husband, she loses her honour. She is shameless. If she is divorced, she can do whatever she wants to. She can even go to Dhaka and work in garments. She can get involved in other occupations too. If her first marriage breaks, her humanity and honour are halved.

—UP chairman

Social insecurity for divorced women is a major issue in Bangladesh. We observed in the case of Dilruba that once a woman divorced and recovered her dower money, her family did not feel it was safe or socially acceptable to have an unmarried woman in the house, since as a single woman, she would be considered to be available for sex and at risk of predators in the community. Therefore, they married her off again to a man who was already married.

UP and local level shalishkars were approachable but often biased against women's interests and rights. In most of the cases studied, the women survivors and their families had approached the UP chair or members at some point in their justice journey. These public representatives, elected to local government, appeared approachable to their women constituents, and also appeared to identify their own role and responsibility in resolving disputes for constituents. When they undertook shalishes, they considered themselves responsible for the families and the outcomes reached. The UP chairman in Rina's case, for example, said, "I took the responsibility of the family and conducted the shalish."

However, many of the women survivors also made it clear that the priority for these public representatives, which they (the public representatives) themselves explicitly stated, was to reconcile the couple and to continue the marriage, over and above stopping the violence. They even advised the survivors facing abuse, widely acknowledged within the community, to stay in the abusive marriage. In the case of Beauty, who was clearly in a child marriage (which is a crime), the UP chair tried to patch up the marriage and make the girl return to her husband without taking any measures to ensure her safety or to bring the offenders to account. He failed to act even though he recognized the violence was enabled by the fact of child marriage, and the huge age gap between the fourteen-year-old Ruma and her adult, twenty-year-old husband. Local government representatives often ignored women's interests and rights, instead explaining violence by a husband as socially acceptable and the norm. In several of the case studies, UP chairmen were involved in victim-blaming and re-victimization, compelling women survivors to ask for forgiveness from abusive in-laws, but requiring not even an acknowledgement of wrong-doing from the perpetrators. For example, Afroza, who was severely beaten and thrown out of the house, and Beauty, were told to beg for forgiveness from their in-laws to go back to their abusive in-laws' houses. In Beauty's case, she had sought assistance to end her marriage, not to stay in it. Some local government representatives reflected gender stereotypical views of domestic violence as resulting from disputes between mothers-in-law and wives, and spoke more in detail about conflicts between mothers-in-law and daughters-in-law than about conflicts between the husbands and the wives.

Procedural complexity and lack of understanding of formal justice mechanisms are a barrier to women seeking justice. Several of the survivors and their family members (e.g., Beauty, Reshma, Fatema, and Ayesha) were

not aware of legal procedures. They did not understand the steps taken to file or conduct cases, the reasons for these, and were wholly dependent on the lawyers dealing with the cases. Most of them simply followed their lawyers' advice without necessarily engaging with it or exploring different options available. Exceptionally, in two cases, where the women's mothers had prior experience of navigating the courts and the justice system (connected to separate land disputes), they were able to guide their daughters through the process.

Women remain in abusive marriages because of fears for children's future security and safety without paternal acknowledgement or financial and social support. Nine out of the twelve women had children, and for all nine, it was a concern. These women said that their children were the main reason they stayed in the marriage and put up with abuse. They felt that a child without a father would be seen in society as being "without a guardian" and effectively an orphan. The father's identity was considered essential for the child's acceptance and status in society. The law continues to be interpreted in the majority of cases to consider the father as the guardian of the children. Although the higher courts increasingly see the child's welfare as the key issue in deciding questions of custody, this is not reflected in cases of guardianship, in spite of Section 17 of the Guardian and Wards Act 1980 providing for certain matters to be considered for the welfare of a minor.³ This is also not reflected in local court decisions or community shalish. The women in our study reflected prevailing social norms that it is a woman's responsibility to ensure her children have their father as a guardian, and that a woman is not socially or economically capable of being a guardian herself.

Corruption is a barrier for women seeking access to justice. Seven out of the twelve women in the case studies did not earn an income. They depended on their parents or siblings to pay the costs of accessing justice. Many of the cases involved the women or their families paying the law enforcement agencies or shalishkars, elected local government representatives, for services. Afroza's mother had to pay the law enforcement agencies to accompany her to rescue her daughter from her in-laws' home. Meena had

³ In an exceptional verdict by Dhaka's 12th District and Session Court's Assistant Judge in 2018, Bangladeshi model and actress Azmeri Hoque Badhon received full guardianship of her daughter instead of general custody. There have been significant judgments by the Supreme Court applying and interpreting the laws on custody and guardianship, invoking the paramount consideration of the welfare of the child, and recognizing women's rights to custody of children, trumping personal law limits. [<https://archive.dhakatribune.com/showtime/2018/04/30/badhon-receives-guardianship-daughter-saira>]

to pay the law enforcement agencies to rescue her daughter from her in-laws. Reshma and her family allegedly felt that the law enforcement agencies did not file a criminal case because they did not pay money. Rupa said that the law enforcement agencies did not arrest her husband, and understood that this was because his family were making payments. This was one reason that she was frustrated with pursuing her case and wanted to drop it, as she could see the financial burden involved in pursuing the case.

The case studies illustrate the costs and consequences for women of speaking out against violence, questioning the terms of the marriage and seeking redress. There are financial costs involved for women in approaching the UP chairman or members (travel costs and informal fees), bringing together people in a shalish, travelling to the district court accompanied by a family member or child (as in the case of Sadia). A few of the women and their families also spoke about the social costs involved. These include reputational damage for women, who are afraid that they would be identified in their communities as a “mamlabaaj” (a person who tends to file cases, seen as a derogatory term), which could hamper their re-marriage prospects. Women who sought justice also faced retaliation by their husband or in-laws’ family and increased violence, the threat of or actual divorce.

The case studies have brought out women’s vulnerability to unilateral divorce.

Under the Muslim law,⁴ as it applies in Bangladesh, women can be divorced unilaterally and through arbitrary processes, with limited rights to financial relief on divorce. A woman cannot contest a divorce once initiated by the husband; the only possibility is to seek alternative dispute resolution (ADR) to convince him to withdraw his decision. Where the majority of women remain without any independent source of income or livelihood, and where the right to maintenance is dependent (under the Muslim law) on being married, women are vulnerable to economic destitution on divorce. In this context, women may seek to resist divorce, but have limited ability to do so under the law. A man can initiate a divorce just by issuing a notice to his wife and the relevant local authority. After receiving this first notice, the local authority may (but rarely does in practice) arrange for an ADR, by bringing the parties together, within the next ninety days. In default, the divorce will become effective after ninety days, even though the wife does not receive any further notification (Section 6, Muslim Family Laws Ordinance [MFLO],

⁴ The report refers to only Muslim Family Law as all women in the case studies were married under Muslim Family Law, and that is what applied in deciding their rights to divorce and rights following divorce.

1961 and Muslim Marriages and Divorces (Registration) Act [MMDRA], 1974). Exceptionally, women may undergo a *khula talaq* (as in the case of Ayesha and Dilruba); in these cases, a woman has some scope to exercise agency as, without her active decision, the divorce cannot proceed. In the case of *khula talaq*, the signatures of both husband and wife are required on the notice of divorce that goes to the local authority (Section 7, MFLO and MMDRA). If the husband issues a divorce notice while a case relating to domestic violence is ongoing, the wife will not be protected under this law after the divorce takes effect. A woman may only seek legal protection under the Domestic Violence Act against her husband if she is still married, which may be another reason for limited use of the Domestic Violence Act as opposed to cases in family court.

Dower money recovered is not likely to provide for the woman's financial needs to give her any form of financial security. In four of the twelve cases, women were able to recover their dower money, the amount stipulated in their marriage contracts, fully or at least partially. As the payment of dower money is usually done as a lump sum, and often with less being given on divorce than originally stipulated (through mediation settlements), it is inadequate in itself for the long term survival of a woman or her children. The amount is generally fixed at the time of marriage according to the husband's financial ability to pay and the amount actually paid is often reduced following settlement negotiations at the time of divorce.

A divorced woman, married under Muslim law, can only claim maintenance for herself for three months or till the end of a pregnancy. Under Muslim law, maintenance to a wife is only due for three months after divorce or till pregnancy, whichever is longer. In contrast, if the parties were married, then he would need to keep on paying her maintenance until divorce or death. This means a divorced woman is financially totally dependent on her natal family—parents or siblings in the absence of alternative livelihood options or any adequate social security. While the cases documented demonstrate that women's natal families were willing to provide support, their resources were generally strained, and even more so in the COVID-19 pandemic.

For some women, even where a husband agreed to provide child maintenance, it was difficult to ensure regular payments (as seen in the cases of Sadia and Mita). This might explain why women prefer to secure a one-time financial settlement that they can invest to get a regular income.

A number of the cases brought out the material and emotional loss of the women in losing their household possessions when they lost their marital home. These were often possessions that they had painstakingly accumulated over the years, either by saving money from household expenses or buying them with their own earnings as domestic or factory workers. Mita's jewellery and household possessions were taken over by her husband's first wife and mother-in-law. Sadia's mother-in-law also took over her household possessions after her marriage broke down. Only Ayesha was able to recover her household possessions, probably as they were of little value—just pots and pans.

There is little or no awareness among women survivors or their families or the wider community of the right of a victim of domestic violence to reside in the shared home (Section 1 of the Domestic Violence (Prevention and Protection) Act [DVPPA]), or secure residence orders from a court, or the awareness to protect this right while ensuring the security of the victim (Section 15). Exceptionally, in Afroza's case, the law enforcement agencies explicitly mentioned that she had the right to reside in her marital home even after receiving a divorce notice. However, Afroza's family was not willing to enforce this right, fearing for her physical security if she were to remain in the same place as her violent husband.

Many of the case studies also highlighted the extreme psychological trauma and suffering that married women and girls and their children face in abusive marriages. Sadia, Reshma, Komola, and Rupa all mentioned their unhappiness, undergoing periods of depression and anxiety and not being able to sleep, eat, or lead "normal lives." The pain that their parents and other family members faced seeing their suffering was also very apparent. The children who observed or lived with such persistent violence were also impacted. Reshma not only dealt with her husband's constant violence but also faced abuse from her twelve-year-old son, who was manipulated by her husband into blaming her for leaving them, insulting his grandfather, and threatening his maternal uncle. The psychological consequences of domestic violence need to be urgently addressed, including through providing access to psycho-social counselling as a priority for married women and girls, their children, their families, and the perpetrators.

Most of the women in the case studies have experienced/availed mediation as a tool to resolve their respective domestic violence-related crisis at some point in their justice journey; however, only a few of them could resolve the dispute through mediation. It was seen that the community is the most visited space where these women sought justice, despite availing services from the NGOs or state-level institutions and formal justice system, as an attempt to resolve matters, seek advice and information or build support. The costs of availing judicial services, difficulties of accessing legal aid, procedural complexities, backlog of cases, and lack of information and understanding of formal processes create obstacles to women's access to the formal judicial process. Therefore, the general tendency is to avail of formal and informal mediation (Siddiqi, 2003). Although there are limitations to the effectiveness of informal mediation in many regards, the social and moral support received from the community level and technical support received from the legal aid organizations and their field staff can facilitate access to justice through mediation (Islam & Alam, 2018). It was also observed that several cases combined community-level mediation with access to formal systems, where the threat of legal action was used to pressurize the husband and his family to resolve the conflict and resume the marriage. While in some cases this worked well, in a few other cases, this had the opposite effect of hardening positions and leading to divorce.

In conclusion, these case studies have highlighted twelve women's justice journeys, their courage and their struggles in their repeated attempts to stop the violence they were facing and to continue their marriages and ensure their own and their children's economic survival. Once it was clear that the marriage could not be saved, women sought reparation in the form of claiming their dower money or maintenance, using all the means at their disposal. However, the women's experiences demonstrate that they are not able to hold the perpetrators accountable for the physical, psychological, and economic violence they experience and the economic vulnerability they face after divorce. The institution of marriage is given more priority than the harm faced by women.

The institutional and policy reforms needed to address the various issues emerging from the case studies are discussed in the policy brief "Access to Justice During COVID-19 for Survivors of Domestic Violence" and more at length in the report of the same title.



Ayesha's mother having a meeting with an RDRS animator.



II. CASES



LOCKED UP FOR A NIGHT

AFROZA

Afroza using her phone. When Afroza's in-laws locked her up in their home, she called her mother and the UP chairman for help. She was also the only domestic violence survivor in our research who used social media to seek assistance, reaching out to a journalist whom she had met on Facebook.

A. LOCKED UP FOR A NIGHT: AFROZA

I Keywords

dowry, migrant worker, forced marriage, emotional blackmailing by mother-in-law, locked up in a room, BRAC Human Rights and Legal Aid Services (HRLS), law enforcement agencies, right to residence

INTRODUCTION

Afroza is twenty-four years old. She married Saiful, a migrant construction worker based in Malaysia, in 2014. They were married for six years until Saiful divorced Afroza in 2020. They have no children. In her six years of marriage, Afroza faced physical, economic, and psychological violence from her in-laws and husband in demand for dowry. She and her mother approached different community and state actors to resolve her marital disputes, and was one of the only survivors who used social media (Facebook) to access support. However, their multiple attempts failed. Afroza was divorced by her husband, who married again. Now that Saiful has remarried, she no longer wishes to go back to him and is waiting for the law to punish him.

PROFILE

Afroza is the only daughter of her parents. Her family's house is located right next to the highway and Mymensingh. Her father used to run a dairy farm and sell milk. They even had a small shop, which her parents ran jointly, and they were economically solvent. However, their financial condition deteriorated, and now Afroza's father is involved in farming and her mother is a homemaker.

Saiful's family was involved in farming and agriculture. His brother is a CNG driver, and of two sisters, one is married and lives with her in-laws, while the other is divorced and lives with their parents in the same house. During his wedding, Saiful was living in Malaysia, working as a construction worker. Though a Secondary School Certificate (SSC) candidate, Afroza could not sit for the examination because of the marriage.

THE CASE

Afroza was married to Saiful in December 2014. The marriage was arranged by Afroza's family, with the help of a Union Parishad (UP) member's husband, Ontu Mia. She was sixteen years old at the time. Ontu Mia is an influential member of the community and Afroza's mother's brother (*dhormo bhai*, a social relationship in which someone is considered as a brother). He knew Saiful and his family well, as they lived in the same neighbourhood. Afroza and her parents saw Saiful's pictures and met his family. Afroza's in-laws were insistent, but Afroza was not ready, as she had not met Saiful in person. As her parents and relatives kept pressurizing her to consent, she agreed to the marriage thinking about her parents' happiness. The marriage took place over the telephone, as Saiful was still in Malaysia. During the ceremony, she saw Saiful's face for the first time online, and was unhappy about his looks, but she accepted her fate. Although he remained in Malaysia, they regularly talked over the phone, and she gradually started liking him.

After a year of marriage, Saiful returned from Malaysia to stay in Bangladesh for three months, and formally took Afroza to his parents' home. Their first two months went well, but things started getting complicated when her father-in-law and mother-in-law started pressurizing Afroza for dowry. Afroza's in-laws were in a financial crisis and had outstanding loans to repay. It was a surprise for Afroza and her family, as dowry had never been discussed before the marriage. Afroza felt that her mother-in-law, not Saiful, was the cause of all her marital disputes. Disputes over dowry continued. At one point, Afroza argued with her mother-in-law about the dowry issue, and protested her demands. When the argument escalated, Saiful beat Afroza.

Faced with the dowry demands, Afroza sold her jewellery to repay her in-laws' loans. She reported that things became normal for a few days after this, and Saiful left for Malaysia again. But her fights with her mother-in-law continued, as she demanded more dowry. Her mother-in-law would call Saiful and complain about the fights. Saiful would become upset with Afroza, and they started fighting on their phone calls. He stopped speaking with Afroza for months, and she constantly tried to make up, but it took two to three months to convince him each time.

During one of the fights, Afroza's mother-in-law tried to strangle Afroza with her bare hands. This abrupt escalation of violence shocked Afroza. She decided to go back to her parents' home. While there, she repeatedly tried phoning Saiful to inform him of the attack, but could not reach him. After two and a half months, Saiful finally called and asked her to go back to his parents, to her matrimonial home. She then went back.

But the in-laws' demands for dowry did not stop. Her mother-in-law started asking for more money to rebuild their house. This time, Afroza's mother gave fifty thousand taka to her in-laws to purchase cement to rebuild the house. She wanted to support her daughter by any means. Afroza and her mother both used this tactic to keep peace in Afroza's married life. Things became better again for a few days.

Saiful returned to Bangladesh in 2018. He sent all his earnings while abroad to his father. Despite this, his parents again demanded three lac taka from Afroza, and she again refused. Saiful was unemployed then, and his parents turned both Saiful and Afroza out of the house, claiming that they could not provide food and shelter for the couple if they did not contribute financially. Afroza's mother-in-law threatened to hang or poison herself if the couple refused to leave. Seeing no other option, and under this intense psychological pressure, Afroza and Saiful left.

Afroza's mother came forward to support the couple and advised them to come to Bhaluka in Mymensingh and find a job. The couple started to live in a separate house in Bhaluka. Afroza's mother provided them three months of food cost and necessary household items. She even bought Afroza cloth worth five thousand taka, so that she could earn an income by sewing clothes and selling them. Eventually, Saiful started to work as a security guard and Afroza started working in a mill. Soon afterwards, she became sick and had to quit the job. However, Saiful continued working for another ten months.

While they were in Bhaluka, Saiful started visiting his parents frequently in his village. According to Afroza, this changed Saiful's attitude towards her, and they had repeated arguments. Saiful started beating Afroza regularly. She felt that her mother-in-law was influencing Saiful's behaviour. After about ten months, Afroza's mother-in-law fell sick and Saiful went to visit her. But after going to his village, Saiful cut off all communication with Afroza and did not return to Bhaluka. Afroza tried contacting him over the phone and waited. After a few days, when he did not respond, she went to her in-laws' house in Baborgonj, near Bhaluka, accompanied by her mother. However, she was denied entry and was again beaten by her mother-in-law. Her mother-in-law kept shouting at her for not being able to give them three lac taka. Saiful stayed silent.

For Afroza, seeing her husband fail to support her escalated the conflict. At that point, she decided to seek help from outside the immediate family, and went to Ontu Mia with her mother. Ontu Mia was upset hearing Afroza's story about the regular beatings. He suggested that she should continue to try and enter her marital home as this was her basic right. Afroza was determined. She went back and forcefully tried to enter the house, and had a physical clash with her mother-in-law. People from the village crowded around. Ontu Mia, and his wife Simi, who is a UP member, also went to help her and tried to convince her mother-in-law, but she was adamant, and Afroza's attempt failed. She returned to her paternal home.

Ontu Mia continued his efforts to help her. He wanted to arrange a shalish at his place, with the help of the law enforcement agencies. Afroza's mother decided otherwise, thinking that Ontu Mia might be biased towards Saiful as he was from Saiful's village and his neighbour. She felt it would be better if she approached the UP chairman of Saiful's village, thinking about his influence and power over the local people. She and Afroza went to the UP chairman. The UP chairman assured Afroza that he would take care of the matter, and told her that the regular beatings were unacceptable. He felt the main clash was between the mother-in-law and Afroza, and not a conflict between the couple. He also felt that Afroza's mother-in-law was more at fault than Saiful, as she was a short-tempered ("bod mejaji") and opinionated woman. When Afroza approached the UP chairman, her objective of seeking justice was to get access to her marital home or shoshurbari, because she considered that to be her right. For her, it did not really matter whether the violence stopped or not. The idea of being home, the idea of staying married, seemed more important than the violence stopping. Following the request, the chairman and members arranged the first shalish and summoned Saiful's family. Ontu Mia resented the fact that Afroza and her mother went to the UP chairman instead of him, and he did not attend the shalish arranged by the chairman.

Neither Saiful nor his family attended the first and second shalish sessions. Afroza's mother was frustrated with the UP chairman, and approached her brother-in-law, a local student leader, to complain about the slow process. The student leader called the chairman and asked him to speed up the process of shalish, and the chairman called for a third meeting. The third attempt also failed because of the absence of Saiful and his family. The chairman sent a strong message to Saiful's family for the fourth time and threatened to have Saiful picked up from the house if they did not show up for the shalish. Saiful did not listen and the chairman then sent the village police to bring the family over.

During the shalish, the following issues were brought up by both families: repayment of Saiful's loans, the physical violence, and Afroza's wish to continue the marriage. Saiful took a thirty thousand taka loan from the market during their stay in Bhaluka which he did not repay before leaving. Afroza raised this issue, and it was discussed how repayments should be done. The chairman scolded Saiful for leaving his wife alone and for not fulfilling his responsibility as a husband. He also berated him for beating Afroza and asked him not to beat her in the future. But he also asked Afroza to apologize and beg for forgiveness from her in-laws in the shalish for her outspokenness. She complied, though she felt that it was unnecessary, as she thought refusing would be seen as disrespectful to her elderly in-laws. At the end of the shalish, Saiful was asked whether he would like to continue the marriage and take Afroza back, to which he agreed. They agreed that Afroza would go back to her in-laws' that very day. However, after the shalish ended, Saiful and his family left her behind, disregarding the shalish decision. Left with no other choice, Afroza returned to her parents' house.

After the community failed to resolve the dispute, Afroza decided to seek help from a non-governmental organization (NGO) in February 2020. The BRAC Bhaluka office was right next door to Afroza's parent's house, and the BRAC Human Rights and Legal Aid Services (HRLS) officer was also their neighbour. This made it easy and quick to reach them. Afroza and her mother went to BRAC HRLS to seek help. BRAC recorded this as a complaint regarding non-payment of dower money and maintenance and advised her to proceed with mediation. BRAC sent out two notices for mediation; however, Saiful did not respond or show up. Then BRAC decided to send him a third mediation notice, but the process was delayed due to the pandemic-related measures in place.

Soon after, in May 2020 (during Ramadan), Afroza heard rumours about Saiful remarrying. She returned to her in-laws where Saiful handed her a notice stating he was divorcing her. She did not read it, fearing that just reading it would result in divorce. She was not ready to leave the house. People from the neighbourhood came and shamed her for wanting to live in her husband's house after getting divorced, and claimed it was "haram" to do so after getting divorced. Despite all the insults, she refused to leave. Her in-laws locked her up in a room to punish her. She had to urinate into a dish as she was not allowed to use the bathroom. As reported by Afroza, her mother-in-law called a number of local boys and kept them in the house till late to threaten her. Afroza feared that her mother-in-law might even order them to rape her. Afroza's grandmother-in-law, who lived in the same house as Saiful's parents, intervened and sent the boys away.

Afroza was worried about the divorce letter as she did not know anything about the process. She decided to consult people who might advise her on the next step. While locked up, she called the UP chairman, her mother, and the BRAC HRLS officer who filed her application. All of them assured her that the divorce was not finalized, as she did not sign the papers, and suggested that she should stay and fight for her rights. Apart from the mother, those who advised her did not seem worried about her security, and did not inform her that her in-laws were committing a crime by confining her. Also, none of them mentioned that in divorce cases, her receipt of the notice was required, but not her acceptance or signing of the divorce. She trusted everyone's advice and decided to stay in the house.

In contrast, Afroza's mother was incredibly concerned about Afroza's safety, and she approached Simi, a UP member, to help her to rescue her daughter. Both the member and Afroza's mother went to the police station and met the sub-inspector (SI) at 11:00 p.m. on the same day. As per the law enforcement agencies' suggestion, they filed a written complaint.

In the morning when Afroza was unlocked from the room, she announced that she had no intention of leaving. Her father-in-law became furious, and she was immediately thrown out of the house. Afroza's mother called the law enforcement agencies and the law enforcement agencies came to rescue her. Seeing the police arrive, the father-in-law ran away. The police stated that Afroza had a right to stay in that house as the divorce was not final. The police further suggested that Afroza should not give up on the dower money of three lac taka, and should not leave the house without claiming the remaining money, which was two lac eighty thousand taka. However, Afroza's mother thought it was not safe to leave Afroza in her in-law's house, so she finally took her to Bhaluka. Afroza's mother reported having to pay nine thousand taka for the law enforcement personnel's support. Besides the money given to the police, Afroza's mother had to pay travel costs from Afroza's village to Saiful's village and the UP office. All these amounted to a total cost of ten thousand taka.

After returning to Bhaluka, Afroza and her mother went to Mymensingh to meet a BRAC panel lawyer in August 2020, with the help of the BRAC HRLS staff. They found out that Saiful had remarried in the meantime. Afroza had not received any notice from Saiful about the second marriage, as required by the law. She decided, as advised by BRAC, to file a case for the recovery of her dower money and maintenance for the time she was married plus three months after her divorce.

The first hearing of the case was held on 1 March 2021. Saiful first appeared before the court on 10 March 2021, and then on 25 March 2021. There was a long time lag in the filing process, and it was further delayed since Afroza’s lawyer was abroad and could not return on time because of COVID-19 travel restrictions. In September 2021, Saiful left for a new job in Saudi Arabia, without informing Afroza and without paying the money. She learned about this from her aunt-in-law. Afroza and her family feel frustrated and helpless with the latest turn of events. BRAC HRLS is guiding her in dealing with the situation. If Afroza can trace Saiful’s location, then HRLS might be able to send a notice to his employer abroad.

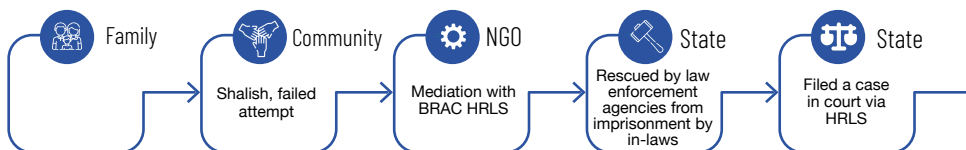
LEGAL COMMENTARY I

Extradition of the accused to their home country is not usually a common practice. It is often done in criminal cases, but that too in the most sensitive ones. In criminal cases, this can be done through the concerned embassies, and in such cases, to extradite someone for criminal liabilities will not violate one’s migrant rights.

CONCLUSION

Afroza and her family prioritized sustaining her marriage and maintaining the status quo, in spite of facing domestic violence. This was also the case for her *shalishkars*, who preferred not to challenge the status quo. She tried to challenge her husband’s decision to divorce her and sought to establish her right to her matrimonial home. Even after being locked up in a room at her in-laws’, she fought with immense courage and mobilized her various contacts for support and advice. However, when Saiful remarried, her expectation of justice changed completely, and she did not want to continue the marriage. A frustrated Afroza now awaits for settlement of her dower money through legal channels. This is even more challenging than usual as Saiful has migrated again.

JUSTICE JOURNEY





VULNERABILITY OF A DIVORCED WOMAN

DILRUBA

Two panel lawyers and a BLAST paralegal entering the Chief Judicial Magistrate Court, Patuakhali. When Habib, Dilruba's husband, failed to show up at a mediation, BLAST assigned a panel lawyer to file a legal case and represent Dilruba in court.

B. VULNERABILITY OF A DIVORCED WOMAN: DILRUBA

Keywords

child marriage, polygamy, sexual harassment by step son-in-law, migration, Bangladesh Legal Aid and Services Trust (BLAST), District Legal Aid Committee (DLAC), Dowry Prohibition Act, vulnerability of divorced women

INTRODUCTION

Dilruba was subjected to violence by her second husband Habib, her stepdaughter, and stepson. The main form of violence she faced in this marriage was verbal, physical, psychological, and sexual. Several times throughout her seven years of marriage when she had arguments with her stepdaughter, Habib took his daughter's side and physically assaulted Dilruba. Habib would take loans in Dilruba's name and the loan collectors would call her to pay the instalments. Dilruba was sexually abused by her eldest stepson. She was ashamed to tell her father about the sexual harassment and violence, which contributed to further harassment and silence. When the harassment became public, she called a shalish but no action was taken against her stepson. She then left her marital home and returned to her paternal home with financial help from her father and moral support from her sister and later got a divorce and payment of dower money.

PROFILE

Dilruba is thirty-one years old and lives in Patuakhali. Her father works as a mason when he can find work. Her mother earns money as a beggar as well as by working in other people's houses. She has two brothers and a sister.

Her sister is married and lives in Dhaka, her elder brother works as a mason, and her younger brother is a hafez and also works in a garment factory in Dhaka. Dilruba did not study beyond class five as her parents made her work as a household help to earn income for the family. She was first married when she was thirteen. Dilruba has two sons from her previous marriage but they live with her first husband as she cannot afford to look after them. She was a money lender when she was living with her second husband, Habib, in Dhaka; her husband worked as a manager in a sand business.

THE CASE

Dilruba married Habib Shikder in 2015. It was her second marriage and his fifth. Habib is of the same age as Dilruba's father with no formal education. Her marriage to Habib was arranged by her brother-in-law. When the proposal came, Dilruba heard that it was mainly for the purpose of looking after Habib's younger son as his wife had passed away, which is why they did not demand any dowry. Since she had not been able to raise her two sons, she agreed to the marriage to raise his son. The dower was fixed at one lac taka. She moved to Dhaka from Patuakhali with her husband and her youngest stepson on the very day of her wedding. She thought that Habib was a widower with one child but when she arrived in Dhaka, she found out that he had married four times before and Dilruba was his fifth wife. She did not have any information about his previous wives. Habib had not one but four children, three sons and a daughter. Habib's eldest son and daughter, both married, lived in Dhaka with them. Dilruba informed her family about this. But her family told her to accept the situation.

Dilruba's marital troubles started from the very first year of the marriage. Her stepdaughter would argue with Dilruba, which would cause problems between Dilruba and her husband. Habib would take his daughter's side, the couple would argue, and the argument would lead to verbal abuse of Dilruba by Habib. Although several shalishes were initiated by Dilruba at the family level to resolve her conflict with her stepdaughter, this continued until she got married.

“

He [Dilruba's husband] cursed using bad language. And he physically beat me thrice. That, too, for his daughter. She used to quarrel with me, and when I tried to say something, he would hit me instead of confronting his daughter.

—Dilruba

Dilruba felt the main problem was not the violence, but that Habib would take out loans in her name and she had to pay them off. He took out a loan under her name within a day of arriving in Dhaka. By 2020, there were four loans in her name and the responsibility to pay the instalments fell on Dilruba. Habib's creditors would call her for repayment. She even went to Habib's colleagues at work and told them to do something about this but to no avail. A dispute between Habib and Dilruba started in early 2020 about a loan of sixty thousand taka. Dilruba asked for ten thousand taka from that loan for her father's treatment, but Habib refused to give any money. This led to a big argument and the situation escalated from there.

LEGAL COMMENTARY II

The type of abuse related to the loan use and repayments could be characterized as economic abuse under the Domestic Violence (Prevention & Protection) Act (DVPPA). Dilruba also saw this economic abuse as wrong, but did not see how she could claim any relief, nor did the lawyer choose to use this.

Soon after this, Dilruba's eldest stepson tried to sexually abuse her. At night, Dilruba used to sleep with her youngest stepson in a separate room from Habib, and her eldest stepson tried to have sex with her. This took place a number of times and one night his stepson was caught red-handed by Dilruba's stepdaughter and stepdaughter's husband. Dilruba arranged a shalish with her husband and his other family members to stop the sexual harassment and she hoped that Habib would take action against his son. However, Habib did not believe Dilruba's accusations and did not take any action. Dilruba was angry about all this and ran away to live with a female cousin. From there, her *dhormo chele* (a social relationship in which someone is considered as a son) convinced her to return to her husband's house and told her that if she wanted to leave then she should let everyone know instead of running away. Dilruba then returned to her husband's house and told her sister about what happened. She did not tell her father about it because of the nature of the incident.

Dilruba received support from her sister who came to her marital home and confronted Habib and his family. Her sister told Habib and his family to take action, and if they failed to do so then Dilruba would seek a divorce because Dilruba's sister had the ability to look after her. Dilruba's sister added that Dilruba had had a difficult life since childhood, and she did not have to accept this anymore.

Dilruba's husband and her stepchildren then assured her that they would send Dilruba back to her parents' home, but they did nothing. When Dilruba's family saw that even after two weeks Habib was not keeping his word, Dilruba's father sent Dilruba some money in March 2020 so that she could travel back to her parents' house. In spite of the dispute, Habib came to Patuakhali from Dhaka just one week before the lockdown began in March 2020 and stayed at Dilruba's parents' house.

Habib and his family had migrated to Dhaka from their village in Patuakhali and had no house in his village even though he had relatives living there. Whenever he visited his village, he lived with Dilruba's family. When the "general holiday" was declared after the COVID-19 pandemic broke out in March 2020, Dilruba and Habib both stayed at her parents' house the entire month as he was not working. Dilruba's mother was the only income-earning person during that time and fed the family through her begging. Even with that earning, Dilruba's mother tried to ensure that Habib, as a son-in-law, was well fed. During their stay, the situation calmed down and Habib said he would take Dilruba back to Dhaka with him once the lockdown was over. However, when the lockdown lifted, one of his sand cargo boats was nearby and he left for Dhaka without taking Dilruba with him.

Dilruba's in-laws asked her to come back, but Dilruba refused to go back until Habib settled the loan repayments issue. Her brother-in-law called for a family shalish to resolve this loan dispute. Dilruba's brother-in-law asked Dilruba to pay half of the loan, but Dilruba refused. This disagreement caused her relationship with her brother-in-law, who used to be supportive of her, to deteriorate. After the shalish failed, Habib was not happy and misbehaved with Dilruba's father over the phone. Dilruba's father was infuriated and asked Dilruba to take action of such misbehaviour; otherwise, he would not keep any relation with her. Dilruba then decided to seek legal help. Dilruba's father took Dilruba to a lawyer whom he knew from earlier getting advice on his land issues. After hearing Dilruba's story, the lawyer referred them to Bangladesh Legal Aid and Services Trust (BLAST), as the lawyer knew that BLAST provides free legal advice and assistance to those who cannot afford to pay legal fees and he was aware that their financial situation was difficult. They contacted the BLAST office in May 2020 during the lockdown and were advised to come to the office when the lockdown was lifted.

In August 2020, Dilruba filed an application at BLAST's Patuakhali office asking for help regarding her marital dispute with Habib. BLAST advised her on possible options and Dilruba chose to have a mediation. BLAST set a date for the mediation and sent a notice to Habib. On 9 September 2020,

Dilruba was present at the mediation but Habib was not. Dilruba mentioned that her in-laws' family would often say that she and her family could not win in any legal process as they were not financially stable, since her father is a day labourer and every time they go to court, it would cost him a day's wages. Her in-laws said that they would not be able to carry on any legal process for long and would eventually have to stop. They estimated that it would cost three hundred taka per day if Dilruba and her father would visit the court, of which one hundred and fifty taka would be spent on travel and another one hundred and fifty taka on food.

When Habib did not show up for the mediation, BLAST began preparing to file a legal case and assigned Advocate Junaid, a panel lawyer, to work on this and represent Dilruba. Dilruba told Advocate Junaid that Habib does not look after Dilruba and her stepson and stepdaughter "torture" her. That is why she does not want to live with them. Advocate Junaid recalled his interactions with Dilruba,



She [Dilruba] said, 'He [Habib] does not look after me, his children from previous marriages torture me.'

Advocate Junaid then filed a case under the Dowry Prohibition Act, Section 3 (see Legal Commentary III).

LEGAL COMMENTARY III

In practice, lawyers who provide legal advice to survivors of domestic violence often advise them to file a case under the Dowry Prohibition Act (DPA), rather than the Domestic Violence (Prevention and Protection) Act (DVPPA). When a case is filed under the DPA, there is a real possibility that the accused husband would face arrest or the threat of arrest, and also if convicted, would face a higher penalty. Unlike DVPPA offences, DPA offences are non-bailable. In practice, in a non-bailable case, the court of first instance initially refuses bail applications where the defendants are already in police custody. However, where reasonable grounds are available and the court agrees with the grounds, the court may grant bail using discretionary powers. Alternatively, when the defendants are not already in police custody but presume a future arrest, the concerned lawyer seeks anticipatory bail from the High Court with reasonable grounds.

Victims of domestic violence request lawyers or legal aid service providers to ensure rigid punishments against the accused. This works as a reason behind preferring the DPA over DVPPA. The scope of a settlement between

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the parties when the perpetrator is being threatened with arrest or being arrested is also a significant reason behind this preference. Another reason is that the lawyer can ensure the appearance of the defendant husband before the court as there is scope for arrest under the DPA. On the other hand, ensuring the appearance of defendants is difficult under the DVPPA because the preliminary remedial orders from the court under this Act are civil in nature, and criminal liabilities can only be invoked once court orders are breached, and not otherwise. Moreover, many practising lawyers are not familiar with domestic violence-related matters and there are gaps in their understanding of the law. BLAST has clear guidelines for concerned lawyers to consult with clients, understand their needs, and use relevant laws accordingly in filing a case. Other than using DPA, clients often request lawyers to use provisions of the Nari-O-Shishu Nirjatan Daman Ain 2000 (Suppression of Violence against Women and Children Act 2000) to secure a legal remedy against domestic violence, instead of using the DVA, as they are more familiar with the former Act.

While explaining why Advocate Junaid was using the Dowry Prohibition Act instead of the Domestic Violence Act, he said that the application of the Domestic Violence Act does not bring much benefit to the client as he cannot catch the perpetrator with that Act (see Legal Commentary IV). He said,



There is no benefit in filing that case [Under DVPP Act]. There is a rural saying that if you want to catch someone, it's better to catch them tightly.

LEGAL COMMENTARY IV

DPA offences are non-bailable, unlike DVPPA offences. When a case is filed under the DPA, there is a real possibility that the accused would face arrest or the threat of arrest, and also, if convicted, imprisonment. In practice, in a non-bailable case, the court of first instance initially refuses bail applications where the defendants are already in police custody. Therefore, survivors resort to the DPA over the DVPPA, as the former often comes with harsher punishments for the accused. The threat of arrest and imprisonment can be leveraged to facilitate a swifter outcome or settlement in any pending claim for maintenance. On the other hand, the lawyer can more easily ensure the appearance of the defendant before the court given the scope for arrest under the DPA.

Dilruba's case was filed at the First Senior Judicial Magistrate Court. According to Section 10 of the Family Courts Ordinance 1985, the court shall arrange for a pre-trial shalish process. Alternatively, in compliance with Section 89A

of the Code of Civil Procedure 1908, the court shall send the matter in hand for shalish to the District Legal Aid Officer or to a mediator from the panel of mediators as prepared by the District Judge or mediate the issue on its own. Later on, the concerned court forwarded the case to District Legal Aid Committee (DLAC) for pre-trial mediation.

Although the dower money in the marriage document was one lac taka, during the mediation at the DLAC office, Advocate Junaid demanded eighty thousand taka as Habib and his family claimed that they could not afford the amount. Habib initially wanted to pay only twenty thousand taka. Dilruba and her family then demanded sixty thousand taka. Her husband said he could not afford that amount either. Dilruba's family and Habib's family finally agreed that Habib would pay fifty-five thousand taka as dower money and both would agree to divorce. Dilruba agreed to a khula talaq (see Legal Commentary V).

LEGAL COMMENTARY V

Khula talaq is a process through which a woman, married under Muslim law, may divorce her husband, at her instance and with her consent. This process is usually used in cases where the right to divorce is not expressly delegated by the husband to the wife and is stated in Clause 18 of the *nikahnama*.

With these conditions met, the case was withdrawn. Documents received from BLAST show that Dilruba received fifty-five thousand taka from the defendant husband in two instalments. Dilruba received fifty thousand taka and shared the costs for case withdrawal and kazi's expenses with Habib. In practice, for a khula talaq, both parties bear the costs of the divorce procedure; thus, five thousand taka was deducted from the total amount. While assessing his role, Advocate Junaid said,

“

In short, my goal is what my client wants; I try to help the client meet their needs; fulfil their wishes. This is my goal.

—Advocate Junaid

Dilruba and her father were initially happy with the outcome. However, in a follow-up interview in April 2021, she mentioned that if she had known that it would be so easy to get the money, she would have negotiated for more. After her experience with the court, she has helped two other women to access legal help on similar issues. When we visited Dilruba in October

2021, we found that she has bought a threshing machine in partnership with two other people from her village with her dower money. She also bought two decimals of land where her father and brother work.

During a follow-up visit in October 2021, we found that Dilruba had married again a few months ago. Her current husband is a van driver and lives in her village. The third marriage was arranged by her family and influential people of her village. When asked why she remarried, she and her family claimed that local men were harassing her. In spite of her being thirty-one years old, her parents felt they needed to marry her off for her protection and she agreed. She is unhappy in this marriage as well. Her mother said that her present husband, Rimon, entered this marriage as a *shokher biye* (for his pleasure). Her consent to the marriage was obtained by fraud as she was told that Rimon's first marriage was over. She is the second wife, and Rimon's first wife (who she thought left him permanently) returned the day after Dilruba's wedding. Since the day his first wife returned, Rimon has been living with the first wife in the same room. Dilruba claims that she is regularly neglected, and kept in an isolated room away from her husband, where she feels unsafe.

In the nikahnama or marriage contract under Clause 21, Rimon had mentioned that he did not have another wife (see Legal Commentary VI). Rimon had also promised that he would give ten katha (seven thousand two hundred square feet) land to Dilruba (although this is not in the marriage contract), but this has not yet been done.

LEGAL COMMENTARY VI

The nikahnama generally mentions previous marriage-related information and the status of such marriage. In this case, Dilruba's husband's first wife returned the next day after Dilruba's marriage. The consent of Dilruba on the said marriage can be challenged based on the fraudulent statement. Although there is a problem: under Muslim personal laws, it is not possible to invalidate a marriage or declare it void if it has already been consummated.

Rimon drove her out of the home after BIGD and BLAST's follow up visit recently on the accusation that Dilruba is being instigated for filing cases against him. Some people in the village feel that she should get divorced and accept twenty thousand taka or fifty thousand taka in order to leave an unhappy marriage and preserve her dignity. But the mother is against it.

Dilruba now wants to divorce Rimon and claim her dower money of one lac fifty thousand taka, but her husband wants to give only twenty thousand taka. Dilruba again sought assistance from BLAST. A case under Section 3 of DPA is ongoing with the help of BLAST.

CONCLUSION

Dilruba tried to protest economic exploitation by her husband and the sexual harassment she faced from her stepson but the latter went completely unaddressed. People thought that she would not be able to pursue a legal case because of her family's financial situation. However, neither Dilruba nor her family let that become an obstacle and approached BLAST to file a case. We can see the positive role of the judge of the First Senior Judicial Magistrate Court, who sent the case for mediation to DLAC as both parties wanted a divorce and settlement of the dower was done speedily. Even though her lawyer tried to negotiate for more money, she had to settle for half of what she was due. In our follow up visit, we found that she had been compelled to marry again as living alone is not socially sanctioned and because of the risks involved, including that of sexual violence, if she were to remain single. However, she is not satisfied with being the co-wife in the present marriage and is contemplating a divorce.

JUSTICE JOURNEY





“WHAT WILL HAPPEN
TO MY CHILD NOW?”

FATEMA

An RDRS staff and a BLAST paralegal working together to solve Fatema's problems. RDRS had referred Fatema's case to BLAST to help her file a maintenance case at the Rangpur DLAC office. Collaboration between different stakeholders in a survivor's justice-seeking journey can facilitate their access to justice.



C. “WHAT WILL HAPPEN TO MY CHILD NOW?”: FATEMA

Keywords

dowry, sexual violence by father-in-law, polygamy, migrant worker, blank stamp paper, Dowry Prohibition Act, Muslim Family Law for maintenance, BLAST, DLAC, Rangpur Dinajpur Rural Service (RDRS), community shalish, paralegals

INTRODUCTION

Fatema is a twenty-four-year-old woman from a poverty-stricken family of Kaunia, Rangpur. Her married life, after she migrated to Dhaka, has been full of challenges, where she faced domestic violence in the form of physical, economic, psychological abuse from her husband and in-laws, and sexual abuse from her father-in-law. She has worked in various factories in Dhaka and Ghorashal. Even after being the breadwinner for her family and her in-laws', and after her multiple efforts to save her marriage and stop the violence, she feels that she has not got justice. Two legal cases are ongoing, one under the Dowry Prohibition Act and the other under the Muslim Family Laws Ordinance for maintenance, with support from RDRS and BLAST.

PROFILE

Fatema studied up to class three, but then had to drop out of school for her father's financial condition. She has been working since childhood, helping her father in the paddy fields. At the time of her marriage, she was working in a tobacco factory. Fatema's father was a rickshaw puller, who later shifted to farming and is currently unemployed. Her mother works at a tobacco

factory near their home. Fatema has five sisters, two of whom live and work in Gazipur.

Rubel, Fatema's ex-husband, who is twenty-three years old, is the eldest among his three siblings. He never went to school. The in-laws are migrant workers living in Gazipur, Dhaka. They are originally from Birbagh, Rangpur. Her husband, father-in-law, mother-in-law, and two brothers-in-law live together in the same house. Her father-in-law is a drug user and a violent man. He would often beat Fatema's mother-in-law as well as Rubel. At times, he would beat her mother-in-law till she was senseless. Fatema would then rescue her mother-in-law and lock her up in her room so that her father-in-law could not beat her any further.

THE CASE

Fatema's father and father-in-law knew each other distantly. Her father-in-law sent the marriage proposal through a matchmaker, and went to see Fatema and her family. Without any prior notice, she was brought back home from her work the following day and was married off. According to Fatema, her parents felt the pressure to marry her off, as her neighbours would say bad things about her and her siblings since they were working outside the home. Although she did not agree to the marriage, no one listened.

According to her marriage certificate, she was nineteen years old during the time of her marriage in 2016. However, she claims that she was only sixteen years old. If she was sixteen as she claimed, her parents could give consent on her behalf. But if she was nineteen years old as shown on the marriage certificate, she would have the right to refuse the marriage and not give her consent under the law. Because of her circumstances, she had no other real options for survival (such as income, shelter, etc.) but to accept her parents' decisions.

LEGAL COMMENTARY VII

In the case of a child marriage, a kazi (marriage registrar) who registered the marriage may be held liable if he can be found to have known about the age of the child. In that case, the kazi can face up to two years of imprisonment (no less than six months), or be fined up to fifty thousand taka, or both, and may also face imprisonment of up to three months and cancellation of his license upon not paying the fine (Section 11, Child Marriage Restraint Act [CMRA]). However, in practice, kazis evade liability by proving that they were not aware of the bride being a child, as they were given documents by the family, establishing that the girl was an adult. There is no provision in the nikahnama for mentioning the age of the parties. If the nikahnama states that the parties are adults, there is no scope to hold the kazi liable under Section 11, CMRA.

During the wedding, Fatema's in-laws demanded one lac twenty thousand taka as dowry but her parents could only pay forty thousand. The family had to arrange this money by selling their cow. Her in-laws started pressuring Fatema verbally for more money, even threatening to send her back to her parents' place if they did not pay the remaining money. The family arranged another sixty thousand taka, for which Fatema's mother took a loan of thirty thousand taka and her sister took another loan of thirty thousand taka from BRAC. Given the increasing pressure, Fatema's mother again paid twenty thousand taka. She also bought beds and furniture for her daughter's house. The pressure for more money continued, although Fatema's family paid the entire amount as promised.

Since Fatema failed to bring more money from home, her husband and in-laws asked her to take a job so that she could earn, but she was not sure how to manage work and married life and she refused. This made them angry. Her husband and in-laws called her parents to Gazipur and asked them to take Fatema back as she refused to listen to them. They asked her to bring another extra sixty thousand taka when she returned to Gazipur.

When Fatema was living in the village with her parents, she found out she was pregnant. She informed her in-laws, but they did not allow her to return. After a few days, Fatema's in-laws came to her village. Her father-in-law and mother-in-law called for an informal shalish at Fatema's village to discuss dowry demands, as well as to decide whether Fatema will return to

her matrimonial home. However, no decision was reached and her in-laws demanded another shalish to be held in their village in Hajarpar, Rangpur. Both the families, the UP chairman, members, and neighbours from Rubel's village were present. Fatema remembers the support she received from Rubel's uncle during the shalish, as he spoke in favour of Fatema and asked her in-laws to return the things they took from her mother (such as the bed and other furniture). Fatema's mother-in-law wanted to take her back as well, claiming that as she supervises her daughter-in-law, she must have the final say. However, Rubel was adamant about not taking her back. Her father-in-law also did not want to take her back to their home. There were arguments between Fatema's father and her father-in-law in the shalish, and at one point, Rubel's father slapped Fatema's father. This affected Fatema deeply, but she said nothing, as she felt powerless.

According to the final decision of the arbitration, her in-laws left her at her parental home, although she had wanted to return to her marital home. Soon after, Fatema's family again attempted to solve matters and another traditional shalish took place at their home with participants from both families. Again the in-laws demanded more dowry, and Fatema's family continued to refuse. Fatema continued living at her parent's house and spent her whole pregnancy period there. She eventually gave birth to a stillborn baby girl. Neither Rubel nor her in-laws came during the delivery. Around ten thousand taka was spent on local doctors, and no one from her in-laws provided any kind of support.

Fatema thought there would be no use staying at home and she needed to move on with her life. Three months after giving birth to her daughter, she decided to start working and went to Ghorashal with her younger sister, who was a migrant factory worker there. They both started to work for a biscuit and chips manufacturing company. After a while, Fatema's elder sister, who lived in Gazipur, then took her to her place and helped her in getting a job at a sweater factory in Gazipur. Her sisters continued their attempts of mediation in hopes of reconciliation. Another shalish took place at her sister's house. This was the fourth shalish, and was conducted by Fatema's brother-in-law. Rubel did not come to this shalish, and it was evident that he was not interested in working things out with Fatema. However, in the shalish, her mother-in-law apologized for her family's behaviour, and requested Fatema's return to their house.

Fatema's sister and parents agreed to send her back. Upon returning to her in-laws, she found out Rubel had remarried a woman with whom he had an affair before marrying Fatema. The marriage was kept secret from Fatema by Rubel and his family, and he did not send her a notice before he married, as he was legally required to do. The reason why in-laws took her back was that they were not getting along with the second wife. Rubel's second wife was furious to see Fatema back. She and Rubel left the house as soon as Fatema entered. Rubel sent Fatema back to her parental home in the village again. Fatema went back to the village feeling that she had no other choice but to accept her fate.

After six months, Rubel's second wife went back to her paternal home and sent a divorce notice to Rubel. After receiving the divorce letter, Rubel went to their village and started living at his village home and was joined by Fatema who became pregnant again. There used to be times when Rubel would not provide her with any food and she would starve unless her mother provided rice. Months passed and it was time for Fatema's delivery. She needed a cesarean section this time. None of the delivery and hospital expenses was paid by Rubel. Fatema's mother paid all the bills. Her father-in-law had suggested that Fatema go back to her parental home and assured her that he would bear his grandson's maintenance costs. Fatema continued to live in her parental home with the baby. Fatema's son was suffering from pneumonia and needed five injections worth three thousand five hundred taka. The commute and other medications added more costs; but none of these was paid for by her in-laws.

Five months passed by and Fatema and her father decided to take action against Rubel and his family. A relative of Fatema's family, Sagor, who was a soldier in the army, was called for help. He tried to help by calling Fatema's husband over the phone and asking him to take her back, but it did not work. Sagor took Fatema and her father to Kollan Metro Police Station to file a complaint, but the police suggested they go to Kaunia Thana Police Station as Rubel resided there. However, instead of going there, Sagor took Fatema to BLAST Kachari Bazaar office. BLAST accepted Fatema's application and sent two notices for mediation to Rubel.

Rubel came to Fatema's sister's home in the village after hearing that a legal case would be filed if he did not show up after the third notice. He tried negotiating with her sister to withdraw the application. Her sister negotiated and told him that if he took Fatema back, the complaint would be withdrawn.

Rubel agreed, and both the families agreed for making another attempt at reconciliation through community shalish. This was the fifth and last shalish, which took place at Fatema's village. The arbitration was conducted by Fakir, a local political leader from the ruling party. Fakir asked Fatema's parents to let her go back to her in-laws for the last time, and give the marriage another chance. Rubel agreed to take Fatema back. Fatema's brother-in-law took Rubel's and his father's signatures on a stamp paper that they would not torture Fatema for money. Fatema and her son were taken back to Gazipur, and she withdrew the legal complaint made to BLAST.

After going back to Dhaka, Fatema started working in a garment factory. She used to leave her son at her in-laws' and go to work. She had no control over her income, as she had to give most of her earnings to her in-laws. As her in-laws looked after her son, she gave them two thousand five hundred taka monthly.

However, during the pandemic, the factory she used to work at closed down, and she had no income. She almost starved for six days before asking her mother to lend her one thousand taka and her sister to lend five hundred. She bought a flask with one thousand taka and cigarettes, betel leaves, and sugar with the remaining money. Rubel started selling tea and cigarettes, and they just about survived with the money. Her father-in-law again demanded a share. She used to divide the money into two shares, and gave the larger share to the in-laws as they had more mouths to feed.

However, the torture did not stop by her father-in-law, and he used to shout at Fatema. "Shuorer baccha [you bitch]! Why didn't you bring money? Khankir beti [daughter of a prostitute], why didn't you bring money?" he used to shout. If Rubel tried to intervene, his father beat him as well. She started having chronic headaches as she was constantly getting slapped by her father-in-law. He also used to harass her sexually and tried to get her to sleep with him, but she kept avoiding him. In order to cope, whenever he tried to talk to her alone at home, she used to head outside with her son. When Rubel would go out, her father-in-law used to go to her room and call her, but she would pretend to sleep. She never told Rubel about these incidents, knowing that he would never believe her. At one point, her father-in-law burnt her hand with cigarettes and injured her legs.

Being a drug user with a gambling habit, he always used to pressurize Fatema for money. Her mother-in-law also used to taunt her about her

father-in-law's behaviour. "Marry your father-in-law and sleep with him," she would say to Fatema. Torture from her in-laws kept increasing. At this point, Rubel and Fatema started living separately from the in-laws. However, her father-in-law's torturing did not stop. Fatema did not complain to her family much about the violence. However, at one point her father-in-law broke her legs while beating her. She finally told her mother about the torture, who did nothing even after the extreme violence. Her in-laws again sent her back to her parents after this incident. Rubel dropped her off at the bus stop and promised to pick her up within a few days. However, after eighteen days, he sent her divorce papers.

Fatema was in shock after receiving the divorce papers. She called 109, the government helpline for VAW, for help. She also approached her family friend, Farid, who is in the Village Police. Farid introduced her to a Rangpur Dinajpur Rural Service (RDRS) paralegal, Parvin, who helped Fatema in a number of ways. She photocopied Fatema's papers with her own money and called a project officer from RDRS to look into her case. The RDRS officer suggested that Fatema go back to the garment and earn money because if she has a steady income, her husband would come back to her. He also explained that she could then finance the case, as litigation is expensive. Fatema appreciated all the advice but was worried that if her marriage ended, she would have no place to go. Therefore, she chose options that would enable her to continue the marriage.

With the help of Parvin, Fatema first approached the UP member. He asked her to file a case to recover her dower money. Fatema ignored his advice and went to UP Chairman Polash, thinking that it would be better to resolve matters through community shalish. When the chairman saw the divorce papers, he suggested she go to court. With everyone's advice, she then approached a clerk in her village who gave her Advocate Masud's phone number. Advocate Masud was hired for her case and a fee of three thousand taka was paid. Fatema mentioned that to arrange this money, they had to sell their rice.

Masud filed a case under the Dowry Prohibition Act, Section 3 on 19 November 2020 and sent a notice to Rubel and his family for mediation. The first hearing took place in December 2020 in court, where Rubel was not present, but her father-in-law and mother-in-law were. As a result, the court issued a warrant against Rubel. Advocate Masud charged two thousand taka per court day which was expensive for Fatema. She and her family also

thought that he took money from Rubel's family which is why there was not much progress with the case. The research team was not able to interview Advocate Masud.

Considering the cost of running the case, the RDRS advised her to forward the case to the DLAC office. The RDRS assigned a BLAST paralegal to help Fatema to file a maintenance case at Rangpur DLAC. She visited the DLAC office for the second time on 9 March 2021. The DLAC assigned Advocate Nasir to her case. Her visit to the DLAC office was delayed due to the 2021 COVID-19 lockdown. Advocate Nasir is currently dealing with Fatema's ongoing maintenance case. At present, Fatema is planning on going to the RDRS shelter to receive vocational training so that she can have an alternative livelihood.

LEGAL COMMENTARY VIII

Fatema's husband is not providing his national identity (NID) card for the maintenance case in support of the child's birth. As a result, in order to claim maintenance, Fatema alternatively needs the birth certificate of her son which she does not have. RDRS's community animator is helping her obtain this from the authorities. However, there are alternative ways to prove paternity, such as collecting the birth certificate from the hospital (a list of government authorities who can register and provide birth certificates is provided in Section 4 of the Births and Deaths Registration Act 2004) and submitting this in court (Section 112, Evidence Act 1872).

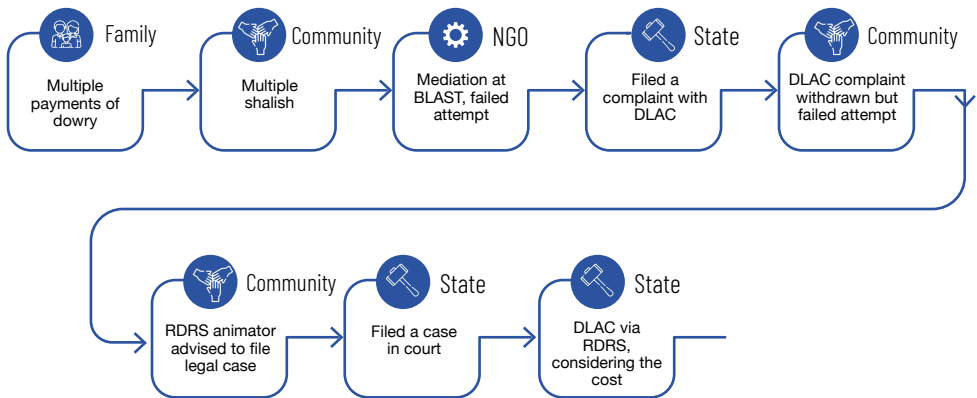
Her last resort was the law, but with the slow and expensive court processes, she has no hope with her cases. She feels all her efforts have simply gone down the drain. "My parent's condition is so bad. Where will I go with this child? What shall I say, Apa, it's just my destiny," she sobs.

CONCLUSION

Married against her will and uprooted with no notice to Dhaka from Rangpur, Fatema's case reflects her and her family's endless efforts, at the cost of her safety and wellbeing, to sustain her marriage. She took loans from her family, started earning herself, and when neither of these worked, she started living in a separate house with her husband to avoid the sexual advances from

her father-in-law. She also accepted her husband's second marriage in an attempt to save her own. When nothing worked, she approached different actors and went through multiple traditional shalishes but none of these prioritized her wellbeing and her wishes. She is now continuing to fight the two legal cases, one with the assistance of RDRS and BLAST, but does not have much faith in the possible outcomes.

JUSTICE JOURNEY





“I HAVE NO RIGHT TO THE HOUSE I BUILT”

RINA

■ An RDRS community animator speaking at a community shalish held in the UP chairman’s office in a bid to resolve problems like the ones Rina faced.

D. “I HAVE NO RIGHT TO THE HOUSE I BUILT”: RINA

I *Keywords*

land disputes, polygamy, rehabilitation, RDRS, community shalish, court, Domestic Violence and Prevention Act 2013; Suppression of Violence against Women and Children Act

INTRODUCTION

Rina is a twenty-five-year-old woman from Kaunia Upazilla of Rangpur district. She was married to Rahim in 2009. She faced domestic violence in the form of physical violence by her husband and in-laws, which ultimately led to hospitalization. She faced psychological violence as well when her husband remarried, and economic abuse when she and her father were asked for money to build a house, of which she later lost possession. The land disputes between Rina’s father and her father-in-law aggravated the conflict between the couple regarding Rahim’s second marriage. Despite multiple efforts by Rina and her father for mediation and reconciliation, the violence did not stop. She then filed a case for dowry violence under the Suppression of Violence against Women and Children Act. Rahim was arrested and imprisoned. Once released on bail, he sent Rina a divorce notice.

PROFILE

Rina studied till the seventh grade but could not study further as she was married off to Rahim by her parents in 2009 at the age of sixteen. Rahim and Rina are from the same village, and he is a relative of Rina’s paternal

aunt's husband. Rahim is thirty-one years old and is a van driver for an egg business in Kawranbazar, Dhaka. Rahim and his family had migrated to Dhaka for work and used to visit the village occasionally. They all live together. Rina, therefore, was taken to Dhaka after marriage. The couple has two daughters; the elder one is nine years old and the younger seven.

THE CASE

After the wedding, Rina was taken to Dhaka by her in-laws, where she lived for seven years, from 2009 to 2017, in a joint family in Mohammadpur. Two years after their marriage, Rahim and Rina moved with their firstborn to a separate house of their own in Bosila for Rahim's work-related matters. According to Rina, the marriage was going well. She was happy with her husband's behaviour. He used to take care of her and the child and would provide everything she would ask for.

Rahim and his parents earned their livelihoods as migrant workers in Dhaka. With the money earned, they bought land in their village in Kashempur. When Rina gave birth to her second daughter, she was asked by her in-laws to go back to their village and build a house on the land they had bought, using money from her father. Rina wanted a house of their own where the family could live, so she agreed. She came back from Dhaka in 2017 with her daughters, and lived with her parents for a year. In 2018, she and her father started building the house. During her wedding, Rina's father had wanted to pay fifty thousand taka as dowry, but her in-laws did not take it. Her father then took the in-laws' land on a mortgage, and grew wheat. The house for Rahim's family was built with the fifty thousand taka that Rina's father saved for her dowry, the money he earned through selling the wheat, and money saved by Rina from her earnings from Dhaka where she used to work. It took a year to build the house and once the house was completed, Rina started living there with her two children. Rahim and his family continued living in Dhaka. The couple was in touch over the phone.

In November 2018, eight months after Rina came back from Dhaka, she felt Rahim's behaviour had changed. Whenever he came to the village to visit Rina and their daughters, he used to beat her. His mood kept fluctuating. Rina was shocked as she had never been treated ill by Rahim or her in-laws before. She started hearing rumours from her distant relatives and neighbours that Rahim was living with a woman in Dhaka, who he claimed to be his sister. Her suspicions proved to be right when her cousin who lived in

Dhaka reported that Rahim had remarried. When Rina confronted Rahim in 2019, he confessed. However, Rina did not receive any notice when Rahim remarried, which she was entitled to according to Section 6 of Muslim Family Laws Ordinance 1961.

LEGAL COMMENTARY IX

While already in an existing marriage, a man cannot marry another woman without the permission of the Arbitration Council (AC) (Section 6, MFLO 1961). The husband shall submit an application in writing to the chairman of the AC, paying the prescribed fee and stating the reasons for the proposed marriage. He also needs to state in the application whether the consent of the existing wife has been obtained (Section 6[2], MFLO 1961). The chairman will then require the husband and his existing wife each to nominate a representative and then constitute the AC (Section 6[3], MFLO 1961). The AC may allow the second marriage if it is satisfied that the marriage is necessary, and may impose conditions thereon. Marrying without the permission of the AC may cause the husband to pay the dower due to his existing wife immediately (Section 6[5][a], MFLO 1961). He may also be punished with simple imprisonment up to one year, or a fine not exceeding ten thousand taka (Section 6[5][b], MFLO 1961). In practice, the AC is not constituted in many areas, and these procedures are not followed⁵. Subsequent marriage does not become invalid in absence of permission from the first wife. The husband may face penal sanctions for contracting the subsequent marriage only, without affecting the validity of the marriage.

When Rahim's parents found out about his second marriage, they initially supported Rina. They thought Rahim might be using drugs, and that he had married again out of infatuation. They put him into rehabilitation for twenty-four days. The purpose of sending Rahim to rehab was a way of disciplining him, as his parents were aware that he would "smoke" frequently, and would be intoxicated. However, Rina believed that they sent him to rehabilitation to get rid of his "addiction to his second wife." She said, "They put him there to get rid of her spell and his obsession towards her." Before sending Rahim to rehab, her father-in-law took her permission, and she agreed. Rina paid four thousand and five hundred taka per month for the treatment by selling her cow. Rahim's family promised to get him out only if he agreed to leave his second wife. To get out of the centre, Rahim agreed to divorce his second wife and go back to Rina, which he did.

⁵ Sura Al-Baqarah, verse 229 as mentioned in Balqis Fatima vs. Najm-ul-Ikram case reported in 11 DLR (W.P.) (1959) 93.

After his divorce, he came back to the village and lived with Rina for ten months. According to Rina, they were living peacefully. However, one morning Rahim disappeared. Rina found out that he went back to his second wife in Dhaka, and she (Rina) thought she had no other option but to accept her fate. Rahim continued his relationship with the second wife and visited Rina and the daughters in her village from time to time.

During the first phase of the COVID-19 lockdown in March 2020, when Rahim came back to the village, Rina felt that his behaviour towards her deteriorated again. He subjected her to frequent verbal and physical abuse. The couple kept fighting over the issue of Rahim's second wife. Rahim held Rina responsible for his second marriage, claiming that he had to remarry as Rina was unable to "give him a son." He also saw polygamy as a "family tradition." Since his father and uncles had multiple wives, he thought he had a right to remarry. Their conflicts continued, and in June 2020, he left for Dhaka again.

During Eid-ul-Adha, on 1 August 2020, Rina's in-laws came to the village. A violent physical fight related to the land given to Rina's father by her in-laws on a mortgage took place between Rina's father and her father-in-law. The fight escalated when her father grabbed her father-in-law by his collar and sat him down on a chair. Rina's father-in-law felt insulted and stopped speaking with her. Her in-laws wanted to call a shalish to take action against her father's behaviour, but Rina's father did not agree. Her in-laws then went back to Dhaka.

Two weeks later, they came back to the village again, but this time with Rahim. They were still upset about the incident. One night, Rina had a fight with Rahim and snatched Rahim's phone as he was speaking to his second wife and smashed it. In response, Rahim started beating her. Her in-laws, who Rina said had always supported her up till then, turned against her this time, and did not stop Rahim. Rina was in shock. The next day, she was beaten again. Rina felt that they took out the anger they had towards her father by beating her. They tortured her within a locked room, injuring her forehead and causing it to bleed.

The neighbours could hear her scream and rushed to her parents' house to inform them. Her parents, aunt, uncles, and many other locals went to Rahim's place to rescue her. Upon reaching Rahim's house, Rina's father attacked Rahim for beating his daughter. Rina's father-in-law, on the other hand, injured his knee. This resulted in renewed physical violence between the

two families. It became an unruly incident that the whole village remembers. Rina's father knew of RDRS Community Animator Siddique's expertise, and right after the incident, he informed him. Siddique lived in the same village and was a neighbour to both families. This was an added advantage for Rina and her family as he remained accessible whenever required. Rina's father mentioned his eagerness to file a case. Siddique, however, suggested they visit the hospital first for her treatment, as well as to get a medical certificate for filing the case. Rahim's family too was eager to file a case. Siddique suggested that Rahim avoid filing a case and think about mediation, since Rina and her husband had two children together. With her severe injuries, Rina was taken to the hospital.

After Rina was discharged, she and her father wanted to convene a shalish for a final decision on Rina's marital disputes, and the land disputes between the two families. Initially, Rahim's family wanted a shalish too, and went to the UP chairman's office to ask for a shalish date. The chairman agreed to conduct a shalish for Rina, but later Rahim's family changed their mind. According to Rina, the in-laws were being influenced by other politically influential people of the ruling party from Dhaka whom Rahim and his family got to know and became friends with while staying in Dhaka, although they were not directly involved in politics themselves. In the end, the shalish did not take place.

Siddique advised Rina's father to file a case for dowry violence under the Suppression of Violence against Women and Children Act 2000, as she had a medical certificate. Based on Siddique's advice, Rina and her father went to the police station to file a case against Rahim's family. Siddique went with them as well. However, the police officer in charge, Inspector Lahab, was reluctant to take the case and suggested mediation, given filing a case is expensive, and mediation, in his view, was better for the poor and disadvantaged. Hence, Rina and her father did not file a case. Rina felt that Inspector Lahab gave them the right advice, and was very positive about the role of law enforcement agencies in her case. On the other hand, Rahim and his family wanted to file a case regarding the injury to his father's knee. Again, Inspector Lahab did not want to record their complaint and again suggested mediation. It was repeatedly observed that the law enforcement agencies would often suggest or even attempt mediation which is not within their mandate as law enforcement authority, but is often socially expected or even desired by the community. As mentioned above, Rina appreciated this initiative.

Following Inspector Lahab's advice, Rina and her father wanted to hold a shalish for mediation in the community on 5 September 2020. Rahim's family agreed to participate in the shalish but later claimed that his father needed more time to recover. Inspector Lahab suggested that the shalish could take place at Rahim's house for his father's health concerns, or at any other convenient place for them, but Rahim's family did not agree. However, Rina felt that this was a part of their plan, and soon after, Rahim and his father secretly went to court and filed a criminal case on 13 September 2020 against Rina's family, charging them with stealing money and gold, and rejecting Inspector Lahab's advice for mediation. Many members of Rina's family were accused, even those who were not present on the day of the incident.



They filed the case against each and every member of my family, even the ones who were not involved in what happened that day! My father, uncles, aunts, brother, even my baby cousins—everyone!

—Rina

In total, nine members of Rina's family were accused of beating her father-in-law.

The law enforcement agencies formed an investigation committee and, as part of the investigation, came to check Rina's house. Rahim's family knew that court processes were lengthy, and Rina claimed that they paid the relevant authorities to move their legal files from Rangpur to Katapukur faster than usual. She also claimed that the political people influencing Rahim's family's decisions were more knowledgeable about the legal system and that was an added advantage for Rahim's family. Ultimately, the court gave the judgement in favour of Rina's father, saying that it was a false case. However, her father-in-law did not accept the judgement.

When Rina's family received the court notice, Inspector Lahab suggested they file a case against her in-laws. He was unhappy with Rahim's family for having gone behind his back and filing a court case, and therefore advised Rina's family to file a case. Eventually, again as per Inspector Lahab's advice, she filed a case under the Suppression of Violence against Women and Children Act on 15 September 2020. Rahim was arrested on the same day.

Rina filed another case against Rahim on 8 October 2020 under the Domestic Violence (Prevention and Protection) Act, Section 11(3) for maintenance

and protection orders, as per the advice of her family lawyer Harun. Harun suggested she file this case under the DVPPA as it would enable Rina to receive her maintenance, as well as give her protection to live at the house she built. In the hope of being able to stay at her marital home as well as receiving the maintenance money, Rina filed the second case.

LEGAL COMMENTARY X

Family laws in Bangladesh do not recognize the right of the woman to reside in the matrimonial home, or her contribution to it. So this protection order is quite an innovation. At the same time, it is often difficult to enforce where couples live in joint families. In this case, where there is a separate home, there is a scope to enforce it. While women's right to reside in their family home is recognized by the DVPPA, this only applies when they are in an existing family relationship. However, rights within the family, the existence of family relationships, and their ending (e.g., through a divorce) are determined by personal laws, which vary for different communities. Thus, the right to reside will vary for women depending on whether they marry under Muslim, Hindu, Christian personal law or the Special Marriage Act. None of these personal laws recognizes the right to a family or matrimonial home.

Rahim was in jail for twenty-five days. After being released from the jail, Rahim sent Rina a divorce notice. Rina claimed that the judge told her that since she filed a case against Rahim, and since Rahim's father was attacked by Rina's father, it was expected that he would send this.

LEGAL COMMENTARY XI

It has been over three months since Rahim has sent the papers, and therefore the divorce has been finalized. During an ongoing case, divorce can take place without any legal complications and in such cases, the husband's obligations (if related to maintenance, dower, and custody, the case will continue) are not exempted from such divorce. However, this is a challenge in cases filed under the DVPPA. For any case to be filed under the DVPPA, the domestic relation of the parties is a major issue. So, when the parties are divorced during the pendency of a case, the validity of such cases get questioned by the opposite party and therefore, the woman gets deprived of her rights.

Rina has not yet received her dower money, as her father had objections to the court judgement. He has objections to the judgement because the court had cleared the four other accused from the Suppression of Violence against Women and Children Act (Nari O Shishu Nirjaton Domon Ain [NSNDA]) case and only kept Rahim's name. The case is, therefore, still unsolved and Rina is yet to receive the money.

According to Siddique, Rina had minimum say in the overall process. She also did not understand the court proceedings much.

“

She didn't ask any questions about the process but would just go to court without understanding what was going on. What she really had in her heart was her love for Rahim.

—Siddique

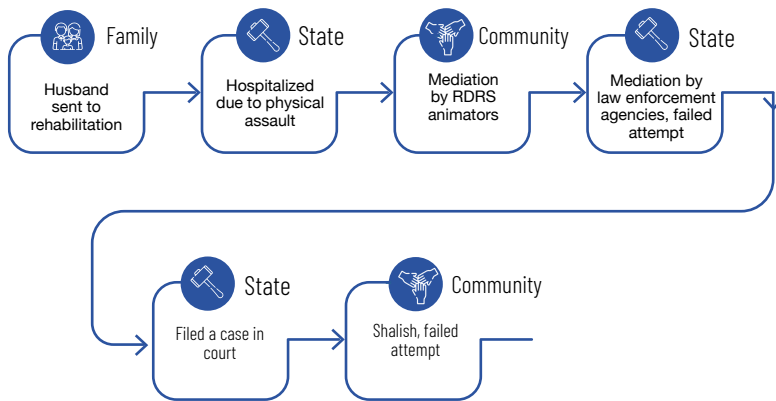
After the divorce, Rina's father arranged different shalishes regarding the land disputes. The last shalish was held at the UP Council and was conducted by UP Chairman Faruk. The shalish took hours and a number of decisions were reached. Rahim was supposed to take Rina back, and both the families were asked to solve things between themselves, and finally, some land from her in-laws was to be registered in Rina's name. Both the families accepted the clauses and signed papers. However, Rahim's family was later influenced by a group of influential and political people, who suggested more complicated conditions for the land to be registered to Rina and for payment of the dower money. Rahim and his family prioritized the advice given by these politically influential persons and disregarded the shalish's decisions. The chairman got to know about this and felt insulted. He decided to withdraw from Rina's case. The two families could not come to a common decision and the divorce was finalized. At present, Rahim comes to Rangpur for his hearings and then goes back to Dhaka.

CONCLUSION

Rina's marriage was affected by the disputes between her father and father-in-law, where she had no real control. Her case also reflects the challenges women face in terms of the absence of alternatives to marriage that are necessary to secure safety and survival. With the stigma associated with broken families and the uncertainty of the financial security of children, she

felt the need to preserve her marriage as there were no other real alternatives. When she filed a case against Rahim, she wanted to punish him and his family and hold them to account for their violence. She did not realize that filing a case would threaten the existence of her marriage and result in divorce. Now that the divorce has taken place and Rahim is living with his second wife, she feels defeated. Whenever she realizes that she has no right over the house she built, the furniture and utensils she bought, and the man she loved, it breaks her heart. Or as Rina put it, “I have no right to the house I built.”

JUSTICE JOURNEY





THE FATE OF A SECOND WIFE

MITA

Garment workers returning home from work. Mita, a financially independent woman who worked at a readymade garments factory, was stalked on her way to work by a married man who ultimately became her husband

E. THE FATE OF A SECOND WIFE: MITA

Keywords

migration, RMG worker, polygamy, UP shalish, BRAC HRLS, divorce, maintenance, theft

INTRODUCTION

Mita's story is one of a woman who had migrated independently for work, earning her own living. She was compelled to marry a man who was already married. Eventually, she supported her husband financially and was able to save up money and buy jewellery and household goods. Both the savings and assets were misappropriated by her husband and his first wife. Once she was no longer earning and had a son and needed to be supported, her husband divorced her and is now negligent about paying maintenance, even though that was negotiated by BRAC HRLS.

PROFILE

Mita had studied up to class five but stopped to earn a living. At the age of fifteen, Mita fled to Dhaka when her parents pressurized her to marry someone. After she moved to Dhaka, she did not have any contact with her parents. She used to live with one of her friends. She became involved in a relationship with Momen, a fish seller by profession, whom she married later on.

Mita was twenty-one years old and Momen was forty at the time of marriage. Momen was already married, and had two children when they got married.

Mita and Momen now have a boy who is two years old. Currently, Mita and her child live with her parents in Fulbaria. After her older brother died leaving behind a wife and children, Mita's father became the sole earner of the family, and supported them with his income from a community centre where he was a cook. But he often could not go to work given his old age and ill health.

THE CASE

Mita moved to Dhaka and started working. Momen migrated there independently and started selling fish near Mita's workplace. They met at a local bazar and Momen started following her. Her landlord noticed this. Assuming a responsibility towards young and unmarried Mita, the landlord raised concerns. Mita denied having any connection with Momen and complained to the landlord that Momen followed her every day. When the landlord questioned Momen about following Mita, he said that he wanted to marry her. But Mita, all too aware that she would need her in-laws' acceptance to ensure family support in future, did not want to marry Momen without the presence of his parents. Momen then brought his uncle and cousin to represent them as his guardians, but Mita was still reluctant to marry him since she knew he already had a wife. However, Momen's uncle and cousin assured everyone that Momen's first wife and he were separated. Finally, Mita married Momen in the presence of Momen's uncle, cousin, and their landlord. They did not inform Mita's parents about the marriage.

After the marriage, Mita first lived in Tongi for fifteen days, where some of her relatives lived nearby. Since Mita's parents did not know about the marriage, her husband shifted their house from Tongi to Maona, an upazila in the neighbouring district of Gazipur, afraid that Mita's family might trace them if they continued to live in Tongi. They lived in Maona for three years, and Mita used to work for a garments factory. According to her, their time in Maona was peaceful. During that time, her husband used to take her salary every month and used to pay the household costs with it.

From the beginning of her marriage, she claimed that she was prevented from contacting her family members. Her parents still did not know her whereabouts after her marriage. She did not visit her parents in Fulbaria until she received the news that her brother fell severely ill. After receiving the news of her ailing brother from a coworker who used to live in the same neighbourhood as her parents, she came to see her brother, but he died shortly after. During her stay in Fulbaria, she found out that her husband and

his first wife had not separated. Furious, Mita went back to Dhaka without informing her husband and stayed in a friend's house to hide from Momen. But Momen managed to find her, and took her to Bhalukjan and rented a room there. Mita's husband beat her several times, whenever she attempted to communicate with her parents or threatened to leave Momen.

Mita stopped working when she moved to Bhalukjan, in Fulbaria Upazila, Mymensingh, because she could not find a suitable job. When she worked for a garments factory at Maona, she used to deposit a certain amount of money in a savings scheme—Deposit Pension Scheme (DPS)—from her salary. Her husband made her encash the DPS of one lac twenty thousand taka and took the money when she left Maona, which he later used for building a separate house for his first wife when disputes arose between his parents and his first wife.

One day, Momen suddenly started searching for their marriage contract and took it out of a trunk without telling Mita. When Mita asked for an explanation, Momen told her that he was going to give it back. After hiding the marriage contract, he told Mita that he would go to Shagordik to sell fish and would return within fifteen days as the business was not going well in Fulbaria. But when he left, he did not give any contact phone number, or leave any food for Mita, though she was three months pregnant and jobless at that time. Mita waited over a month for her husband to return. Finally, she decided to go to Shagordik, Ghatail to search for him. When she met him there, he just ran away leaving her behind.

On her way back to Fulbaria, Mita met her husband's cousin and introduced herself as Momen's second wife. The cousin assured her that he would bring Momen home. A few days later, her brother-in-law and father-in-law (chachato shoshur) held a discussion with Mita and Momen in an attempt to resolve their dispute. During that discussion, the relatives told them that Momen should maintain ties with, and provide for, both the families simultaneously. They should make compromises and continue the marriage since Mita was expecting a child.

“

The wrong has already been done. There's nothing to do; now you have two families. You have to act wisely and the same goes for him. We want the best. Both of you stay in harmony, this is what we want. He will go there too and he will come here too. There is nothing more to do now that a child has been born.

—Mita's father-in-law

The intervention by Mita's father-in-law and brother-in-law only gave temporary respite until one day Momen asked the local Ward Commissioner Hira to arrange a shalish because he could not afford to pay for two households anymore. Since Mita was no longer earning money, the entire financial responsibility of maintaining the household had fallen on Momen. Cutting down Mita's maintenance seemed an option for Momen to tackle his economic crisis.

In the shalish, Commissioner Hira tried to convince Mita that it would be best if Mita stayed with her parents for the time being as she was pregnant and needed care. Prenatal care is conventionally considered to be a responsibility of the woman's family in Bangladesh and Hira's advice reinforced that idea. In addition, Hira assured Mita that Momen would visit her regularly and provide for anything she needed. However, even after a few days of the shalish, Momen did not contact her. Mita went to the commissioner and informed him about her husband's failure to abide by the decision taken in the shalish.

A second shalish was then arranged by Hira Commissioner. Mita complained to him that Momen did not contact her or paid for her maintenance since she left Bhalukjan. During the shalish, her husband again accepted that he would pay for her maintenance, but he did not keep his word after the shalish. After some time, Hira Commissioner, being annoyed with Mita's repeated complaints and Momen's disobedience, told her that he could not do anything about it since Momen would not listen. He also said that he would give testimony against Momen if needed. However, Mita decided not to pursue the matter at that time as she was at the last stage of her pregnancy.

Nevertheless, Mita was extremely dissatisfied with the decisions and outcomes of the shalishes conducted by the commissioners. She was particularly frustrated with Hira Commissioner's decision that compelled her to leave her husband's house from Bhalukjan and stay at her parents' on the ground that her parents would be able to provide the prenatal care she needed during her pregnancy. She said,

“

In the meantime, he didn't try to contact me. When I approached the commissioner, he said, 'What can I do? He doesn't listen!' Didn't you know this before, that he wouldn't listen? So why did you proceed with the divorce?

In 2020, Mita gave birth to their son. Her parents sent the news to Momen, but he did not come to see the child. Later, Hira Commissioner and a local

leader Fozlur went to Momen's house and forced him to come and see the child. Momen stayed for around ten minutes and then left immediately after Fozlur and the commissioner.

While Mita was delivering the child, Momen broke into Mita's house in Bhalukjan. The theft was abetted by Momen's first wife whom he introduced to the landlord as Mita's sister-in-law and his mother who was introduced as Mita's aunt. The three took away Mita's furniture and other household items, such as refrigerator, clothes, and jewellery that Mita bought with her own money. Three days after the incident, Mita's landlord called her and asked why she had emptied her room without informing. Mita rushed to her house immediately and searched for her gold jewellery, but everything was already gone. When she asked her neighbours, they told her that all her belongings were taken to and kept in her mother-in-law's house.

It is then that Mita decided to seek assistance from BRAC HRLS. The theft was a turning point for her as she felt betrayed and decided to take legal action. Her father heard of BRAC HRLS from his workplace and suggested that Mita went to BRAC. In the meanwhile, her husband sent her a divorce notice that she refused to accept. Mita went to the BRAC HRLS office with her four-day-old baby and consulted with the HRLS officer regarding the issue. After accepting the complaint from Mita, the HRLS officer sent a notice to Momen for alternative dispute resolution (ADR) in order to reconcile the marriage. Momen did not respond to the first two notices and finally showed up at the HRLS office for the third. He declared that he would rather pay the dower and maintenance money than take Mita back.

Seeing no other option, the HRLS officer demanded one lac ten thousand taka as dower money. However, Mita claimed her dower money was reduced to seventy thousand taka from the amount she asked for by Commissioner Akbar who was invited by the HRLS for ADR. She claimed that she did not want to give a divorce. They pressured her to accept the divorce by saying that her husband was not willing to continue the marriage, so it would be best for her to accept the dower money and a monthly maintenance of two thousand taka for the child. Although Momen gave Mita the seventy thousand taka, he did not provide child maintenance after the divorce. All of these outcomes limited Mita's confidence in the justice process.

“

I did not want to give a divorce, I refused. Later they said that he [Momen] would look after my child and he would also pay for my child's maintenance. I agreed to the divorce trusting their words, but now he doesn't even ask about my child, let alone provide the maintenance.

—Mita

Moreover, UP Commissioner Hira and his wife who were present in the shalish mirrored prevalent gender norms by holding Mita responsible for the situation. She was blamed for not being careful and for not checking Momen's background before becoming his second wife, even though Mita claimed that Momen lied to her about his separation with his first wife.

On the other hand, the fact of Momen's second marriage, and even his having a wife and children, was normalized by the commissioner and his wife. They said,

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He did what he did. It's in man's nature to marry a second time. If he provided for her food and clothes properly, would we bother so much?

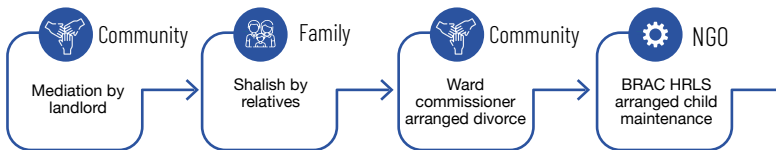
With the dower money, Mita bought a piece of land and rented it out. However, she did not receive the child's maintenance as promised. So Mita again lodged a complaint at HRLS for the child's maintenance. The HRLS has sent two notices to her husband over this issue so far.


During a follow-up interview, Mita claimed that her husband still did not pay for the child's maintenance. She also claimed she was beaten by her husband's first wife in the middle of the street. She fears that her child may be harmed by her husband and her wife and be deprived of his share of the property. Mita claimed that she was directly threatened by Momen and his first wife that her child would be harmed if she pressed for the maintenance money. BRAC HRLS is currently preparing a case under the Muslim Family Laws Ordinance against Momen in order to secure the child's maintenance.

CONCLUSION

Mita's story is common with those of many other domestic violence survivors where women have to go through multiple avenues to seek justice. At first, Mita tried to resolve the issue within the family. When the family intervention was not successful, she sought help from the community and UP level. When community-level shalish could not bring any positive results, she sought support from an NGO. However, Mita was not completely satisfied with the outcomes of various shalishes and meditations conducted as an attempt to resolve her marital disputes. Although she wanted to continue her marriage, she got divorced, for which she held the shalishkars responsible. She finally agreed to a divorce settlement mediated by BRAC HRLS, believing that it would secure her son's future by ensuring maintenance payments. However, this has not happened.

JUSTICE JOURNEY



A photograph showing a man in a dark suit and a light blue surgical mask walking towards the left. Behind him, a woman wearing a colorful headscarf and an orange vest is carrying a large stack of papers. They are in a hallway with white walls and windows with metal grates. A framed plaque is mounted on the wall to the left, and a blue door is visible in the background.

HER MOTHER THINKS
SHE IS NO LONGER
HERSELF

SADIA

A panel lawyer and a BLAST paralegal entering the Patuakhali DLAC office with a complaint file as they had done in Sadia's case.

F. HER MOTHER THINKS SHE IS NO LONGER HERSELF: SADIA

I *Keywords*

migrant workers, multiple marriages of husband, hospitalization, BLAST, DLAC, multiple simultaneous cases; Dowry Prohibition Act, Muslim Family Laws Ordinance 1961, helpline

INTRODUCTION

Sadia is a twenty-eight-year-old woman from Dumki Upazila, Patuakhali, who has been facing physical, psychological, and economic violence at the hands of her husband and mother-in-law since the beginning of her marriage. The psychological effect of the violence she endured has been particularly devastating. Sadia's parents called her recent behaviour "unpredictable"—at times she would be calm and quiet and at other times she would explode with anger on trivial matters. She was severely beaten by her mother-in-law and husband Nobin, a thirty-five-year-old CNG driver from Mirzaganj, when disputes arose, and was thrown out of the house many times. At one point, she was hospitalized as a result of the beating. She was also accused of being a thief by her husband. Sadia reached out to the family, community, NGOs, and state institutions to make her marriage work, but she felt as if all her attempts failed. Her story is a glaring example of how domestic violence takes a toll on the survivor's overall wellbeing and mental health and hampers their ability to lead a normal life.

PROFILE

Sadia studied up to tenth grade, but then gave up her education to earn a living. She used to work at a garments factory in Dhaka before her family moved back to their village in Patuakhali. In 2017, she married Nobin, a driver, from a nearby village called Moheshkhali. The couple has a three-year-old son.

Sadia's father is a Village Ansar. Her marriage was arranged by one of her former colleagues and Nobin's cousin when Sadia went to Dhaka on a visit. Although her parents were not present when her marriage took place, they did not seem to have any objection to the marriage.

Nobin had been married thrice before, but all three wives were said to have left him because of domestic violence perpetrated by his mother. Nobin withheld the information about his previous marriages from Sadia and it was not until she came back to Patuakhali that she found out after the neighbours informed her of this.

Nobin lost his job as a CNG driver due to the COVID-19 pandemic, and now occasionally goes on replacement duty for other drivers. Since he has no stable income source, he cannot regularly bear Sadia's expenses and their child's maintenance. Sometimes he would send small amounts for their child after he provided for his mother.

THE CASE

For the first few months after their marriage, Sadia lived in Mohakhali, Dhaka with her husband. When disputes arose between them, she asked her husband's sister and the woman who arranged their marriage to mediate. They both told her to leave her husband if they could not stay together peacefully. Another person advised Sadia to go to a locally influential person in Mohakhali who might be able to pressure her husband into behaving better with her. However, when she sought that person's assistance in mediating her marital dispute, her husband, her husband's cousin, and her colleague scolded her.

While in Dhaka, Sadia complained to her mother-in-law about her husband talking to his ex-wife over the phone. According to Sadia, her mother-in-law then informed Nobin, distorting what she had actually said. In response,

Nobin beat her up, though she was eight months pregnant at the time. He also burnt her legs with hot water. The wife of the manager of the low-income settlement they were living in, who was present during the incident, was also burnt when she was trying to rescue Sadia. After this incident, the manager's wife gave Nobin an ultimatum:

“

The manager's wife from that house said, 'If he [Nobin] beats his wife one more time, we, the other women, will take action against it.'

—Sadia

Later on, Sadia's mother-in-law, her sister, and her sister's husband convinced Sadia to come back from Dhaka and start living in their village in Patuakhali. She, along with her husband, migrated to Patuakhali in 2018. Her mother-in-law gave them a piece of land in Shubidkhali (five *kora*⁶ land from her husband's maternal grandfather), where they built a new house. Sadia's mother-in-law was separated from her husband and used to live with her brothers in the same place. Sadia bought her husband a rickshaw. She also arranged to get an electricity line at their new home by taking a loan from BRAC. Sadia started to settle down in her new home with Nobin.

After some time, Sadia's mother-in-law bought a piece of land with Nobin's earnings. She registered this in her father's name instead of her own name. Nobin felt that he would not be the only inheritor of the property since it is registered in his maternal grandfather's name. This, later on, became a matter of conflict between the son and the mother.

According to Sadia, her mother-in-law used to control all the decisions of the household after she migrated to Patuakhali. She used to lock up the food and also took the decisions on how much Sadia would cook. Sadia refused to give in to her mother-in-law's wishes and this caused constant conflicts in her marriage. When asked about her mother-in-law's hostility towards her, Sadia reasoned that her mother-in-law had wanted Nobin to marry her niece, but he refused to do so. Sadia even accused her mother-in-law of trying to take away her son on three different occasions.

On the other hand, her husband's behaviour fluctuated hugely, between his seeming to care about her and then beating her up, as Sadia claimed. This pattern of behaviour made her believe that he had been put under a spell by his own mother. Sadia also claimed that her husband was a relatively simple

⁶ *Kora* is a sub-unit of Gonda and Kani which are traditional units of land area.

1 Kora = 217.8 sq ft.

person who always followed his mother's orders. Her mother-in-law stopped Nobin from keeping any contact with Sadia and her child when Sadia moved out of her in-laws' house. Sadia blamed her husband for not stopping his mother when she was tortured. She also felt that her mother-in-law had excessive control over her son, not allowing him to have sexual relations with her, was insanely jealous of his wives, and was bitter and unhappy about anyone having a happy marriage, as she had a broken marriage herself, and had had to return to her parents with her son when her husband married again.

While reflecting about her marriage, Sadia said that she agreed to marry her husband when she was told that Nobin prayed five times a day, and went to Tabligh, a regular religious gathering of Muslim men. She felt that anyone who was a pious believer in Islam would practice Islam and behave well in marriage.

When her marriage deteriorated, Sadia would read her husband stories of Prophet Muhammad's married life to remind him about his duties as a husband, which did not work.

“

I used religious texts to make him understand. I resorted to Hadith, sat along with him and read out the parts on how husbands are supposed to treat their wives. Still, I am not being able to make my marriage work.

—Sadia

On 2 March 2020, being fed up with the violence and being forced to move out of her marital home repeatedly, Sadia registered an application at the BLAST office seeking legal services. BLAST, as per their policy, set a date to mediate the dispute through an ADR so that she could continue her married life without facing violence. However, Nobin did not show up. Two other dates were set for mediation, but Nobin was consistently absent. In the meanwhile, the violence at home aggravated after she went to BLAST in March 2020. She was scolded by her husband every time anyone from BLAST called her.

When the lockdown restrictions were relaxed in August 2020, two more dates were again set for an ADR, but neither Sadia nor her husband showed up. In August, BLAST referred Sadia's case to the Patuakhali DLAC office as a dowry case. The concerned court sent the case for pre-trial mediation to DLAC after receiving the cases from BLAST. Sadia's case under the Dowry Prohibition Act had to wait for several months to reach the court due to

the COVID-19 pandemic, which created frustration and despair in Sadia. Another reason for frustration was that Sadia primarily held her mother-in-law and mother-in-law's brother to be responsible for the developments in her marriage. In the case that had been filed through DLAC, no charges were brought against the mother-in-law and her brother. Therefore, Sadia thought that if the main criminals did not get punished, there was no point in punishing her husband, who, according to Sadia, was nothing more than a puppet in this case. Lastly, she felt that it was too costly for her to pursue the case through DLAC. As a result, Sadia withdrew her complaint from DLAC.

Soon after filing the case through DLAC, Sadia was beaten up by her husband, who suspected that she had stolen money from his pocket. After getting beaten by her husband, she called 109, the national helpline number, and the operators suggested she go to the police station. In spite of the lockdown, she went to the police station and asked her father to meet her there. She insisted that the police resolve the matter before she went back to her in-laws', fearing she might get beaten again for trying to take help from the police. The police official knew her father. After that, both her father and the police went to her in-laws' and tried to settle the dispute, although that is not the formal role of the law enforcement agencies. Her in-laws were adamant that she was the one responsible for the theft. She was beaten again by her husband and mother-in-law two days after her father and the police had intervened. This time, Sadia's mother-in-law injured her genitalia so badly that her vagina started to bleed. This was in retaliation for Sadia daring to complain to the law enforcement agencies when she was accused of stealing money.

“

You know what happened then? You're a woman, so I can tell you. She scratched my vagina so hard that my skin came out.

—Sadia

After this attack, Sadia was taken to Shubidkhali Government Hospital and received treatment there. The hospital also issued a medical certificate, noting the state of her injuries. Nobin paid for the medicine.

After the attack by her mother-in-law, Sadia's father went to her in-laws' to bring his daughter back home. At first, her husband would not allow Sadia to take their child with her. Then, Sadia called an uncle and the village police, who convinced Nobin to let the child go with his mother.

After this incident, one of Sadia's female neighbours tried to help. She called Nobin and pretended to be a female ward member. She asked for an explanation from Nobin for the violence and told him that she had sent Sadia's clothes covered with blood to the Rapid Action Battalion (RAB) office. After this phone conversation, Nobin came to Sadia's house to take her back. At this point, Sadia's sister-in-law again met Nobin pretending to be a ward member disguised in a burqa and suggested that he confront his mother for beating his wife. She also advised him not to repeat this again.

Sadia complained that her neighbours never came to her rescue when she started living in her husband's village, as they were frightened by her mother-in-law. A shalish was organized by a member of Sadia's in-laws' village, but he could not resolve Sadia's dispute with her mother-in-law. Sadia also claimed her mother-in-law was shameless and dangerous, as she could take off her clothes herself and make allegations of sexual assault against any man who would try to stop or correct her. Sadia claimed that this was why nobody dared to question her mother-in-law beating her.

Apart from physical and psychological violence, Sadia also faced economic violence at the hands of her husband and mother-in-law. She received all her household items from her parents, but whenever she came to her parents' home, her mother-in-law used to throw away her clothes and steal her cooking utensils. She was denied maintenance for herself and her child. Sadia also seemed psychologically affected by the violence she had faced which she confided to the research team.

BLAST agreed to provide free legal aid to Sadia and to file a case on her behalf under the Muslim Family Laws Ordinance 1961 for recovery of dower and for maintenance for her child in September 2020.

The reason Sadia was ready to continue her marriage amidst all the violence was her perception of a woman's home. She did not believe that a woman has any rights in or to her parental home. She believed that a woman's real home is her marital home, which she had built herself.

“

This is not my home Apa. My father's house is just my father's house. My house is my husband's house. The home I build for myself will be my home. You tell me, will my father's house ever be my own?

—Sadia

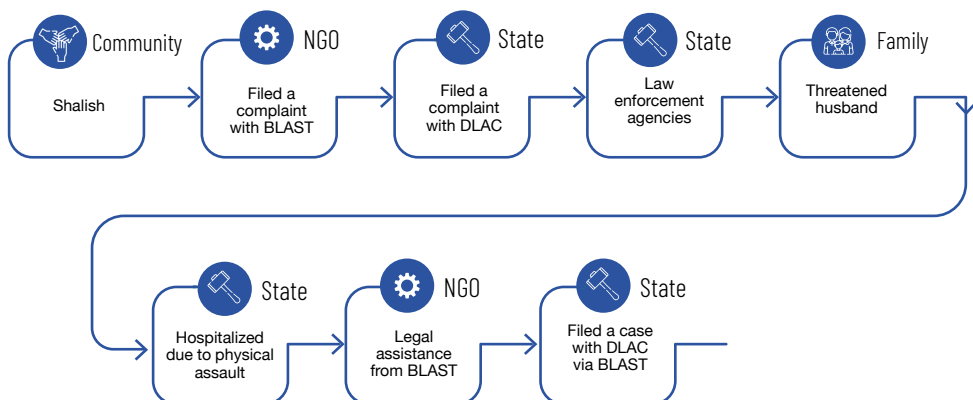
During the first follow-up by the research team in November 2020, Sadia was trying for reconciliation with her husband. She said that he had come to take her and the child back but she was scared to go back because of her mother-in-law. He had come and spent a few days at Sadia’s parental home. She also said that while she wanted sexual intimacy with her husband, he had been refusing to have sex with her. Her husband, however, claimed that he wanted to take her back and she was harassing him on the phone and using abusive language about him and his mother.

By October 2021, Sadia was again living in Dhaka with Nobin. She still seemed very disturbed and did not agree to a follow-up meeting with the BIGD research team. BLAST Patuakhali team considered the case as resolved and all complaints had been withdrawn.

CONCLUSION

Sadia’s case exemplifies the difficulties and frustrations of finding the right legal solutions to deal with domestic violence. Her father and his police colleagues’ interventions did not help but only made matters worse. They also undertook a shalish which was beyond the formal mandate of the police officer. In terms of securing a result that would provide a remedy for her by stopping violence, ensuring maintenance and survival, and continuing the relationship, the legal interventions by BLAST and DLAC did not satisfy her. However, these interventions may have indirectly led to the couple trying to reconcile and have helped them live together, far away from the mother-in-law whom Sadia blamed for all her troubles.

JUSTICE JOURNEY



A woman wearing a vibrant yellow and blue headscarf and a red and white patterned dress is seen from behind, carrying a young child on her back. They are standing on a dirt path in a lush, green forest with many tall, thin trees. The scene is brightly lit, suggesting daylight. The text is overlaid on the lower half of the image.

“I WON’T DIE IN
PEACE UNTIL HE IS
JAILED”

KOMOLA

Komola and her child cling to each other, desperately waiting for a remedy for the harm that has been inflicted on them.

G. “I WON’T DIE IN PEACE UNTIL HE IS JAILED”: KOMOLA

I *Keywords*

dowry, psychological violence by husband, photoshopped pictures, blackmailing, conditional bail, child abuse, community shalish, court, BLAST

INTRODUCTION

Komola is a nineteen-year-old from Barishal. Married at sixteen, she faced repeated physical violence from her husband and in-laws, even during her pregnancy. She faced psychological violence and online abuse in the form of blackmailing through photoshopped pictures from her husband. He also refused to pay for their child’s maintenance and would always torture Komola for dowry. All throughout her justice journey, she tried approaching different actors in her family, community, NGOs, and the court in attempts at mediation. Her husband Jibon flouted court orders and his family sent the police to harass Komola’s family. When her efforts failed and she and their seventeen-month-old son were brutally beaten by her husband, Komola decided she no longer wanted mediation, but wanted to punish him under the law and stop the violence.

PROFILE

Komola is the only daughter of her parents and has one elder brother. She and her son live with her parents and her brother. Komola's brother is a rent-a-car service driver, the only earning member of the family and also Komola's financial provider. She studied till fifth grade, after which she did not feel like studying further. While her father seems quite old and cannot work any longer, her mother is an active woman with some knowledge of courts as she had land-related disputes previously which required her to visit the court. She is often consulted by her neighbours to help them out with accessing the courts.

Komola's husband Jibon is twenty-six years of age, and is from the nearby village of Sayedkhali Bazar. He drives a pickup truck in Dhaka, and his parents live in Sayedkhali. Komola and Jibon met over the phone, and the couple got involved in a relationship. According to Komola, Jibon became desperate to marry her, although she wanted to wait a little longer before getting married, as she felt the need to get to know him better. Jibon was adamant, and he pressurized her further by threatening to commit suicide if she did not marry him. Faced with this pressure, Komola married him in 2018 at the age of sixteen. The couple has been married for over three years now.

THE CASE

The first few months after the marriage, things went well, and the couple was happy. However, Jibon's behaviour changed gradually. According to Komola, her mother-in-law used to provoke Jibon, who abused her verbally. Verbal abuse soon transformed into physical abuse. Jibon beat her before, during, and after her pregnancy. After she gave birth to their son, he beat the baby as well.

She also faced severe psychological violence, when he sent her pictures of himself with other women and said that he no longer felt attracted to her.

“

'I have found someone better than you,' he [Jibon] told me. He says, 'If I were to sell you at the bazar, nobody would buy you. You are a mother now. Nobody wants a mother of a child.'

—Komola

Moreover, Komola also faced economic violence, as her husband did not take steps to meet any of their expenses, not even for the baby.

All the violence started from his demands for dowry. During their wedding, Jibon's family demanded two lac taka as dowry; not being able to afford it, Komola's family gave Jibon a gold chain worth thirty thousand taka instead. They also gave Komola other essentials, such as clothes, to take with her to her in-laws. Komola's brother made grand arrangements for the wedding and entertained fifty people from her in-laws' side. One year later, Jibon and his family again started pressuring Komola for more dowry. Jibon demanded a motorbike and his parents pressured Komola to bring money from her parents to build a house for them (they used to live in a rented house). Besides dowry, Komola's brother also supported her and Jibon financially by letting them stay at his place for three months, so they could save up money.

Komola decided to rent a separate house for Jibon and herself. This was her first initiative to cope with the situation and reduce the violence. Her mother supported her by giving her essentials for the new house. But living separately did not end the violence. Jibon used to go out regularly to smoke marijuana and to drink, and beat her up whenever he came home. As a second initiative, Komola then decided to have a child, thinking this might make things better. Jibon agreed, and by December 2018, she became pregnant. But Komola was wrong; Jibon continued beating her even during her pregnancy. When the neighbours in Jibon's village saw that Komola was beaten regularly during her pregnancy, they organized an informal community arbitration to make Jibon and his family behave better. The shalishkars decided that Jibon must stop the violence against his pregnant wife. But Jibon flouted their decision and continued beating her.

Five months into her pregnancy, in March 2019, Jibon threw Komola out of their house, but kept her belongings. Komola called her mother to pick her up, and her mother, accompanied by neighbours from her village, took her home.

Komola continued to make efforts to go back to her matrimonial home. She used to call Jibon and ask him to take her back. But Jibon refused. She tried communicating with her in-laws (even with the extended family like aunts-in-law) over the phone, but they insulted her and her mother by saying they were at fault for not being able to make the in-laws happy.

Repeated efforts by Komola and her mother continued for reconciliation, and they decided to ask UP Chairman Selim, who was from their village, for help. They thought a shalish could convince Jibon to take back Komola, and Chairman Selim convened a shalish at their request. But this did not work. Komola and her mother were not happy with the chairman. Komola's mother felt, being a man himself, the chairman could not understand Komola's struggles. She also complained how community shalish systems and the shalishkars were all about money.

“

Shalishkars take money. Only women understand women's suffering. What do men understand? They can't understand women's suffering. Men and boys [can't understand this].

—Komola's mother

Komola gave birth to her son in July 2019. Jibon was staying in Dhaka with his parents at that time and did not return for the baby's birth. He also refused to pay for the hospital expenses. Komola's brother covered all the medical expenses. Jibon finally came to see their son three days after he was born. But having seen him, he quickly left.

Komola still wanted to return to her husband's house with her son. She felt it would be difficult to raise a child without a father, as it would be financially and socially difficult. She and her mother tried to get another *shalish* and approached Chairman Selim, who convened a second shalish, two months after the baby was born. Selim's view was that it was essential to preserve Komola's marriage at any cost.

“

If a woman loses her husband, she loses her honour and becomes shameless. If she is divorced, she can do whatever she wants to. She can even go to Dhaka and work in the garments. She can get involved in other professions too. If her first marriage breaks, her humanity and honour are halved.

—UP Chairman Selim

During the shalish, Selim asked Jibon to stay at Komola's parents' house for two days, to try and resolve issues amongst themselves and then take her back home with him. Komola went back to her marital home with the baby. It was also decided at the shalish that a "reception" for the baby would be held at Jibon's village. This time, Jibon's family demanded a cow from Komola's family, as a condition for holding this event. However, Komola's family could not afford it. Jibon was angry, and started beating Komola again, and threw her and their child out of the house. He kept all her belongings and Komola came back to her parent's house again.

In the meantime, Jibon and his family started using different ways to harass Komola's family. They sent three local journalists over to Komola's parents' house to bring her and the baby back, claiming that Komola's parents were not letting her return. Komola's mother explained to the journalists that this was Jibon's way of harassing Komola and her family. The journalists were convinced that Komola and her family were innocent and left.

When Komola realized the repeated shalishes had had no impact, she finally decided to take legal action. Her mother was worried about how they would pay for the litigation. She knew about BLAST through its reputation in the community, and knew that it provided legal aid for the poor and disadvantaged. She thought since they were poor, BLAST would be the best option for them to take legal action. Komola's mother herself previously had to visit the court for land disputes. Therefore, she finally decided to take Komola to BLAST in October 2020.

BLAST accepted the application and sent two notices to Jibon and his family, calling them for mediation to reconcile, but they did not show up. BLAST then filed a case against him on Komola's behalf through a panel lawyer, providing her with all court costs and also costs of conveyance, under Section 4 of the Dowry Prohibition Act 2018.

After Jibon received a notice from the court, he appeared in person, received a conditional bail, and agreed to take back Komola. The conditions included that Jibon would take Komola back, give her the respect she deserves as his wife, and he would continue to live peacefully as a family with his son and wife. But the loopholes in the justice system proved bigger than Komola's cry for justice, as it turned out that Jibon had made this promise only as a

tactic to avoid imprisonment, and as soon as he left the court premises, he abandoned Komola and went back to his village.

Frustrated with the outcome, Komola decided to resort to a community shalish again. She again approached UP Chairman Selim. He advised Komola's family to make arrangements to receive her in-laws and entertain them with food, and also advised Jibon's family to go to Komola's parents' house, resolve all outstanding issues, and take her back. Following his advice, Jibon, his parents, and a few other relatives went to Komola's parents' place to take her back. Komola's family hosted her in-laws, making them a special meal. But Jibon again demanded a motorbike as a condition for taking Komola back. Komola's mother refused and admitted that they could not afford it. Jibon became violent again, and started beating Komola in front of everyone at the house. He attacked her with a spade and injured her severely. Jibon's family members started shouting, saying that the baby could claim all of Jibon's property in the future and blamed the baby for making Komola's case stronger (as the baby was Jibon's heir). That angered him further and he beat his baby as well, who was only one and a half years old at the time.

Severely injured, Komola and her baby were taken to the nearby hospital. Komola suffered a head injury, and was bleeding. Her baby's collar bone was dislocated. However, she refused to be admitted to the hospital, fearing COVID-19 infection and the risk to her baby. The hospital authorities told them that she would be committing a crime by refusing admission, as her injuries were grievous, and advised Komola and her mother to file a criminal case regarding the violence. They also prescribed medicine for both the mother and child, and assured them they would provide all the medical documents needed to support Komola's case.

This time, as the injuries were serious, Komola was determined to take legal action and went to BLAST again. She did not want help to return to her husband, but instead to punish him and hold him accountable for hurting her and her son. BLAST referred her case to DLAC. As per the DLAC's advice, she filed another case against Jibon under the Suppression of Violence against Women and Children Act. In reaction, Jibon managed to have a warrant issued against Komola's parents as revenge for filing a legal case. The warrant was for the recovery of his wife and child, as he claimed to the law enforcement agencies that Komola's parents had detained Komola and the baby at their house forcefully. The warrant was a way to make Komola

drop her charges against Jibon and withdraw the case. The police came to her parents' house, but did not arrest anyone, as they were convinced that Jibon's complaint was false. However, Komola also reported having to pay the law enforcement agencies five hundred taka.

While the case filed under the Suppression of Violence against Women and Children Act was ongoing, Komola and her son continued living at her parent's house. During this period—Jibon continued to harass her by sending her messages on her cell phone with pictures of him with other women. He told her he wanted a divorce, as he had found another woman to marry and was no longer interested in her. Komola heard from some people that he had married again. Jibon also tried blackmailing Komola by editing her pictures on Photoshop with other men, making it seem like she was having multiple extramarital affairs. He would then send her these pictures through Imo—an audio/video calling and instant messaging software service—and blackmail her about showing these to the court, which would weaken the case she had filed against him.

At present, both cases filed by Komola are ongoing. Jibon is appearing before the court for the dowry case, which is under investigation. The other case filed under the Suppression of Violence against Women and Children Act has not started yet. With the second phase of the lockdown, the dowry case was delayed as the courts were closed. Komola was frustrated thinking of the uncertainty and delay resulting from the restrictions imposed due to the pandemic.

Jibon is still not paying for the baby's expenses. He has remarried and has a baby with his second wife. They all live in Dhaka. Komola was not sent any notice before Jibon's second marriage. She got to know about his marriage as he still sends her pictures of his second wife and their newborn child. This affects Komola psychologically. Komola and her mother have preserved all the pictures sent by Jibon. They have also recorded the phone conversations with Jibon, where he is often shouting at and threatening her. They have preserved these hoping they would serve as strong evidence against Jibon and make their cases stronger.

LEGAL COMMENTARY XII

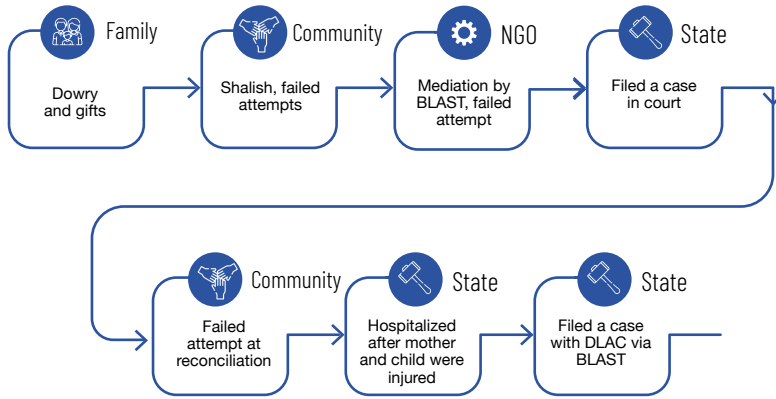
If the wife is threatened by her husband, she can file a General Diary (GD) with the police station (Section 154 and 155 Criminal Procedure Code). But if a case proceeding is pending before the court and the wife receives any threatening videos or recordings from the husband to manipulate her regarding the trial, she is advised to inform her lawyer (or the public prosecutor, in criminal proceedings) about such threats and the lawyer can take necessary actions against it through the court under the same proceeding. However, if the video does not include an active threat of harm, but it is humiliating or harassing (e.g., contains verbal abuse), she can regard this as domestic violence and seek protection under the Domestic Violence (Prevention and Protection) Act (DVPPA) 2010.

In this case, although Komola regarded the photos and videos as harassment, the lawyers did not feel the court could or would take this into cognizance. Komola and her family are unhappy about this.

CONCLUSION

Komola's case brought out the complex trajectories of a survivor's justice journey. She faced continuous violence from her husband and in-laws, with the neighbours, community influentials, and her own family trying to intervene to save her marriage. Her expectations of justice changed over time: initially, she wanted to return to her marital home and her husband and continue her married life, despite all the violence she faced. Even after their son's birth, she wanted to go back to secure a future for him. But Komola's expectation of justice finally changed when she and her son were beaten severely. She no longer wants to go back, and demands that her husband is jailed. She is, however, worried for her son's future, as she feels it will be challenging to raise a child without a father both financially and socially. Both the cases on Suppression of Violence against Women and Children and the Dowry Prohibition Act are ongoing, but Komola is worried about the lack of progress due to COVID-19.

JUSTICE JOURNEY





BLACKMAILED TO FORGIVE AND FORGET

RUPA

Rupa seeking legal help from a BRAC HRLS officer who assigned a panel lawyer for her court case.

H. BLACKMAILED TO FORGIVE AND FORGET: RUPA

Keywords

marriage of choice, BRAC HRLS, hospital, community mediation, garment worker, emotional blackmail, police, journalist, affidavit, settlement agreement

INTRODUCTION

Rupa is a twenty-two-year-old university student from Mymensingh. She had an affair with Ashik and married him in court in 2019. When she worked in Gazipur, she did not have control over her earnings, faced violence, and her husband started an affair. Her family filed a GD at the police station and organized a shalish so that Rupa could go back to her husband. Soon after, Rupa was beaten so severely that she had to be hospitalized and a case was filed against Ashik and his family, under the Nari O Shishu Nirjatan Daman Ain (NSNDA) through BRAC HRLS. Local people pressurized Rupa's family on behalf of Ashik's family to withdraw the case. She was tricked into signing an affidavit saying she wanted a divorce. Rupa was then divorced in November 2020. Ashik remarried and Rupa now wants him to be punished and wants to appear before the court to say that she was forced to sign the settlement agreement.

PROFILE

Rupa's father is a retired government clerk and her mother a homemaker. She has three older brothers. Her brothers are educated and run a brickfield, and the family is economically solvent. Her maternal aunt, Khairun Begum,

has been a UP member for ten years. Rupa was studying for her Bachelor of Social Science (BSS) (Degree) from Bhuaganj Degree College.

Ashik is twenty-six years old. He used to work at a factory when he was married to Rupa. He is currently unemployed. Ashik's father is involved in agricultural work and his family is not as economically solvent as Rupa's family. Ashik has three younger brothers and two elder sisters, and is the only sibling who has completed his master's degree.

THE CASE

Rupa and Ashik knew each other from their school days but they began their relationship after she started studying in the same college as him for her social science degree. They married secretly in court in February 2019 and did not tell their families. One month after their marriage, in March 2019, Rupa started pressuring Ashik to inform his family about their marriage. Rupa disclosed the news of the marriage to Ashik's elder brother. Even though Rupa's family accepted the marriage, Ashik's father did not approve of it as he hoped to get a large dowry by marrying off an educated son and in this case, he had not received any dowry. On 29 March 2019, a wedding function was held at Rupa's parents' place and the dower was fixed at two lac taka.

The first six months of Rupa's marriage went well. She was living with Ashik and her in-laws at her matrimonial home. However, Ashik did not have a job during that time. Later on, her husband faced pressure from her father-in-law to pay off the loans that her father-in-law had taken out at the time of their wedding.

Ashik took a job at a medicine company. Rupa offered to pay off a portion of the loan by taking some money from her home and by selling her jewellery but she did not tell her family about it. Selling the jewellery was insufficient to pay off the entire loan. Rupa then had no other option but to tell her family about the situation. Rupa's family suggested that both of them should get jobs. Both of them then started working near Gazipur. Ashik and Rupa rented a room in a house and had other housemates. She worked there for eleven months to pay off all the loans. She would receive her salary through mobile banking. As Ashik did not allow Rupa to use a mobile phone after the marriage, Ashik would collect her salary and spend it without informing her about it.

Rupa also had a deposit pension scheme (DPS) in the bank, saved by Rupa's family for her wedding. In the beginning, Ashik was not interested in doing anything with that money. Later on, once Rupa paid off the loan by selling her jewellery, he started demanding money because he wanted to quit his job and start a business. Once she realized that there was no other way, because Ashik was putting constant mental pressure on her, she handed over the money to her paternal uncle-in-law who received the money on Ashik's behalf, and her aunt, the UP member, was present as a witness.

While living in Gazipur, Rupa got to know from the neighbours that Ashik was having an affair. When Rupa confronted Ashik about this, they got into an argument and in the heat of the argument, he poured hot rice water on her feet. Rupa's landlord was aware of the violence. He asked her how long she would endure this. He told her that if a man did not try to be understanding, there was no need to behave well with him. The landlord then informed Rupa's father through one of his relatives. The landlord told Rupa's father,

“

If you want your daughter to be alive, then take her back to you, or else he will kill her.

Rupa's father then sent his sons to pick her up from her husband's house. Her brother told her,

“

There's no need to continue the job. You have taken care of him with your earnings. You have done a lot already. But he has no more affection for you.

When her elder brothers brought her back from Gazipur, at Rupa's insistence, they tried to arrange a mediation so that she could go back to Ashik, but her father-in-law was against it. Rupa believed that her husband would listen to what his father would tell him.

In one of the attempts, Rupa's elder brother tried to talk to her father-in-law but the latter showed no interest in any reconciliation. Ashik's father instead suggested she take the eighty to ninety thousand taka owed to her as dower money and agree to a mutual divorce as it was normal in his (Ashik's) family for men to get married multiple times.

But her brother said that he did not want a divorce for his sister but was trying to save her marriage.

“

I am not trying to get her divorced. I want her marriage to survive.

—Rupa's elder brother

After coming home in August 2020, Rupa filed a GD at the police station. At that time, she met Sub-Inspector (SI) Ruma. Rupa informed her that she wanted to continue her marriage. She told the SI,

“

I told her, 'Madam, I want my marriage to survive. I do not want my marriage to end. She said, 'We will send a force to ensure that your marriage survives.' She said, 'I can tell by the look on your face that it is a love marriage.' Later I cried, saying that my marriage should not break up even if it was for SI Ruma.

The law enforcement agencies visited her matrimonial home several times, but her in-laws did not give it any importance. When Ashik's family finally showed up for a mediation at the police station, the SI told Ashik that Rupa would behave well with him, if he behaved well himself. However, no allegation had been made against Rupa regarding her behaviour. When the SI asked Ashik whether he wants to continue the marriage or not, he asked for some time to think and went back, but did not provide an answer. On 28 August 2020, a mediation was initiated by Rupa's family on whether Rupa could return to the in-laws and continue the marriage. Rupa's aunt, the UP member; Ashik's neighbour Motin, a local matobbar; Rupa's brother-in-law; her brother; father; and husband were also present at the shalish. Ashik's family asked for ten days' time to make their final decision about taking Rupa back but his family did not show up with a decision again.

Rupa's aunt, Khairun Begum, arranged three shalishes at her house to reach a resolution. She did not think it was right to send Rupa back to her matrimonial home after the violence she faced. She felt that Ashik was inhuman. She tried to make Ashik understand that if he tortured her niece again in the future, she would not spare him.

Rupa's brother also forbade her to have any sort of dealing with her husband. But in October 2020, Ashik called Rupa and told her to forget everything and come back to her matrimonial home. On 13 October 2020, she pretended that she was going to the doctor and snuck out to go back to her matrimonial

home, taking ten thousand taka with her. When she reached her matrimonial home, her husband, father-in-law, mother-in-law, sister-in-law, and brother-in-law beat her up brutally. She was punched and slapped, her tongue was punctured with a pencil compass, her tooth was broken, and her sister-in-law tried to cut a vein in her leg with a sharp blade. They beat Rupa so viciously that she lost consciousness for three hours. It did not stop there. When she regained consciousness, she was threatened and interrogated by a ward member of Ashik's area. The ward member was suspicious about Rupa's intention of returning to her matrimonial home. Rupa said,

“

The member came and threatened me, saying, 'Who came to drop you in this house? Who sent you?' I said, 'No one sent me, I came by myself.' Then he said, 'This is a conspiracy, someone sent you.' Then the member added that he would break my arms and legs all at once. The member threatened me.

Later on, she was sent back to her parents' house by one of Ashik's neighbours. But Rupa went to her aunt's house instead. Khairun Begum provided shelter to Rupa who was afraid that her older brother would be furious with her for disobeying him. At first, she did not want to admit the extent of her injuries. Later when Rupa was admitted to the hospital with severe injuries, the doctor at the hospital offered to give evidence if needed when a police case would be filed. The doctor visited Rupa even when she was not on duty. The dental surgeon also provided a statement regarding her broken tooth. Khairun Begum used her networks to call a journalist who was her classmate and publish a report on the violence Rupa faced in the newspaper and broadcast on a national television (TV) channel.

During that time, Rupa's elder brother and her paternal cousin tried to file a case at the police station but the investigation was delayed. Later on, when the case was handed over to SI Ruma, she filed a case within three days as she had all the documents and witnesses needed. Rupa's landlord from Gazipur also gave a statement to the law enforcement agencies when the case against Ashik was being prepared. SI Ruma prepared the charge sheet with a medical certificate from the hospital. Rupa was satisfied with SI Ruma's role, but was not happy when her husband did not get arrested after all the violence he inflicted on her.

In the meantime, on 24 October 2020, a BRAC HRLS officer, Zara, came across Rupa's case when she went to the police station to collect information about another case from the *munsi* (clerk) of that police station. The *munsi*

has contacts with Zara. The BRAC HRLS officer, Zara, reached out to Rupa to offer legal help. On 27 October 2020, Rupa went to the BRAC HRLS office to file a complaint against her husband and to seek legal help. BRAC HRLS then assigned a panel lawyer and continued to follow up with the case proceedings. Rupa had not known that BRAC provides legal services, she only knew that they gave loans and had schools. If she had known, she would have gone for BRAC's services earlier to seek a solution.

Advocate Mizan, HRLS panel lawyer, filed a case on 12 November 2020 under the NSNDA Section 11(c) against four accused—Rupa's husband, her father-in-law, sister-in-law, and brother-in-law. At the time of the first interview, the last three of the accused were on bail.

Motin Matobbar was approached by Ashik's family to resolve matters and have the case withdrawn. For Ashik's family, the whole process was becoming expensive. Every time the law enforcement agencies visited, Ashik's family had to pay them to ensure Ashik was not arrested. Rupa's brother paid the law enforcement agencies to arrest Ashik but they did not arrest him as his family paid more to avoid the arrest. Ashik approached Rupa saying that he and his family were suffering because of the law enforcement agencies visits and requested to put an end to his sufferings.

In November 2020, Motin Matobbar arranged a mediation, where he, his brother-in-law, Ashik's brother, and Rupa's brother were present. Ashik's family was supposed to give two lac taka to Rupa and the two would get divorced. It was also decided that Rupa would withdraw the case. After agreeing to these conditions, Rupa's family and Ashik's family hired a private lawyer, (not the BRAC one), who drew up an agreement. Ashik, some local political leaders, and the matobbar told Rupa not to disclose this matter to BRAC and added this as a condition for the agreement. She did not want a divorce but only wanted her husband to be punished. Rupa said during her interview,

“

The lawyer did not tell me that I have to give divorce. He asked me to sign the *aposhnama* at home. I would not have gone to the court if it was about signing a divorce letter.

This *aposhnama* was signed without HRLS's knowledge as Motin explained to both parties that this would be to their benefit. BRAC HRLS authorities were unhappy when they found out about the *aposhnama*. Rupa claimed that she did not have a copy (see Legal Commentary XIII).

LEGAL COMMENTARY XIII

In any case, where the parties have reached a settlement, the deed or agreement of settlement (aposhnama) should be made available to the parties and their lawyers. However, if the aposhnama has already been submitted to the court along with case documents (nothi), without the complainant (wife) preserving one for herself, she can apply through her lawyer to the court for a certified copy only if the submitted copy of such aposhnama is accepted by the court (Rule 243, Criminal Rules and Orders 2009). Alternatively, if the aposhnama is in the custody of the husband's lawyer, the wife can ask for a copy from him.

Rupa and her family decided to withdraw the case. She was not happy with the final outcome. Khairun Begum said,

“

No, the whole process was not right. She was not given justice. The boy needed to be punished.

Rupa said she did not want a settlement but felt pressurized by her in-laws, journalists, and the matobbar, who all advised her to sign the aposhnama as an alternative to filing a case. She had an affidavit signed on 19 November 2020 in front of the District Public Notary stating that she has divorced Ashik and has received her dower money as well as maintenance (see Legal Commentary XIV).

LEGAL COMMENTARY XIV

An affidavit, which is a statement that a person makes on oath, affirming its truth, and before a court or notary public, or any such declaration of not wanting to continue the marriage, cannot be considered as a divorce in itself because the procedure for divorce is prescribed under the statutory laws, and an affidavit for this purpose is not one prescribed therein (Section 7, Muslim Family Laws Ordinance 1961). For example, a divorce can be initiated by giving notice to the chairman of the Arbitration Council and to one's wife, after pronouncing talaq, or by filing a suit for dissolution of marriage. There is no requirement of an affidavit to complete the divorce, nor is this allowed since prescribed legal procedures must be followed. However, the aposhnama may have evidentiary value in relevant cases.

According to BRAC HRLS Officer Zara, Rupa is owed four lac taka from Ashik's family, two lac as dower money, the amount due to her on divorce as promised in her nikahnama, and another two lac to recompense her for the amount that was taken from her as dowry which she gave from her bank DPS. However, Ashik and his family only decided to return Rupa's bank deposit money, which they had taken from her illegally as a dowry demand, not the dower money which he owed her.

Rupa said that her in-laws pressurized her by sending journalists to her home. She was told that if she took her case to court, she would have to tell all her stories in front of a lot of people, which she did not want to. While the accused were roaming around despite an arrest warrant having been issued in their names, the law enforcement agencies did not arrest them. Her father-in-law threatened to poison himself if Ashik took Rupa back. Rupa was again manipulated into thinking that she would be the cause of another person's death and desisted. All these events contributed to her deciding to sign a settlement agreement. Various manipulative measures were taken by Ashik's family at different steps.

Later on, during the case proceedings, Rupa was asked whether she was pressurized to sign the aposhnama. However, she said that she was doing it willingly. Rupa kept changing her mind on whether she wanted Ashik to be punished or not. Before signing the divorce paper, Rupa did not want her husband to be punished as it was a love marriage. Her husband called her three days before the final mediation before signing the aposhnama and asked how long she would punish him, and wanted her to set him free. She thought that she could set him free if she withdrew the case. Ashik then called her up after the signing of the divorce papers and proposed to marry her again if she returned the money which she got from the mediation.

Rupa felt that her husband was not at fault. She thought that the divorce was against both her and her husband's will. Her husband cried over the phone saying his father was responsible for everything that had happened, which affirmed her belief that he did not want to leave her.

However, Ashik married another woman who had a child from a previous marriage, which upset Rupa as it meant there would be no reconciliation. She then made up her mind to punish her husband and not withdraw the case. She decided to admit in front of the court that she was pressured to sign the settlement agreement (see Legal Commentary XV).

LEGAL COMMENTARY XV

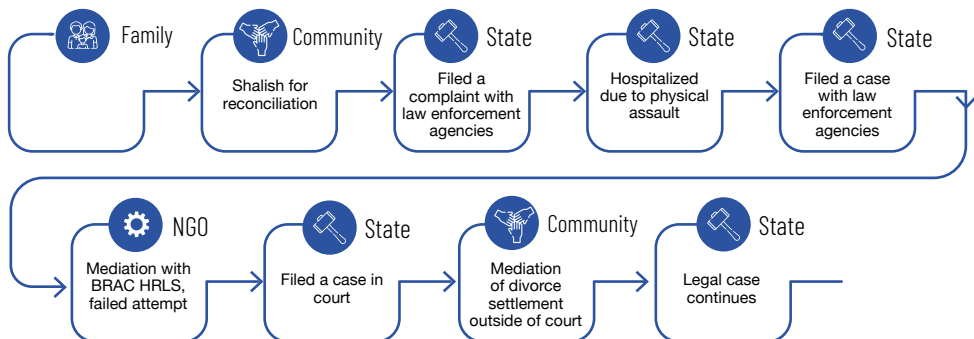
This document, even if signed by any of the parties, can be withdrawn showing reasonable grounds to the court. The party willing to withdraw the document needs to appear in court and state the reasons (e.g., the document was signed due to coercion/fraud) for withdrawal to the court and the same can be withdrawn with the permission of the court. Also, forced settlement can always be challenged in court proceedings and requests of withdrawal can be made to the court.

However, during the second phase of lockdown in 2021, the courts were closed again till August 2021. She has not received the next court date since the court reopened.

CONCLUSION

In spite of Rupa coming from a well connected and economically solvent family, with connections with local journalists, UP members, and the law enforcement agencies, neither Ashik nor his family members were arrested for mercilessly assaulting Rupa. This eventually led to Rupa losing faith in the justice system. Ashik and his father used emotional blackmail, and the community also manipulated Rupa into signing the aposhnama. It shows how difficult it is to ensure justice in the form of accountability, i.e., Ashik and his family could not be held to account for the violence inflicted on Rupa. It was relatively easier to demand a financial settlement. What she received did not compensate her fully for what was taken from her, and was also inadequate for her survival. After the divorce, Rupa continued with her studies and was living with her parents. She started working for a private company in March 2021. But she had to give this up when Ashik started to harass her on her way to work.

JUSTICE JOURNEY



A group of approximately ten people, including men and women, are seated in a circle on plastic chairs outdoors. They are gathered in front of a building with a corrugated metal roof and walls. The scene is set in a rural or semi-rural area with trees in the background. The people are dressed in traditional Indian attire, including saris and kurta. Some are wearing face masks. The overall atmosphere appears to be one of a community meeting or a family shalish.

ACCUSED OF TALKING TOO MUCH BEAUTY

A woman speaking at a family shalish held in a neighbour's home. A similar shalish had taken place when Beauty's in-laws wanted to send her back to her parents.

I. ACCUSED OF TALKING TOO MUCH: BEAUTY

Keywords

child marriage, child pregnancy, RDRS facilitator, community shalish, husband with disability

INTRODUCTION

In 2019, Beauty was married to Shohag, a farmer aged twenty-four, when she was only sixteen years old. She grew up in Dhaka, but moved to Rangpur after her marriage. Her mother arranged the marriage against her will. Soon after her marriage, she started to experience physical, economic, and psychological violence and dowry demands at the hands of her father-in-law, mother-in-law, and husband which increased at the time of her pregnancy. She was also deprived of food and maternal health care during her pregnancy. Beauty sought help from her family, the local community, and, eventually RDRS Bangladesh. However, no intervention could offer a remedy to Beauty's marital disputes and she was divorced.

PROFILE

Beauty grew up in Dhaka where she studied up to class five, but decided not to continue her education to work in garment factories where she worked three years intermittently before her marriage. Her father died when she was thirteen years old. Her mother works at a garment factory in Narayanganj. She has an elder brother who lives in Narayanganj with his wife and mother. Beauty's husband Shohag passed his Secondary School Certificate (SSC) examination. He was affected by polio when he was a child, which left him unable to carry out physically demanding tasks. As a result, he used to help

his father farm lands taken on lease and get paid by his father. Shohag has two married sisters. However, he withheld the information about his disability from Beauty and her family for the marriage. The couple has a daughter who is one year old.

THE CASE

When Beauty was getting married, Restorative Justice (RJ) Facilitator Moshur had secretly informed the law enforcement agencies, but not the UP committee to prevent the child marriage. However, by the time police had arrived, Beauty was already married. Instead of taking any action against it, the police left with one thousand five hundred taka from Beauty's brother.

LEGAL COMMENTARY XVI

As soon as the child marriage is solemnized, it constitutes an offence under the Child Marriage Restraint Act (CMRA), 2017, and the police can arrest the perpetrators without a warrant and proceed with criminal action against them. Government officials and local government representatives empowered by the CMRA can stop the child marriage or may take necessary measures to proceed with legal action against such marriage (CMRA, Section 4). Unfortunately, the legal status of child marriage is the same as any other valid marriage. This means that with the solemnization of the marriage, it becomes legal. However, the people involved in it may face punishment in accordance with the law, which did not happen in Beauty's case.

The first five to six months of Beauty's marriage passed peacefully with her husband and in-laws. However, the violence started when she conceived a child and could not perform the household chores properly due to pregnancy complications. Her in-laws also had complaints that Beauty did not know how to do tasks such as husking and boiling rice since she grew up in Dhaka. She was beaten and threatened to be thrown out of the house by her in-laws who claimed that Beauty was making excuses to avoid doing household chores. In addition, her in-laws did not feed her enough during her pregnancy. Beauty recalled they would feed her only lentils and rice. She felt that the lack of nutritious food made her malnourished and she fell sick.

Because of Beauty's poor health condition, her elder brother came and took her to Narayanganj before the lockdown was announced in March 2020, after securing permission from her in-laws. Since Beauty lost her father before her marriage, her elder brother had taken on the role of her guardian.

Once she left with her brother, her husband and in-laws did not maintain contact with her. Beauty gave birth to her daughter in Narayanganj where she underwent a complicated cesarean section delivery. The child was on oxygen for five hours. However, her in-laws and husband did not come to see her and the child. For the cesarean delivery, Beauty's brother had to spend fifty-five thousand taka, whereas Shohag did not spend any money for his own child. After childbirth, Beauty could not come back to her in-laws' due to movement restrictions during the lockdown, yet her husband threatened to send her a divorce notice if she did not return soon. Finally, her brother took her back to her in-laws' in Rangpur when Beauty's child was two months old.

A few months after Beauty's return, her mother came to celebrate paan-shupari, a ritual in Rangpur to commemorate shaving a newborn's hair for the first time. Things were fine for a while. Although Beauty was still recovering from the cesarean delivery, she would do all the household chores and would often fall sick. However, her in-laws and husband did not provide her with any treatment. They would scold her for having a daughter. Since the birth of her daughter, the in-laws did not provide anything for the child; the child's maintenance was mostly provided by Beauty's mother and brother. Except for food and shelter, Beauty's husband and in-laws did not provide for basic things like clothes.



They wouldn't get me any treatment, they would only scold me for having a daughter. Ever since my daughter was born, they have given her nothing. Even now, she is living on what my family has given her....My father-in-law said that they wouldn't even touch my child because she's a girl. They would have been ecstatic about a son.

—Beauty

When Beauty's in-laws rebuilt and decorated their whole house, it cost them more than two lac taka. They started pressing Beauty's brother for the remaining twenty thousand taka dowry money (forty thousand cash and furniture had been given before). Since her brother had already paid for Beauty's cesarean section by taking a loan, he urged Beauty's in-laws to wait until he repaid the loan. But the in-laws demanded the money immediately.

In mid-2020, the first shalish took place when Beauty's in-laws refused to keep her on the grounds that she did not perform household chores properly and wanted to send her back to her parents, which Beauty's family did not

agree to. Therefore, Beauty's father-in-law called for the shalish which was arranged by UP Member Tarek, where both Beauty and her husband's families participated along with the *chowkidar*. Beauty's in-laws proposed that she maintained a household separate from theirs (*juda khawa*) where they would have to provide their own food and other costs, but she refused to do so as her child was young and her husband was financially dependent on his father. It would be difficult for Beauty, who is relatively young to manage her child and household chores simultaneously. Having to carry the child, Beauty could not even go gathering firewood. Beauty rather wanted a divorce and asked for her due as a wife. Finally, the UP member and chowkidar convinced her in-laws to give Beauty a second chance and suggested Beauty ask for forgiveness. Although Beauty could not understand why she should be the one to ask for forgiveness, she still had done so just to carry on with the marriage. The chowkidar also asked her in-laws to visit him if Beauty was at fault again. However, five or six days after the mediation, they started abusing her again. The reason was the same - that she did not carry out her household duties properly. Both her father-in-law and mother-in-law verbally abused Beauty and her mother. Her mother was shamed for living in Dhaka and working in a garment factory.

“

They insult my mother. They say that women who go to work in Dhaka sell their bodies.

—Beauty

To gather support and mobilize opinions in her favour, Beauty took the initiative of pointing out to the neighbouring villagers who blamed her for recurring disputes that her in-laws were verbally abusing her and that they should listen for themselves. Although the neighbours previously held her responsible for the disputes, after witnessing the violence and hearing the abusive language, they started blaming her in-laws.

Another informal attempt at mediation took place at the request of Beauty's in-laws, regarding their complaint that she was unable to perform household chores. Her mother, brother, in-laws, and “gramer dosh” (respected community members) from the village were present. These respected community members included the RDRS RJ Facilitator⁷ Moshir (who also lived in the same area as Beauty), chowkidar, and one of the elders

⁷ Restorative Justice (RJ) Facilitators and Community Animators are trained RDRS volunteers who assist survivors of domestic violence to get necessary support such as going to the One Stop Crisis Centre to get medical assistance, accompanying the victim to the district legal aid clinic.

of the village called Nobi. Beauty's in-laws kept insulting Beauty in front of everyone. Her brother said that he would take his sister home, teach her how to work, and then bring her back to her in-laws. However, Beauty's aunt-in-law stopped Beauty from leaving that day. Beauty started crying when her brother was leaving her, but her brother reminded her that it was her fate that brought such misery to her life. Although her brother blamed Beauty's fate and said she must learn to deal with it patiently, he promised that he would take steps if they tortured her again. Her brother left that night and although things were better for a while, the abuse started yet again.

Based on a request from Beauty's brother, two attempts at mediations were conducted at her in-law's place by the RJ Facilitator Moshiur. He went to Beauty's in-laws' after receiving the request from Beauty's brother over the phone. When he entered the house, he heard both sides using abusive language towards each other. Beauty's in-laws complained to Moshiur that Beauty was verbally aggressive and left the household chores for her mother-in-law, even though her mother-in-law remained busy all day doing harvesting and cultivation work. Beauty, on the other hand, told Moshiur that she did most of the work, but sometimes could not finish it all as she has a baby to look after and she often falls sick. Moshiur requested Beauty's in-laws to be patient with Beauty as she was very young and inexperienced in maintaining the household. Then he left for that day.

However, Beauty's brother called him again the next day to mediate the unresolved dispute. Moshiur went to the in-laws' home again and attempted to mediate the dispute. Considering Shohag's disability, he suggested that Shohag might not get another physically able and young wife like Beauty again. It would be better to try to reconcile the disputes and live peacefully with each other.

“

His [Shohag's] right leg is very thin [which was affected by polio]. Still, he has found a wife like Beauty. Later he might not get another wife like this. Others might not marry their daughter to him. So even if you are not happy with this girl, you have to make do with her.

—RJ Facilitator Moshiur

Shohag's disability and Beauty's role in caring for him were used as an argument by Moshiur to convince Shohag to continue the marriage. However, the peace did not last for long after the RJ facilitator left.

One day her mother-in-law complained to Beauty's father-in-law about Beauty using inappropriate words with her. According to her mother-in-law, Beauty said that she did not know how to work and she only knew how to sleep with her husband. Beauty, however, refused having said such things. Being outraged, her father-in-law came to attack Beauty with an axe. He started calling Beauty a whore. He said that he would behead her. Beauty's father-in-law would not even let her into the house. He refused to eat the food Beauty cooked. Finally, Beauty's mother came to take her away.

When Beauty, along with her daughter, was forbidden from entering her in-law's house for five days, she and her mother demanded another mediation. The mediation was facilitated by the Community Animator Parvin who was informed by the RDRS RJ Facilitator Moshiur. Beauty and her mother complained to Parvin that Beauty's in-laws drove her away from home after they beat her. Parvin tried but failed at resolving the conflict as well. Then she suggested that the mother and daughter go to the Rangpur DLAC and apply for legal services. Beauty had reached the limits of her patience when she was banished from her house for days and decided to teach her in-laws a lesson by lodging a complaint under the Dowry Prohibition Act in DLAC, with RDRS facilitation (as RDRS does not undertake litigation for clients but refers cases to DLAC).

Beauty was living with her mother at her maternal grandmother's place after she was thrown out of her in-law's house. The "gramer dosh" came to take her back after the complaint was filed at the DLAC office and they held another mediation in November 2020. Since Beauty had a child, they felt that she must carry on with the marriage and her in-laws have to accept her, which shows the importance of the community norms that a marriage must be maintained for the sake of the child. The "gramer dosh" gave her the courage to go back and claim her home. Beauty went back to her in-laws. Again things were fine for a bit, but they quickly became conflictual as soon as the court notice arrived. Her mother-in-law threatened to throw her out of the house again, but Beauty made a counter-threat saying she would go and complain again if they tried to drive her away.

When Beauty filed a complaint under the Dowry Prohibition Act in DLAC, her in-laws became scared and decided to take her back through a *Grammo Shalish* arranged by the UP with the presence of UP Member Shamim Mia and RJ Facilitator Moshiur in December 2020. The complaint lodged in DLAC was withdrawn after the shalish.

Beauty and her husband went to court on 20 January 2021 to withdraw the complaint. However, this withdrawal included some paperwork that her in-laws found confusing and threatening (there was a letter from DLAC which they thought was from court). As a result, her in-laws started to abuse Beauty and her family as well as questioning her audacity in going to court. Beauty

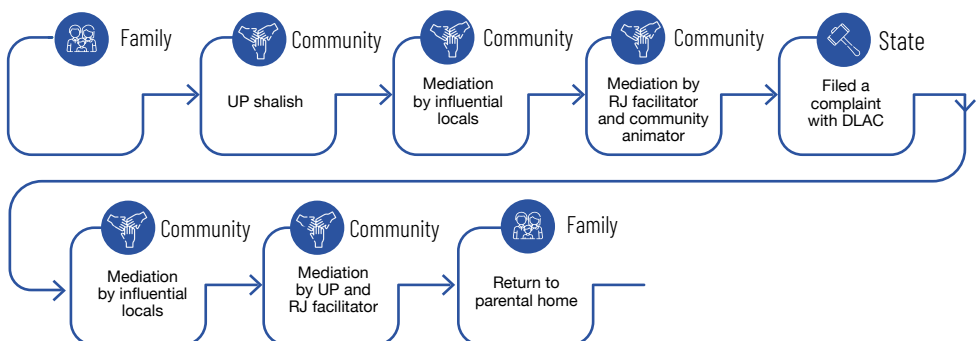
then started an argument with her mother-in-law and her husband tried to hush her up. However, she refused to stay silent and told her husband that she would hit him with a shoe. Hearing this, her husband became enraged and beat her mercilessly. Later on, her mother-in-law also beat her until she lost consciousness. Being angry and frustrated, Beauty stopped cooking and eating for three days. Her husband and in-laws went outside for their meals. Another mediation took place on the recent violence at the respondent's in-law's house facilitated by Parvin and Beauty's brother, and it was decided that Beauty would maintain a separate household.

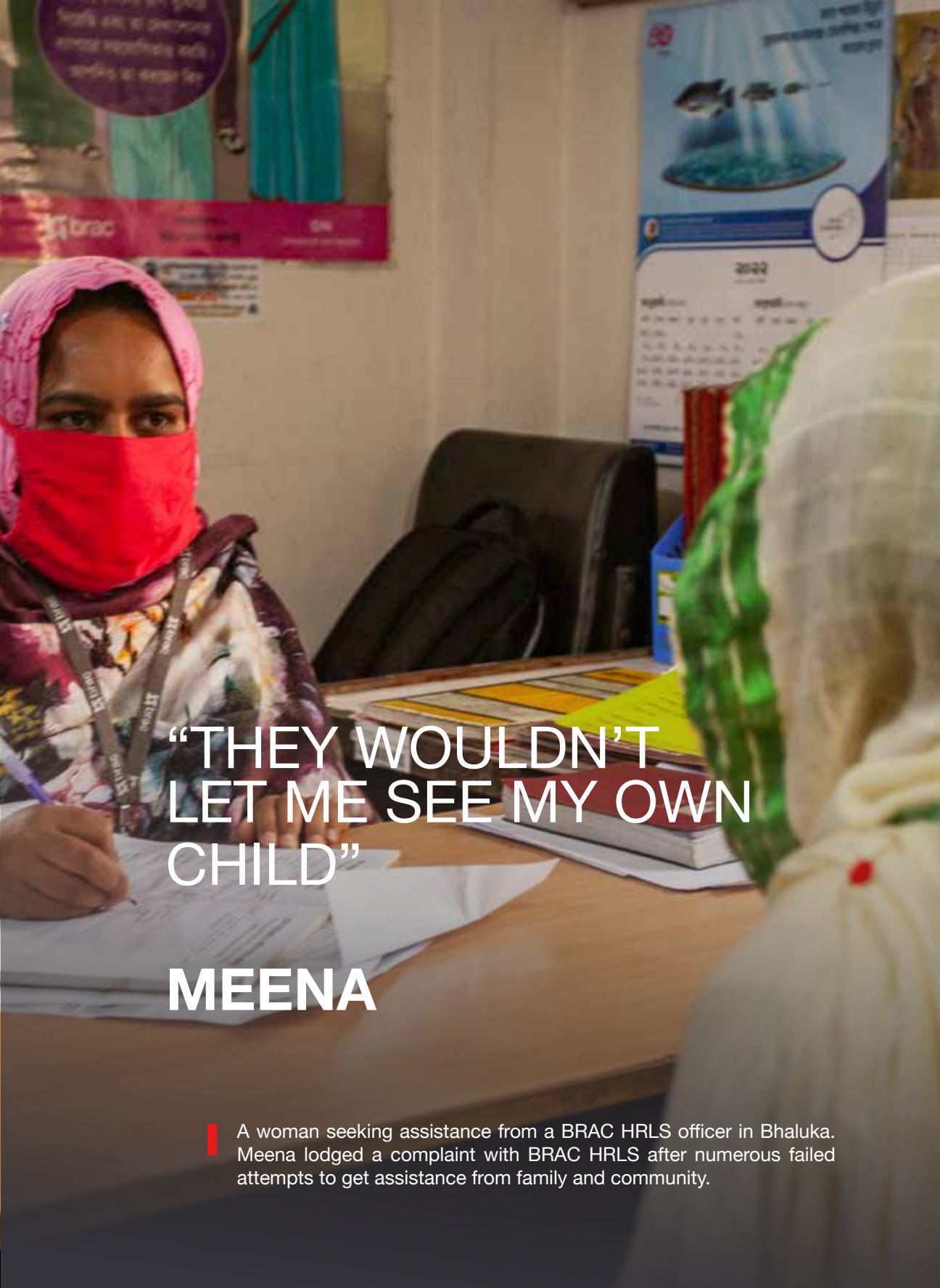
However, maintaining a separate household could not save Beauty's marriage. In July 2021, Beauty and Shohag got divorced. Currently, Beauty, along with her child, lives with her brother and mother in Dhaka. She started working for a garment factory again and is looking forward to building a safer future for her daughter by educating her.

CONCLUSION

Beauty was forced into an early marriage by her parents, where she faced physical, economic, and psychological violence at the hands of her in-laws and husband. Her health and nutrition were neglected during pregnancy. Beauty was constantly taunted by her in-laws for giving birth to a girl. Beauty encountered violence mostly because she was being asked to undertake large amounts of work at her young age with a child and weakness from cesarean section. In addition, Beauty was perceived as an argumentative or verbally abusive woman. To teach Beauty a lesson and keep her in line, her in-laws resorted to violence. Beauty constantly sought help from her elder brother, mother, and Community Animator Parvin to make her marriage work. However, during the mediations, no attention was given to stop the violence she had been facing. Rather the meditations were called to discipline her and punish her where her family tried their utmost to sustain the marriage. Finally, this was not possible and she has been divorced.

JUSTICE JOURNEY





“THEY WOULDN’T
LET ME SEE MY OWN
CHILD”

MEENA

A woman seeking assistance from a BRAC HRLS officer in Bhaluka. Meena lodged a complaint with BRAC HRLS after numerous failed attempts to get assistance from family and community.

J. “THEY WOULDN’T LET ME SEE MY OWN CHILD”: MEENA

Keywords

child marriage, in-laws’ abuse, community shalish, poisoning, separation from child, NGO intervention, law enforcement agencies intervention

INTRODUCTION

Meena is from a farming family from Shantipur village in Fulbaria, Mymensingh. She was only fifteen when she was married to Polash, a twenty-five year old auto-rickshaw driver from the same village as Meena. The marriage took place against her will with twenty thousand taka as dowry. Meena was subjected to a child marriage, in which she then suffered domestic violence perpetrated by her husband, mother-in-law, and, occasionally, her sister-in-law. The violence escalated to such a degree that at one stage her husband poisoned her. There are indications that he was having an extramarital affair. Meena’s father played an active role in seeking legal protection for his daughter by approaching the community, the law enforcement agencies, and, eventually, an NGO—BRAC Human Rights and Legal Aid Services (HRLS). Meena currently lives with her husband and daughter and recently gave birth to a baby boy and claims that she is not facing violence at present.

PROFILE

Meena’s father and mother are both day labourers, mostly working in turmeric fields. She grew up with her two sisters in Shantipur where she

studied till sixth grade, but she dropped out of school after being married to Polash in 2017. Like Meena, Polash also studied up to class six. Before marrying Meena, he was married to another woman who left him within six months due to the violence she faced at the hands of Polash and his family. After marriage, Meena started living with Polash and his mother in Fulbaria, a remote area that is hilly and wooded. Meena's in-laws mostly cultivate seasonal fruits, vegetables, and turmeric on their own land for a living. Meena and Polash have a three-year-old daughter and a newborn baby boy.

THE CASE

Throughout her married life, Meena faced physical, psychological, and economic violence mostly by her husband, mother-in-law, and sister-in-law. She could not understand why this violence was meted out to her.



He doesn't tell me why he does it. He takes me up into the hills and beats me, tortures me, and doesn't even tell me why.

—Meena

Meena's father, Yakub Hussain, recalled a horrifying incident of violence, where Polash had poisoned Meena after being asked to pay back a loan he owed to Yakub. Meena's father used to save money from his earnings and instead of depositing it into a bank, he trusted his son-in-law with the money for depositing. He gave a total of sixty thousand taka over a period of time to Polash, whom he treated as his own son. According to Yakub, Polash poisoned Meena when he was asked to return Yakub's money. Although Meena confirmed her father's claim, she kept silent when asked about the underlying reasons behind the incident. She was eventually taken to the nearby health complex by her in-laws and she survived. Polash paid for the treatment.

The incident led to the first of a series of shalishes that could not stop the violence but provided a way for Meena to go back to her husband. After Meena's father was informed of the poisoning incident by her mother-in-law, he took Meena back to his house from the hospital. He then asked for a shalish regarding this incident. Four UP members from his area conducted this. They reached a settlement where Polash was to stop abusing Meena and take her back.

Meena's husband took her back, promising not to beat her again. But the promise was soon broken. Five or six months after the shalish, he again badly beat Meena. He even stopped buying food and left her starving. Meena was separated from her newborn daughter who was kept with Polash's mother for fifteen days while Meena was thrown out of the house. A second shalish was held to help Meena get her child back, conducted by three of the same UP members. During the shalish, the UP members asked Polash to return the child to Meena and to take her back. A few days later, Polash did so, but only to abuse Meena again.

When Meena repeatedly sought assistance from the UP members after being beaten by her husband, they suggested that she seek a divorce. Reflecting on the recurring violence against Meena and the possible reasons for this, one of the UP members said that Meena's husband Polash was "evil" by nature.

“

That man, her husband, is a devil. He beats her. That's it. He is not under the influence of any drugs, he is just a wicked person.

—Local UP member

The members told Meena that her husband was not going to change, so it would be better for her to be separated. Meena did not find this an acceptable solution, given that she already had a child, and he would be "orphaned" if she divorced her husband. She felt the child would be left without a "guardian" if his father was not around. She wanted to wait and see if her husband would treat her better in time. Meena also questioned the UP members' sincerity and commitment towards those who could not afford to pay for their services. She believed that the UP members only spoke up or intervened in favour of those who could offer incentives to them. When asked why, she said that she had heard it from her neighbours.

“

[The UP members said,] 'Since he didn't change after all these shalishes, let's end this.' I said, 'You want to end this? But I have a child. Let me try again and see if this gets any better. What if I could change him? Otherwise, the child will become an orphan.'

—Meena

Right before the pandemic hit her village, Meena was beaten by her husband again, separated from her child, and driven out of her in-laws' house for the second time. The day before this, her mother-in-law verbally abused

her because she ate her lunch late and goats ate the rice that she had left outside. On the day she was beaten, she had gone to the field to collect turmeric and cut the turmeric leaves. Before this, she cooked rice, but nothing else, thinking her mother-in-law would cook the curry and then call her, and they would all eat lunch together. She did not cook the curry as her mother-in-law preferred to cook this and did not like Meena's cooking. But that day, Meena's mother-in-law did not call her for lunch. Instead, she ate with Meena's husband and sister-in-law without Meena. Meena kept quiet and went hungry the whole day, afraid that if she said anything, she would trigger more abuse and assaults. Later that day, Meena and her husband argued over the use of stored water. When he took the stored water for the toilet, she asked him what would be left for her to use. He became enraged, beat her, and told her to leave the house immediately.

The next day, Polash told Meena to call her uncle to take her away. Her mother-in-law and sister-in-law took Meena's child away and shut the door on her face. She waited outside for the situation to get better. Her mother-in-law started to verbally abuse her when she tried to enter the house. She asked them why they were using such abusive language with her, and she also asked her mother-in-law why she was treating her differently from her own daughter. Meena's mother-in-law and sister-in-law became more enraged, and responded with more violence.

“

They weren't letting me in the house, but I still tried to enter. When I tried to enter, they started to use abusive language with me, my mother-in-law actually. Then I said, 'Why are you all scolding me? Abusing me is just the same as abusing your daughter.' When I said these things, both of them started to beat me.

—Meena

Meena did not protest anymore, as she was afraid they might kill her and hide her body in the jungle and she would never be found.

Ultimately Meena called her mother, who took her back to her parental house. Beaten, berated, separated from her daughter, and driven out of her in-laws' house, Meena decided to take stronger action against Polash. On 10 March 2020, with encouragement from her father, Meena lodged a complaint with BRAC HRLS. Meena's father had learned about BRAC HRLS through their neighbour. BRAC HRLS then sent two notices to Polash, the first on 11 March and the second one on 25 March 2020, and called him for an alternative dispute resolution (ADR), for a reconciliation, and return of

the child. BRAC HRLS also asked Polash to send their child back to Meena, since the child was too young to live without her mother. Polash refused.

Joydwip, the BRAC HRLS officer who was handling the case, called one of the local UP members and asked for his help in bringing the child back. The UP member phoned Polash and then told Joydwip that Polash had agreed to hand their child over to Meena. When Meena and her mother went to get the child, Polash and Meena's in-laws insulted Meena for filing a complaint against them and refused to give the child back. Meena pleaded with them to let her see the child just once. But they refused saying that if the child saw Meena, it would be difficult to keep her away from her mother. Her in-laws eventually agreed to let Meena's mother see the child, but refused to let Meena do so. She said,

“

I stayed [at parents' house] for seven months, but they didn't return my child. I went for my child, but they insulted me and drove me away. [They said,] 'How dare you file a case against us? We will bring you back. We will keep you half-clothed and so on and so on.

Meena went to her in-laws' house on numerous occasions, just to catch sight of her daughter. Each time she was turned away.

“

I always went there thinking of my child. When I would go there, my mother-in-law would tell me that my child had died. I went there at 1:00 in the afternoon. They would tell me, 'Come tomorrow, you can't see her today.' I called the member, [hoping] the member would show me my child.

—Meena

BRAC HRLS could not take any immediate action to recover the child's custody for Meena, as the first country-wide lockdown was imposed to control the spread of COVID-19. Even though they sent a second notice to Polash on 25 March 2020, and fixed a date for ADR, they could not hold the session because of the movement restrictions in place by then. This meant that the BRAC HRLS office and courts were closed, and the law enforcement agencies were preoccupied with enforcing the lockdown measures and relief distributions.

Despite these limitations, the BRAC HRLS officer sought assistance from the law enforcement agencies in April 2020. The police station was locked from the outside due to COVID-19 and they were only taking emergency cases. The sub-inspector of police came down and received the complaint only

after Joydwip, the BRAC HRLS officer, introduced himself. To make the case stronger, a General Diary (GD) was recorded against Polash for separating a breastfeeding child from her mother with an additional charge that he had demanded dowry. The law enforcement agencies went to Meena's house instead of going to the perpetrator's house directly, which gave Meena and her family the impression that they needed to offer an incentive to the law enforcement agencies to take action and one thousand and five hundred taka was paid.

Eventually, the law enforcement agencies went to talk to Meena's husband. Being scared of the law enforcement agencies, Polash came to collect Meena from her parental home. Meena got her two-year-old child back after several months of struggle, which led her to believe that the law enforcement agencies neglected their duty and they invoked the pandemic as an excuse to delay their response.

In Meena's case, the sub-inspector mentioned that they prioritize women's issues, as women are generally "weak" and socially neglected. Despite his paternalistic attitude, the police officer was helpful.

“

Another thing is that if something happens to a particular woman, we take action immediately with the highest priority because women are socially quite neglected, weak in nature, seekers of justice; that's why we do it. We always do it either from a family and guardian's position or from our sense of responsibility; this is our main job.

—A local sub-inspector

The UP members' roles were quite different. While undertaking shalishes, one of the UP members described Meena as "ill-tempered" and "intolerant." According to him, the violence by Polash against her would not have escalated had Meena kept silent when Polash was overcome with anger. He blamed Meena for doubting her husband and trying to restrict his freedom. He believes that as a man, Polash had the right to talk to anyone at any time, including his ex-wife, and that by asking questions about Polash's phone history, Meena was intruding on his privacy and restricting his freedom.

“

I told Babul [Meena's uncle], 'Babul, your niece has got some problem. She is angry. She mustn't intervene in where a man does or doesn't make a phone call. If something goes wrong openly, then we are here. The man should have his freedom, let it go.' Later, there have been clashes and conflicts over these issues at different times.

—A local UP member

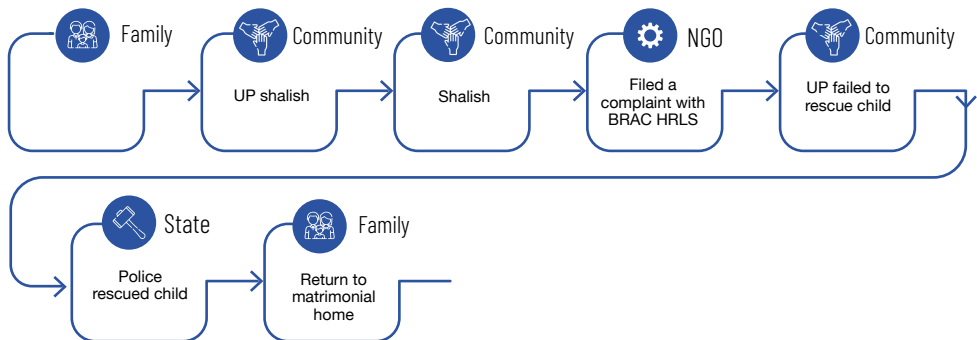
Meena repeatedly referred to the domestic violence she experienced as shaja-shasti (punishment), in which her husband and in-laws were the authority with the power to discipline her through beating, berating, coercion, and control. She also seemed to believe that she could be beaten by her husband and in-laws for a legitimate cause, and that such causes would include neglecting household chores.

During a follow-up interview, Meena said that her husband does not beat her anymore and behaves well with her. She and her husband recently had a baby boy. The research team also had the impression that she was trying very hard to ensure that her in-laws do not send her away again. It may be that the BRAC HRLS follow-up and the law enforcement agencies' intervention have resulted in the present truce.

CONCLUSION

Married at an early age, Meena was subjected to violence by her in-laws as well as her husband. Although she was poisoned and hospitalized, she still returned to her marital home. To stop the violence, Meena went back and forth to various levels, i.e., family, community, NGO, and the law enforcement agencies, seeking redress, but this did not stop the violence. After the violence escalated, she was separated from her breastfeeding child for a length of time and it is only with intervention from law enforcement agencies and BRAC HRLS that she was reunited with her child. She is now living in her marital home and has just given birth to a son.

JUSTICE JOURNEY





“I WANT TO GO BACK
TO MY HUSBAND”

RESHMA

A family speaking to a staff lawyer at the BLAST Patuakhali office.

K. “I WANT TO GO BACK TO MY HUSBAND”: RESHMA

I *Keywords*

child marriage, DVPPA, BLAST, panel lawyer, community mediation, hospital

INTRODUCTION

Reshma is a twenty-seven-year-old from Patuakhali. She faced severe physical and psychological violence. She has two children, a twelve-year-old son and an eight-year-old daughter. Her multiple attempts to stop violence through community shalish failed. Ultimately, she resorted to BLAST for help, which initially wanted to treat the case under the Domestic Violence (Prevention & Protection) Act (DVPPA) as Reshma wanted to prioritize the continuation of her marriage. However, her husband Sujon refused to cooperate with the DVPPA procedures. BLAST then filed another case under the Family Law for maintenance in March 2021, which is ongoing. Reshma still wants to go back to her husband, hoping that one day Sujon would stop beating her and she can live peacefully with her two children.

PROFILE

Reshma is a twenty-seven-year-old woman from Beltola, Patuakhali. Her father is a fish trader and her mother a homemaker. She has an older brother who is married and used to work in a garment factory in Gazipur, Dhaka, but moved back to Beltola after the March 2020 lockdown when his factory closed. He currently earns his living by giving people rides on his motorbike. Reshma has a younger sister who is also married. Her parental home is a one-story house located by a canal that gets waterlogged during the monsoon season. Reshma studied up to class five, but her studies stopped when she

got married to Sujon through a marriage arranged by her parents in 2007 at the age of fifteen/sixteen years. When the marriage was registered, the dowry was fixed at seventy-five thousand taka. Her relatives felt that Sujon's family was "good", with a stable source of income, which is why Reshma's parents agreed. Although Reshma said that no dowry was given, her parents gave her all the things needed to set up a household "so that no one could say anything," which was perhaps dowry in disguise.

THE CASE

After the marriage, Reshma and her husband used to live in a joint family with her in-laws. However, after a few years, she and her husband separated from the rest of the family and moved into their own home. Her husband earned his income through a number of different means, selling trees and ring-slabs. They have a twelve-year-old son and a daughter who is eight. In her sixteen years of marriage to Sujon, he did not provide any maintenance for Reshma or for their children. She would work at her neighbour's house as a household help to support herself and her children.

The first few months of Reshma's marriage went well. However, soon her mother-in-law started making up stories about her and complaining to Sujon. The mother-in-law would also beat her. Sujon would then physically and verbally abuse Reshma, and throw her out of her matrimonial home. According to her, whenever she tried to give her opinions or ask for anything for herself or the children, he beat her. The mother-in-law and Sujon both insulted and verbally abused her parents. Reshma said that she faced violence due to dowry demands from her in-laws. When Reshma's father could not provide the money, the violence started.

Reshma and her family assumed that he did drugs, as he smoked a lot and was away at night. Sujon would beat and verbally abuse Reshma if she asked him about his whereabouts at night. Sometimes when turned out of the house, she would go and sleep in the cowshed. However, she built up her household little by little using her earnings. Now that she has been forced to come away, her mother-in-law is using her things. Her brother also claimed that Reshma's in-laws kept asking for an increasing amount of dowry.

When Reshma could not tolerate the violence, she would go back to her parental home. Her natal family tried to stop the violence through a shalish with the help of the UP chairman of Beltola. Reshma did not attend the shalish and did not feel it was necessary as her family members represented

her and the shalishkars knew of the violence she faced. At the shalish, Sujon was asked to stop the violence. Reshma then returned to her matrimonial home but the violence did not stop. A number of shalishes of this type took place where her family tried to mediate the matter repeatedly with the help of community members. This cycle of violence continued until 2015.

At one point, Reshma decided that having children might put an end to the violence. When she gave birth to her daughter, the violence escalated with her in-laws' disappointment at the child being a girl. Reshma gave birth to both of her children at her parents' home and her father bore the costs. Her son stayed at her parents' place and went to school from there and Reshma's father bore the cost of his grandson's education. The daughter had not started school yet.

In 2015, Sujon beat her up so brutally that she had to be hospitalized. The severity of violence was described by Reshma,

“

Many people in the village said that I wouldn't survive, that's how severely he beat me. My life span/expectancy was reduced by six months in one day. My whole body turned black as if he had beaten me with a hammer.

During the interview with Reshma's family members, one of her cousins described how Sujon beat her. He said,

“

He beat her [Reshma] so brutally, it bruised different parts of her body. He beat her using a broom and the sticks penetrated her skin.

Reshma's brother admitted her to the Beltola Medical College Hospital. She received a medical certificate that specified that she was admitted to the hospital for physical assault and a General Diary (GD) was filed at the police station. Although Constable Saif came to visit Reshma and took pictures of her physical condition, no police case was filed. Her brother said that the family did not pursue legal options as they did not know what to do.

Reshma felt that the reason was that Sujon had bribed the law enforcement agencies. She said,

“

We went to the law enforcement agencies to bring them, but since they had been paid [by her husband], the law enforcement agencies left without doing anything.

After coming back from the hospital in 2015, Reshma's family went to the UP chairman of Sujon's area for a shalish. But the chairman refused to hold any more shalishes as he knew from past experience that Sujon would not observe the settlement conditions and would not stop beating his wife. He told Reshma's family that Sujon was a bad person and refused to conduct a mediation. He did not want to take the risk or the responsibility in case Sujon ended up killing his wife as a result of the violence. The UP chairman then contacted Hameem, the UP chairman of Reshma's area, Beltola.

At the shalish conducted by Hameem Chairman, Sujon again said that he would stop the violence and take back Reshma. The chairman also made Sujon sign a blank stamp paper to ensure that he kept his word. This stamp paper is with Reshma's family which they showed us very proudly. But again the violence did not stop. And again, as in previous years, Reshma kept going back and forth from her parents' house to escape from the violence, and then after each UP shalish, to her matrimonial home at her in-laws' house.

Another incident of violence occurred during the COVID-19 lockdown. However, this time, she did not come to her parents' house directly, and went to her paternal aunt's house instead. She explained that she did not want to be a burden to her parents. She later called her brother and then came to her parents' house in mid-2020. When she came to her parent's house during the lockdown, she only brought her daughter with her and left her son with her husband. Whenever Reshma called Sujon to ask about their son, Sujon threatened her with divorce. She was also very upset that Sujon had given their son gifts to take his side, including a smartphone and an allowance of five hundred taka a week.

When Reshma's family went to Hameem Chairman once again for a shalish, Hameem Chairman refused to conduct a shalish again and suggested that unless Sujon is taken to court, he would not change. However, Reshma and her family felt that they could not afford to file a case against Sujon due to their financial situation. One of Reshma's nephews, who sold fish near BLAST's Patuakhali office, suggested that Reshma and her family go to BLAST. Reshma's niece had faced violence by her husband and with the help of BLAST, had been able to go back to her husband, who had stopped the violence after BLAST's intervention.

On 12 October 2020, when Reshma went to the BLAST office, BLAST lawyers explained to her the application process for seeking legal aid. BLAST sent two notices for reconciliation to Sujon but he did not respond to either one. On 9 November 2020, BLAST Panel Lawyer Rubel Khan filed a case

under Section 11, Subsection 1 of the Domestic Violence (Prevention & Protection) Act (DVPPA) 2010 at the Senior Judicial Magistrate's Court asking for various protection orders under Section 13 (interim protection order), Section 14 (protection order), Section 15 (residence order), and Section 16 (compensation order). The objective was that Reshma could live peacefully in her marital home. While explaining why Advocate Rubel filed the case under the DVPPA, he said that, as Sujon said he would not ask for dowry in the community-led mediations and the later violence faced by Reshma was not due to dowry demands, he could not file the case under the Dowry Prohibition Act (see Annexe, Domestic Violence [Prevention and Protection] Act 2010, p. 132). Reshma, on the other hand, wanted the violence to stop and go back to Sujon to continue their conjugal life. Reshma said,



All I want is to live in peace with my two children. I do not want to leave my husband's house. I want my husband to stop beating me and torturing me in the future.

The case was sent for investigation. In practice, the courts sometimes direct investigation of domestic violence cases to be done by the Department of Women Affairs (DWA), or the Department of Social Services. The court decided that since there was no DWA upazila office in Reshma's area, the headmistress of Beltola Primary School would know the local realities better than a government official from outside the area. BLAST had requested a DWA officer be appointed, but the court did not agree. BLAST's concern was that school teachers and headteachers do not have the necessary experience or training to carry out such investigations. In Reshma's case, the headmistress, instead of conducting the investigation, sent out a notice for a shalish at the school to see if she could help Reshma return to her matrimonial house. She explained that she took this initiative for the sake of Reshma's children and their future.

The headmistress called Sujon and told him to bring two people with him who could vouch for him but he came alone. He said that if the headmistress wanted to return Reshma to him, then she should do this alone, or else the matter could be resolved in court. Reshma's father refused to let Reshma go back to Sujon if he did not bring two other people with him to vouch for him. After the failed mediation, the headmistress submitted a report to the court. The headmistress was not satisfied with the failed mediation. She was mostly concerned about the two children. The headmistress thought that a legal case would end up in Reshma and Sujon getting divorced. If Sujon and Reshma were to remarry, their children would be harmed, especially Reshma's daughter, as Reshma's being a divorcee might affect

the possibility of Reshma's daughter's marriage, given discriminatory social attitudes towards divorced women.

The court set 16 March 2021 as the date for the hearing of the case. Sujon applied for bail, which the court granted. The case was then transferred to the Chief Judicial Magistrate's court. The court then fixed the next hearing for 20 April 2021, a month later. But the country entered another lockdown in April 2021 and the courts were physically closed till August 2021. BLAST did not avail of any online processes for this case.

During the 2021 lockdown, Reshma's son used to call her, at his father's behest, to ask her to come back home. Sujon used to taunt her about the case she filed against him. He did not ask about how Reshma was doing. Instead, Sujon would tell her to get a divorce since she filed a legal case. He also told her that she should get a divorce if she did not return. Reshma replied that if Sujon wanted a divorce then he should seek one.

A meeting took place at BLAST in March 2021. Both Reshma and Sujon were present. Their son took Sujon's side. BLAST District Coordinator, a lawyer, said that they would claim an increased amount of money of five lac taka to compensate for past maintenance since Reshma's parents have been bearing her treatment costs, education costs for the children, and she had been sent to her parental home repeatedly. When the issue of the increased dower came up, Sujon said he would take his wife back through the court. Since Sujon did not agree to the DVPPA procedures, the BLAST coordinator decided to file a case under the Muslim Family Laws Ordinance, Section 5, for maintenance (see Legal Commentary XVII).

LEGAL COMMENTARY XVII

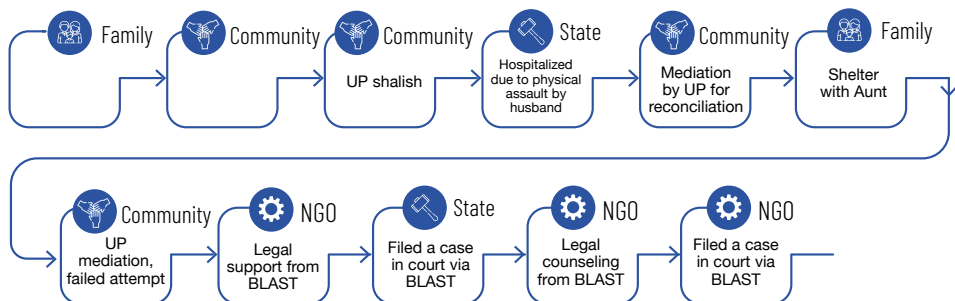
Among many strategic measures to ensure that the marriage stays intact, the wife's lawyer often increases the amount of recoverable money in the petition of family suits, which includes dower, past maintenance, and compensatory maintenance, so that the husband becomes reluctant to cut the marital tie to avoid paying a hefty amount of money. In practice, husbands often agree to reconcile and to allow a wife, who has been thrown out, to return to the matrimonial home, to avoid paying out the dues that are owed to her. This strategy contributes to the stability of the marriage (although, of course, it is not clear what the cost of this is in terms of whether the violence continues or not).

When the schools reopened in September 2021, Reshma’s daughter started going to her school which is located near Sujon’s home. When Reshma went to drop her daughter to school in September, she saw Sujon there. Local people and other guardians put pressure on her to forgive her husband and go back to him. Sujon was also adamant about taking her back. Reshma said that she could not say no to so many people and went back to Sujon. After two days, he beat her up again. Her son, too, beat her at his father’s instructions. She found this terribly upsetting and shocking. She then came back to her parents’ house again. The psychological manipulation of the son through various gifts and insults of the mother and the harm it is causing the young son is also a matter of concern.

CONCLUSION

When Reshma and her family had exhausted the options of reconciliation through community shalishes, they expected that the court would help them resolve matters—Reshma would go back to her husband and he would stop the violence. BLAST attempted to use the DVPPA to seek a protection order through which she would be able to go back to her home safely. However, ensuring the appearance of defendants is difficult under the DVPPA because the preliminary remedial orders from the court under this Act are civil in nature, and criminal liabilities can only be invoked once court orders are breached, and not otherwise. In Reshma’s case, the lack of cooperation from her husband, either of the legal process or of various community shalishes, resulted in failure to reach a reconciliation. As a result, BLAST had to resort to another legal case on 24 March 2021 under the NSNDA to put pressure on Sujon so that he would take back Reshma and compensate for the expenses incurred by Reshma and her family. Both of the cases are now ongoing.

JUSTICE JOURNEY





“IF I GO BACK, I
WILL RETURN AS A
CORPSE”

AYESHA

Ayesha, who was married at the age of fourteen, signing divorce papers through a *khula talaq* in the presence of the marriage registrar.

L. “IF I GO BACK, I WILL RETURN AS A CORPSE”: AYESHA

I *Keywords*

child marriage, attempted murder, UP-led mediation

INTRODUCTION

Aysha is a sixteen-year-old girl from Rangpur. At the age of fourteen, when she was hardly able to give consent, Ayesha was married to Karim. Since the very beginning of her marriage, she has been subjected to extreme violence. The most common forms of violence she faced from her husband, mother-in-law, and sister-in-law during her marriage were physical and psychological—beating, slapping, and insults—resulting from dowry demands. Once she was almost killed by her husband who had tied her up to slit her throat. After several attempted mediations, she is currently divorced and is living with her mother and grandmother. She received her dower money through a community shalish convened by her family and has now gone back to school and is in class nine.

PROFILE

Ayesha's mother worked as a domestic worker and her father as a day labourer. Her parents were separated and her father lived with his second wife. Her older sister was also married. Ayesha, along with her mother, lives at her maternal grandmother's one-room tin-shed house. Ayesha's maternal grandmother and uncles gave her a place to stay and provided family support to her and her mother. Ayesha was in the eighth grade when she got married to Karim, a twenty-year-old mason, in 2019. She did not

continue her studies after the marriage. Her husband Karim, on the other hand, never went to school. Karim's family was not financially solvent and his father worked as a rickshaw puller. They lived in a tin-shed house with three bedrooms on a plot of four decimals—the only piece of land Karim's family owned. Ayesha and her mother did not have the marriage certificate to show, thus it could not be confirmed whether the marriage was registered.

THE CASE

When Ayesha was married, her dower money was set at one lac twenty thousand taka and Karim's family demanded fifty thousand taka as dowry. It was decided that the dowry demand made by Karim's family would be fulfilled by Ayesha's mother within one year of their marriage as she did not have enough savings. Her family bought necessary household utensils during the wedding which were not part of the agreed dowry. Ayesha's father attended the marriage but he did not provide any financial assistance to the family, hence did not have much to contribute to the dowry. The marriage proposal came from one of Ayesha's neighbours and the family did not know at the time of marriage that Karim had been married twice earlier.

Although Karim's family had agreed to wait for the dowry, they started demanding money from Ayesha's mother immediately after the wedding. Just after ten days of the marriage, Ayesha's mother-in-law and sister-in-law demanded dowry money and beat Ayesha up when she could not pay it. Ayesha's in-laws would make her do all the household work, and if her mother-in-law was not satisfied with her work, she would beat her. Although the dowry demands and violence came from in-laws in the first place, Ayesha's husband supported his mother's and sister's actions by not protesting and not doing anything to stop the violence. He did not allow Ayesha to contact her mother. After five to six days of the first incident, she managed to secretly call her mother using her husband's phone to inform her about the violence. Ayesha's mother visited her at the in-laws' home and confronted them about the violence and had an argument. However, the violence did not stop. After her mother's visit, Ayesha and Karim visited her mother's house for an invitation (dawat). After the event, her husband returned to his village, leaving her behind. She stayed at her parental home for eight months. Whenever she asked her husband to pick her up, her husband suggested she come back by herself, which she refused. According to her mother, going back to her matrimonial home alone would not look good and would bring shame to the family as Ayesha was a newlywed wife. Also, as Ayesha was not used to

travelling alone, there were mobility concerns too. Constant dowry demands from in-laws and the violence Ayesha experienced right after the marriage had indirect influence on her decision to not returning back to her in-laws. Ayesha's in-laws did not like that Ayesha refused to return to them by herself.

So, her in-laws decided to go to the union council for a shalish to bring Ayesha back. Both families were from the same union. The issues of dowry and violence were discussed in the shalish. UP Chairman Faruk carried out the arbitration at the shalish and took the responsibility of sending Ayesha back to her matrimonial home. He said that he would take the responsibility of following up if something happened after the arbitration. The arbitration suggested that the couple have a separate household from the in-laws (even though Ayesha was just a child). The justification behind this was not clear. While Chairman Faruk recognized that it was a case of child marriage, he only blamed Ayesha's family; he asked them how they could marry off a young girl. There was no mention of his role as the chairman of the Union Child Marriage Prevention Committee and the responsibilities it entails. However, the UP cannot take any punitive action once a child marriage has taken place (see Legal Commentary XVIII for responsibilities of UP with regard to child marriages).

LEGAL COMMENTARY XVIII

According to the Child Marriage Restraint Rules 2018 (Section 15[1]), the only actions that members of the Union Child Marriage Prevention Committee can take, prior to a child marriage taking place, are directly intervening and stopping the marriage from being solemnized, or filing a complaint in court, under the CMRA 2017 (Section 5), following which the court can impose an injunction on the marriage. So any form of "punitive" action—meting out actual punishment—is to be undertaken by the court.

However, nothing in the rules states that the committee cannot file a complaint under CMRA against parties contracting a child marriage after it has already taken place.

"The Union committee shall be headed by the Chairman of Union Parishad and shall comprise of all ward members, Nikah registrar and upon selection by the Chairman, a Headmaster/Headmistress from primary and secondary schools, an advisor or principal of Madrasa, and two representatives of NGOs that work with child marriage or women and child rights. The Committee shall meet at least once a month and submit a monthly report of its activities to the Upazila district. It shall identify challenges in preventing child marriage and make recommendations to the Upazila committee and shall prepare an action plan at the beginning of each year (Yasmin, 2020)."

While talking about child marriage in general, Chairman Faruk said that incidents of child marriage happen without his knowledge and outside his union. He blamed the guardians for child marriage incidents. When the chairman would learn about a child marriage taking place, the family would go to a different union and arrange the marriage secretly, which often would result in divorce.

While discussing his role in shalishes related to violence against women in general, the chairman emphasized the importance of sustaining marriages through these shalishes as the only socially acceptable alternative. He also brought out the importance of documenting the proceedings to be used later in court, if needed.



In terms of reconciliation, there are two things here, one is to prevent this from happening again, and the other is for the marriage to sustain. We try to ensure both. We keep the records in such a way that in the near future, the plaintiff or the defendant or whoever the victim is can take legal support using our documents.

—UP Chairman Faruk

After returning to their home, Ayesha's in-laws allowed the couple to stay separately for the first night as the chairman suggested. When Ayesha set up a separate household from her in-law's, as per the council suggestion, Ayesha and her husband were not given the necessary utensils by her in-laws. So, she brought everything from her mother's house.

It was observed that Ayesha's mother complained more about household utensils than about the continued violence against her daughter. Ayesha's experience of sexual violence, once sanctioned by marriage, seemed to be expected, and there did not seem to be any concerns about her sexuality or consent.

Even after separating from her in-laws, the violence did not stop. Her husband would still beat her and would not let her talk to her mother or any other family member. Ayesha thought that it was her mother-in-law and her sister-in-law who were responsible for the violence. Her sister-in-law, whose husband lived abroad, lived with Ayesha's in-laws. Her in-laws would also pressurize her to have a child but she claimed that she refused as she knew that she was too young to be pregnant and to carry a child. Her refusals would result in her being beaten again.

Meanwhile, Ayesha found out that her husband was already married and she was his second wife. But she decided to be patient and continue her marriage. She tried to cope by telling herself that in some cases women have to be a third or fourth wife. In her case, she was only the second.

Later, near the end of Ramadan in 2020, Ayesha's mother and sister visited her to give clothes for Eid, bringing Iftar for Ayesha's in-laws as well as a few thousand taka for Eid. The visit was part of a social practice to carry gifts and pay a visit to daughters' in-laws before Eid. Ayesha's mother also wanted to visit her before Eid as she had not seen or even spoken to Ayesha for a month. Even though the whole country was under strict lockdown, as observed in many rural areas, it did not affect the mobility from one village to another. While they were visiting the in-laws' house and waiting to talk to Ayesha, her mother-in-law and sister-in-law, along with one of their neighbours, ended up having an argument. Her mother stepped forward to save Ayesha and was assaulted by them too.

Later that day, Ayesha's paternal uncles came to Ayesha's matrimonial home and heard about what happened. Ayesha's mother wanted to arrange a shalish at that moment but Ayesha's uncle said that bringing a *dewani* (shalishkar) would cost four thousand five hundred taka and suggested arranging the shalish later. Hearing this, Ayesha's mother left her at her in-laws' house.

Ayesha's mother went back to Ayesha's in-laws' house three days later when Ayesha's maternal uncle Tanvir arranged an informal shalish with the help of Proctor Heron on 23 May 2020. Heron was a college teacher who lived at Polashpara. Apart from teaching, he was also a shalishkar who was respected by the community, and conducted community shalishes on different types of conflicts. The shalish took place at Ayesha's in-laws' house at Polashpara. The shalish was called by Ayesha's family to discuss the incident where Ayesha, her mother, and sister were beaten up by her in-laws and their neighbours. Ayesha's mother, her cousin Tanvir, and a few others, including her maternal grandmother, went to Ayesha's in-laws' house in the morning. When they reached there, they found out that Ayesha was locked inside the house. Then Ayesha's grandmother started knocking on the door to open it. When Ayesha came out, she was crying. Ayesha's mother asked her why she was crying. But she did not say anything about what happened there, as she was scared.

During the shalish, Ayesha told everyone about how her husband and her in-laws attempted to murder her right before the shalish started. The in-laws did not realize that Ayesha's family would arrive before the proposed time for the shalish. Ayesha narrated how Karim had tried to kill her in front of everybody. She said,

“

He tied my hands and my face with a scarf. Then he tied my legs with a rope. He then took a knife to slaughter me. He held the boti against my stomach, I thought my life will end here.

When they asked Karim about it, he confessed to attempting to kill Ayesha.

Heron, through his networks at Polashpar, also found out that Ayesha was the third wife, not the second, and told Ayesha's family about this in the shalish. The stories only came up during the shalish. There were around thirty to forty people present at the shalish and people from the area who were present at the shalish said that her in-laws are not good people. After hearing this, Heron told Ayesha's mother to take Ayesha back to her mother's home. Heron also said that whether Ayesha wants to continue the marriage or not will be decided later. However, it was a turning point for Ayesha's family and they decided that they would not send Ayesha back to Karim. Ayesha's mother then brought her back to her maternal home.

Several months passed after the shalish, but no further discussion took place regarding Ayesha's marriage. Ayesha's mother approached her cousin Tanvir for help. Ayesha had been married for two years but had only spent about one month at Karim's house. None of Ayesha's family members wanted her to continue the marriage. Ayesha's maternal uncle Tanvir was a politically influential person. Although he was not directly involved with politics, he worked with the people of the ruling party which gave him local influence. He had a good relationship with Heron. Ayesha said,



At the beginning, I wanted to go, but later I refused. If I go there, everyone at my house will see my corpse.

Even though Ayesha did not talk much about her expectations of the marriage, Ayesha's mother had expected Karim to be affectionate towards Ayesha after getting married. Ayesha's mother said during the interview that Karim did not show any love towards his wife.

In November 2020, Tanvir communicated with Heron and tried to come to an agreement, but they failed to agree as Ayesha's in-laws did not show any interest. Then Tanvir suggested taking the matter to the law enforcement agencies. Tanvir also suggested taking advice from RDRS Community Animator Siddique as he had taken advice from him on similar matters before. When they met on 15 December 2020, Tanvir told Siddique about what happened but not about the incident of Karim attempting to kill Ayesha.

When Siddique asked Tanvir whether Ayesha's family wanted a shalish, Tanvir responded that they wanted to recover the dower money. Siddique felt that Ayesha's family were not interested in legal help or seeking litigation support. After talking to Tanvir, Siddique went to meet Ayesha's mother. He understood from speaking with Ayesha's mother and hearing about the attempted

murder that Ayesha's family did not want to file a police case, even though she was almost killed. During the interview with Ayesha's mother, she said that her family thought that engaging the law enforcement agencies would be expensive and would have a social cost. Ayesha's mother thought that Ayesha was still very young and might get married again. Going to court may bring shame on the family, as a society always blames women for their fate. For Ayesha's mother, the considerations of economic and social survival (i.e., countering/evading stigma) took precedence over considerations for justice or punishment for the extreme physical violence that Ayesha experienced.

Siddique and Heron spoke to Karim and his family about the money. Karim's family wanted to give only thirty thousand taka but Ayesha's family would not agree because they had already spent between sixty thousand and seventy thousand taka for the wedding and other costs. Siddique suggested that Ayesha's mother should go to the Union Parishad (UP), and if that did not work, go to government legal aid services as they also do mediation before filing a legal case.

On 6 January 2020, Ayesha's mother went to Polashpara (Karim's UP) and to Chairman Faruk (her UP). Although she went to Chairman Faruk twice, the UP did not arrange for a shalish. Sending out notices for a shalish is a usual procedure at the Polashpara UP chair's office. Ayesha's mother chose to go to the UP because Faruk, in the first shalish he conducted, said that if anything happened, he would be responsible. Ayesha's mother said,

“

I went because he had sent the girl once before; [I should] let him know again. Because he said, 'Send your daughter back, and let me know if something happens.' So won't he look into the matter as a chairman? Whether the girl is having problems, the girl has been here for 9 months, it is his responsibility to see, isn't it? So I went to the chairman.

Ayesha's mother played an active role throughout the process, from attempting to stop the violence Ayesha was facing to negotiating for more dowry money in the divorce settlement. Even though Ayesha's mother only studied till the fifth grade, she used her networks, such as her cousin Tanvir's influential position in the community, to negotiate on her behalf. During the interview, Ayesha's mother said that she was negotiating for more money so that she could marry off Ayesha again later on. This illustrates the fact that marriage is seen as the only respectable option for family members and by society, in spite of the traumatizing experience Ayesha had gone through. The lack of social and economic alternatives for young girls to have a future outside of marriage could not be envisaged.

Heron continued to negotiate with Karim's family about recovering the dower money. When Karim's family was being uncooperative, he informed them that Ayesha's family was preparing to file a legal case. The threat of legal action often catalyzes settlements out of court—the fear of delay, being caught up in a case, the time lost from other activities, the huge cost, and the mental pressure may drive people to settle. This put pressure on Karim's family to start negotiations. In January 2021, both families agreed that Karim's family would give fifty thousand to Ayesha's family and return the furniture and utensils given by Ayesha's family at the time of the wedding. On 23 January 2021, Ayesha signed the divorce papers at Proctor Heron's house through a khula talaq in the presence of the marriage registrar (see Legal Commentary XIX).

LEGAL COMMENTARY XIX

Khula talaq is a process through which a woman, married under Muslim law, may divorce her husband, at her instance and with her consent. This process is usually used in cases where the right to divorce is not expressly delegated by the husband to the wife and is stated in Clause 18 of the nikahnama (marriage deed). In exercising divorce by khula talaq, the wife gives or agrees to give consideration to the husband for her release. Though the bargaining conditions depend on the husband and wife, the wife may, as consideration, release her dower money and other rights, or make any other arrangement for the benefit of the husband. In practice, a woman may agree to waive or reduce payment of the amount of dower money stated in the nikahnama simply to secure the divorce and exit the marriage. In this process, the wife and husband both have to sign the divorce document. Her signature is the visible sign of her consent. This is not required in case of other divorce procedures where the wife's consent, written or otherwise, is not required but a simple receipt of notice is sufficient.

While assessing his role in the shalish, Heron said that he would not call this a successful shalish because when he facilitated a shalish, he would try for the marriage to survive. Since Ayesha's marriage did not survive, Heron did not call it a successful shalish.

Ayesha's family was satisfied with the outcome as they were happy to have Ayesha back alive and safe. However, her mother was not satisfied with the role of UP Chairman Faruk, as he was the one who had earlier assured them he would look into the matter if Ayesha faced violence again. Ayesha enrolled in class nine in school again. She lost two school years, part of which was during the COVID-19 school closure, but her school teachers

were supportive. She received the furniture and utensils given during the wedding along with the dower money. In keeping with prevailing practice, Ayesha's family paid ten thousand taka to Heron for facilitating the shalish and negotiating with Karim's family on her behalf. The divorce documents were kept at Heron's home. Even though all the shalish and negotiation took place during a period when a COVID-19 lockdown was imposed in March 2020, during the interview, no one mentioned the lockdown affecting their mobility or work.

CONCLUSION

Ayesha's case illustrates the dangers of child marriage. Her case also illustrates how community-level shalishes do not really acknowledge child marriage or deal with it differently, other than handing out minimal compensation. There is no acknowledgement of wrongdoing or asking for accountability by any of the parties involved. There was no attempt to use legal remedies to exit the marriage, either due to a lack of knowledge of these options, or, more importantly, the stigma associated with ending a marriage. Financial considerations were also important, with the family calculating the costs involved in seeking legal remedies as well as for a new marriage. This story also demonstrates the importance of the girl or woman having the chance to speak out in the community shalish or during mediation. It is only when she had the chance to speak in front of her relatives that she could tell everyone about how she was almost murdered.

While community-level mechanisms are supposed to be more accessible, they are not free of cost. The community-level shalishes promote settlement and compromise with violence and abuse. They endorse the social stigma against a woman being single, pursuing her education, and do not think of self-determination as an option in a woman's life. In addition, there was no acknowledgement of sexual and physical violence, neither within the family nor outside in the community.

JUSTICE JOURNEY





Ayesha walking to school.

LIST OF REFERENCES

- Sultan, M., Akter, M., Mahpara, P., Pabony, N. A., & Tasnin, F. (2021a). Access to justice during COVID-19 for survivors of domestic violence. BRAC Institute of Governance and Development, BRAC University. <https://bigd.bracu.ac.bd/publications/access-to-justiceduring-covid-19-for-survivors-of-domestic-violence/>
- Sultan, M., Akter, M., Mahpara, P., Pabony, N. A., & Tasnin, F. (2021b). Access to justice during COVID-19 for survivors of domestic violence [Policy brief]. BRAC Institute of Governance and Development, BRAC University. <https://bigd.bracu.ac.bd/publications/access-to-justiceduring-covid-19-for-survivors-of-domestic-violence-policy-brief/>
- Siddiqi, M. D. (2003). Shalish and the quest for gender justice: An assessment of strategic intervention in Bangladesh. Research Initiative Bangladesh.
- Islam, M. S., & Alam, M. S. (2018). Access to justice in rural Bangladesh: A review on village court and its effectiveness. Asian Studies, Jahangirnagar University Journal of Government and Politics, 37, 31–44.
- Yasmin, T. (2020). A review of the effectiveness of the new legal regime to prevent child marriages in Bangladesh: Call for law reform (p.24). Plan International Bangladesh & Girls Not Bride Bangladesh. <https://plan-international.org/file/46276/download?token=fu7fdGCh>



■ A BLAST staff member and paralegal walking towards a police station



Glossary

<i>Aposhnama</i>	A legal format through which one appeals at the court to withdraw a legal case
<i>Bodh mejaji</i>	Short-tempered
<i>Chowkidar</i>	A local security guard
<i>Daroga</i>	A police officer (Inspector/Sub-Inspector/Assistant Sub-Inspector)
<i>Dewani</i>	Civil matter
<i>Dhormo bhai</i>	A social relationship in which someone is considered as a brother
<i>Dhormo chele</i>	A social relationship in which someone is considered as a son
<i>Gramer dosh</i>	A group of influential people of the village
<i>Grammo shalish</i>	An informal settlement meeting organized by villagers
<i>Hafez</i>	A person who memorizes the Quran
<i>Juda khawa</i>	To live separately, often from the in-laws in a marriage
<i>Kazi</i>	Marriage registrar
<i>Khula talaq</i>	A process through which a woman, married under Muslim law, may divorce her husband, at her instance and with her consent
<i>Mahr</i>	An Arabic term to signify the obligation, in the form of money or possessions paid by the groom, to the bride at the time of Islamic marriage
<i>Mamlabaaj</i>	A person who loves to file cases
<i>Matobbar</i>	A local elite/influential person
<i>Munsi</i>	A clerk at the police station
<i>Nikahnama</i>	Marriage deed
<i>Paan-shupari</i>	A ritual in celebrating when a child's hair is shaved off for the first time
<i>RJ facilitator</i>	A trained RDRS volunteers who assist survivors of domestic violence to get the necessary support
<i>Shalish</i>	A settlement meeting
<i>Shalishkar</i>	A person/group of people initiate/organize settlement meeting



Two panel lawyers and a BLAST paralegal walking towards the Chief Judicial Magistrate Court, Patuakhali.

ANNEXE | LEGAL COMMENTARY

NOTE ON LEGAL QUERIES REGARDING PROTECTION FROM DOMESTIC VIOLENCE¹

BANGLADESH LEGAL AID AND SERVICES TRUST (BLAST)

Sara Hossain, Abdullah Titir, Esrat Jahan Siddiki, and Sadiul Islam Antor²

1. DOWRY PROHIBITION ACT 2018

The Dowry Prohibition Act (DPA) 2018 prohibits and penalizes taking or giving dowry at the time of, or before, a marriage, or during the existence of a marital relationship (Sections 3 and 4, DPA). The penalty for demanding or receiving dowry is a maximum of five years in jail and a maximum fine of fifty thousand taka (Sections 3 and 4, DPA). It applies to both the bride and groom, their parents or legal guardians, or any other person directly involved in the marriage. The Act came into effect on 1 October 2018, repealing an almost forty-year-old law of the same name (Dowry Prohibition Act, 1980). It included a savings clause, which allows the continuation of all cases filed under the earlier Act which are still pending for trial or investigation (Section 10[2], DPA).

¹Acknowledgments to BLAST colleagues—Ayesha Akter, Md. Borkot Ali, Sharmin Akter, Sifat-E-Nur Khanam, Sijra Goswami, and Taposhi Rabaya—for their comments and input.

²This note only relates to consideration of queries relating to the twelve case studies in the BIGD/BLAST/BRAC/RDRS study, and to cases concerning women from across Bangladesh who married under Muslim law. It does not discuss specific issues relating to remedies for DV for women married under Hindu or Christian personal law, or customary law or the Special Marriage Act.

The Act defines “dowry” as money or other assets being demanded or given or agreed to be given by a party to the marriage as consideration for the marriage (Section 2(b), DPA). Dowry does not include “dower” or “mahr” — the sum agreed as the consideration of the marriage contract under Muslim law, which applies where the parties are Muslims (see Section 1, Muslim Personal Law (Shariat) Application Act 1937). It also does not include any “presents” or “gifts” given to either party to a marriage by the relatives, friends, or well-wishers (Section 2(b), DPA).

For investigation, trial, appeal, or other relevant matters regarding dowry offences, the Code of Criminal Procedure 1898 (CrPC) applies. Any offence committed under this Act is cognizable, which means the police can arrest the person accused, without a warrant from a court (Section 7, DPA, Section 4(1)(f) of CrPC). It is also non-bailable (Section 7, DPA), which means once arrested, a person cannot claim bail as of right, but has to obtain a court order, which may be refused if there are grounds to do so (Section 4(1)(b), CrPC). Finally, it is compoundable (Section 7, DPA), i.e., the party that files the case can withdraw it if there is a settlement.

Anyone who falsely accuses another person of committing an offence under this Act can be punished by being jailed for up to five years or fined up to fifty thousand taka or both (Section 6, DPA). But a court would have to first find that they had a mala fide intention to cause loss to someone.

2. DOMESTIC VIOLENCE (PREVENTION AND PROTECTION) ACT 2010

The Domestic Violence (Prevention and Protection) Act (DVPPA) 2010 was enacted with the stated aim to establish “equal rights for women and children as guaranteed in the Constitution,” and in observance of the State’s obligations under the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC), for prevention and protection of women and children from domestic violence (Preamble).

The Act defines domestic violence as “physical abuse, psychological abuse, sexual abuse or economic abuse against a woman or a child of a family by any other person of that family with whom victim is, or has been, in family relationship” (Section 3).

Only women and children (anyone aged under eighteen) (Section 4, Children Act, 2013) can claim protection for domestic violence under the Act. The Act defines “victim” as a child or woman who is, or has been, or is at risk of being, subjected to domestic violence by any other member of the family with whom a family relationship exists. A major limitation is that a person not in a subsisting family relationship—such as a divorced wife—cannot claim a remedy under this Act.

A victim does not have to seek protection under this Act directly. Others, such as a police officer, enforcement officer, service provider, or any other person, may do so on their behalf. The application has to be made to the nearest Judicial Magistrate’s Court or the Metropolitan Magistrate Court (Section 11, DVPPA). The Court may pass different orders, depending on the needs of the victim, including an interim protection order (Section 13), protection order (Section 14), residence order (Section 15), compensation order, (Section 16), or custody order (Section 17).

A police officer has a statutory duty (Section 4, DVPPA) on receiving any information or complaint about domestic violence to inform the victim about available legal remedies and medical services, the scope for seeking legal aid and the availability of services of enforcement officers.

An enforcement officer has statutory duties to assist the victim and the court in dealing with cases filed under this Act (Section 5, DVPPA). The duties to the Court include assisting the court in discharging functions, providing reports to the Court regarding domestic violence, and forwarding copies of these reports to police stations. The duties to the victim include applying for a protection order on their behalf and referring them to shelter homes.

Service providers who receive any such information from victims also have a statutory duty to report such incidents with the victim’s consent and forward the same to the Court and enforcement officer within the jurisdiction (Section 7(2)(a), DVPPA). They are also duty bound to refer victims for medical assistance or shelter homes, as necessary. A service provider is defined by law to include any organization approved by the government under any other law for the time being in force, with the objective of inter alia protecting human rights, especially the rights and interests of women and children, by any lawful means, including providing of legal aid, medical, financial, or other assistance (Section 7(1), DVPPA).

A court may, at its discretion, order the husband to pay “adequate maintenance” to the victim and her children consistent with her standard of living (Section 16(5)), and may order either a lump sum or monthly payments to be paid (Section 16(6)).

The breach of any court order made under this Act is an offence. Such offences are cognizable, bailable, and compoundable (Section 29). This means that a police officer may arrest the person accused of committing the offence without a warrant (“cognizable”), and taken into custody, that person will be entitled to be released on bail (“bailable”). The parties involved (the victim and the person so accused) may also agree to settle the matter out of court; once they inform the court of this, the case will not continue further (“compoundable”).

If anyone breaches a protection order, they may face a maximum jail term of six months, or a fine of up to ten thousand taka, or both (Section 30), for a first offence, which may be increased to a maximum of two years and one lac taka, or both, for a repeat offence.

3. LEGAL PROTECTION FOR DOMESTIC VIOLENCE IN PRACTICE

In practice, lawyers who provide legal advice to survivors of domestic violence may advise them to file a case under the DPA, rather than the DVPPA for a number of reasons. Where a case is filed under the DPA, there is a real possibility that the accused husband would face arrest or the threat of arrest, and also, if convicted, imprisonment. DPA offences are non-bailable, unlike DVPPA offences. In practice, in a non-bailable case, the court of first instance initially refuses bail applications where the defendants are already in police custody. However, even for non-bailable cases, the court may grant bail using its discretionary powers, except in cases where there are reasons to believe that a person may evade justice, tamper with the evidence, or threaten the victim or witnesses. When the accused is not already in police custody but anticipates arrest, where a warrant has already been issued, they may seek anticipatory bail from the High Court.

One reason given by some lawyers for why they resort to the DPA over the DVPPA is that victims of domestic violence request them to ensure harsh punishments for the accused. Another significant reason is that the threat

of arrest and imprisonment can be leveraged to facilitate a swifter outcome or settlement in any pending claim for maintenance. Another reason is that the lawyer can more easily ensure the appearance of the defendant before the court given the scope for arrest under the DPA. In contrast, ensuring the appearance of defendants is difficult under the DVPPA, because the Court's initial orders are civil and result only in the issuance of a summons, not a warrant.

In many cases, women facing domestic violence request lawyers to use provisions of the Nari-O-Shishu Nirjatan Daman Ain 2000 (Suppression of Violence against Women and Children Act 2000) to secure a legal remedy against domestic violence, by seeking arrest and punishment of their husband and in-laws. This may be because they are more familiar with the 2000 Act, and are not aware of the DVA, or because they want to see the accused punished, rather than to seek protective orders.

A major reason for lawyers not filing cases under the DVPPA is that many of them are not familiar with it, and the remedies available. BLAST has clear guidelines for concerned lawyers to consult with clients and to understand their needs and use relevant laws accordingly in filing a case. The guidelines do not specifically say anything about not misusing the DPA. The guidelines say that all BLAST lawyers (staff, panel) should speak to their clients seeking legal advice to understand what exactly it is they want to seek remedies against, and then advise them accordingly/use the relevant laws and procedures that are applicable in securing those remedies. It is not directly specified in the guidelines that a law that is not directly relevant to the matter at hand cannot be used to provide any remedies relating to that matter (the DVPPA/DPA issue); it is implied that this would not be the case when lawyers are advising/filing cases.

4. AFROZA'S CASE

- Securing payment of maintenance: In a maintenance case, where the defendant (husband or former husband) does not appear, the Court will hold the hearing *ex parte*, i.e., in their absence. When the Court passes its order allowing or refusing the wife's application for maintenance, it will also issue a summons upon the husband to appear before it. If he does not appear even after receiving the summons, the wife or former wife would have to file a second, separate case, in the same Court, seeking execution of the maintenance order. If the husband fails to pay the amount ordered, the wife/ex-wife may request the court to issue a warrant for arrest (Section 51(c), CPC). In practice, lawyers report that the accused husbands are often not arrested even after the warrant is issued. Instead, in many cases, they keep moving residences, so that the warrant cannot be served on them and they can avoid arrest. Lawyers also noted the reluctance, in practice, in many cases of the police in executing the arrest order even where the accused was known to be present in the area.
- Extradition of a person accused of domestic violence to Bangladesh from abroad: Where a person is outside the country, it is very difficult to hold them to bring them to justice in the courts in Bangladesh. Most of the cases in this study relate to civil claims, for non-payment of maintenance, and are not extraditable offences (Schedule, Extradition Act, 1974). Even in the case of extraditable offences, which include "maliciously or wilfully wounding or inflicting grievous bodily harm," there may not be procedures in place for extradition with the countries concerned.
- Appearance through a lawyer: In civil cases, including family cases, any lawyer may appear in court to represent their client; often private lawyers or representatives of legal aid organizations provide this support. In a criminal case filed with the police (GR case), in contrast, a victim of a crime will in most cases be represented by a public prosecutor who is appointed by the State. Similarly, in complaint cases that are filed directly in court (CR case), a public prosecutor is appointed though victims often have private lawyers appointed. The private lawyer, who may be permitted to assist the public prosecutor and to enter appearance (until the peremptory hearing), if the court allows their written application to assist (Section 493, CrPC). The

court may demand the presence of the accused before it at any time, through issuing a warrant of arrest.

5. RUPA'S CASE

- Obtaining a copy of the aposhnama: Wherever the parties, in any case, have reached a settlement out of court, the agreement of settlement (aposhnama) should be available to both the parties and their lawyers. However, if the aposhnama has already been submitted to the court, without an original being retained by the wife, she can apply through her lawyer to the court for a certified copy only if the submitted copy of the aposhnama is accepted by the court (Rule 243, Criminal Rules and Orders 2009). Alternatively, if the aposhnama is in the custody of the husband's lawyer, the wife can ask for a copy from the lawyer. Legal aid provider, BLAST, provides each party to the concerned mediation a copy of the settlement agreement, either handwritten or computer composed (depending on the situation) versions. However, no photocopies are provided considering the risk of forging the signature of the parties in later events.
- Scope for withdrawal of aposhnama: An aposhnama, even if signed by both the parties, husband and wife, and submitted to the court, can be withdrawn at any time by either of them, if the court finds that there are reasonable grounds for doing so. Whoever wishes to withdraw the aposhnama needs to apply to the court in writing and inform it of their reasons for doing so (e.g., they were made to sign the document under coercion or deceitfully) and can do so if the court gives permission.
- Affidavit as divorce notice: The simple making of an affidavit—or a statement in writing made on oath, affirming its truth, and before a court or notary public—or any other written declaration of not wanting to continue marriage does not result in a divorce in itself. The procedure for divorce, in case of a marriage under Muslim law, is prescribed under sections 7 and 8 of the Muslim Family Laws Ordinance (MFLO) 1961. This provides that any party may initiate a divorce by giving notice in writing to the Chairman (of the concerned Union Parishad, or municipality or city corporation,

among others), or by filing a suit for dissolution of marriage. There is no prescribed format in the Schedule to the Muslim Marriages and Divorces (Registration) Rules 2009 (which sets out relevant forms relating to registration of marriage and divorce) for such notice. The affidavit could serve as notice of the divorce, but would need to be communicated, as noted, to the Chairman. Such an affidavit may have evidentiary value in relevant cases to prove that there was a decision to divorce.

6. AYESHA'S CASE

- **Khula talaq:** Khula talaq is a process through which a woman, married under Muslim law, may divorce her husband, at her instance and with her consent (Mulla, Principles of Mohamedan Law [LexisNexis 2013] 402). Women may use this process in cases where they have not been delegated the right to divorce by the husband in writing in Clause 18 of the nikahnama, or any other document.
- In exercising divorce by khula talaq, the wife gives or agrees to give consideration to the husband for her release from the marriage. In practice, a woman may agree to waive or reduce payment of the dower simply to secure the divorce and exit the marriage.
- **Marital rape:** Marital rape—that is sexual intercourse by parties who are married, by force or without consent of one party—is not criminalized under Bangladesh law, except in cases where a wife is under thirteen years old (see Section 375, Penal Code 1860). As Ayesha is a fourteen-year-old girl, the protection under the “exception” will not extend to her, even though she had been subjected to sexual intercourse without her consent, and against her will, by her husband during her marriage on a regular basis. On the contrary, Section 9 of the Suppression of Violence Against Women and Children Act 2000 shall criminalize a person for sexual intercourse with a woman below the age of sixteen with whom he has a marital relationship, which implies that Ayesha can seek protection for the alleged “marital rape” under the Act of 2000.

7. RINA'S CASE

- Permission for second marriage: Under Muslim law, a man who is in a subsisting marriage cannot marry another woman without prior notice to and permission of the Arbitration Council, set up within the relevant local government body (Section 6, MFLO 1961). He is required to seek permission by providing an application in writing to the concerned Chairman, and paying a prescribed fee. The application should set out the reasons for the proposed marriage, and whether the consent of the existing wife has been obtained (Section 6(2), MFLO 1961). The Chairman will require the husband and his existing wife each to nominate a representative and then constitute the AC (Section 6(3), MFLO 1961). The Arbitration Council may allow the second marriage if satisfied that the marriage is necessary and just, and may impose conditions thereon. If the husband marries without the permission of the Arbitration Council, he may be required to pay the dower due to his existing wife immediately (Section 6(5)(a), MFLO 1961), and may be jailed for up to one year, or fined up to ten thousand taka (Section 6(5)(b), MFLO 1961).
- In practice, according to the lawyers with whom we spoke, the Arbitration Council is not constituted in many areas to deal with matters relating to the MFLO 1961, and these procedures are not followed.
- Divorce notice: Under Muslim law, the husband, or the wife delegated with the right to divorce, is required to issue a notice to the Chairman after pronouncing the talaq and to supply a copy of the same to the other party (Sections 7 and 8, MFLO). The Chairman is then required to form an Arbitration Council to arrange a reconciliation between the parties. The Council in turn should “take all necessary steps” to this end, at the least send out a notice to both parties to convene a mediation. Unless the talaq is revoked earlier, the marriage will stand dissolved on the conclusion of ninety days from receipt of the notice, or at the end of her pregnancy if the wife was pregnant, whichever is later (Section 7, MFLO). Once the divorce is final, it is required to be registered with the Kazi or marriage and divorce registrar (Section 6, Muslim Marriages and Divorces (Registration) Act 1974 (MMDRA)). Non-registration does not render the divorce

invalid. In practice, kazis often register a divorce immediately after the notice is sent, before completion of the ninety-day period. This can deprive a woman of her entitlements.

- Any person obtaining the divorce can apply orally to the Kazi for registration (Section 6(2), MMDRA). If the divorce was initiated by a wife exercising her delegated right to divorce, she must provide documents proving her delegated right, her nikahnama, or any other document (Section 6, MMDRA). Once the registration is completed, the Kazi is required to deliver to both parties an attested copy of the entry in the register and no fee should be charged in this regard (Section 9, MMDRA).
- Divorce during case proceedings: If a couple divorces while a case under the DVPPA is ongoing, the wife may lose her right to protection. The husband's duty to pay maintenance to the wife will be limited to the period of three months after divorce. In contrast, if the parties remained married, then the husband would need to keep on paying maintenance to his wife, till divorce or her death. This is a challenge in cases filed under the DVPPA. A woman may only seek legal protection under the DVPPA against her husband if she is still married to him. If the divorce takes place while a DV case is ongoing, she will not be protected under this law.
- Right to residence of women: While women's right to reside in their family home is recognized by the DVPPA, this only applies when they are in an existing family relationship. However, rights within the family, the existence of family relationships, and their ending (e.g., through a divorce) are determined by personal laws, which vary for different communities. Thus, the right to reside will vary for women depending on whether they marry under Muslim, Hindu, Christian personal law or the Special Marriage Act. None of these personal laws recognizes the right to a family or matrimonial home.

The Muslim Family Laws Ordinance (MFLO) 1961 covers maintenance and divorce-related procedures. While in many countries, women have a right in the matrimonial home, given their contribution to building and sustaining it, this has not been fully recognized under Bangladesh law. The DVPPA was the first law to recognize such a right by introducing the residence order (Section 15, DVPPA), which

effectively takes into consideration a married woman's right to live in her matrimonial home, among others. This protection mechanism reinforces a woman's rights as an integral part of the family. In the context of Bangladesh, women often do not have financial decision-making capacity or have ownership of property under their own name, which weakens their agency in the family as they always have to defer to a man's, in particular their husband's, decision. Given this context, the right to reside in the matrimonial home is significant. Further, in our social context, many women are extremely vulnerable financially, and are compelled to depend on their families for financial support, in the event of marital breakdown, and in the absence of adequate and available social security. There is limited availability of spaces in emergency shelter homes for women facing violence.

- In practice, there are challenges to the enforcement of residence orders, particularly where a woman resides with her in-laws. There is greater scope for enforcing such orders where a woman lives in a separate home with her husband (and children if applicable), apart from her in-laws.

8. FATEMA'S CASE

- Birth certificate instead of husband's NID: Where a husband refuses to provide his National Identity (NID) card in a maintenance case, the wife/former wife seeking child maintenance can also submit the hospital record of the childbirth which is received after the birth of a child from a hospital. Women/mothers often do not recognize the importance of preserving such documents and leave the responsibility to their husbands. However, it may also happen that the wife could not collect relevant documents related to the birth of her child from the hospital, or she has not been provided with any such document by the hospital. In that case, the woman needing to show proof of paternity may try to collect the child's birth certificate from the relevant birth registrar, i.e., the Union Parishad, city corporation/municipal corporation, cantonment board (Section 4 of the Births and Deaths Registration Act 2004) and submit this to the court (Section 112, Evidence Act 1872). Hospitals are not listed as birth/death registrars, but can send relevant information regarding births/deaths to the authorities listed in Section 4 of the Act, and the authorities then take the step to register these.

- Child marriage, kazi's liabilities: In the case of a child marriage, a Kazi who registers the marriage can face a minimum of six months and up to two years' imprisonment, or be fined up to fifty thousand taka, or both. If he fails to pay the fine, he may face a further three months in jail, and cancellation of his license (Section 11, CMRA). In practice, Kazis tend to evade this liability by claiming that the documents given by the bride's family at the time of marriage established that she was an adult. NID cards, birth certificates, passports, or secondary, junior, or primary school certificates (or equivalent academic certificates) are accepted as legal documents that can prove that the parties to a marriage have attained the legal age of marriage (Section 12, CMRA). The Kazi must only register a marriage between two parties if the legal documents provided certify that the parties are adults, for the purposes of CMRA. If the nikahnama states that the parties are "adults" but legal documents listed above state otherwise, any Kazi registering such a nikahnama would then be held liable under Section 11, CMRA. Here, "adult" means the bride's age is entered on the form as eighteen or above, and the groom's age is entered as twenty-one or above; however, according to CMRA, there is no explicit statement in the nikahnama requiring that the parties signing the marriage contract be adults. In reality, parents tend to solemnize the marriage of their children at an early age due to poverty and lack of social security. During the pandemic, with rising insecurities, the number of child marriages increased exponentially, as schools were closed for more than a year and girls were kept at home, leaving their future in uncertainty.

9. MEENA'S CASE

- What does the law of Bangladesh say about child custody and guardianship?

In Bangladesh, questions regarding custody and guardianship of a child are mainly governed by the Guardians and Wards Act (GWA) 1890, which discusses, among others, the appointment and declaration of guardians, their rights and liabilities, and penalties for noncompliance. Applications for custody and guardianship are made in the Family Courts (Section 5, Family Courts Ordinance (FCO) 1985), and in cases of abduction/removal of a child from##

the lawful custody of one parent, the magistrates' court (Section 100, CrPC) as well as High Court Division (Section 491, CrPC or Article 102, Constitution of Bangladesh) has jurisdiction. The Family Court has jurisdiction to deal with matters relating to custody and guardianship irrespective of the religion of the concerns (Section 5, FCO). Under Muslim Law, a father is the legal and natural guardian of the children until they attain the age of majority, and GWA takes recourse to the personal law in determining the custody of a child. Factors such as age, sex, and religion of the minor as well as the character and capacity of the guardian are taken into consideration for this purpose (Section 17, GWA).

- The Supreme Court has given a series of judgments holding that welfare of the child is paramount in determining issues of custody and guardianship. For example, in *Abu Bakar Siddique vs. SMA Bakar*³ ([1986] 38 DLR (AD) 106), the Court held that the welfare of the child shall be considered in deciding custody rather than always taking recourse to the age-sex rule (where it was presumed that the custody of a boy aged over seven would be given to the father). In *Sharon Jall's case* ([1998] 50 DLR (AD) 55), the High Court allowed a mother who was a non-Muslim to recover custody of her children. However, the court continues to hold that a mother who remarries will lose her preferential right to custody of her children, but will not be excluded absolutely from being considered fit for guardianship (*Rahmatullah (Md) and Others vs. Sabana Islam and Others* [2002] 54 DLR 519).
- How can a mother recover custody of her child if the husband/ex-husband takes the child/baby away without her consent or against her will?

If her husband/ex-husband takes their child away without her consent, a woman may apply to the Family Court to pass an order against the father directing him to return the child to her. If he refuses, the father may be liable to fine and detention in the civil jail (Sections 25 and 45, GWA). Alternatively, she may make an application to a Magistrate's Court for a search warrant for recovery (Section 100, CrPC). Finally, she may file a petition before the High Court Division (Section 491, CrPC or Article 102, Constitution of Bangladesh).

In practice, many women are not aware of these procedures or do not have access to legal advice or assistance. Instead, they seek help from local authorities (e.g., the Chairman of the Union Parshad) to recover custody of their children. Such attempts are successful on some occasions, and also avoid litigation.

³ [1986] 38 DLR (AD) 106 per Chief Justice F.K.M.A. Munim, Justices BH Chowdhury and Shahabuddin Ahmed at para. 10.

- Who is responsible for the maintenance of the child?

The GWA states that the guardian of a child is liable for the maintenance of the child (Section 24, GWA). Under Muslim law, a father, being the natural guardian of a child, is responsible for the child's maintenance, even if they are under the custody of their mother. A son is entitled to maintenance until he attains the age of majority, and a daughter until she is married (Principles of Mohamedan Law by Sir Dinshaw Fardunji Mulla (20th edn, LexisNexis), p. 454). The father will not remain liable for maintenance if he ceases to be a guardian.

- Is the law discriminatory/does it have any loopholes that make it difficult for the mothers to take the child's custody?

The Guardians and Wards Act 1890 is the core law governing custody and guardianship of children, and is interpreted alongside the relevant personal law applicable to the parties to any dispute. Where the parties to any proceedings contesting the custody and guardianship of children are Muslim, all questions regarding guardianship are determined by Muslim personal laws (Section 2, Muslim Personal Law (Shariat) Application Act 1937), which recognize only the right of a Muslim father to remain the sole guardian of his child during his lifetime. A Muslim mother does not enjoy the right of guardian of her child. However, in an exceptional judgment by Dhaka's 12th District and Session Court's Assistant Judge in 2018, Bangladeshi model and actress Azmeri Hoque Badhon received full guardianship of her daughter instead of general custody.⁴ There have been significant judgments by the Supreme Court applying and interpreting the laws on custody and guardianship, invoking the paramount consideration of the welfare of the child, and recognizing women's rights to custody of children, trumping personal law limits. However, serious concerns remain over discriminatory provisions of personal laws (for example, the Muslim law provisions that state that women, but not men, lose custody of children on remarriage), as well as discriminatory applications of the law, with women's character often being questioned by husbands in child custody disputes, alongside stereotypical ideas of women's role and responsibilities.

10. BEAUTY'S CASE

- What steps could be taken by the police, if the child (girl child) is already married before the police could intervene? Will the marriage be recognized, especially when child marriage is illegal in

⁴ Badhon receives guardianship of daughter Saira. (2018, April 30). Dhaka Tribune. <https://www.dhakatribune.com/showtime/2018/04/30/badhon-receives-guardianship-daughter-saira>

Bangladesh?

Solemnizing or participating in a child marriage is an offence under the Child Marriage Restraint Act 2017 (Sections 7 and 9, CMRA). If a girl child has already been married before the police could intervene, they may still take action by filing a case against those responsible for who arranged or solemnized the marriage (parents, Kazi), or participated in it (an adult groom), and they can do so without a warrant (Sections 9 and 14, CMRA). There may also be scope to bring charges against a witness to a child marriage, under Section 8 of CMRA, which outlines punishment for parents, guardians, or “any other individual” involved in a child marriage, provided that “being witness to the marriage” is considered as “an act” done to conduct the marriage.

- While carrying out or participating in a child marriage is a crime (even for the child bride) (Sections 7 and 8, CMRA), the marriage itself may be valid, depending on the law applicable to the parties. Validity of the marriage means that the parties to the marriage, the husband and wife have rights and responsibilities regarding each other, and the child can, for example, claim maintenance. If a child marriage were treated as invalid, all the women married underage would be left with no protection in terms of maintenance for themselves or their children.

11. KOMOLA'S CASE

- Being threatened by husband: If a wife is threatened with violence by her husband, she can file a General Diary (GD) with a police station (Sections 154 and 155, CrPC). But if a case is already pending before a court when the wife receives any threatening videos or recordings from the husband to try to pressure her into changing her evidence regarding the trial, she can inform her personal lawyer (or the public prosecutor, in criminal proceedings) about the threat and they can take action, including informing the court as part of the same proceeding. However, even if the video does not contain a threat of violence, but is humiliating or harassing, it could still constitute a form of domestic violence, and she can seek protection under the DVPPA.

12. DILRUBA'S CASE

- Five thousand taka paid for kazi's expenses: The District Legal Aid Committee conducted the mediation. The wife had claimed sixty thousand taka as her dower money but her husband/ex-husband only agreed to pay fifty-five thousand taka, of which five thousand taka covered the kazi's fees and miscellaneous incidental costs. In practice, where there is a khula talaq, both parties bear the costs of the divorce registration; thus, five thousand taka was deducted from

the total amount due as the wife's contribution.

- Return of wife: The nikahnama, in the prescribed form, generally requires the bride to provide information regarding her marital status, whether she is virgin, widowed, or divorced (Column 5, Form 'Gha' under Rule 27(1)(a), enclosed in the Schedule to the Muslim Marriages and Divorces (Registration) Rules 2009). However, the High Court in *BLAST and others vs. Bangladesh and others* (Writ Petition No. 7878 of 2014) passed an order to replace the word "virgin" with "unmarried" in the nikahnama. In the nikahnama, the groom has to specify whether there is a subsisting marriage (under Column 21 of the same form).

In this case, the husband's first wife returned to the matrimonial home on the day after the second marriage took place, although the husband had told his second wife that his first wife would never return. The second wife could not take any steps to evict the first wife, as long as the latter remained married to her husband, since a wife's right to live with her husband is one of her conjugal rights.

13. RESHMA'S CASE

- Increasing the amount of dower money as a strategy to ensure continuity of the marriage: Among many strategies aimed to ensure that the marriage stays intact, the wife's lawyer may increase the amount claimed in a family suit, which includes dower, past maintenance and "compensatory maintenance." Personal and family laws governing marriage and its dissolution do not contain any provisions that grant this form of maintenance. Claiming this in a family suit is a strategy employed by lawyers in situations where a woman's husband has not paid her dower, or provided any maintenance costs to her during the course of their marriage; when making a maintenance claim in such situations, lawyers may ask for a bigger amount than the actual sum that is due, so that the wife can also be "compensated" for all the overdue maintenance that she has not received from her husband. The assumption is that the husband would be reluctant to dissolve the marriage where this would involve paying a hefty sum to the wife, and would rather just reconcile with her. In practice, according to many lawyers with whom we spoke, husbands often do agree to reconcile and allow a wife, whom they had earlier thrown out, to return to the matrimonial home, to avoid paying the dues owed to her. This strategy is seen as successful in that it enables the continuance of the marriage, although, of course, it is not clear what the cost of this is to the woman concerned in terms of whether domestic violence continues or not.

