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Eclipsed Justice: The Dissonance between Constitutional Textuality and Legal Reality for Women in Bangladesh

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Abstract

In Bangladesh, despite the constitutional promise of gender equality, women continue to face significant structural inequalities. The law, while formally recognizing women's rights, often fails to materialize in practice, creating a gap between legal norms and social realities. This article seeks to explore the disjunction between the legal texts that guarantee gender equality and the persistent discrimination experienced by women, focusing on unequal access to social and economic justice as well as legal protections that do not lead to genuine empowerment. This study employs a doctrinal legal research method with a critical theoretical approach, specifically feminist legal theory and critical justice theory. The author critiques the Bangladeshi legal system, which continues to operate within a masculine and patriarchal framework, both in its constitutional domain and criminal law. The main findings reveal that although statutes such as the Prevention of Women and Children Repression Act (2000) and the Anti-Dowry Act (1980) provide legal safeguards, women remain marginalized by procedural and structural inequities. The existing legal system is not sufficiently transformative to ensure substantive justice for women. Hence, a more inclusive and transformative legal approach is required to realize genuine equality.

1. Introduction

The Constitution of the People's Republic of Bangladesh of 1972 articulates an ambitious normative framework that enshrines equality, human dignity, and social justice as fundamental state principles.[1] Through provisions such as Articles 10, 27, and 28, the Constitution explicitly prohibits discrimination on the grounds of sex and mandates the State to ensure women's participation in all spheres of national life.[2] These provisions project a vision of inclusive constitutionalism, a legal order committed to transforming gender relations and dismantling historical hierarchies. Yet, in practice, this constitutional ideal of gender equality often remains a symbolic promise rather than a lived reality. The dissonance between constitutional text and institutional practice reveals a paradox deeply embedded within Bangladesh's legal order: women are recognized as equal legal subjects in principle but are treated as subordinate actors in practice.

This paradox underscores a structural failure that extends beyond administrative inefficiency or gaps in enforcement. Rather, it points to a deeper epistemological tension within the legal system itself. Law in Bangladesh, while professing neutrality and universality, continues to operate within a framework that privileges patriarchal assumptions about

[1] Jamila Ahmed Chowdhury, "Rights in Law and in Practice: The Case of Bangladesh," *Www.Hurights.or.Jp*, June 2003, https://www.hurights.or.jp/archives/focus/section2/2003/06/rights-in-law-and-in-practice-the-case-of-bangladesh.html.
[2] Serajul Islam, "Women's Rights and Discrimination in Bangladesh," *Www.Dhakatribune.Com*, July 9, 2013, https://www.dhakatribune.com/opinion/op-ed/30529/women%E2%80%99s-rights-and-discrimination-in-bangladesh.

morality, authority, and justice. As a result, constitutional guarantees are continuously undermined by the persistence of gender-biased legal norms and the dominance of religious and cultural interpretations that reinforce women's subordination. This condition transforms the constitutional commitment to equality into an abstract ideal, detached from the lived experiences of women who remain systematically marginalized by the very institutions designed to protect them.

Empirical evidence substantiates this critique. Recent scholarship has shown that Bangladesh's legal system perpetuates gender inequality through deeply entrenched patriarchal structures that contradict its constitutional commitments. Sohel Rana et al.[3] identify structural barriers within the criminal justice system, demonstrating how procedural inefficiencies and gender bias in law enforcement negate constitutional safeguards. Nazmun Sakib Ety et al.[4] highlight that women, especially in rural and marginalized communities, continue to face severe obstacles to accessing justice, shaped by sociocultural norms, institutional discrimination, and economic dependency. Zahidul Islam et al.[5] further reveal that, although Bangladesh has enacted several laws addressing gender-based violence, such as the Domestic Violence (Prevention and Protection) Act 2010 and the Nari O Shishu Nirjatan Daman Ain, their implementation is compromised by systemic deficiencies and patriarchal enforcement practices. Subrata Banarjee et al.[6] additionally expose critical gaps in laws dealing with sexual offenses, demonstrating that these instruments fail to meet international standards of gender justice and victim protection. Collectively, these studies confirm that legal reform, when pursued within the boundaries of the existing positivist framework, is insufficient to achieve substantive equality. The persistence of inequality thus reflects not only an implementation deficit but also an epistemological failure in how law conceptualizes justice itself.

This article departs from the assumption that Bangladesh's legal system continues to function under a rigid positivist paradigm that isolates law from its socio-political context. Positivism's claim to objectivity and neutrality obscures the lived realities of women, treating their marginalization as external to the law rather than a product of it. By separating "law as it is" from "law as it ought to be," positivism conceals the structural violence embedded within legal institutions and legitimizes the exclusion of women's voices from legal discourse. Consequently, the law becomes complicit in reproducing patriarchal hierarchies, even while proclaiming equality. This article therefore aims to bridge constitutional analysis with feminist legal theory to expose the epistemic foundations of gender-based injustice that are institutionalized through both explicit legal texts and implicit interpretive practices.

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[3] Sohel Rana, Tuhin Mia, and Maruf Billah, "Justice, Human Rights, and Legal Reform," *Isagoge - Journal of Humanities and Social Sciences* 5, no. 1 (August 29, 2025): 302–30, doi:10.59079/isagoge.v5i1.267.

[4] Nazmun Sakib Ety and Badsha Mia, "Access to Justice for Women: A Comparative Study between Subarnachar and Begumganj Upazila of Noakhali District," *Daengku: Journal of Humanities and Social Sciences Innovation* 4, no. 5 (September 14, 2024): 900–908, doi:10.35877/454RI.daengku2959.

[5] Zahidul Islam, "The Effectiveness of Bangladesh's Current Legal and Institutional Arrangements for Combating Violence Against Women: A Qualitative Study," *International Journal of Social Science, Technology and Economics Management* 2, no. 1 (2024), doi:10.59781/5051BUDN.

[6] Subrata Banarjee, "A Critical Analysis of How Sexual Violence against Women Is Defined and Addressed within Existing Legal Instruments in Bangladesh," *Journal of Gender-Based Violence* 8, no. 2 (June 2024): 232–49, doi:10.1332/23986808Y2024D000000028.

Feminist legal theory provides the analytical lens through which this contradiction can be unraveled. Catharine MacKinnon argues that law itself is a reflection of male power, masquerading as neutrality while reinforcing gender hierarchies through its language, categories, and procedures.[7] Martha Fineman's vulnerability theory, meanwhile, critiques the liberal assumption of the autonomous legal subject and demands a relational understanding of justice that accounts for structural dependency and care.[8] Hilary Charlesworth extends this critique into the realm of international law, emphasizing that the very epistemology of law has been constructed through masculine norms that marginalize women's perspectives.[9] Together, these feminist thinkers challenge the positivist conception of law as a detached and universal rationality, proposing instead that justice must be grounded in the recognition of gendered experiences and relational inequalities.

In Bangladesh, the insights of these theorists are crucial for reinterpreting constitutional commitments beyond formal equality. The persistence of gender inequality in family law, inheritance law, and criminal law demonstrates how patriarchal epistemologies continue to shape both the content and interpretation of legal norms. Family law often reinforces male guardianship and restricts women's autonomy; inheritance law privileges male heirs under religious justifications; and criminal law frequently normalizes sexual violence by privileging moral reputation over victim protection. These legal practices exemplify what feminist scholars term structural violence, forms of harm that are normalized and legitimized through institutional arrangements. Hence, the law not only mirrors but also sustains patriarchal power.

The novelty of this article lies in its epistemic reconstruction of justice within the Bangladeshi constitutional framework. While prior studies have focused on descriptive analyses of discrimination or procedural shortcomings, this research advances the discourse by interrogating how the very rationality of law contributes to gender inequality. It contends that achieving gender justice in Bangladesh requires more than legislative reform; it demands a fundamental transformation in how justice itself is theorized and practiced. By situating the Bangladeshi experience within feminist legal and critical justice theories, this study seeks to illuminate the hidden structures of power that shape law's claim to universality and neutrality. Accordingly, the central questions guiding this inquiry are: to what extent has Bangladesh's legal system succeeded, or failed, to function as an emancipatory instrument for women? And can genuine gender equality be realized without first deconstructing the patriarchal epistemologies that constitute the very foundation of legal reasoning?

2. Methods

The focus of this study lies in the identification, interpretation, and evaluation of positive legal norms relating to women's rights in Bangladesh, particularly within the framework of the Constitution, statutory laws, and international legal instruments ratified by the State. Accordingly, this research consciously adopts the framework of Critical Legal Studies (CLS),

[7] Catharine A. MacKinnon, "Toward Feminist Jurisprudence," in *Living with Contradictions* (Routledge, 2018), 34–39, doi:10.4324/9780429499142-4.
[8] Martha Albertson Fineman, "Vulnerability and Inevitable Inequality," *Oslo Law Review* 4, no. 3 (December 15, 2017): 133–49, doi:10.18261/issn.2387-3299-2017-03-02.
[9] Hilary Charlesworth, Christine Chinkin, and Shelley Wright, "Feminist Approaches to International Law," *American Journal of International Law* 85, no. 4 (October 27, 1991): 613–45, doi:10.2307/2203269.

with particular emphasis on Feminist Legal Theory and Critical Justice Theory as analytical tools. This approach enables the articulation of epistemic violence and internalized patriarchal domination embedded within legal texts, while also exploring how the law not only regulates but also reproduces asymmetrical power relations between men and women.

3. Results and Discussion

3.1. Constitutional Rights of Women under Bangladeshi Law

The Constitution of the People's Republic of Bangladesh (1972) explicitly embodies a commitment to the principles of equality and non-discrimination, which, in normative terms, ought to serve as the foundation of a just and inclusive legal system.[10] Several constitutional provisions merit close examination, particularly Articles 10, 19(1), 27, 28(1), and 28(2), which declaratively affirm guarantees of participation, equality of opportunity, and equal legal protection for all citizens regardless of sex.[11]

1. Analysis of Constitutional Norms

Article 10 provides that "The State shall take steps to ensure participation of women in all spheres of national life." This formulation carries a promotional and ostensibly progressive tone; however, it remains declaratory in nature and lacks any imperative legal force that can be enforced through judicial mechanisms. As such, this provision functions more as a non-justiciable political aspiration than as an operative legal norm.

Article 19(1) further stipulates that "The State shall endeavor to ensure equality of opportunity for all citizens." The phrase "shall endeavor to ensure" signifies a soft normative character, allowing the State broad discretion in implementation. This raises fundamental concerns regarding the effectiveness of constitutional mandates when framed as aspirational clauses devoid of enforceable accountability mechanisms.

Article 27 declares that "All citizens are equal before the law and are entitled to equal protection of the law." This provision reflects an acknowledgment of the principle of formal equality, which constitutes a cornerstone of the rule of law tradition. Nevertheless, this approach to equality has long been criticized for its inability to redress inequalities entrenched within patriarchal social and cultural systems.

Articles 28(1) and 28(2) provide a more direct normative foundation for addressing gender-related issues. Article 28(1) states that "The State shall not discriminate against any citizen on grounds of religion, race, caste, sex, or place of birth." Meanwhile, Article 28(2) affirms that "Women shall have equal rights with men in all spheres of the State and of public life." While these provisions appear promising in textual terms, a critical question arises: Does the mere existence of equality clauses suffice to guarantee justice in legal and social practice?

2. Between Constitutional Rhetoric and Operational Reality

[10] Ridwanul Hoque, "Gender and the Legal Profession in Bangladesh: Achievements and Challenges," *NAVEIÑ REET: Nordic Journal of Law and Social Research*, no. 3 (December 1, 2015): 45–64, doi:10.7146/nnjlsr.v0i3.111105.

[11] Naznin Huq and Md. Rifat-Ur-Rahman, "Justification of The United Nations Organization's CEDAW Charter in Ensuring Women's Rights in Bangladesh," *ABC Journal of Advanced Research* 8, no. 2 (2019): 59–66, doi:10.18034/abcjar.v8i2.88.

An examination of the aforementioned constitutional provisions reveals a sharp dichotomy between textual interpretation and operational reality.[12] While the Constitution appears to guarantee broad rights for women, these provisions have failed to translate into affirmative policies, effective protection mechanisms, or consistent judicial decisions that uphold the interests of victims of gender inequality.[13]

For instance, although Article 28(2) promises equal rights for women, in practice, Islamic inheritance law as applied in Bangladesh continues to allocate women half the share of men.[14] This represents a clear normative dissonance between constitutional law and sectoral law, wherein the hierarchically superior constitutional norms are not reflected consistently across the national legal framework.

Moreover, the absence of an effective mechanism for judicial review of policies or administrative actions that de facto discriminate against women renders the constitutional guarantee of equality devoid of operative force. Judges often adopt a formalistic and legalistic approach, without probing the structural inequalities underlying such cases. Consequently, the Constitution risks being reduced to a non-performative normative text—symbolically progressive, yet substantively inert.

3. Challenging the Illusion of Legal Neutrality

When the law proclaims equality yet fails to ensure equal access to resources, protection, and social recognition, what emerges is not emancipatory justice but rather a simulacrum of equality, an illusion of fairness sustained by the formalism of legal reasoning. It is in this context that the critique of legal positivism becomes particularly salient: the law must not be read solely through its textual articulations but also through its silences, through what is unsaid and through those who are rendered voiceless.

Accordingly, the fundamental question arises: Does the mere existence of equality clauses in the Constitution genuinely guarantee justice for women in Bangladesh? Or, conversely, do these constitutional provisions function as legalistic veneers, concealing the patriarchal power relations that continue to operate beneath the surface of the legal system? This inquiry not only challenges the structural foundations of positive law but also calls for a paradigmatic shift toward transformative constitutionalism, a model of constitutionalism that actively pursues justice through redistribution, recognition, and meaningful participation.[15]

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[12] Nazmun Sakib Ety and Badsha Mia, "Access to Justice for Women: A Comparative Study between Subarnachar and Begumganj Upazila of Noakhali District," *Daengku: Journal of Humanities and Social Sciences Innovation* 4, no. 5 (September 14, 2024): 900–908, doi:10.35877/454RI.daengku2959.

[13] Mitali Jahan, "How Legal Change Happened through Effective Policy Advocacy in Bangladesh: Adoption of the Domestic Violence Law," *Asian Journal of Women's Studies* 23, no. 3 (July 3, 2017): 401–10, doi:10.1080/12259276.2017.1351590.

[14] Issa Khan et al., "The Right of Women in Property Sharing in Bangladesh: Can the Islamic Inheritance System Eliminate Discrimination?," *SpringerPlus* 5, no. 1 (December 3, 2016): 1695, doi:10.1186/s40064-016-3347-2; Jinat Hossain and Ishtiaq Jamil, "Equality in Contention: Exploring the Debates of Gender-Equal Inheritance Rights in Bangladesh," *Public Administration and Policy* 25, no. 3 (November 2, 2022): 323–35, doi:10.1108/PAP-08-2021-0049.

[15] Islam, "The Effectiveness of Bangladesh's Current Legal and Institutional Arrangements for Combating Violence Against Women: A Qualitative Study."

3.2. Criminal Law and Women as Objects of Legal Protection

The criminal law of Bangladesh has incorporated various legislative instruments that, in normative terms, are intended to protect women from acts of violence and inhuman treatment. Nevertheless, an inherent paradox characterizes this legal approach: paternalistic protection has seldom translated into substantive empowerment. Women are positioned as objects of state sympathy, rather than as autonomous subjects possessing full legal capacity. From this perspective, the law functions not as a vehicle of liberation or gender justice, but rather as a mechanism that reinforces women's subordinate status within the legal and social order.

1. Analysis of Legal Protection Instruments

Three principal legal instruments are central to the framework of criminal law protection for women in Bangladesh:

a. The Penal Code of 1860

As a product of colonial legislation, the Penal Code 1860 regulates various offences against women, including rape (Section 375), domestic violence, and sexual harassment. However, the restrictive legal definition of rape, together with the exemption of marital rape, reflects the patriarchal bias embedded in its legal construction. Women within the domestic sphere are not recognized as sovereign individuals possessing autonomy over their own bodies, but rather as extensions of the husband's property, bound by the marital contract.

b. The Anti-Dowry Prohibition Act of 1980

This statute criminalizes both the giving and receiving of dowry; however, its implementation remains weak and susceptible to misuse. Frequently, women who suffer violence related to dowry demands experience secondary victimization at the hands of law enforcement officials, who question the morality or personal integrity of victims. Legal enforcement often prioritizes family-based mediation or compromise rather than the imposition of criminal sanctions on perpetrators, thereby legitimizing violence as an acceptable component of domestic relations.

c. The Prevention of Repression Against Women and Children Act of 2000 (Nari o Shishu Nirjatan Daman Ain)

As a relatively progressive legal instrument, this Act covers a wide range of offences against women, including rape, abduction, human trafficking, and acid attacks. Although its textual provisions appear comprehensive, the implementation in practice reveals numerous violations of women's rights within judicial proceedings. High evidentiary burdens, social pressure against reporting, and intimidation of witnesses and victims all contribute to perpetrator impunity and the prolonged trauma experienced by women survivors.

2. Critique of the Relationship between Law and Gender

The relationship between law and gender within Bangladesh's criminal justice system reveals a profound paradox: the very institution that purports to serve as an instrument of justice simultaneously functions as a mechanism for reproducing women's subordination.[16]

[16] Afroza Begum, "Dowry in Bangladesh: A Sear y in Bangladesh: A Search from an International P Om an International Perspectiv Erspective for an E for an Effective Legal Appr e Legal Approach to Mitigate W o Mitigate Women's Experiences s Experiences," *Journal of International Women's Studies* 15, no. 2 (July 2014): 249–67, https://vc.bridgew.edu/cgi/viewcontent.cgi?article=1771&context=jiws; F. D. Chowdhury, "Dowry, Women, and Law in Bangladesh," *International Journal of Law, Policy and the Family* 24, no. 2 (August 1, 2010): 198–221, doi:10.1093/lawfam/ebq003; Banarjee, "A Critical Analysis

The three principal legislative instruments, the Penal Code 1860, the Anti-Dowry Prohibition Act 1980, and the Prevention of Repression Against Women and Children Act 2000, constitute the loci of this contradiction, wherein the law presents itself as protective in normative discourse while, in practice, preserving patriarchal foundations.

As Catharine A. MacKinnon critiques, law is constructed from the male perspective as the "universal standard", rendering women's experiences a deviation from the legal norm. The Penal Code 1860, as a colonial artifact, exemplifies this logic: women are not treated as sovereign subjects over their own bodies, but as elements of the marital contract that safeguards male proprietary rights. The exemption of marital rape reinforces the notion that a woman's body within marriage lies beyond the domain of legal autonomy. Consequently, the law not only ignores sexual violence within domestic spaces but also epistemically erases women as autonomous moral and juridical entities.

Meanwhile, under the Anti-Dowry Prohibition Act 1980, the law appears to side with women while leaving the underlying power structures untouched. Drawing on Martha Fineman's vulnerability theory, it becomes evident that a merely protective legal framework fails to address the institutional roots of inequality. In the Bangladeshi context, the State constructs women as "vulnerable subjects" requiring paternalistic protection, rather than as political actors capable of negotiating power relations.[17] The widespread reliance on "family mediation" in place of criminal prosecution underscores the dominance of patriarchal moral values over legal principles of justice, an expression of benevolent sexism that masks structural injustice beneath the rhetoric of moral protection.

In the case of the Prevention of Repression Against Women and Children Act 2000, Hilary Charlesworth has highlighted how both international and domestic legal systems often disregard the gendered structures of power that determine who gains access to justice. Although the Act appears progressive in textual terms, its implementation reveals entrenched barriers: onerous evidentiary burdens, institutional bias, and intimidation of victims and witnesses demonstrate that the judicial process continues to operate within a masculine framework, privileging control over justice. Women are positioned not as legal subjects with agency, but as objects awaiting the benevolence of legal institutions.

Ultimately, the Bangladeshi criminal justice system represents a form of symbolic protectionism, providing formal protection for women while refusing to dismantle the structural bases of patriarchy. Protection without empowerment merely reinforces the myth of the State as a "moral guardian" rather than a guarantor of justice.[18] Thus, the relationship between law and gender in Bangladesh exposes the law as an ideological terrain, wherein patriarchy is institutionalized and perpetuated through the language of legal norms.

3. Procedural Inequality within the Criminal Justice System

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of How Sexual Violence against Women Is Defined and Addressed within Existing Legal Instruments in Bangladesh."

[17] Farida C. Khan, "Gender Violence and Development Discourse in Bangladesh," *International Social Science Journal* 57, no. 184 (June 17, 2005): 219–30, doi:10.1111/j.1468-2451.2005.546.x; Sohela Nazneen, "The Politics of Promoting Gender Equity in Bangladesh," *SSRN Electronic Journal*, 2017, doi:10.2139/ssrn.2956423.

[18] Islam, "The Effectiveness of Bangladesh's Current Legal and Institutional Arrangements for Combating Violence Against Women: A Qualitative Study."

Procedural inequality within Bangladesh's criminal justice system constitutes a concrete manifestation of patriarchal power relations institutionalized through law. Women who are victims of violence confront not only their perpetrators but also a legal structure imbued with gender bias. These obstacles emerge from the very first stage of reporting through to adjudication, where each legal mechanism reflects the reproduction of social hierarchies legitimized under normative frameworks.

As Catharine A. MacKinnon argues, law is constructed from a male perspective that defines women's experiences through the lenses of sexual domination and patriarchal morality. The burden of proof placed upon victims of sexual violence is a clear example of the law's androcentric bias; the female body becomes the object of judgment rather than the locus of harm requiring protection. Instead of assessing the conduct of perpetrators, legal officers often scrutinize the victim's "character" and "modesty," transforming legal proceedings into arenas of symbolic violence that humiliate women and perpetuate structural injustice.

Martha Fineman reminds us that women's vulnerability is not a natural condition but a social construct arising from the institutional failures of the state to create inclusive systems of protection. The absence of comprehensive witness and victim protection mechanisms in Bangladesh demonstrates the state's failure to acknowledge vulnerability as a structural responsibility. Instead, the legal system treats women as isolated individuals who must shoulder the burden of proof and social repercussions alone. In several cases, victims of sexual violence who courageously report their experiences face threats, stigmatization, and pressure to "settle" for the sake of family honor, reflecting a form of repression institutionalized through a patriarchal legal culture.[19]

From Hilary Charlesworth's perspective, judicial bias epitomizes the law's failure to interpret justice substantively. She underscores that both international and domestic law often disregard the social contexts within which women experience violence, rendering legal proceedings ostensibly neutral but politically gendered. In Bangladesh, judges and prosecutors frequently reproduce moral norms rooted in patriarchal values, transforming the courtroom from a site of redress into an instrument of social control over women's bodies and behavior.[20]

Under such circumstances, the criminal justice system fails to fulfill its protective function and instead actively sustains gender hierarchies through processes that appear legally formal yet substantively unjust. This procedural inequality signifies that justice for women cannot be achieved within a positivistic and moralistic legal framework. A reconstruction of

[19] Udita Barua and Mohammad Belayet Hossain, "Patriarchy and the Rights of Rape Victims: Law and Practice," *Lex Publica* 9, no. 1 (January 30, 2022): 79–93, doi:10.58829/lp.9.1.2022.79-93; Md. Syedur Rahaman Sumon et al., "An Overview of Sexual Assault Cases in Bangladesh," *International Journal of Ethics, Trauma & Victimology* 6, no. 01 (August 16, 2020): 10–14, doi:10.18099/ijetv.v6i01.2; Shuprova Tasneem, "Amid Waves of Protest, Bangladeshi Media Erased Victims in 49% of Reporting on Sexual Violence," *Reutersinstitute.Politics.Ox.Ac.Uk*, September 13, 2022, https://reutersinstitute.politics.ox.ac.uk/amid-waves-protest-bangladeshi-media-erased-victims-49-reporting-sexual-violence.

[20] Sara Hossain, "Public Interest Litigation on Violence against Women in Bangladesh," in *Gender, Violence and the State in Asia* (New York: Routledge, 2016), 119–33, doi:10.4324/9781315656731-8.

the law grounded in gender-sensitive justice is imperative, one in which law not only enforces rules but also challenges the social structures that perpetuate women's subordination.

3.3. Discriminatory Legal Practices and Structural Violence

Behind the constitutional narrative of equality and rights protection, the legal practices in Bangladesh reveal systemic and structured forms of discrimination, particularly in the implementation of gendered laws. Such discrimination does not always manifest within the formal text of the law but materializes in judicial and social practices that sustain unequal power relations between men and women. In this regard, law functions not merely as a normative instrument but as an arena of ideological contestation, where patriarchal values operate implicitly through interpretation, application, and even the omission or selective enforcement of law.

In divorce proceedings, procedural inequality becomes particularly evident.[21] Under the Islamic family law system adopted by the state, a husband may unilaterally pronounce talaq without the need to prove any grounds or obtain judicial authorization. In contrast, a wife seeking to dissolve the marriage through khula or other forms of marital termination is required to initiate court proceedings and substantiate her claim with "valid" reasons as defined by patriarchal standards.[22] This represents a manifestation of procedural inequality legitimized by positive law, which substantively places women in an inferior position, both legally and socially. In practice, women bear a significantly heavier moral, social, and administrative burden than men, resulting in a low rate of divorce petitions filed by women, even in cases involving abuse or coercive relationships.

Similarly, in matters of inheritance under Islamic law, women systematically receive only half of the male share, justified by the traditional argument that men bear financial responsibility.[23] This reasoning, rooted in a medieval socio-economic context, continues to serve as a normative reference without accounting for the structural transformation of women's roles in contemporary society. Such a provision institutionalizes economic inequality and restricts women's access to productive resources. Even when women actively contribute to family income or serve as the primary financial providers, inheritance law fails to recognize their contributions equitably. Consequently, the law of inheritance functions as an instrument of economic exclusion, perpetuating women's subordination under the guise of religious legitimacy.

Furthermore, informal legal practices conducted in the name of religion and tradition, such as fatwas issued by unauthorized local authorities in rural communities, have generated

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[21] Shahnewaj Patwari and Abu N. M. A. Ali, "Muslim W Muslim Women's Right t s Right to Divorce and Gender E Ce and Gender Equality Issues in Quality Issues in Bangladesh: A Proposal for Review of Current Laws," *Journal of International Women's Studies* 21, no. 6 (August 2020): 50–79, https://vc.bridgew.edu/cgi/viewcontent.cgi?article=2293&context=jiws; Salma Bibi and Shakeel Ahmed, "The Gendered Landscape of Justice: Institutional Barriers to Women's Khula Rights in District Courts Peshawar, Khyber Pakhtunkhwa," *Journal of Social Sciences Review* 5, no. 1 (March 30, 2025): 267–75, doi:10.62843/jssr.v5i1.489.

[22] Aisha Waraich et al., "Distinction between Khula and Divorce Under Pakistani Law: A Doctrinal Analysis," *The Critical Review of Social Sciences Studies* 3, no. 2 (June 16, 2025): 2370–86, doi:10.59075/d0pmbj21.

[23] Noor Mohammad, "Islamic Law and Women Rights in Bangladesh," *Social Sciences* 2, no. 2 (2013): 22, doi:10.11648/j.ss.20130202.11.

forms of extra-judicial violence against women.[24] These fatwas often impose physical or social sanctions based on vague allegations of "moral misconduct," ranging from supposed illicit relationships to "improper behavior." Women accused under such fatwas have been subjected to flogging, social ostracism, and even death, all without any due legal process. The state, rather than acting as a guarantor of its citizens' constitutional rights, has frequently remained passive, allowing these pseudo-legal powers to operate with impunity. The state's inability, or unwillingness, to act against fatwas that violate the principles of due process and equality before the law represents a tacit collusion with patriarchal authority rooted in tradition.[25]

This phenomenon reflects the structural failure of the state to consolidate the principle of legal monism, which should guarantee the equal rights of all citizens under a single, uniform system of law. Instead, what prevails is a form of asymmetric and exclusionary legal pluralism, in which formal state law coexists with and at times is subordinated to informal, religion- and custom-based legal orders that discriminate against women. The tension between the constitutional principles of equality before the law, as enshrined in Articles 27 and 28 of the Constitution, and the persistence of legal pluralism has never been genuinely resolved by the state. On the contrary, in the name of social stability or as a political concession to conservative groups, the state often opts for compromise, even at the expense of women's constitutional rights. In doing so, the state not only fails to protect women but actively participates in the reproduction of their subordination by legitimizing pseudo-legal authorities. When the state endorses or tolerates discriminatory practices under the pretext of preserving social harmony or respecting local wisdom, it effectively facilitates the reproduction of structural violence. Consequently, law becomes the arena through which patriarchal ideology is entrenched, manifesting itself in the forms of "norms," "traditions," and "religious values" that are rendered immune to critique.

3.4. Violence as an Instrument of Domination: The State, Society, and the Female Body

Violence against women cannot be understood merely as an aberration of individual behavior; it must be recognized as a product of institutionalized structures of domination. Gender-based violence—whether occurring in private or public spaces—functions as a mechanism of power designed to subjugate women's bodies and reaffirm their inferiority within the social hierarchy. Empirical data consistently reveal that the female body serves as a battleground of patriarchal power—sanctioned by law, neglected by the state, and normalized by society.

Statistical evidence of violence against women presents a deeply alarming picture that indicates systemic patterns. Reports from ODHIKAR and other non-governmental organizations record thousands of cases each year, including rape, domestic violence, acid attacks, and the trafficking of women and children.[26] As documented in limited-circulation annual reports, in 2002 alone, there were 3,189 reported cases of rape, not including the many

[24] Md. Manjur Hossain Patoari, "Socio-Economic and Cultural Causes and Effects of Increasing Divorce Rate by Women in Bangladesh: A Critical Analysis," *Asian Journal of Social Science Studies* 5, no. 1 (February 4, 2020): 21, doi:10.20849/ajsss.v5i1.713.
[25] Mohammad, "Islamic Law and Women Rights in Bangladesh."
[26] Chowdhury, "Rights in Law and in Practice: The Case of Bangladesh."

incidents that go unreported due to shame, familial pressure, or distrust of law enforcement.[27] Acid attacks, often used to "punish" women who reject marriage proposals, assert bodily autonomy, or resist social control, continue to increase annually.[28] Simultaneously, the trafficking of women, both across borders and within Bangladesh, persists through increasingly sophisticated networks that exploit structural vulnerabilities such as poverty, limited education, and unequal access to legal protection.

This violence persists not merely because of legal deficiencies but because the state has failed to act as a protector of women's fundamental rights to safety and dignity. The state neglects its constitutional duty as a protector of rights, instead assuming the role of an absent protector, invisible when patriarchal violence assaults women's bodies, yet ever-present with restrictive regulations when women seek to reclaim their autonomy. Unfriendly reporting mechanisms, biased evidentiary standards, social stigmatization of victims, and the moral criminalization of women who defy conservative norms all reveal how the state itself has become an integral part of the ecosystem of violence.

In this power configuration, the female body is never its own sovereign territory. It is subject to multiple layers of control: domestic control by family and partners, communitarian control through social and religious norms, and institutional control by the state through repressive and paternalistic laws. Violence against women, therefore, is not merely a criminal act but a modus operandi of patriarchal domination, in which fear, shame, and powerlessness are deliberately cultivated to ensure the reproduction of submission.

This phenomenon demonstrates that the female body in Bangladesh constitutes a locus of power, where patriarchal ideology operates in its most concrete form. Women's bodies are shaped, regulated, and controlled through mutually reinforcing legal and social narratives, from dress codes and restrictions on mobility to punitive laws and discriminatory moral norms.[29] Justice for women will not be achieved through legal ratification alone or the mere creation of new statutory instruments, but through a transformation of power relations that have long rendered the female body a political object and an instrument of social control.

Violence against women in Bangladesh thus reflects a pathology of law and the state, a legal order that is textually neutral yet structurally biased, and a state that is constitutionally declarative yet operationally patriarchal.[30] As long as the female body remains a site of unfreedom, justice will continue to be cosmetic rather than substantive, a façade of equality masking the persistence of systemic subordination.

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[27] Bimal Kanti Paul and Syed Abu Hasnath, "Trafficking in Bangladeshi Women and Girls," *Geographical Review* 90, no. 2 (April 2000): 268, doi:10.2307/216125.
[28] Afroza Anwary, "Acid Violence And Medical Care In Bangladesh," *Gender & Society* 17, no. 2 (April 1, 2003): 305–13, doi:10.1177/0891243202250851.
[29] Shireen Huq, "My Body, My Life, Whose Rights? – Bangladeshi Women's Struggle for a Fair Deal," *Contemporary South Asia* 20, no. 1 (March 2012): 11–18, doi:10.1080/09584935.2011.646078.
[30] Najma Chowdhury, "The Politics of Implementing Women's Rights in Bangladesh," in *Globalization, Gender, and Religion* (New York: Palgrave Macmillan, 2001), 203–30, doi:10.1007/978-1-137-04378-8_9.

3.5 Inequality in Access to Social and Economic Justice

Justice is actualized through equal access to social and economic rights, as well as the capacity to exercise such rights within a fair and responsive institutional framework.[31] In Bangladesh, women face structural and intersecting barriers in attaining social and economic justice, which in turn deepen inequality and perpetuate systemic exclusion. These disparities do not stem merely from administrative negligence but from a socio-legal configuration that legitimizes and institutionalizes inequality.

In the field of education, despite notable progress in female participation at the primary level, dropout rates remain high at secondary and higher levels, particularly in rural areas. Contributing factors include early marriage, poverty, and cultural norms that continue to devalue girls' education as a non-priority.[32] This educational gap has a direct impact on women's limited access to decent employment opportunities and their restricted participation in the formal labor sector, where legal protections and social security are guaranteed. When women remain trapped in the informal economy, a sector largely unregulated by labor law, they are structurally excluded from fundamental rights such as fair wages, job security, and protection against exploitation.

Limited access to asset ownership and economic resources constitutes another dimension of injustice often overlooked in normative legal analysis. Ownership of land, inheritance, or even bank accounts remains overwhelmingly dominated by men, both as a consequence of discriminatory legal legacies and of social norms that constrain women's authority in economic decision-making.[33] When the law requires collateral to access credit or bank loans, and such assets are de facto controlled by men, women are effectively locked out of the formal financial system. The result is a systematic and sustained financial exclusion that entrenches women's economic dependence.

Moreover, Bangladesh's law enforcement and judicial institutions, including the courts, police, and prosecution, are still overwhelmingly male-dominated, both quantitatively and normatively. Gender imbalance within the power structure of the legal system leads to judicial processes that fail to reflect or respond to women's lived experiences and needs. Female representation among judges and prosecutors remains strikingly low, while at the police level, many victims of gender-based violence are reluctant to report crimes due to experiences of discrimination, trivialization, or even harassment by officers. The absence of a gender-sensitive justice perspective within the legal administrative process renders women not only marginalized as seekers of justice but also re-victimized by the system itself.

This situation reflects the state's failure to construct a legal system that is inclusive and responsive to the complexities of women's experiences. The principle of gender-sensitive justice, which recognizes the social, biological, and structural differences between men and women, has been sidelined by a rigid, formalistic, and androcentric legal approach. In other

[31] Patoari, "Socio-Economic and Cultural Causes and Effects of Increasing Divorce Rate by Women in Bangladesh: A Critical Analysis."
[32] Chowdhury, "The Politics of Implementing Women's Rights in Bangladesh."
[33] Patoari, "Socio-Economic and Cultural Causes and Effects of Increasing Divorce Rate by Women in Bangladesh: A Critical Analysis."

words, when the law acknowledges equality only in a normative sense, without intervening in the structural inequalities that shape social reality, justice remains an illusion.

Inequality in access to social and economic justice is not an accidental or incidental phenomenon; it is the logical consequence of a legal system never designed to disrupt patriarchal dominance. In this respect, the state has not only failed to rectify inequalities but has actively reinforced them through inaction, absence, and resistance to equality-based reform. Hence, the reformulation of the legal system must extend beyond mere regulatory amendment; it must penetrate the structural and institutional cultures that construct justice as a privilege, rather than a universal right.

4. Conclusions

Although the principles of equality are enshrined in Articles 10, 19(1), 27, and 28 of the 1972 Constitution, the effective implementation of these rights is frequently obstructed by structural and procedural barriers that remain insensitive to the realities of women's lives. Criminal and protective laws concerning women, while present, tend to operate more as instruments of protection than of empowerment, positioning women as passive objects of legal concern rather than as active subjects of rights. Discriminatory practices in matters of divorce, inheritance, and fatwas issued by religious authorities illustrate that, despite the existence of a legal framework recognizing equality, women continue to be systematically relegated to an inferior position, both within the formal legal system and in the informal domains of social regulation. The law, which should serve as a mechanism for redressing inequality, instead perpetuates it by allowing patriarchal power to govern women's bodies, manifested through domestic violence, gender-based violence, and entrenched discriminatory traditions that the state has consistently failed to effectively intervene against.

Without a transformative legal approach, one that transcends mere regulatory reform and seeks to deconstruct the underlying social and cultural structures of domination, justice for women in Bangladesh will remain an unfulfilled promise. A more profound and inclusive reform is required to ensure that justice becomes a lived reality for women, rather than a constitutional abstraction. Only then can women genuinely exercise their rights on an equal footing, free from violence and discrimination, and empowered to access justice and resources on equitable terms.

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