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## **A CRITICAL ANALYSIS OF GENDER INEQUALITY IN THE CRIMINAL JUSTICE SYSTEM OF BANGLADESH**

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### **ABSTRACT**

Women are often considered a vulnerable section of society. They require special legislation, provisions, and exemptions. Although such measures may appear to violate the principle of equality, they are often necessary. Many laws have been enacted to protect women's rights, and various provisions have been introduced for this purpose. However, with the increasing involvement of women in socio-economic activities, such legislation, provisions, and exemptions are sometimes being misused. False claims are made, and false evidence is presented. These exemptions may contribute to an increase in female criminality, and habitual offenders may be encouraged. Therefore, misuse needs to be addressed, and any unfair advantage should be prevented. This paper focuses on how these provisions are misused and the consequences of such misapplication. It does not recommend eliminating special exemptions but suggests that they should be applied with caution and care, so that justice can be ensured for genuine victims.

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## Introduction:

Equality before law is a basic principle of Rule of Law and cornerstone of justice. It refers to treat every individual equally.<sup>3</sup> Social engineers always focus on equality of male- female, religion and races. The Constitution of Bangladesh guarantees equal Protection of the law to all citizens regardless of sex or status.<sup>4</sup> However, certain provisions within the criminal laws of Bangladesh reveal the existence of gender- based distinctions in the infliction of punishment.<sup>5</sup> These disparities raise important questions regarding fairness, equality and the compatibility of such legal provisions with modern human rights standards.<sup>6</sup> Traditionally, many criminal justice systems incorporated gender-specific rules influenced by social perceptions of women as physically weaker or in need of special protection.<sup>7</sup> Consequently, certain laws provide differential treatment for men and women in relation to criminal liability and punishment. An example is the prohibition of executing a death sentence on a pregnant woman, reflecting humanitarian consideration rather than strict equality in punishment. In contrast, the rate of female criminality is increasing day by day.<sup>8</sup> Recently, women have also been involved in murder, conspiracies, and drug dealing, which are very alarming.<sup>9</sup> The Inclusion of differential punishment in criminal law may unintentionally facilitate the commission of offences by women. While such provisions may appear protective in nature, they also generate debates about gender disparity within the criminal justice system.<sup>10</sup> Many analysts argue that differential punishment based solely on gender may conflict with the principle of equal justice. Alternatively, some proponents contend that certain differences are justified to safeguard maternal health, dignity, and broader humanitarian concerns. This study

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<sup>3</sup> AV Dicey, *Introduction to the Study of the Law of the Constitution* (8th edn, Macmillan 1915) 198; Universal Declaration of Human Rights 1948, art 7; International Covenant on Civil and Political Rights 1966, art 26.

<sup>4</sup> The Constitution of the People's Republic of Bangladesh, art 27.

<sup>5</sup> The Penal Code 1860, s 497; The Code of Criminal Procedure 1898, s 382; Raisa Shahid, 'An Analysis of the Penal Provision on Adultery in Light of Gender Equality and the Constitution' *Dhaka Law Review* (29 October 2024) <https://www.dhakalawreview.org/blog/2024/10/an-analysis-of-the-penal-provision-on-adultery-in-light-of-gender-equality-and-the-constitution-6561> accessed 30 April 2026.

<sup>6</sup> The Constitution of the People's Republic of Bangladesh, arts 27–28; International Covenant on Civil and Political Rights 1966, art 26; Convention on the Elimination of All Forms of Discrimination against Women 1979, art 15.

<sup>7</sup> Deborah E Roberts, 'The Meaning of Gender Equality in Criminal Law' (1994) 85(1) *Journal of Criminal Law and Criminology* 1 <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6806&context=jclc> accessed 30 April 2026.

<sup>8</sup> Sadia Tabassum, Punam Chakrabarty, 'Female Criminality in Bangladesh: Causes, Patterns and Preventive Measures' (2024). Volume 6 issue 5, *IJFMR*

<sup>9</sup> Ibid.

<sup>10</sup> Estelle B Freedman, 'The Prison Lesbian: Race, Class, and the Construction of the Aggressive Female Homosexual, 1915–1965' (1996) 22(2) *Feminist Studies* 397; Audrey Fraga, 'Gender Disparities in Criminal Sentencing' (PhD dissertation, Ohio State University 2020) 13.

seeks to analyze the gender based differences in the imposition of punishments under Bangladeshi laws and their probable consequences.

### **Research Methodology:**

This research adopts a qualitative research methodology to analyze gender inequality in criminal law within the legal framework. The study primarily relies on the examination of statutory provisions, constitutional principles, and judicial decisions that reflect gender based disparities in the enforcement of criminal laws. The study is based on secondary sources of data which include primary legal sources like constitutional law, penal laws, criminal procedural laws and judicial decisions. It also includes information collected from books, scholarly articles, reports published by national and international organizations etc. The collected materials are analyzed through critical analysis. The study evaluates how existing penal laws are applied in practice and whether they produce discriminatory outcomes or not.

### **Gender Equality:**

Gender equality requires that individuals be treated equally under the law regardless of their gender. The principle of equality before the law, which is incorporated in the constitution, implies that every person is subject to the same legal standards and protections.<sup>11</sup> In the context of criminal justice, this principle demands that criminal liability and punishment be determined solely on the basis of the offence committed rather than the gender of the offender. However, many legal systems have historically treated men and women differently due to prevailing social norms and perceptions. In certain circumstances, differential treatment has been justified on the ground of physical differences, as women often have been perceived as physically weaker and therefore deserving of more lenient punishment. Nevertheless, such distinctions may sometimes create opportunities for offenders to evade appropriate punishment. For instance, in Bangladesh, no death sentence has been carried out against a woman<sup>12</sup>. Historically, women were often regarded as less competent and inferior to men. Indeed, many early criminologists paid little attention to female criminality and did not seriously consider

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<sup>11</sup> The Constitution of the People's Republic of Bangladesh, arts 27–28; Convention on the Elimination of All Forms of Discrimination against Women 1979, art 15.

<sup>12</sup> Views Bangladesh, No precedent of any woman being executed in the country, 18 Nov, 25 <http://viewsbangladesh.com/no-precedent-of-any-woman-being-executed-in-the-country/>>accessed April 7, 2026.

women as potential offenders.<sup>13</sup> Therefore, the indemnities and privileges granted under certain penal provisions require careful reconsideration to ensure that the principles of equality are properly maintained.

### **Legal Framework of Gender Disparity:**

In Bangladesh, there are many laws and order where women are given privileged. Being privileged is not wrong.<sup>14</sup> But committing a crime by taking the advantage of privilege is ruthless. The Constitution of Bangladesh provides for equality before law. However, many other enactments have discriminatory provisions that will be discussed.

**1. The Penal Code, 1860:** The crime of adultery under section 497 of the penal code 1860 has attracted significant criticism due to its gender based implication.<sup>15</sup> Adultery is voluntary sexual intercourse between a married person and someone else other than their spouse. The crime is committed by man and woman. Yet, the code considers only male individual as criminal. Section 497 states that whoever has sexual intercourse with a person who is and whom he knows or has to believe to be the wife of another man, such intercourse not amounting to the offence of rape, is guilty of the offence of adultery.<sup>16</sup> It is clear that the current provision allows only a male to prosecute another male as the offender.<sup>17</sup> The following provision fails to acknowledge the female as accused. Section 497 unequivocally passes on that the adulterous spouse is totally liberated from criminal liability. She is too not to be rebuffed in any event for abetting the offence.<sup>18</sup> Section 497 fails to uphold gender equality and constitutional rights by only penalizing men for adultery. This gender-discriminatory approach is inconsistent with constitutional principles. Moreover, the wife of the adulterer husband is also a victim. But she cannot file a case against her husband. It is also discriminatory. So to resolve these issues, the law should be amended to hold both men and woman responsible for adultery.<sup>19</sup>

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<sup>13</sup>Sadia Tabassum, Punam Chakrabarty, 'Female Criminality in Bangladesh: Causes, Patterns and Preventive Measures' (2024). Volume 6 issue 5, *IJFMR*.

<sup>14</sup> The Constitution of the People's Republic of Bangladesh, arts 28(2), 28(4), 29(3) (c); Convention on the Elimination of All Forms of Discrimination against Women 1979, art 4(1).

<sup>15</sup> The Penal Code 1860, s 497.

<sup>16</sup> K Kamakar and S Rahman, 'An Analysis of the Penal Provision on Adultery in Light of Gender Equality and the Constitution' ( Dhaka Law Review, 29 October 2024) <https://www.dhakalawreview.org> 9 April 2026.

<sup>17</sup> Md. Sakib Hasan, *Causes and Impacts of Adultery on the Disruption of the Family System of Bangladesh; A Critical Analysis on the Section 497 of the Penal Code, 1860*, 6 (2) *IJLSI* Page 182 - 217 (2024), DOI: <https://doi.org/10.1000/IJLSI.111795>

<sup>18</sup> Indian Institute of Legal Studies, Adultery and Gender Equality, <https://www.iilsindia.com> 9 April, 2026

<sup>19</sup> *Ibid*.

**2. The Dowry Prohibition Act, 2018:** Gender Discrimination is also reflected in the application of the Dowry Prohibition Act, 2018.<sup>20</sup> Although the Act was enacted with the noble objective of protecting women from the social and economic burden of dowry, its provisions have sometimes been subject to misuse in practice. In certain cases, allegations under the Act are used as a means of exerting pressure on groom and his family during marital disputes. Consequently, the law may be invoked to compel settlements or compromises rather than solely to address genuine instances of dowry related offences. Moreover, it has been observed that some complainants prefer to initiate proceedings under the Dowry Prohibition Act instead of pursuing claims for dower through family court, as proceeding under family law are often considered less coercive in enforcing such claims. The Act may occasionally be used strategically to secure financial settlements from the groom's family. Section 7 of the Dowry Prohibition Act, 2018 provides that offences committed under the Act are compoundable, allowing the parties to settle the dispute through compromises. Although this provision aims to facilitate reconciliation in marital disputes, the compoundable nature of the offence may sometimes results in settlements on unreasonable or coercive terms. Criminal Proceedings under the Act may be used as a means of exerting pressure on the groom and his family to reach a compromise. While the law contains provisions to address the filing of false or malicious complaints,<sup>21</sup> these safeguards are rarely invoked. Studies have indicated that approximately 80% of dowry cases are alleged to be false or exaggerated.<sup>22</sup> The filing of false cases not only subjects innocent individuals to unwarranted harassment but also undermine the credibility and integrity of legitimate claims. Although the law provides for sanctions against the filing of false cases under section 5, such measures remain largely inadequate and ineffective in ensuring meaningful redress. Though in section 5 of the Act, there is a provision of punishment for filing false cases with 5 years' imprisonment and a maximum 500000/ taka fine. But before the cases can go to the end, the cases are ended through a compromise where the provision for false cases is useless.<sup>23</sup>

**3. Nari O Shishu Nirjatan Daman Ain, 2000:** The Nari O Shishu Nirjatan Daman Ain 2000 is a special statute enacted to provide protection to women and children against violence, abuse, rape and other forms of exploitation. It is a specialized law that prescribed stringent and severe

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<sup>20</sup> Dowry Prohibition Act 2018, ss 3, 4, 6; 'Bangladesh: The Dowry Prohibition Act, 2018' *Refworld* <https://www.refworld.org/legal/legislation/natlegbod/2018/148275> accessed 30 April 2026.

<sup>21</sup> Dowry Prohibition Act, 2018, section 6.

<sup>22</sup> Kamrul Islam, 'ভূয়া যৌতুকের মামলার শিকার সিংহভাগ পুরুষ' *DBC News* (9 September 2020)

<sup>23</sup> Ruksana Akter, Md. Anwar and Arshi Salehjee, Unveiling the Dark Side: The Misuse of the Dowry Prohibition Act 2018 in Bangladesh (2024) 6 (5) *IJFMR*.

punishments in order to deter such offences and ensure effective protection of vulnerable groups. While the Act serves an important protective function, concerns have been raised regarding its implementation in practice. The severity of its provisions and strict procedural framework may, in some instances, be used to exert pressure on the accused. As a result, the legislation has occasionally been criticized for its alleged misuse in personal or marital disputes. The legal framework has facilitated the lodging of unsubstantiated allegations against men in cases involving offences such as domestic violence or rape. Such misuse not only results in reputational harm to the accused but also diminishes the reliability of bona fide claims. Arrest warrants are issued without the benefit of prior investigation. Section 9 of the act, in certain instances, alleged to be misused as a form of entrapment. Most cases filed under the section results in no punishment because the cases are either withdrawn or disposed of for other reason. In certain contexts, it is assumed that a significant proportion of rape allegations are unfounded and do not arise from actual instances of non-consensual sexual intercourse. Men are often subjected to detention, reputational harm and prolonged legal proceedings in a case under this act. The entire family of the accused is often implicated in the proceedings. Thus it is often perceived as being employed as an instrument of coercion rather than as a mechanism of protection.

**4. Procedural Law:** Procedural law confers several protective advantages upon women, which, while well-intentioned, may in certain instances be vulnerable to misuse. A significant criticism of the Code of Criminal Procedure lies in its approach to bail in non-bailable offences, where women are often afforded preferential consideration.<sup>24</sup> Although ostensibly justified on humanitarian grounds, such differential treatment arguably departs from the principle of formal equality before the law by introducing gender as a determinative factor in judicial discretion. Some contends that this framework risks undermining the uniform application of criminal law, potentially enabling unequal outcomes and fostering perceptions of bias within the justice system. In many cases, some female accused persons seek bail on false compassionate grounds- such as childcare responsibilities or personal hardship- despite being alleged habitual offenders under the Narcotics Control Act. Critics argue that such claims may, be exaggerated or fabricated, thereby raising concerns about the potential misuse of discretionary leniency in bail decisions. Women are exempt from arrest in civil proceeding also. Women are often subject to comparatively lenient punishment. There is no recorded instance of a woman being executed

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<sup>24</sup> The Code of Criminal Procedure 1898, section 497.

under capital punishment<sup>25</sup>.

**Consequence of gender inequality:** Gender bias in the implementation of punishment carries deep and far-reaching consequences. It reinforces unequal standards across society, shaping public perceptions while distorting fundamental notions of justice and fairness. Over time, such disparities undermine efforts to build an equitable society governed by the impartial rule of law.

- 1. Increasing rate of Female Criminality:** The primary impact of gender inequality in penal enforcement is the rising rate of female criminality. In Bangladesh, this trend has become increasingly evident, as more women are becoming involved in activities such as drug trafficking, theft, domestic violence, and prostitution. This growing participation reflects the broader social and institutional disparities that continue to affect women within the justice system. Research indicates a notable upward trend in female criminality over time, with the rate increasing from 1.7% in 1971 to 3.8% in 1992 and rising significantly to 13% by 2008, reflecting a substantial shift in patterns of female involvement in criminal activities<sup>26</sup>. In addition, in 2003, there were 1910 or 2.8 per cent, female prisoners in jails of Bangladesh while in 2017; there were 2772 female prisoners or 3.8 per cent<sup>27</sup>. These data indicate a growing trend in female criminality in Bangladesh over the years. This reflects a significant shift in patterns of female criminality. Women are increasingly being identified in roles such as drug trafficking networks, with some even labeled as “drug queens”. Others are reportedly involved in prostitution- related activities, while instances of domestic violence involving women have long existed. The Narcotics Control Department mentions that around 30 per cent of the country’s total drug dealers are women.<sup>28</sup> Such developments may be partly attributed to disparities in penal enforcement, where gender- based leniency can create a perception of reduced accountability. This perceived immunity may, in some cases, embolden certain individuals to engage in criminal activities, assuming that they are less likely to face severe punishment or may be granted exemptions due to their gender.

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<sup>25</sup> No precedent of any woman being executed in the country, Views Bangladesh, Nov 17 2025, <http://viewsbangladesh.com> accessed on 28<sup>th</sup> April, 2026.

<sup>26</sup> Islam and Khatun, Nature, trends and causes of Female Crime in Bangladesh: A theoretical Review (2013)

<sup>27</sup> Sarmin Akther, (2019, Mar 2016) Female Criminality, *New Age*.

<sup>28</sup> *Ibid*.

- 2. Breakdown of confidence in judicial fairness:** When the administration of justice appears to hinge on gender rather than on evidence or culpability, public confidence in the legal system begins to erode. The ideal of impartiality—justice as blind—comes under scrutiny, and communities grow increasingly skeptical of whether verdicts are shaped by facts or by entrenched social biases and institutional prejudices. For many men from underprivileged or rural backgrounds, this perception is especially acute. Severe sentencing can seem less like the outcome of a fair and balanced process and more like a foregone conclusion—one influenced by the intersecting forces of gender and socioeconomic status. Over time, such patterns risk deepening alienation and diminishing faith in the very institutions meant to uphold equity and the rule of law.
- 3. Male Victimization:** A significant consequence of gender inequality in penal punishment is the potential for unfair harassment of male individuals within the criminal justice system. Where legal frameworks or enforcement practice provide comparatively lenient treatment or procedural advantage to women, male accused persons may be subjected to stricter measures, including immediate arrest, denial of bail or prolonged detention. In cases involving gender-specific offences, allegations may be sometimes misused. When such accusations are made without sufficient scrutiny at the preliminary stage, male individuals can be exposed to immediate arrest, social stigma and reputational harm, even before the guilt is established.
- 4. Effect on Genuine case:** Gender bias in punishment doesn't just create abstract unfairness—it has very real consequences for genuine cases. When bias exists, legitimate victims may struggle to be believed or taken seriously, especially if they don't fit common stereotypes. This can lead to underreporting, weak investigations, or inadequate punishment for offenders. At the same time, bias can also result in harsher treatment or wrongful suspicion toward individuals based on gendered assumptions rather than evidence. For genuine cases, this distortion undermines trust in the justice system. Victims may hesitate to come forward, fearing dismissal or prejudice, while accused individuals may feel they won't receive a fair hearing. Over time, this weakens accountability, reduces the effectiveness of legal protections, and allows injustice to persist on both sides.

Ultimately, gender bias doesn't just harm individuals; it compromises the credibility and

integrity of the entire system meant to deliver justice.

**Recommendations:**

- i. **Non-discriminatory Penal Enforcement:** Discrimination in the enforcement of penalties is evident and must be addressed. Ensuring equal treatment of women is essential to correcting imbalances within the criminal justice system. Any special exemptions should be applied with caution and only when clearly justified, so that fairness and consistency are maintained.
- ii. **Sanction against False Complaints:** Under the legal system of Bangladesh, various laws have been enacted to protect women's rights and provide them with legal remedies. However, concerns have been raised about the misuse of certain provisions, with allegations that some cases are filed for malicious intention. Although the law includes safeguards to address such misuse, these measures are reportedly underutilized. It is important that any proven instance of filing a false case be addressed with appropriate legal consequences. At the same time, each allegation must be carefully and impartially examined to ensure that genuine claims are not discouraged and that justice is fairly administered.
- iii. **Statutory Reform:** Statutory reform is essential to eliminate provisions within existing legal frameworks that permit or perpetuate discriminatory treatment. In particular, Section 497 of the penal code warrants immediate revision to ensure that its application is gender-neutral and consistent with principles of equality before the law. Both men and women should be subject to equal legal standards, and enforcement mechanisms must apply impartially to all parties involved. Furthermore, any legislative provisions that create scope for discrimination should be systematically reviewed and amended to align with contemporary human rights norms and constitutional guarantees of equality and justice.
- iv. **Judicial Skill Development:** Judicial skill development is crucial to ensure neutral criminal justice system. Judicial officers should receive specialized training to enhance their ability to assess cases objectively, including those involving repeat or habitual offenders, regardless of gender. Decisions relating to bail should be made with due caution, based on the specific facts and risks

associated with each case. Any statutory exemptions or leniencies must be applied judiciously and not in a manner that undermines the principles of equality before the law. Furthermore, the decision to order arrest should follow careful scrutiny of evidence and a circumstance, ensuring that due process is respected while maintaining the integrity of the justice system.

- v. **Awareness Program:** Public programs should be initiated to address and counter gender biases within the criminal justice system. These programs are designed to educate and inform society, helping to reduce the influence of such biases on legal decisions. By raising awareness, they aim to minimize the impact of gender-based prejudice and promote fairness. Ultimately, these efforts contribute to building a more just and equitable society that upholds neutrality and impartiality within the criminal justice system.

### **Concluding Remark:**

The rule of law remains a foundational objective of any state, requiring the consistent application of equality before the law. To uphold this principle, discrimination among members of society must be eliminated. Nevertheless, in pursuit of substantive equity, certain legal protections and facilities have been extended to women in recognition of their historical and structural disadvantages. Such measures are grounded in legitimate humanitarian considerations and the broader goal of achieving social justice. However, there is an increasing need for legislative reform to clearly define the scope and limits of these safeguards, accompanied by strengthened judicial oversight to prevent their misuse. The central challenge lies not in dismantling protective provisions, but in ensuring that they function within a framework characterized by fairness, accountability, and uniformity. A legal system that effectively balances protection with equality will be better positioned to uphold the integrity of justice and maintain public confidence in its processes.

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