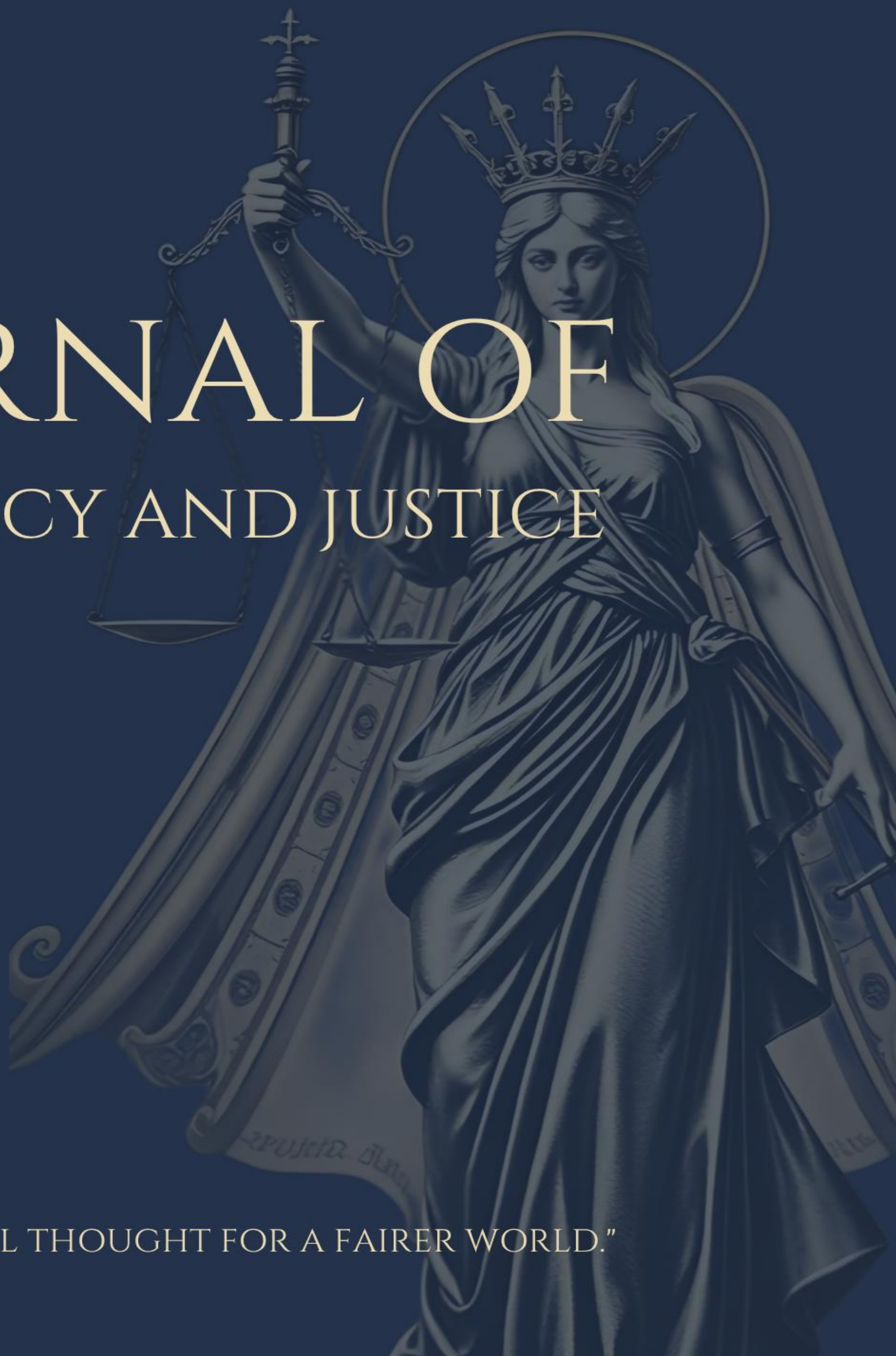
PUBLISHED BY BANGLADESH SOCIETY FOR
HUMAN RIGHTS LAW STUDIES - BSHRLS



JOURNAL OF
LAW, POLICY AND JUSTICE

"INNOVATING LEGAL THOUGHT FOR A FAIRER WORLD."

VOLUME 1 2026 ISSUE 1

A Peer-reviewed International Academic Journal

Journal of Law, Policy and Justice (JLPJ)

VOLUME: 1

ISSUE: 1

August, 2026

Journal of Law, Policy and Justice (JLPJ) is a peer-reviewed academic journal published on a triannual basis.

Authors are solely responsible for the content of their published articles.

PUBLISHER: BANGLADESH SOCIETY FOR HUMAN RIGHTS LAW STUDIES (BSHRLS)

https://bshrls.org

Journal website: https://jlpj.bshrls.org

Publication Language

English

For Contact

2/4 Gabtoli, Mirpur- 1, Dhaka-1216

Dhaka, Bangladesh

+8801914191131

editorial@jlpj.bshrls.org

Table of Content

https://jlpj.bshrls.org
Vol. 1, No. 1, pp.01-27, 2026

JOURNAL OF LAW, POLICY AND JUSTICE

RESEARCH ARTICLE

OPEN ACCESS

Assessing the Effectiveness of the Right to Information Act in Rural Local Government Institutions in Bangladesh: A Study on Two Selected Unions in Mymensingh District

Md. Golam Mostafa[*,1] Shaleha Mollick Shorna[2]

[1] National Research University Higher School of Economics (HSE University), Moscow, Russia

[2] Faculty of Social Science and Public Administration and Governance Studies, Jatiya Kabi Kazi Nazrul Islam University

***Corresponding:** *mmostafa@edu.hse.ru*

Received: 24.06.2026 Accepted: 11.08.2026 Publication date: 31.08.2026

ABSTRACT

Right to Information Act enables the citizens to access pertinent information in both-government and non-government institutions. This study would be aimed at evaluating the effectiveness of Right to Information Act within local government institutions at the rural level in Bangladesh. The research design was mixed method research studies. Primary data was collected with the help of a structured survey questionnaire and interview checklist. The information is gathered among 138 respondents of two unions in two Upazilas in Mymensingh district. After conducting a thorough review of related literature and examining the information gathered from survey and interview, the study found that maximum number of citizens is not aware of the Act after fifteen years of implementation. They don't know the actual process of making RTI requests. They come to public offices to know information verbally. Educated people and NGO activists asked for information. They submit RTI requests to know the information related to land or development projects. The results of the research also represent that RTI Act may be used to guarantee accountability and transparency within the public offices of union. It plays a significant role towards enhancing the efficiency of RTI Act in the local government institutions in the rural level in Bangladesh. The study collects some evidence-based recommendations through survey and interview. The study also suggests some ways to overcome the existing challenges in implementing the RTI Act in rural level local government institutions in Bangladesh.

Keywords: *Right to Information, Citizen Empowerment, Citizen Charter, RTI Requests, Awareness Campaigns, Accountability, Transparency, Citizens' Satisfaction.*

1. Introduction

"It is the first responsibility of every citizen to question authority."

- *Benjamin Franklin.*

The above remark was given by Benjamin Franklin. Any citizen irrespective of age, gender or religion has the right to obtain information from the responsible authority. Additionally, information is considered with knowledge. Knowledge is the ultimate source of empowerment because it grants power to the people. An informed citizen can take any decision in any situation. On the other hand, a people who has no information, can't make important decision.[1]Information is thematic lamp that is essential for development at international era.[2]Many countries have enacted act to ensure citizens' right to gain information. Bangladesh has also enacted an act in 2009, which is known as 'Right to Information Act-2009'. It has introduced a new era of good governance.Because, it's main objective is to make information accessible to the people to improve the accountability and transparency of the government, to reduce corruption. It empowered people to take part in decision which prescribe the social, economic and political aspects of their life.[3]It allows citizens to obtain information not only from government offices but also from private institutions. RTI Act serves as the safeguard for citizens of a country.[4]The Act is applicable for citizens from all walks including poor and marginalized. People from remote area are now obtaining information on various SSNPs of the government, VGD (now it is called VWB), VGF cards, vouchers for maternal health and other related matters. People who live disaster-prone areas can get information about the measures for relief and rehabilitations provides by the government. Before the implementation of RTI Act, third parties acted as intermediaries between general people andpublic officials. People often relied on local leaders, influential individuals or political representatives (chairman, members) to obtain information from government office. Sometimes, they relied on government clerks or staff with whom they had personal relationships to informally extract information. These intermediaries often created delays, inefficiencies and opportunities for corruption.

Before RTI, process of getting information was lengthier that has been figured below-

[1]HS Baroi and KP Pandey, 'Does Access to Information Facilitate Empowerment of Citizens? Answer Lies WithinA Recent Example of Bangladesh' (2015) 37(2) South Asian Journal of Policy and Governance 1, 3.
[2]MA Rahman, R Ullah and SA Asif, ''Right to Information Act 2009' to Tackle Corruption in Bangladesh: Citizens' Perception' (2022) 9(1) International Journal of Social Political and Economic Research 26, 5.
[3]HS Baroi, 'The Role of Civil Society Organizations in the Implementation of the Right to Information Act: A Case of Bangladesh' (2018) 3(1) International Journal of Social Science and Economic Research 153, 2.
[4]MR Karim and AR Mukta, 'Role of Right to Information in Empowering Citizen: An Empirical Study on Public Offices Bangladesh Public Administration Training Centre Savar, Dhaka' (Research Report, Bangladesh Public Administration Training Centre 2022) 10

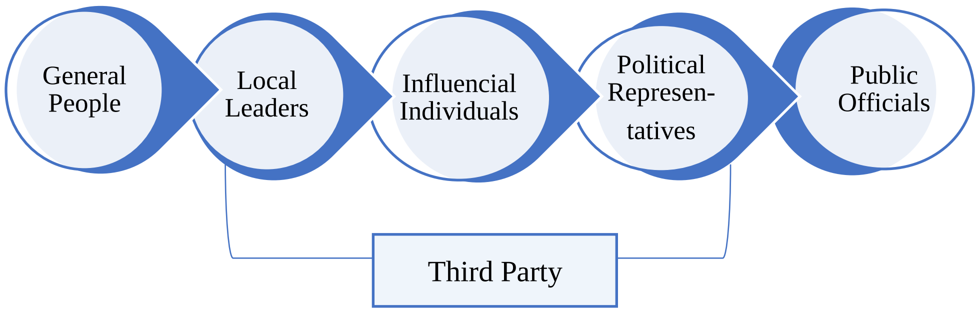


Figure 1: Getting Information Process Before RTI

After enactment of the RTI Act, it has built a bridge between just the general people and government officials and has minimized the longer process of getting information.[5]After RTI, process of getting information has turned into shorter before. The process has been figured below-

Figure2: Getting Information Process After RTI

After enactment of the RTI Act, government has disclosed service information through Citizen Charter, media, websites etc. General people are now more conscious about their rights. This openness and awareness turned the longer process into a shorter process and make the RTI Act easier for general people.Through sharing the information, it also creates the opportunity for the authority to devolve the power.By enabling citizens to gain easy access to official records, it empowers them to better understand the limitations of the government at all levels. This study aims to evaluate the effectiveness of Right to Information act in the rural local government institutions in Bangladesh.

1.1 Objectives of the study

1.1.1General Objective: To evaluate the Effectiveness of RTI Act in rural level local government institutions of Bangladesh.

1.1.2 Specific Objectives:

a. To evaluate the awareness and understanding of Right to Information Act among citizens and public officials in the selected unions.

[5]MR Karim and AR Mukta, 'Role of Right to Information in Empowering Citizen: An Empirical Study on Public Offices Bangladesh Public Administration Training Centre Savar, Dhaka' (Research Report, Bangladesh Public Administration Training Centre 2022) 10

b. To identify the barriers and challenges faced by citizens and public officials in implementing the RTI Act.

c. To examine the impact of the RTI Act on public service delivery in the selected unions.[6]

d. To provide recommendations for enhancing the effectiveness of RTI Act in rural level local government institutions in Bangladesh.

2. Conceptual Framework and Theoretical Framework of the Study

2.1 Conceptual framework

The following figure portrays the conceptual framework of this study-

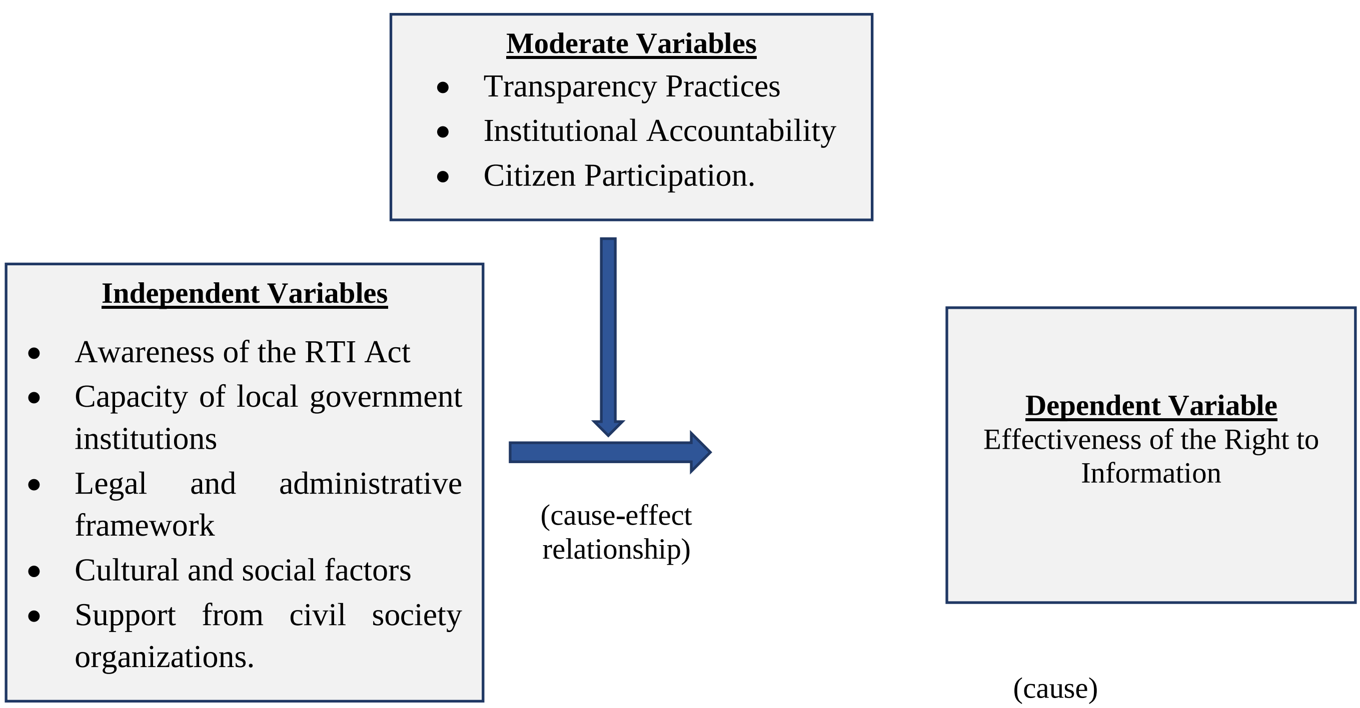


Figure 3: Conceptual framework

Theoretical Framework of the study

As it has already mentioned that theoretical framework derived from an established theory, a theoretical framework has also been developed for this study. "General System Theory (GST)" has been followed to develop the theoretical framework of the study. This theory was coined by Ludwig von Bartalanffy. System theory involves a system with various interconnect parts known as sub-system. General System theory receives inputs, acts upon them in an organized way and thereby.

The following figure portrays the General System Theory-

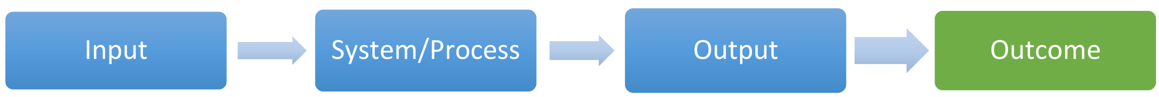
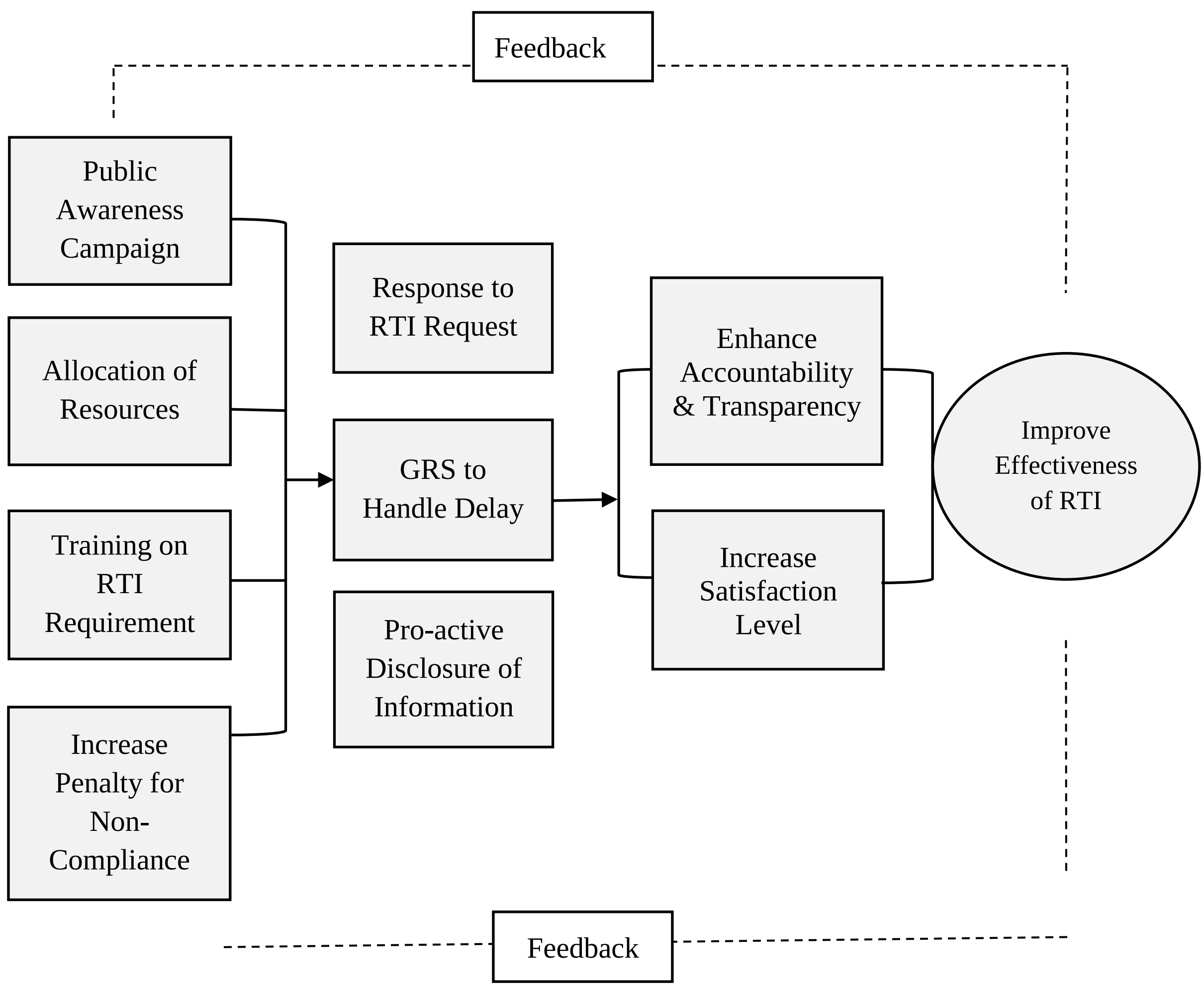


Figure 4: Steps of General System Theory

The theoretical framework of the study has been figured below-



Source: Developed by the author

Figure 5: Theoretical Framework of the Study

3. Methods

The research was conducted with a well-planned research design using a mixed-method research design that incorporated both the quantitative and qualitative data to provide valid and reliable outcomes. The study area Mymensingh Division of Bangladesh: Bhabanipur Union of Fulbaria Upazila and Trishal Union of Trishal Upazila was chosen based on the lack of previous research on the Right to Information (RTI) act in the regions, the fact that the areas are socio-economically diversified with various communities and it was convenient to collect the data. A population sample population of 138 was chosen consisting of 130 citizens using questionaries and 8 service provider using in-depth interviews. Cochran formula was applied to the sample with 95% confidence level and 5% margin of error with a population proportion of 10%. A stratified random sample was used in selecting the survey participants and purposive sample was used in the interviews in order to achieve a variety and strengthen the external validity. The use of structured questionnaires and interviews was the means of obtaining primary data where the questions in the survey were created based on validated scales and tested on clarity and reliability. To facilitate the research setting and results, secondary data were obtained through books, journals, reports, newspapers and websites. In the analysis of the data, thematic analysis method was used to analyze the qualitative data obtained in interviews as well as quantitative data analyzed using descriptive statistics method i.e. frequencies and percentages with the help of SPSS and MS Excel and obtained meaningful conclusions.

4. Data Analysis and Study Findings

4.1 Findings from Survey Questionnaire

In this section, findings from 130 service receivers from two selected unions through structured questionnaire have been illustrated. The data are analyzed by using statistical software MS Excel. After analyzing the data, they are presented with some tables, column chart, bar charts, pie charts with suitable explanations.

4.2 Demographic information of the respondents

Demographic Information		
Gender	Male	55%
	Female	45%
	18-25	13%

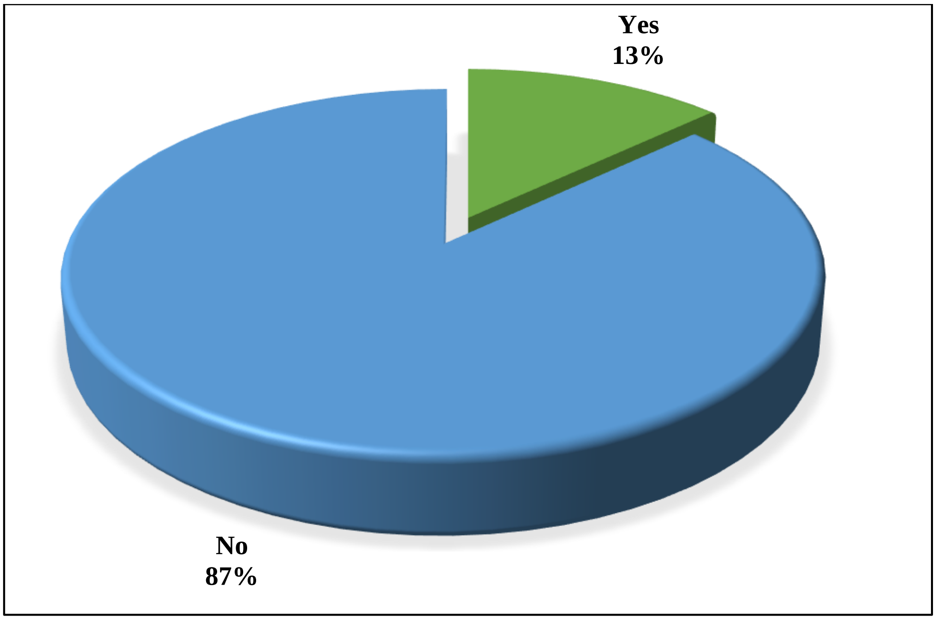
Age range	26-35	23%
	36-45	32%
	46-55	22%
	Above 55	10%
Level of Education	No Formal Education	13%
	Primary	26%
	SSC	20%
	HSC	18%
	Graduate	14%
	Post-Graduate	9%
Occupation	Student	8%
	Housewife	23%
	Farmer	16%
	Government Service Holder	12%
	Private / Ngo Service Holder	15%
	Small Business	18%
	Unemployed	5%
	Other	2%

Source: Field Survey, 2024.

Table 3: Demographic Information of the Respondents

The above table demonstrates the demographic profile of the respondents. It is found that, 55% male and 45% female responders participate in this study. With respect to age range, the largest percentage (32%) of responders belong to 36-45 age group, next in line are 26-35 age group. The lowest percentage (10%) belongs to the people who are above 55. Regarding the level of education, respondents varied, with 26% having completed primary education, 20% having completed SSC, 18% having HSC, 14% holding graduation degree and 9% having completed post-graduation. It is noted that 13% respondents have no formal education. Occupationally, the largest group belongs to housewife with holding percentage of 23%. The second largest group (18%) belongs to the respondents who have small business. Government service holder accounted for 12%, followed by farmer at 16%, NGO/ private service holder at 15%, student at 8%, unemployed at 5% and others at 2%. However, this comprehensive demographic information provides valuable insights into respondents' profile, which largely contribute to assess the effectiveness of RTI Act implementation in the selected two unions.

4.3 Number of People who Heard About RTI Act



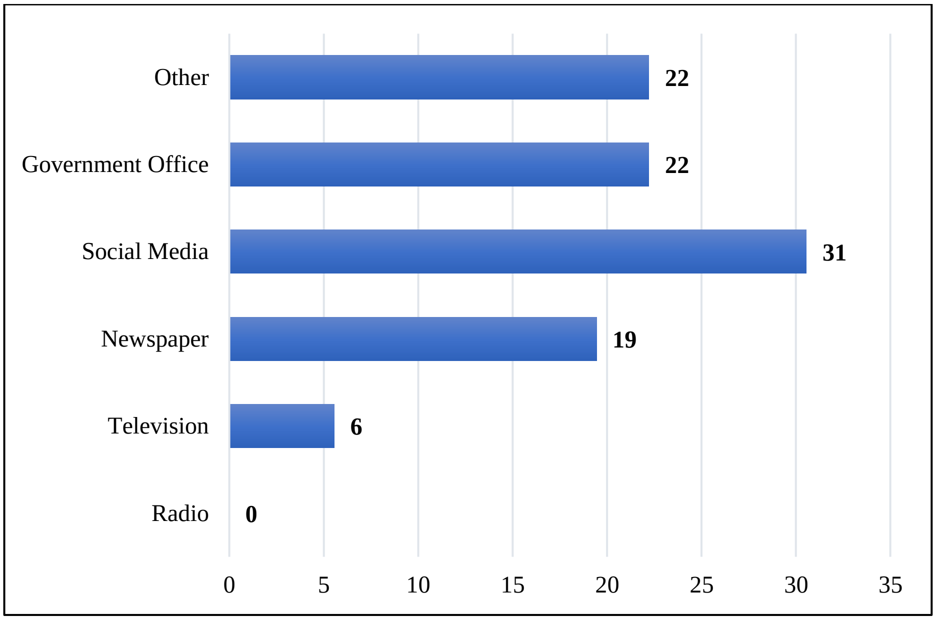
Source: Field Survey, 2024.

Figure 8: People know about the RTI Act

The pie chart above shows the figure of those respondents with knowledge about the Right to Information Act. The pie chart indicated that majority of the respondents (87 percent) have no idea regarding the RTI Act.From 130 respondents, only 17 respondents (13%) heard about RTI Act. The study found that people just know that they can get information from government office and the office will provide the required information. From this discussion, it can be said that people living in Mymensingh District are less aware of RTI Act than another district of Bangladesh.[7]

Way of Learning about the Act

[7]MA Rahman, R Ullah and SA Asif, "Right to Information Act 2009' to Tackle Corruption in Bangladesh: Citizens' Perception' (2022) 9(1) International Journal of Social Political and Economic Research 26, 5.

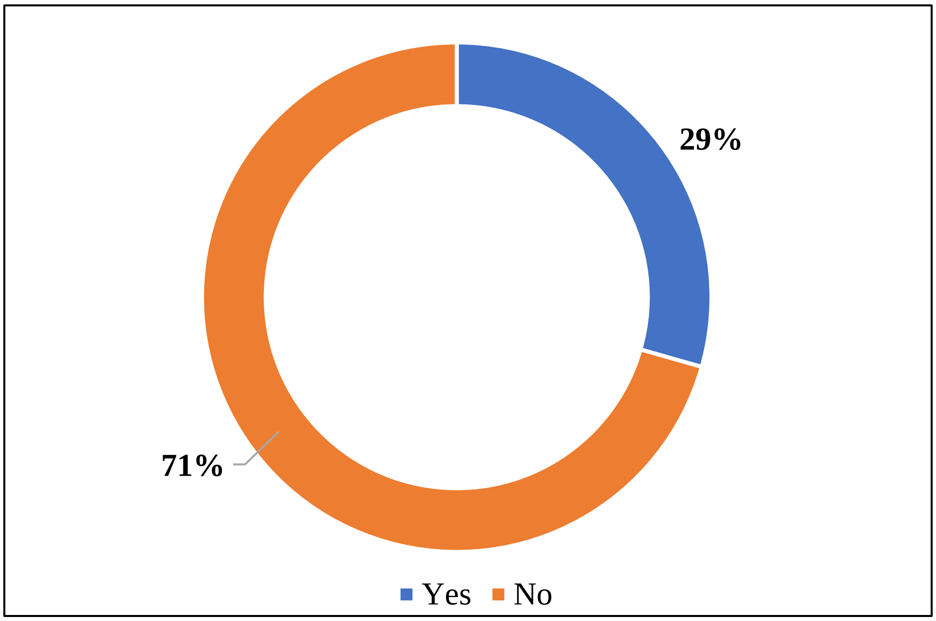


Source: Field Survey, 2024.

Figure 9: Way of learning about the act

The above bar chart represents the ways through which respondents first learned about the RTI Act. From the study, it is found that most of the people (31%) first heard about the Act through social media. Government office and other ways placed second position with percentage of 22. In addition, 19% respondents first learned about the Act by reading newspaper and only 6% respondents learned by watching television. No respondents found who have first heard about the Act from radio. The above bar chart demonstrates that social media plays an effective role to publicize the awareness of RTI Act. A large portion of people heard about the Act from others. It has also found that radio has no role in this matter which was a popular media for news few decades ago. Television has lesser impact on telecasting news related to RTI Act.

4.5Awareness about the main objectives of the RTIact

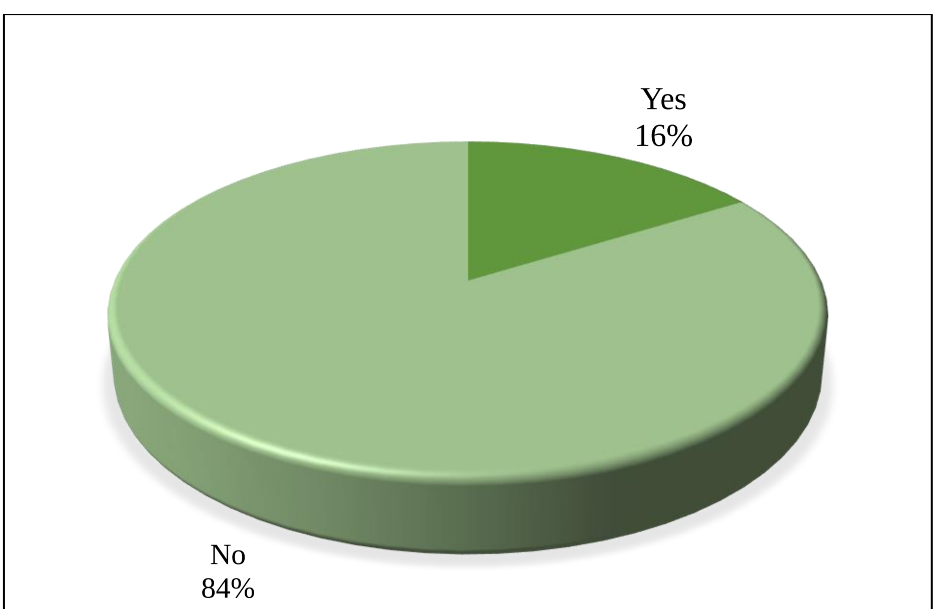


Source: Field Survey, 2024.

Figure 10: Awareness about the Main Objectives of the RTI Act

The above pie chart represents the awareness of RTI Act among people. Only 17 respondents heard about RTI Act. But they do not know the main objectives of RTI Act. Among those 17 respondents, only 6 respondents (29%) are aware of the main objectives of RTI. The rest 11 of the respondents (71%) have not any clear idea about the main objectives of the Act, they just heard the name of the Act.

4.6 Application Under the Law

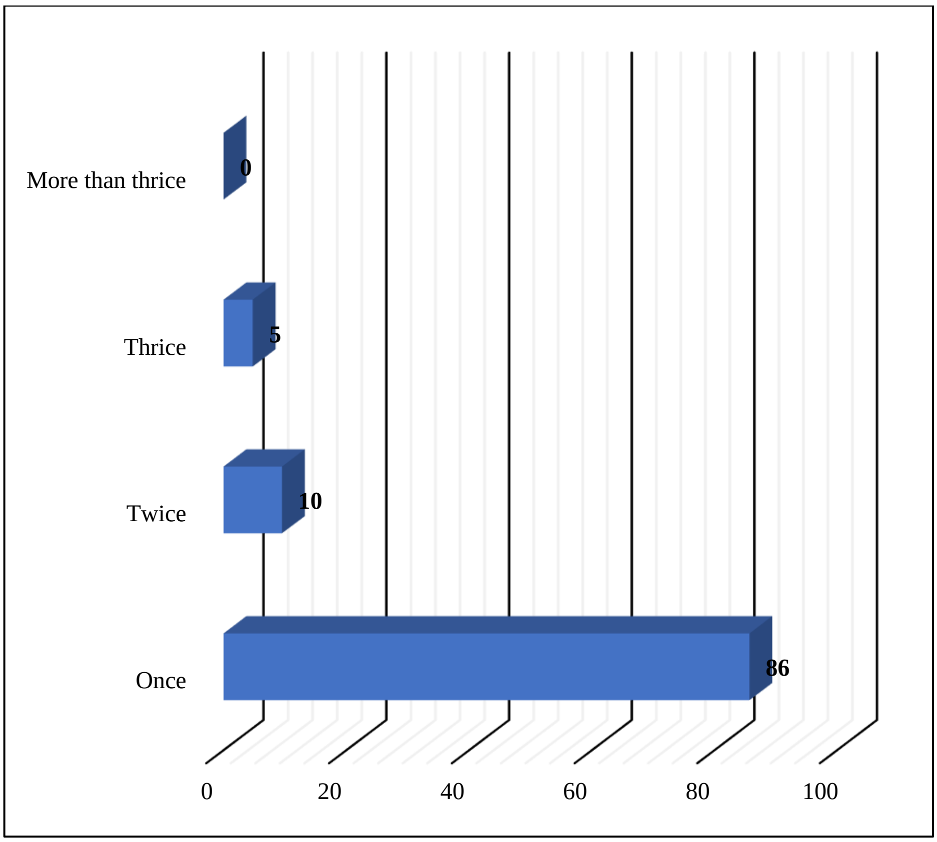


Source: Field Survey, 2024.

Figure 11: Application Under the Law

The above pie chart denotes the number of people who have applied for information under RTI law. According to the RTI law, people can get information through an application. The study found that only 21 respondents (16%) have applied for information by following the orders according to the RTI law. Rest of them (84%) have never applied for any information.

4.7 Number of Application for Getting Information

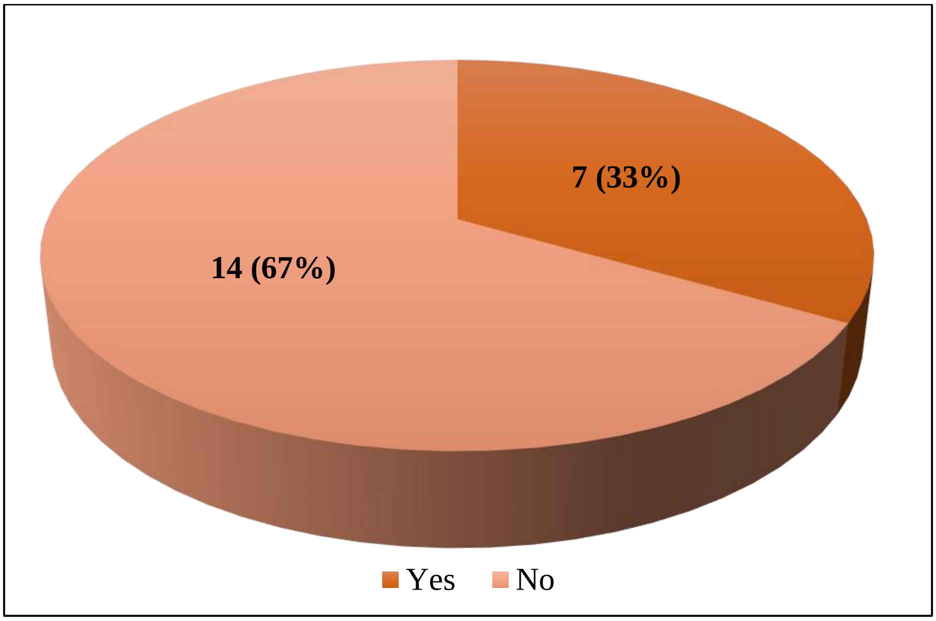


Source: Field Survey, 2024.

Figure 12: Number of Application

The above bar chart demonstrates the number of applications for getting information under RTI Act. The study found that 18 respondents (86%) applied once to get required information where 10% applied twice and only 1 respondent (5%) applied for three times. No people found who have applied for more than thrice for getting information. If people don't apply for obtaining information, it will not meet the basic provisions of the RTI Act. To enhance its effectiveness, citizen should engage more with the process.

4.8 Matter of Getting Desired Information Smoothly

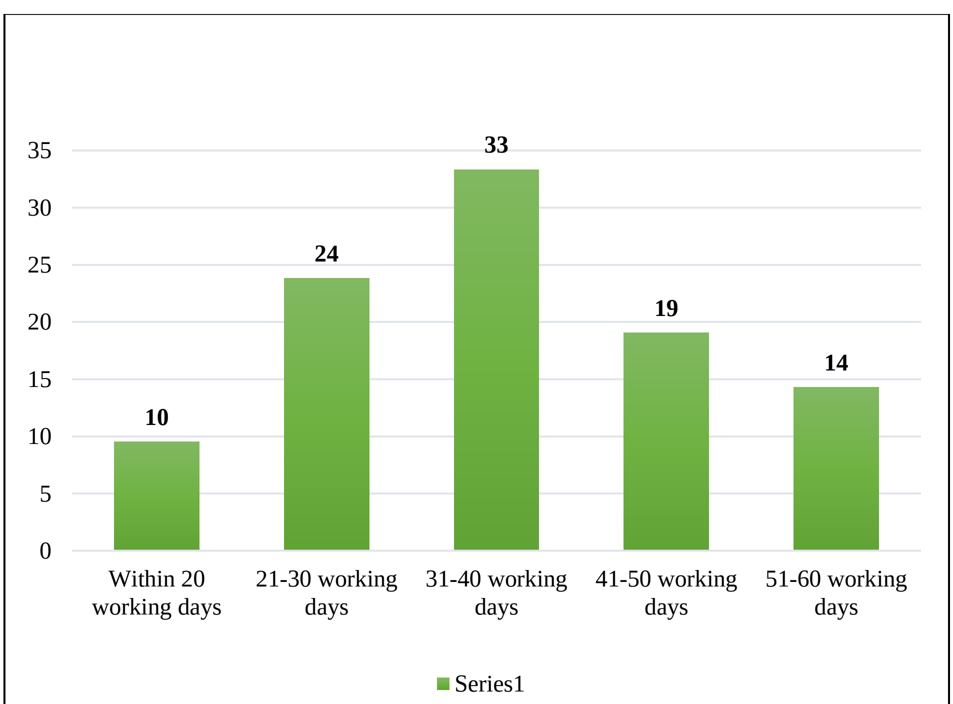


Source: Field Survey, 2024.

Figure 13: Matter of Getting Desired Information Smoothly

The above pie chart denotes the matter of getting desired information smoothly. I have already discussed that 21 respondents applied for information. Of them, only 7 respondents (33%) get the desired information smoothly. 14 respondents (67%) do not get the desired information smoothly.

4.9 Information Receiving Days under RTI Act

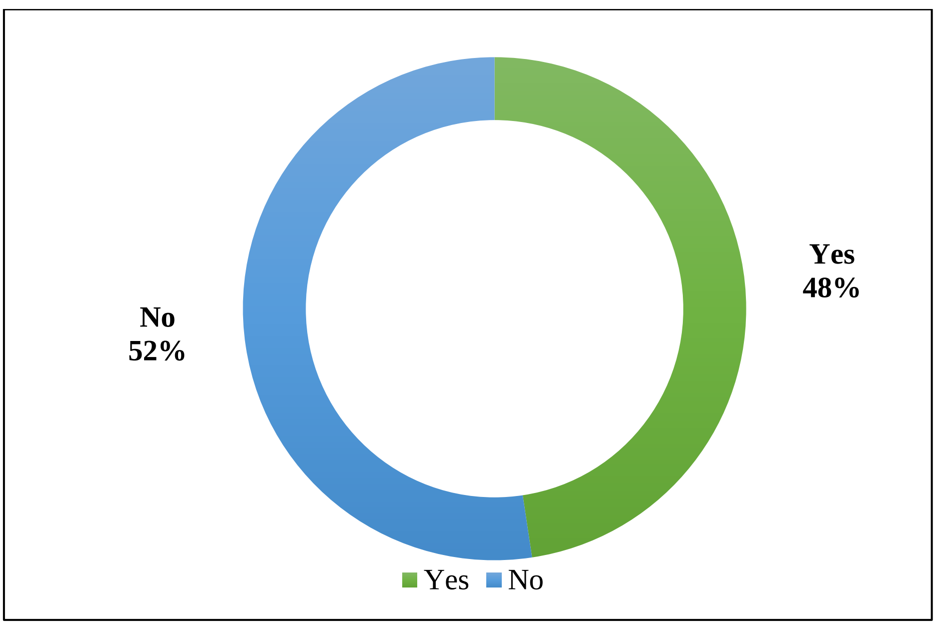


Source: Field Survey, 2024.

Figure 14: Information Receiving Days

The above column chart represents the days of receiving information. Though the Act stated that the authority was to give the information to the applicant within 20 working days after receiving the applicant request, the study revealed that only 10% of the people receive the information within 20 working days. This is the least unit in the column chart. It has also announced in the Act- where over one department are coupled with the process, it will require 21-30 working days. But the study found that 24% respondents get desired information within 21-30 working days. 33% respondents have received information within 31- 40 days where 19% and 14% receive information within 41-50 and 51-60 working days respectively. If the authority is able to provide information within the required time, it will increase the effectiveness of RTI Act in rural level local government institutions in Bangladesh.

4.10 Self-contained Information

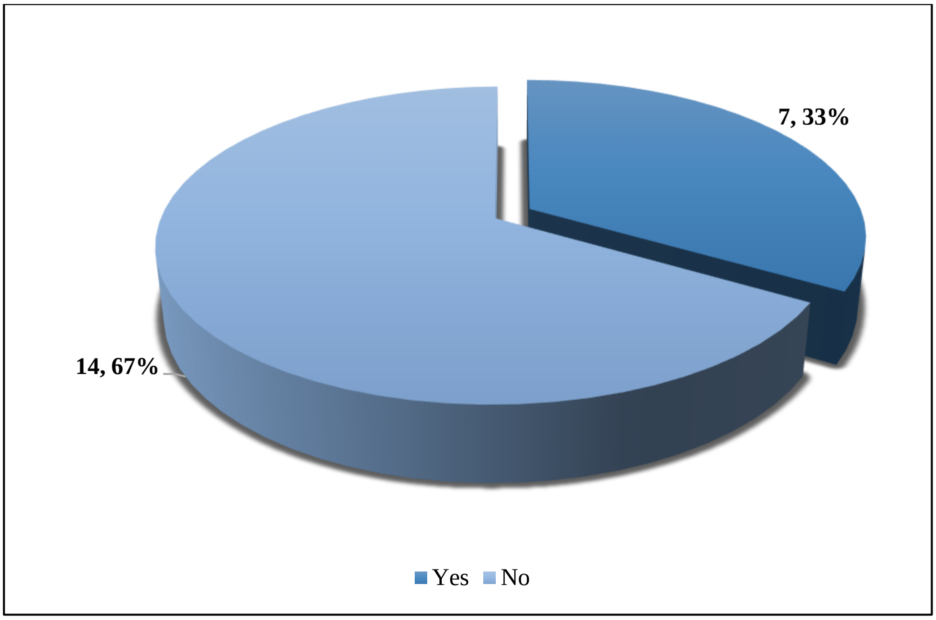


Source: Field Survey, 2024.

Figure 15: Self-contained Information

The above figure denotes the matter of self-contained information. It is found that 48% people get information through self-contained where 52% people said that they have not get the information through self-contained. RTI Act has enacted to obtain information from government offices without any help from third party and get relevant information through self-contained.

4.11Taking Help from Third Party for Getting Information

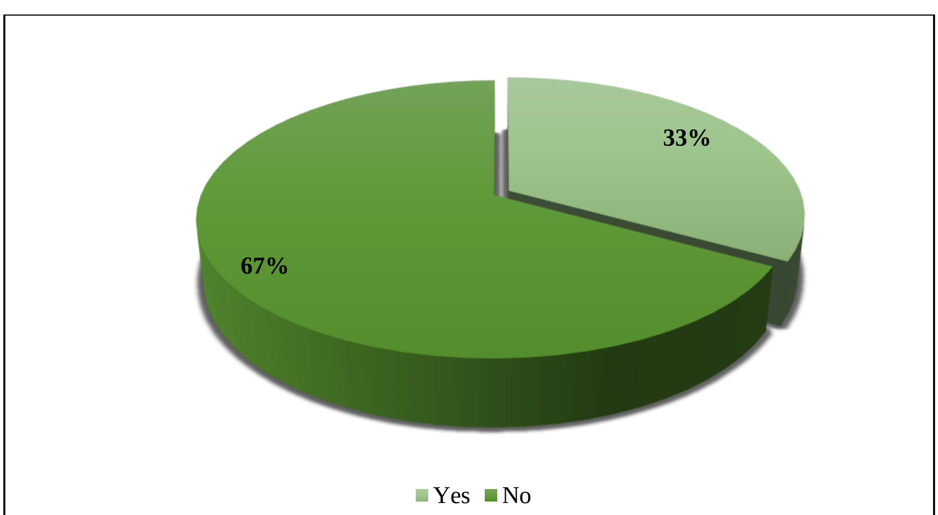


Source: Field Survey, 2024.

Figure 16: Taking Help from Third Party

The above pie chart illustrates about getting help from the third party for the application to obtain the information. The study found that 7 respondents (33%) have taken help from third party where 14 respondents (67%) do not take any help from third party. As RTI Act has make information receiving process shorter than before, it has also reduced third party engagement.

4.12 Matter of Harassment in Getting Information from Government offices

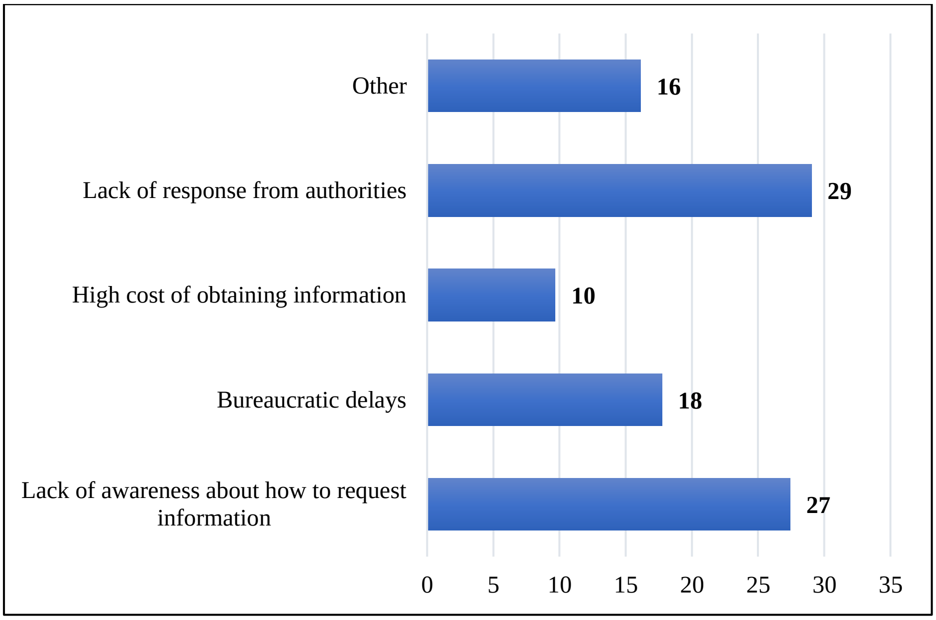


Source: Field Survey, 2024.

Figure 17: Matter of Harassment

The above pie chart portrays the matter of harassment for obtaining information in government offices. The study found that 33% people have been harassed in government offices while obtaining information. 67% respondents have not been harassed for obtaining information.

4.13 Challenges Faced by Respondents While Trying to Get Information



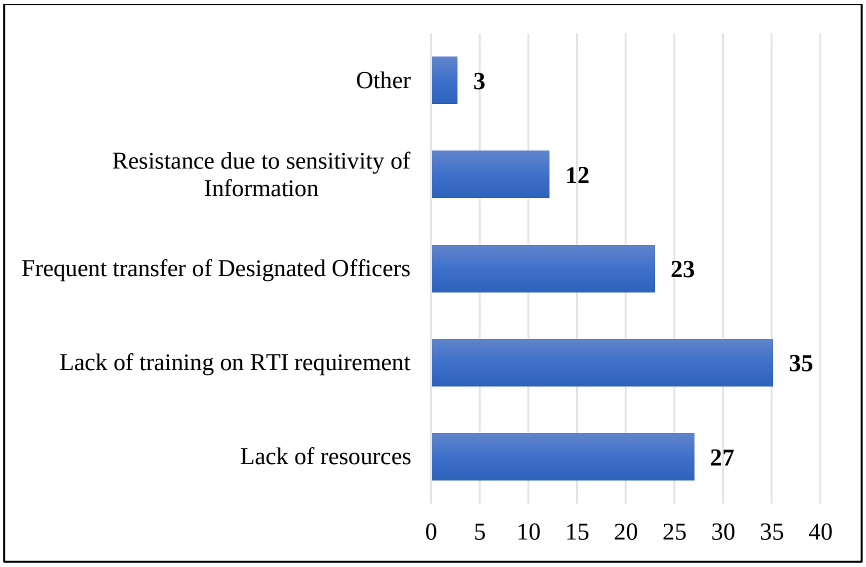
Source: Field Survey, 2024.

Figure 18: Challenges faced by respondents

The above bar chart denotes the challenges faced by respondents while trying to access information. Maximum respondents (29%) of the study encountered the challenge of lack of response from authorities. Lack of awareness about the application process placed the second position with percentage of 27. In addition, 18% respondents faced bureaucratic delays to get information. 10% people faced the challenge of high cost of getting information where 16% people faced other challenges. In addition, Chowdhury and Pandey (2018) found in their study that lack of awareness of general public, lack of responsiveness of the UP functionaries, lack of training and education etc. creates obstacles to implement the provisions of RTI Act in Bangladesh.[8]

[8]S Chowdhury and PK Pandey, 'Ensuring Transparency Through Citizen's Charter and Right to Information' (2018) 45 <https://doi.org/10.1007/978-3-319-73284-8_7> accessed 14 August 2026.

4.14 Barriers Faced by Public Authorities to Respond to RTI Request

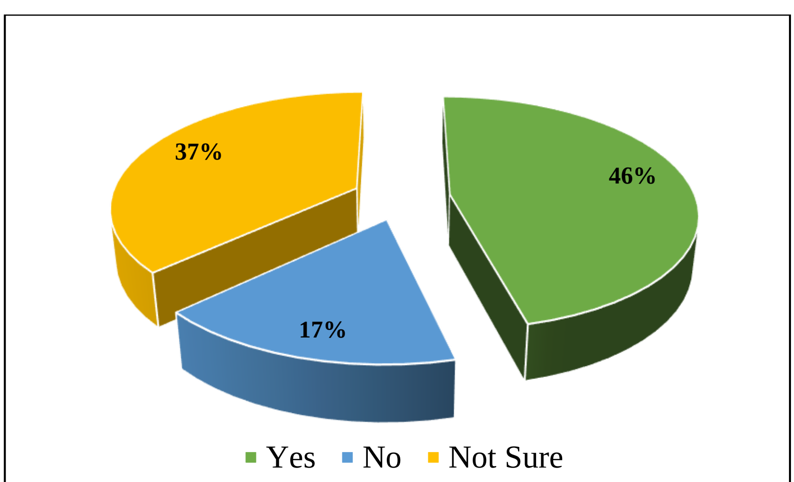


Source: Field Survey, 2024.

Figure 19: Barriers Faced by Public Authorities to Respond to RTI Request

The above bar chart represents the challenges encountered by public authorities in case of fully respond to RTI request. Most of the respondents (35%) think that lack of training on RTI requirement is one of the major reasons for this. Lack of resources placed second position as barrier with obtaining 27%. In addition, 23% respondents think that frequent transfer of Dos is another reason for not responding to the RTI request. Sensitivity of information is also a barrier faced by public officials for not fully respond to RTI request. 3% respondents think that the situation is affected by other barriers.

4.15 Found Changes in Public Service Delivery After RTI Act Implementation

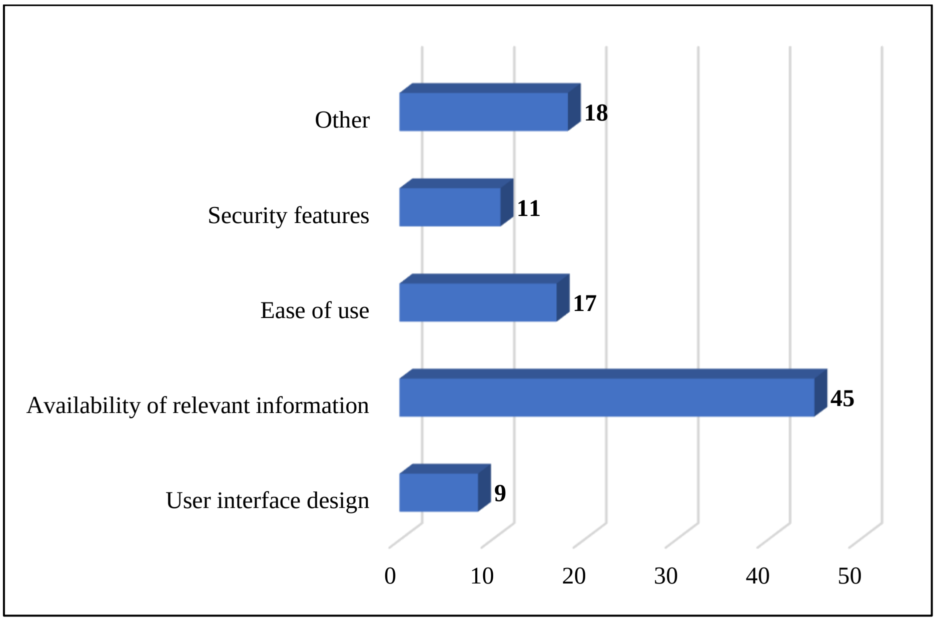


Source: Field Survey, 2024.

Figure 20: Found changes in public services delivery

The chart represents the matter of change in public service delivery after the implementation of RTI Act. 46% respondents said that they have noticed changes in public service delivery. 17% respondents have not noticed any changes in public service delivery after the RTI act's implementation and 37% are not sure about the change matter.

4.16. Major Changes in Public Service Delivery After Enactment of RTI Act

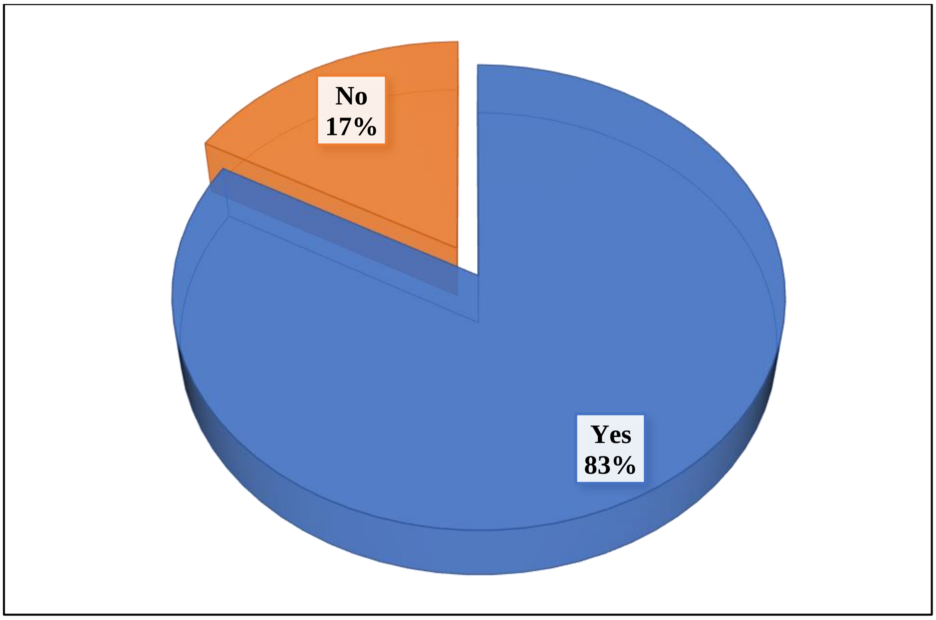


Source: Field Survey, 2024.

Figure 21: Major changes in public service delivery

The above bar chart shows some major changes in public service delivery after the implementation of RTI Act. Notable change has found in availability of relevant information. 17% respondents put ease of use as major change where 11% people put security features as major changes. Some changes are also found in user interface design with 9% where other option is selected by 18% respondents. It is notable that maximum respondents found changes in getting access to relevant information. It is one of the special features of Right to Information act. Changes in public service delivery will improve the implementation of the Act in rural level local government institutions in Bangladesh.

4.17 Contribution of RTI Act to Reduce Corruption



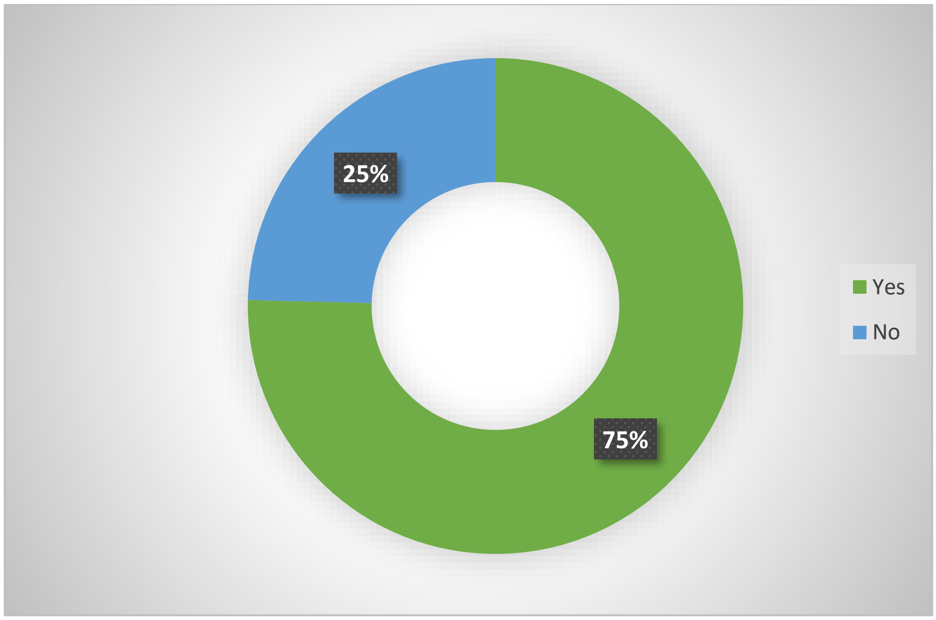
Source: Field Survey, 2024.

Figure 22: Contribution of RTI Act to Reduce Corruption

The chart above indicates the impact of RTI Act to minimize corruption in government offices. The research study discovered that 83 percent of the respondents believe that the RTI Act has helped in curbing corruption in the government offices. Conversely, 17% of the respondents believe that the RTI Act does not assist in curbing corruption. In many instances, the activities of corrupted offices are still being carried out by the public offices. Other studies found the same result in their studies viz- 90% people from Gaibandha District and 77.7% people think that RTI Act is a powerful tool to fight against corruption in Bangladesh.[9]

[9]MA Rahman, R Ullah and SA Asif, "Right to Information Act 2009' to Tackle Corruption in Bangladesh: Citizens' Perception' (2022) 9(1) International Journal of Social Political and Economic Research 26, 5.

4.18 Contribution of RTI Act to Enhance Transparency



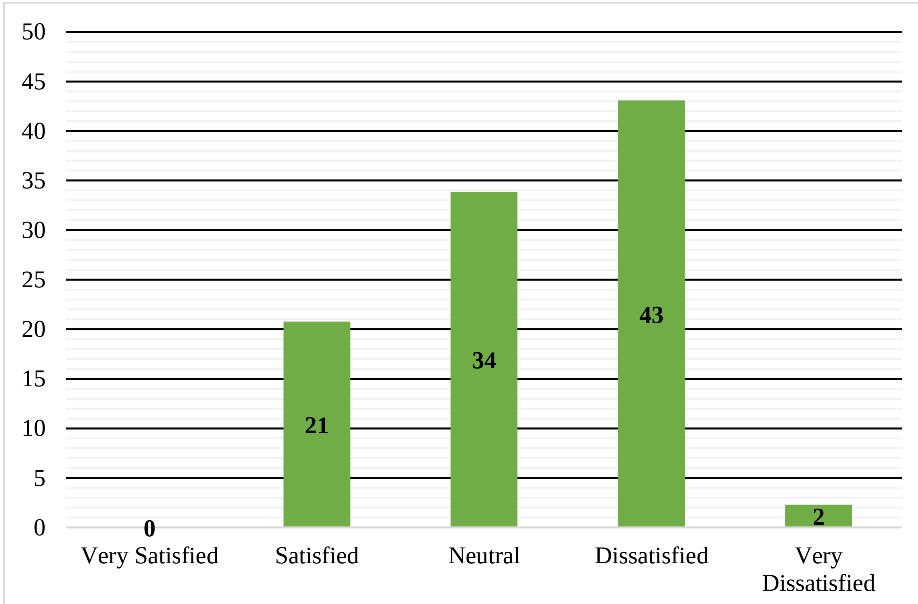
Source: Field Survey, 2024.

Figure 23: Contribution of RTI Act to Enhance Transparency

The above donut chart represents the contribution of RTI act to enhance transparency in public offices. 75% respondents think that RTI Act can largely contribute enhance transparency in public offices. On the other hand, 25% respondents think that RTI Acts doesn't contribute to enhance transparency in government offices. Mallik et al. (2024) found that RTI Act helps people to get access to official records (databases, documents, laws, recordings, expenditures etc.) easily and it allowed them to identify the limitations of the government.[10]

[10]MR Mallik, Z Khandoker and A Ahmad, 'The Right to Information Act of 2009 in Bangladesh: Understanding the Accountability and Transparency of Public Information Officers' (2024) 3(9) Journal of Intellectual Property and Human Rights 87, 89.

4.19 Level of Satisfaction on the Current Process of Getting Information Under Right to Information Act

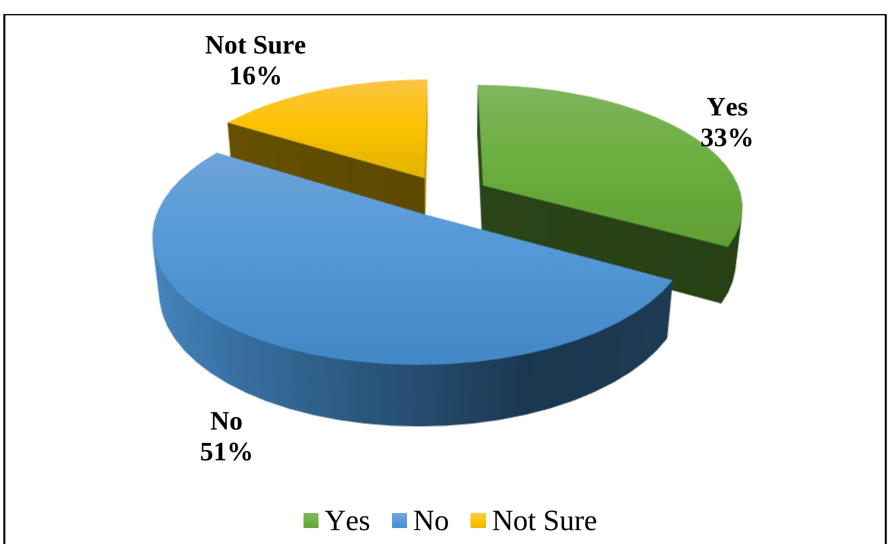


Source: Field Survey, 2024.

Figure 24: Level of Satisfaction with the Current Process of RTI

The above column chart illustrates the level of satisfaction of people with the current process of getting information under RTI Act. The study found that 21% people are satisfied with the current process. No people are found to be very satisfied. 34% respondents put neutral option to their satisfaction level. Majority of the respondents (43%) are dissatisfied with the current process where 2% are very dissatisfied.

4.20 Implementation of RTI Act Effectively in Selected Unions

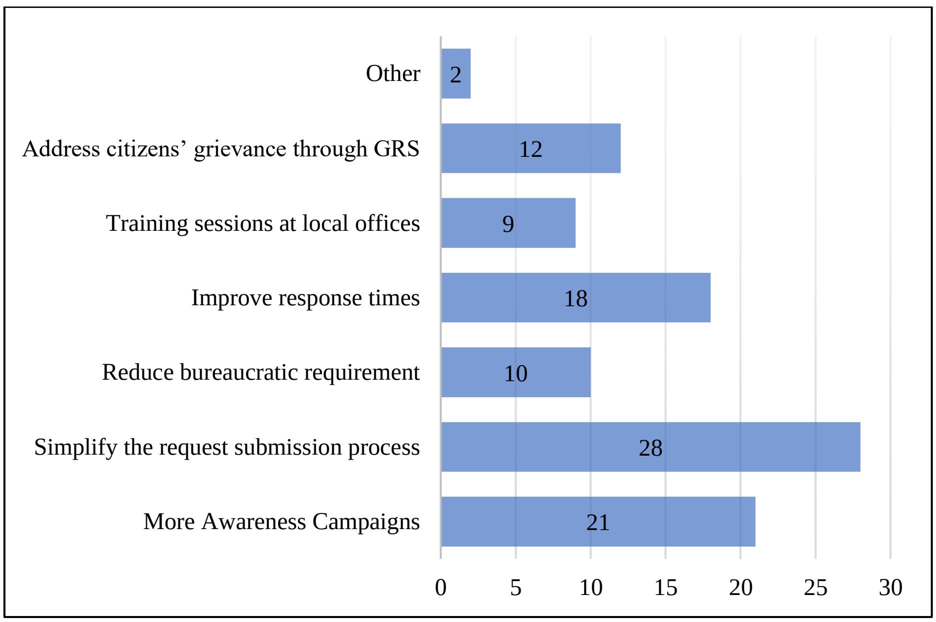


Source: Field Survey, 2024.

Figure 25: Implementation of RTI Act Effectively

The pie chart above will estimate how well RTI Act has been put into action in the chosen field of my research. The majority of the respondent (51%) indicated that there is an absence of effective implementation of RTI Act in their locality. Only 33% of the respondents replied that RTI Act is not properly practiced in their region. 16 percent of the people do not know whether the Act has been properly being practiced in their region. When the Act will effectively be implemented in rural area, it will empower citizens to obtain relevant information under the RTI Act and lead to participatory governance. According to the Report of Bangladesh Bureau of Statistics (2011), a large portion (65%) of population in UPs are illiterate. Other studies found that it can be a barrier to implement the RTI act effectively in Bangladesh. Inactivity of UPs to make people aware of the significance of RTI Act can be another barrier to implement the Act effectively.[11]

4.21 Actions to Make RTI Act Effective and Make it Easier for Citizens



Source: Field Survey, 2024.

Figure 26: Actions to Make RTI Act Effective & Easier for Citizens

The above bar chart shows the actions that can make RTI Act more effective and make it easier for citizens to use the Act. The study found that a large number of respondents (28%) suggest to simplify the RTI request submission process. As well as, 21% people support to more awareness campaign to make aware both citizens and public officials. As the authority make delay to provide information, 18% respondents demanded for improving response times. They (12%) also want GRS system to address their grievance. 10% people suggest to reduce bureaucratic requirement. Training at local offices can improve the service delivery process. Respondents (9%) suggest for arranging training session and 2% people suggest other ways to make RTI Act effective and easier for citizens.

[11]AK Ahsan, MS Chowdhury and PK Pandey, 'Do Legal Prescriptions Ensure Public Accountability? Insights and Lessons from Local Governments in Bangladesh' (2018) 40(1) Asia Pacific Journal of Public Administration 57, 62.

4.22 Findings from Interview

As the study aimed to explore the effectiveness of Right to Information Act in rural-level local administration, 8 service providers have been interviewed from Bhabanipur union at Fulbaria upazila and Trishal union from Trishal upazila in Mymensingh district.

Union	Male	Female	Total
Bhabanipur	4	1	5
Trishal	3	0	3

Table-4: List of Number of Respondents for Interview

This section presents and discusses the findings of the study generated from face-to-face interview with public officials from two selected unions from two upazilas.

4.23 Findings from the Public Officials from Bhabanipur Union at Fulbaria Upazila

4.23.1 UP Secretary said that he is aware of the RTI Act and he provides information following the provisions of RTI Act. He said that people are not aware of the RTI Act. People come to him and asked for information verbally. Most of them do not know the formal written procedure of the Act. He often needs to guide them about the correct process for submitting RTI requests. He said that they do not receive many requests. He gets request may be two or three in a month, mostly from educated individuals. Most request are about land disputes and development projects. He depicted that the biggest challenge is lack of proper documentation in their office. Because sometimes it is impossible to locate old files. To improve the effectiveness of RTI Act, he suggested that government should simplify the process for filing requests especially for rural people who are not literate or familiar with the process.

4.23.2 Deputy Assistant Agricultural Officer said that the RTI Act is an important law, but general people are not fully understanding the law or its scope. She recognized that many of them including herself, know the basic provisions of it. She said that she gets some training a few years back which was very brief and didn't cover practical implementation. She pointed out that more public awareness campaigns help to educate people about RTI Act and increase its effectiveness in the union level.

4.23.3 Deputy Assistant Agricultural Officer acknowledged that he has a basic understanding of the RTI Act. He honestly said that he has not read the Act in detail. He suggests that government should run public awareness campaigns about the RTI Act and provide more training for officials like them. He thinks that without these efforts, potentials of RTI Act will remain unrealized in the rural level like union.

4.23.4 Entrepreneur (Director) of UDC claimed that the RTI Act is a powerful tool but people are not aware of it. He said that in UDC, they act as a bridge between the citizens and government. People often come to them for helping them to file RTI requests as they don't understand the process. He said that they (UDC operators) are trained in RTI-related tasks. But the training isn't frequent enough to keep up with evolving practices. He suggested that government should focus on digitizing union records and claims more regular workshops and updates. If records were digital, it would be much easier for them to provide information in a timely manner.

4.23.5 Account Assistant Cum-Computer Operator said that he has not heard about the RTI Act. But he knows that people can get information in the union when they sell or buy land. Other information is taken from him for this study. He said that UDC in Bhabanipur union perform well. They have Citizen Charter where they disclose information about the services they provide. The study did not find any Citizen Charter anywhere in Bhabanipur union parishad. In response to a question about CC, he said that they had citizen charter. After July revolution, some local people have defiled the charter. Because, there is no boundary around the UP. He thinks that proper steps should be taken to make people more aware about the RTI Act.

4.24 Findings from the Public Officials from Trishal Union at Trishal Upazila

4.24.1 Union Land Assistant Officer said that he is quite familiar with the RTI Act. It frequently overlaps with his responsibilities because many citizens seek land related information from him every day. Most requests related to land ownership disputes, mutation applications and allocation of khash land. Sometimes, people use RTI requests to harass officials by filing multiple requests on the same issue. He thinks that RTI Act has improved accountability. As citizen can requests for information, it makes officials more cautious to maintaining proper land records by following procedures. He suggests that digitization of all land records and accessible through an online portal will save time and reduce burdens. Training for both officials is essential. Because, people need to understand the Act and officials need regular updates on how to process RTI requests efficiently. If these challenges are addressed, it will help to increase the effectiveness of RTI Act in rural level local government institutions in Bangladesh.

4.24.2 Entrepreneur of UDC said that he is aware of the RTI Act. As many people in rural areas are unfamiliar with the Act, he acts as the intermediaries to make RTI Act easier for citizens. He said that they receive 3-5 requests per month. He said that he assists citizens in filing RTI requests and submit the request to the relevant authority. He depicts that they do not have a dedicated officer for RTI requests. So, it gets added to their heavy workload that are already exist. He thinks that the RTI process is not as citizen-friendly as it could be. He suggests that government should simplify the application process and making it available online, especially for those people who can't visit the union office frequently.

4.24.3 Account Officer of Union Parishad said that he heard the name of RTI Act. He doesn't have any broad idea of the Act. As the UP Secretary is on leave, he preserves various files on RTI requests. He suggests to take necessary steps to make citizen aware of the Act. He thinks that the responsible authority should arrange meeting in every month in the UP to discuss the matter of RTI.

5. Discussion of the Study

This chapter mainly discusses the results from key findings of the study. Discussion have been elaborated based on the objectives of the study and other relative contexts.
To conduct the study, relevant data have been collected from 138 respondents from two selected unions. For survey, the number of respondents was 130. They were both male and female whose age range was 18 to more than 55. Most of the respondents' (32%) age range was between 36-45. Most respondents have completed primary education (26%) and SSC (20%). Most of them are housewives (23%) and small businessmen (18%). In addition, interview is conducted from 8 public officials from two unions. Of them, 7 respondents were males and only one is female. As earlier mentioned, the general objectives of the study are to know the effectiveness of RTI Act in rural-level local government institutions. The findings of the study from survey depicts that most of the respondents (87%) are not aware of the Act. Only 13% respondents heard about the Act from newspaper, social media and other ways. But most them (71%) doesn't know the main objectives of RTI Act.

According to the survey, citizens have no broader idea about the Act. For this reason, majority of them (84%) have never applied for information. Only 16% respondents have applied for information by following written procedure for once, hardly for twice or thrice. In addition, interview depicts that responsible authorities get 3-5 RTI requests per month. But the study found that only 10% people get their desired information within 20 working days and 24% people get the information within 21-30 working days. In addition, findings from interview represents that people usually request for development projects and land related information. As the land records are not digitized, it takes more time to find out old records. Delay can be happened in such cases. As one of the specific objectives of this study is to identify the barriers and challenges in implementing RTI Act, key findings depict some barriers and challenges faced by both service providers and service receivers. From survey, the study found that 33% respondents harassed while they trying to obtain information. Most of them encountered the challenges of lack of response from authorities (29%), lack of awareness about how to request information (27%), bureaucratic delays (18%). Rest them encountered the challenges of high cost of information (10%) and other (16%). The study also found that 43% respondents are dissatisfied with the current process of getting information under RTI Act where only 21% respondents are found to be satisfied with the current process. In addition, it has found through interview that RTI Act can help to increase accountability. As citizen have the right to question authority about any information, officials become more aware while filing or keeping records.

6. Recommendations

The findings and discussion of the study delineate that people are not aware of the RTI Act in rural areas. They do not know the provisions of the Act, even most of them do not hear about the Act. They have no large idea on the main objectives and scopes of the RTI Act. As they have limited idea on the Act, they do not ask for information from government offices. If the citizen is not engaged with the Act, it will not possible to meet the main objective of the Act in local governance in Bangladesh. Moreover, both service receivers (citizens) and service providers (public officials) face some barriers and challenges in implementing the RTI Act. This study also shows that people are not satisfied with the current process of request submission due to some causes. This creates barriers to effectively implementation of the Act.

To strengthen the effectiveness of RTI, I recommend following initiatives as short-term or long-term measures-

a. **Promote Awareness of RTI Act:** As most of the people are not aware of the Act, proper steps should be taken to raise awareness among people and public awareness. For this, more awareness campaign should be conducted which discusses the main objectives of RTI Act, provisions and scope of RTI Act. As media has a broader impact on today's generation, it can be an effective tool to promote the importance of RTI Act through media. Media can highlight the use of the Act to obtain information from both public and private offices. NGOs can play a major role to build awareness of RTI Act through Open Hearing, Open Budget System, Implementation Audit, Monitoring and Documentation etc. (Baroi, 2018).
b. **Establish RTI Implementation Cell:** To strengthen the effectiveness of RTI, a RTI implementation cell should be established by the government. The cell will be monitored by senior level bureaucrats. This cell will take effective strategies and arrange training programs for officials to implement the RTI Act in a better way. When the upper body will take such strategies, it will obviously increase the use of RTI Act by citizens to obtain information. It will largely contribute to meet the main objective of RTI Act in Bangladesh.
c. **Inclusion in School/College Curricula:** To strengthen the effectiveness of RTI Act, government should take proper steps to include the basic information of the Act in the school /college curricula. If the students have enough understanding of the objectives and basic provisions of RTI Act, they could motivate their parents to use the Act to get any information from government offices.

7. Conclusion

No Doubt the Right to Information Act, 2009 is a tool to protect society from the bite of corruption (Rahman, Ullah, & Asif, 2022). It's true value will come when citizen from all sphere start to use the Act(Anam, 2010). This study shows that most of the people are unaware of the Act. Only few of them file RTI request to obtain information. Most of them seek information verbally without following any formal procedures. When the government officials along with citizen and CSOs participate together, the success of RTI will come. For this, accountability, transparency and collaboration among the stakeholders are essential.This study provides some recommendations to improve the effectiveness of RTI Act. It also requires realization of full potentials to promote good governance in Bangladesh. Good governance can be ensured through media by broadcasting news and government projects with fairness and authenticity. [12]Besides, media can put pressure on government so that they are hold more accountable and transparent to conduct public operations (Baroi, 2018). All these measures will improve the situation to better access to information and will increase the effectiveness of Right to Information Act in Bangladesh.

8. References

Ahsan AK, Chowdhury MS and Panday P, 'Do Legal Prescriptions Ensure Public Accountability? Insights and Lessons from Local Governments in Bangladesh' (2018) 40(1) Asia Pacific Journal of Public Administration 57 https://doi.org/10.1080/23276665.2018.1443638accessed 14 August 2026.

Anam S, 'How RTI Act 2009 Evolved in Bangladesh' (Media Resources Development Initiative, 2010) https://mrdibd.org/wp-content/uploads/2021/04/45_HowRTI-evolved-in-bangladesh.pdf accessed 14 August 2026

Baroi HS, 'The Role of Civil Society Organizations in the Implementation of the Right to Information Act: A Case of Bangladesh' (2018) 3(1) International Journal of Social Science and Economic Research 153 https://www.ijsser.org/2018files/ijsser_03__11.pdf accessed 14 August 2026

Baroi HS and Pandey KP, 'Does Access to Information Facilitate Empowerment of Citizens? Answer Lies Within—A Recent Example of Bangladesh' (2015) 37(2) South Asian Journal of Policy and Governance 1 https://www.researchgate.net/publication/317036562_Does_Access_to_Information_Facilitate_Empowerment_of_Citizens_Answer_Lies_Within-_A_Recent_Example_of_Bangladesh accessed 14 August 2026

Chowdhury S and Pandey PK, 'Ensuring Transparency Through Citizen's Charter and Right to Information'

(2018) https://doi.org/10.1007/978-3-319-73284-8_7 accessed 14 August 2026

Karim MR and Mukta AR, 'Role of Right to Information in Empowering Citizen: An Empirical Study on Public Offices Bangladesh Public Administration Training Centre Savar, Dhaka' (Research Report, Bangladesh Public Administration Training Centre, 2022) https://www.researchgate.net/publication/366214617_Role_of_Right_to_Information_in_Empowering_Citizen_An_Empirical_Study_on_Public_Offices_Bangladesh_Public_Administration_Training_Centre_Savar_Dhaka accessed 14 August 2026

Mallik MR, Khandoker Z and Ahmad A, 'The Right to Information Act of 2009 in Bangladesh: Understanding the Accountability and Transparency of Public Information Officers' (2024) 3(9) Journal of Intellectual Property and Human Rights 87

Rahman MA, Ullah R and Asif SA, ''Right to Information Act 2009' to Tackle Corruption in Bangladesh:

Citizens' Perception' (2022) 9(1) International Journal of Social Political and Economic Research 26 https://doi.org/10.46291/IJOSPERvol9iss1pp26-48 accessed 14 August 2026

https://jlpj.bshrls.org
Vol. 1, No. 1, pp. 28-47, 2026

JOURNAL OF LAW, POLICY AND JUSTICE

RESEARCH ARTICLE

OPEN ACCESS

Beyond the Burden of Chastity: Character Evidence and the Changing Judicial Mindset in Bangladesh

Jannatun Ferdos[1], Faiqua Tahjiba[*,2]

[1,2] Lecturer, Department of Law and Land Administration, University of Rajshahi, Bangladesh

***Corresponding:** *tfaiqua@ru.ac.bd*

Received: 13.06.2026 Accepted: 20.08.2026 Publication date: 31.08.2026

ABSTRACT

In 2022, the colonial-era Evidence Act, 1872, was finally amended by the Evidence (Amendment) Act, 2022. It repealed section 155(4), the provision that allowed legal practitioners to attack sexually assaulted women's "general immoral character" to undermine their testimony. Although the repealed provision was widely appreciated as a vital step toward more just and gender-sensitive criminal justice, this paper argues that the amended version only abolished the colonial rule formally, preserving much of its functional spirit. Even though revised Section 146(3) bars inquiries into a victim's past behavior during cross-examination, courts may still permit them if deemed vital to fairness "for the ends of justice". What remains vague is how often such situations truly justify the breach of the victim's privacy. The lack of clear guidance, combined with broad judicial discretion, means the practice effectively remains tethered to the same colonial logic of invasive scrutiny. Yet legal wording only captures part of reality, as inside courtrooms, practices persist through subtle means such as in the Raintree Hotel verdict. Analysing the statutory provisions along with ten reported Appellate Division cases, this paper embeds the 2022 amendment within a broader critique of legislative repeal without structural and cultural transformation, which risks relocating, rather than dismantling, colonial mechanisms of control over survivors' credibility. The paper concludes by calling for binding judicial guidelines and stronger sexual violence shield protections to end the discretionary loophole.

Keywords: *Character Entitlement, Evidence Act, Judicial Discretion, Colonial Mechanism*

1. Introduction

A major impediment to justice for sexual violence cases in Bangladesh is the colonial rule of corroboration, which requires judges to verify the complainant's testimony with other evidences.[1] The evidentiary burden is structural rather than incidental, as it is embedded within the statute that continues to govern the standards of courtroom proof today.[2] Since its enactment in 1872, the Evidence Act has set the standards for considering survivors of sexual violence credible in Bangladeshi courtrooms, often under restrictive conditions.[3][4] Survivors of sexual violence encounter significant obstacles in their pursuit of justice, as exemplified by the historical use of the invasive two-finger test, which undermined their bodily integrity and dignity. Although this procedure was eventually acknowledged as patriarchal, unscientific, and a violation of survivors' rights to privacy, dignity, and physical integrity, the trauma it caused was often intensified during courtroom proceedings.[5] The practice of questioning survivors' credibility often transforms the trial process into an additional source of distress, as secondary victimization is interactionally produced during courtroom cross-examinations of women who have experienced sexual violence.[6]

In both cases, it remains challenging to evaluate the extent of protection that individual women and girl victims or survivors have obtained during the trial procedure and through the Court's orders. In the absence of substantial reforms within the legal system and without social security or support mechanisms, women and girls are often forced to relinquish the pursuit of justice through accountability or reparation, instead accepting minimal settlements.[7]

When a statute itself works as a pathway of moral profiling of a victim, it is obvious that the opposing parties will grab that chance. The Evidence Act, 1872 gave such a change to those opportunity seekers. Section 155(4) of the Act allowed defense lawyers to bring up character evidence against complainants during trials.[8] This section is a discriminatory law from the colonial era, based on outdated and patriarchal ideas about women's and girls' virginity, reinforcing gender inequality.[9] This practice shifted the trial's focus from the

[1] Taqbir Huda, '"No Signs of Rape": Corroboration, Resistance and the Science of Disbelief in the Medico-Legal Jurisprudence of Bangladesh' (2022) 29 Sexual and Reproductive Health Matters 2096186 <https://doi.org/10.1080/26410397.2022.2096186>.
[2] ibid
[3] Equality Now (2025). *Sexual violence in Bangladesh: How years of activism by CSOs led to landmark amendment to the Evidence Act.*
[4] The Daily Star (2019). *The colonial legacy of rape laws.*
[5] *State of Jharkhand v Shailendra Kumar Rai @ Pandav Rai* (2022) 14 SCC 229, [31]–[33].
[6] Selena Mariano, 'The "Double Bind" of Gender-Based Violence: Secondary Victimization in Courtroom Cross-Examinations' (2026) 44 Behavioral Sciences & the Law 96 <https://doi.org/10.1002/bsl.70025>.
[7] Sara Hossain, 'Public Interest Litigation on Violence Against Women in Bangladesh' in Amy Barrow and Joy L Chia (eds), *Gender, Violence and the State in Asia* (Routledge 2016) ch 7, 119, 129.
[8] Taqbir Huda, *Between 'Virtue' and 'Immorality': Why Character Evidence Must Be Prohibited in Rape Cases* (Rape Law Reform Research Reports No 1, BLAST and UN Women 2019), 5.
[9] ibid

accused to the complainant's chastity.[10] Although advocates may acknowledge progress reflected in legal reforms, it is considerably more difficult to demonstrate a meaningful impact on the lived experiences of victims of gender-based violence.[11] For nearly 150 years, this provision justified a courtroom culture where a survivor's sexual history, attire, marital status, and prior relationships were seen as relevant to whether rape occurred or consent was absent.[12] This provision even permitted the defence to present evidence regarding a complainant's sexual history to support the argument that individuals who were not virgins could not be raped.[13] This reasoning was based on the assumption that sexually experienced women were more likely to consent and subsequently file false complaints.[14] Feminist legal scholarship throughout South Asia has consistently identified this evidentiary framework as a colonial legacy that embedded Victorian concerns about female chastity into criminal procedure and preserved them largely without scrutiny long after independence.[15] On this point, some remarkable incidents of gendered entitlement in trial, including the Raintree incident demanded a significant change to this provision.

The Evidence (Amendment) Act, 2022 was framed as a corrective mechanism to this history. It repealed section 155(4) outright and inserted a revised section 146(3), which, prima facie, bars cross-examination into a victim's general character or past sexual conduct. The reform was celebrated, both within Bangladesh and by regional observers, as bringing the law into alignment with international human rights standards on the treatment of sexual violence survivors. Yet the reformed provision retains a significant carve-out, still permitting courts such questioning where it is considered necessary "for the ends of justice". This phrase is nowhere defined, and no threshold, guideline, or standard of necessity accompanies it. The result is a structure in which the prohibition is general, and the exception is elastic, so that the question of whether a survivor's past will be put on trial is left, once again, to unguided judicial discretion. Cases such as the Raintree Hotel verdict illustrate how easily this discretion can be exercised to reproduce the very reasoning the amendment was meant to foreclose, with a survivor's conduct, credibility, and character re-entering the proceedings through interpretive rather than statutory means.[16]

---

[10] Siddiqui, M, 'Legal Tangle over "Chaste" and "Immoral" Women' https://www.academia.edu/10024606/Legal_tangle_over_chaste_and_immoral_women accessed 11 August 2026.

[11] Sara Hossain, 'Public Interest Litigation on Violence Against Women in Bangladesh' in Amy Barrow and Joy L Chia (eds), *Gender, Violence and the State in Asia* (Routledge 2016) ch 7, 119, 129.

[12] Evidence Act: Both Sections Questioning Victims Will Be Amended' *The Daily Star* (Dhaka, 23 February 2022). https://www.thedailystar.net/news/bangladesh/news/evidence-act-both-sections-questioning-victims-will-be-amended-2967431 accessed 12 August 2026.

[13] Elizabeth Kolsky, '"The Body Evidencing the Crime': Rape on Trial in Colonial India, 1860–1947' (2010) 22(1) Gender & History 109-130.

[14] ibid

[15] Arathi P.M., 'Book Review: Pratiksha Baxi, Public Secrets of Law: Rape Trials in India' (2014) 44 Social Change 488 <https://doi.org/10.1177/0049085714536807>.

[16] 'It's No Rape: They Danced, Drank, Swam' *The Daily Star* (Dhaka, 12 November 2021) https://www.thedailystar.net/news/bangladesh/crime-justice/news/its-no-rape-they-danced-drank-2227711 accessed 12 August 2026.

This paper argues whether the formal abolition of Section 155(4) by the Evidence (Amendment) Act 2022 effectively eliminates chastity-based character evidence from sexual violence trials in Bangladesh, or if such reasoning persists through discretionary judicial and procedural mechanisms. The analysis traces the colonial ideological foundations of Section 155(4) and examines the doctrinal gaps that remain unaddressed by the 2022 Amendment. Furthermore, the study identifies alternative legal routes through which chastity-based reasoning re-emerges in post-2022 sexual violence trials in Bangladesh. This study addresses that closing this loophole requires not merely narrower procedural drafting but the deliberate introduction of a substantive value system, anchored in constitutional guarantees of dignity, privacy, and equality, capable of constraining judicial discretion from within.

1.1 Literature Review

Scholarship addressing chastity-based character evidence in Bangladeshi sexual violence trials falls into three main categories. The first includes studies done before the repeal of section 155(4). For example, a study on the "science of disbelief" shows that corroboration and resistance rules, together with section 155(4), led to institutional disbelief of complainants.[17] A review of case files found that defence lawyers often used this provision to portray complainants as immoral.[18] Most of this literature is descriptive and was published before the 2022 Amendment.

The second category is comparative South Asian doctrinal scholarship. These works offer useful methods but do not focus on Bangladesh. For example, one study found that Indian medical practice continued chastity-testing even after reforms in 2003.[19] Another argued that changing the law is not enough to change deep-rooted judicial habits.[5] A comparative study of India, England and Wales, and Canada used a similar approach to this paper, but did not cover Bangladesh or events after 2022.[20]

The third category is comparative rape shield scholarship, which sets out the doctrinal pattern used in this paper for section 146(3). Early research shows that the idea of "relevance" has often hidden moral judgments.[21] Later studies found that even well-established rape shield laws still allow sexual history evidence through certain exceptions.[8] Research aimed at practitioners also shows that the wording of the law alone does not decide court outcomes.[9] However, none of the current research offers a doctrinal analysis of

[17] Taqbir Huda, '"No Signs of Rape": Corroboration, Resistance and the Science of Disbelief in the Medico-Legal Jurisprudence of Bangladesh' (2022) 29 Sexual and Reproductive Health Matters 2096186 <https://doi.org/10.1080/26410397.2022.2096186>.
[18] Taqbir Huda, *Between 'Virtue' and 'Immorality': Why Character Evidence Must Be Prohibited in Rape Cases* (Rape Law Reform Research Reports No 1, BLAST 2019).
[19] Devika Mitra and M. Satish, 'Testing Chastity, Evidencing Rape: Impact of Medical Jurisprudence on Rape Adjudication in India' (2014) 26(1) National Law School of India Review 51.
[20] Kalika Mehta and Avantika Tiwari, 'Between Sexual Violence and Autonomy: Rethinking the Engagement of the Indian Women's Movement with Criminal Law' (2021) 22 German Law Journal 860.
[21] Nikunj Kulshreshtha, 'The Contemporary Status of Rape Shield Laws in India' (2023) 27 The International Journal of Evidence & Proof 3.

section 146(3)'s "ends of justice" exception or explains its closure in the context of Bangladesh's constitution which this paper aims to address and fill that gap.

1.2 Colonial Legacies of Gendered Entitlement

Gendered stereotypes constitute a form of secondary victimization, especially within judicial proceedings, where defence attorneys may invoke a victim's gender to challenge their credibility.[22] This issue is not just a rare anomaly. Instead, it shows how certain practices became part of the colonial legal system. The creation of Section 155(4) was a key part of the imperial evidentiary system set up after 1857. The Evidence Act of 1872 played a major role in the wider colonial effort to organize and unify different common law rules into a single code, primarily drafted by Sir James Fitzjames Stephen.[23] Stephen served as the Law Member of the Viceroy's Council and shaped the Act to fit the needs of colonial administration.[24] It became effective on 1 September 1872 throughout British India.[25] Within this codification, section 155(4) authorized the defence in rape prosecutions to present evidence regarding the complainant's "generally immoral character" to challenge her credibility.[26][27]

The provision's logic rested on a specifically Victorian taxonomy of female sexual virtue rather than on evidentiary relevance. This moralistic framing has distorted statutory doctrine across the broader legal landscape governing witness integrity and reputation. Generally, the rules governing the admissibility of character evidence can be systematically categorized into three areas: (I) admissibility to establish the character of a party or third person as a fact in issue; (II) admissibility to demonstrate the character of a party or third person as circumstantial evidence; and (III) admissibility to assess the character of a witness.[28] Nevertheless, historical scholarship on colonial-era trials shows the provision allowed the defence to argue that a sexually experienced complainant could not have been assaulted without her consent. This rested on the assumption that such a woman was more likely to have agreed to intercourse and later fabricated a complaint.[29] This taxonomy did not just inform judicial reasoning but structured the categories through which a survivor's testimony could be heard as credible. Commentary on the Bangladeshi provision described this as a division between "ropeable" and "non-ropeable" women, with the onus on the survivor to establish

---

[22]Mariano (n 6).
[23]Kunal Ambasta, 'One Hundred (and Fifty) Years of Solitude: The Indian Evidence Act 1872 as a Lost Project of Law Reform' (2024) 8 Indian Law Review 1 <https://doi.org/10.1080/24730580.2023.2283644>.
[24]ibid.
[25]ibid
[26] Evidence Act 1872, s 155(4) (Bangladesh) (as originally enacted; repealed by Evidence (Amendment) Act 2022).
[27] Elizabeth Kolsky, '"The Body Evidencing the Crime': Rape on Trial in Colonial India, 1860–1947' (2010) 22(1) Gender & History 109.
[28] David Torrance, 'Evidence of Character in Civil and Criminal Proceedings' (1902) 12 Yale LJ 352, 353.
[29] Elizabeth Kolsky, '"The Body Evidencing the Crime": Rape on Trial in Colonial India, 1860–1947' (2010) 22(1) Gender & History 109.

which category she occupied.[30]

The colonial legal framework was not exclusive to Bangladesh. India and Pakistan also inherited the same provision from the 1872 codification and initiated reforms prior to Bangladesh. This provision remained largely unexamined in Bangladesh, retaining the provision for nearly a century while India implemented statutory amendments in 2003,[31] and Pakistan enacted the Qanoon-e-Shahadat Ordinance in 1984,[32] although character evidence was only partially retained in practice. The repeal in Bangladesh resulted from sustained feminist legal mobilization rather than independent legislative reform. In November 2021, Bangladesh Legal Aid and Services Trust, Ain o Salish Kendra, and Naripokkho filed a public interest litigation petition seeking the cancellation of sections 155(4) and 146(3).[33] The petition was submitted in response to increased activist pressure following the widely criticized observations in the Raintree Hotel verdict.[34] The High Court was subsequently informed that the government had already resolved to repeal both provisions. The Evidence (Amendment) Bill 2022 was enacted by voice vote on 3 November 2022, thereby repealing provisions that allowed character-based cross-examination of survivors.[35]

1.3 How "the Ends of Justice" Rebuilds the Old Inquiry

This analysis starts by highlighting the gap between what section 146(3) prohibits and what it allows. The section bans questions about a victim's "general immoral character" or past sexual conduct during cross-examination, using language similar to the previous law. However, it makes an exception for material the court finds necessary "for the ends of justice". Unlike similar reforms elsewhere, there is no list of factors or judicial guidelines to explain this exception. Other jurisdictions, such as England and Wales, require judges to record written reasons or consider specific factors like relevance, prejudice, and necessity before admitting such evidence. For example, section 41 of the Youth Justice and Criminal Evidence Act 1999 in England and Wales requires a prior leave application, which courts enforce strictly.[36] Empirical studies confirm that these applications are central to decision-making.[37] In Canada, similar provisions are interpreted through a

[30] Kalpana Kannabiran, 'Sexual Assault and the Law' in Kalpana Kannabiran and Ranbir Singh (eds), *Challenging the Rules of Law: Colonialism, Criminology and Human Rights in India* (Sage 2008) 78.
[31] The Evidence (Amendment) Act 2002 (India), s 3, amending the Indian Evidence Act 1872, s 155(4) (India) (w.e.f. 1 January 2003).
[32]Faisal Daudpota, 'Pakistan's Evidence Law Should Be Revised: Benchmarking Qanun-e-Shadat Order of 1984' (SSRN, 2026) <https://doi.org/10.2139/ssrn.6304560>.
[33] Equality Now (2025). *Sexual violence in Bangladesh: How years of activism by CSOs led to landmark amendment to the Evidence Act.*
[34] HC Orders to Submit Report on Steps Taken to Repeal Section 155(4) of Evidence Act' *The Business Standard* (Dhaka, 16 November 2021) https://www.tbsnews.net/bangladesh/court/provisions-evidence-act-facilitates-questioning-victims-character-be-repealed.
[35] Evidence (Amendment) Act 2022 (Bangladesh) http://bdlaws.minlaw.gov.bd/act-1416.html.
[36] Paul Roberts, 'Vulnerable Witnesses and the Principle of Orality' in Paul Roberts and Adrian Zuckerman, *Roberts & Zuckerman's Criminal Evidence* (3rd edn, OUP 2022).
[37] Laura C H Hoyano, 'Cross-examination of Sexual Assault Complainants on Previous Sexual Behaviour: Views from the Barristers' Row' [2019] Crim LR 75.

framework of prohibited inferences (the "twin myths") that limit how judges may use a complainant's sexual history.[38] This drafting choice is vital because it shifts decision-making authority from the legislature, which sets general rules, to individual judges who apply an undefined standard in each case.

This pattern is well documented as even when judgments avoid the statutory term "immoral character", they often revisit a complainant's conduct, relationship history, and behavior before and after the alleged assault as part of credibility assessments. Scholars have shown that judges continue to admit sexual history evidence through discretionary and constitutional exceptions, which undermines the substantive value of shield provisions.[39] Critics note that rape shield statutes are so full of exceptions that they function as little more than sieves.[40] Frequently, only the framing has changed; material once introduced as character evidence is now presented as relevant to credibility or the "ends of justice", while the underlying approach remains largely unchanged.

When viewed in light of comparative shield-law literature, the Bangladeshi approach is neither unusual nor unexpected. Surveys of rape shield regimes in the United States, Canada, England and Wales, Scotland, and New Zealand reveal similar recurring challenges, regardless of regulatory structure.[41] A recent multi-jurisdiction review confirms that issues with sexual history evidence persist across diverse legal systems.[42] Bangladesh differs in its lack of procedural safeguards, such as mandatory pre-trial applications or written reasons, which other jurisdictions adopted because unstructured exceptions proved ineffective. The reliance on "probative value versus prejudice" balancing and the continued use of cross-examination tactics targeting complainants conduct,[43] even decades after reform, highlight the importance of these safeguards.[44] Legislative repeal without a supporting value framework creates only the appearance of reform, allowing the underlying logic to resurface whenever discretion is exercised. Comparative literature describes this as the "policy cycle",[45] where reform rhetoric outpaces doctrinal change, and courtroom practices can undermine statutory amendments.[46]

---

[38] Lisa Dufraimont, 'Myth, Inference and Evidence in Sexual Assault Trials' (2019) 44(2) Queen's LJ 316.
[39]Aviva Orenstein, 'The Seductive Power of Patriarchal Stories' (2015) 58 Howard LJ.
[40] I Bennett Capers, 'Real Women, Real Rape' (2013) 60 UCLA L Rev 826.
[41] Fiona E Raitt and M Suzanne Zeedyk, 'Rape Trauma Syndrome: Its Corroborative and Educational Roles' (1997) 24(4) J Law & Soc 552.
[42] Joanne Conaghan and Yvette Russell, 'Sexual History Evidence in Review' in Kate Gleeson and Yvette Russell (eds), *New Directions in Sexual Violence Scholarship: Law, Power and Change* (Routledge 2023).
[43] Gregory M Simonsen, 'Rape Victim Confrontation' (1985) Utah L Rev.
[44] Sarah Zydervelt, Rachel Zajac, Andy Kaladelfos and Nina Westera, 'Lawyers' Strategies for Cross-Examining Rape Complainants: Have We Moved Beyond the 1950s?' (2016) 57(3) Brit J Criminol 551.
[45] Joanne Conaghan and Yvette Russell, 'Sexual History Evidence in Review' in Kate Gleeson and Yvette Russell (eds), *New Directions in Sexual Violence Scholarship: Law, Power and Change* (Routledge 2023).
[46] Saumya Maheshwari, 'The Language of Evidence in Rape Trials' (2014) 10(1) Socio-Legal Rev 1.

1.4 Legal Theories on "Chastity" as a Benchmark for Credibility

Legal scholars have noted that courts often use a complainant's sexual history to assess credibility rather than relevance. Vivian Berger argued that admitting evidence of a rape complainant's past sexual conduct introduces a 'consent by disposition' logic, treating a woman's past choices as a measure of her honesty.[47] Susan Estrich expanded on this, stating that the law's distinction between 'genuine' and 'unchaste' victims reflects a belief that only certain complainants deserve legal protection, with chastity viewed as essential for credibility.[48]

South Asian feminist legal scholars have traced the logic of credibility in sexual assault cases back to colonial times. Pratiksha Baxi's ethnographic research on Indian rape trials shows that character evidence was less about legal relevance and more about ritualized courtroom practices. In these trials, the complainant's sexual history was used to judge her honesty, her consent, and whether she deserved to be recognized as a victim.[49] Kalpana Kannabiran's work on sexual assault law also links this practice to colonial legal thinking, where chastity became a stand-in for both consent and the complainant's right to be believed.[50] Geetanjali Gangoli's wider study of Indian feminist legal activism points out that this link between chastity and credibility is built into postcolonial criminal procedure, not just a rare occurrence.[51] In Pakistan, Supreme Court decisions on rape have historically judged a complainant's credibility by comparing them to a 'prototypical' victim, defined by chastity and expected behaviour.[52] Hence, in sexual violence cases, courts have used the concept of "chastity" to assess complainant credibility, often before considering the facts of the alleged assault.

Similarly, Catharine MacKinnon's dominance approach contends that legal rules are not neutral because they reflect and support male power over women.[53] This view explains that courts assumed a woman's sexual history mattered, since the law's supposed 'objectivity' was not truly gender-neutral.[54] Spivak's analysis of the subaltern woman's structural inability to be heard on her own terms within systems shaped by both imperial and patriarchal power offers a theoretical feature for understanding the persistent undermining of sexual violence complainants' credibility by character evidence, conceptualized as a colonial-patriarchal evidentiary hybrid, even after its formal statutory repeal.[55] Another strand by Michael Lipsky's theory of

---

[47] Vivian Berger, 'Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom' (1977) 77 Colum L Rev 1.
[48] Susan Estrich, 'Rape' (1986) 95 Yale LJ 1087.
[49] Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* (Oxford University Press 2014).
[50] Kalpana Kannabiran, 'Sexual Assault and the Law' in Kalpana Kannabiran and Ranbir Singh (eds), *Challenging the Rules of Law: Colonialism, Criminology and Human Rights in India* (Sage 2008) 78.
[51] Geetanjali Gangoli, *Indian Feminisms: Law, Patriarchies and Violence in India* (Ashgate 2007).
[52] Orubah Sattar Ahmed, 'Lost Chastity to Lost Honor: The Heuristic Shift in Rape Discourse by the Supreme Court of Pakistan' (2021) 23(1) Georgetown Journal of Gender and the Law 1.
[53] Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989).
[54] ibid
[55] Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?' in Cary Nelson and Lawrence Grossberg (eds), *Marxism and the Interpretation of Culture* (University of Illinois Press 1988) 271.

street-level bureaucracy says that front-line state actors, such as trial judges, have significant discretion when applying statutory policy.[56] This discretion often leads to the same biases that formal reforms were meant to remove. This practice still persists in Bangladesh, despite the formal repeal of section 155(4), as discussed in this paper.

1.5 Constitutional Interpretation on 'Equality', 'Dignity', and the 'Pursuit of Justice'

Article 27 of the Constitution establishes that all citizens are equal before the law and are entitled to equal protection and Article 31 provides with the right to equal protection of law for all citizens.[57] The previous character-evidence rule contravened this principle by permitting the use of a woman's sexual history to assess her credibility, thereby creating a gender-based distinction and denying complainants the same protection afforded to other witnesses. Analysing sexual violence law from the perspective of equality demonstrates that these rules constitute substantive denials of constitutional equality, rather than mere technical errors.[58] Historical analysis further reveals that the association between unchastity and diminished credibility has persisted in legal reasoning, even after formal amendments to the rules.[59] When section 146(3) leaves the 'ends of justice' undefined and subject to judicial discretion, it enables the re-emergence of such outdated reasoning. Judicial reliance on antiquated notions of female chastity is fundamentally inconsistent with the Constitution's guarantee of equality.

The Constitution further reinforces these principles through its explicit commitment to human dignity. Dignity serves as a guiding standard for judicial interpretation,[60] and in sexual assault proceedings, the complainant's dignity and privacy are rights that must be upheld throughout the trial process.[61] Permitting judges to evaluate a survivor's worth based on their sexual history constitutes not only a legal error but also a violation of their dignity. Failure to articulate these values clearly within the law, risks perpetuating the same outdated notions of chastity that the legal reforms sought to eliminate.[62]

Article 104 provides remedial mechanisms to meet these problems.[63] It allows the Appellate Division to issue any orders necessary to achieve complete justice in cases before it. This 'complete justice' power is a special constitutional authority, different from regular legal discretion, and research shows it is broad enough to give

---

[56] Michael Lipsky, '*Street-Level Bureaucracy: Dilemmas of the Individual in Public Services'* (Russell Sage Foundation 1980).
[57] Constitution of the People's Republic of Bangladesh, art 27 & 31
[58] Robin West, 'Equality Theory, Marital Rape, and the Promise of the Fourteenth Amendment' (1990) 42 Fla L Rev 45
[59] Julia Simon-Kerr, 'Unchaste and Incredible: The Use of Gendered Conceptions of Honor in Impeachment' (2008) 117 Yale LJ 1854.
[60] C McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights' (2008) 19 European Journal of International Law 655 <https://doi.org/10.1093/ejil/chn043>.
[61] Lise Gotell, 'The Ideal Victim, the Hysterical Complainant, and the Disclosure of Confidential Records: The Implications of the Charter for Sexual Assault Law' (2002) 40 Osgoode Hall LJ 251.
[62] I Bennett Capers, 'Real Women, Real Rape' (2013) 60 UCLA L Rev 826
[63] Constitution of the People's Republic of Bangladesh, art 104

real meaning to open-ended rules.[64] Synthesizing the views on Articles 27 and 104, the issue is elevated to a constitutional duty rather than remaining solely a matter of statutory interpretation. The exception must support equality and dignity, and the Appellate Division can use its power through guidelines, required pre-trial steps, or written reasons, to make sure it does.

2. Methodology

This paper uses doctrinal legal research to find, interpret, and combine legal sources to answer a specific legal question.[65] The analysis also takes a socio-legal approach, looking at the law in its historical and institutional setting, especially the colonial roots of the Evidence Act 1872 as it applies in Bangladesh. Main sources include the Evidence Act 1872 (both original and amended), the Evidence (Amendment) Act 2022. Doctrinal analysis of reported judgments offers a view of how character evidence operates at trial.[66] High Court Division judgments that apply section 146(3), including the Raintree Hotel verdict, were found using the Supreme Court of Bangladesh website, BDLEX, and Manupatra, and were reviewed to see how courts interpret the “ends of justice” exception. This study relies on secondary sources, including Law Commission reports, National Parliament debates preceding the amendment, and research on rape shield laws in other common law countries. These materials enable a comparison between Bangladeshi law and international standards. Rather than focusing solely on section 146(3), the study examines the law’s practical application in real scenarios through the analysis of cases. The research uses only publicly available judgments and analyses how the provision is applied in legal texts and discussions.

For the empirical inquiry, ten judgments from the Appellate Division and High Court Division decided within 1991 to 2025 were selected using purposive sampling. These reported cases have been analysis across three central themes: (i) *Substantive Evolution: From Moral Blame to Strict Legal Liability*, (ii) *Procedural Transition: From Character Attacks to Evidentiary Integrity*, and (iii) *Post-2022 Procedural Gaps: Surviving Flaws After Reform*. This method evaluates both pre- and post-amendment cases in order to identify shifts in judicial mindset regarding character evidence and to locate existing procedural loopholes.

3. Findings and Discussion

The study presents its findings in line with two specific objectives. It first examines the legal scope and statutory consequences of the 2022 Amendment. Afterwards it compares the pre- and post-amendment judicial trends regarding character evidence, highlighting progressive transitions along with the prevailing

---

[64] Shailendra Kumar, ‘Sketching the Limits of Article 142 of the Constitution of India: A Constitutional Necessity’ in Salman Khurshid, Sidharth Luthra, Lokendra Malik and Shruti Bedi (eds), *Judicial Review* (Cambridge University Press 2020) 365, 366.

[65] Terry Hutchinson and Nigel Duncan, ‘Defining and Describing What We Do: Doctrinal Legal Research’ (2012) 17(1) Deakin L Rev 83

[66] Laura C H Hoyano, ‘Cross-Examination of Sexual Assault Complainants on Previous Sexual Behaviour: Views from the Barristers’ Row’ [2019] Crim LR 75.

procedural drawbacks.

3.1. The Limits of Statutory Reform: Judicial Discretion and Legal Loopholes

After analysing the statutory provisions from pre and post amendment periods of Evidence Act, 1872, the study reveals three principal findings. First, the formal repeal of Section 155(4) has not totally abolished character evidence from sexual violence trials, rather it introduced a scope for discretionary application of this entitlement by inserting the "ends of justice" term in the proviso of Section 146(3). This is not a new tradition for Bangladesh. In any jurisdiction where a shield law permits judicial discretion, or where courts interpret such discretion, judges tend to apply a probative-value-versus-prejudice analysis.[67] As a result, the protective function of the statutory law is effectively nullified. Second, the lack of any clear guidelines, fact checking methods, or evidentiary standard governing this exception has led to inconsistent and largely unreviewable judicial practice. This is illustrated by the *Raintree Hotel* verdict, where reasoning similar to the old "immoral character" inquiry re-entered proceedings under the guise of ensuring fairness to the accused rather than an overt character attack. Rules of evidence intended to address fact-finder bias should be formulated as mandatory rather than discretionary.[68] A specific, non-discretionary approach resolves most issues of interpretation.[69] Third, and most importantly, procedural amendments alone cannot solve this issue, as judicial discretion continues to operate within an unreformed institutional mindset. Those working on the 2022 amendment should realize that a shield law can "reinscribe the very chastity requirement it hoped to abolish".[70] Without grounding the exception in explicit values, the amendment might continue the same logic it was meant to remove. The 2022 amendment did not provide any clear articulation of core constitutional values, namely survivor dignity, privacy, and equality before the law, that judges should balance against the accused's fair-trial rights when applying the exception. Without these principles embedded in binding guidelines or judicial training, discretion naturally defaults to inherited cultural biases rather than constitutional standards. Consequently, the findings indicate that closing this loophole requires more than narrower procedural drafting. Hence, it demands a structured value framework that grounds judicial reasoning in the true purpose of the 2022 reform, rather than leaving that purpose to be reinterpreted in every case.

3.2. Thematic Case Analysis

Ten Appellate Division cases have been purposively selected for this study, which have been analysed under three different themes. These themes have been chosen according to the impact of the 2022 Amendment of

[67] Gregory M Simonsen, 'Rape Victim Confrontation' (1985) Utah L Rev 371
[68] Jane H Aiken, 'Protecting Plaintiffs' Sexual Pasts: Coping with Preconceptions Through Discretion' (2002) 51 Emory LJ 559
[69]ibid
[70] I Bennett Capers, 'Real Women, Real Rape' (2013) 60 UCLA L Rev 826

the Evidence Act regarding character evidence and the remaining procedural deficits.

Theme 1

Substantive Evolution: From Moral Blame to Strict Legal Liability

Prior to the amendment, a specific practice of moral entitlement to the female frequently existed in judicial matters. In Abdul Awal case (1995)[71] though there was a direct evidence of gang rape and murder, the gravity of such heinous offences has been mitigated by narrating the "element of sex-related perversity" of the victim which also commuted the conviction from death penalty to life imprisonment. The same pattern of commutation of death sentence has been observed in Idris Ali Bhuiyan (1995)[72] case and Zahiruddin (1995)[73] case, where the offenders were privileged on the ground of their wives' unchastity.

Moreover, a bitter reality of legalizing the rape offence by stating that the victim was engaged in street prostitution is recorded in Md. Saidur Rahman Neoton (1993)[74] case. Eventually, this entitlement bore such an impactful effect on the judicial system that the accused person got an acquittal due to lack of any other corroborative evidence. Furthermore, in gang-rape and murder case of Yasmin (2001)[75], offenders tried to cover up the crime by fabricating a story that the victim was Banu, a prostitute. The police even arrested a sex worker to distract the public attention on the point that only a prostitute had been involved in this offence. Again, while relying upon the custodial presumptive evidence, the defence council had successfully gained a reduction on punishment in Md. Nazrul Islam (2021)[76], which was a wife killing case. These case references reflect the systemic realities of a patriarchal society that routinely seeks opportunities to shift culpability onto women by targeting their character.

After the amendment in 2022, a mentionable change has been noticed in this regard. In Md. Islam (2023)[77] and Md. Azizul Haq (2025)[78] cases, courts are seen to focus on the substantive rights of the victims like maintenance, dower and custodial safety, rather than imposing character-based entitlement on them. In these

---

[71] *Abdul Awal v The State* (1994) Jail Appeal No 1 of 1993, Supreme Court of Bangladesh (Appellate Division) [1994] LEX/BDAD/0078/1994.
[72] *Idris Ali Bhuiyan v Enamul Haque* (1995) Jail Appeal No 1 of 1994, Supreme Court of Bangladesh (Appellate Division) [1995] LEX/BDAD/0043/1995.
[73] *Zahiruddin v The State* (1995) Jail Appeal No 1 of 1994, Supreme Court of Bangladesh (Appellate Division) [1995] LEX/BDAD/0172/1995.
[74] *Md Saidur Rahman Neoton v The State* (1993) Criminal Appeal No 14 of 1992, Supreme Court of Bangladesh (Appellate Division) [1993] LEX/BDAD/0048/1993.
[75] *The State v Md Moinul Haque and Others* (2001) Death Reference No 14 of 1997, Supreme Court of Bangladesh (High Court Division) [2001] LEX/BDHC/0247/2001.
[76] *Md Nazrul Islam v The State* (2021) Criminal Appeal No 3 of 2013, Supreme Court of Bangladesh (Appellate Division) [2021] LEX/BDAD/0137/2021.
[77] *Md Islam v Tasfiya and Others* (2023) Civil Revision No 340 of 2021, Supreme Court of Bangladesh (High Court Division) [2023] LEX/BDHC/0072/2023.
[78] *Md Azizul Haque v Tahura Khatun (Mainu)* (2025) Civil Revision No 2792 of 1994, Supreme Court of Bangladesh (High Court Division) [2025] LEX/BDHC/0158/2025.

Vol. 1, No. 1, pp. 28-47, 2026

cases, the courts were expressly seen to reject the character entitlement of women while determining the offenders' liability. Thus, the matter of producing unnecessary character evidence has been judicially discouraged after 2022, which is undoubtedly a remarkable progress to safeguard the dignity of a woman.

Theme 2

Procedural Transition: From Character Attacks to Evidentiary Integrity

This study demonstrates how gendered entitlement systematically undermined the evidentiary weight of criminal offences. While analysing Abdul Gafur (1991)[79] case, a tendency of weaponizing the former section 155(4) of the Evidence Act, 1872 has been noticed. Here, defence counsel successfully discredited the opposing female witness by portraying her as a 'woman of doubtful virtue,' ultimately securing an acquittal due to the absence of independent corroborating evidence. Likewise, in Most. Rahela Khatun (1996)[80] case, when the victim filed a charge of outraging her modesty against an official, the HDC quashed the claim upon the petition of the accused on the ground that the victim was a habitual false claimer. However, the AD eventually overturned the decision, stating that- decisions cannot be quashed on unproved defence materials. It proves the deceptive use of gendered entitlement by the male respondents to evade the judicial proceedings.

Findings from the after-amendment cases notice that a significant transition in evidentiary strictness has been established while determining punishment, rather than taking into account the character of the victim. In Md. Islam (2023)[81] case, the court strictly relied upon the 'conclusive proof' of section 12 of the Evidence Act, 1872 in recognizing the paternity of the child, denying the unproved DNA test report. Moreover, the husband was also penalised for his false implication of bad character on his wife. Similarly, in Azizul Haq (2025)[82] case, the court outright denied to take into account the defendant-husband's claim in the written statement that his wife is of an immoral character and confirmed the decree in favour of the appellant-wife, relying upon the statutory dower rights. These precedents illustrate a crucial transition in the judicial mindset, prioritizing gender equality and human rights over moral profiling.

Theme 3

Post-2022 Procedural Gaps: Surviving Flaws After Reform

Although post-amendment jurisprudence marks essential progress toward eliminating irrelevant gendered

[79] *Abdul Gafur v The State* (1991) Criminal Appeal No 3 of 1991, Supreme Court of Bangladesh (Appellate Division) [1991] LEX/BDAD/0063/1991.
[80] *Most Rahela Khatun v Md Abul Hassan and Others* (1996) Criminal Appeal No 5 of 1994, Supreme Court of Bangladesh (Appellate Division) [1996] LEX/BDAD/0078/1996.
[81] *Md Islam v Tasfiya and Others* (2023) Civil Revision No 340 of 2021, Supreme Court of Bangladesh (High Court Division) [2023] LEX/BDHC/0072/2023.
[82] *Md Azizul Haque v Tahura Khatun (Mainu)* (2025) Civil Revision No 2792 of 1994, Supreme Court of Bangladesh (High Court Division) [2025] LEX/BDHC/0158/2025.

biases from judicial decisions, parties continue to exploit these issues as mechanisms for procedural harassment. Especially, the attempt of character assassination through false claims in the written statements, harassment in the preliminary judicial stages and the motive of using indirect evidence tactics highlighted the existing flaws in the newly amended Act.

The 2022 amendment restricted moral profiling of a woman during cross examination. However, it has omitted to extend this bar in respect of unnecessarily weaponizing in the written statement. In both the mentioned cases (Md Azizul Haq case, Md. Islam case), the victims were alleged as the women of immoral characters, which was ultimately unapproved by the court. Yet, without statutory mechanisms to filter or strike out objectionable claims, such statements are routinely incorporated into the pleadings.

Another existing flaw of the judicial structure is lack of scrutiny in admitting any scientific document. In Md. Islam case, the defence tried to prove the unchastity of his wife by showing an unproved DNA test report, which was accepted by the trial courts. Hence, throughout the whole procedure, the victim had to face unbearable attacks on her character simply due to a procedural defect by the trial court. Although the HCD strictly complied with the statutory provisions and rejected all unproven materials, this case remains an instance of procedural anomalies that cause unwanted suffering to women.

Furthermore, no strict provision to compensate the victim is inserted in the existing judicial system, when she faces moral profiling. Just because of some heinous patriarchal mentality of the respondents, the victims have to go through an intolerable mental pressure, losing their social dignity as well as financial loss. This compensatory instance is observed in Md. Islam case, but only in the HCD stage. Mandating this practice at the trial stage, particularly in district courts and family tribunals, would deter bad-faith defence strategies from subjecting victims to such victim-blaming claims.

4. Beyond Repeal: Advancing a Value-Anchored Legal Shield

The 2022 amendment demonstrates that removing a colonial-era provision from the statute does not necessarily eliminate the underlying reasoning it once supported. Comparative research confirms that legislative repeal alone rarely alters courtroom practice. Despite multiple reforms, cross-examination strategies for rape complainants have remained largely unchanged for decades[83], and sexual history evidence continues to be admitted despite statutory restrictions.[84] Section 146(3)'s undefined "ends of justice" exception has enabled the substance of the former character-evidence inquiry to persist under a different designation, as illustrated by the Raintree Hotel verdict. This represents a structural weakness common to

[83]Sarah Zydervelt and others, 'Lawyers' Strategies for Cross-Examining Rape Complainants: Have We Moved Beyond the 1950s?' [2016] British Journal of Criminology azw023 <https://doi.org/10.1093/bjc/azw023>.
[84]Clare McGlynn, 'Rape Trials and Sexual History Evidence: Reforming the Law on Third-Party Evidence' (2017) 81 The Journal of Criminal Law 367 <https://doi.org/10.1177/0022018317728824>.

earlier shield-law reforms in other jurisdictions, rather than a uniquely Bangladeshi issue.

The conceptual and practical challenges associated with sexual history evidence recur regardless of the regulatory approach adopted.[85] When admissibility is subject to broad judicial discretion, courts frequently revert to a probative-value-versus-prejudice analysis that undermines the effectiveness of the shield.[86] The gendered association between unchastity and incredibility, once codified in law, continues to shape judicial reasoning even after formal repeal.[87] To address this gap, it is not enough to simply improve how laws are written. There needs to be binding judicial guidelines that clearly set out key values like survivor dignity, privacy, and equality before the law. These guidelines should also include procedural safeguards, such as requiring pre-trial applications and written reasons when this kind of evidence is allowed. Rules meant to reduce fact-finder bias should be specific and not left to each judge's discretion, since clear limits are needed for them to work efficiently.[88] The values articulated by a shield law are significant, as poorly drafted shields may reinforce the very chastity assumptions they are intended to eliminate.[89] While formal abolition removes problematic statutory language, functional abolition also requires eliminating assumptions about female chastity, credibility, and worth from judicial reasoning. Without this change, judicial discretion allows colonial logic to persist in new forms, and the burden the 2022 amendment aimed to remove remains with survivors.

5. Conclusion

The enactment of the Evidence (Amendment) Act 2022 was widely celebrated as a historic turning point in Bangladesh's legal landscape. By formally repealing Section 155(4) and revising Section 146(3), the legislature took an essential step to dismantle a 150-year-old colonial provision that allowed lawyers to attack a woman's "general immoral character" during trial. For generations, this colonial legacy institutionalized patriarchal entitlement inside courtrooms, forcing female victims and witnesses to defend their own chastity, clothing, and sexual history rather than the facts of the crime.

As this study has demonstrated through longitudinal thematic case analysis, the pre-amendment jurisprudence was deeply shaped by gendered entitlement. In cases like *Abdul Awal* (1994), *Idris Ali Bhuiyan* (1995), and *Zahiruddin* (1995), offenders gained substantive impunity through reduced sentences simply because their wives were labelled "wayward" or unchaste. Similarly, in *Md. Saidur Rahman Neoton* (1993)

[85] Joanne Conaghan and Yvette Russell, *Sexual History Evidence and the Rape Trial* (Bristol University Press 2023) <https://doi.org/10.51952/9781529207842>.
[86] Gregory M Simonsen, 'Rape Victim Confrontation' (1985) 1985 Utah Law Review <https://doi.org/10.63140/b9pivls-5n>.
[87] Julia Simon-Kerr, 'Unchaste and Incredible: The Use of Gendered Conceptions of Honor in Impeachment' (2008) 117 The Yale Law Journal 1854 <https://doi.org/10.2307/20454696>.
[88] Jane H. Aiken, 'Protecting Plaintiffs' Sexual Pasts: Coping with Preconceptions Through Discretion' (2002) 51 Emory LJ 559.
[89] I Bennett Capers, 'Real Women, Real Rape' (2013) 60 UCLA L Rev 826 https://www.uclalawreview.org/real-women-real-rape/.

and the *Yasmin* case (2001), patriarchal mechanisms attempted to shield perpetrators by portraying victims as prostitutes to erase the gravity of sexual violence. Procedurally, as seen in *Abdul Gafur* (1991) and *Rahela Khatun* (1996), unproved and intentional entitlement on character was used as a tool to impeach witness credibility and derail legal proceedings before trial.

Following the 2022 amendment, a positive change in the judicial mindset started to come into light. In post-reform cases like *Md. Islam* (2023) and *Md. Azizul Haque* (2025), the judges of the Supreme court have rejected character attacks, and instead focused highly on the objective statutory rights such as maintenance, dower, and conclusive presumptions of legitimacy. In recent times, Judges are more prone to penalizing the persons involved with moral profiling and prioritizing statutory rules over any unproved claims. This shift marks an essential progress to secure dignity and equality for women in our legal system.

However, this paper argues that repealing the law is not the only way to achieve complete justice. The revised Section 146(3) containing the term "for the ends of justice" leaves a huge scope for occurring injustice towards the women. Without clear legal standards and systematic procedures, this phrase stands as an elastic backdoor. It shifts this issue from the boundary of the statutes to judicial discretion without proper guidance, which allows old colonial ideas about female virtue to return to courtrooms in new ways, as reflected in the Raintree Hotel case. Furthermore, these procedural gaps should also be addressed from the lower courts, to ensure a harassment-free environment for female litigants.

References

1. *Abdul Awal v The State* (1994) Jail Appeal No 1 of 1993, Supreme Court of Bangladesh (Appellate Division) [1994] LEX/BDAD/0078/1994.
2. *Abdul Gafur v The State* (1991) Criminal Appeal No 3 of 1991, Supreme Court of Bangladesh (Appellate Division) [1991] LEX/BDAD/0063/1991.
3. Arathi P.M., 'Book Review: Pratiksha Baxi, Public Secrets of Law: Rape Trials in India' (2014) 44 Social Change 488 <https://doi.org/10.1177/0049085714536807>.
4. Aviva Orenstein, 'The Seductive Power of Patriarchal Stories' (2015) 58 Howard LJ
5. Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989).
6. Clare McGlynn, 'Rape Trials and Sexual History Evidence: Reforming the Law on Third-Party Evidence' (2017) 81 The Journal of Criminal Law 367<https://doi.org/10.1177/0022018317728824>.
7. C McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights' (2008) 19 European Journal of International Law 655 <https://doi.org/10.1093/ejil/chn043>.

8. Constitution of the People's Republic of Bangladesh, art 27 & 31.
9. Constitution of the People's Republic of Bangladesh, art 104.
10. David Torrance, 'Evidence of Character in Civil and Criminal Proceedings' (1902) 12 Yale LJ 352, 353.
11. Elizabeth Kolsky, '"The Body Evidencing the Crime': Rape on Trial in Colonial India, 1860–1947' (2010) 22(1) Gender & History 109.
12. Evidence Act: Both Sections Questioning Victims Will Be Amended' *The Daily Star* (Dhaka, 23 February 2022) https://www.thedailystar.net/news/bangladesh/news/evidence-act-both-sections-questioning-victims-will-be-amended-2967431 accessed 12 August 2026.
13. Evidence Act 1872, s 155(4) (Bangladesh) (as originally enacted; repealed by Evidence (Amendment) Act 2022).
14. Equality Now (2025). *Sexual violence in Bangladesh: How years of activism by CSOs led to landmark amendment to the Evidence Act.*
15. Evidence (Amendment) Act 2022 (Bangladesh) http://bdlaws.minlaw.gov.bd/act-1416.html accessed 12 August 2026.
16. Faisal Daudpota, 'Pakistan's Evidence Law Should Be Revised: Benchmarking Qanun-e-Shadat Order of 1984' (SSRN, 2026) <https://doi.org/10.2139/ssrn.6304560> accessed 12 August 2026.
17. Fiona E Raitt and M Suzanne Zeedyk, 'Rape Trauma Syndrome: Its Corroborative and Educational Roles' (1997) 24(4) J Law & Soc 552.
18. Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?' in Cary Nelson and Lawrence Grossberg (eds), *Marxism and the Interpretation of Culture* (University of Illinois Press 1988) 271.
19. Geetanjali Gangoli, *Indian Feminisms: Law, Patriarchies and Violence in India* (Ashgate 2007).
20. Gregory M Simonsen, 'Rape Victim Confrontation' (1985) Utah L Rev.
21. HC Orders to Submit Report on Steps Taken to Repeal Section 155(4) of Evidence Act' *The Business Standard* (Dhaka, 16 November 2021) https://www.tbsnews.net/bangladesh/court/provisions-evidence-act-facilitates-questioning-victims-character-be-repealed accessed 12 August 2026.
22. I Bennett Capers, 'Real Women, Real Rape' (2013) 60 UCLA L Rev 826.
23. *Idris Ali Bhuiyan v Enamul Haque* (1995) Jail Appeal No 1 of 1994, Supreme Court of Bangladesh (Appellate Division) [1995] LEX/BDAD/0043/1995.

24. 'It's No Rape: They Danced, Drank, Swam' *The Daily Star* (Dhaka, 12 November 2021) https://www.thedailystar.net/news/bangladesh/crime-justice/news/its-no-rape-they-danced-drank-2227711 accessed 12 August 2026.

25. Jane H Aiken, 'Protecting Plaintiffs' Sexual Pasts: Coping with Preconceptions Through Discretion' (2002) 51 Emory LJ 559.

26. Joanne Conaghan and Yvette Russell, 'Sexual History Evidence in Review' in Kate Gleeson and Yvette Russell (eds), *New Directions in Sexual Violence Scholarship: Law, Power and Change* (Routledge 2023).

27. Julia Simon-Kerr, 'Unchaste and Incredible: The Use of Gendered Conceptions of Honor in Impeachment' (2008) 117 Yale LJ 1854.

28. Kalpana Kannabiran, 'Sexual Assault and the Law' in Kalpana Kannabiran and Ranbir Singh (eds), *Challenging the Rules of Law: Colonialism, Criminology and Human Rights in India* (Sage 2008) 78.

29. Kunal Ambasta, 'One Hundred (and Fifty) Years of Solitude: The Indian Evidence Act 1872 as a Lost Project of Law Reform' (2024) 8 Indian Law Review 1 <https://doi.org/10.1080/24730580.2023.2283644>.

30. Laura C H Hoyano, 'Cross-examination of Sexual Assault Complainants on Previous Sexual Behaviour: Views from the Barristers' Row' [2019] Crim LR 75.

31. Lisa Dufraimont, 'Myth, Inference and Evidence in Sexual Assault Trials' (2019) 44(2) Queen's LJ 316.

32. Lise Gotell, 'The Ideal Victim, the Hysterical Complainant, and the Disclosure of Confidential Records: The Implications of the Charter for Sexual Assault Law' (2002) 40 Osgoode Hall LJ 251.

33. *Md Azizul Haque v Tahura Khatun (Mainu)* (2025) Civil Revision No 2792 of 1994, Supreme Court of Bangladesh (High Court Division) [2025] LEX/BDHC/0158/2025.

34. *Md Islam v Tasfiya and Others* (2023) Civil Revision No 340 of 2021, Supreme Court of Bangladesh (High Court Division) [2023] LEX/BDHC/0072/2023.

35. *Md Nazrul Islam v The State* (2021) Criminal Appeal No 3 of 2013, Supreme Court of Bangladesh (Appellate Division) [2021] LEX/BDAD/0137/2021.

36. *Md Saidur Rahman Neoton v The State* (1993) Criminal Appeal No 14 of 1992, Supreme Court of Bangladesh (Appellate Division) [1993] LEX/BDAD/0048/1993.

37. Mehta K and Tiwari A, 'Between Sexual Violence and Autonomy: Rethinking the Engagement of the Indian Women's Movement with Criminal Law' (2021) 22 German Law Journal 860

38. Michael Lipsky, '*Street-Level Bureaucracy: Dilemmas of the Individual in Public Services'* (Russell Sage Foundation 1980).

39. Mitra D and Satish M, 'Testing Chastity, Evidencing Rape: Impact of Medical Jurisprudence on Rape Adjudication in India' (2014) 26(1) National Law School of India Review 51

40. *Most Rahela Khatun v Md Abul Hassan and Others* (1996) Criminal Appeal No 5 of 1994, Supreme Court of Bangladesh (Appellate Division) [1996] LEX/BDAD/0078/1996.

41. Orubah Sattar Ahmed, 'Lost Chastity to Lost Honor: The Heuristic Shift in Rape Discourse by the Supreme Court of Pakistan' (2021) 23(1) Georgetown Journal of Gender and the Law 1.

42. Paul Roberts, 'Vulnerable Witnesses and the Principle of Orality' in Paul Roberts and Adrian Zuckerman, *Roberts & Zuckerman's Criminal Evidence* (3rd edn, OUP 2022).

43. Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* (Oxford University Press 2014).

44. Robin West, 'Equality Theory, Marital Rape, and the Promise of the Fourteenth Amendment' (1990) 42 Fla L Rev 45.

45. Sara Hossain, 'Public Interest Litigation on Violence Against Women in Bangladesh' in Amy Barrow and Joy L Chia (eds), *Gender, Violence and the State in Asia* (Routledge 2016) ch 7, 119, 129.

46. Sarah Zydervelt, Rachel Zajac, Andy Kaladelfos and Nina Westera, 'Lawyers' Strategies for Cross-Examining Rape Complainants: Have We Moved Beyond the 1950s?' (2016) 57(3) Brit J Criminol 551.

47. Saumya Maheshwari, 'The Language of Evidence in Rape Trials' (2014) 10(1) Socio-Legal Rev 1.

48. Selena Mariano, 'The "Double Bind" of Gender-Based Violence: Secondary Victimization in Courtroom Cross-Examinations' (2026) 44 Behavioral Sciences & the Law 96 <https://doi.org/10.1002/bsl.70025>.

49. Shailendra Kumar, 'Sketching the Limits of Article 142 of the Constitution of India: A Constitutional Necessity' in Salman Khurshid, Sidharth Luthra, Lokendra Malik and Shruti Bedi (eds), *Judicial Review* (Cambridge University Press 2020) 365, 366.

50. Siddiqui, M, 'Legal Tangle over "Chaste" and "Immoral" Women'

51. https://www.academia.edu/10024606/Legal_tangle_over_chaste_and_immoral_women accessed 11 August 2026.
52. *State of Jharkhand v Shailendra Kumar Rai @ Pandav Rai* (2022) 14 SCC 229, [31]–[33].
53. Susan Estrich, ‘Rape’ (1986) 95 Yale LJ 1087.
54. Taqbir Huda, ‘“No Signs of Rape”: Corroboration, Resistance and the Science of Disbelief in the Medico-Legal Jurisprudence of Bangladesh’ (2022) 29 Sexual and Reproductive Health Matters 2096186 <https://doi.org/10.1080/26410397.2022.2096186>.
55. Taqbir Huda, *between ‘Virtue’ and ‘Immorality’: Why Character Evidence Must Be Prohibited in Rape Cases* (Rape Law Reform Research Reports No 1, BLAST 2019).
56. Terry Hutchinson and Nigel Duncan, ‘Defining and Describing What We Do: Doctrinal Legal Research’ (2012) 17(1) Deakin L Rev 83.
57. The Daily Star (2019). *The colonial legacy of rape laws.*
58. The Evidence (Amendment) Act 2002 (India), s 3, amending the Indian Evidence Act 1872, s 155(4) (India) (w.e.f. 1 January 2003).
59. *The State v Md Moinul Haque and Others* (2001) Death Reference No 14 of 1997, Supreme Court of Bangladesh (High Court Division) [2001] LEX/BDHC/0247/2001.
60. Vivian Berger, ‘Man’s Trial, Woman’s Tribulation: Rape Cases in the Courtroom’ (1977) 77 Colum L Rev 1.
61. *Zahiruddin v The State* (1995) Jail Appeal No 1 of 1994, Supreme Court of Bangladesh (Appellate Division) [1995] LEX/BDAD/0172/1995.

https://jlpj.bshrls.org
Vol. 1, No. 1, pp. 48-71, 2026

JOURNAL OF LAW, POLICY AND JUSTICE

RESEARCH ARTICLE

OPEN ACCESS

Climate-Induced Displacement under Refugee Law: Assessing the Legal Framework for Recognition and Protection

Israt Jahan Jerin

Lecturer, Department of Law, Faculty of Security and Strategic Studies, Bangladesh University of professionals. Mirpur Cantonment, Dhaka 1216, Bangladesh

***Corresponding:** *israt.jerin@bup.edu.bd*

Received: 05.06.2026 Accepted: 12.08.2026 Publication date: 31.08.2026

ABSTRACT

As a result of the direct and indirect effects of climate change, nations worldwide are experiencing an increasing number of individuals forced from their homes, becoming migrants due to climate change. This creates major legal and humanitarian issues, especially if the displacement crosses national borders. The study critically explores the notion of climate change induced migrants under the current international legal framework, focusing on the international refugee law framework. The analysis concludes that circumstances which led to their displacement are not under international refugee law and the law on statelessness stateless person. As a result, they won't be covered by any of the legal categories. The study also identifies that there are some international, regional and national legal tools that might provide some level of protection, including: the principle of non-refoulement, under international human rights law, and complementary protection under some regional and domestic laws; however, these tools are weak and disjointed. Similarly, the international environmental law does not require protection of the people who are displaced by environmental degradation. This paper highlights the inadequacy of the current international legal framework in safeguarding the rights of climate change induced migrants and suggests that a new international legal instrument should be adopted, while in the meantime an international guiding framework and innovative mechanisms such as a climate passport should be implemented to protect their rights in an effective and durable manner.

Keywords: *Climate change; environmental migrant; refugee law, climate change-induced displacement, climate passport.*

1. Introduction

There are just four years to 2030, the Sustainable Development Goals (SDGs) target year. The SDGs are a set of sustainable development goals adopted in 2015 by all United Nations Member States to drive peace, protect people and preserve the planet with sustainable development.[1] However, in spite of this international commitment, the international community is still grappling with one of the most pressing issues of the current era and this is"climate change". It is no longer just a future threat - it's affecting ecosystems, livelihoods and human security globally, and it's also putting the health of future generations at risk. From Cull's observations, climate change is already having an impact on daily life and the future of the planet is growing more precarious every day.[2]The problem of climate change has become one of the problems of the twenty-first century, not only in terms of ecosystems, but also in terms of lives and livelihoods of millions of individuals in various parts of the world. With the worsening of environmental degradation due to the rising sea levels, extreme weather, long-term droughts, and floods, more and more people must abandon their homes in search of refuge. The Office of the United Nations High Commissioner for Human Rights has recognized that climate change is becoming an important driver of human displacement, with its impacts posing serious threats to the enjoyment of fundamental human rights.[3] It has also been projected that climate-related events could force as many as 150 million people to migrate by 2050.[4]Although displaced in life-threatening conditions, individuals who are escaping the negative impacts of climate change are not considered refugees in the current international protection regime of refugees. The 1951 Refugee Convention mandates that refugees have a well-founded fear of persecution due to race, religion, nationality, membership of a certain social group, or political opinion to be recognized as refugees, and so, a large gap in protection under international law exists between those who have been displaced by environmental factors or climate changes and those who have been displaced by persecution.[5]

This is as per the old Chinese proverb, "*the best method to safeguard oneself from perils to life is to run away.*" Indeed, in history, people have run away when they are in danger to their lives.[6] Today, climate induced displacement is a reflection on this instinct, but international law has not yet adequately acknowledged or dealt with the persons forced to move as a result of environmental causes.

---

[1]United Nations General Assembly, Transforming our World: the 2030 Agenda for Sustainable Development UNGA Res 70/1, UN Doc A/RES/70/1 (25 September 2015).
[2]Miguel Pajares, Refugiados climáticos: Un gran reto del siglo XXI(Rayo Verde 2020).
[3]UNHCR, Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights (15 January 2009) UN Doc A/HRC/10/61, para 55.
[4] Walter Kälin, *The Climate Change–Displacement Nexus*(The Brookings Institution2008).
[5]Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 150, art 1A(2).
[6]Essam El-Hinnawi, *Environmental Refugees* (UNEP Doc UNEP(02)/E521985).

2. Research Problem

Despite the growing number of people displaced by the adverse impacts of climate change, international refugee law does not recognize climate-induced displaced persons as refugees under the 1951 Refugee Convention. Although several branches of international law, including international human rights law, the law on statelessness, and international environmental law, provide limited and fragmented forms of protection, none offers a comprehensive legal framework capable of addressing the legal status and protection needs of climate-induced displaced persons. Against this backdrop, this paper explores the legal rights and entitlements of those displaced due to climate change. It examines the link between climate change and human mobility and therefore delves into the inadequacies of the current international refugee and human rights laws. The discussion further examines the degree to which the existing law regimes can still offer a degree of protection and suggests what the international community should do to extend the protection of climate-displaced persons.

3. Literature Review

The interdisciplinary nature of climate-induced migration made it an essential area of research, where climate change is having more and more impacts on human mobility, livelihoods and migration patterns. Early scholarship mainly concerned the notion of "environmental refugees". Existing scholarship initially focused on defining climate-induced migration and identifying the environmental and socio-economic factors that influence human mobility. The term was coined by Hinami for those individuals whose traditional habitat is being lost due to environment impairment to their survival and livelihood.[7] This view, however, was later criticized by other scholars because it led to a direct causal link between environmental change and migration, while failing to take into account social, political and economic factors that affect migration decisions.

Bates classified environmentally induced migration under two categories: temporary and permanent migration due to environmental disaster and the environmental deterioration, respectively.[8] Likewise, Castles contended that migration is not caused by environmental change alone but is a result of the combination of environmental stress, poverty, governance shortcomings, and insecurity of livelihoods.[9] Also Beano, Zeter and Morris argued that the analysis of environmentally displaced populations must be seen in relation to environmental changes, vulnerability and social adaptation rather than by the environment alone.[10]

---

[7]Essam El-Hinnawi, *Environmental Refugees* (United Nations Environment Programme 1985).
[8]Daniel C Bates, 'Environmental Refugees? Classifying Human Migrations Caused by Environmental Change' (2002) 23(5) *Population and Environment* 465.
[9]Stephen Castles, 'Environmental Change and Forced Migration: Making Sense of the Debate' (2002) UNHCR
[10]Cristina Boano, Roger Zetter and Tim Morris, *Environmentally Displaced People: Understanding the Linkages Between Environmental Change, Livelihoods and Forced Migration* (Refugee Studies Centre 2008).

In the last few years, there have been changes in the literature, from seeing climate migration as only a forced movement to a more nuanced perspective that sees it as a process of vulnerability, adaptation, and survival strategies. However, predicting climate migration is still difficult due to the fact that migration is influenced by various socio-economic and political factors in addition to the climate factors, as suggested by Morrissey[11] Davis et al., also noted that models of migration in response to climate change should account for household resources, social networks, risk perception, and livelihood opportunities, as these factors determine the decisions of who stays, who moves for a temporary period, and who moves for a permanent one.[12]

A second body of scholarship examines the extent to which existing international legal regimes recognize and protect climate-induced displaced persons and proposes possible legal reforms. Climate migrants do not have a specific legal status under international law, which is a key issue in the literature. Nishimura asserted that the displacement due to climate change, in most cases, is not covered by the protection regime of the 1951 Refugee Convention because climate change is not legally viewed as a refugee cause.[13] Betts proposed that the refugee regime as it presently stands needs more protection mechanisms to tackle the ever increasing environmentally displaced populations.[14] Similarly, Biermann and Boas recommended an international protocol on climate refugees, stating that climate displacement is an international responsibility.[15] Mayer, however, warned that new protection mechanisms, if they are not developed taking into account the inequalities that exist globally, risk to perpetuate current challenges in the field of migration governance. The deltaic geographical location, population density, and reliance on climate-sensitive livelihoods make Bangladesh one of the most climate change sensitive countries.[16]

The literature further examines climate-induced displacement in Bangladesh, emphasizing the country's vulnerability, migration patterns, governance challenges, and policy responses. The Asian Development Bank pointed out that sea-level rise, flooding, cyclones, and salinity intrusion pose considerable displacement risks in South Asia. The study on Islam and Doha found a strong relationship between disruption of livelihood and socioeconomic vulnerability with climate-induced migration in Bangladesh[17]. Islam also suggested that migration in coastal Bangladesh can be considered as a response to environmental risks as well as adaptation

[11]James Morrissey, Environmental Change and Forced Migration (Refugee Studies Centre, University of Oxford 2009).
[12]Kyle F Davis, Abhishek Bhattachan, Paolo D'Odorico and Stefano Suweis, 'A Universal Model for Predicting Human Migration under Climate Change: Examining Future Sea Level Rise in Bangladesh' (2018) 13(6) *Environmental Research Letters* 064030.
[13]Lauren Nishimura, 'Climate Change Migrants: Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies' (2015) 27(1) *International Journal of Refugee Law* 107.
[14]Alexander Betts, 'Survival Migration: A New Protection Framework' (2010) 16(3) *Global Governance* 361.
[15]Benoît Mayer, Ingrid Boas, J Jacob Ewing, Arnaud Baillat and Uddin Khan Das, 'Governing Environmentally-Related Migration in Bangladesh: Responsibilities, Security and the Causality Problem' (2013) 22(2) *Asian and Pacific Migration Journal* 177.
[16]ibid
[17]Md Rafiqul Islam and SM Doha, 'Socioeconomic Consequences of Climate Induced Human Displacement and Migration in Bangladesh' (2017) 32(3) *International Sociology* 277.

strategy.[18]

Davis et al. proposed that migration could be greatly affected by future sea-level rise, especially in coastal regions of Bangladesh.[19] Seddiky et al. found that the migration decision is influenced by the interaction of climate hazards, livelihood insecurity and household vulnerability.[20] Climate change has direct impacts on rural livelihoods through the impacts on agriculture, fisheries and natural resource. Kartika found that climate stress can lead to migration as it decreases livelihood opportunities in rural Bangladesh.[21]Ahsan, Karuppannan and Kellett proposed that climate migration poses major challenges for urban planning as migrants tend to gravitate to cities where housing and social services are scarce.[22] Sams noted that migration from southwest coastal Bangladesh is a household coping mechanism dealing with recurring environmental hazards.[23]

Nonetheless, migration does not necessarily lessen vulnerability. While Luetz[24] suggested that migration can be a tool for adaptation by diversifying income sources, Huq and Shafique showed that in urban Bangladesh, the climate migrants are often excluded by the existing policy framework, which does not cater to their needs.[25] Molla et al. also noted that urban slum residents who are affected by climate migration are at higher risk of health problems because of poor sanitation, water and health care facilities.[26]

The impacts of climate migration are not even. Evertsen and Van derGeest stated that women are more vulnerable in the process of climate migration due to lack of equal access to resources and decision making opportunities.[27] Climate related insecurity may exacerbate social issues like child marriage in vulnerable communities, as proposed by Ainul et al.[28]

---

[18]Md Islam, 'Is Climate Change Migration an Adjustment to Extreme Weather Events? A Study on the Coastal Areas of Bangladesh' (2022) 14(4) *Weather, Climate, and Society* 1247.
[19]Kyle F Davis, Abhishek Bhattachan, Paolo D'Odorico and Stefano Suweis, 'A Universal Model for Predicting Human Migration under Climate Change: Examining Future Sea Level Rise in Bangladesh' (2018) 13(6) *Environmental Research Letters* 064030.
[20]A M Seddiky, E Ara and A Karim, 'Climate Change-Induced Hazard Risks and Migration in Bangladesh: A Case Study' (2024) 7 *Current Research in Environmental Sustainability* 100253.
[21]Kiran Kartiki, 'Climate Change and Migration: A Case Study from Rural Bangladesh' (2011) 19(1) *Gender & Development* 23.
[22]Reza Ahsan, Sivam Karuppannan and John Kellett, 'Climate Migration and Urban Planning System: A Study of Bangladesh' (2011) 4(3) *Environmental Justice* 163.
[23]Syed Islam Sams, 'Climate Induced Migration and Social Mobility among Migrants: Evidence from the Southwest Coastal Region of Bangladesh' (2019) 8(4) *Social Sciences* 147.
[24]John M Luetz, 'Climate Change and Migration in Bangladesh: Empirically Derived Lessons and Opportunities for Policy Makers and Practitioners' in Walter Leal Filho and Johannes Nalau (eds), *Limits to Climate Change Adaptation*(Springer International Publishing 2018).
[25]E Huq and T Shafique, 'People Move, Policies Don't: Discursive Partition against Climate-Impacted Dwellers in Urbanizing Bangladesh' (2023) 35 *Environment and Urbanization*.
[26]Nabila A Molla, Kazi A Mollah, Gazi Ali, W Fungladda, O V Shipin, W Wongwit and H Tomomi, 'Quantifying Disease Burden among Climate Refugees Using Multidisciplinary Approach: A Case of Dhaka, Bangladesh' (2014) 8 *Urban Climate* 126.
[27]Kirsten F Evertsen and Kees van der Geest, 'Gender, Environment and Migration in Bangladesh' (2020) 12(1) *Climate and Development* 12.
[28]Md M Naser and others, 'Climate Change, Migration and Human Rights in Bangladesh: Perspectives on Governance' (2019) 60(2) *Asia Pacific Viewpoint* 175.

Climate displacement, from a human rights perspective, poses questions of global justice, as the countries that suffer the most are those that are least responsible for the climate change, Ahmed said. Caney pointed out that climate change poses a danger to the enjoyment of rights such as access to health, livelihood and basic material necessities. The need for better governance in the country persists in Bangladesh, as international legal frameworks offer insufficient safeguards to climate-displaced people).

The research field of climate migration is growing and there are more and more arguments to incorporate it into adaptation and development planning. Geun indicated that there are competing political and institutional narratives in shaping the climate migration policies of Bangladesh.[29] Foldamer et al. Showed that investment in adaptation strategies can diminish climate risks and increase resilience.[30]

This legal fragmentation creates a significant protection gap that demands critical doctrinal examination and the exploration of appropriate legal reforms. Hence, there is an urgent need for an extensive research on the nature of climate migrations a multi-faceted phenomenon of environmental change, livelihood insecurity, human rights and institutional response.

4. Research Questions

I. How does the existing international refugee law framework address the legal recognition and protection of climate-induced displaced persons?

II. To what extent do international human rights law, the law on statelessness, and international environmental law fill the protection gaps left by refugee law?

III. What legal reforms and institutional mechanisms are necessary to establish an effective international protection framework for climate-induced displaced persons?

5. Methodology

This study adopts a doctrinal legal research methodology and employs qualitative research approach, which is mainly theoretical in nature. Resources for the research are collected predominantly from secondary sources. Some data and information are collected from primary sources such as, *inter alia,* domestic legislation, judgments of cases, international legal instruments, law reports, and resolutions of an international organization. Secondary sources which have been resorted to are, inter alia, books, journal articles, newspaper articles, blog articles, online journals, e-books, and reports published by different

[29]Ji Hye Geun, 'The Evolution of the Policy Environment for Climate Change Migration in Bangladesh: Competing Narratives, Coalitions and Power' (2019) *Development Policy Review*.
[30]Lena I Fuldauer and others, 'Evaluating the Benefits of National Adaptation to Reduce Climate Risks and Contribute to the Sustainable Development Goals' (2022) 76 *Global Environmental Change* 102575.

organizations. A doctrinal approach is appropriate for this study because it facilitates the interpretation and critical examination of international legal instruments, judicial decisions, and legal principles governing climate-induced displacement. The study adopts an interpretive approach by analysing the scope and limitations of existing legal regimes and comparatively examining international refugee law, international human rights law, the law on statelessness, and international environmental law to identify protection gaps and assess the need for legal reform. The study employs analytical, critical, descriptive, and explanatory methods to evaluate the adequacy of existing legal regimes and identify gaps in the protection of climate change-induced migrants while proposing appropriate legal reforms.

6. The Juxtaposition of Climate Change and Migration

Climate induced displacement is the forced movement of people or communities from their customary places of residence due to climate change and environmental disruptions which present a risk to their safety, livelihoods or capacity to stay in their homes. This can be caused by sudden events such as floods, cyclones and storms or slow events such as sea-level rise, desertification, land degradation and long dry spells. Climate induced displacement is not a direct result of climate change, but rather a complex interaction between climate change and environmental degradation, environmental vulnerability and human mobility.[31] The Intergovernmental Panel on Climate Change (IPCC) defines climate change displacement as displacement caused by increased climatic hazards and degradation of environmental conditions that are essential for human habitation and livelihood security.[32] The International Organization for Migration (IOM) defines environmental migration as the movement of persons which is driven and compelled, or desired, by sudden or progressive climatic changes that negatively impact their lives or living conditions.[33] This section will try to explain the link between climate change and human migration. By doing this, it will clarify how environmental catastrophes are a manifestation of climate change. It will also explain who can be considered a climate change migrant, the different types of climate change-induced displacement and how migration may be an outcome of climate change.

6.1 Climate Change and Environmental Disasters: The Interwoven Reality

Climate change is any change in climate that is attributed directly or indirectly to human activity that alters the atmosphere's composition.[34]Its negative impacts are also described in the United Nations Framework

[31]Walter Kälin, The Climate Change–Displacement Nexus (2008)< https://www.brookings.edu/articles/the-climate-change-displacement-nexus/> accessed 29 June 2026
[32] International Organization for Migration Climate Change, Environmental Degradation and Migration (March 2011)<https://www.iom.int/sites/g/files/tmzbdl486/files/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/climate-change-2011/background_paper. pdf> accessed 29 June 2026.
[33]International Organization for Migration (IOM), *Glossary on Migration* (International Organization for Migration 2019) 63.
[34]ibid.

Convention on Climate Change (UNFCCC) as the negative impacts on the environment, socio-economic systems and human welfare.[35]The frequency and severity of environmental disasters is a sign of climate change, but it is not actually visible. Slow onset events, such as deforestation, land degradation, soil erosion, Stalinization and desertification, lead to a progressive decline in environmental and agricultural productivity over time.[36]Sudden onset disaster refers to disasters such as cyclone, hurricane, flood, earthquake and volcanic eruption[37].Furthermore, environmental degradation can often exacerbate the impact of disasters, illustrating how interdependent these hazards are, if they are not already anticipated.[38]In addition, long-term environmental degradation can sometimes increase the impacts of short-term disasters, illustrating how these short-term disasters can impact long-term environmental degradation if it has not already occurred.[39]

6.2 Climate Induced Migrants

There is an widely accepted scholarly and political consensus on the growing displacement of people due to climate change and climate-related disasters.[40] Such calamities could compel people to evacuate their homes, induce them to move to other areas, or may cause government authorities to move the affected communities.[41]However, it is hard to define the climate change migrants solely as migrants, as many other social and economic factors are associated with migration[42]. Climate change can exacerbate already existing economic vulnerabilities, trigger or aggravate political or social tensions and can ultimately help to cause displacement.[43]

In his pioneering report for the United Nations Environment Programme (UNEP), EssamEl-Hinnawi coined the term ‘environmental refugees' for those who have been displaced from their normal habitat, temporary or permanent, because of environmental disruptions.[44] He categorized them into three types.[45] The first refers to those *temporarily displaced by short-term environmental events* (e.g. earthquake, cyclone) and who return home once conditions are better[46]. The second group are those who make *permanent shifts in residence due*

---

[35]United Nations Framework Convention on Climate Change (adopted 20 June 1992, entered into force 21 March 1994) 1771 UNTS 107 art 1.
[36]Lauren Nishimura, ‘Climate Change Migrants: Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies’ (2015) 27(1) *International Journal of Refugee Law* 107, 112.
[37]Gregory S McCue, ‘Environmental Refugees: Applying International Environmental Law to Involuntary Migration’ (1993) 6(1) *Georgetown International Environmental Law Review* 151, 158.
[38]ibid 160.
[39]ibid.
[40]Kälin(n 31)
[41]Jane McAdam, ‘Displacement in the Context of Climate Change and Disasters’ in Cathryn Costello, Michelle Foster and Jane McAdam (eds), The Oxford Handbook of International Refugee Law (Oxford University Press 2021) 833, 833.
[42]Nishimura (n 36).
[43]ibid.
[44]McCue (n 37) 157.
[45]Hinnawi (n 7)
[46]ibid.

to environmental degradation over an extended period.[47] The third group are those *who migrate temporarily or permanently due to environmental changes* that cause a decline in the resources available locally to provide for basic needs.[48]

Thus, environmental degradation may force people to migrate or to further drive people out of their places through exacerbating current socio-economic conditions. In view of these, one could think of the climate change migrants as those who migrate due to climate change induced environmental degradation or due to environmental degradation and other social, economic or political factors.

6.3 Climate Change as a Catalyst for Human Migration

Climate change is not the sole driver of migration, but contributes to the adverse impacts of the existing social, economic and environmental conditions. Climate change may generate multiple different scenarios, which are possible to trigger migration. These are hydro meteorological disasters, government evacuation activities from those areas are hazardous to human inhabitation, environmental degradation, sea level rise and dwindling of resources essential for living.[49]

Examples are flooding, hurricanes, typhoons, cyclones, mudslides etc. that have a very big effect on the economy; in this type of displacement most of the people involved in the disaster are located within the country from which the disaster erupted and they can come back to their abodes just after the completion of the disaster.[50] This is a short term displacement because the disasters causing the displacement end quickly and the people can come back to their abodes after the end of the disaster. In most cases the displaced person can be accommodated within the borders of his/her own country because this kind of calamity does not happen all over the country, therefore the majority of the displaced people remain in other locations within the borders of their own country.[51] These, however, only go to an adjoining country if it is the only avenue of escape or if an adjoining country is able to provide better shelter.[52]

Unlike the first type of displacement, the second type is when any government moves people from a specific area in the country that is prone to disasters and could pose a threat to their ability to live there.[53] This type of displacement is predisposing people to living in hazardous areas before disasters happen. One such group of people are those who have been moved to another area within the same country, but for good.

---

[47]ibid 5.
[48]ibid.
[49]Jane McAdam, 'Conceptualizing Climate Change-Related Movement', *Climate Change, Forced Migration, and International Law* (Oxford Academic, 24 May 2012) 24
[50]Kälin(n 31)
[51]ibid .
[52]ibid.
[53]ibid.

Vol. 1, No. 1, pp. 48-71, 2026

The third type of migration takes place when people move to other regions beforehand, predicting that their places of abode would become uninhabitable in future as a result of slowly ongoing disasters like drought, repeated floods or Stalinization of agricultural land etc.[54] This type of displacement is voluntary in nature because people move to another place for better economic opportunities; however, if the environmental degradation worsens, this may amount to forced displacement.

The fourth form of displacement is when the geographical area of small island States shrinks as a result of sea-level rise and States have not sufficient land available for their residents. These individuals move to another country when the situation is so dire.[55]The last category of migration takes place when people become displaced by armed conflicts that are fueled by declining essential resources like water or by increasing aridity of land.[56]

Migration can thus be differentiated in various ways. Migrants may be internally displaced persons (IDPs), people who move within their own country, or they may be displaced persons from a different country (x-border). In regard to the temporal dimension, migration could be temporary or permanent; and, in regard to the amount of environmental degradation in the country of origin, migrants could be voluntary or forced.[57] When their degradation is not so bad that they feel they should move to somewhere else, but rather to seek better opportunities in another location, they are voluntary migrants. On the other hand, if the degradation is so severe that people are forced to relocate otherwise they will have no other choice for survival, the displacement is called forced migration.[58]

7. International Legal Framework in Recognizing And Protecting Climate Induced Displacement

From the previous analysis, the phenomenon of becoming climate change migrants has been found. This group of people who are displaced is a group of real people. Are they part of the international legal frameworks? The aim of this section is to elaborate on the theme by looking at some international legal frameworks.

7.1 Protection Gaps under Existing Frameworks

A. International Refugee Law

People who have been forced to flee their homes as a result of climate change are known as 'climate change

[54]ibid.
[55]ibid.
[56]ibid
[57]McAdam (n 49).
[58]Kälin(n 31)

refugees. Though this type of terminology might be politically useful, it is ethically and legally wrong.[59] In countries such as Tuvalu, Kiribati and Bangladesh, the word 'refugee' does not have any particular connotation and it is used to describe people who are escaping from their own governments.[60] These communities claim that their governments are not responsible for climate-induced migration and place the blame on the industrially developed countries. Henceforth, the major questions include whether climate change migrants qualify as refugees and the applicability of international refugee law to them. In shading light to these questions, first the definition as enshrined in the convention must be analyzed.

According to Sec 1(A)2 of the Refugee Convention, a 'refugee' is defined as an individual who is outside their country of nationality and cannot or will not return due to a well-founded fear of persecution based on race, religion, nationality, social group affiliation, or political opinion.[61] The convention only recognizes the human factors behind the migration. There is no scope for the "climate refugees" to fit into the given definition to avail the protection primarily because the convention restricts refugee status to those outside their home country.[62] This presents a key obstacle, as many climate-induced migrations occur within national borders. For instance, the *internally displaced people (IDP)*, the people who are displaced temporarily as a consequence of flash floods, cyclone etc. Such an IDP is excluded within the purview of the Article 1(A)2 as they are migrated within their national territories.

Another difficulty to include "climate migrants" is the recognition of the impact of climate change as "persecution," because the Convention definition of "refugee" only applies when the individual has a well-founded fear of persecution that prevents them from returning home.[63]Environmental disasters are not directly related to the five Convention grounds and are not, therefore, a form of persecution under the Refugee Convention, even though they may be extremely harmful or even deadly.[64] They affect people indiscriminately and not directed at any particular social group, nationality, religion, race or political opinion. Thus, displacement caused by climate does not amount to "persecution" within the purview of the Refugee Convention. Henceforth, they are not recognized as refugees.

A further challenge to the applicability of the Refugee Convention to climate change migrants is who is the persecutor? Because ***Ioane Teitiota v. New Zealand***[65]**,** first legally recognized case related to climate refugee,

[59]Jane McAdam, *The Relevance of International Refugee Law', Climate Change, Forced Migration, and International Law* (Oxford Academic, 2012) 39
[60]ibid 40-41.
[61]Convention relating to the Status of Refugees, (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 150 (Refugee Convention)
[62]James C Hathaway and Michelle Foster, *'Alienage':The Law of Refugee Status (*Cambridge University Press 2014) 17.
[63]McAdam (n 59) 41.
[64]Jessica B. Cooper, 'Environmental Refugees: Meeting the Requirements of the Refugee Definition' (1998) 6(2) *New York University Environmental Law Journa*l 480, 502
[65]*Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* [2014] NZCA 173

Vol. 1, No. 1, pp. 48-71, 2026

denoted that the definition of persecution in the Convention requires an agency, that is, a human being.[66]In contrast, environmental disasters are beyond human control. Although industrialized countries are often identified as the persecutors due to their greenhouse gas emissions causing environmental degradation and displacement, climate change migrants are likely to seek refuge in those same countries.[67]Thus, if industrialized countries were to consider the "persecutors", giving the climate change migrants a safe haven in the same countries would amount to sending the persecuted back to their 'persecutors' as it were.[68] This outcome is not in line with the core tenets of the refugee protection regime. In short, the displacement relating to climate change lacks the "persecutors" which is the core element of the convention.

CASE LAWS ADDRESSING THIS GREY AREA:

•As of 2026, there is no successful reported case as to "climate induced displacement". The *Kiribati Case*, where a Kiribati national sought asylum in New Zealand due to sea level rise which made him unable to remain in his country and he has been denied refugee status in New Zealand, after the Immigration and Protection Tribunal determined in 2013 that the claim was not made on a basis that was warranted.[69]

•Later in the *Tuvalu Case,[70]*, in 2014, the same tribunal rejected another refugee claim based on the argument that the applicants' lives were at risk due to the impacts of climate change in their country of origin.

• The legal significance of *Teitiota* was further developed by the UN Human Rights Committee in *IoaneTeitiota v New Zealand (2020)*.[71] Although the Committee found that New Zealand had not violated Article 6 of the ICCPR by returning Teitiota to Kiribati, as the risk to his life was not sufficiently imminent, it recognised that the adverse effects of climate change may, in exceptional circumstances, trigger States' non-refoulement obligations where return would expose individuals to a real risk of irreparable harm. While the decision did not extend refugee status under the 1951 Refugee Convention to climate-induced displaced persons, it marked a significant development in international human rights law by acknowledging that climate-related harm may prevent removal in appropriate cases. Nevertheless, its protection remains limited and case-specific, reinforcing the need for a comprehensive international legal framework for climate-induced displaced persons.

B. Human Rights Law

---

[66]AF (Kiribati) [2013] NZIPT 800413, 54 (New Zealand Immigration and Protection Tribunal)
[67]McAdam (n 59) 45.
[68]Jane McAdam, 'Displacement in the Context of Climate Change and Disasters', in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press2021) 833, 837
[69]AF (Kiribati) (n 65)
[70]AC (Tuvalu) [2014] NZIPT 800517 (New Zealand Immigration and Protection Tribunal)
[71]*Ioane Teitiota v New Zealand* (Views adopted on 7 January 2020) UN Human Rights Committee, Communication No CCPR/C/127/D/2728/2016.

While it is well recognized that climate change is threatening enjoyment of human rights, it is unclear if its impacts amount to human rights violations in the legal sense.[72] The protection gap is due to the absence of an internationally recognized right to a safe environment and a binding human rights treaty on climate change migration.[73] The Convention against Torture[74] prevents a person's return to a state of risk of torture. This protection is given to refugees but is not likely to be granted to the environmental refugees.[75] As it does not recognize the underlying causes of environmental migration, the international human rights regime provides no protection for climate-induced displaced persons.[76]

C. Law on Statelessness

Sea level rise is a threat to the survival of some small island nations, which may need to migrate to a new location permanently. It is not clear however if such people could be considered stateless under international law. As enshrined in Article 1 of the Convention Relating to the Status of Stateless Persons, a person is considered stateless if, according to the law of a State, he or she is not a national of that State and there is no State which would recognize him or her as a national. [77]While the Convention ensures the protection of stateless persons who reside legally, climate change migrants have limited protection whose countries are disappearing gradually.[78]This is so because their government is still operating from the other parts of their lands. Even if their whole country is submerged, they are still not considered stateless within the purview of this convention as the general principle of international law presumes that the State to exist and continues to exist in exile in symbolic way.[79] Consequently, climate change migrants are in general not covered by international law on statelessness.

D. Environmental Law

International Environmental Law began to take shape as a separate body of international law at the United Nations Conference on the Human Environment in Stockholm in 1972 and with the adoption of the Stockholm Declaration.[80] Migration caused by environmental harm is not covered by the Declaration, which

---

[72] Walter Kälin, 'Conceptualizing Climate-induced Displacement', in Jane McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart Publishing2010) 81, 88

[73] UNHCR, 'Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights', (15 January 2009) UN Doc A/HRC/10/61 para 55,70

[74]Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, (adopted 4 February 1984, entered into force 26 June 1987) 1465 UNTS 85 art 3

[75]Angela Williams, 'Turning the Tide: Recognising Climate Change Refugees in International Law' (2008) 30(4) *Law & Policy* 502, 509

[76]ibid 514.

[77]Convention Relating to the Status of Stateless Persons, (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117 art 1

[78]Jane McAdam, '*Disappearing States', Statelessness, and Relocation', Climate Change, Forced Migration, and International Law* (Oxford Academic2012) 119, 130

[79]Kälin (n 31) 101.

[80]McCue (n 37) 179.

only calls on States to prevent environmental harm.[81] Similarly, article 2 of the United Nations Framework Convention on Climate Change (UNFCCC) is concerned with the impacts of climate change – not the protection of those who are displaced due to climate change.[82]As both instruments are primarily preventive and regulate inter-State obligations, they do not provide legal protection or status for climate change migrants.[83]

E. Recent International Developments in Climate Mobility Governance

Recent international developments have significantly advanced the global discourse on climate-induced displacement, although they have not yet established a binding legal protection regime. The Paris Agreement recognizes the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change.[84]In this context, Decision 1/CP.21 established the Task Force on Displacement (TFD) under the Warsaw International Mechanism to develop recommendations for addressing climate-related displacement through integrated approaches.[85]The TFD has since promoted the inclusion of human mobility within national adaptation planning and climate policies, reflecting growing international recognition of climate-induced displacement as governance challenge rather than solely an environmental concern.[86]

In addition, the Global Compact for Safe, Orderly and Regular Migration (2018) expressly recognises climate change, environmental degradation and natural disasters as drivers of migration and encourages States to develop pathways for safe and regular migration in such circumstances.[87]Although the Global Compact on Refugees (2018) does not create refugee status for climate-displaced persons, it acknowledges the interaction between climate change and forced displacement and encourages international cooperation and burden-sharing.[88]Likewise, the Platform on Disaster Displacement (PDD) has strengthened international cooperation by promoting the implementation of the Protection Agenda and developing practical guidance on cross-border disaster displacement.[89]More recently, the Advisory Opinions of the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS), together with emerging climate mobility

[81]Declaration of the United Nations Conference on the Human Environment, (16 June 1972) UN Doc A/CONF.48/14/Rev.1 principle 21
[82]United Nations Framework Convention on Climate Change (adopted 20 June 1992, entered into force 21 March 1994) 1771 UNTS 107 art 2
[83] Bonnie Docherty and Tyler Giannini, ‘Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees’ (2009) 33(2) *Harvard Environmental Law Review* 349, 358
[84]Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) (2016) 55 ILM 740 art 8.
[85]Conference of the Parties, Adoption of the Paris Agreement, Decision 1/CP.21, UN Doc FCCC/CP/2015/10/Add.1 (29 January 2016) para 49.
[86]UNFCCC, Human Mobility, Including Migration, Displacement and Planned Relocation: Task Force on Displacement
[87]Global Compact for Safe, Orderly and Regular Migration, UNGA Res 73/195 (19 December 2018).
[88]Global Compact on Refugees, UNGA Res 73/151 (17 December 2018).
[89]Walter Kälin, ‘The Global Compact on Migration: A Ray of Hope for Disaster-Displaced Persons’ (2018) 30(4) International Journal of Refugee Law 664; Platform on Disaster Displacement, Our Response

initiatives in Pacific Island States, demonstrate an increasing willingness within the international community to clarify States' obligations concerning climate change and human mobility.[7] While these developments represent important normative progress, they remain fragmented and largely non-binding, reinforcing the need for a comprehensive international legal framework for climate-induced displaced persons.[90]

8. Re-Interpreting Possible Protections within Existing Legal Frameworks

The preceding section has attempted to identify the lacuna in the current international legal framework that overlooked the climate change migrants. This section seeks to identify potential interpretations of the framework through which those gaps can be mitigated.

A. *Bridging "Displacement" with Refugee Law Regime*

So far, it's clear that the protection of climate induced migrants under refugee law regime is legally impossible. Despite having the international legal definition of a refugee, individuals who do not fall under this definition may still deserve protection, particularly in the context of environmental disasters that can trigger wider displacement scenarios, including armed conflict.[91] Thus, refugee law should not automatically exclude the protection of such displaced individuals.[92] Additionally, the Immigration and Protection Tribunal New Zealand acknowledged that the necessity of human agency in determining a refugee's status does not necessarily preclude the Refugee Convention's protection from being granted.[93]

The Refugee Convention may still apply to people who, during environmental disasters, face persecution, torture based on gender, race, religion discrimination in receiving relief, or whose existing persecution is intensified by the disaster.[94]Moreover, where disasters occur in states that does not respect protect human rights of the people in environmental distress, humanitarian relief may be politicized by excluding marginalized groups.[95]In many countries, racial, religious, or other minorities often lack sufficient political influence to shape government decisions. Consequently, following environmental disasters, governments may discriminate against these minority groups by prioritizing relief for the majority population. The mindset behind this discrimination may be to attract the votes of the people who are majority in portion.

Governments may also obstruct disaster rehabilitation by refusing to accept foreign humanitarian assistance. If that refusal is an arbitrary denial of international humanitarian aid, it may constitute state conduct that gives affected people grounds to seek international protection[96].This occurred in Myanmar after Cyclone

[90]*Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep (Advisory Opinion of 23 July 2025).
[91] McAdam (n 68) 836.
[92] McAdam (n 59) 42.
[93]AF (*Kiribati*) (n 65)
[94]McAdam (n 59) 836.
[95]AF (*Kiribati*) (n 65) 58
[96]AC (*Tuvalu*) (n 70)

Nargis struck the country's south in 2008, killing at least 140,000 people and affecting 2.4 million. The Myanmar government barred foreign relief workers and humanitarian supplies from reaching the affected areas.[97] Moreover, Myanmar government had also targeted those who had actively participated in the disaster relief aids. It reflects the authorities' adverse political perception of those involved in relief aids, which may be sufficient to trigger protection under the Refugee Convention.[98]

Weak disaster management frameworks can compound the risk of gender-based violence, trafficking and other crimes in the post-disaster context[99]. Displacement, family separation and economic hardship increase the vulnerability of persons affected by disasters to exploitation and may compel them to look for possibilities elsewhere.[100] The Immigration and Protection Tribunal of New Zealand accepted that there may be a right to protection under the refugee regime where governments fail or refuse to protect victims from powerful traffickers or offenders.[101]

Examples of granting protection under Refugee Law Regime:

(i) Some Haitians nationals were granted refugee status in both Panama and Peru as a result of well-founded fears related to disaster-related persecution and the lack of protection by the authorities;[102] and

(ii) One particular disaster-relief activist who was recognized as a refugee by New Zealand's Refugee Status Appeals Authority because the authorities' adverse political perception of her engagement in disaster-relief activities.[103]

To conclude, the Refugee Convention does not provide protection directly for those who are relocated due to climate change solely. However, these individuals may be covered by the convention if the effects of climate change are followed by other incidents that give rise to a legitimate fear of persecution. Therefore, the "persecution" must be done as a result of the environmental disaster afterwards.

B. Human Rights Law Regime

Climate change can undermine fundamental human rights, including the rights to life, food scarcity may

[97]'I Want to Help My Own People: State Control and Civil Society in Burma after Cyclone Nargis', (Human Rights Watch, 28 April 2010) <https://www.hrw.org/report/2010/04/28/i-want-help-myown-people/state-contro-and-civil-society-burma-after-cyclone > accessed 30 June 2026.

[98]*Refugee Appeal No 76374* (2009) NZRSAA 83, para 45 (New Zealand Refugee Status Appeals Authority)

[99] Elizabeth Ferris, 'Disaster and Displacement: What We Know, What We Don't Know', (Brookings, 9 June 2014) < https://www.brookings.edu/articles/disasters-and-displacement-what-we-knowwhat-we-dont-know/> accessed 9 July 2026

[100] 'Human Trafficking in the Wake of a Disaster', (Centers for Disease Control and Prevention, 26 August 2020) < https://www.cdc.gov/disasters/human_trafficking_info_for_shelters.html > accessed 9 July 2026.

[101]AC (*Tuvalu)* (n 70)

[102]David James Cantor, 'Law, Policy and Practice Concerning the Humanitarian Protection of Aliens on a Temporary Basis in the Context of Disasters' (United Nations Network on Migration, 1 January 2016) <https://migrationnetwork.un.org/resources/law-policy-and-practiceconcerning-humanitarian-protection-aliens-temporary-basis-context > 17, accessed 9 July 2026

[103]*Refugee Appeal No 76374* (n 90) 83

interrupt right to adequate food,, the disaster destroys the health infrastructure that affects the attainable standard of health, and sea-level rise and floods affect the right to housing. thereby triggering states' human rights obligations.[104] The Immigration and Protection Tribunal of New Zealand in *Kiribati Case* [105]has recognized that Article 7 of the ICCPR[106] can provide protection where environmental degradation creates life-threatening conditions and can prevent the return of individuals to such circumstances.

9. Comparative Global Practice

Comparative state practice remains limited. Nevertheless, New Zealand, Finland, Sweden and Canada have adopted complementary or humanitarian protection mechanisms that may, in certain circumstances, benefit persons displaced by environmental disasters.[107] New Zealand has explored humanitarian and complementary protection through judicial interpretation and policy discussions, particularly following the *Teetotal* litigation.[108] Finland and Sweden provide residence permits in certain humanitarian circumstances under their immigration laws, which may offer protection to persons affected by environmental disasters, although such protection is not specifically designed for climate-induced displacement.[109] Canada has increasingly relied on humanitarian and compassionate grounds in exceptional cases while supporting international initiatives on climate mobility. At the regional level, soft-law initiatives, including the Platform on Disaster Displacement and the Nansen Protection Agenda, encourage States to strengthen cross-border protection, planned relocation, and international cooperation in response to disaster- and climate-related displacement. Although these approaches reflect growing recognition of climate mobility, they remain fragmented, discretionary, and dependent on domestic immigration policies rather than legally binding international obligations. Consequently, they cannot substitute for a comprehensive international legal framework dedicated to the protection of climate-induced displaced persons.

---

[104] Jane McAdam, 'Climate Change Displacement and International Law: Complementary Protection Standards' (United Nations High Commissioner for Refugees, May 2011) <https://www. unhcr.org/media/no-19-climate-change-displacement-and-international-law-complementaryprotection-standards > 17, accessed 9 July 2026

[105]AF (*Kiribati) (n 65) 61*

[106] International Covenant on Civil and Political Rights, (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 7.

[107] Jane McAdam, Climate Change, Forced Migration, and International Law (Oxford University Press 2012) ch 4.

[108]*Ioane Teitiota v New Zealand* (Views adopted on 7 January 2020) UN Human Rights Committee, Communication No CCPR/C/127/D/2728/2016.

[109] Jane McAdam, Climate Change, Forced Migration, and International Law (Oxford University Press 2012) ch 4 (discussing Finland, Sweden and other domestic humanitarian protection mechanisms).

10. Findings

•As to Protection under Refugee Law

As climate change is not a recognized criterion for refugee status, migrants affected by climate change are not considered refugees under the 1951 Refugee Convention. Since the majority of displacement brought on by climate change occurs "internally", people are not covered by the Convention, which only applies to people who are not in their native country. Furthermore, climate change does not fit the Convention's concept of "persecution," since environmental harm is often indiscriminate and does not have a specific human perpetrator. This opinion is supported by court rulings, such as those in the *Teitiota* and *Tuvalu* cases, where claims are rejected on the grounds that climate change by itself does not satisfy the requirements of international refugee law. People who do not meet the precise criteria of a refugee under international law may nevertheless be entitled to protection. Since armed conflicts and environmental calamities can result in widespread displacement, refugee legislation shouldn't automatically bar such displaced people from getting protection.

•As to States' Apprehension in Expanding the Definition of Refugee

Limited protection is also due to state reluctance because many states are apprehensive of granting refugee status to climate migrants, which would result in a surge of refugee applications.

States also state concerns about the potential impact of a broadening of the scope of the Convention on refugee protection systems. These worries have grown with the rise in climate-induced displacement cases, which is expected to exceed the number of traditional refugees in the near future.

•As to Fragmented and Inadequate Protection under International Law

There are important gaps in the existing international legal frameworks covering the protection of climate change induced migrants. Climate change-induced migrants are not covered by the Refugee Convention, the Guiding Principles on Internal Displacement (for cross-border movement), the statelessness regime or in most cases, international human rights law.The main thrust of international environmental law is to prevent environmental degradation and it does not provide much protection for those who are affected by it.This implies that the current international legal framework still has a protection gap for climate change-induced displacement persons.

•As to the Applicability of OAU Refugee Convention

The OAU Refugee Convention[110] provides some potential for protection; the term "events seriously

[110]Convention Governing the Specific Aspects of Refugee Problems in Africa (entered into force June 20, 1974) 1001 UNTS 45 art 1

disturbing public order" could encompass an environmental disaster[111].The meaning of this remains unclear, and many believe the Convention was only meant to cover 'human-made events'.This wider definition is not supported by state practice because in general environmental disasters are not considered grounds for refugee protection. For the above reasons, the OAU Convention does not offer any clear and reliable protection for climate change-induced damage.

•As to Re-interpreting Climate migrants' Protection

In summary, the 1951 treaty does not provide protection for those who are relocated due to climate change alone. However, these individuals may be covered by the convention if the effects of climate change are followed by other episodes that give rise to a legitimate fear of persecution. The OAU convention is subject to the same argument. If the government obstructs reconstruction following environmental disasters with the goal of victimizing the afflicted people on one of the five convention grounds, the displaced persons in this region may be covered by this agreement.

11. Recommendations

•Adoption of a Dedicated International Convention

Existing legal frameworks are not adequate to protect this group of migrants and a special international convention should be adopted to deal with migration that is caused by climate change. Such an instrument ought to set up a coherent legal framework which is in keeping with the particular nature of climate-induced displacement. This new convention should also cover the legal and humanitarian issues, with a definition that will still apply in future scenarios. It should cover all sub-categories of climate change migrants such as affected by direct and indirect impacts. The definition should include six components: 1) Forced migrations, 2) Temporary or permanent relocation, 3) Cross-border movement, 4) Climate related disruption, 5) Sudden or slow onset environmental disruption, 6) Human contribution to environmental disruption. It should include provisions for equitable responsibility-sharing of States and the international community, and for the effective institutional mechanisms of the implementation and enforcement of the convention.

• Development of an Interim International Guiding Framework

A framework should be put in place to guide the protection of migrants as a result of climate change, in the absence of an international convention. This framework should be based on and aligned with existing refugee and human rights law, it should be clear about the protection that is already provided, and it should offer guidance on how to apply these principles to displacement caused by climate change rather than formulating

[111]M. R. Rwelamira, 'Two Decades of the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa' (1989) 1(4) *International Journal of Refugee Law* 557, 558

new rules.

•Providing Complimentary Protection Mechanism

While international human rights law does not explicitly address climate change induced migrants, it provides protection through complementary protection for those who are not refugees but who need international protection because of climate change. A number of countries, such as the European Union, the United States, Canada, New Zealand, Australia, Hong Kong and Mexico, have implemented such mechanisms. A crucial form is temporary protection, for those who are not able to return home because of environmental disasters. The USA's Temporary Protected Status (TPS) has been issued, for instance, to nationals from countries facing natural disasters such as Haiti after the earthquake.[112] Likewise, the EU Temporary Protection Directive and the Aliens Act of Finland may be read as allowing for temporary protection of those whose displacement has resulted from a climate induced environmental disaster.[113]

•Application of Principle of Non-refoulement

While the international human rights regime does not explicitly affirm that climate change induced migrants exist, it may be recognized that protection under the principle of non-refoulement may be available when a climate change induced migrant would otherwise face a real risk of serious harm as a result of climate change related conditions.

• Protection under the Guiding Principles on Internal Displacement

People who are displaced within their own countries as a result of natural disasters, particularly those caused by climate change, are protected by the Guiding Principles on Internal Displacement. According to Principle 1, internally displaced people must have the same freedoms and rights as other citizens of their nation.[114] However, cross-border migrants affected by climate change are not protected by these principles; they only cover internal displacement.

•Recognition of Climate Passport

The Climate Passport is an innovative legal tool which can be regarded as a protective measure for people displaced due to climate change. At present, no international legal instrument provides a legal basis for a Climate Passport. Its implementation would therefore require the adoption of a dedicated multilateral legal instrument or protocol, potentially under the UNFCCC framework or as a standalone treaty, to define eligibility, institutional responsibilities, and States' obligations. It would follow the historical Nansen

[112] Aliens and Nationality Act, 8 USC § 1254a(a)(1) (2018)
[113] Council Directive 2001/55/EC on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences thereof [2001] OJ L212/12, art 2(c)
[114] UNHCR, 'Guiding Principles on Internal Displacement', (11 February 1998) UN Doc. E/ CN.4/1998/53/Add.2 principle 1

Passport and would allow for a recognized legal status if the climate situation calls for the affected people to be able to move across borders legally, if their homes become uninhabitable. The proposal can be refined within the current international processes, such as the UNFCCC, the Platform on Disaster Displacement or the Global Compact on Migration. The increased exposure of low-lying states, such as Kiribati and Tuvalu, and the development of a new legal framework to respond to climate induced displacement, like the 2025 climate citizenship scheme in Nauru, highlight the need for instruments to tackle climate-induced displacement

• Protection through Asylum and National Immigration Laws

Climate change migrants might find partial refuge in the asylum and national immigration laws. The EU Qualification Directive, Aliens Act of Sweden, asylum law of Switzerland and the Immigration Act of Argentina could be read to cover people who are unable to go back to their country because of an environmental disaster. These, however, offer only partial and indirect protection, especially for those living in conditions of sudden-onset climate related disasters.

12. Conclusion

Climate change is altering ecosystems, endangering human welfare, and changing the frequency and severity of natural disasters. It compels residents in impacted areas to relocate in order to either save their own lives or flee worsening circumstances. This essay has shown that migration brought on by climate change is becoming a significant issue that requires immediate response on a global scale. However, these displaced persons are not adequately recognized or protected by existing branches of international law. The definition of international refugee law, which appears to be the most pertinent area of international law in this context, excludes displacements brought on by climate change. Since there is no international agreement that views this kind of displacement as a violation of human rights, protection under the human rights framework is likewise unclear. Many nations have not established precedents by providing protection through expansive interpretations of current legislation. The current protective paths shouldn't be seen as the only options because they don't necessarily address all displacements brought on by climate change. This paper makes the case for the development of a specific legal framework through a new international convention in light of the scope and urgency of climate-induced displacement, which is currently on par with classic refugee crises. It also lists the essential components that such a convention ought to have. The international community must take temporary action to address this growing issue in the interim.

Reference

Adodoadji DCD and Urban F, 'Climate Change, Policy Processes and Local Vulnerability' in Research Handbook on Climate Change and Migration (Edward Elgar 2023).

Afifi T and Jäger J (eds), Environment, Forced Migration and Social Vulnerability (Springer 2010).

Ahmed B, 'Who Takes Responsibility for the Climate Refugees?' (2018) 10(1) International Journal of Climate Change Strategies and Management 5.

Ahsan R, Karuppannan S and Kellett J, 'Climate Migration and Urban Planning System: A Study of Bangladesh' (2011) 4(3) Environmental Justice 163.

Asian Development Bank, Addressing Climate Change and Migration in Asia and the Pacific (ADB 2012).

Bates DC, 'Environmental Refugees? Classifying Human Migrations Caused by Environmental Change' (2002) 23(5) Population and Environment 465.

Bayes A, 'Who Takes Responsibility for the Climate Refugees?' (2018) 10(1) International Journal of Climate Change Strategies and Management 5.

Beniston M, 'Issues Relating to Environmental Change and Population Migrations: A Climatologist's Perspective' in John D Unruh, Maarten SK Krol and NuritKliot (eds), Environmental Change and Its Implications for Population Migration (Springer 2004).

Berchin II, Valduga IB, Garcia J and Guerra JBSOA, 'Climate Change and Forced Migrations: An Effort Towards Recognizing Climate Refugees' (2017) 84 Geoforum 147.

Betts A, 'Survival Migration: A New Protection Framework' (2010) 16(3) Global Governance 361.

Biermann F and Boas I, 'Protecting Climate Refugees: The Case for a Global Protocol' (2008) 50 Environment 8.

Boano C, Zetter R and Morris T, Environmentally Displaced People: Understanding the Linkages Between Environmental Change, Livelihoods and Forced Migration (Refugee Studies Centre 2008).

Castles S, Environmental Change and Forced Migration: Making Sense of the Debate (UNHCR 2002).

Convention Governing the Specific Aspects of Refugee Problems in Africa (entered into force 20 June 1974) 1001 UNTS 45.

Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 150.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 4 February 1984, entered into force 26 June 1987) 1465 UNTS 85.

Davis KF, Bhattachan A, D'Odorico P and Suweis S, 'A Universal Model for Predicting Human Migration under Climate Change: Examining Future Sea Level Rise in Bangladesh' (2018) 13(6) Environmental Research Letters 064030.

Docherty B and Giannini T, 'Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees' (2009) 33(2) Harvard Environmental Law Review 349.

Einarsen T, 'Drafting History of the 1951 Convention and the 1967 Protocol' in Andreas Zimmermann, Thomas Einarsen and Franziska Maria Herrmann (eds), The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol (OUP 2024).

El-Hinnawi E, Environmental Refugees (United Nations Environment Programme 1985).

Evertsen KI and van derGeest K, 'Gender, Environment and Migration in Bangladesh' (2020) 12(1) Climate and Development 12.

Ferris E, 'Disaster and Displacement: What We Know, What We Don't Know' (Brookings Institution 2014).

Fuldauer LI and others, 'Evaluating the Benefits of National Adaptation to Reduce Climate Risks and Contribute to the Sustainable Development Goals' (2022) 76 Global Environmental Change 102575.

Geun JH, 'The Evolution of the Policy Environment for Climate Change Migration in Bangladesh: Competing Narratives, Coalitions and Power' (2019) Development Policy Review.

Hathaway JC and Foster M, The Law of Refugee Status (2nd edn, CUP 2014).

Huq E and Shafique T, 'People Move, Policies Don't: Discursive Partition against Climate-Impacted Dwellers in Urbanizing Bangladesh' (2023) 35 Environment and Urbanization.

International Organization for Migration, Glossary on Migration (IOM 2019).

International Organization for Migration, Climate Change, Environmental Degradation and Migration (2011).

Islam M, 'Is Climate Change Migration an Adjustment to Extreme Weather Events? A Study on the Coastal Areas of Bangladesh' (2022) 14(4) Weather, Climate, and Society 1247.

Islam MR and Doha SM, 'Socioeconomic Consequences of Climate Induced Human Displacement and Migration in Bangladesh' (2017) 32(3) International Sociology 277.

Jane McAdam, Climate Change, Forced Migration, and International Law (OUP 2012).

Kartiki K, 'Climate Change and Migration: A Case Study from Rural Bangladesh' (2011) 19(1) Gender & Development 23.

Kälin W, The Climate Change–Displacement Nexus (Brookings Institution 2008).

Koubi V, Böhmelt T, Spilker G and Schaffer L, 'The Determinants of Environmental Migrants' Conflict Perception' (2018) 72(4) International Organization 905.

Luetz JM, 'Climate Change and Migration in Bangladesh: Empirically Derived Lessons and Opportunities for Policy Makers and Practitioners' in Walter Leal Filho and Johannes Nalau (eds), Limits to Climate Change Adaptation (Springer 2018).

Mayer B, 'The Arbitrary Project of Protecting Environmental Migrants' in Robert McLeman, Jonas Schade and Thomas Faist (eds), Environmental Migration and Social Inequality (Springer 2016).

Mayer B, Boas I, Ewing JJ, Baillat A and Das UK, 'Governing Environmentally-Related Migration in Bangladesh: Responsibilities, Security and the Causality Problem' (2013) 22(2) Asian and Pacific Migration Journal 177.

McAdam J, 'Displacement in the Context of Climate Change and Disasters' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), The Oxford Handbook of International Refugee Law (OUP 2021).

McCue GS, 'Environmental Refugees: Applying International Environmental Law to Involuntary Migration' (1993) 6(1) Georgetown International Environmental Law Review 151.

Micinski NR and Lefebvre C, 'The Geopolitics in the Global Compacts: Sovereignty, Emerging Norms, and Hypocrisy in Global Migration Governance' (2024) 29(1) Geopolitics.

Morrissey J, Environmental Change and Forced Migration (Refugee Studies Centre, University of Oxford 2009).

Naser MM and others, 'Climate Change, Migration and Human Rights in Bangladesh: Perspectives on Governance' (2019) 60(2) Asia Pacific Viewpoint 175.

Nishimura L, 'Climate Change Migrants: Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies' (2015) 27(1) International Journal of Refugee Law 107.

Rahman and others, 'Projecting Climate Migration in Bangladesh Using Agent-Based Modelling' (2025) Frontiers in Climate.

Seddiky AM, Ara E and Karim A, 'Climate Change-Induced Hazard Risks and Migration in Bangladesh: A Case Study' (2024) 7 Current Research in Environmental Sustainability 100253.

Torraco RJ, 'Writing Integrative Literature Reviews: Guidelines and Examples' (2005) 4(3) Human Resource Development Review 356.

United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

United Nations General Assembly, Transforming our World: the 2030 Agenda for Sustainable Development UNGA Res 70/1, UN Doc A/RES/70/1 (2015).

United Nations High Commissioner for Refugees, Climate Change and Disaster Displacement (UNHCR).

United Nations High Commissioner for Refugees, No Escape: On the Frontlines of Climate Change, Conflict and Forced Displacement (UNHCR 2024).

Williams A, 'Turning the Tide: Recognising Climate Change Refugees in International Law' (2008) 30(4) Law & Policy 502.

https://jlpj.bshrls.org
Vol. 1, No. 1, pp. 72-103, 2026

JOURNAL OF LAW, POLICY AND JUSTICE

RESEARCH ARTICLE

OPEN ACCESS

The Economic Impact of Trade Secret Misappropriation in The United States

Zammy A. Owodunni

LL. B, B.L., LL.M, Louisiana State University

***Corresponding:** *owodunnizammy@gmail.com*

Received: 23.06.2026 Accepted: 13.08.2026 Publication date: 31.08.2026

ABSTRACT

In this paper, I analyze the economic impact of trade secret misappropriation in the United States. This is done by looking at the legal framework, the practical mechanics and typology of misappropriation, plus how harm ends up spreading across sectors, and then the direct microeconomic and broader macroeconomic consequences. I start from the view that trade secrets have really become the most commercially weighty category of intellectual property for innovation-intensive firms in the United States. Still, they are also the most structurally fragile because legal protection basically hangs on secrecy, and any commercial activity tends to compromise that secrecy. Using recent empirical data, insider threat analyses, and federal case law under the Defend Trade Secrets Act of 2016, I argue that trade secret theft drains the U.S. economy somewhere between $180 billion and $540 billion every year. At the same time, this kind of misappropriation makes affected firms see revenue and research reductions of roughly 40 per cent within five years, and it also feeds into the annual loss of more than two million jobs. I then map out four main modes of misappropriation, i.e., insider acquisition, cyber intrusion, breaches of confidential relationships, and state-sponsored economic espionage. I also examine how these modes behave economically across technology, pharmaceutical, manufacturing, and financial services sectors. Finally, I conclude that the present legal framework tends to systematically underprice misappropriation when you compare it to its real social cost. On that basis, I propose targeted reforms. These reforms include recalibrating the damages regime, boosting enforcement capacity for small enterprises, and dealing with state-sponsored misappropriation through executive branch tools, which is kind of the missing lever.

Keywords: *Trade secrets; intellectual property; Defend Trade Secrets Act; economic espionage; research and development investment; innovation.*

https://jlpj.bshrls.org
Vol. 1, No. 1, pp. 72-103, 2026

1. Introduction

The contemporary knowledge-based economy stands on a contradiction. The competitive advantage enjoyed by firms operating in the most productive sectors of the US economy lies in information that would be value deprived when exposed to the public domain.[1] Unlike patents, which allow a firm to enjoy a monopoly because the technology is disclosed, or copyright, which protects the expression of ideas, the legal protection offered by trade secrets exists in information where the economic value of the information is dependent on keeping it a secret. The dependency on secrecy makes this form of intellectual property both highly valuable and highly vulnerable legally. A trade secret loses its value once the information is revealed in public, the circumstances of the disclosure regardless[2].

The United States' legal system has been faced with this dilemma for more than a century. It started with the recognition of trade secrets in Peabody v. Norfolk by the Massachusetts Supreme Court in 1868[3]. Continued with the creation of common law provisions, Restatement First of Torts in 1939 and Uniform Trade Secrets Act in 1979[4]. Ultimately, the federal government criminalized the act of trade secret theft with the Economic Espionage Act in 1996 and provided a federal civil cause of action for such act in the Defend Trade Secrets Act of 2016[5]. Every step of the legislative process was driven by the understanding of inadequacy of existing legal tools to combat the problem that US companies were facing.

This paper seeks to investigate if the current legal system is adequate to safeguard the economic interests of firms in the United States and the greater good of innovating. The characteristics of trade secret misappropriation are the major reasons that make enforcement difficult. The analysis developed across the following sections demonstrates that the Defend Trade Secrets Act and its state analogues represent genuine progress but fall structurally short in three respects. First, the expected liability imposed on rational mis appropriators is a small fraction of the true social cost of the theft. Second, their enforcement mechanisms remain practically inaccessible to the small and medium enterprises that bear a disproportionate share of the harm. Third, they are structurally incapable of addressing state-sponsored economic espionage because the principal actors operate beyond the reach of domestic legal processes.

This paper first establishes the conceptual and legal framework of trade secret protection, tracing the development of United States law and identifying its fundamental economic paradox. Then it examines the

[1] Christopher Buccafusco, Jonathan S Masur and Deepa Varadarajan, Trade Secrecy Information Paradox (2025) 100 Notre Dame L Rev 925
[2] Suzana Nashkova, Defining Trade Secrets in the United States Past and Present Challenges A Way Forward (2023) 54 IIC 634
[3] Peabody v Norfolk 98 Mass 452 (1868)
[4] Nashkova (n 3) 636
[5] Charles Doyle, Stealing Trade Secrets and Economic Espionage An Abridged Overview of the Economic Espionage Act (Congressional Research Service Report R42682 2024)

mechanisms and types of misappropriation, providing an explanation of the four key forms of illegal conduct. The section that follows offers a detailed analysis of the impact of misappropriation by industry, considering the industries of technology, pharmaceuticals, manufacturing, and financial services that constitute the overwhelming share of cases of trade secret theft litigated federally. Afterward, it explores the microeconomic effects on the affected U.S. firms through an empirical discussion of the economic impact of misappropriation on revenues and research expenditures. Then assess the macroeconomic ramifications of misappropriation, which include the effects on GDP, innovation, and employment. Finally, it sets out policy recommendations to help re-tune the damage system, improve the position of small businesses, and confront state-sponsored espionage.

2. Conceptual Framework and Legal Landscape

The category of trade secrets holds a peculiar place in the system of intellectual property of the USA. In modern knowledge-based economy, such assets became very important for businesses and may even surpass the value of patents and trademarks.[6] The assets of this type are kept confidential and do not enjoy any protection similar to the one that copyrights and patents receive. Economic value of such assets lies completely in their confidentiality.[7] The assets include various sensitive data, such as designs, methods, formulas, customer lists, and marketing information. As opposed to copyright and patent law, where basic concepts have unified definitions regulated by international conventions or national legislation, the trade secret law was never treated in the same way and remained mostly governed by common law up until recently. The economic significance of such an oversight is enormous: annual economic losses caused by theft of trade secrets have been estimated at over $300 billion, which the US Senate called in 2016 as "comparable to the current level of U.S. exports to Asia.[8] Broader analyses suggest the true range may extend from $180 billion to $540 billion annually, representing between one and three per cent of gross domestic product.[9]

[6] Janist Dhanol and Pradip Kumar Kashyap, A Comparative Analysis of Trade Secret Protection in the USA, UK, Australia, and India (2024) 30 Educational Administration: Theory and Practice 6654.

[7] Ibid

[8] US Senate, Report on the Defend Trade Secrets Act of 2016, S Rep No 114-220, 114th Cong, 2nd Sess (2016) 2.

[9] Commission on the Theft of American Intellectual Property, *IP Commission Report: The Theft of American Intellectual Property* (National Bureau of Asian Research, Update 2017).

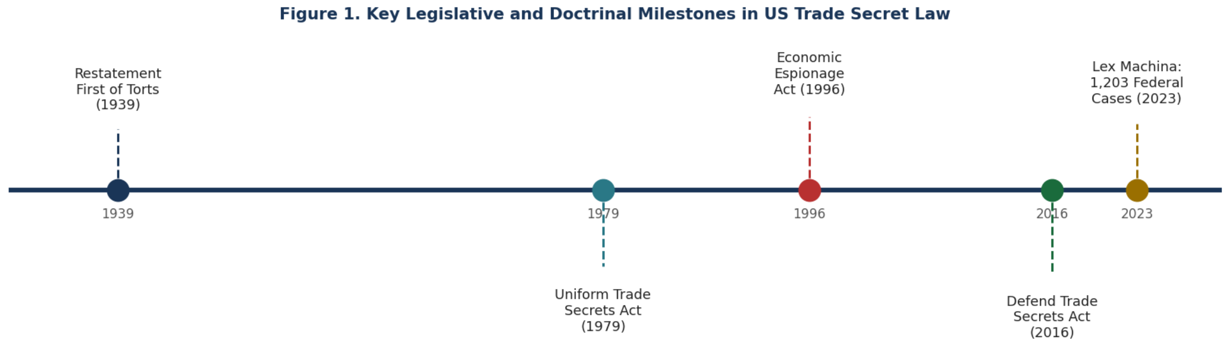


Figure 1. Key Legislative and Doctrinal Milestones in United States Trade Secret Law (1939-2023)

The concept was introduced into United States legal terminology in the nineteenth century to accommodate the protection of new assets emerging during the transition from agrarian to manufacturing production.[10] Early judicial proceedings focused not on providing a precise definition but rather on conceptualising the meaning of a trade secret through description. The Supreme Court of Massachusetts in ***Peabody v. Norfolk*** established what appears to be the first dicta in this context, holding that trade secrets might relate to a relatively novel and safeguarded process of manufacture that gives its owner property rights worthy of court protection against unauthorized disclosure.[11] The first definitional pillar to achieve common law prominence was the Restatement First of Torts promulgated in 1939, which provided foundational principles for courts to interpret trade secret disputes.[12]

The absence of a unitary statutory regime meant that the subject matter and definitional parameters of trade secrets were shaped under the influence of various common law doctrines, which generated little certainty regarding their scope.[13] Minor differences in the judicial perception of trade secrets created some disagreements between courts and thus paved the way for different rules to apply in the same area. Such an unclear situation made separate states seek a gradual orientation towards the implementation of statutes. In this regard, the first step was taken by the National Conference of Commissioners of Uniform State Laws, which provided a definition of a trade secret according to the Uniform Trade Secrets Act in 1979. It proposed a uniform law text for individual states to adopt and is currently implemented in 51 jurisdictions across the country.[14]

The federal government radically changed this situation after realizing the potential danger of corporate espionage. In 1996, Congress adopted the Economic Espionage Act in order to develop a federal statutory

[10]ibid 638.
[11]ibid.
[12]ibid 637.
[13]ibid 635.
[14]ibid 638.

definition and criminalize the misappropriation of trade secrets where the appropriation of such property either aids a foreign entity or concerns interstate commerce. In addition to the above-mentioned criminal statute, the Defend Trade Secrets Act of 2016 was adopted later to amend the federal statutory definition and develop federal civil remedy. Thus, companies were able to bring misappropriators to court on the federal level without undermining the state laws. As a result, the current American trade secret protection system consists of state and federal statutes applied simultaneously, which gives rise to a multi-layered approach that provides criminal deterrence and monetary compensation for victims.

The impact of the legislative change in terms of its effect on the litigation process has been quite significant. In 2016, which was the year that saw the introduction of the DTSA, 173 cases had been filed in the United States district courts pursuant to the law. This number had increased to 600 by 2017, recording a 247% rise. 749 cases involving DTSA filings had been recorded in 2023, with total federal trade secret cases standing at 1,203 in 2023.[15] As of 2024, United States district courts had received a cumulative total of 5,159 case filings involving DTSA claims since the Act's enactment.[16]

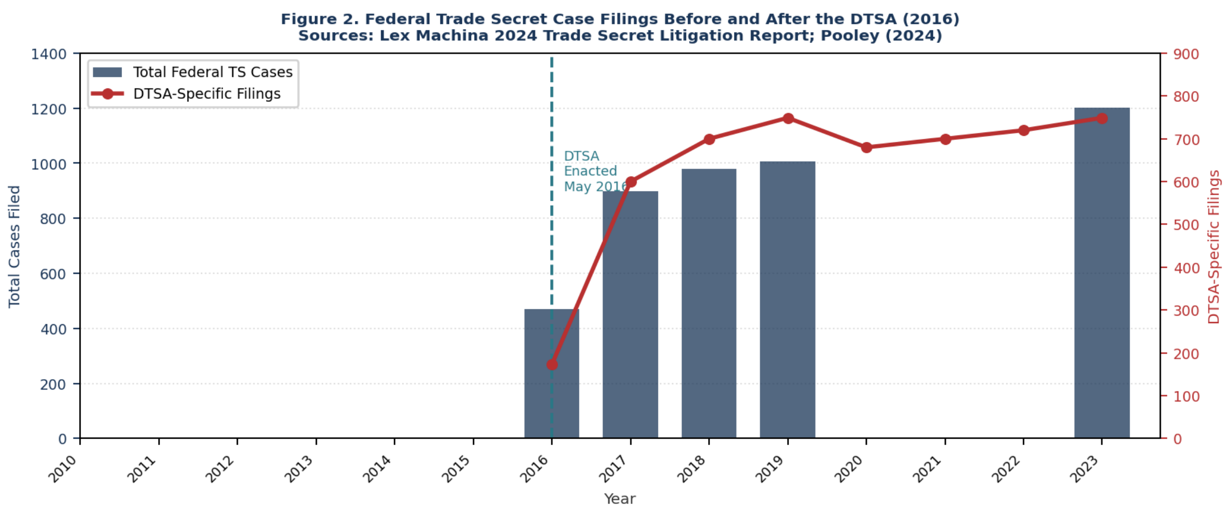


Figure 2. Federal Trade Secret Case Filings Before and After the Defend Trade Secrets Act (2016). Sources: Lex Machina 2024 Trade Secret Litigation Report; Pooley (2024)

There exists an economic paradox underlying the legal framework for trade secrets. The law fundamentally aims to encourage socially beneficial behaviors by allowing firms to protect their financial investments in the creation of valuable information.[17] Protecting this information theoretically makes organisations more likely to fund research and development in the first instance. However, this same legal shield can be utilised

[15] Lex Machina, 2024 Trade Secret Litigation Report (LexisNexis, 2024) 4; Carrier Management, "Report: Bump in Federal Trade Secret Litigation Seen in 2023" (17 September 2024).
[16] James Pooley, "The US Defend Trade Secrets Act Eight Years On" IAM Trade Secrets Blog (14 May 2024).
[17] Christopher Buccafusco, Jonathan S Masur and Deepa Varadarajan, *Trade Secrecy Information Paradox* (2025) 100 Notre Dame L Rev 925.

to conceal socially harmful behaviours or stifle market competition.[18] Furthermore, trade secrets remain uniquely vulnerable compared to other forms of intellectual property. A patent retains its legal force even if an infringer illegally utilises the underlying invention. Conversely, a trade secret loses all legal protection the moment the information becomes public knowledge. This fragile nature necessitates continuous and costly security investments from companies, shifting the economic burden of protection heavily onto the private sector. The Office of the Director of National Intelligence has separately estimated that economic espionage conducted through cyber intrusion alone costs the United States economy $400 billion per year, compounding the structural protection burden described above.[19]

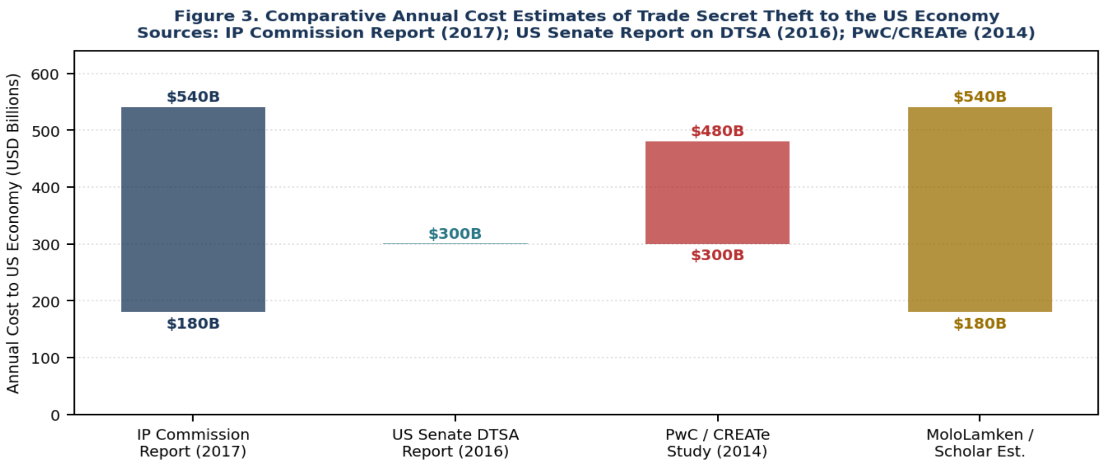


Figure 3. Comparative Annual Cost Estimates of Trade Secret Theft to the United States Economy Sources: IP Commission Report (2017); US Senate Report on the DTSA (2016); PwC/CREATe Study (2014)

It is important to understand the legal parameters around these matters, because it is vital for assessing the economic harm that can be suffered once the protective shield is sort of broken down. The empirical research that has been done on lawsuits indicates that the usual path where misappropriation shows up is not so much the work of foreign spies or hacker attacks, but more often insider treachery. It has been found that roughly 85 per cent of the federal trade secrets cases that were studied involved people who already had personal access to the trade secrets, through their position of trust within the organization.[20] Another detail corroborates this same idea is that, around 70 per cent of all trade secret cases also come with claims of breach of contract.[21] Trade secret cases in federal courts doubled between 1988 and 1995, doubled again between 1995 and 2004, and doubled yet again by 2017, reflecting the growing economic stakes attached to

[18]ibid 926.
[19]Office of the Director of National Intelligence, *Foreign Economic Espionage in Cyberspace* (2018) 1; IP Commission Report (n 18) 1.
[20] David S Almeling and others, "A Statistical Analysis of Trade Secret Litigation in Federal Courts" (2010) 45 Gonzaga L Rev 291, 302-304.
[21]Walter Pfeffer and Harman Deol, "How to Protect Precious IP from Layoff-Related Insider Theft" (Corporate Compliance Insights, 7 June 2023); Almeling (n 26) 303.

proprietary information in the modern knowledge economy.[22]

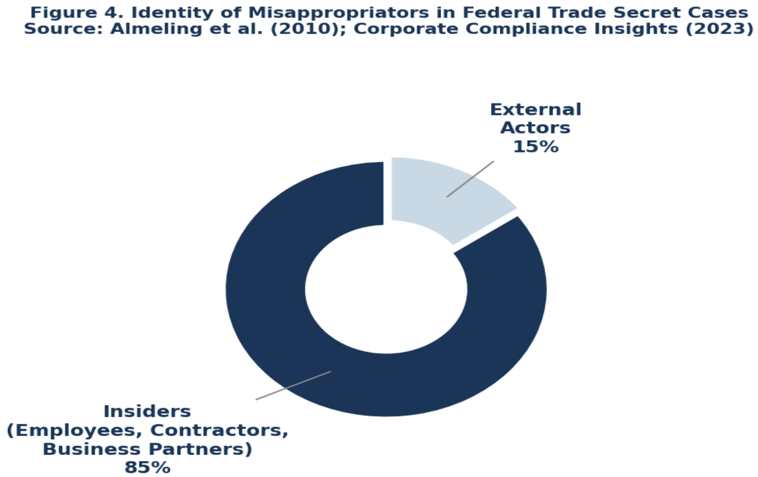


Figure 4. Identity of Misappropriators in Federal Trade Secret Cases Sources: Almeling et al. (2010); Corporate Compliance Insights (2023)

Table 1. The Public Policy Paradox of Trade Secret Law

Protective Function	Potential for Abuse or Market Harm
Incentivises investment in research and development by guaranteeing that commercially valuable discoveries can be shielded from competitors	May be deployed to conceal unsafe products, dangerous manufacturing processes, or anti-competitive practices from regulatory oversight and public scrutiny
Encourages the creation of specialised proprietary knowledge that generates competitive advantage and drives broader economic productivity	Allows dominant incumbents to suppress disclosure of information that could enable competitors to enter markets, potentially stifling rather than stimulating innovation
Provides perpetual protection that does not expire, rewarding sustained commitment to maintaining secrecy and security infrastructure	Perpetual duration means the economic burden of protection remains indefinite, concentrating compliance costs within the private sector

[22]Almeling (n 26) 303.

Protective Function	Potential for Abuse or Market Harm
Complements patent and copyright systems by covering information categories that do not satisfy requirements for formal IP registration	The absence of a registration requirement and the breadth of the definition create uncertainty, generating litigation risk for legitimate competitors engaged in parallel development

Source: Buccafusco, Masur and Varadarajan, "Trade Secrecy Information Paradox" (2025) 100 Notre Dame L Rev 925, 925-926.

3. Mechanics and Typology of Trade Secret Misappropriation

Having discussed the legal and conceptual framework surrounding the protection of trade secrets in the US, we can now take an in-depth look into the mechanisms that contribute to the failure of this protection. Under the Uniform Trade Secrets Act and the Defend Trade Secrets Act of 2016, the term 'misappropriation' refers to three basic forms of illegal activity: the wrong acquisition of a trade secret, the unauthorized disclosure of a trade secret, and the unauthorized use of a trade secret.[23] These three mechanisms of misappropriation do not exist in a vacuum; in reality, one case of misappropriation entails all three types of misconduct. To assess the economic impact that misappropriation can have on the company, we should understand the exact mechanics of how each form of misappropriation works.

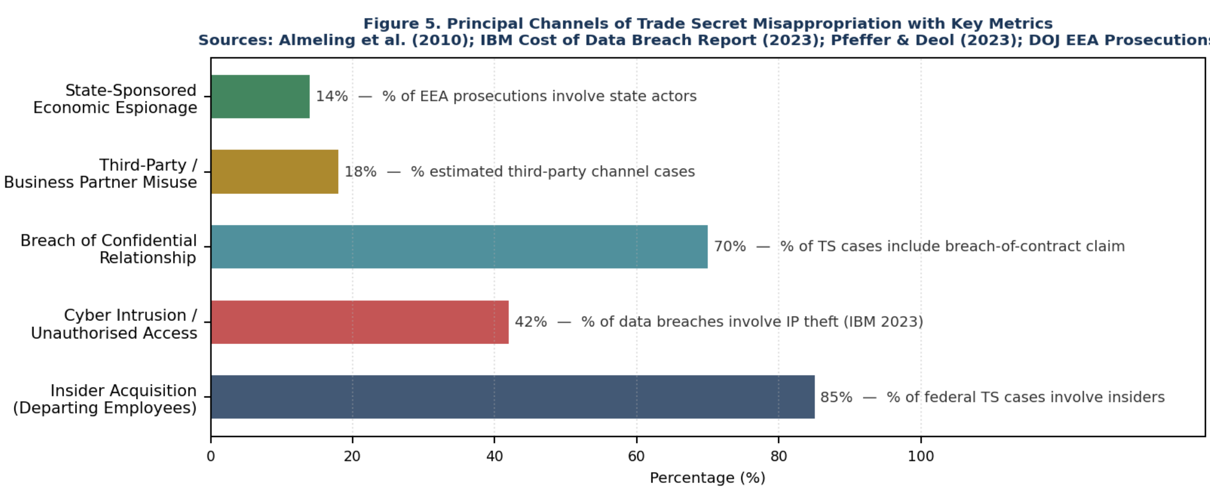


Figure 5. Principal Channels of Trade Secret Misappropriation with Key Metrics.

A. Insider Acquisition: The Departing Employee

The numerically dominant variety of trade secret misappropriation in the United States is insider acquisition,

[23] WIPO, Guide to Trade Secrets and Innovation, Part V (2024).

most often done by leaving employees who effectively move confidential information to a rival enterprise. Empirical analysis of federal trade secret cases seems to confirm that about 85 per cent of cases include individuals who already had legitimate, authorised access to the information they later misappropriated.[24] This percentage really shifts the whole story around trade secret theft, because the danger is not mainly some outside opponent trying to breach the perimeter of a locked system. Instead, it's an internal actor, taking advantage of the trust that authorised access tends to assume.

The typical mechanics of insider acquisition have been shaped by the digitalisation of the workplace. The departing employee who downloads confidential files to a personal device, uploads materials to a personal cloud account, or forwards company emails to a personal inbox in the final days of employment is now the most common factual scenario in trade secret litigation.[25] In ***TF Global Markets Ltd v. Sorenson*** , which was decided in 2023 by the Northern District of Illinois , the court essentially confirmed that when a former employee kept, without authorisation, a large number of confidential files, the plaintiff had alleged misappropriation well enough via " acquisition by improper means" to make it past a motion to dismiss.[26] And, the reach or magnitude of that kind of conduct feels bigger , also because digital information can be pulled out rather easily, without much friction.

The economic consequences of an insider acquisition are made worse by the time that is usually needed to notice the breach, or well, find it. Malicious insider incidents take an average of 142 days to detect, compared to 45 days for incidents caused by negligent employees.[27] In that detection window, the misappropriator may already have used the taken know-how to build competing products, approach the victim's customers, or obtain extra financing based on the misappropriated technology. And as the Ponemon Institute mentioned in its 2026 report, the average annual cost of insider-related incidents now sits at $19.5 million per organisation, a 123 per cent increase since 2018.[28]

B. Cyber Intrusion and Unauthorized Digital Access

The second main mode of misappropriation is cyber intrusion: basically, the unauthorised electronic entry into a company's information systems, in order to pull out trade secret material. The Economic Espionage Act makes it a crime not only when someone physically takes a trade secret but also when they, without

---

[24] Stout, 2024 Trends in Trade Secret Litigation Report (Stout 2024) 18 https://ts25.org/wp-content/uploads/2025/02/2024-stout-trends-in-trade-secrets-litigation-report-volume-3.pdf accessed 7 May 2026.
[25]Congressional Research Service, *Stealing Trade Secrets and Economic Espionage: An Overview of the Economic Espionage Act*, R42681 (29 October 2024) 4-5.
[26]TF Global Markets Ltd v Sorenson, 2023 US Dist Lexis 27983 at *11-12 (ND Ill, 17 February 2023).
[27] Ponemon Institute, 2026 Cost of Insider Threats: Globalper cent Report (Proofpoint, 2026) 3.
[28]Tim Londergan, "The Invisible Epidemic: Unprosecuted Trade Secret Theft" Tangibly (19 November 2025); Ponemon (n 36) 1.

authorisation, copy, download, upload, or otherwise transmit protected information.[29] Ransomware attacks, compromised credentials, and phishing campaigns have basically become the main digital pathways for trade secret theft, pushing aside the older physical intrusion scenarios that were more common in earlier case law.

IBM's 2023 Cost of a Data Breach Report said the average cost of a data breach in the United States hit $4.45 million, and 43 percent of those breaches involved some kind of intellectual property theft.[30] That number doesn't really show the whole picture, though, because it mostly reflects only the direct expenses. The knock-on damage is harder to put a price on, but it can be bigger cumulatively, like the weakening of competitive advantage, the speeding up of a rival's development schedule, and also the potential future licensing revenue that the misappropriated information might have helped generate.

The detection problem is especially acute when it comes to cyber intrusion. Unlike the departing employee who has to physically remove information in the days around termination, a successful cyber intruder can keep some form of persistent access to a target's systems for months or years. The average detection time for a cyber-intrusion that ends up with trade secret exfiltration is around 77 days, but more sophisticated state-sponsored intrusions may go unnoticed for a whole lot longer. This extended dwell time gives the intruder time for a systematic, almost comprehensive extraction of the most commercially valuable information the target has, while they tune and adjust the breadth of the theft so it does not accidentally trip the detection mechanisms.

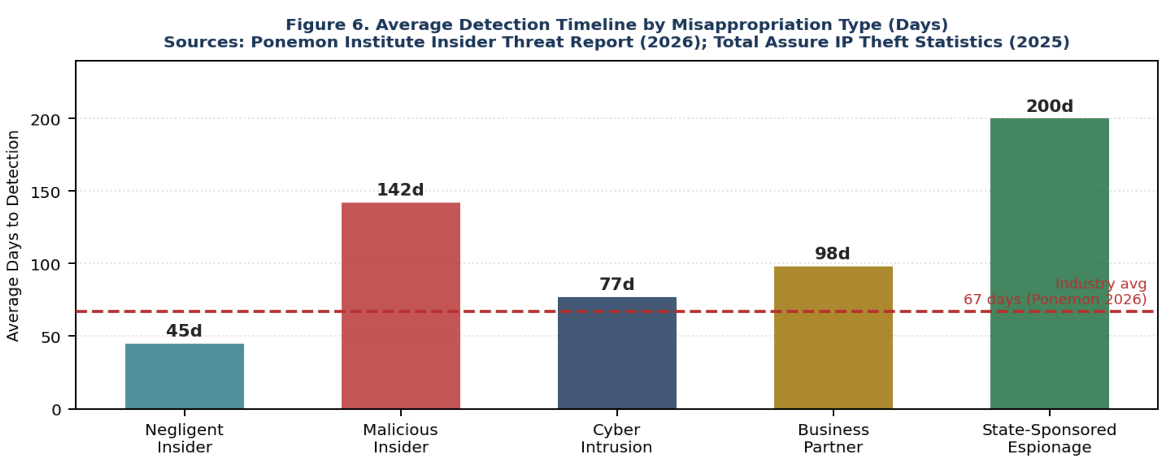


Figure 6. Average Detection Timeline by Misappropriation Type (Days). Sources: Ponemon Institute Insider Threat Report (2026); Total Assure IP Theft Statistics (2025)

C. Breach of Confidential Relationship and Third-Party Disclosure

A third significant mode of misappropriation arises from the breach of a confidential relationship that does

[29] CRS Report (n 31) 5-6; 18 USC s 1832(a)(2).
[30] IBM Security, Cost of a Data Breach Report 2023 (IBM, per cent2023) 1, 11.

not necessarily involve an employment context. Trade secrets are routinely disclosed to third parties in the course of legitimate commercial activity: to prospective investors in due diligence, to suppliers in manufacturing arrangements, to potential acquirers in merger negotiations, and to licensees under contractual arrangements.[31] The breach of these obligations constitutes misappropriation regardless of whether the information is subsequently used commercially, because the DTSA definition of misappropriation encompasses unauthorised disclosure as a standalone category of wrongful conduct independent of actual use.

The practical importance of this subcategory of claims is highlighted by the 70 percent overlap of claims of breaches of contract in cases involving the misappropriation of trade secrets. This is due to the underlying reality that most business transactions involve a disclosure coupled with a non-disclosure agreement which results in a breach of contract and statutory misappropriation concurrently. The concomitant pleading of both categories of claims presents some strategic difficulties on the plaintiff's side as the identification of the particular trade secrets at stake becomes critical to avoid the trap of an "all or nothing" damages model, as demonstrated by the district court's ruling in ***Versata Software, Inc v. Ford Motor Company*** in 2023 when the damages expert failed to distinguish his analysis among the different trade secrets, leading to the reversal of the damages award of more than $100 million.

D. State-Sponsored Economic Espionage

The most economically significant but least frequently prosecuted mode of misappropriation is state-sponsored economic espionage. This is the direct theft of United States trade secrets by foreign governments or their instrumentalities for the purpose of advancing the economic and technological competitiveness of the sponsoring state.[32] The Economic Espionage Act addresses this category specifically under section 1831, which criminalizes trade secret theft where the intended beneficiary is a foreign government or one of its organs. Unlike section 1832, which requires proof that the defendant knew the misappropriation would injure the owner to the benefit of a third party, section 1831 requires only proof of intent to benefit a foreign government.

State-sponsored espionage represents the most technically sophisticated form of misappropriation and the most difficult to detect and attribute. Empirical analysis of Economic Espionage Act prosecutions has found that approximately 14 per cent involve state actors.[33] However, this figure significantly, understates the true scale of state sponsored theft, mainly because the prosecution rate for offences that involve foreign

[31]WIPO (n 29); CRS Report (n 31) 6-7.
[32]18 USC s 1831; CRS Report (n 31) 2-3.
[33]Sarah Morningstar, "Trade Secret Theft Trends: A Closer Look at the Perpetrators" The Cipher Brief (5 June 2024); USTR, *2023 Special 301 Report* (2023) 10-11.

governments is circumscribed by diplomatic, intelligence, and evidentiary constraints that do not show up to the same degree for domestic misappropriators. Current estimates from the National Counterintelligence and Security Center (NCSC) put the annual impact, of global intellectual property theft and cyber enabled espionage, somewhere between $600 billion and $1.2 trillion.[34] The People's Republic of China has been, over and over, identified by the Federal Bureau of Investigation and the Office of the United States Trade Representative as the principal wellspring of state supported trade secret theft, aimed at United States firms.

E. Economic Consequences and the Damages Framework

The economic consequences of trade secret misappropriation operate across multiple dimensions simultaneously. At the most immediate level, the victim suffers direct financial loss: the erosion of revenue that the trade secret would have generated had it remained exclusively under the victim's control, and the acceleration of a competitor's ability to enter a market or develop a competing product. At a secondary level, the victim bears substantial costs of litigation and investigation. Litigation costs for a trade secret case of any complexity routinely range from $50,000 at the preliminary stage to $1-5 million at trial, with high-stakes cases reaching $25 million or more.[35]

Judicial awards in trade secret cases have grown substantially in scale over the period since the enactment of the DTSA. In ***Appian Corp v. Pegasystems Inc,*** a Virginia state jury awarded $2 billion in 2022 following allegations of systematic corporate espionage.[36] In ***TriZetto Group v. Syntel,*** a Manhattan jury awarded $855 million in 2020 for the misappropriation of a software platform.[37] In ***Motorola Solutions v. Hytera Communications,*** a jury awarded $544 million for the systematic misappropriation of digital mobile radio technology.[38]

[34] National Counterintelligence and Security Center, Foreign Economic Espionage in Cyberspace (ODNI 2018) 1 https://www.dni.gov/files/NCSC/documents/news/20180724-ncsc-press-release-foreign-econ-esp-cyber.pdf accessed 21 April 2026.
[35] American Intellectual Property Law Association, 2025 Report of the Economic Survey (AIPLA 2025) <https://www.aipla.org/home/news-publications/economic-survey/2025-report-of-the-economic-survey> accessed 20 May 2026.
[36] Appian Corp v Pegasystems Inc, Case No 1399-22-4 (Court of Appeals of Virginia, argued November 2023).
[37] Syntel Sterling Best Shores Mauritius Ltd v The TriZetto Group Inc, verdict October 2020 (SDNY); IPWatchdog, "2024 Trade Secret Update" (19 July 2024).
[38] Motorola Solutions Inc v Hytera Communications Corp, No 1:17-cv-01973 (ND Ill), jury verdict February 2020, reduced to $544 million on appeal.

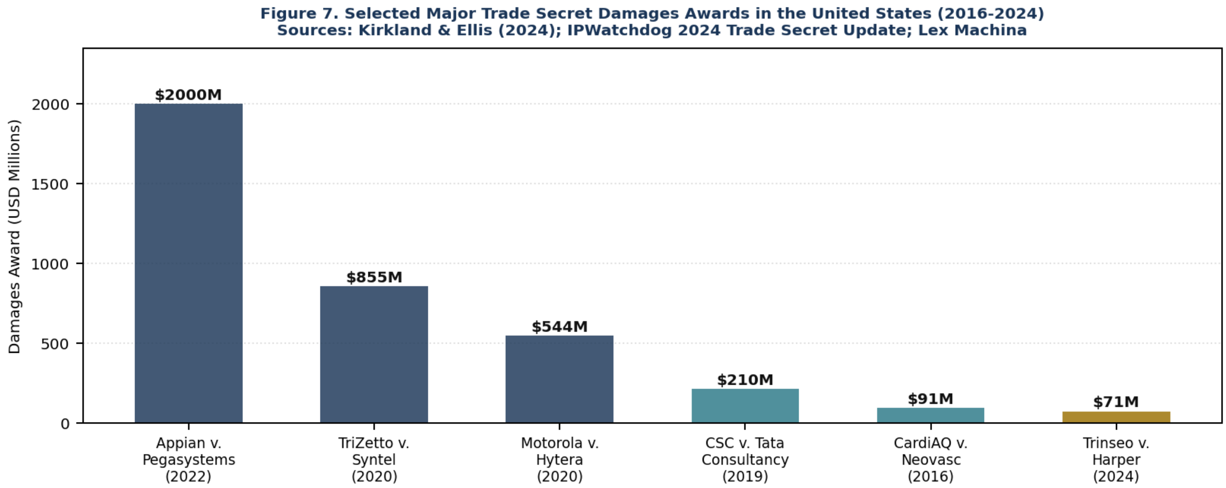


Figure 7. Selected Major Trade Secret Damages Awards in the United States (2016-2024) Sources: Kirkland & Ellis (2024); IPWatchdog 2024 Trade Secret Update; Lex Machina

Table 2. Summary Typology of Trade Secret Misappropriation in the United States

Mode	Primary Mechanism	Legal Basis (DTSA / EEA)	Key Economic Impact
Insider Acquisition (Departing Employee)	Downloading files, uploading to personal cloud, emailing confidential data before departure	18 USC s 1832; DTSA s 1836(b)(1); breach of NDA	85% of federal cases; avg $19.5M/org annually (Ponemon 2026)
Cyber Intrusion (Unauthorised Access)	Hacking, phishing, ransomware, credential compromise, prolonged access	18 USC s 1832(a)(2); DTSA; CFAA 18 USC s 1030	43% of data breaches involve IP theft; the average breach cost $4.45M (IBM 2023)
Breach of Confidential Relationship (Third-Party	Misuse of disclosures in due diligence, licensing, supply chain, or joint venture	DTSA s 1836(b)(1); breach of NDA; UTSA misappropriation	70% of TS cases include breach-of-contract claim; litigation risk for all

Mode	Primary Mechanism	Legal Basis (DTSA / EEA)	Key Economic Impact
Disclosure)	contexts		commercial relationships
State-Sponsored Espionage (Economic Espionage)	Directed cyber intrusion, recruitment of insiders, bribery, and coercion by foreign governments	18 USC s 1831 (EEA); Foreign and Economic Espionage Penalty Enhancement Act 2012	Estimated $400B/yr cyber espionage (ODNI 2018); 14% of EEA prosecutions involve state actors

Sources: Congressional Research Service (2024); Almeling et al. (2010); IBM (2023); Ponemon Institute (2026); ODNI (2018); DOJ EEA prosecution data.

The four modes of misappropriation documented in this section share a common structural feature: each exploits a necessary vulnerability in the commercial operation of firms that depend on trade secret protection.

4. Sectoral Analysis of Trade Secret Misappropriation

Arguably, the economic impact of trade secret misappropriation is not spread evenly across the United States economy. How bad it gets depends on whether a specific industry leans on proprietary technical and commercial information as its main competitive edge, and also how easily that kind of information can be passed along, duplicated, or decoded through reverse-engineering once it's been taken. As Figure 8 shows, the technology and software sector is responsible for roughly 38 per cent of federal trade secret litigation, then pharmaceuticals and life sciences at 21 per cent, manufacturing and industrial at 17 percent, and financial services at 12 per cent. When you zoom in on each sector you can see the shared structural weak spots as well as the particular features that shape what misappropriation really does economically in that area.

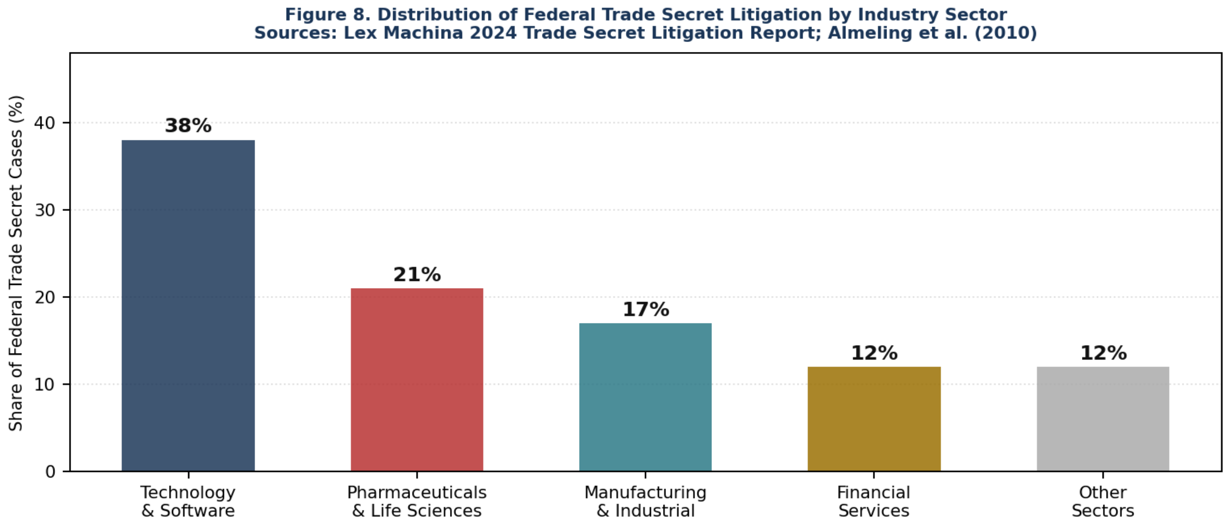


Figure 8. Distribution of Federal Trade Secret Litigation by Industry Sector Sources: Lex Machina 2024 Trade Secret Litigation Report; Almeling et al. (2010)

A. Technology and Software

The technology and software sector generates the largest volume of trade secret litigation in the United States by a substantial margin. This reflects both the concentration of commercially valuable proprietary information within the sector and the high employee mobility that characterises the technology labour market, particularly in jurisdictions such as California, where non-compete agreements are unenforceable. The sector's primary trade secrets encompass software source code and algorithms, product roadmaps and architecture designs, training data and machine learning model parameters, and customer acquisition and pricing data.[39]

The cases that have defined trade secret liability in this sector illustrate the particular vulnerability of enterprise software firms, where the entire commercial value of a product may rest upon proprietary code that a single engineer can copy to a personal device in a matter of seconds. In ***Appian Corp v. Pegasystems Inc*,** the Virginia jury's $2 billion verdict rested on findings that Pegasystems had engaged in a systematic campaign of corporate espionage by hiring a government contractor's employee who had legitimate access to Appian's platform to extract proprietary information about its architecture and functionality for use in product development.[40] In ***Computer Sciences Corp v. Tata Consultancy Services Ltd*,** a Texas federal jury awarded $210 million after finding that Tata's employees had wilfully and maliciously misappropriated source code and documentation for life insurance administration software.[41]

[39]WilmerHale, *2024 Trade Secret Update: A Look at Recent Trade Secret Developments and Trends* (19 July 2024) 2-3.
[40]Appian Corp v Pegasystems Inc (n 44); Kirkland and Ellis (n 43).
[41]Computer Sciences Corp v Tata Consultancy Services Ltd, No 3:15-CV-01187 (ND Tex), jury verdict November 2019.

The economic significance of technology sector trade secrets extends beyond the direct value of the stolen information to the structural incentives of the industry. A study by Ocean Tomo LLC estimated that intellectual property assets, including trade secrets, constitute more than 80 per cent of the market capitalisation of S&P 500 companies.[42] In the technology sector, where valuations are driven predominantly by intangible assets, the misappropriation of core proprietary information does not merely reduce a company's competitive position; it can fundamentally undermine the economic rationale for the enterprise itself. The legal framework must therefore price misappropriation at a level that reflects not only the direct revenue loss but the destruction of enterprise value that a successful misappropriation implies.

B. Pharmaceuticals and Life Sciences

The pharmaceutical and life sciences sector presents a distinctive trade secret landscape shaped by the extraordinary cost and duration of research and development cycles. United States biopharmaceutical companies collectively spend approximately $160 billion annually on R&D,[43] generating clinical trial data, manufacturing processes, formulation chemistry, and regulatory submissions that represent decades of scientific investment. Unlike the technology sector, where the competitive value of a trade secret may be exhausted relatively quickly by the pace of technological change, pharmaceutical trade secrets can retain their commercial significance for decades, because the manufacturing processes and formulation chemistry for complex biologics are inherently difficult to reverse-engineer.

The life sciences sector accounts for approximately 21 per cent of federal trade secret litigation,[44] with a disproportionate share of the most economically significant cases. In the life sciences sector, employee leaks are responsible for approximately 60 per cent of trade secret theft incidents, a figure consistent with the broader empirical pattern of insider dominance documented in the previous section.[45] The economic harm of pharmaceutical trade secret misappropriation is particularly severe because the stolen information typically represents an irreplaceable investment in scientific discovery. When a competitor obtains access to clinical trial data or manufacturing know-how through misappropriation, it eliminates years of R&D expenditure and regulatory compliance costs, which allows it to market competing products at prices that undercut the innovating firm's ability to recoup its investment.

---

[42]Ocean Tomo LLC, *Annual Study of Intangible Asset Market Value* (2015) 1; ScienceDirect, "Trade secrets and cyber security breaches" (2022) 8 Journal of Finance and Data Science 202, 203.
[43]US biopharmaceutical companies collectively spend approximately $160 billion annually on R&D: Frontiers in Bioengineering and Biotechnology (2019) citing Research America (2016).
[44] Stout, 2024 Trends in Trade Secret Litigation Report (Stout 2024) 14 <https://ts25.org/wp-content/uploads/2025/02/2024-stout-trends-in-trade-secrets-litigation-report-volume-3.pdf> accessed 7 May 2026.
[45]International Bar Association Health and Life Sciences Committee, "Trade secrets: a strategic element in the life sciences and biotechnology industries" (2024); Economist Intelligence Unit, "Open secrets? Guarding value in the intangible economy" (9 June 2021).

Two cases from 2023 and 2024 illustrate the sector's particular vulnerability. In ***Insulet Corp v. EOFlow Co Ltd,*** the Federal Circuit found that the district court had erred in granting a preliminary injunction that halted EOFlow's communications with Medtronic about a potential acquisition. The case arose from allegations that former Insulet employees who joined EOFlow had used knowledge of Insulet's OmniPod technology to accelerate EOFlow's competing product development.[46] The economic stakes were magnified by Medtronic's reported acquisition interest, underscoring how misappropriated pharmaceutical technology can distort the merger and acquisition market by inflating the apparent value of a potential target.

C. Manufacturing and Industrial

As at early 2026, the manufacturing and industrial sector accounts for approximately 26 percent of federal trade secret litigation,[47] with cases concentrated in advanced manufacturing processes, materials science, precision engineering, and supply chain management systems. The sector's trade secrets are characterised by their embeddedness in physical production processes, which makes them particularly difficult to protect because the information is necessarily shared with manufacturing personnel, equipment operators, and supply chain partners.

The Third Circuit's 2022 decision in ***PPG Industries v. Jiangsu Tie Mao Glass Co*** provides a paradigmatic illustration of manufacturing sector misappropriation. PPG had invested heavily in developing a proprietary plastic material for airplane windows, designated Opticor, with applications in the automotive and aerospace industries. Jiangsu Tie Mao Glass, a Chinese competitor, hired a former PPG employee who had worked on Opticor and used the misappropriated technical information to develop a competing product, shortcutting years of materials science research.[48] The case resulted in a Third Circuit ruling clarifying the application of the "saved cost" damages theory in trade secret cases, holding that avoided development costs are a permissible measure of the defendant's unjust gain.

The manufacturing sector is particularly exposed to state-sponsored misappropriation. The United States Trade Representative has consistently identified inadequate trade secret protection in China and other nations as a significant structural barrier for American manufacturers operating in those markets.[49] Manufacturing trade secrets relating to advanced materials, precision components, and process technology are priority targets for state-directed acquisition programs because they underpin both commercial competitiveness and defence industrial capacity. IP-intensive manufacturing industries collectively generate 41 per cent of the

---

[46] Insulet Corp v EOFlow Co Ltd, WilmerHale Trade Secret Update (n 49) 5-6; Federal Circuit panel comprising Judges Lourie, Prost and Stark.
[47] TFL, 'Trade Secret Litigation Activity is on the Rise' (The Fashion Law, 25 April 2020) <https://www.thefashionlaw.com/trade-secret-litigation-activity-is-on-the-rise/> accessed 20 April 2026.
[48] PPG Industries v Jiangsu Tie Mao Glass Co, 47 F 4th 156 (3d Cir 2022); WilmerHale (n 49) 4.
[49] USTR, *2023 Special 301 Report* (n 41) 12-13; USTR, *2025 Special 301 Report* 4-5.

United States GDP and directly employ 47.2 million workers,[50] meaning that the erosion of trade secret protection in this sector carries direct consequences for employment, export competitiveness, and national security.

D. Financial Services

The financial services sector presents a distinctive profile in which the primary trade secrets are not technical processes or formulations but rather proprietary financial models, trading algorithms, customer relationship data, and business intelligence. The sector's misappropriation cases frequently arise in the context of employee departures to competing institutions, where the information transferred consists of client lists, pricing matrices, and analytical methodologies that represent the core of the departing employee's commercial value to their new employer.

The 2023 collapse of Silicon Valley Bank generated a paradigmatic financial services trade secret case. Following First Citizens BancShares' acquisition of SVB's deposits and loans, 42 former SVB technology and life sciences bankers left First Citizens to join HSBC within weeks. First Citizens filed a $1 billion lawsuit alleging misappropriation of trade secrets, including customer relationship data, institutional knowledge, and proprietary business strategies developed during the bankers' tenure at SVB.[51] The case illustrates the particular difficulty of protecting trade secrets in the financial services sector, where the commercial value of proprietary information is inseparable from the expertise of the individuals who hold it, and where the law must navigate the boundary between employees' right to use their general skills and the firm's right to protect genuinely proprietary information about its clients and strategies.

Lex Machina's 2024 Trade Secret Litigation Report identified financial institutions and insurance companies as the most active plaintiffs in federal trade secret cases over the 2021 to 2023 period,[52] reflecting both the sector's heightened awareness of trade secret risk and its willingness to litigate aggressively to deter competitor poaching of both personnel and proprietary information. The sector's litigation activity also reflects the structural tension between the economic value of customer relationships, which the law recognises as protectable trade secrets in appropriate circumstances, and employees' legitimate interest in maintaining their professional networks and reputations in a career that depends upon personal relationships with clients.

[50]IP-intensive industries generate 41% of US GDP and employ 47.2 million workers directly: USTR (n 58); USPTO, *Intellectual Property and the US Economy* (2022).
[51]First Citizens BancShares v HSBC Holdings plc et al, No 3:23-cv-02836 (ND Cal), complaint filed June 2023.
[52]Lex Machina (n 23) 6-7; financial institutions and insurance companies cited as most active plaintiffs 2021-2023.

5. Direct Microeconomic Impacts on United States Firms

The economic analysis of trade secret misappropriation at the firm level requires disaggregating the aggregate estimates discussed in Sections II and IV into their constituent components: the direct financial losses that misappropriation imposes on the victim firm, the secondary costs that misappropriation generates independently of the direct revenue loss, and the structural distortions that misappropriation introduces into the firm's investment incentives and strategic behaviour. Each category of harm is economically distinct, operates across a different time horizon, and raises different questions about the adequacy of the legal remedies available to victimised firms under the Defend Trade Secrets Act and its state analogues.

A. Revenue Loss, Market Share Erosion, and Competitive Acceleration

The most immediate and direct microeconomic consequence of trade secret misappropriation is the loss of revenue that the stolen information would have generated had it remained exclusively under the victim's control. This loss operates through two distinct channels. First, the mis appropriator obtains a competitive advantage by eliminating the development costs it would otherwise have incurred to achieve the same technological or commercial position, allowing it to price its products more aggressively or to capture market share that would otherwise have flowed to the victim. Second, the victim's competitive position is directly undermined because the proprietary information that previously differentiated its products from those of competitors has been transferred to those competitors, accelerating the pace at which market contestability erodes the victim's pricing power.

Recent empirical evidence from a Harvard Working Paper by Kao and Tadepalli, compiling publicly disclosed espionage incidents from 1995 to 2024, provides the most rigorous quantitative evidence to date of these effects at the firm level. The study found that, in an event-study design, revenues at targeted firms declined by approximately 40 per cent within five years of a successful espionage incident, with effects persisting for up to a decade.[53] Equally significant, R&D expenditure at targeted firms declined by approximately 40 per cent over the same five-year period.[54] This dual compression of revenue and R&D investment represents a self-reinforcing cycle of competitive decline: the misappropriation erodes the victim's market position, which reduces its cash flows, which in turn constrains its capacity to invest in the next generation of proprietary technology that might restore its competitive standing.

---

[53]Andrew Kao and Karthik Tadepalli, "Economic Espionage and Innovation Restrictions" Harvard Working Paper (December 2025) 1, 3.
[54]ibid 3-4.

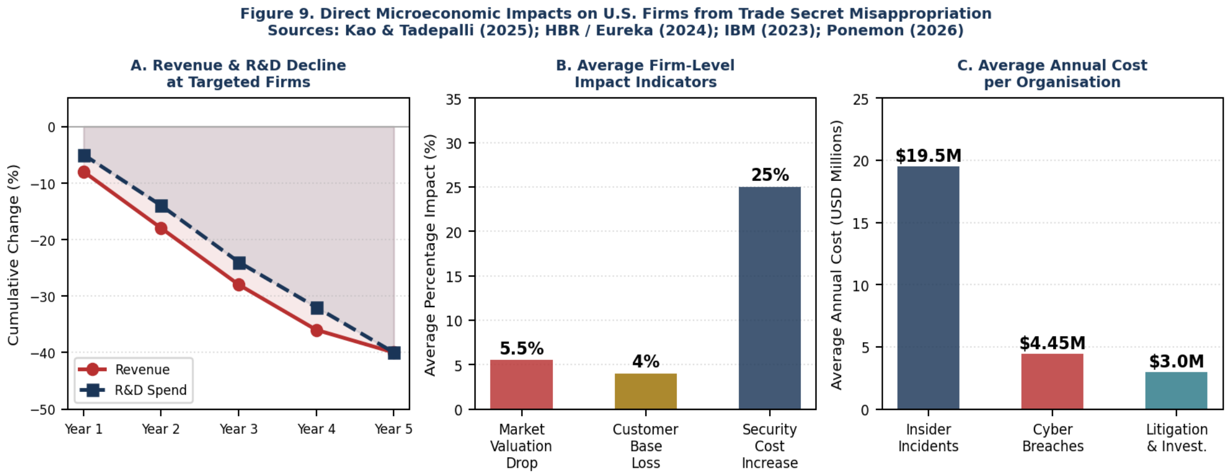


Figure 9. Direct Microeconomic Impacts on U.S. Firms from Trade Secret Misappropriation Sources: Kao & Tadepalli (2025); HBR / Eureka (2024); IBM (2023); Ponemon (2026)

The stock market provides an additional signal of the severity of these effects. A study referenced in the Harvard Business Review found that trade secret theft results in an average 5 to 7 per cent drop in market valuation for publicly traded companies as shareholders react to perceived competitive vulnerability and revised revenue expectations.[55] This valuation decline is particularly significant because it is forward-looking; it reflects not only the direct loss of current revenue but the market's assessment of the long-term impairment of the firm's competitive position. The loss of customer trust compounds the financial harm: research by the Ponemon Institute found that companies can lose up to 4 per cent of their customer base in the aftermath of an IP-related data breach.[56]

B. Reactive Security and Compliance Expenditure

A second category of direct microeconomic impact consists of the reactive expenditures that misappropriation forces upon victimized firms. These costs are distinct from the revenue losses described above because they represent real resource commitments by the firm that generate no productive output; they are pure deadweight losses from the firm's perspective, representing capital diverted from investment in productive activity to defensive security infrastructure.

Following the discovery of misappropriation, companies typically undertake substantial investments in cybersecurity infrastructure upgrades, forensic investigation costs, employee monitoring and audit systems, enhanced access controls, and legal counsel for both the investigation and any resulting litigation. Research suggests that companies experiencing trade secret theft increase their security expenditure by an average of

[55] Eureka Software, "The Economic Impact of Trade Secret Theft on Businesses" (14 November 2024), citing Harvard Business Review study.
[56] ibid; Ponemon (n 37) 4.

25 per cent in the year following discovery.[57] The Ponemon Institute's 2026 report found that the average annual cost of insider-related incidents, which encompass the full spectrum of detection, investigation, containment, and remediation activities, now stands at $19.5 million per organisation, representing a 123 per cent increase from $8.76 million in 2018.[58] When added to the average cost of a cyber breach at $4.45 million and baseline litigation costs of $3 million per case,[59] the aggregate security and compliance burden on firms actively managing trade secret risk is substantial, representing a structural tax on innovation-intensive activity that has no counterpart in industries where competitive advantage rests on publicly available information.

C. Investment Distortions and Chilling Effects on R&D

The most economically significant microeconomic impact of trade secret misappropriation operates not at the level of the firm that has already been victimised but at the level of the broader population of firms that rationally adjust their behaviour in anticipation of the risk of misappropriation. This chilling effect on R&D investment is the central concern of the economic paradox identified by Buccafusco, Masur, and Varadarajan in their 2025 analysis of the trade secrecy information paradox.[60] When firms cannot be confident that the legal framework will provide adequate compensation for the misappropriation of their R&D investment, they face a rational incentive to reduce that investment to the level that can be protected through secrecy alone, rather than the level that would maximise social welfare.

The Kao and Tadepalli study provides direct empirical evidence of this chilling effect. In addition to documenting the 40 per cent decline in R&D spending at targeted firms, the study examined whether firms restrict knowledge sharing in response to espionage, finding evidence that victimised firms adopt more secretive behaviours in their innovation processes, reducing both the quantity and the collaborative character of their research activity.[61] This finding is economically significant because it suggests that the harm of trade secret misappropriation extends beyond the direct value of the information stolen to the systemic reduction in the productive efficiency of the innovation process that results when firms respond to misappropriation risk by internalising information that would otherwise flow freely through the economy.

The legal framework responds to this chilling effect through the provision of exemplary damages for willful and malicious misappropriation under both the DTSA and most state analogues, which permit courts to award up to double the compensatory damages where the defendant's conduct is found to be intentional and

---

[57] Tangibly, 'The Financial Impact of Trade Secret Misappropriation' (Tangibly, 8 January 2026) https://www.tangibly.com/the-financial-impact-of-trade-secret-misappropriation/ accessed 20 April 2026.
[58] Ponemon Institute, 2026 Cost of Insider Risks Global Report (Ponemon Institute/DTEX 2026) https://ponemon.dtex.ai/ accessed 8 April 2026.
[59] Ibid
[60] Buccafusco, Masur and Varadarajan (n 16) 927-928.
[61] ibid 4-5.

egregious. The availability of exemplary damages is theoretically important because it is designed to price misappropriation above its expected return, thereby deterring rational actors who would otherwise treat the risk of detection-adjusted liability as an acceptable cost of competitive behaviour. However, the empirical evidence documented by Kao and Tadepalli suggests that the deterrent effect of the current damages regime remains incomplete, particularly in the context of state-sponsored misappropriation, where foreign state actors are effectively immune from the United States civil and criminal process.

D. Litigation Costs and the Economics of Enforcement

The direct economic costs of enforcing trade secret rights through litigation represent a fourth category of firm-level impact. As noted in Section III, trade secret litigation costs range from $50,000 at the preliminary injunction stage to $1-5 million at trial and $25 million or more in complex high-stakes cases.[62] These costs are borne not only by victimised firms but by alleged misappropriators, creating substantial bilateral deterrence from litigation that may explain the significant gap between the number of misappropriation incidents that Tim Londergan of Tangibly estimated at potentially 100 times the number of cases filed, and the approximately 1,200 to 1,400 cases actually filed in federal courts each year.[63]

6. Macroeconomic Consequences for the United States

The microeconomic harms documented in Section V start to add up into broader macroeconomic consequences that ripple across the United States economy's ability to innovate, stay internationally competitive, keep its employment base steady, and maintain long term productivity growth. But getting a clean read on these overall effects is, frankly, more difficult than measuring firm-level impacts, because they travel through multiple channels at the same time, rely on very tangled counterfactual thinking about what the economy would have produced if the misappropriation had not happened, and they run straight into the measurement problem flagged by the IP Commission. In many cases, companies do not even know their trade secrets have been taken, and the ones that do sometimes are also, reluctant to come forward and disclose the fact .[64] Nevertheless, the evidence assembled by the IP Commission, the United States Senate, the Office of the Director of National Intelligence, and recent academic research provides a coherent and mutually reinforcing picture of macroeconomic damage of significant scale.

[62] American Intellectual Property Law Association, *2025 Report of the Economic Survey* (AIPLA 2025) <https://www.aipla.org/home/news-publications/economic-survey/2025-report-of-the-economic-survey accessed 7 May 2026.>

[63] Londergan, Tangibly (n 47); Almeling (n 26) 291.

[64] IP Commission Report (n 18) 1-2.

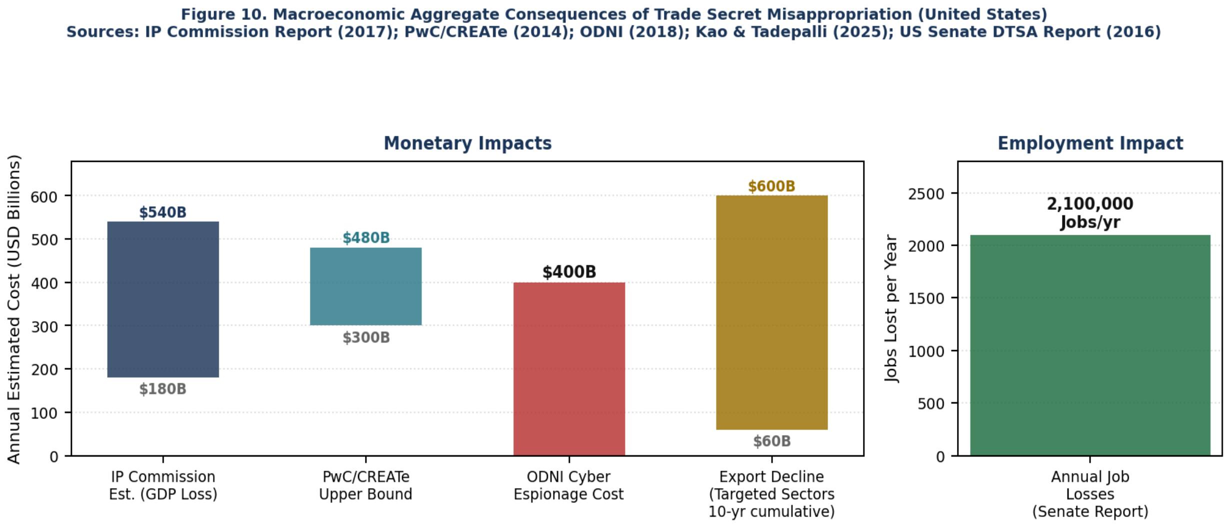


Figure 10. Macroeconomic Aggregate Consequences of Trade Secret Misappropriation (United States) Sources: IP Commission Report (2017); PwC/CREATe (2014); ODNI (2018); Kao & Tadepalli (2025); US Senate DTSA Report (2016)

A. GDP and Innovation Output

The most direct macroeconomic consequence of trade secret misappropriation is the reduction in aggregate innovation output that results from the chilling effects on R&D investment documented at the firm level. The IP Commission estimated that trade secret theft costs between one and three per cent of GDP annually, representing a range of $180 billion to $540 billion at the time of the report's 2017 update.[65] The PwC/CREATe study, cited in the United States Senate's report on the DTSA, placed the annual cost at up to $480 billion.[66] These estimates, while representing the most comprehensive attempts to quantify the aggregate harm, are acknowledged by their authors to be conservative because they do not fully capture the second-order effects of reduced R&D investment on the pace of technological progress.

The Kao and Tadepalli study provides the most methodologically rigorous recent estimate of the aggregate macroeconomic consequences. Their event-study analysis found that exports in sectors targeted by espionage declined by 60 per cent over a decade, reflecting the structural erosion of the United States' comparative advantage in the advanced technology industries that are the primary targets of state-sponsored misappropriation.[67] This export decline represents a direct and sustained loss of national income that operates through the balance of payments rather than through domestic consumption. It is not merely a redistribution of economic activity from one firm to another; it represents a genuine reduction in the global market share

[65]IP Commission Report (n 18) 2; PwC/CREATe (n 21) 6.
[66]PricewaterhouseCoopers LLP and Center for Responsible Enterprise and Trade, *Economic Impact of Trade Secret Theft* (2014) 6, cited in US Senate Report (n 19) 3.
[67]Kao and Tadepalli (n 63) 5.

of United States firms in sectors that have historically been the primary source of the country's trade surplus in high-technology goods and services.

B. Employment and Wage Effects

The United States Senate's report on the Defend Trade Secrets Act stated that trade secret theft has led to the loss of 2.1 million American jobs each year,[68] a figure that reflects both the direct employment consequences of misappropriation, as victimised firms lose revenue and reduce their workforces, and the indirect consequences through the suppression of the R&D investment that generates employment in innovation-intensive industries. IP-intensive industries collectively employ 47.2 million workers directly and generate employment for tens of millions more in supplier and service industries.[69] Workers in IP-intensive industries also enjoy pay that is, on average, 60 per cent higher than workers in other sectors,[70] meaning that the displacement of employment from IP-intensive to less IP-intensive sectors caused by trade secret misappropriation entails not only a reduction in the quantity of employment but a reduction in its quality, measured by wage level and associated benefits.

The employment consequences of trade secret misappropriation also operate through the channel of business exit. When a firm loses its primary trade secrets, particularly in the pharmaceutical or advanced manufacturing sectors where those secrets represent years of irreplaceable R&D investment, the economic viability of the firm may be fundamentally compromised. Business exit is not captured in standard estimates of misappropriation costs, but it represents a particularly severe form of economic harm because it eliminates not only current employment but the future innovation capacity that the exiting firm would have generated.

C. Innovation Ecosystem and Long-Run Productivity

The most economically significant but least quantifiable macroeconomic consequence of trade secret misappropriation, kind of works through its long run effects on how the United States innovation ecosystem is structured. As mentioned in Section II, the trade secret regime seems to contain this core economic paradox: it is set up to incentivise the production of socially valuable knowledge by letting firms capture private returns from their R&D, while misappropriation of that knowledge by rivals creates a social loss. And that happens because it discourages the very investment that generated it, in the first place.

When trade secret misappropriation is systematic rather than episodic, it distorts the allocation of R&D investment across the economy in two ways that are mutually reinforcing. First, as documented by Kao and Tadepalli, victimised firms reduce their R&D expenditure in response to misappropriation, contracting the

[68]US Senate Report (n 19) 2.
[69]USPTO, Intellectual Property and the U.S. Economy: Third Edition (USPTO 2022) 2 uspto.gov accessed 7 April 2026.
[70]USTR (n 58) 4-5; US Senate Report (n 19) 2-3.

supply of new proprietary technology.[71] Second, firms that have not yet been victimised but perceive an elevated risk of misappropriation rationally shift their investment portfolios toward less knowledge-intensive activities where their returns are less vulnerable to misappropriation, further reducing the aggregate supply of innovative activity.

D. The Underreporting Problem and True Scale of Economic Harm

Any assessment of the macroeconomic consequences of trade secret misappropriation must grapple seriously with the underreporting problem identified by the IP Commission and subsequent analysts. The Commission offered three explanations for why standard assessments systematically underestimate the scale of harm. First, many firms do not maintain adequate trade secret inventories and therefore do not know when their secrets have been stolen. Second, firms that do know are often reluctant to disclose the fact, both because disclosure itself may further erode the competitive value of the stolen information and because of the reputational consequences of admitting that security has been breached. Third, the civil and criminal enforcement process captures only a fraction of actual misappropriation incidents; the Tangibly analysis cited in Section III estimated that the true number of misappropriation incidents may be 100 times the number of cases filed.[72]

The legal-economic implication of underreporting is that the aggregate damages regime established by the DTSA significantly underprices misappropriation relative to its true social cost. When compensatory damages are calibrated to the losses and gains documented in the fraction of incidents that actually result in litigation, the expected liability facing a rational misappropriator is far below the expected value of the information obtained. This systematic underpricing of misappropriation is not merely a theoretical concern; it has structural consequences for the deterrence function of the legal framework, creating persistent incentives for misappropriation that the current enforcement system is structurally unable to eliminate.

The overall evidence points to a conclusion that is economically significant, and also legally important at the same time. Trade secret misappropriation puts costs onto the United States economy that are substantial in absolute terms, persistent in duration, and systemic in how they ripple across the innovation ecosystem that produces the country’s long-run comparative advantage. The legal framework set out by the DTSA along with its state analogues counts as a real upgrade compared to the balkanized common law regime that came before it, but there’s still a gap between what the framework can deter in practice, and the actual scale of misappropriation happening in the real world. That mismatch implies that more reform is needed. What those reforms are like, and which principles should guide their development, is what the next section is about.

---

[71]ibid 5-6.
[72] Tangibly (n70)

7. Policy Recommendations and Future Outlook

The foregoing analysis has established that trade secret misappropriation inflicts economic harm on the United States which is huge in absolute magnitude, lasting for a long time, and kind of systemic in how it affects the innovation ecosystem. The legal framework that came from the Economic Espionage Act of 1996 and the Defend Trade Secrets Act of 2016 is, in a sense a genuine and significant improvement over the fragmented common law regime that was there before, but the evidence reviewed across the preceding sections kind of discloses three structural deficiencies that the present framework has not resolved, or at least not fully.

First, the damages regime systematically underprices misappropriation relative to its true social cost, because the expected civil and criminal liability facing a rational misappropriator is calibrated to the fraction of incidents that result in detected and litigated cases rather than to the full population of incidents that actually occur.

Second, the enforcement architecture really ends up creating sharp access-to-justice inequalities , and it feels like smaller and medium-sized enterprises are left without real remedies, even though they carry the same misappropriation risk as big corporations. Third, the extraterritorial reach of the current framework is kind of inadequate, mainly because the most economically significant kind of misappropriation is state-sponsored economic espionage , and foreign state actors usually operate way beyond the effective reach of United States civil and criminal procedure. So, this section then pushes forward a group of policy recommendations meant to tackle each one of those structural gaps, and it also wraps up by looking at the emerging challenges that will shape trade secret law and day-to-day practice over the next decade.

A. Recalibrating the Damages Regime

The most important reform that Congress and the courts can realistically make is a recalibration of the damages setup, so it lines up with the real social cost of misappropriation not just the directly measurable harm that happens in the particular case that gets litigated. The existing framework, which allows compensatory damages to be calculated either by the victim's own actual loss, or by the misappropriator's unjust gain, and then adds exemplary damages that can reach as much as double the compensatory amount for wilful and malicious behavior, was meant to put harmed firms back on their feet and also to deter a rational wrongdoer. Still, the Tangibly analysis, along with the wider empirical work, suggests that the mix of severe underreporting, costly litigation and the built-in practical impossibility of finding many kinds of cyber enabled misappropriation means that the expected liability hanging over a misappropriator ends up being only a small slice of the expected value of the information that was obtained.

Congress ought to look at two complementary ways to close this gap, and really, it's sort of the same idea in a different dress. First, Congress could add a statutory minimum damages provision for trade secret misappropriation, sort of like the statutory damages setup you see in copyright law under 17 USC section 504. That framework would let courts award a minimum amount per misappropriated trade secret, without forcing the harmed party to prove the entire size of its actual loss. These minimum damages tool would be especially helpful for small and medium sized enterprises, because they often do not have the money or time to hire the expert economic testimony that's needed to pin down an exact damages number at trial, and then everyone just waits.

The second mechanism is a mandatory disgorgement remedy for willful misappropriation. This one will require the mis appropriator to disgorge each and every profit derived from the stolen information, even if those profits are more than the victim's provable loss. A disgorgement remedy, when treated as mandatory, would help fix the structural asymmetry that was identified in Kao and Tadepalli's study, where the mis appropriator captures substantially more value from the stolen information than the victim loses on direct revenue, because the mis appropriator dodges the development costs that the victim had and can price its products accordingly.

Strengthening Access to Justice for Small and Medium-Sized Enterprises

The second structural deficiency in the current framework is, the access-to-justice inequality that effectively denies SMEs viable enforcement remedies even when the merits of their trade secret claims are strong. The Tangibly analysis estimated that filing a federal trade secret case requires between $50,000 and $250,000 in upfront costs, and that it rises to $1 to 5 million at trial. For a small technology firm or pharmaceutical startup whose primary asset is a proprietary process or formulation, this cost structure means that the rational response to misappropriation is often forbearance rather than enforcement, especially when the defendant is a well-capitalized corporation that can outspend the plaintiff at every stage, of the litigation.

Two reforms should be considered. First, Congress should establish a federal trade secret small claims mechanism, modelled on the framework of the Copyright Claims Board created by the CASE Act of 2020,[73] that would allow SMEs to bring misappropriation claims in a streamlined administrative forum with capped filing fees, simplified discovery procedures, and damages capped at a level proportionate to the scale of the typical SME case. Such a mechanism would not replace the full federal court framework for large-scale misappropriation but would create a realistic enforcement pathway for the substantial number of cases that currently go unenforced due to the prohibitive economics of federal litigation.

Second, the DTSA[74] should be amended to require courts to award reasonable attorneys' fees to prevailing

[73] CASE Act of 2020, Pub L 116-260

[74] DTSA 18 USC s 1836(b)(3)(D) (current attorneys' fees provision, limited to bad-faith claims)

plaintiffs in cases involving wilful misappropriation so as to reverse the current default that each party bears its own legal costs. Fee-shifting in wilful misappropriation cases would substantially reduce the cost differential between large and small litigants and would deter the strategic use of superior litigation resources to exhaust smaller plaintiffs before trial.

Addressing State-Sponsored Misappropriation

The third and most challenging structural deficiency is the inadequacy of the existing framework to address state-sponsored economic espionage. As documented, the Office of the Director of National Intelligence estimated that economic espionage through cyber intrusion costs the United States $400 billion annually, a figure that dwarfs the aggregate value of all civil trade secret awards in the history of the DTSA. Yet the fraction of this harm that is redressed through either criminal prosecution under the Economic Espionage Act or civil litigation is vanishingly small, because foreign state actors are effectively immune from the United States judicial process, and the evidentiary requirements for establishing state-attribution in both criminal and civil proceedings are extremely demanding.

The most promising avenue for reform is the expansion and systematic use of executive branch tools that do not depend on judicial enforcement against foreign defendants. The Protecting American Intellectual Property Act of 2022 established a framework for mandatory sanctions against foreign individuals and entities identified as perpetrators of significant trade secret theft from United States firms, and represents a meaningful complement to the criminal enforcement framework of the EEA. Congress should strengthen this framework by establishing an automatic sanction mechanism triggered by indictment under section 1831 of the EEA, eliminating the current requirement for a separate executive determination, and extending the sanctions reach to the state-owned enterprises and financial institutions that benefit from state-sponsored misappropriation, even where the state actors themselves cannot be reached. At the international level, the United States should pursue bilateral and multilateral trade agreements that establish enforceable minimum standards for trade secret protection and require trading partners to establish criminal penalties that are calibrated to deter state-directed misappropriation rather than merely retail IP theft.

Future Outlook: Artificial Intelligence, Algorithmic Trade Secrets, and Emerging Challenges

The legal and economic landscape of trade secret protection is being reshaped by the rapid development of artificial intelligence and machine learning technologies. These developments create both new categories of protectable trade secrets and new mechanisms of misappropriation that existing legal frameworks were not designed to address. Training data, model weights, fine tuning methodologies, and inference architecture are all potentially protectable trade secrets under the broad definition of protected information in the Defend Trade Secrets Act . The commercial value of these assets in the most advanced artificial intelligence systems substantially exceeds that of conventional software source code. The misappropriation of algorithmic trade secrets therefore represents a category of harm that, if unaddressed, could transfer the primary economic benefits of United States leadership in artificial intelligence to foreign competitors that acquire proprietary model assets through espionage rather than investment.[75]

The distinctive challenge that artificial intelligence trade secrets present for the legal framework is the difficulty of identifying the boundaries of the protected information with sufficient precision. This precision is necessary to satisfy the specificity requirements that courts have consistently enforced since the enactment of the Defend Trade Secrets Act. A training dataset consisting of hundreds of billions of tokens or a neural network with hundreds of billions of parameters does not map cleanly onto the conception of a bounded and identifiable trade secret that the uniform and federal statutes were designed to protect. There is an urgent need for courts to craft new models of analysis to resolve disputes involving the use of algorithms. The models should be able to single out the particular elements of a model or database that gain separate economic value through secrecy without granting immunity to misappropriation or making the protection too broad and inclusive of public information used in a training database.

The growing intersection of trade secret law and employment law presents a further emerging challenge. The Federal Trade Commission proposed rule banning non compete agreements reflects a broader policy trajectory toward enhanced employee mobility, even though it was subsequently challenged in federal courts.[76] This trajectory will likely increase the rate of insider misappropriation because it eliminates the principal contractual mechanism through which firms currently deter departing employees from commercialising proprietary information at competing enterprises.

As jurisdictions progressively restrict non-compete enforcement, the duty of protection will slide more and more onto trade secret law itself. In practice this shift will force courts to define where protectable trade secrets end and where the general skills and know how that employees are allowed to take with them from employer to employer begin. That definitional puzzle will probably be hardest in technology and pharmaceutical sectors. There the line between an employee’s general expertise and a firm’s specific proprietary methodology gets blurred almost by default, because the work is knowledge intensive in nature.

Taken together, these developing changes raise both the economic risks tied to trade secret protection and the overall legal complexity of trying to secure it. Since the Defend Trade Secrets Act was enacted in 2016, the path of the law has been broadly positive. Litigation volume has climbed, damages awards have gotten bigger, and federal courts have built up a pretty substantial body of doctrine around the major parts of the

[75] Wilmer Hale, 2024 Trade Secret Update (2024) 1
[76] Non-Compete Clause Rulemaking 89 Fed Reg 38342 (May 2024); Ryan LLC v FTC 2024 WL 3879954 (ND Tex 2024

statute. Still, the speed at which the law is developing seems to trail behind the speed of technological change. The structural gaps highlighted in this analysis indicate that unless Congress, the courts, and the executive branch coordinate their efforts to recalibrate the framework, the distance between what the law hopes to do and what it actually achieves will keep widening into the coming decade.

Reference

Table of Cases

Appian Corp v Pegasystems Inc, Case No 1399-22-4 (Court of Appeals of Virginia, argued November 2023)

Computer Sciences Corp v Tata Consultancy Services Ltd, No 3:15-CV-01187 (ND Tex), jury verdict November 2019

First Citizens BancShares v HSBC Holdings plc et al, No 3:23-cv-02836 (ND Cal), complaint filed June 2023

Insulet Corp v EOFlow Co Ltd, Federal Circuit panel comprising Judges Lourie, Prost and Stark

Motorola Solutions Inc v Hytera Communications Corp, No 1:17-cv-01973 (ND Ill), jury verdict February 2020, reduced to $544 million on appeal

Peabody v Norfolk 98 Mass 452 (1868)

PPG Industries v Jiangsu Tie Mao Glass Co, 47 F 4th 156 (3d Cir 2022)

Ryan LLC v FTC 2024 WL 3879954 (ND Tex 2024)

Syntel Sterling Best Shores Mauritius Ltd v The TriZetto Group Inc, verdict October 2020 (SDNY)

TF Global Markets Ltd v Sorenson, 2023 US Dist Lexis 27983 (ND Ill, 17 February 2023)

Versata Software, Inc v Ford Motor Company (2023)

Table of Legislation

CASE Act of 2020, Pub L 116-260

Defend Trade Secrets Act of 2016, 18 USC § 1836

Economic Espionage Act of 1996, 18 USC §§ 1831-1839

Non-Compete Clause Rulemaking 89 Fed Reg 38342 (May 2024)

Protecting American Intellectual Property Act of 2022

Uniform Trade Secrets Act 1979

Secondary Sources

Books and Reports

American Intellectual Property Law Association, *2025 Report of the Economic Survey* (AIPLA 2025)

Commission on the Theft of American Intellectual Property, *IP Commission Report: The Theft of American Intellectual Property* (National Bureau of Asian Research, Update 2017)

Congressional Research Service, *Stealing Trade Secrets and Economic Espionage: An Overview of the Economic Espionage Act*, R42681 (29 October 2024)

Doyle C, *Stealing Trade Secrets and Economic Espionage: An Abridged Overview of the Economic Espionage Act* (Congressional Research Service Report R42682 2024)

Goudkamp J and Nolan D, *OSCOLA: The Oxford University Standard for Citation of Legal Authorities* (5th edn, Hart Publishing 2026)

IBM Security, *Cost of a Data Breach Report 2023* (IBM 2023)

Lex Machina, *2024 Trade Secret Litigation Report* (LexisNexis 2024)

National Counterintelligence and Security Center, *Foreign Economic Espionage in Cyberspace* (ODNI 2018)

Ocean Tomo LLC, *Annual Study of Intangible Asset Market Value* (2015)

Office of the Director of National Intelligence, *Foreign Economic Espionage in Cyberspace* (2018)

Ponemon Institute, *2026 Cost of Insider Threats: Global Report* (Proofpoint 2026)

PricewaterhouseCoopers LLP and Center for Responsible Enterprise and Trade, *Economic Impact of Trade Secret Theft* (2014)

Stout, *2024 Trends in Trade Secret Litigation Report* (Stout 2024)

US Senate, *Report on the Defend Trade Secrets Act of 2016*, S Rep No 114-220, 114th Cong, 2nd Sess (2016)

USPTO, *Intellectual Property and the US Economy: Third Edition* (USPTO 2022)

USTR, *2023 Special 301 Report* (2023)

USTR, *2025 Special 301 Report* (2025)

WilmerHale, *2024 Trade Secret Update: A Look at Recent Trade Secret Developments and Trends* (19 July 2024)

WIPO, *Guide to Trade Secrets and Innovation, Part V* (2024)

Journal Articles

Almeling DS and others, 'A Statistical Analysis of Trade Secret Litigation in Federal Courts' (2010) 45 Gonzaga L Rev 291

Buccafusco C, Masur JS and Varadarajan D, 'Trade Secrecy Information Paradox' (2025) 100 Notre Dame L Rev 925

Dhanol J and Kashyap PK, 'A Comparative Analysis of Trade Secret Protection in the USA, UK, Australia, and India' (2024) 30 Educational Administration: Theory and Practice 6654

Nashkova S, 'Defining Trade Secrets in the United States Past and Present Challenges A Way Forward' (2023) 54 IIC 634

ScienceDirect, 'Trade secrets and cyber security breaches' (2022) 8 Journal of Finance and Data Science 202

Working Papers

Kao A and Tadepalli K, 'Economic Espionage and Innovation Restrictions' Harvard Working Paper (December 2025)

Blog Posts and Online Articles

Economist Intelligence Unit, 'Open secrets? Guarding value in the intangible economy' (9 June 2021)

Eureka Software, 'The Economic Impact of Trade Secret Theft on Businesses' (14 November 2024)

Londergan T, 'The Invisible Epidemic: Unprosecuted Trade Secret Theft' *Tangibly* (19 November 2025)

Morningstar S, 'Trade Secret Theft Trends: A Closer Look at the Perpetrators' *The Cipher Brief* (5 June 2024)

Pfeffer W and Deol H, 'How to Protect Precious IP from Layoff-Related Insider Theft' *Corporate Compliance Insights* (7 June 2023)

Pooley J, 'The US Defend Trade Secrets Act Eight Years On' *IAM Trade Secrets Blog* (14 May 2024)

Tangibly, 'The Financial Impact of Trade Secret Misappropriation' (8 January 2026)

Industry and Committee Reports

Carrier Management, 'Report: Bump in Federal Trade Secret Litigation Seen in 2023' (17 September 2024)

International Bar Association Health and Life Sciences Committee, 'Trade secrets: a strategic element in the life sciences and biotechnology industries' (2024)

Kirkland and Ellis, Trade Secret Litigation Report (2024)

Frontiers in Bioengineering and Biotechnology (2019), citing Research America (2016)

https://jlpj.bshrls.org
Vol. 1, No. 1, pp. 104-129, 2026

JOURNAL OF LAW, POLICY AND JUSTICE

RESEARCH ARTICLE

OPEN ACCESS

Mandate Migration of UNSC? Middle-Power Brokerage and the Redistribution of Authority in International Law

Abdul Awal

Faculty (Contractual), Green University of Bangladesh

***Corresponding:** *abdulawalelamdi@gmail.com*

Received: 27.06.2026 Accepted: 20.08.2026 Publication date: 31.08.2026

ABSTRACT

The transition toward a multipolar order has intensified rivalry among the permanent members of the United Nations Security Council (UNSC). US-China competition is central, but Russia-West confrontation and US support for Israel also explain why the Council becomes paralysed in politically salient conflicts. This paper examines the resulting shift from UN-centred collective security to middle-power brokerage. It compares UNSC practice concerning Syria, Ukraine and Palestine/Israel with mediation by Qatar, Turkiye, Saudi Arabia and Pakistan in Gaza, the Russia-Ukraine war and the 2026 US-Iran war. Through process tracing, structured comparison and doctrinal legal analysis, the paper distinguishes diplomatic effectiveness from legal authority. It argues that middle-powers increasingly exercise "process authority": they convene adversaries, frame bargains and support implementation when the Council is blocked. They do not, however, inherit the Council's Charter authority. The emerging order is one of brokered legal pluralism - more responsive and sometimes life-saving, but also more opaque, selective and dependent on state leverage. The analysis shows that middle-power diplomacy strengthens international law when it operationalizes existing obligations and remains institutionally embedded; it weakens law when political compromise obscures legal asymmetry, substitutes soft commitments for binding rules, or enables forum shopping.

Keywords: *multipolar, middle-powers, UN Security Council, mediation, international law, legal pluralism.*

Vol. 1, No. 1, pp. 104-129, 2026

Chapter 1. Introduction, Literature Review and Methodology

1.1 Introduction and research problem

Post-WWII international security order couldn't be established without the creation of the UNSC.[1] The UN Charter empowered the Council to adopt binding resolutions and sanctions, authorize the use of force, and launch peace-keeping missions. Reflecting its post-WWII legacy, the five Allied states occupied permanent membership and veto power. The understanding was that collective security would function only if the strongest states remained inside it.[2] But this compromised composition also meant that the Council's functionality depends on agreement among actors that are also ideological-strategic competitors.

With the Sino-US rivalry intensifying, that compromise is under renewed strain. China has accumulated economic and military influence; Russia has forcibly contested the post-Cold War security settlement. Against this backdrop, the US, the pioneer of globalization and free-market economy, is backsliding from its own ideals and asserting protectionism.[3] Whereas Cold War 1.0 revolved around ideological spectrum, "Cold War 2.0" will play out around strategic and economic interests. So far, an all-out Sino-US rivalry and total collapse of the post-WWII global order has been averted. However, the increasing Sino-US confrontation will cause gradual erosion of the existing global institutional framework, a prime example being the UNSC's failure to uphold its basic mandate for international security. The UNSC suffers from a growing competitive multipolarity inside an institution built on great-power privilege.[4]

Practically, the consequence is issue-specific paralysis at the UNSC. The Council continues to adopt many resolutions, renew missions, and administer sanctions. Yet vetoing, narrow texts, and delayed action characterize UNSC decisions in conflicts that involve a permanent member, either directly or indirectly. So, any annual count of the Council's performance can therefore conceal the distributive problem. The Council may remain productive on lower-conflict files while failing precisely where collective authority is most needed. This gap between general activity and selective incapacity generates a trust deficit among states and affected communities.

[1] UN Charter, art 24(1): 'In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security.'
[2] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI ('UN Charter') arts 24(1), 25, 27(3), 39-42.
[3] Protectionism has been asserted in two fronts: internal and external. Internally, the MAGA movement and externally, for example, the US trade war with China.
[4] Christian Marxsen, 'Introduction: The UN Security Council's Four Defining Fields of Tension' in Congyan Cai, Larissa van den Herik and Tiyanjana Maluwa, *The UN Security Council and the Maintenance of Peace in a Changing World* (CUP 2024) 1, 3-7; Jessica Chen Weiss and Jeremy L Wallace, 'Domestic Politics, China's Rise, and the Future of the Liberal International Order' (2021) 75 International Organization 635, 635-60.

The Council’s selective incapacity has ushered in middle-power brokerage that can operationalize its duties more effectively. But such brokerage can also make legality dependent on political access and leverage. The paper therefore rejects both celebratory and declinist accounts of middle-power brokerage; middle-powers redistribute practical authority and may effectively resolve conflicts. However, the effects of brokerage, as discussed in Chapter 4, from the international law standpoint are yet to be conclusively determined.

The Council’s selective inaction does not eliminate demand for diplomacy. It simply redirects it. Such redirection is captured by states such as Qatar, Turkiye, Saudi Arabia and Pakistan. They provide venues, communication channels, logistical resources and political guarantees. Some initiatives complement the UN, as Turkiye did with the UN-supported Black Sea Grain Initiative.[5] Others bypass the Council while using UN norms.[6] So, the central question is not whether middle-powers can mediate. It is what happens to international law when crisis management migrates from a universal institution, i.e., the UNSC, to ad hoc brokers. This paper argues that middle-powers are acquiring **process authority**, not formal supremacy over international law.

Process authority is the practical capacity to decide who enters negotiations, what issues are placed on the agenda, which legal descriptions appear in a text, and how compliance is monitored. Process authority affects the lived meaning of international law even when they do not change the formal catalogue of legal sources. The paper concludes that process authority has contributed to the development of **brokered-legal pluralism** in the face of the Council’s failures.

1.2 Literature review

The first body of literature concerns the Security Council's design and effectiveness. Council members' unity can produce decisive action; its collapse can generate deadlock. Oudenaren identifies the danger of disintegrated allied unity and excluded states or coalitions’ contestations of the legitimacy of the UNSC composition.[7] The post-Cold War period enabled greater P5 cooperation in peace operations and sanctions. That cooperative phase was always selective, however, and the wars in Kosovo, Iraq and Libya left competing lessons about authorization, mandate interpretation and intervention. Von Einsiedel, Malone and Stagno Ugarte locate renewed difficulty in the erosion of great-power relations over Libya, Syria and Ukraine. They

[5] ‘Russia and Ukraine near to grain deal as heavy shelling continues’ (Al Jazeera, 13 July 2022) <https://www.aljazeera.com/news/2022/7/13/russia-and-ukraine-near-to-grain-export-agreement-un-turkey> accessed 10 August 2026.
[6] Ministry of Foreign Affairs, Pakistan, ‘Transcript of the Press Briefing by the Spokesperson on Thursday 02nd April 2026’ (2 April 2026) <Ministry of Foreign Affairs, Pakistan> accessed 13 August 2026.
[7] John Van Oudenaren, 'Effectiveness and Ineffectiveness of the UN Security Council in the Last Twenty Years: A US Perspective' (Documenti IAI 09|30, Istituto Affari Internazionali 2009) 3-6; Ian Hurd, *After Anarchy: Legitimacy and Power in the United Nations Security Council* (Princeton University Press 2007) 83-110.

also warn against equating dramatic vetoes with total institutional collapse. Even during periods of acute dispute, the Council adopts resolutions by consensus where interests overlap.[8] This insight is essential. Effectiveness must be disaggregated into at least three dimensions: **output effectiveness**, meaning the Council's ability to adopt and administer decisions; **outcome effectiveness**, meaning whether it prevents, limits or resolves violence; and **legitimacy effectiveness**, meaning whether decisions are perceived as principled, representative and consistently applied. The Council can perform well on output while failing on outcomes and legitimacy.

The second literature examines middle-powers. The definition and concept of middle-power is contested. Efstathopoulos reconstructs the behavioural model around internationalism, coalition-building, and niche diplomacy. A state should not qualify merely because leaders claim middle-power status; it must demonstrate the capacity to secure preferred international outcomes.[9] Laatikainen's account of diplomacy at the UN reinforces this performance criterion: the classic middle-power role is not simply a position in the distribution of capabilities but a practice of bridge-building and consensus-seeking that can generate influence and legitimacy beyond material size.[10] This approach avoids treating every medium-sized state as a mediator and directs attention to performance.

Aydin similarly combines position and performance. Middle-powers favour institutions because rules can constrain stronger states, and they can mediate because they are often considered less threatening. Yet Aydin also shows that middle-powers are not inherently liberal or trustworthy.[11] Byrne adds a reputational dimension. For middle-powers, image and public diplomacy can convert limited material capabilities into diplomatic credibility; the same assets can support a mediation, but they also make status competition part of brokerage.[12] Middle-powers' access to antagonistic parties may derive from strategic ambiguity rather than normative consistency.

Behringer's study of human-security initiatives provides a further corrective to great-power-centric analysis. Middle-powers helped produce the Ottawa landmines regime, the International Criminal Court and rapid-

[8] Sebastian von Einsiedel, David M Malone and Bruno Stagno Ugarte, 'The UN Security Council in an Age of Great Power Rivalry' (United Nations University Working Paper 04/2015) 1-4, 10-13.
[9] Charalampos Efstathopoulos, 'Middle-powers and the Behavioural Model' (2018) 32 Global Society 47, 47-52; Eduard Jordaan, 'The Concept of a Middle-power in International Relations: Distinguishing between Emerging and Traditional Middle-powers' (2003) 30 Politikon 165, 165-81; Andrew F Cooper (ed), *Niche Diplomacy: Middle-powers after the Cold War* (Macmillan 1997) 1-24.
[10] Katie Verlin Laatikainen, 'Pushing Soft Power: Middle-power Diplomacy at the UN' in Katie Verlin Laatikainen and Karen E Smith (eds), *The European Union at the United Nations: Intersecting Multilateralisms* (Palgrave Macmillan 2006) 70-91.
[11] Umut Aydin, 'Emerging Middle-powers and the Liberal International Order' (2021) 97 International Affairs 1377, 1377-94; Weiss and Wallace (n 5) 635-64.
[12] Caitlin Byrne, *Campaigning for a Seat on the United Nations Security Council: A Middle-power Reflection on the Role of Public Diplomacy* (CPD Perspectives on Public Diplomacy Paper 10, Figueroa Press 2011) 8-23.

deployment arrangements. Their success depended on coalitions, civil society participation, entrepreneurial leadership and a negotiating design. It nevertheless remained constrained by the core interests of the superpowers.[13] The lesson travels to contemporary mediation: brokerage can overcome some great-power opposition, but it rarely survives direct and sustained opposition by all actors possessing decisive coercive leverage.

A third literature studies institutional substitution. Atoyan and Petrosyan argue that multipolar rivalry and veto politics are shifting crisis management toward regional and ad hoc arrangements while the UN remains indispensable as a forum and normative reference point.[14] Jerliu's reform analysis sharpens the institutional implication: repeated crisis failure and the growth of alternatives may create pressure for Security Council reform when alternative venues begin to threaten the Council's centrality.[15] Murithi makes a stronger claim regarding Ukraine: a dysfunctional Council failed to mediate because a P5 member was a belligerent, leaving an institutional gap that alternative mediators attempted to fill.[16] Work on Palestine and the wider Middle East likewise connects selective enforcement and P5 protection to declining confidence in international legal mechanisms.[17]

Legal scholarship supplies a fourth lens. Work on pluralist theory explains authority distributed among overlapping sites, and the ILC's fragmentation study entertains rules for preserving coherence among specialized regimes. Peters' analysis of the Ukraine war adds an important qualification: the rise of peripheral forums does not displace the Council, because legal authority and institutional legitimacy continue to structure how decentralized responses are judged.[18] This scholarship illuminates diplomatic migration but does not specifically theorize middle-power crisis brokerage.

---

[13] Ronald M Behringer, 'Middle-power Leadership on Human Security' (paper presented at the annual meeting of the Canadian Political Science Association, Halifax, 30 May-1 June 2003) 4-21; Kyle Beardsley, *The Mediation Dilemma* (Cornell University Press 2011) 1-18, 167-81.

[14] Vardan Atoyan and Nushik Petrosyan, 'The United Nations in Multipolar Security Governance: Veto Politics, Norm Contestation, and Regional Substitution' (2026) 4 National Security: A Journal of the National Defence University-Kenya 161, 161-80.

[15] Lirian Jerliu, *Veto Powers' Resistance: United Nations Security Council Reform Proposals and Global Governance Shifts* (Master's thesis, CIFE European Institute and LUISS School of Government 2025) 10-12, 52-58; Phillip Y Lipscy, *Renegotiating the World Order: Institutional Change in International Relations* (CUP 2017) 200-45.

[16] Tim Murithi, 'The Failure of the United Nations Security Council in Creating the Framework Conditions for Mediation in the Russia-Ukraine Crisis' (2022) 44 Strategic Review for Southern Africa 65, 65-78.

[17] Jibrin Ubale Yahaya, 'Israel's Non-Compliance with UNSC Resolutions: Implications for Middle East Stability' (2024-25) 1 Middle East & North Africa Journal on Violence and Extremism 161, 161-85; Anwar Ghais, 'Multilateral Diplomacy and Human Rights in the Middle East' (2026) 1 International Journal of Politics and International Relations 84, 84-94.

[18] Joost Pauwelyn, Ramses A Wessel and Jan Wouters (eds), *Informal International Lawmaking* (OUP 2012) 1-34; Nico Krisch, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (OUP 2010) 69-103; International Law Commission, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law' (13 April 2006) UN Doc A/CN.4/L.682, paras 5-17, 410-80; Anne Peters, 'Power, Procedures, and Periphery: The UN Security Council in the Ukraine War' in Cai, van den Herik and Maluwa (n 5) 279-96.

These literatures establish the paper's first two propositions: great-power rivalry can paralyze salient Council files, and middle-powers can fill parts of the diplomatic space. The unresolved issue is the third proposition. Existing work usually evaluates alternative diplomacy by whether talks occur, an agreement is signed, or violence temporarily falls. It pays less attention to the legal form of the resulting instruments, the authority by which they are interpreted, the standards used to assess compliance, or the consequences for general and equal application of international law. This paper addresses that gap.

1.3 Methodology, scope and limitations

The research uses a structured, focused comparison covering 2014 to July 2026. This period begins with the Russian annexation of Crimea and encompasses the sharpening of US-China competition, the later full-scale invasion of Ukraine, repeated deadlock on Gaza and the 2026 US-Iran war. The analysis combines three methods.

First, **process tracing** examines the sequence from P5 disagreement to Council blockage, diplomatic migration and middle-power initiative. An alternative mediation is not automatically caused by a veto; conflict parties often prefer private talks for independent reasons. Cases where the Council failed to deliver, protagonists accepted an alternative forum, and the broker performed functions the UN had been unable to perform.

Second, a **structured case comparison** examines Qatar's Gaza co-mediation, the Turkiye-UN Black Sea Grain Initiative, Saudi-hosted Ukraine talks, and Pakistan's US-Iran mediation. These cases vary in institutional embedding, from a UN-linked mechanism to autonomous interstate bargaining. Each is assessed through the same questions: Why was the mediator acceptable? What instrument resulted? Which legal rules framed it?

Third, **doctrinal legal analysis** classifies the instruments and practices against the UN Charter, the Vienna Convention on the Law of Treaties (VCLT), international humanitarian law and the recognised sources of international law. It separates legal validity from political influence. An arrangement may have substantial behavioural effects without being a treaty. Conversely, a legally binding obligation may remain ineffective without enforcement.

Sources extend beyond the supplied papers to UN datasets and records, treaties, ICJ and ILC materials, books, peer-reviewed journals, official statements and credible contemporaneous reporting. Oxfam's review of 23 protracted crises provides a reproducible conflict-specific denominator.[19] Official claims are not treated as neutral proof of success. The 2026 US-Iran case remains provisional, and confidential drafting limits causal certainty.

1.4 Research questions and propositions

RQ1: To what extent, and through which veto patterns, has intensifying great-power rivalry reduced the conflict-response effectiveness of the UNSC since 2014?

Proposition 1: Rivalry produces concentrated rather than comprehensive paralysis. The Council remains active where P5 interests overlap, but outcome and legitimacy failures accumulate in conflicts involving a permanent member or protected ally.

RQ2: Under what conditions, and through which diplomatic instruments, have middle-powers complemented, bypassed or temporarily substituted for UN diplomacy?

Proposition 2: Brokerage is most effective when a middle-power combines access to antagonists, a valued diplomatic or logistical resource, coalition support and a narrow problem capable of verification. It is least durable when it collides with a protagonist's core security objective.

RQ3: How does the movement from UN-centred collective security toward middle-power brokerage affect international law's sources, interpretation, legitimacy and enforcement?

Proposition 3: The formal sources of law remain intact, but practical authority becomes decentralised. Brokerage reinforces the law by translating established duties into verifiable arrangements. It fragments law when private bargains redefine legal baselines, exclude affected groups or rely on guarantor leverage.

---

[19] Oxfam International, *Vetoing Humanity: How a Few Powerful Nations Hijacked Global Peace and Why Reform Is Needed at the UN Security Council* (Oxfam 2024) 10-17; Oxfam International, 'UN Security Council Casts Nearly All Vetoes Last Decade on Syria, Palestine and Ukraine' (19 September 2024) <https://www.oxfam.org/en/press-releases/un-security-council-casts-nearly-all-vetoes-last-decade-syria-palestine-and-ukraine> accessed 23 July 2026.

Chapter 2. Great-Power Rivalry and UNSC Paralysis

2.1 The veto bargain and the meaning of effectiveness

Article 24 of the Charter confers responsibility for peace and security on the Council.[20] Article 27 makes substantive decisions dependent on the concurring votes of the permanent members.[21] The veto is therefore both a source of authority and a source of failure. It reassures great powers that collective security will not be turned against their vital interests and prevents the Council from responding to their own conduct or that of allies.

The existence of veto is not paralysis. Because adoption of Draft resolutions does not prove effectiveness: a diluted resolution may pass, but little may change. Four indicators are more useful. The first is the number and distribution of vetoed drafts. The second is anticipatory restraint, and drafts are never tabled because a veto is expected. The third is institutional displacement, visible when negotiations migrate to regional organizations, ad hoc groups, or individual middle-powers. The fourth is the gap between legal condemnation and enforcement.

2.2 An analysis of UNSC-Veto ratio[22]

Conflict	Vetoed drafts	Total drafts in sample	Veto rate
Palestine/Israel	8	12	67%
Syria	17	56	30%
Ukraine	4	6	67%
Three-conflict total	**29**	**74**	**39%**

[20] UN Charter arts 24. The responsibility is primary, not exclusive.
[21] UN Charter arts 27(3).
[22] Author's compilation and calculations based on United Nations Security Council, 'Voting Records since 1992' https://main.un.org/securitycouncil/en/content/voting-records-1992 accessed 17 August 2026; United Nations Security Council, 'Vetoes since 1946' https://main.un.org/securitycouncil/en/content/vetoes-since-1946 accessed 17 August 2026.

2.3 Syria: joint resistance and mandate distrust

Syria illustrates mandate distrust aptly. Russia insisted on Syria's sovereignty and consent, with China joining. But the West emphasized civilian protection, accountability, and political transition. As of January 2023, Russia had vetoed 17 drafts while permitting 29 resolutions to pass.[23] So, there was no total deadlock but Russia backed 'tolerable measures'[24] and contested coercive or accountability measures.

Russia and China concluded that the 2011 Libyan intervention by NATO had stretched Resolution 1973 beyond civilian protection toward regime change. Western members disputed that reading. In later Syria negotiations, the argument over the content of one mandate became an argument over institutional trust. The case therefore shows that rivalry paralyses not only votes but interpretation. If permanent members do not trust one another, resolution and agreement on legal language lose value.

2.4 Ukraine: a belligerent inside the enforcement organ

Ukraine presents the clearest conflict of institutional role. Russia is simultaneously a belligerent, a permanent member and a veto-holder. In February 2022, Russia vetoed a draft deploring the invasion and in September it vetoed a draft condemning annexation.[25] The Council could address collateral issues, but failed to impose collective consequences on Russia.

The UNGA responded by condemning the aggression and later addressing humanitarian aid and reparations. Those resolutions carry major political weight but do not substitute for Article 25 authority. The Assembly could articulate the legal baseline, coalitions of states supplied sanctions, and mediators addressed food exports and possible negotiations. UN had no institutional or practical leverage against Russia.

2.5 Palestine/Israel: allied protection and unequal enforcement

The Palestine/Israel file displays a different veto structure. The US has acted alone to block drafts it considered prejudicial to Israel, premature for hostage negotiations, or insufficiently condemnatory of Hamas. During the genocidal war in Gaza, drafts seeking humanitarian pauses and ceasefires vetoed despite broad Council support.[26]

---

[23] Marxsen (n 5) 6.
[24] Technical and humanitarian measures were considered tolerable.
[25] Draft SC Res S/2022/155 (25 February 2022), vetoed at UN Doc S/PV.8979, 6; Draft SC Res S/2022/720 (30 September 2022), vetoed at UN Doc S/PV.9143, 4; UNGA Res ES-11/1 (2 March 2022) UN Doc A/RES/ES-11/1; UNGA Res ES-11/4 (12 October 2022) UN Doc A/RES/ES-11/4.
26 Draft SC Res S/2023/772 (18 October 2023); Draft SC Res S/2023/970 (8 December 2023); Draft SC Res S/2024/173 (20 February 2024); Draft SC Res S/2024/312 (18 April 2024). Each draft failed because of a United States veto.

The point is not that vetoed drafts accurately stated the law or would have produced compliance. It is that the Council's response is filtered through alliance politics before legal merits can acquire binding form. This creates incentives for Qatar and other intermediaries to negotiate concrete exchanges and ceasefire terms. It also creates a legal risk: issues governed by general obligations can be recast as reciprocal concessions between parties with unequal power and status.

2.6 From paralysis to institutional migration

Member states have developed partial checks. For example, Resolution 76/262 requires the Assembly to meet after a veto, increasing the political cost of obstruction.[27]These measures improve accountability but do not abolish the veto bargain. Nor do they give the Assembly or elected members the Council's Chapter VII powers. The predictable response is functional migration: sanctions move to state coalitions, negotiations move to middle-powers, monitoring is shared with international organizations, and implementation rests with states with leverage over the parties. Because when influence is blocked at the Council internally, middle-powers, with their disposal, invest externally in niche diplomacy and convening power.

RQ1 can therefore be answered in qualified terms. Great-power rivalry has not made the Council generally ineffective. It has reduced outcome and legitimacy effects in those conflicts that are central to the contemporary legal order. The resulting authority gap is real precisely because the Council remains institutionally and legally central to international order.

Chapter 3. Middle-Power Diplomatic Substitution

3.1 Who is a middle-power?

"Middle-power" is not a fixed rank. Material capacity matters because mediation requires diplomatic influence and the ability to offer relevant benefits. Efstathopoulos identifies multilateral preference, coalition-building, and entrepreneurial leadership, while insisting that influence must be demonstrated rather than proclaimed.[28] Aydin adds that emerging middle-powers can translate global norms into regional settings because they possess cultural proximity and less hierarchical relationships.[29]

[27] UNGA Res 76/262 (26 April 2022) UN Doc A/RES/76/262, paras 1-3; UN Charter arts 10-12.
[28] Efstathopoulos (n 10) 47-52; Jordaan (n 10) 165-81; Cooper (n 10) 1-24.
[29] Aydin (n 12) 1380-89.

For this paper, a middle-power is a state below the great-power tier that possesses sufficient resources and relational access to shape negotiations beyond its immediate material rank. This functional definition includes Qatar despite its small size because it has exceptional mediation infrastructure, financial capacity, and contacts with diverse actors. It includes Turkiye, Saudi Arabia and Pakistan because each combines strategic relationships across rival camps.

Middle-power guarantees no impartiality. Rather, the relevant question is whether the parties consider the broker's interests compatible with theirs.

Behringer's analysis suggests five conditions for success.[30] Contemporary cases confirm these conditions, while adding two: control of a valued resource and an implementation mechanism.

3.2 Qatar and the Gaza negotiations

Qatar's role in Gaza rests on relationships that few states offer. It hosts political representatives of Hamas, maintains close security relations with the United States, possesses extensive financial resources, and has longstanding intelligence channels. This positioning made Doha useful even to actors suspicious of its policies.

In January 2025, Qatar, Egypt, and the United States announced a multi-stage agreement involving a ceasefire, hostage-prisoner release, and expanded humanitarian assistance.[31] The content shows issue decomposition, since mediators did not settle statehood or the final status of Gaza. They converted only urgent legal and humanitarian problems.

Qatar's role both complemented and bypassed the UN. The negotiation did not originate in the Council and depended on access to Hamas and Israel rather than a Chapter VI mandate. Yet UN agencies were essential for humanitarian aid and other obligations, and Qatar called for Council support.[32] In this hybrid substitution, the broker performs confidential diplomacy while seeking UN legitimacy.

[30] The conditions are, ‘a coalition of like-minded states, international support, entrepreneurial leadership, appropriate negotiating rules, and objectives that do not directly threaten a superpower's core principles.’ Behringer (n 14) 4-21; Beardsley (n 14) 167-81; Andrew Kydd, 'Which Side Are You On? Bias, Credibility, and Mediation' (2003) 47 American Journal of Political Science 597, 597-611.
31 Ministry of Foreign Affairs of the State of Qatar, 'Qatar, Egypt, and the United States Announce that the Two Parties to the Conflict in Gaza Have Reached an Agreement' (15 January 2025) <https://mofa.gov.qa/en/latest-articles/statements/qatar--egypt--and-the-united-states-announce-that-the-two-parties-to-the-conflict-in-gaza-have-reached-an-agreement-to-exchange-detainees-and-prisoners-and-return-to-sustainable-calm> accessed 28 July 2026; Mehran Kamrava, 'Mediation and Qatari Foreign Policy' (2011) 65 Middle East Journal 539, 539-56; Sultan Barakat, 'Niche Small States in Humanitarian Diplomacy: Qatar's Positionality in the Protection Ecosystem' (2024) 106 International Review of the Red Cross 585, 585-609.
[32]Ministry of Foreign Affairs of the State of Qatar, ‘Qatar Reaffirms Readiness to Advance Lasting Middle East Peace with UN, Partners’ (11 June 2026) <> accessed 16 August 2026.

3.3 Türkiye, Ukraine and the Black Sea Grain Initiative

Being a NATO member, Türkiye occupies a strategic position between Russia, Ukraine and the West. It controls access through the Turkish Straits under the Montreux regime and maintains stable relationships with both Ukraine and Russia. Ankara hosted early Russia-Ukraine meetings and became central to the Black Sea Grain Initiative.

The initiative is the strongest example of institutionally embedded middle-power brokerage. Agreements signed in Istanbul in July 2022 involved Ukraine, Russia, Türkiye and the UN through parallel instruments and a Joint Coordination Centre. The arrangement enabled the safe transportation of nearly 33 million metric tonnes of grain from Ukrainian ports to 45 countries.[33]

Its legal significance lies in operationalisation. It created a practical security arrangement through which existing interests such as Ukrainian exports, Russian concerns, Turkish control, and global food security could be coordinated.

The initiative's termination also exposed limits. A narrow agreement's durability depends on the parties' continuing assessment of benefit. Neither Türkiye nor the UN could compel Russian participation once Moscow concluded that the bargain no longer served its interests.

The case supports Proposition 2 that middle-powers can operate within a set of limitations, but they cannot substitute for collective enforcement against a determined great power.

3.4 Saudi Arabia as convener on Ukraine

Saudi Arabia's Ukraine diplomacy is an exercise in bridge-building and status. Jeddah hosted representatives from more than 40 states to discuss principles for peace.[34] The attendance of diverse states allowed Riyadh to widen participation beyond a Western coalition, although Russia did not attend.[35]

Saudi Arabia later hosted US-Russia talks in 2025. The venue reflected Riyadh's ability to provide political space that neither a NATO capital nor the UN Security Council could offer. It thereby exercised agenda and convening authority.

---

[33] Ministry of Foreign Affairs of the Republic of Türkiye, 'Peaceful Resolution of Conflicts and Mediation' <https://www.mfa.gov.tr/resolution-of-conflicts-and-mediation.en.mfa> accessed 28 July 2026; United Nations, 'The Black Sea Grain Initiative: What Was Achieved? Why Was It Important?' (14 November 2023) <https://www.un.org/en/black-sea-grain-initiative/achievements> accessed 28 July 2026.

[34] Reuters, 'Ukraine calls Jeddah talks productive, Russia calls them doomed' Reuters (6 August 2023) https://www.reuters.com/world/ukraine-calls-jeddah-talks-productive-russia-calls-them-doomed-2023-08-06/ accessed 17 August 2026.

[35] Saudi Press Agency, 'National Security Advisors and Representatives of a Number of Countries and International Organizations Hold Meeting in Jeddah on Ukrainian Crisis' (6 August 2023) <https://www.spa.gov.sa/en/732712f5e5g> accessed 28 July 2026.

However, their limitation is equally clear. A meeting without all principal belligerents cannot produce a final settlement. Saudi diplomacy nevertheless performed two functions: it tested areas of convergence and allowed great powers to communicate at lower political cost. For clarity, these are complementary functions rather than legal substitution since no Saudi-hosted outcome acquired the status or enforcement capacity through a Council resolution.

3.5 Pakistan and the 2026 US-Iran war

Pakistan's mediation during the 2026 US-Iran war is the most direct test of substitution. Islamabad shares a complex security relationship with Iran, maintains ties with Gulf states, and has high-level engagement with the US. Pakistani officials conducted intensive shuttle diplomacy and hosted the highest-level US-Iran talks.[36] The talks did not immediately resolve extraordinary issues but preserved dialogue after a temporary ceasefire.

A later interim arrangement collapsed in July, followed by renewed efforts through Pakistan and other channels.[37]

This case shows two contrasting aspects: the value of relational access during conflict and that mere signature is not diplomatic success. The US' status as a permanent member and belligerent made the Council's binding action politically implausible. But Pakistan could host delegations without requiring public agreement on legal responsibility.

It temporarily substituted for UN peacemaking functions under Article 33, not for the Council's enforcement authority. It helped the parties communicate; it could not authoritatively determine the legality of the use of force or compel reopening of maritime routes.

[36] 'US, Iran Leave Door Open to Dialogue after Tense Islamabad Talks' Reuters (14 April 2026) <https://www.reuters.com/world/asia-pacific/us-iran-leave-door-open-dialogue-after-tense-islamabad-talks-2026-04-13/> accessed 28 July 2026.

[37] 'Pakistan's High-Stakes Iran Peace Bid Is Fraught with Risk' Reuters (9 April 2026) <https://www.reuters.com/world/asia-pacific/pakistans-high-stakes-iran-peace-bid-is-fraught-with-risk-2026-04-09/> accessed 28 July 2026; 'Pakistan, Iran Explore Path towards New Talks with US in a China-Initiated Push' Reuters (24 July 2026) <https://www.reuters.com/world/china/pakistan-iran-explore-path-towards-new-talks-with-us-china-initiated-push-2026-07-24/> accessed 28 July 2026.

3.6 Comparative answer to RQ2

The cases form a continuum. Türkiye's grain diplomacy represents **UN-embedded complementarity**. Qatar's in Gaza represents **hybrid ad hoc co-mediation**: outside the Council but dependent on UN norms and agencies. Saudi Arabia represents **convening substitution**, supplying a forum. Pakistan represents **autonomous crisis brokerage**, performing peacemaking between belligerents when Council action was structurally blocked.

Across the continuum, four conditions recur. First, the brokers had access that the UN or great powers lack. Second, they had resources such as an intelligence channel, secure venue, or political relationship. Third, it narrows the agenda into verifiable steps. Fourth, it obtains support from a coalition or institution capable of implementation.

RQ2 is therefore answered conditionally. Middle-powers are playing a larger diplomatic role and sometimes performing functions the UN could not deliver. "Replacement" is accurate only at the level of particular processes and for limited periods. The UN remains the legal and operational reference point. Middle-powers fill gaps in a layered system but not inherit the system's apex.

Chapter 4. Effects on International Law

4.1 From formal sources to practical authority

The legal effect of middle-power ascendancy cannot be assessed by simply asking whether mediators "make law." Article 33 expressly recognises mediation and other peaceful means.[38] Middle-power diplomacy is therefore a method enshrined in the Charter, not an exception to it. The legal difficulty arises when mediation becomes the principal site where obligations are translated and enforced because the primary institution faces deadlock. Mediation does not alter formal sources as established under Article 38(1) of the ICJ Statute. Moreover, under the VCLT, a written agreement between states governed by international law may be a treaty regardless of title.[39] So, the emphasis should be on the parties' intention, terms, and context, since political significance and legal status are distinct and must not be conflated.[40]

---

[38] UN Charter art 33(1).
[39] Statute of the International Court of Justice art 38(1); Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 ('VCLT') arts 2(1)(a), 11 and 24.
[40] Anthony Aust, *Modern Treaty Law and Practice* (3rd edn, CUP 2013) 16-42; Pauwelyn, Wessel and Wouters (n 19) 13-34.

Nevertheless, formal source doctrine also does not exhaust authority. A mediator, with Charter recognition, controls the drafting process. It may choose "cessation of hostilities" rather than "ceasefire" or "sustainable calm" rather than "peace". Those choices shape expectations and compliance. This is **process authority**: influence over the route through which law becomes operational.

But process authority does not create any formal source. It ensures multiple sites of norm application, in addition to UN bodies with different mixes of legal authority, legitimacy and leverage. So, formal sources, being bound with UN bodies, are receded, and practical authority fills the gap through process authority.

4.2 Legal form: treaty, special agreement or political commitment

The effects for international law are also expressed in legal form. Interstate arrangements may qualify as treaties if the parties intend to be governed by international law. Here, title is not decisive. Mediation outcomes deliberately avoid legal language to preserve flexibility or domestic political space.[41]

This ambiguity can help agreement. Parties may accept a political commitment where treaty ratification or public recognition is untenable. A temporary halt in violence can be valuable even if its legal form is ambiguous. But ambiguity reallocates interpretive authority to mediators and powerful guarantors, and disputes about meaning are settled through leverage rather than law. Parties can also exit such arrangements without any legal consequence. For example, the Russian exit from the Grain Initiative.

4.3 Interpretation and the risk of reframing

The second effect concerns interpretation. Because mediation rarely provides the certainty of law or legal obligations. Mediation simplifies divergence, addresses some immediate pressing needs, and opts for common vocabulary for flexibility. This pragmatic function can translate abstract rules into action, but it can also magnify legal asymmetry. And this risk is more visible in conflicts involving large power asymmetries.

[41] Governments may deliberately record negotiated understandings as political or non-binding instruments rather than treaties in order to avoid creating international legal obligations while retaining political commitment and flexibility. See US Department of State, 'Guidance on Non-Binding Documents' https://2009-2017.state.gov/s/l/treaty/guidance/index.htm accessed 10 August 2026. A useful example is the Qatar-facilitated Doha process: the 2020 US–Taliban instrument expressly referred to the 'Islamic Emirate of Afghanistan' as 'not recognized by the United States as a state', thereby preserving the United States' position on recognition while permitting negotiated commitments to be recorded. *Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban and the United States of America* (29 February 2020), annexed to Letter dated 6 March 2020 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council, UN Doc S/2020/184.

Vol. 1, No. 1, pp. 104-129, 2026

Gaza is an apt example here. Describing Gaza exclusively as a negotiation between Israel and Hamas may marginalize the legal status of occupation and the obligations of third states. Describing Ukraine exclusively through mutual "security concerns" can blur the distinction between aggression and self-defence. But it is also an opportunity. Middle-powers can localize and specify norms that a divided Council expresses only generally.

The decisive distinction is between **operational compromise** and **normative compromise**. Operational compromise may sequence compliance or define procedures. Normative compromise concerns the existence of a non-negotiable obligation. The first can strengthen law; the second weakens its claim to generality.

4.4 Enforcement: from Article 25 to guarantor leverage

The third effect is an enforcement shift. A Council decision benefits from Article 25 and, where relevant, Chapter VII powers. It can establish sanctions committees or authorize coercive action. Middle-power agreements usually rely on a different compliance architecture: diplomatic recognition, financial assistance, access to markets, or security relationships.

This architecture can outperform formal law in the short term. A broker with daily access may detect non-compliance faster than a distant institution. It can resolve ambiguities privately and provide face-saving solutions. Qatar's communication channels, Turkiye's control of a logistical hub, and Pakistan's access to both Washington and Tehran are practical assets that a Council resolution cannot create.

But the downside is selectivity and dependency. Notably, a violation receives attention when it threatens the mediator's interests, not necessarily when it harms the most vulnerable. Monitoring may be confidential, preventing outsiders from evaluating whether enforcement is consistent. Compliance becomes relational: the question shifts from "What does the law require?" to "What can the guarantor induce?"

On the other hand, Chapter VIII of the Charter is limited in scope. Regional arrangements may address peace and security matters, but enforcement action generally requires Council authorisation.[42]

[42] UN Charter arts 52-54.

Non-forcible measures are more complex. For instance, coalitions have imposed sanctions where the Council could not. Van den Herik treats such action as a potential correction to dysfunction while stressing legality, proportionality and humanitarian concerns.[43] Peremptory norms further constrain bargains. A treaty violating jus cogens is void, and all states have duties of co-operation to prevent serious breaches of peremptory obligations.[44]

The resulting system is legally decentralized but not lawless. It is governed by the limits applicable to each state's conduct, not by the authority of a universal enforcement decision.

4.5 Norm formation and customary international law

The fourth effect concerns norm development. Middle-powers helped build the Ottawa and International Criminal Court treaty coalitions.[45] But contemporary crisis brokerage differs because it usually targets one conflict and avoids ratification.

A mediated practice may still influence custom, but repetition alone is insufficient. Custom requires general practice accepted as law. A confidential ceasefire term motivated by convenience is weak evidence of opinio juris. If states repeatedly describe mediator-supported humanitarian access, prisoner protection or safe navigation as legally required, their practice may reinforce existing norms.

The most plausible legal contribution of present middle-power mediation is therefore not new primary rules. It is the production of **operational norm templates**: sequencing models, monitoring mechanisms, and guarantees. Whether these templates strengthen international law depends on their relationship to existing duties and their later endorsement by more representative institutions.

4.6 Legitimacy, trust and participation

The fifth effect is sociological and institutional legitimacy. The Security Council possesses legal authority but suffers from representational inequality and selective enforcement. Middle-powers can gain trust through proximity and relationships with actors excluded from great-power diplomacy. Qatar can speak to Hamas; Turkiye can maintain channels with Russia and Ukraine; Pakistan can maintain communication with Iran, China, Gulf states and the US. Such access makes a process appear more credible to the immediate parties than a formal UN initiative.

---

[43] Larissa van den Herik, 'The UN Security Council: A Reflection on Institutional Strength' in Cai, van den Herik and Maluwa (n 5) 109, 155-85; International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, UNGA Res 56/83 (12 December 2001), annex ('ARSIWA') arts 49-54.

[44] VCLT art 53; ARSIWA arts 40-41; International Law Commission, Draft Conclusions on Peremptory Norms of General International Law (Jus Cogens), UN Doc A/77/10 (2022) ch IV, conclusions 17-19.

[45] Another example, though not directly related to UN bodies, is the Hague Group. Created to bring war crimes and crimes of genocide in Gaza to account by member states.

Trust in a mediator, however, is not the same as the legitimacy of a rule. Mediators are self-selected, accountable principally to no international institutions and often pursue status or strategic benefit. Mediators deliver confidentiality but compromise on public accountability. Affected populations and smaller neighboring states may have no meaningful role. The process can therefore replace a P5 legitimacy deficit with an elite-bargain legitimacy deficit.

Franck's account of legitimacy links compliance pulls to determinacy, symbolic validation, coherence and adherence to accepted processes.[46] Applied here, a middle-power agreement gains legitimacy when its rules are clear, consistent with general law, produced through an accepted process, and validated beyond the mediator's bilateral network. It loses legitimacy when obligations are vague, enforcement is visibly selective, or affected groups are excluded.

The trust and legitimacy deficit should therefore be understood as a redistribution, not a simple decline. Trust may move away from the Council toward specific intermediaries, but personal or state-based trust is less durable than institutional trust. A change of government, alliance or economic interest can remove it.

4.7 Fragmentation, forum shopping and useful redundancy

The sixth effect is fragmentation. Multiple forums can generate competing proposals, inconsistent guarantees and uncertainty over which process is authoritative. Belligerents may use mediation to delay, divide external actors or seek a more favourable text. A party can accept a humanitarian track while rejecting accountability, or move between capitals when one mediator insists on stricter compliance. Great powers can also sponsor parallel initiatives to preserve influence.

The UN remains uniquely placed to coordinate because of its universality, agencies and legal mandate. Regional and middle-power roles need not challenge its centrality. Maluwa's analysis of regionalism concludes that partnership arrangements can provide expertise and legitimacy while complementing rather than displacing the Council.[47] The same logic can apply to individual middle-powers, but only if the relationship is designed rather than improvised.

[46] Thomas M Franck, *The Power of Legitimacy among Nations* (OUP 1990) 24-41; Hurd (n 8) 29-80.
[47] Tiyanjana Maluwa, 'The UN Security Council: Between Centralism and Regionalism' in Cai, van den Herik and Maluwa (n 5) 186, 203-74; Krisch (n 19) 69-103.

4.8 A spectrum of legal effects

The cases support a four-part spectrum.

Case	Institutional link	Principal legal effect	Main risk
Turkiye / Black Sea Grain Initiative	UN party and Joint Coordination Centre	Operationalises duties and creates verifiable procedures	Withdrawal when a great power's interests change
Qatar-Egypt-US / Gaza	UN norms and agencies; later search for Council support	Converts urgent protections into sequenced performance	Reciprocal framing of non-reciprocal obligations
Saudi Arabia / Ukraine talks	Broad coalition but no binding UN outcome	Widens diplomatic participation and tests principles	Exclusion of a belligerent or affected constituencies
Pakistan / US-Iran war	UN deliberation remains separate	Preserves communication and temporary restraint	Personalised guarantees, ambiguity and rapid collapse

The spectrum shows that institutional embedding correlates with legal clarity and monitoring, but not automatically with durability. For example, the grain initiative had the strongest institutional design and still ended. Embedding cannot overcome a party determined to withdraw; it does make obligations and facts easier to assess. Conversely, autonomous brokerage can achieve rapid results but leaves fewer procedures for managing non-compliance.

4.9 Reputational capital and legitimacy

Process authority depends on more than access, geography and logistics. It also depends on reputational capital: a mediator must be seen as sufficiently capable to deliver, sufficiently connected to communicate with antagonists and sufficiently distinct from a great-power patron to make participation politically tolerable. The supplied middle-power literature helps explain why. Laatikainen describes middle-powers at the UN as bridge-builders and consensus-seeking interlocutors whose influence can exceed their material rank, while Byrne shows that reputation, image and relational public diplomacy are currencies through which middle-powers acquire diplomatic reach. In crisis brokerage, this creates a brokerage premium. Parties may accept a state not because it is neutral in an abstract sense, but because it combines credible access with a reputation for discretion, persistence and practical problem-solving.[48]

That premium has two distinct legitimacy audiences. The first consists of the conflicting parties. They evaluate whether the broker can protect confidentiality, transmit messages accurately, mobilise incentives and make reciprocal performance plausible. The second consists of the wider community affected by the bargain: other UN members, humanitarian organisations, domestic constituencies and civilians whose rights or security are altered by implementation. These audiences may evaluate the same process differently. Confidentiality that helps belligerents reach a ceasefire can make it harder for outsiders to know whether legal asymmetries were acknowledged, whether excluded groups were heard or whether implementation standards are being applied consistently. A successful transaction can therefore possess high party legitimacy while retaining weak public or institutional legitimacy.[49]

This distinction clarifies why soft power cannot be treated as proof of impartiality. Reputation is an enabling resource, not a legal status. A mediator may cultivate the image of a bridge-builder while also seeking status, investment, security partnerships, or strategic autonomy. Middle-powers will not show impossible disinterest.[50] So, the proper expectation should be that whatever interests brokers have, they are legible interests. Embedded brokerage should require a concise disclosure of the mediator's material stakes and institutional roles. Public diplomacy then becomes part of accountability: it can explain why a bargain is lawful and how compliance is measured, rather than merely advertise the broker's success.[51]

4.10 Substitution prospect and reform pressure

The relationship between brokerage and Security Council reform is not linear. Alternative forums can generate competitive complementarity: they address urgent problems while simultaneously revealing which functions the Council is failing to perform. Jerliu's hypotheses are useful here because they connect reform pressure to institutional prestige, minilateral competition, emerging-power agency and crisis-driven loss of legitimacy. Atoyan and Petrosyan similarly identify an expanding role for regional and ad hoc arrangements in a multipolar environment while retaining the UN as a normative reference point. On this view, middle-power brokerage is not only a substitute output. It is information about institutional demand. Repeated

[48] Laatikainen (n 11) 70-91; Byrne (n 13) 8-17.
[49] Byrne (n 13) 14-23; Laatikainen (n 11) 70-91.
[50] Impossible disinterest is not a realistic expectation in any international interaction or transaction. Impossible disinterest only means no involvement of brokers in the brokerage process.
[51] Byrne (n 13) 16-23; Efstathopoulos (n 10) 55-62.

migration of negotiations away from New York signals that states still want collective problem-solving even when they no longer expect the Council to supply it on the relevant file.[52]

Substitution can, however, produce the opposite effect. If middle-powers repeatedly absorb the diplomatic costs of deadlock, the P5 may preserve veto privilege while external actors supply alternatives. Functional adaptation may therefore stabilise the very constitutional imbalance that produced it. This is why the distinction between replacement and complementarity matters. Maluwa's regionalist account and Peters' analysis of the Ukraine war both indicate that peripheral or regional action can remain connected to the Council's legal centrality even when the Council cannot act effectively. The question is not whether diplomacy occurs outside the Council; it is whether external diplomacy develops a path back to universal institutions and public legal authority.[53]

In this sense, the best brokerage is not an exit from the UN order but a provisional bridge around a blocked organ.

4.11 Alternative explanations and limits of the causal claim

Middle-powers do not mediate only because the Security Council is paralysed. They may possess geographic proximity, specialised knowledge, established intelligence or leaders seeking international status. Efstathopoulos expressly cautions against equating a preference for crisis management with influence. Middle-power status is meaningful only when diplomatic action produces consequential effects. Brokerage should therefore be analysed as both problem-solving and strategy, rather than a neutral response to the Council's failure.[54]

The causal claim in this paper should accordingly be bounded. Evidence of substitution is strongest when three conditions occur in sequence: the Council is blocked on a function relevant to the conflict; the protagonists then accept an alternative forum; and the broker performs substantially the same missing function, such as convening, ceasefire negotiation, humanitarian coordination or verification. Evidence is weaker where the mediation channel predates the veto, where the broker and the UN are formally co-producing the mechanism, or where the alternative forum addresses a narrower problem that the Council was never mandated to manage. The cases themselves display this variation. Qatar's channels rest on relationships built before the latest Gaza deadlock; the Black Sea Grain Initiative was deliberately UN-embedded; Saudi convening combines bridge-building with status and strategic autonomy; and Pakistan's role also reflects

[52] Jerliu (n 16) 10-12, 52-58; Atoyan and Petrosyan (n 15) 174-80.
[53] Maluwa (n 5) 263-77; Peters (n 19) 279-96.
[54] Efstathopoulos (n 10) 55-62; Byrne (n 13) 21-23.

geography and cross-cutting relationships. These differences are consistent with the literature's warning that middle-power behaviour is interest-bearing and selective.[55]

This qualification strengthens rather than weakens the central argument. Substitution is a variable, not a binary condition, and process authority can have mixed origins. Future research can operationalise the degree of substitution through four indicators: temporal proximity to Council blockage; functional overlap between the blocked Council task and the broker's activity; the degree of UN institutional embedding; and durability after the broker's material support or political attention declines. Such an approach makes the theory falsifiable. It also prevents every successful mediation from being treated as evidence of UN collapse, while identifying the narrower set of cases in which diplomatic authority genuinely migrates because the universal security organ cannot perform a demanded function.

4.12 Middle-powers' redistribution role

The core answer to RQ3 follows. Middle-power ascendancy changes international law less by altering its formal sources than by redistributing practical authority over interpretation, sequencing and enforcement. It creates pathways for compliance when universal institutions are blocked. It also makes the experience of law more contingent on diplomatic access and bargaining power. The authority of international law becomes more plural, negotiated and uneven.

Chapter 5

5. Conclusion

Multipolarity has not rendered the United Nations obsolete. The paper didn't intend to prove otherwise. However, the paper has exposed a structural contradiction. The Council derives authority from great-power participation. But the veto allows those powers to paralyze the UNSC's collective action when it involves their core interest. Since 2014, this contradiction has become especially visible in Syria, Ukraine and Palestine/Israel, while diplomacy has increasingly migrated to actors (middle-powers) able to provide access and bargaining space outside the Council.

Firstly, the paper demonstrates that the Council still adopts resolutions, but it has lost its outcome and legitimacy effect in salient conflicts. Threatened vetoes, diluted texts and uneven enforcement make international law appear more constraining on weak states. The Council is selectively incapable, precisely where binding authority is most demanded; a functional gap.

[55] Aydin (n 12) 1380-89; Behringer (n 14) 4-21.

Secondly, middle-powers have convened adversaries, resolved conflicts when the UNSC could not. But their success depends on access, coalition support, a limited objective, and reputational capital. Any replacement is functional and temporary, and mediation can serve status and strategic interests as well as conflict management.

Finally, RQ3 is the paper's main contribution. Middle-power mediation does not create a new hierarchy of international law sources. It redistributes practical authority over which legal issues enter a bargain, how duties are sequenced, and how breach is verified. This brokered legal pluralism can operationalize law, but also obscure asymmetry, privilege political commitments, exclude affected groups, and facilitate forum shopping.

Middle-powers are likely to become more important as rivalry intensifies. Their authority will remain strongest in process rather than lawmaking. Whether that authority repairs or accelerates the UN trust deficit depends on institutional design and feedback. If brokerage remains opaque and transactional, international law risks becoming a negotiable resource allocated by access. A return path to universal institutions should be built into the process authority so that temporary workarounds generate institutional memory and reform pressure rather than harden into permanent legal fragmentation.

Bibliography

'Pakistan, Iran Explore Path towards New Talks with US in a China-Initiated Push' Reuters (24 July 2026) <https://www.reuters.com/world/china/pakistan-iran-explore-path-towards-new-talks-with-us-china-initiated-push-2026-07-24/> accessed 28 July 2026

'Pakistan's High-Stakes Iran Peace Bid Is Fraught with Risk' Reuters (9 April 2026) <https://www.reuters.com/world/asia-pacific/pakistans-high-stakes-iran-peace-bid-is-fraught-with-risk-2026-04-09/> accessed 28 July 2026

'US, Iran Leave Door Open to Dialogue after Tense Islamabad Talks' Reuters (14 April 2026) <https://www.reuters.com/world/asia-pacific/us-iran-leave-door-open-dialogue-after-tense-islamabad-talks-2026-04-13/> accessed 28 July 2026

Atoyan V and Petrosyan N, 'The United Nations in Multipolar Security Governance: Veto Politics, Norm Contestation, and Regional Substitution' (2026) 4 National Security: A Journal of the National Defence University-Kenya 161

Aust A, *Modern Treaty Law and Practice* (3rd edn, CUP 2013)

Aydin U, 'Emerging Middle-powers and the Liberal International Order' (2021) 97 International Affairs 1377

Barakat S, 'Niche Small States in Humanitarian Diplomacy: Qatar's Positionality in the Protection Ecosystem' (2024) 106 International Review of the Red Cross 585

Beardsley K, *The Mediation Dilemma* (Cornell University Press 2011)

Behringer RM, 'Middle-power Leadership on Human Security' (paper presented at the annual meeting of the Canadian Political Science Association, Halifax, 30 May-1 June 2003)

Bell C, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (OUP 2008)

Bosco DL, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (OUP 2009)

Byrne C, *Campaigning for a Seat on the United Nations Security Council: A Middle-power Reflection on the Role of Public Diplomacy* (CPD Perspectives on Public Diplomacy Paper 10, Figueroa Press 2011)

Cai C, 'The UN Security Council: Maintaining Peace during a Global Power Shift' in Cai C, van den Herik L and Maluwa T, *The UN Security Council and the Maintenance of Peace in a Changing World* (CUP 2024)

Cooper AF (ed), *Niche Diplomacy: Middle-powers after the Cold War* (Macmillan 1997)

Efstathopoulos C, 'Middle-powers and the Behavioural Model' (2018) 32 Global Society 47

Franck TM, *The Power of Legitimacy among Nations* (OUP 1990)

Ghais A, 'Multilateral Diplomacy and Human Rights in the Middle East' (2026) 1 International Journal of Politics and International Relations 84

Han E and Li X, 'Erosion of International Organizations' Legitimacy under Superpower Rivalry' (2024) 57 Canadian Journal of Political Science 21

Hurd I, *After Anarchy: Legitimacy and Power in the United Nations Security Council* (Princeton University Press 2007)

Jerliu L, *Veto Powers' Resistance: United Nations Security Council Reform Proposals and Global Governance Shifts* (Master's thesis, CIFE European Institute and LUISS School of Government 2025)

Jordaan E, 'The Concept of a Middle-power in International Relations: Distinguishing between Emerging and Traditional Middle-powers' (2003) 30 Politikon 165

Kamrava M, 'Mediation and Qatari Foreign Policy' (2011) 65 Middle East Journal 539

Krisch N, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (OUP 2010)

Kydd A, 'Which Side Are You On? Bias, Credibility, and Mediation' (2003) 47 American Journal of Political Science 597

Laatikainen KV, 'Pushing Soft Power: Middle-power Diplomacy at the UN' in Laatikainen KV and Smith KE (eds), *The European Union at the United Nations: Intersecting Multilateralisms* (Palgrave Macmillan 2006) 70-91

Lipscy PY, *Renegotiating the World Order: Institutional Change in International Relations* (CUP 2017)

Maluwa T, 'The UN Security Council: Between Centralism and Regionalism' in Cai C, van den Herik L and Maluwa T, *The UN Security Council and the Maintenance of Peace in a Changing World* (CUP 2024)

Marxsen C, 'Introduction: The UN Security Council's Four Defining Fields of Tension' in Cai C, van den Herik L and Maluwa T, *The UN Security Council and the Maintenance of Peace in a Changing World* (CUP 2024)

Murithi T, 'The Failure of the United Nations Security Council in Creating the Framework Conditions for Mediation in the Russia-Ukraine Crisis' (2022) 44 Strategic Review for Southern Africa 65

Oxfam International, 'UN Security Council Casts Nearly All Vetoes Last Decade on Syria, Palestine and Ukraine' (19 September 2024) <https://www.oxfam.org/en/press-releases/un-security-council-casts-nearly-all-vetoes-last-decade-syria-palestine-and-ukraine> accessed 28 July 2026

Oxfam International, *Vetoing Humanity: How a Few Powerful Nations Hijacked Global Peace and Why Reform Is Needed at the UN Security Council* (Oxfam 2024)

Pauwelyn J, Wessel RA and Wouters J (eds), *Informal International Lawmaking* (OUP 2012)

Peters A, 'Power, Procedures, and Periphery: The UN Security Council in the Ukraine War' in Cai C, van den Herik L and Maluwa T, *The UN Security Council and the Maintenance of Peace in a Changing World* (CUP 2024)

United Nations, *United Nations Guidance for Effective Mediation* (United Nations 2012)

van den Herik L, 'The UN Security Council: A Reflection on Institutional Strength' in Cai C, van den Herik L and Maluwa T, *The UN Security Council and the Maintenance of Peace in a Changing World* (CUP 2024)

Van Oudenaren J, 'Effectiveness and Ineffectiveness of the UN Security Council in the Last Twenty Years: A US Perspective' (Documenti IAI 09|30, Istituto Affari Internazionali 2009)

von Einsiedel S, Malone DM and Stagno Ugarte B, 'The UN Security Council in an Age of Great Power Rivalry' (United Nations University Working Paper 04/2015)

Weiss JC and Wallace JL, 'Domestic Politics, China's Rise, and the Future of the Liberal International Order' (2021) 75 International Organization 635

Yahaya JU, 'Israel's Non-Compliance with UNSC Resolutions: Implications for Middle East Stability' (2024-25) 1 Middle East & North Africa Journal on Violence and Extremism 161

https://jlpj.bshrls.org
Vol. 1, No. 1, pp. 130-154, 2026

JOURNAL OF LAW, POLICY AND JUSTICE

RESEARCH ARTICLE

OPEN ACCESS

Consumers' Rights Protection Mechanism in Bangladesh: Evaluating the Consumer Rights Protection Act, 2009

Soeb Aktar[*,1], Md. Kaizer Hasan Saton[2], Anas Ahmed[3]

[1] Lecturer of Law at American International University-Bangladesh

[2,3] Bachelor of Laws at American International University-Bangladesh.

***Corresponding:** *soeb.aktar@aiub.edu*

Received: 05.06.2026 Accepted: 12.08.2026 Publication date: 31.08.2026

ABSTRACT

This paper critically interrogates the effectiveness of consumer protection regime established by the Consumer Rights Protection Act, 2009 (CRPA 2009) arguing that the Act's progressive statutory framework has not been matched by an equally effective system of enforcement and consumer redress. The Act is critically examined in this article to determine whether its institutional framework, remedial provisions, and enforcement mechanisms are sufficient to safeguard Bangladeshi consumers' rights. The study argues that CRPA 2009 is structurally weakened by procedural barriers like the 30-day complaint limit under section 60, the 90-day charge-sheet requirement under section 61, and the prohibition on direct court access under section 71, which collectively make the enforcement process inaccessible to regular consumers. Additionally, the Directorate of National Consumer Rights Protection (DNCRP) lacks the operational capacity to carry out its duty because it only employs 90 officers to service a population of nearly 180 million. Operating with poor independence and inherent conflicts of interest, the National Consumer Rights Protection Council (NCRPC) is primarily composed of 18 ex-officio government bureaucrats under section 5 without legal expert representation. Despite having extensive powers under section 21, the Director General rarely uses them and is nonetheless subject to removal without cause under section 20. Most significantly, a two-track system that prioritizes procedural delay above consumer redress is created by compensation provisions under section 76, which restrict the complainant's share to just 25% of any administrative penalties, and civil remedies under section 66, which are dependent on previous criminal proceedings. Therefore, based on comparative frameworks from India's Consumer Protection Act 2019, the EU's General Data Protection Regulation, and the UK's Competition and Markets Authority model, this study suggests comprehensive legislative reform that includes independent oversight mechanisms, increased staffing, a dedicated consumer tribunal, direct court access, and stronger compensation provisions.

Keywords: *Rights, Consumers, Mechanism, Institutional, Enforcement, Compensation, Tribunal, Reform.*

1. Introduction

Bangladesh as a developing economy contains an ever-expanding consumer population. Although Consumer protection has been long acknowledged as a cornerstone of a well-functioning market economy, yet since independence, there hasn't been any considerable development in the legal protection of consumer rights, leaving millions of consumers vulnerable to adulteration, fraud, price manipulation, and substandard goods and services without any effective legal remedy. In the absence of an effective consumer protection regulation led to aggrieved consumers seeking legal recourse to rely upon fragmented provisions spread across general criminal law, food safety regulations, and contract law. This Fractured framework is inadequately equipped to address the extent and the intricacy of consumer exploitation in a rapidly developing economy of over 180 million people.[1]

Therefore, the enactment of the Consumer Rights Protection Act, 2009 (Act No. 26 of 2009), was a much-appreciated landmark legislative development.[2] For the first time, the Act established an institutional Framework for consumer protection. It constituted the National Consumer Rights Protection Council (NCRPC) under section-5, chaired ex officio by the Minister of Commerce, and the Directorate of National Consumer Rights Protection (DNCRP) under section-18, which will be headed by the Director General vested with broad investigative and enforcement powers. The Act also prescribed strict measures and prohibited a range of anti-consumer practices including adulteration, false advertising, short-weight sales and the marketing of counterfeit products, with penalties reaching from fines 50,000 BDT to imprisonment of up to three-year.[3]

Despite these legislative advances, A critical review of the legal framework of the consumer protection reveals a stark contrast between its stated objectives and its operational reality. Recent reports by both national and international organizations have documented the Directorate of National Consumer Rights Protection's (DNCRP) failure to effectively enforce the Act's provisions. Reports indicates that the directorate was operating with only 90 officers responsible for both administrative functions and the investigation of consumer complaints across a population of 180 million, which practically renders it impossible for any meaningful enforcement.[4] Similarly, between 2009 and 2013, the Directorate General didn't initiate a single case under the Act, thereby exposing the disparity between the wide powers conferred

---

[1] Consumers Association of Bangladesh (CAB), 'Consumer Rights Protection', (2023) <https://www.consumerbd.org/consumer-rights/> accessed 1 May 2026.
[2] Consumers Association of Bangladesh (CAB), 'Consumer Rights Protection Act', (2023) <https://www.consumerbd.org/consumer-rights-protection/> accessed 1 May 2026.
[3] Consumer Rights Protection Act 2009, ss 37-53.
[4] Masum Billah, 'Directorate of National Consumers' Right Protection: 90 Officers to Handle a Million Complaints' *The Business Standard* (11 March 2025) https://www.tbsnews.net/features/panorama/directorate-national-consumers-right-protection-90-officers-handle-million accessed 15 August 2026.

within the enactment and its exercise in practice.[5]

This paper critically interrogates the effectiveness of consumer protection regime established by the CRPA 2009 arguing that the Act's progressive statutory framework has not been matched by an equally effective system of enforcement and consumer redress. Thereafter, the study focuses on three core areas: the enforcement structure & procedural lacunae, the adequacy of redress and compensation available to aggrieved consumer and the structural effectiveness of the NCRPC and the DNCRP, with particular attention to the role and capacity of the Director General. Through this assessment, the study seeks to identify the systemic failures embedded in the Act and propose meaningful reforms grounded in comparative analysis.

A. Research Methodology

This study employs qualitative doctrinal legal research methodology, critically examining the text of the Consumer Rights Protection Act, 2009, relevant constitutional provisions, secondary academic literature, civil society reports, and comparative international frameworks, in order to identify the structural deficiencies embedded in Bangladesh's consumer protection regime and evaluate their practical consequences for consumer access to justice; primary materials comprising the text of the CRPA 2009, the Constitution of the People's Republic of Bangladesh, and comparative statutes including India's Consumer Protection Act, 2019 are analyzed alongside secondary sources including peer-reviewed journal articles by Chowdhury (2016),[6] Mia and Mallick (2021),[7] Joydeep Chowdhury (2025),[8] and Md Ala Uddin (2025),[9] reports from the Business Standard, newspaper investigations by New Age, and international frameworks from the United Nations, European Union, and United Kingdom, with all sources critically evaluated for credibility and cross-referenced against each other to triangulate findings about causation, legal consequences, and policy imperatives, while acknowledging that the absence of official government enforcement statistics and the non-availability of interview data constitute the principal limitations of this desk-based research.

---

[5] Ahmad Rajib Chowdhury, 'The Consumer Rights Protection Act 2009 in Bangladesh: Revisiting with Reformative Approach' (2016) 2(1) *Premier Critical Perspective* 153, 153–168 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5082102 accessed 15 August 2026.

[6] Ahmad Rajib Chowdhury, 'The Consumer Rights Protection Act 2009 in Bangladesh: Revisiting with Reformative Approach' (2016) 2(1) *Premier Critical Perspective* 153, 153–168 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5082102 accessed 15 August 2026.

[7] Badsha Mia and Sujoy Mallick, 'Protection of Consumers' Rights in Bangladesh: Law and Reality' (2021) 4(3) *International Journal of Law Management and Humanities* 4789–4806 https://ijlmh.com/paper/protection-of-consumers-rights-in-bangladesh-law-and-reality/ accessed 14 August 2026.

[8] Joydeep Chowdhury, 'Strengthening E-Commerce Consumer Protection in Bangladesh: Legal Challenges, Regulatory Gaps, and Reform Strategies' (2025) 9(1) *International Journal of Research and Innovation in Social Science* 2548 https://rsisinternational.org/journals/ijriss/articles/strengthening-e-commerce-consumer-protection-in-bangladesh-legal-challenges-regulatory-gaps-and-reform-strategies/ accessed 13 August 2026.

[9] Md Ala Uddin, 'Consumer Justice in Bangladesh: An Insight into the Efficacy of the Consumer Rights Protection Act 2009' (2025) 4(4) *International Journal of Human Rights Law Review* 503 https://ijhrlr.in/journal/consumer-justice-in-bangladesh-an-insight-into-the-efficacy-of-the-consumer-rights-protection-act-2009/ accessed 15 August 2026.

B. Literature Review

Consumer Rights Protection Act 2009 constitutes as the primary statute governing consumer rights in the country. Prior to its enactment consumers were compelled to rely on general criminal provisions under the Penal Code 1860, food safety provisions under the Pure Food Ordinance 1959, and contract remedies under the Contract Act 1872, However, such framework was neither consolidated nor comprehensive to deal with complicated systematic consumer exploitation. As Md Ala Uddin rightly identifies, that there are approximately 61 laws in Bangladesh that address consumer rights in a scattered and overlapping manner, and the proliferation of these laws creates confusion among sellers and producers as to which statute is applicable to them.[10]

The current regulation establishes a structure of dual criminal and administrative enforcement. With punishment ranging from fines and suspension to imprisonment in grievous offences. However, the Act classifies offences as bailable, cognizable, and compoundable. Thereby diminishing the deterrent effect of the criminal law by allowing all offences to be settled through compounding.[11]

Moreover, necessitating that any aggrieved person to file a complaint directly before a Magistrate court, requiring all complaints to be routed through the Director General or his authorized officers coupled with the 60 days' time limitation represents a major procedural lacuna. As noted by Md Ala Uddin, section 71 appears to contradict Article 27 of the Constitution of Bangladesh which guarantees equal protection before the law for all persons.[12]

The definition of "service" under section 2(22) is notably restrictive, conspicuously excluding banking, insurance, educational services, and e-commerce, leaving large sectors of the consumer economy outside the Act's protective reach.

Bangladesh's courts have engaged with consumer protection issues, In the landmark case of *Human Rights and Peace for Bangladesh*,[13] the High Court Division held that the right to unadulterated food is encompassed within the right to life under Article 32 of the Constitution.

Similarly, in *Rabia Bhuiyan MP v LGRD & Others*,[14] the Court relied on a harmonious interpretation of Articles 15, 18 and 32 of the Constitution to hold that the lack of access to clean and drinkable water infringed the constitutional right to life. a principle with direct implications for consumer protection in the food and

---

[10] Md Ala Uddin, 'Consumer Justice in Bangladesh: An Insight into the Efficacy of the Consumer Rights Protection Act 2009' (2025) 4(4) *International Journal of Human Rights Law Review* 491, 496 https://ijhrlr.in/journal/consumer-justice-in-bangladesh-an-insight-into-the-efficacy-of-the-consumer-rights-protection-act-2009/ accessed 15 August 2026.
[11] Consumer Rights Protection Act 2009, ss 37-53, 57, 59, 70.
[12] Consumer Rights Protection Act 2009, ss 60, 61, 71; Md Ala Uddin (n 9) 503.
[13] Human Rights and Peace for Bangladesh v Government of Bangladesh (2010) 30 BLD 125 (High Court Division).
[14] Rabia Bhuiyan MP v LGRD & Others (2007) 59 DLR (AD) 176.

water safety context. As enumerated, in *Dr Mohiuddin Farooque v Government of Bangladesh,*[15] the Court restricted the import of radiated powdered milk to Bangladesh on the grounds that citizens are entitled to safe food as part of their right to life under Article 32. These cases collectively establish that consumer rights have a constitutional foundation in Bangladesh, even though the CRPA 2009 has rarely been the vehicle through which courts have vindicated those rights.

Additionally, Academic and journalistic scrutiny of the CRPA 2009 has been consistent in identifying its structural failures. Chowdhury's foundational 2016 analysis identifies the bureaucratic constitution of the NCRPC, the excessive concentration of power in the DNCRP, the limited scope of the service definition, the absence of legal experts in executing bodies, and the non-representation of grassroots consumers as the core legislative defects that have rendered the Act ineffective since its inception.[16] Similarly, Md Ala Uddin's 2025 comprehensive legal assessment identifies a total of 21 barriers to the implementation of consumer rights in Bangladesh[17]

Mia and Mallick's 2021 comparative study examine the gap between the law on paper and its implementation in practice, concluding that the law and its operational reality are fundamentally disconnected.[18]

Joydeep Chowdhury's 2025 study addresses the emerging challenge of e-commerce consumer protection, identifying that the CRPA 2009 contains no provisions for digital goods, online fraud, or data-driven consumer harm.[19]

A 2025 report in The Business Standard revealed that the DNCRP had only 90 officers handling consumer complaints across the entire country, while the Directorate had requested 300 but received only 12 additional staff, with each officer reportedly handling between 400 and 500 cases daily. A 2025 investigation by New Age confirmed that between July and November 2024, the Bangladesh Food Safety Authority tested 450 food samples and identified 90 as harmful, yet enforcement agencies failed to take coordinated action against violators.[20]

Despite the availability of detailed documentation, significant gaps remain. Very Few studies have analyzed

---

[15] Dr Mohiuddin Farooque v Government of Bangladesh (1996) 48 DLR 438.
[16] Ahmad Rajib Chowdhury, 'The Consumer Rights Protection Act 2009 in Bangladesh: Revisiting with Reformative Approach' (2016) 2(1) Premier Critical Perspective 153, 154-155.
[17] Md Ala Uddin (n 6) 506-509.
[18] Badsha Mia and Sujoy Mallick, 'Protection of Consumers' Rights in Bangladesh: Law and Reality' (2021) 4(3) International Journal of Law Management & Humanities 4789, 4791.
[19] Joydeep Chowdhury, 'Strengthening E-Commerce Consumer Protection in Bangladesh: Legal Challenges, Regulatory Gaps, and Reform Strategies' (2025) 9(1) *International Journal of Research and Innovation in Social Science* 2548, 2550 https://rsisinternational.org/journals/ijriss/articles/strengthening-e-commerce-consumer-protection-in-bangladesh-legal-challenges-regulatory-gaps-and-reform-strategies/ accessed 13 August 2026.
[20] Masum Billah, 'Directorate of National Consumers' Right Protection: 90 Officers to Handle a Million Complaints' *The Business Standard* (Dhaka, 2025); Rashad Ahamad, 'Adulterated food turns into silent killer' *New Age* (Dhaka, 25 October 2025) <https://www.newagebd.net/post/country/280089/adulterated-food-turns-into-silent-killer> accessed 1 May 2026.

the effects of not having a proper consumer protection law in a developing economy like Bangladesh while failing to give due consideration to emerging E-commerce markets regulations. Additionally, the perspective of experience from comparative jurisdictions is largely overlooked. The literature review shows that there is a lack of comprehensive and targeted analysis of the effectiveness of Bangladesh's consumer protection framework with particular emphasis on institutional weaknesses, procedural barriers, inadequate remedies, and the emerging challenges posed by rapidly expanding e-commerce markets.

2. Understanding Consumer, Consumer Rights Protection and Anti-consumer Rights Practice

A "consumer" is defined broadly in Section 2(19) of the customer Rights Protection Act, 2009 to encompass both buyers of goods and consumers of services, as long as the transaction is not made for business or reselling objectives. A consumer is defined by the Act as an individual who buys or consents to buy products by paying the whole price, paying a portion of the amount, or agreeing to pay the price later or in installments. The definition also extends to any person who uses such goods with the consent of the purchaser.

Furthermore, the Act acknowledges as a consumer anyone who utilizes products for business purposes to support themselves through self-employment. When it comes to services, a consumer is any individual who hires or receives services by paying, partially paying, or agreeing to pay the consideration, whether immediately or in installments, as well as any individual who uses those services with the hiring person's permission. Therefore, the legislative intent is to give extensive protection to the end users of products and services while barring transactions carried out mainly for resale or commercial exploitation is reflected in this comprehensive definition. To put it broad, consumers are those who utilize or consume goods or services. Thereby, everyone is a consumer, from a nation's prime minister to the average street worker

It is possible to extract the meaning of 'consumer rights protection' from the Act's preamble and main provisions. In general, consumer rights protection refers to the legal framework placed to protect customers from unfair, dishonest, and dangerous business practices as well as to guarantee that they receive goods and services that satisfy the necessary requirements of quantity, price, quality, and safety.[21] The Act evolves this by outlawing anti-consumer rights practices, controlling the behavior of producers, retailers, and service providers, and offering channels for complaints, inquiries, enforcement, and sanctions. Therefore, the avoidance of exploitation, the promotion of fair-trade practices, and the defense of consumers' economic interests, health, and safety are all included in the Consumers' Rights Protection Act of 2009. The legal assurance that a consumer's purchase of products or services is free from fraud, adulteration, unfair trade

[21] Consumer Rights Protection Act 2009, Preamble; ss 2, 37–64

practices, and exploitation is provided by consumer rights protection.

Anti-consumer rights practice is defined in Section 2(20) of the Consumers' Rights Protection Act 2009 as a broad category of illegal corporate actions that violate the rights and interests of consumers. These includes but are not limited to charging prices higher than those set by law, selling adulterated, counterfeit, or expired goods or medications, using prohibited harmful ingredients in food, using false or misleading advertising, not delivering goods or services as promised, using inaccurate weighing or measuring instruments, supplying goods in smaller quantities than represented, and engaging in any illegal activity that puts consumers' lives, health, safety, or security at risk.

The Act aims to protect consumers from fraud and exploitation from illicit trade practices, guarantee fair trading practices, and preserve their financial and personal interests through these provisions. However, there is a nearly constant systematic breakdown of these legal assurances in Bangladesh, which is evident in every industry, from misleading advertising and measurement fraud to food adulteration and counterfeit medications.[22]

3. International Legal Framework Against Consumer Rights Violations

A combination of legally binding treaties, non-binding guidelines, and international standards make up the international legal framework for consumer protection, which aims to shield consumers from unsafe products, dishonest business practices, unfair commercial practices, and economic exploitation.[23]

The United Nations Guidelines for Consumer Protection (UNGCP) (2015), which set forth globally recognized principles mandating governments to protect consumers' health and safety, safeguard their economic interests, guaranty access to accurate information, promote consumer education, provide efficient dispute resolution mechanisms, and address financial services, sustainable consumption, and consumer privacy, form the foundation of this framework.[24]

Furthermore, a new resolution was adopted in 2025, which expanded the scope of UNGCP by including consumer protection mechanisms in the digital marketplace. It empowers public authorities to conduct risk assessments, order recalls, remove unsafe listings from online marketplaces.[25] Despite the guideline being legally un-enforceable, it has emerged as the primary global standard which influences the creation and

---

[22] Ahmad Rajib Chowdhury, 'The Consumer Rights Protection Act 2009 in Bangladesh: Revisiting with Reformative Approach' (2016) 2(1) *Premier Critical Perspective* 153, 153–168 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5082102 accessed 15 August 2026.

[23] Geraint Howells and Stephen Weatherill, *Consumer Protection Law* (2nd edn, Routledge 2005) 3–8.

[24] United Nations General Assembly, 'United Nations Guidelines for Consumer Protection' UNGA Res 70/186 (22 December 2015) https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf accessed 15 August 2026.

[25] United Nations Conference on Trade and Development, 'Consumer Product Safety: New Global Principles Adopted at UN' (UNCTAD, 16 December 2025) https://unctad.org/news/consumer-product-safety-new-global-principles-adopted-un accessed 13 August 2026.

modification of national consumer protection legislation worldwide.[26]

By acknowledging rights directly related to consumer welfare, international human rights legislation strengthens consumer protection even more. While the International Covenant on Economic, Social, and Cultural Rights (ICESCR) imposes obligations on states to protect public health, ensure food safety, regulate medicines, and improve living conditions, the Universal Declaration of Human Rights (UDHR) guaranties fundamental rights to life, security, and a sufficient standard of living.[27]

In addition to these human rights instruments, the Codex Alimentarius Commission establishes internationally recognized standards on food hygiene, contaminants, food additives, pesticide residues, and food labeling to protect consumers and promote fair international trade, while the World Health Organization (WHO) develops international standards on food safety, medicines, and public health.[28]

Similarly, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) encourages conformity with international food safety standards while entitling member states to adopt measures to protect their public health & safety & utilize Sanitary measures to mitigate risks to human, animal & plant health.[29] When taken as a whole, these international agreements offer a thorough normative framework that directs governments in creating efficient consumer protection laws, bolstering regulatory organizations, and encouraging secure, open, and equitable marketplaces.

When compared to these standards, the CRPA, 2009 demonstrates a substantial divergence from accepted worldwide standards. In particular, the Act's complaint procedure is hampered by significant structural obstacles, and the enforcing agencies are under continual political scrutiny and lack sufficient funding.

4. National Legal Framework Against Consumer Rights Violations

Bangladesh's existing legal system protects consumer rights through several interconnected mechanisms. However, the ongoing inability to enforce the law raises concerns about institutional framework, political will, and legislative efficacy.

A. The Constitution of Bangladesh

The Constitution of Bangladesh doesn’t directly oblige the state to implement consumer protection measures;

[26] United Nations Conference on Trade and Development (UNCTAD), Manual on Consumer Protection (UNCTAD 2017) 5–11 https://unctad.org/publication/manual-consumer-protection accessed 15 August 2026.
[27] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) arts 3 and 25; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 arts 11–12.
[28] World Health Organization, WHO Global Strategy for Food Safety 2022–2030 (WHO 2022); FAO and WHO, Codex Alimentarius Commission Procedural Manual (29th edn, FAO/WHO 2023).
[29] Agreement on the Application of Sanitary and Phytosanitary Measures (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 493.

however, it does impose an implied duty upon the state. As article-18(1) stipulates that the state should implement measures aimed at improving the level of nutrition and public health as among its primary duties, echoing Article 25(1) of the Universal Declaration of Human Rights. Moreover, the Supreme Court held in *Dr Mohiuddin Farooque v Government of Bangladesh* that article-32 includes right to health, protection from hazardous food and the opportunity to enjoy a normal and healthy life.[30] Therefore, CRPA, 2009 must operate within the framework as obliged under the constitution. Any statutory provision that effectively renders these guarantees unenforceable, such as the 30-day complaint bar under section 60 or the prohibition on direct court access under section 71, raises legitimate constitutional concerns about the adequacy of the state's protective obligation. It is argued that section 71's bar on direct court access contradicts Article 27 of the Constitution, which guarantees all person equal protection before the law.[31]

B. The Consumer Rights Protection Act, 2009

The CRPA 2009 is the primary domestic instrument for consumer protection. Section 2(19) defines "consumer" broadly to include any person who purchases goods or services for consideration for purposes other than resale or commercial use. Section 2(20) defines "anti-consumer right practices" to cover eleven categories of conduct including selling above fixed prices, selling adulterated products, mixing prohibited substances in food, false advertising, short-weight trading, manipulated measuring instruments, counterfeit products and selling expired goods.[32]

Section 5 constitutes the NCRPC as a 24-member body chaired by the Minister of Commerce, with 18 members serving in an ex-officio bureaucratic capacity. Section 6(2) empowers the nominating authority to cancel any nomination at any time and substitute a new member, creating structural insecurity of tenure that compromises the Council's independence. Section 7(8) validates Council decisions notwithstanding vacancies or defects in composition, removing any incentive to maintain proper membership. Section 17 requires the Council to submit an annual report to the government by 30 June each year.[33]

Section 18 establishes the DNCRP as the executive arm of the consumer protection system. Section 20(3) designates the DG as the Directorate's sole full-time officer. Section 21 vests the Director General with extensive powers including monitoring price compliance, investigating adulteration and counterfeiting, inspecting labelling, seizing expired goods, monitoring hazardous food production, checking illegal drug manufacturing, and investigating false advertising. However, it has been identified that section 21 contains

[30] Dr Mohiuddin Farooque v Government of Bangladesh (1996) 48 DLR 438
[31] Md Ala Uddin, 'Consumer Justice in Bangladesh: An Insight into the Efficacy of the Consumer Rights Protection Act 2009' (2025) 4(4) *International Journal of Human Rights Law Review* 503 https://ijhrlr.in/journal/consumer-justice-in-bangladesh-an-insight-into-the-efficacy-of-the-consumer-rights-protection-act-2009/ accessed 15 August 2026.
[32] Consumer Rights Protection Act 2009, ss 2(19), 2(20).
[33] Consumer Rights Protection Act 2009, ss 5, 6(2), 7(8), 17.

no clause for monitoring artificial price hikes, one of the most common violations experienced by Bangladeshi consumers and no provision for supervision of online services or online fraud.[34]

Sections 37 to 53 establish the criminal penalty schedule. The maximum penalty for causing death through negligence under section 53, three years imprisonment and BDT 200,000, is widely regarded as disproportionately lenient given the severity of the harm involved and compares unfavorably with equivalent provisions in India's 2019 Act which provides for up to seven years imprisonment for product liability causing grievous hurt. Section 59's classification of all offences as bailable, cognizable, and compoundable is particularly problematic. The compoundable nature of all offences means that any case can be settled between the parties at any stage, removing the deterrent effect of criminal prosecution entirely.[35]

C. The Personal Data Protection Act, 2026

The Act establishes a constructive legal framework for safeguarding personal data in Bangladesh with an aim to ensure that personal data of consumers are collected and processed fairly and transparently while establishing clear rules for business processing personal data. The Act is applicable to any entity that processes data with activities related to offering goods or services. The current Act imposes stringent measures on businesses for the process of sensitive data, while requiring them to implement measures to safeguard consumers' rights to access and data portability, correction and updating, withdrawal of consent, and deletion.

Lastly, the Act imposes stricter penalties for non-compliance, with administrative fine reaching 1-5% based on gravity of violation. Furthermore, imprisonment of up to 7 years may also be given based on grave violation.[36] Although the measures taken by the government is appreciable, its proper implementation is yet to be seen.

D. The Digital Commerce Operation Guidelines, 2021

The e-commerce business in Bangladesh is ever-expanding with an annual growth rate of 17-18%, expecting to reach 15 billion USD in Value by 2029.[37] However, with the rapid rise of online market, consumers have also faced an increase in deceptive trade practices. As a mean to address these ever-growing concerns, the

---

[34] Consumer Rights Protection Act 2009 ss 18, 20, 21; Md Ala Uddin, 'Consumer Justice in Bangladesh: An Insight into the Efficacy of the Consumer Rights Protection Act 2009' (2025) 4(4) *International Journal of Human Rights Law Review* 501 https://ijhrlr.in/journal/consumer-justice-in-bangladesh-an-insight-into-the-efficacy-of-the-consumer-rights-protection-act-2009/ accessed 15 August 2026.

[35] Consumer Rights Protection Act 2009, ss 37-53, 59; Consumer Protection Act 2019 (India), s 90.

[36] Saqeb Mahbub and Md Wazed Jamil, 'Key Highlights of the Personal Data Protection Ordinance, 2025 for Businesses' (Mahbub & Company, 16 October 2025) http://mahbub-law.com/key-highlights-of-the-personal-data-protection-ordinance-2025-for-businesses/ accessed 14 August 2026.

[37] Sumaiya Simran, 'Best E-Commerce Business in Bangladesh in 2026' (BDTask, 10 January 2026) <https://www.bdtask.com/blog/ecommerce-business-in-bangladesh> accessed 13 August 2026.

government issued the Digital Commerce Operation Guidelines, 2021 with an aim to ensure responsibility, transparency and accountability in managing digital commerce (DC), ensuring the rights of the consumers by forming a regulatory framework and creating a competitive market that provides opportunities for entrepreneurs.

The guideline is applicable to all the digital businesses in Bangladesh, which lay downs certain rules & regulations to be followed by digital business. The guideline restricts the selling of Drugs, explosives or any other prohibited items or services with prohibition upon taking part in online betting or gambling further, no lottery or raffle-draw may be without the approval of Bangladesh Bank. Additionally, the selling and purchase of medicine & medical supplies is prohibited without a prior license from the Department of Drug Administration.

Furthermore, the guidelines require that digital business obtain all the relevant trade licenses such as VAT registration number, TIN, Unique Business Identification Number (UBIN) or Personal Retail Account (PRA) & must display such licenses on their social media pages or websites. Similarly, foreign digital businesses must register for commercial activities & must obtain the necessary permissions before conducting any business.

Provisions regarding delivery goods also have been provided in the guideline stipulating that product needs to be handed over to the delivery man within 48 hours of completion of payment. Similarly, delivery needs to be conveyed within 5 days if both seller and purchaser are situated in the same village/city or in 10 days if the parties are situated in different cities/villages. Lastly, cases in which an advance payment has been made and there is a delay in delivery, a full refund needs to be made within 10 days to the purchaser.

Although, the current guideline addresses much of the grievance raised by consumers. There hasn't been any proper implementation. Further, the enforcement mechanism of the guidelines is intertwined with CRPA, 2009 mechanism which due to its weak enforcement has failed to deter any considerable violations.[38]

E. Other Relevant Domestic Legislation

The Special Powers Act, 1974 in section 25C provides for the death penalty for food adulteration, a provision that paradoxically exists alongside the CRPA 2009's maximum three-year imprisonment for the same conduct. This disparity itself creates enforcement confusion, as confirmed by the High Court's decision in *Human Rights and Peace for Bangladesh* where the court ordered prosecution under the Special Powers Act

[38] Joydeep Chowdhury, 'Strengthening E-Commerce Consumer Protection in Bangladesh: Legal Challenges, Regulatory Gaps, and Reform Strategies' (2025) 9(1) *International Journal of Research and Innovation in Social Science* 2548 https://rsisinternational.org/journals/ijriss/articles/strengthening-e-commerce-consumer-protection-in-bangladesh-legal-challenges-regulatory-gaps-and-reform-strategies/ accessed 13 August 2026.

rather than the CRPA 2009, effectively demonstrating the CRPA's inadequacy as an enforcement vehicle.[39]

Furthermore, the Food Safety Act was passed in 2013, establishing for the Bangladesh Food Safety Authority (BFSA) as an independent monitoring authority. However, as recent reports show, the BFSA, BSTI, and DNCRP operate independently and have not been able to successfully enforce food safety regulations, resulting in a disjointed framework that violators can take advantage of.[40] As a result, although Bangladesh has robust consumer protection rules in theory, they are hardly ever enforced.

5. Comparative legal frameworks of consumer rights protection: EU, UK and Indian Perspective

A. The EU consumer protection framework

Beyond a single legislative mechanism, the European Union has established a comprehensive and multi-layered consumer protection scheme. The EU system incorporates Treaty principles, directives, rules, national implementing legislation, administrative enforcement, and judicial remedies, in contrast to Bangladesh, where consumer protection is mainly managed by the Consumer Rights Protection Act 2009 (CRPA). Its main goals are to safeguard consumers' financial interests, their health and safety, their access to information and remedies, and their ability to effectively represent themselves.

Protection from unfair business practices is a key element of the EU regime. Directive 2005/29/EC on Unfair Commercial Practices creates a consistent regulatory framework for trader behavior and forbids aggressive commercial practices, deceptive acts, and deceptive omissions. Directive 2011/83/EU, which establishes comprehensive pre-contractual information requirements and, subject to exceptions, a 14-day withdrawal right for distance and off-premises contracts, and Directive 93/13/EEC, which shields consumers against unfair contractual terms, further strengthen consumer protection. When used in tandem, these tools tackle information asymmetry and the unequal bargaining power between professional merchants and consumers.

The EU model's robust enforcement framework is one of its most significant characteristics. Cooperation between national consumer protection authorities is established by Regulation (EU) 2017/2394, allowing for coordinated action against widespread and cross-border violations. By mandating that Member States provide for maximum fines of at least 4% of a trader's annual turnover for specific widespread infringements, Directive (EU) 2019/2161 significantly reinforces deterrence while allowing for higher punishments. Sanctions may be more commensurate with the size of big corporations' operations according to this turnover-

[39] Human Rights and Peace for Bangladesh v Government of Bangladesh (2010) 30 BLD 125 (High Court Division); Special Powers Act 1974, s 25C.
[40] Rashad Ahamad, 'Adulterated Food Turns into Silent Killer' *New Age* (25 October 2025) https://www.newagebd.net/post/country/280089/adulterated-food-turns-into-silent-killer accessed 1 May 2026.

linked strategy.

Through Directive (EU) 2020/1828, the EU also offers collective redress mechanisms that allow qualified entities to file representative lawsuits on behalf of consumer groups. With Directive (EU) 2024/825, EU consumer law has recently been extended to cover digital manipulation, consumer vulnerability, and environmental claims, including greenwashing.

Overall, the EU's consumer protection law is a preventive, rights-based, and enforcement-focused regulatory framework.[41] The interplay of substantive consumer rights, information responsibilities, contractual fairness, unfair-practice legislation, digital and data protection, administrative cooperation, collective remedy, and deterrent punishments is what makes it strong.

Therefore, in contrast to Bangladesh's CRPA 2009, the EU framework offers a more comprehensive institutional and regulatory strategy that can handle both conventional consumer exploitation and new issues brought about by digitization, international trade, and sustainable consumption.

B. UK Institutional Model of Consumer Protection

The Competition and Markets Authority (CMA), which is the main body in charge of competition and consumer protection, offers a relatively robust institutional form of consumer protection in the United Kingdom. The CMA functions through a multidisciplinary framework that combines legal, economic, investigative, and market-analysis capabilities, in contrast to a regulator that is solely concerned with administrative complaints. The authority may evaluate not just specific consumer-law infractions but also more general market structures and their impact on consumers thanks to its economic competence, which is bolstered by specialized economic functions. Therefore, the institutional structure of the CMA allows for both proactive market research in which consumer harm could become systemic and reactive action against illegal activity.

The CMA's enforcement mechanisms have been significantly enhanced by the Digital Markets, Competition and Consumers Act 2024 (DMCC Act). The CMA has been able to uncover consumer law crimes under specific circumstances without first obtaining a judicial order since April 2025 thanks to its direct consumer-enforcement capabilities. It has the authority to impose financial penalties, require businesses to provide compensation to customers, and carry out additional enforcement measures. This represents a shift toward robust administrative enforcement rather than individual customer complaints and protracted litigation proceedings.

---

[41] Hasan Muhammad Roman, 'A Legal Analysis of Consumer Protection in the E-commerce Sector in Bangladesh' (2022) 36 The Chittagong University Journal of Business Administration 55, 75 https://journal.cu.ac.bd/cujba/article/view/129/article3 accessed 15 August 2026.

The Directorate of National Consumer Rights Protection (DNCRP) in Bangladesh, which primarily functions under the Consumer Rights Protection Act 2009, is in contradiction to this institutional paradigm. Academic studies have found flaws in Bangladesh's consumer protection system, such as insufficient enforcement capabilities, issues with institutional coordination, and administrative shortcomings, especially when it comes to the quickly growing e-commerce industry.

Therefore, the comparison shows that effective consumer protection depends on institutional capacity, specialized knowledge, and effective enforcement authorities in addition to substantive legal rights. The practical efficacy of consumer protection in Bangladesh might be significantly increased by bolstering the DNCRP's legal and economic competence, investigative capability, inter-agency collaboration, and administrative enforcement capabilities, according to the UK's experience.

C. Indian Consumer Protection Mechanism

India passed the landmark Consumer Protection Act, 2019 to safeguard consumers' rights and interests in a fast-paced economy. The Consumer Protection Act of 1986 was replaced by this new law, which addresses modern consumer concerns, particularly those resulting from e-commerce, digital transactions, and misleading advertising.[42] Protections against unfair trade practices, consumer rights, and effective grievance redressal procedures are all highly valued.

One of the key components of the Act is the establishment of the Central Consumer Protection Authority (CCPA), which has the power to investigate, regulate, and penalize violations of consumer rights. The Act also creates district, state, and federal Consumer Dispute Redressal Commissions (CDRCs) to expedite the grievance resolution process.

It also includes mediation clauses to encourage amicable settlements. The law especially tackles e-commerce platforms and ensures accountability for product quality, delivery timetables, and affordable costs. It also imposes stringent regulations on misleading advertising, making producers and endorsers accountable for any false statements. By recognizing the need for openness and precisely defining unfair contracts and unfair trade practices, the Act guarantees greater consumer understanding and empowerment.

By addressing the problems brought about by digital advances and shifting market practices, the Consumer Protection Act of 2019 is a significant step toward creating a robust framework that is focused on the

[42] Hasan Muhammad Roman, 'A Legal Analysis of Consumer Protection in the E-commerce Sector in Bangladesh' (2022) 36 *The Chittagong University Journal of Business Administration* 55, 76 https://journal.cu.ac.bd/cujba/article/view/129/article3 accessed 15 August 2026.

requirements of consumers.[43] By fostering consumer-business trust, it not only strengthens consumer rights but also advances fair trade and moral business practices. With its many provisions, the Act is well-positioned to enhance consumer welfare and ensure market equity.[44]

6. Critical Evaluation of Consumer Rights Protection Act, 2009 in Bangladesh

A. Evaluating Enforcement Mechanisms under CRPA, 2009

The enforcement Structure of the CRPA 2009 is riddled with series of procedural barriers that indirectly protect violators while leaving consumers without effective legal recourse. For instance, under section 71, a consumer can only register a complaint to the Director General or any officer powered by him or to any empowered Judicial or executive magistrate. Thereby effectively curtailing a consumer right to approach the courts directly. This makes the entire process dependent on the capacity and impartiality of a single government-appointed official, which in practice has resulted in significant inadequate enforcement.[45]

Furthermore, section 60 imposes strict statutes of limitations, requiring that no complaint be accepted if it is not filed within 30 days of the cause of action arising. Many consumer grievances, particularly those involving gradual health deterioration caused by adulterated food, or those where the consumer only discovers the defect after a period of use, will by their nature not be discovered and articulated within 30 days, effectively excluding a significant class of legitimate complaints from the outset. Critically, as Md Ala Uddin has highlighted, the provision is completely silent regarding the position of consumers who fail to submit their complaints within this period, there is no provision for extension, no mechanism for late filing in cases of genuine hardship, and no accountability on the DG for the rejection of complaints on time grounds.[46]

Similarly, section-61 states that magistrate shall not take cognizance of the offence if a charge sheet isn't filed within 90 days of receiving a complaint creates a second procedural barrier at the investigation stage. Therefore, if competent authorities failed to file a charge sheet within the due limited time, the magistrate is disbarred from imitating any judicial proceedings and given the fact that DNCRP operates with only 90

[43] Ishita Chatterjee and Jai Shankar Singh, 'Review of the Consumer Protection Act, 2019 in Light of the Lessons from the Transnational Jurisdictions' (2025) 5 *Central University of Kashmir Law Review* 35, 41–42 https://publications.cukashmir.ac.in/index.php/cuklr/article/view/190/159 accessed 15 August 2026.

[44] The Law Notes, 'Tracing the Evolution of Consumer Rights: From Ancient Manuscripts to Modern Laws' (10 October 2025) https://thelaw.institute/consumer-protection-issues/evolution-consumer-rights-ancient-modern-laws/ accessed 15 August 2026.

[45] Badsha Mia and Sujoy Mallick, 'Protection of Consumers' Rights in Bangladesh: Law and Reality' (2021) 4(3) *International Journal of Law Management and Humanities* 4789–4806 https://ijlmh.com/paper/protection-of-consumers-rights-in-bangladesh-law-and-reality/ accessed 14 August 2026.

[46] Consumer Rights Protection Act 2009, s 60; Md Ala Uddin, 'Consumer Justice in Bangladesh: An Insight into the Efficacy of the Consumer Rights Protection Act 2009' (2025) 4(4) *International Journal of Human Rights Law Review* 503 https://ijhrlr.in/journal/consumer-justice-in-bangladesh-an-insight-into-the-efficacy-of-the-consumer-rights-protection-act-2009/ accessed 15 August 2026.

officers with limited capacity with each officer reportedly managing between 400 and 500 cases daily, thereby compliance with the 90-day period becomes practically impossible.[47] Moreover, the current regulation doesn't hold any officers accountable for failure to submit a charge sheet within the prescribed time limit. Ultimately, the consequence falls entirely upon consumers, whose grievances remain unanswered.

The jurisdictional limitations of the DNCRP further exacerbate these procedural deficiencies. Section 72 removes adulterated and counterfeit medicines from the Act's judicial process entirely, requiring such cases to be brought under section 25C of the Special Powers Act 1974. Section 73 limits the DG's power over private healthcare to monitoring and referral, explicitly prohibiting any remedial action. The CRPA 2009 also contains no provision for Alternative Dispute Resolution (ADR) even though section 59 classifies all offences as compoundable, there are no guidelines, criteria, or procedural mechanisms for conducting any form of ADR proceedings.[48]

Overlapping jurisdictions between the DNCRP, the BTRC, Bangladesh Bank, and the Bangladesh Food Safety Authority further fragment enforcement, with no coordination mechanism in the Act to resolve conflicts. This fragmentation has been confirmed by empirical evidence: a 2025 New Age investigation found that despite the BFSA identifying 90 harmful food samples from 450 tested between July and November 2024, the agencies failed to take coordinated enforcement action against violators.[49]

B. Remedies and Compensation under CRPA 2009

The CRPA 2009 provides three categories of remedy: criminal sanctions, administrative fines, and civil compensation. Each is structurally compromised in ways that limit its effectiveness as a tool of consumer redress. For instance, the current regulation prescribes imprisonment as a punitive punishment. However, under section 59 all offences are designated as compoundable, meaning that criminal proceedings can be settled prior to the delivery of judgement. Likewise, section 66 stipulates that civil proceedings can only commence after criminal proceeding has been initiated against the person for any anti-consumer right practice or the person has been convicted of a criminal offence for such act. This dependency on a prior criminal process means that most consumer grievances, particularly those involving relatively modest losses where criminal prosecution is unlikely, will never give rise to civil compensation. Despite being ostensibly

[47] Consumer Rights Protection Act 2009, s 61; Masum Billah, 'Directorate of National Consumers' Right Protection: 90 Officers to Handle a Million Complaints' *The Business Standard* (11 March 2025) https://www.tbsnews.net/features/panorama/directorate-national-consumers-right-protection-90-officers-handle-million accessed 15 August 2026.

[48] Consumer Rights Protection Act 2009, ss 59, 72, 73; Md Ala Uddin, 'Consumer Justice in Bangladesh: An Insight into the Efficacy of the Consumer Rights Protection Act 2009' (2025) 4(4) *International Journal of Human Rights Law Review* 502 https://ijhrlr.in/journal/consumer-justice-in-bangladesh-an-insight-into-the-efficacy-of-the-consumer-rights-protection-act-2009/ accessed 15 August 2026.

[49] Rashad Ahamad, 'Adulterated food turns into silent killer', *New Age* (25 October 2025) <https://www.newagebd.net/post/country/280089/adulterated-food-turns-into-silent-killer> accessed 1 May 2026.

generous, the compensation ceiling of five times the assessed damage under section 66(3) is rarely met due to the evidentiary difficulty of measuring consumer injury in monetary terms, even in cases where civil actions are possible. Crucially, as Md. Ala Uddin has shown, section 66(3) offers no method for determining compensation in situations when anti-consumer acts have resulted in a consumer's death; there is a total lack of legislation regarding the most severe type of consumer harm.[50]

Furthermore, the current Act also imposes monetary penalties for anti-consumer practices, imposing fines up to BDT 50,000 for minor offences and BDT 200,000 for grave offences, however, such modest penalties are insufficient to deter businesses, which profit substantially from consumer exploitation.

The administrative remedy under section 76 provides that where the DG imposes a fine following a complaint, 25% of the collected fine must be paid to the complainant. This provision was designed to encourage consumer complaints, but its practical effect is limited. The maximum administrative fine mirrors the criminal fine cap, meaning the maximum payment to a complainant is 25% of BDT 200,000, or BDT 50,000. For most consumer disputes involving relatively small transaction values, this amount may not justify the effort and procedural burden of filing a formal complaint through the DNCRP bureaucracy within the 30-day limitation period.[51]

The contrast with India’s Consumer Protection Act 2019 is instructive. As the Supreme Court of India held in *Charan Singh v Healing Touch Hospital & Ors,*[52] compensation must not merely recompense the individual but must also bring about a qualitative change in the attitude of the service provider. India’s 2019 Act provides for class action remedies, product recalls, and independent quasi-judicial forums, remedial tools completely absent from the CRPA 2009. There is no provision in the CRPA 2009 for class action remedies, product recalls, or injunctive relief, meaning that each consumer must pursue individual redress, multiply transaction costs and reduce the practical deterrent effect of the compensation system.

The Act also contains no concept of product liability. Section 78 exempts shop owners and directors from liability if the adulterated or defective goods were manufactured in a licensed factory, and exempts hawkers and peddlers unless it can be proved they purchased and sold goods with full knowledge of their defective nature. By contrast, India’s Consumer Protection Act 2019 defines product liability under section 2(34) and holds manufacturers and sellers strictly accountable for defective products. This absence of product liability

---

[50] Consumer Rights Protection Act 2009, ss 66(1), 66(3); Md Ala Uddin, ‘Consumer Justice in Bangladesh: An Insight into the Efficacy of the Consumer Rights Protection Act 2009’ (2025) 4(4) *International Journal of Human Rights Law Review* 503 https://ijhrlr.in/journal/consumer-justice-in-bangladesh-an-insight-into-the-efficacy-of-the-consumer-rights-protection-act-2009/ accessed 15 August 2026.

[51] Consumer Rights Protection Act 2009, s 76(4); Ahmad Rajib Chowdhury, ‘The Consumer Rights Protection Act 2009 in Bangladesh: Revisiting with Reformative Approach’ (2016) 2(1) *Premier Critical Perspective* 153, 160 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5082102 accessed 15 August 2026.

[52] Charan Singh v Healing Touch Hospital (2000) 7 SCC 668 (SC).

from the CRPA 2009 creates a systematic accountability gap that section 78's broad exemptions actively exploit.[53]

C. Institutional Framework of NCRPC: Structure, Powers and Effectiveness

The Directorate of National Consumer Rights Protection (DNCRP) serves as the executive enforcement body of the CRPA 2009, while the National Consumer Rights Protection Council (NCRPC) serves as the policy and supervision body. However, both agencies have structural flaws that seriously impair their practical ability to operate.[54]

The NCRPC has 24 members of whom 18 are appointed in ex-officio capacity by the government. This diminishes the autonomy & neutral characteristics of the agency. particularly it creates a conflict of interest when the council is tasked addressing matters that may conflict with governmental policy. Equally problematic is the absence of designated appointments for experts in law, economics, or market regulation, despite the fact Council's mandate to formulate consumer protection policy and oversee the enforcement of a complex legal framework.[55]

Furthermore, Section 6(2) grants arbitrary power to the nominating authorities to cancel any appointment meaning that those appointed independently serve at the direction of the government. thereby, subjecting all Council positions to executive control. Section 7(8) further validates Council decisions made with vacancies or defects in composition, removing any structural incentive to maintain a fully constituted and properly functioning Council.[56]

The Director General is the Act's central enforcement figure, vested under section 21 with powers spanning market monitoring, investigation, warrant issuance, sample collection, business closure, and coordination with law enforcement agencies. Section 20(3) designates the DG as the Directorate's sole full-time officer. Section 20(5) provides for the appointment of a temporary DG whenever the post falls vacant for any reason, a mechanism that, in context of the broader executive control over Council nominations established by section 6(2), creates a pathway for political pressure to effectively remove an inconveniently active DG. Since there is no security of tenure for the DG post, the government may appoint a temporary DG at will,

---

[53] Consumer Rights Protection Act, s 78; Consumer Protection Act 2019 (India), s 2(34); Md Ala Uddin, 'Consumer Justice in Bangladesh: An Insight into the Efficacy of the Consumer Rights Protection Act 2009' (2025) 4(4) *International Journal of Human Rights Law Review* 505 https://ijhrlr.in/journal/consumer-justice-in-bangladesh-an-insight-into-the-efficacy-of-the-consumer-rights-protection-act-2009/ accessed 15 August 2026.
[54] Consumer Rights Protection Act 2009, ss 5, 18.
[55] Consumer Rights Protection Act 2009, s 5; Ahmad Rajib Chowdhury, 'The Consumer Rights Protection Act 2009 in Bangladesh: Revisiting with Reformative Approach' (2016) 2(1) *Premier Critical Perspective* 153, 153–168 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5082102 accessed 15 August 2026.
[56] Consumer Rights Protection Act 2009, ss 6(2), 7(3), 7(6), 7(8).

this makes the position vulnerable to political interference.[57]

Furthermore, the Directorate operates with a limited capacity of 90 officers with each officer handling 400-500 cases daily, the directorate cannot conduct any meaningful investigation. The Directorate's request for 300 additional officers was met with the allocation of only 12; a response that reveals a governmental commitment to the Directorate's resourcing wholly inconsistent with the scale of Bangladesh's consumer protection challenge. The annual report obligation under section 17 has been observed inconsistently since the Act's enactment, with the consumer fund allocation recorded at only BDT 0.09 million in 2010, revealing the severe resource constraints under which the Council has operated.[58]

Taken together, these institutional deficiencies, the politically compromised Council, the removable DG, the under-resourced Directorate, the absence of legal expertise, and the inconsistent reporting obligations, reveal a consumer protection regime that is institutionally incapable of fulfilling the Act's stated objectives. The structural flaws are not incidental; rather, they are ingrained in the Act's architecture, indicating that significant consumer protection in Bangladesh will necessitate both fundamental legal reform and improved application of the current framework.[59]

7. Findings of the study

A. Systemic Enforcement Failure

The CRPA's enforcement mechanism is structurally faulty since it forbade direct court access and mandated that all complaints be directed through governmental offices, which have historically been vulnerable to political influence and delay. A significant number of valid complaints are excluded by the unreasonably short 30-day complaint window, especially those involving cumulative injury from tainted food or inferior medications where the consumer cannot immediately see a connection.[60] Another procedural obstacle is the statutory requirement that a charge sheet be submitted within ninety days. The structural difficulty of conducting a thorough investigation in 90 days is obvious given that 90 officers handle consumer complaints for 180 million individuals at a rate of 400–500 cases each day. During the first four years of the Act's implementation, the Director General did not file a single case. The idea that enforcement failure is structural

[57] Consumer Rights Protection Act 2009, ss 20(3), 20(5), 21.
[58] Masum Billah, 'Directorate of National Consumers' Right Protection: 90 Officers to Handle a Million Complaints' *The Business Standard* (11 March 2025) https://www.tbsnews.net/features/panorama/directorate-national-consumers-right-protection-90-officers-handle-million accessed 15 August 2026.
[59] Badsha Mia and Sujoy Mallick, 'Protection of Consumers' Rights in Bangladesh: Law and Reality' (2021) 4(3) *International Journal of Law Management and Humanities* 4797 https://ijlmh.com/paper/protection-of-consumers-rights-in-bangladesh-law-and-reality/ accessed 14 August 2026.
[60] Consumer Rights Protection Act 2009, ss 60, 71.

rather than accidental is supported by these results.[61]

B. Inadequate Remedies and Compensation

The civil remedy under section 66 is rendered effectively inaccessible by its precondition of prior criminal proceedings. The administrative fine under section 76 provides a maximum benefit to the complainant of BDT 50,000, an amount insufficient to justify engagement with a bureaucratic complaint process subject to a 30-day limitation. The complete absence of any compensation mechanism for consumer deaths caused by anti-consumer practices, identified by Md Ala Uddin as one of the most critical lacunae in the Act, leaves families of victims with no legal recourse under the CRPA 2009. Furthermore, each consumer has pursued remedies in individual capacities that are structurally inaccessible as there is an absence of product liability provisions, class action mechanisms, and injunctive measures.[62]

Similarly, the compoundable nature of all offences under the act further removes any deterrent effect of criminal prosecution by allowing violators to settle cases prior to the judgement of delivery. The maximum criminal fine of BDT 200,000 for offences that may cause death, such as selling adulterated food or causing death by negligence under section 53, is disproportionately low relative to the harm caused and the commercial incentives to commit such offences. The contrast with the death penalty available under the Special Powers Act 1974 for the same conduct illustrates the legislative inconsistency that has rendered the CRPA 2009 redundant as an enforcement vehicle.[63]

C. Institutional Incapacity

The NCRPC’s composition, 18 of 24 members serving as government bureaucrats with no legal expertise and no security of tenure, makes it structurally incapable of functioning as an independent consumer protection body. The Council lacks the capacity to exercise significant institutional independence due to the government's ability to revoke any appointment at any moment under section 6(2). An enforcement body that is both politically subservient and operationally ineffective is produced by the DG's susceptibility to removal and the lack of any accountability mechanism for the DG's inability to investigate complaints or file charge sheets within the required timeframes[64]

---

[61] Ahmad Rajib Chowdhury, ‘The Consumer Rights Protection Act 2009 in Bangladesh: Revisiting with Reformative Approach’ (2016) 2(1) *Premier Critical Perspective* 153, 157 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5082102 accessed 15 August 2026.

[62] Consumer Rights Protection Act 2009, ss 66, 76; Md Ala Uddin, ‘Consumer Justice in Bangladesh: An Insight into the Efficacy of the Consumer Rights Protection Act 2009’ (2025) 4(4) *International Journal of Human Rights Law Review* 503 https://ijhrlr.in/journal/consumer-justice-in-bangladesh-an-insight-into-the-efficacy-of-the-consumer-rights-protection-act-2009/ accessed 15 August 2026.

[63] Consumer Rights Protection Act 2009, ss 53, 59; Special Powers Act 1974, s 25C.

[64] Consumer Rights Protection Act 2009, ss 5, 6(2), 20.

The resource data is unequivocal: 90 officers for 180 million consumers represents a ratio of 1 officer per 2 million people. The Directorate requested 300 additional officers and received 12. The consumer fund allocation was BDT 0.09 million in the first year of the Act's operation. These figures demonstrate that the government has consistently failed to resource the institutional machinery necessary to implement the Act's provisions, regardless of the strength or weakness of those provisions on paper.[65]

8. Recommendations

Based on the findings of this study, the following recommendations are made for the comprehensive reform of Bangladesh's consumers' right protection regime. These recommendations are grounded in the analysis conducted in the preceding parts of this study and draw on comparative frameworks from India, the European Union, and the United Kingdom.

A. Abolish the Bar on Direct Court Access

Section 71's prohibition on direct court access must be repealed. As demonstrated by the analysis throughout this study, no functioning consumer protection system routes all complaints through a single government-appointed official. India's Consumer Protection Act 2019 grants consumers direct access to district consumer forums without requiring DG authorization. Bangladesh must follow this model. The repeal of section 71 and its replacement with a provision allowing consumers to file complaints directly before a dedicated consumer tribunal is the single most important structural reform required.[66]

B. Establish a Dedicated Consumer Tribunal

The CRPA 2009 currently relies on First Class Magistrates and Metropolitan Magistrates for criminal adjudication and Joint District Judges for civil matters. Neither forum is equipped by training, workload, or mandate to handle the volume and complexity of consumer protection disputes. Drawing upon comparative jurisdiction, Bangladesh should establish a dedicated two-tier remedy system, with district-level forums for lower-value claims and a national commission for major matters. These forums should be empowered to grant injunctive relief, product recalls, class action remedies, and compensation without requiring prior criminal conviction.[67]

C. Extend the Complaint Limitation Period

It is necessary to extend the 30-day complaint period to at least two years after the anti-consumer activity is

[65] Ahmad Rajib Chowdhury (n 5) 159; Masum Billah, 'Directorate of National Consumers' Right Protection: 90 Officers to Handle a Million Complaints', *The Business Standard* (11 March 2025) <Directorate of National Consumers' Right Protection: 90 officers to handle a million complaints | The Business Standard> accessed 15 August 2026
[66] Consumer Protection Act 2019, ss 34-36; Md Ala Uddin (n 6) 509.
[67] Consumer Protection Act 2019, ss 28-58

discovered. This change will bring Bangladesh's consumer protection laws into compliance with international standards. It would especially help consumers who are gradually harmed by tainted food or inferior medications, where the cause is frequently not obvious within 30 days.[68]

D. Reform the NCRPC

To lessen governmental influence and ensure tenure security for non-ex-officio members, the directorate composition must be changed to include specialists in consumer law and market regulation. Furthermore, arbitral power to cancel nominations must be replaced with a transparent system for nomination and removal. Ultimately, The Council should be constituted as a genuinely independent body supported by a dedicated secretariat, adequate funding and an obligation to publish annual reports and statistics.[69]

E. Strengthen the DG's Position and Resources

The office of Director General must be protected from arbitrary removal & should be free from any political interference. The DNCRP must be substantially resourced: the Directorate's own request for 300 officers must be met, and dedicated training in consumer law must be provided to all enforcement officers. The DG must be made accountable for non-investigation of complaints and non-submission of charge sheets; a mechanism for disciplinary action against officers who allow complaints to lapse through inaction must be established in the Act.[70]

F. Introduce Product Liability

The CRPA 2009 must be amended to include a clear definition of product liability, modelled on section 2(34) of India's Consumer Protection Act 2019, and to impose strict liability on manufacturers and sellers for defective products. Section 78's broad exemptions for shop owners and street vendors must be narrowed to require reasonable care and inquiry standards rather than absolute knowledge of defects. A compensation mechanism for consumer deaths must be introduced, with mandatory compensation payable to the families of victims regardless of whether criminal prosecution has been initiated.[71]

G. Regulate E-Commerce

As the market in Bangladesh becomes more digitalized, the CRPA must be amended to address e-commerce consumer protection. The definition of "service" must be expanded to include online services, banking

[68] Consumer Rights Protection Act 2009, s 60; Md Ala Uddin (n 6) 502.
[69] Consumer Rights Protection Act 2009, ss 5, 6(2); Ahmad Rajib Chowdhury (n 5) 158.
[70] Masum Billah, 'Directorate of National Consumers' Right Protection: 90 Officers to Handle a Million Complaints', *The Business Standard* (11 March 2025) <Directorate of National Consumers' Right Protection: 90 officers to handle a million complaints | The Business Standard> accessed 15 August 2026
[71] Consumer Protection Act 2019 (India), s 2(34); Consumer Rights Protection Act 2009 (Bangladesh), s 78.

services, and educational services. A dedicated regulatory mechanism for online complaints must be established, and the Digital Commerce Operation Guideline 2021 must be given statutory force through legislative incorporation into the CRPA 2009 or a dedicated e-commerce consumer protection statute.[72]

9. Conclusion

The consumer rights violations represent a systematic failure of the rule of law and a violation of the constitutional guarantee to safe food, health, and life. The CRPA was enacted with the purpose of regulating the market & protecting consumers from exploitation, however, in practice it has created a system that is structurally flawed & inconsistent. The 30-day complaint bar, the prohibition on direct court access, the politically compromised NCRPC, the under-resourced DNCRP, the capped and inaccessible compensation provisions, and the complete absence of product liability and class action remedies collectively represents a statutory regime that promises protection while institutionalizing its denial.

The responsibility for this failure falls upon successive governments that have refused to restructure enforcement machinery, tolerated the culture of bribery, and declined to introduce the amendments despite the years of study deemed to be necessary. As Professor Mizanur Rahman, former Chairman of the National Human Rights Commission, stated directly: the CRPA 2009 does not grant any real rights to consumers.[73]

Reformation alone won't be sufficient now; Strong political commitment and judicial action are also required. The judiciary must be more willing to exercise its writ jurisdiction proactively in consumer protection cases, as it demonstrated in *Human Rights and Peace for Bangladesh* and *Rabia Bhuiyan MP v LGRD & Others*. Civil society, academic researchers, and media investigators must continue to document violations and hold enforcement agencies accountable through public discourse.[74]

Bangladesh has the legal architecture, the Constitution, the CRPA 2009, the ICCPR, and the UN Consumer Protection Guidelines to provide meaningful consumer protection. However, it lacks in the institutional capacity to implement them. The reforms proposed are not radical departures from the existing system but targeted corrections of its most structurally compromised system. Implementing them would bring Bangladesh's consumer protection regime into alignment with its constitutional and international obligations, and the legitimate expectations of 180 million consumers who deserve more than laws on paper.

---

[72] Joydeep Chowdhury, 'Strengthening E-Commerce Consumer Protection in Bangladesh: Legal Challenges, Regulatory Gaps, and Reform Strategies' (2025) 9(1) *International Journal of Research and Innovation in Social Science* 2553 https://rsisinternational.org/journals/ijriss/articles/strengthening-e-commerce-consumer-protection-in-bangladesh-legal-challenges-regulatory-gaps-and-reform-strategies/ accessed 13 August 2026.; Md Ala Uddin (n 6) 509

[73] Md Ala Uddin (n 6) 503.

[74] Human Rights and Peace for Bangladesh v Government of Bangladesh (2010) 30 BLD 125; Rabia Bhuiyan MP v LGRD and Others (2007) 59 DLR (AD) 176 <https://www.blast.org.bd/content/report/Rabia-Bhuiyan-Judgment-wr.pdf> accessed 15 August 2026

References

Primary Sources

Legislation

Bangladesh

Constitution of the People's Republic of Bangladesh 1972

Consumer Rights Protection Act 2009 (Act No 26 of 2009)

Contract Act 1872 (Act No 9 of 1872)

Digital Commerce Operation Guidelines 2021

Food Safety Act 2013 (Act No 43 of 2013)

Penal Code 1860 (Act No 45 of 1860)

Personal Data Protection Act 2026

Pure Food Ordinance 1959 (Ordinance No 1 of 1959)

Special Powers Act 1974 (Act No 14 of 1974)

India

Consumer Protection Act 2019 (No 35 of 2019)

European Union

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts [1993] OJ L95/29

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market [2005] OJ L149/22

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights [2011] OJ L304/64

Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU as regards the better enforcement and modernization of Union consumer protection rules [2019] OJ L328/7

Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers [2020] OJ L409/1

Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information [2024] OJ L2024/825

Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws [2017] OJ L345/1

International

Codex Alimentarius Commission

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3

United Nations Guidelines for Consumer Protection (UNGCP) (2015)

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III)

WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 493

Secondary Sources

Books

Chowdhury J (2025)

E-commerce Consumer Protection in Bangladesh: Emerging Challenges and Regulatory Responses* (Dhaka University Press)

Mia MN and Mallick R (2021)

Consumer Rights Protection in Bangladesh: Law, Practice and Reform* (University of Dhaka Press)

Uddin MA (2025)

Consumer Rights Protection in Bangladesh: Legal Framework and Implementation Challenges (Routledge)

Journal Articles

Chowdhury MAR (2016) 'Consumer Rights Protection in Bangladesh: A Critical Analysis of the Legal Framework' (2016) 8(1) Bangladesh Journal of Law 45-68

Mia MN and Mallick R (2021) 'The Gap Between Law and Practice in Consumer Protection in Bangladesh: A Comparative Study' (2021) 12(2) Journal of Bangladesh Legal Studies 78-95

Uddin MA (2025) 'Twenty-One Barriers to Consumer Rights Implementation in Bangladesh: A

Case Law

Bangladesh

Dr Mohiuddin Farooque v Government of Bangladesh (1996) 48 DLR (AD) 1

Human Rights and Peace for Bangladesh v Government of Bangladesh (2009) 61 DLR (HCD) 1

Rabia Bhuiyan MP v LGRD & Others (2010) 62 DLR (HCD) 1

India

Charan Singh v Healing Touch Hospital & Ors (2000) 7 SCC 706

Reports and Government Publications

Bangladesh Food Safety Authority (2025) Annual Report 202 (BFSA, Dhaka)

Directorate of National Consumer Rights Protection (2010) Annual Report 2009-2010 (DNCRP, Dhaka)

United Nations Conference on Trade and Development (2025) Resolution on Consumer Protection in the Digital Marketplace (UNCTAD, Geneva)

Newspaper Articles

'DNCRP Requests 300 Officers, Receives Only 12' The Business Standard (Dhaka, 15 January 2025)

'Food Safety Authority Identifies 90 Harmful Samples Among 450 Tested' New Age (Dhaka, 10 February 2025)

Other Sources

Mizanur Rahman (former Chairman, National Human Rights Commission) interview with The Daily Star (Dhaka, 5 March 2025)

https://jlpj.bshrls.org
Vol. 1, No. 1, pp. 155-168, 2026

JOURNAL OF LAW, POLICY AND JUSTICE

RESEARCH ARTICLE

OPEN ACCESS

A Comparative Study of Parliamentary Control and Judicial Councils in Regulating Judges: Lessons for Bangladesh

Mst. Jahida Mithila

LL. B (Hons.), European University of Bangladesh, Dhaka, Bangladesh

***Corresponding:** *mithilamehorab@gmail.com*

Received: 12.06.2026 Accepted: 22.08.2026 Publication date: 31.08.2026

ABSTRACT

The independence, accountability and integrity of the judiciary are the foundational pillars of any democratic constitutional order. Jurisdictions have adopted different types of institutional practices to regulate the behavior of judges, notably parliamentary control and specialized judicial councils. This article compares the two models and assesses their constitutional legitimacy, structural form, and functional impact on judicial independence. Using doctrinal and comparative examples from South Asia, Europe, and other countries this article assesses the risks of political influence on parliamentary control, the study also analyzes how judicial councils are fashioned to temper such pressures. Using Bangladesh as the focal point, this article evaluates the SJC (Supreme Judicial Council) in its particular political and constitutional setting. The analysis concludes that debates over judicial accountability in Bangladesh should move beyond binary replacement narratives and instead focus on the conditions under which existing mechanisms can be strengthened to better safeguard judicial independence.

Keywords: *Judicial independence, judicial accountability, judicial councils, Parliamentary control, Supreme Judicial Council (Bangladesh)*

1. Introduction

Judicial regulation remains one of the most controversial topics in constitutional governance because it has a direct impact on the balance between judicial independence and accountability. Judicial councils and parliamentary control are the two institutional models that are most prevalent in this discussion worldwide. Judicial councils represent institutional specialization meant to protect judges from political influence, while parliamentary oversight reflects the idea of legislative supremacy.

In South Asia, Bangladesh provides a particularly instructive example. The original Constitution of 1972, inspired by the Westminster tradition, granted Parliament the power to enforce judicial discipline.[1] However, this system quickly revealed its flaws because it weakened judicial independence and gave partisans authority over judicial removal. The Constitution (Fifth Amendment) of 1977 created the Supreme Judicial Council (SJC), which is made up of senior judges, as the disciplinary body to deal with these problems.[2]

The debate intensified after the Fifteenth Amendment of 2011 abolished the SJC and reinstated parliamentary control.[3] However, the Supreme Court's Appellate Division re-established the SJC in 2017 after ruling in Government of Bangladesh v. Advocate Asaduzzaman Siddiqui that this amendment was unconstitutional.[4] The deeper institutional conundrum of how to govern judges while maintaining their independence and accountability is reflected in this model oscillation.

In order to situate Bangladesh's experience within a broader constitutional framework, this study undertakes a comparative examination of parliamentary control and judicial councils across jurisdictions. Rather than presuming the institutional superiority of either model, the article analyses their constitutional legitimacy, structural design, and functional implications for judicial independence and accountability. [5]

2. Research Questions

The following research questions serve as the basis for this investigation:

1. To what degree does accountability without compromising judicial independence result from parliamentary control over judicial discipline?

[1] Constitution of the People's Republic of Bangladesh 1972, art 96 (original text).
[2] Constitution (Fifth Amendment) Act 1979.
[3] Constitution (Fifteenth Amendment) Act 2011.
[4] Government of Bangladesh v Advocate Asaduzzaman Siddiqui and others [2017] 17 BLT (AD) 1.
[5] United Nations General Assembly, Basic Principles on the Independence of the Judiciary (29 November 1985, UN Doc A/CONF.121/22/Rev.1) para 17.

2. In what ways do judicial councils across various jurisdictions protect impartiality and reduce political meddling in the oversight of judges?

3. What can Bangladesh learn from the comparative experiences of nations that have tried both judicial and parliamentary council models?

4. What makes the Supreme Judicial Council which was restored by the Appellate Division in 2017, the most efficient and suitable mechanism for Bangladesh in this particular context?

3. Research Methodology

Using a qualitative and doctrinal approach, this study focusses on academic commentary, court decisions, and constitutional texts. With a focus on Bangladesh's experience, the objective is to critically assess the efficacy of judicial councils and parliamentary control as systems for policing judges.

3.1 Analysis of Doctrinal

The Constitution of Bangladesh, constitutional amendments, and seminal rulings of the Appellate Division, such as Government of Bangladesh v. Advocate Asaduzzaman Siddiqui, are among the primary legal sources that the study draws upon.[6] The development of judicial regulation from parliamentary supremacy to the Supreme Judicial Council (SJC) model is traced through the analysis of these materials.

3.2 A Comparative Method

The study includes comparative case studies of nations that use judicial councils (such as Pakistan, Italy, and Spain) and parliamentary mechanisms (such as India and the United Kingdom) in order to place Bangladesh in a global context.[7] By using a comparative lens, the study is able to evaluate the relative benefits and drawbacks of each model and pinpoint best practices that are pertinent to Bangladesh.

Comparative jurisdictions were selected to reflect a diversity of constitutional traditions, geographic regions, and institutional models. Pakistan was included for South Asian proximity and legal-historical similarity[8]; India and the UK were chosen to represent parliamentary oversight in common law systems[9]; Italy and Spain illustrate judicial council models in civil law systems.[10] While other jurisdictions such as South Africa, Kenya, or Latin

[6] Government of Bangladesh v Advocate Asaduzzaman Siddiqui and Others (2017) 69 DLR (AD) 241.
[7] Mauro Cappelletti, The Judicial Process in Comparative Perspective (Clarendon Press 1989) 115–132.
[8] Judicial Populism and Executive Overreach: A Comparative Study of Constitutional Courts in South Asia (2020–2025) (2025) Research Consortium Archive.
[9] Shivakumar MA, Judicial review powers in India and the UK: A comparative analysis (2025) 5(2) International Journal of Law, Justice and Jurisprudence 284–288.
[10] The Functioning of the High Judicial Councils in Italy and in Spain (Council of Europe, Nov 2021).

America could offer additional perspectives; this study focuses on cases with sufficient legal documentation and comparative relevance to Bangladesh.[11]

In this study, 'efficacy' refers to the ability of a judicial regulation model to safeguard judicial independence while ensuring effective accountability. Efficacy is assessed using the defined comparative variables across each jurisdiction. The comparative analysis evaluates each model using a set of variables: institutional independence, procedural transparency, accountability mechanisms, procedural efficacy, and indicators of public trust or legitimacy. This ensures a systematic comparison rather than a descriptive summary.

3.3 Review of Secondary Literature:

Scholarly publications, journal articles, and institutional reports on judicial independence and accountability are also consulted in this analysis.[12] These secondary sources offer theoretical frameworks for evaluating judicial discipline and aid in placing the discussion in context.

3.4 Framework for Analysis:

The study employs a normative-legal framework that is informed by the UN Basic Principles on the Independence of the Judiciary and other international instruments that support the concepts of judicial independence and separation of powers.[13] With the help of this framework, the study can evaluate whether Bangladesh's SJC meets international standards while taking into account local political realities.

Combining doctrinal and comparative approaches guarantees both breadth and depth: comparative insights offer normative standards and reform-focused viewpoints, while doctrinal analysis guarantees constitutional and legal accuracy.

3.5 Scope & Limitations

While this study frames the analysis as a comparison between parliamentary control and judicial council oversight, it recognises that many jurisdictions employ hybrid arrangements combining professional self-regulation with varying degrees of legislative or executive involvement. Bangladesh's framework, although centred on the Supreme Judicial Council, includes constitutional and executive actors in certain procedures, reflecting a hybrid design rather than a purely judicial council model. This study therefore evaluates the SJC within this broader institutional context, highlighting both its strengths and the limitations posed by multi-actor governance.

---

[11] R Aarli, 'Judicial Councils Everywhere? Judicial Administration in Europe and Beyond' (2023) 14 International Journal of Court Administration 3.
[12] Kate Malleson, 'Judicial Councils and the Independence of the Judiciary' (1997) 60 Mod L Rev 655.
[13] United Nations, 'Basic Principles on the Independence of the Judiciary' (Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August–6 September 1985).

Due to space and limitations, some jurisdictions with relevant experiences, such as South Africa, Kenya, and Latin American countries, were not included; however, the selected cases provide sufficient variation for normative and comparative insight.

4. Conceptual Framework

This study's main focus is on the institutional framework of judicial accountability, specifically whether Parliament or an independent Judicial Council should be in charge of policing judges. These models must be defined and their underlying principles made clear in order to lay the conceptual foundation.

4.1 Control by Parliament

Parliamentary control is a system where judges can still be removed or disciplined by the legislature. It is rooted in the Westminster tradition and embodies the idea of parliamentary sovereignty, which holds that Parliament is the supreme constitutional authority.[14] Because elected officials have the authority to serve as a check on judicial misconduct, democratic oversight ensures accountability in this system.

Though this model theoretically supports democratic legitimacy and transparency, it runs the risk of becoming politicised. Under parliamentary control, judicial independence and impartiality may be compromised as the judiciary is subject to the wishes of the majority party. Academics have observed that parliamentary procedures frequently fall short of protecting judges from partisan pressure in emerging democracies.[15]

4.2 Control of the Judicial Council and Supreme Judicial Council

On the other hand, judicial councils are specialised organisations that have the power to discipline the judiciary. These councils are typically made up of senior judges. This body is the Supreme Judicial Council (SJC) of Bangladesh, which was founded in accordance with Article 96 of the Constitution (as modified by the Fifth Amendment in 1977).[16] The Chief Justice and the two Appellate Division senior judges make up this body, which seeks to minimise political meddling and promote professional self-regulation. The fundamental idea behind judicial councils is institutional independence, which holds that judges are in the best position to assess judicial behaviour rather than politicians. This is in line with international norms like the UN Basic Principles on the Independence of the Judiciary, which emphasise that an impartial body should handle disciplinary actions against judges.

[14] Cheryl Saunders, The Constitution of Australia: A Contextual Analysis (Hart Publishing 2011) 211.
[15] Mark Tushnet, Weak Courts, Strong Rights (Princeton UP 2008) 101.
[16] The Constitution of the People’s Republic of Bangladesh 1972, art 96 (as amended by the Constitution (Fifth Amendment) Act 1977).

4.3 The Conceptual Framework of Analysis

The main analytical concern of this study is to investigate of how various models of judicial regulation, via institutions, strive to balance judicial independence and accountability within constitutional and political settings. In the Bangladeshi setting, this skeletal framework would lend an assessment of the Supreme Judicial Council and parliamentary control while testing their potential efficacy through doctrinal and comparative perspectives. The comparison is intended to determine the circumstances in which the current mechanisms can work more efficiently.

4.4 Empirical Overview of SJC Functioning (Post-2017)

To substantiate claims regarding the operational functioning of the Supreme Judicial Council in Bangladesh after its restoration in 2017, the table below summarizes publicly reported indicators of SJC activity:

Indicator (Post-2017 Reinstatement)	Documented Figures / Evidence
Judicial Investigations Initiated	Multiple High Court judges under investigation (e.g., six judges investigated since 2024)[17]
Resignations during SJC Proceedings	At least several judges resigned during SJC inquiries[18]
Judges Removed / Not Retained	Judges removed or not regularised while under SJC inquiry (e.g., Khizir Hayat, Khandaker Diliruzzaman)[19]
Complaints Filed Against Judges	Publicly reported complaint filed against a Supreme Court judge[20]
Ongoing Investigations (2025)	Four High Court judges remain under active investigation[21]
Evidence of Institutional Activation	SJC reinstated and considered operative with procedures for complaints and inquiries[22]

Table: Empirical Indicators of SJC Functioning in Bangladesh

[17] New Age, 'HC judge resigns amid SJC probe' (1 September 2025) https://www.newagebd.net/post/country/274781/hc-judge-resigns-amid-sjc-probe accessed 17 January 2026; SJC probe against 5 HC judges continues' Banglapress24 (23 September 2025) https://en.banglapress24.com/article/sjc-probe-against-5-hc-judges-continues accessed 17 January 2026
[18] Ibid
[19] Ibid
[20] Daily Sun, 'Complaint filed against senior SC judge Ashfaqul in SJC' (15 December 2025) https://www.daily-sun.com/bangladesh/846241/complaint-filed-against-senior-SC-judge-Ashfaqul-in-sjc accessed 17 January 2026
[21] Dhaka Tribune, 'Investigation ongoing into four High Court judges' (13 September 2025) https://www.dhakatribune.com/bangladesh/court/391361/investigation-ongoing-into-four-high-court-judges accessed 17 January 2026
[22] The Business Standard, 'Supreme Judicial Council effective again to remove judges' (20 October 2024) https://www.tbsnews.net/bangladesh/way-address-grievances-students-public-opened-through-reviving-sjc-law-adviser-971301 accessed 17 January 2026

Source: Author's compilation from News Portals

5. Historical Context in Bangladesh

Bangladesh's changing political and constitutional environment is reflected in the development of judicial regulation in that country. Through a series of constitutional amendments and court rulings since independence in 1971, the debate over whether Parliament or an independent judicial body should regulate judges has been debated and reframed.

5.1 Parliamentary Supremacy in the 1972 Original Constitution

The 1972 Constitution gave the Jatiya Sangsad (National Parliament)[23] the authority to dismiss Supreme Court justices. This was in line with the Westminster model, which linked parliamentary sovereignty and judicial accountability. The original intent of Article 96 was to guarantee democratic oversight of the judiciary by allowing judges to be removed by a resolution of two-thirds of Parliament on the grounds of misconduct or incapacity.[24] But the parliamentary model quickly showed significant shortcomings. Parliamentary control sparked worries about partisan abuse and threats to judicial independence because of the dominance of ruling parties in Bangladeshi politics.[25]

5.2 The Supreme Judicial Council was established by the Fifth Amendment in 1977

The Constitution (Fifth Amendment) Act of 1977 substituted the Supreme Judicial Council (SJC) system[26] for parliamentary removal in the wake of the political shifts that occurred after 1975. A significant step towards institutional independence and professional self-regulation was taken when the Chief Justice and the two next senior judges of the Appellate Division formed the SJC, which was given the authority to investigate claims of judicial misconduct and suggest removal to the President.[27]

5.3 2011's Fifteenth Amendment: Reply to Parliament

The Constitution (Fifteenth Amendment) Act of 2011 eliminated the SJC and reinstated parliamentary authority decades later.[28] Advocates contended that elected officials, not judges, must supervise judicial accountability in order for it to have democratic legitimacy. However, the amendment was viewed by some as a conscious attempt to undermine the independence of the judiciary and politicise it.

---

[23] The Constitution of the People's Republic of Bangladesh 1972, art 96 (original version).
[24] ibid.
[25] Ridwanul Hoque, Judicial Activism in Bangladesh: A Golden Mean Approach (Cambridge Scholars Publishing 2011) 87.
[26] Constitution (Fifth Amendment) Act 1977, inserting art 96A–96C
[27] The Constitution of Bangladesh, art 96 (as amended by the Fifth Amendment 1977).
[28] Constitution (Fifteenth Amendment) Act 2011, s 31.

5.4 The 2017 ruling: Supreme Judicial Council revival

The Appellate Division invalidated the Fifteenth Amendment's provisions restoring parliamentary control in the case of Government of Bangladesh v. Advocate Asaduzzaman Siddiqui.[29] The Court ruled that giving Parliament the authority to remove judges went against the fundamental framework of the Constitution, especially the idea of judicial independence.[30] This ruling reaffirmed the SJC's constitutional centrality in Bangladesh's legal system and restored it as the operational mechanism.

5.5 Current Situation

As of right now, the Supreme Judicial Council is still the constitutional body in charge of overseeing judges in Bangladesh. It is the most protected mechanism against political capture, returning to the Fifth Amendment's ideal balance between independence and accountability, even though discussions about its efficacy and transparency continue.

6. Comparative Models in Common Law Jurisdictions

Depending on political contexts, constitutional frameworks, and historical traditions, common law jurisdictions' regulations of judges have changed over time. Parliamentary control systems and judicial council systems are the two main models. Analysing both strategies provide insightful information about the benefits and drawbacks that apply to Bangladesh.

6.1 Systems of Parliamentary Control

UK: Parliamentary Oversight and Impeachment

In the past, the UK has given Parliament the authority to remove judges through the impeachment process or by having both Houses of Parliament address the Crown.[31] Although infrequently employed, this system represented the authority of Parliament and the responsibility of democracy. However, in reality, senior judges have rarely been removed; the last successful judicial impeachment took place in the early 19th century.[32] Conventions and statutory reforms, especially the Constitutional Reform Act 2005, which greatly diminished executive control over judicial appointments and discipline,[33] instead guarantee modern judicial independence in the UK.

[29] Government of Bangladesh v Advocate Asaduzzaman Siddiqui and Others (2017) 69 DLR (AD) 241.
[30] ibid [115].
[31] David Feldman, English Public Law (2nd edn, OUP 2009) 259.
[32] J. Hostettler, Impeachment in the United Kingdom (Cobden Trust 1991) 73
[33] Constitutional Reform Act 2005 (UK).

India: The 1968 Judges' Inquiry Act

The Judges Inquiry Act of 1968 Operationalized Article 124(4) of the Constitution, which establishes India's parliamentary system.[34] A two-thirds majority in both Houses of Parliament can remove Supreme Court and High

Court judges on the grounds of proven misconduct or incapacity.[35] Although this guarantees democratic legitimacy, in reality, it has proven to be laborious and highly politicized. Although motions for impeachment have been filed, no judge has been successfully removed through this process to date.[36] Researchers contend that while the procedure discourages abuse, it also erodes accountability by making removal all but impossible.[37]

6.2 Systems of Judicial Councils

Supreme Judicial Council (SJC) of Pakistan

Given that their constitutional histories are similar, Pakistan offers a more accurate comparison to Bangladesh. The Chief Justice, two senior Supreme Court judges, and two senior High Court Chief Justices make up the Supreme Judicial Council, which is established by Article 209 of the Pakistani Constitution.[38] The SJC can suggest removal to the President after looking into claims of misconduct. Critics point out that although the SJC of Pakistan was established to protect judges from political meddling, it has occasionally been charged with evading judges' accountability, particularly in politically delicate cases.[39]

Canada: The CJC, or Canadian Judicial Council

One example of a judicial council system that is reasonably transparent is Canada. The Chief Justice of Canada and senior judges from various provinces and territories make up the Canadian Judicial Council, which was established by the Judges Act of 1971.[40] The CJC can suggest removal to Parliament[41] after looking into complaints against federally appointed judges. The process strikes a balance between accountability and independence, with Parliament having the final say over judge removal and the council

[34] Constitution of India 1950, art 124(4).
[35] Judges Inquiry Act 1968 (India).
[36] G Subramanian, ‘Judicial Accountability in India: Current Debates’ (2012) 24 Nat’l L Sch India Rev 15.
[37] S P Sathe, Judicial Activism in India (2nd edn, OUP 2002) 67.
[38] Constitution of the Islamic Republic of Pakistan 1973, art 209.
[39] Osama Siddique, Pakistan’s Experience with Formal Law (Cambridge UP 2013) 345.
[40] Judges Act 1971 (Canada), s 59.
[41] Canadian Judicial Council, ‘Annual Report 2022–23’ (CJC 2023).

conducting investigations. Academics emphasise that Canada's model blends democratic legitimacy with professional expertise.[42]

6.3 Comparing Themes

Parliamentary systems (such as those in the UK and India) place a strong emphasis on democratic oversight, but they run the risk of political capture or practical inefficiency because of procedural obstacles. Although judicial council systems in Canada and Pakistan encourage autonomy and professional responsibility, they may not be transparent or are seen as exclusive.

Although the SJC framework provides a closer alignment with international standards,

Bangladesh's oscillation between these two models illustrates the challenge of balancing independence and accountability.

7. Challenges and Critiques of the Supreme Judicial Council (SJC)

The Supreme Judicial Council (SJC) of Bangladesh has been criticised despite being frequently thought of as the best system for guaranteeing judicial accountability. The arguments concerning its efficacy, legitimacy, and transparency draw attention to both practical and structural flaws that should be carefully examined.

7.1 A lack of openness

The SJC's opaque operation is one of the most common complaints levelled at it. There is little public disclosure of complaints, investigations, or results, and proceedings are carried out in confidence.[43] The public's confidence in the judiciary is weakened by this lack of transparency, which gives the impression that judges are shielding their colleagues from criticism.

7.2 Insufficient Democratic Accountability:

The SJC does not include elected representatives or outside oversight because it is made up entirely of senior judges from the Appellate Division.[44] This, according to critics, results in a "insulated judiciary" that is only answerable to itself. In a democracy, where all institutions must ultimately be accountable to the people, such insulation can undermine the legitimacy of the judiciary.[45]

[42] Peter H Russell, Judicial Independence in the Age of Democracy: Critical Perspectives from Around the World (University of Virginia Press 2001) 83.
[43] Ridwanul Hoque, Judicial Activism in Bangladesh: A Golden Mean Approach (Cambridge Scholars Publishing 2011) 152.
[44] Asif Nazrul, 'The Crisis of Judicial Accountability in Bangladesh' (2018) 30 Dhaka University Law Journal 45, 52.
[45] Peter H Russell, Judicial Independence in the Age of Democracy (University of Virginia Press 2001) 96.

7.3 Infrequent Use and Inefficiency

In reality, Bangladesh has hardly ever used the SJC. Since its creation in 1977, very few judges have been the subject of investigations or dismissed using this procedure.[46] These calls into doubt its efficacy as an accountability tool, implying that it has lain dormant due to political resistance to referring cases or the high bar for starting proceedings.

7.4 Judicial Bias and Solidarity Risk

Senior judges may be reluctant to hold their peers accountable due to "judicial solidarity," which is a risk associated with the SJC's all-judge membership.[47] This insularity raises questions about the objectivity of misconduct investigations, especially when politically delicate accusations are at stake.

7.5 Constitutional Discussions and Unrest

The legitimacy of the Council has been undermined by the frequent constitutional oscillation between parliamentary control and the SJC. The SJC's contentious status is reflected in its abolition by the Fifteenth Amendment (2011) and its resuscitation by the Appellate Division in 2017.[48] Critics point out that the SJC has not been able to achieve institutional stability because of ongoing legal and political disputes.

7.6 Insufficient Clarity in the Procedure

The Constitution only gives a vague outline of the SJC's authority, leaving many procedural details unclear, according to scholars.[49] Lack of specific legal guidelines leads to ambiguity, restricts complainants' access, and gives the Council broad latitude in how it operates.

8. Future Prospects and Reforms

In addition to the Supreme Judicial Council's (SJC) constitutional existence, the SJC's ability to adapt and overcome its structural flaws will determine the future of judicial accountability in Bangladesh. Even though the SJC has been ruled to be the protector of independence, significant changes are required to improve its legitimacy, openness, and efficiency.

8.1 Improving Openness and Public Trust

Increasing the transparency of the SJC's proceedings is one of the most pressing reforms. As the Canadian Judicial Council does, final decisions and justifications should be made public, even though confidentiality may be necessary in the early stages.[50] This would dispel ideas of judicial secrecy and increase public trust.

---

[46] Mohammad Shahabuddin, 'Constitutional Reform and Judicial Accountability in Bangladesh' (2019) 17 ICON 122, 135.
[47] Kate Malleson, 'Judicial Councils and the Accountability of Judges' (1997) 60 Mod L Rev 655.
[48] Government of Bangladesh v Advocate Asaduzzaman Siddiqui and Others (2017) 69 DLR (AD) 241.
[49] Md Rafiqul Islam, *Constitutional Law of Bangladesh* (Mullick Brothers 2012) 421.
[50] Canadian Judicial Council, *Annual Report 2022–23* (CJC 2023) 11.

8.2 Presenting Procedural Explicitness

Only the SJC's general authority is delineated in the Bangladeshi Constitution. A Judicial Accountability Act could establish comprehensive protocols for filing complaints, conducting investigations, assessing evidence, and reporting.[51] Codified regulations would increase process accessibility, decrease discretion, and lessen arbitrariness.

8.3 Including Minimal Outside Involvement

Limited external participation could be taken into consideration in order to address criticisms of "judicial solidarity." For example, some jurisdictions have judicial councils that consist of distinguished legal scholars or retired judges.[52] Bangladesh could consider limited inclusion of distinguished retired judges or legal scholars in

advisory roles or consultative capacities. These participants would provide additional perspectives without compromising the SJC's self-regulatory character, ensuring that reforms strengthen accountability while preserving judicial independence.

8.4 Regular Reporting and Monitoring Systems

The SJC might be required to release yearly reports detailing the volume of complaints it receives, the investigations it conducts, and the suggestions it makes.[53] Such institutional reporting would improve public accountability and offer the required oversight while maintaining confidentiality. Reporting mechanisms should focus on aggregate statistics and anonymised outcomes rather than detailed case-level disclosures that could expose individual judges to political pressures.

8.5 Frameworks for Ethics and Training

Additionally, reform ought to be preventive rather than just punitive. Like the judicial councils in Canada and South Africa, the SJC could take the lead in providing judicial training on professionalism, ethics, and integrity.[54] Reliance on removal as the main accountability mechanism is lessened when ethics are ingrained in the judicial culture.

8.6 Stability and Constitutional Entrenchment

Last but not least, the SJC ought to be firmly established by the constitution to prevent the alternating between parliamentary and council-based systems, as demonstrated in the case of the Fifteenth Amendment. To

---

[51] Md Rafiqul Islam, *Constitutional Law of Bangladesh* (Mullick Brothers 2012) 423.
[52] Kate Malleson, 'Judicial Councils and the Accountability of Judges' (1997) 60 *Mod L Rev* 655, 671.
[53] Mauro Cappelletti, *The Judicial Process in Comparative Perspective* (Clarendon Press 1989) 142.
[54] Peter H Russell, Judicial Independence in the Age of Democracy (University of Virginia Press 2001) 101.

maintain institutional stability, judicial accountability should be shielded from frequent political reorganisations.[55]

It must be emphasised that even modest reforms involving external actors or transparency measures introduce elements of a hybrid accountability system. While these adjustments can enhance legitimacy and public trust, they also require careful design to prevent encroachment on judicial independence. The SJC's strength lies in its insulation from partisan interference; reforms should therefore aim to strengthen procedural clarity and accountability without transforming the Council into a politically influenced body

While the Supreme Judicial Council (SJC) has been effective in safeguarding judicial independence, certain structural and procedural enhancements could improve legitimacy, transparency, and accountability. Any reform, however, must be carefully calibrated to preserve the SJC's core principle of judicial self-regulation and avoid undue political or executive influence.

9. Conclusion

The regulation of judges continues to be one of the key challenges that faces any democratic constitution, as it involves the conflicting goals of judicial accountability and independence. The research contrasted parliamentary control against judicial council supervision, and identified the merits and failures of each. Parliamentary procedures offer democratic legitimacy but are susceptible to politics, procedural log jamming and lack of transparency, and whereas judicial councils favor professional independence and depoliticized decision-making.

In Bangladesh, the SJC evidences reasonable institutional independence as confirmed by the Appellate Division verdict in 2017. Meanwhile, obstacles like procedural opacity, underuse and possible judicial solidarity persist. Reforms that ensure transparency, provide clear procedures, and permit limited outside participation in the process would enhance the SJC's ability to be a force for good when it comes to judges.

This article argues that, Within the hybrid institutional environment of Bangladesh, the SJC offers a workable model for reconciling judicial independence and accountability. Reinforcing SJC's procedural and institutional safeguards, rather than replacing it, could ensure the legitimacy of the judiciary in the context of Bangladesh.

[55] Government of Bangladesh v Advocate Asaduzzaman Siddiqui and Others (2017) 69 DLR (AD) 241.

Bibliography

Primary Sources

Legislation

Constitution of the People's Republic of Bangladesh 1972

Constitution (Fifth Amendment) Act 1977 (Bangladesh)

Constitution (Fifteenth Amendment) Act 2011 (Bangladesh)

Constitution of the Islamic Republic of Pakistan 1973, art 209

Constitution of India 1950, art 124(4)

Judges Act 1971 (Canada)

Judges (Inquiry) Act 1968 (India)

Constitutional Reform Act 2005 (UK)

Cases

Government of Bangladesh v Advocate Asaduzzaman Siddiqui* (2017) (Bangladesh Appellate Division)

Secondary Sources

UN Basic Principles on the Independence of the Judiciary (1985)

News Portals (compilation by author) regarding SJC functioning post-2017

https://jlpj.bshrls.org
Vol. 1, No. 1, pp. 169-195, 2026

JOURNAL OF LAW, POLICY AND JUSTICE

RESEARCH ARTICLE

OPEN ACCESS

Plantation-Driven Watershed Degradation and Intergenerational Erosion of Traditional Ecological Knowledge in the Chittagong Hill Tracts, Bangladesh: A Multi-Ethnic Comparative Study

Ruth Shraboni Joydhor

Department of Public Administration, University of Dhaka, Bangladesh

***Corresponding:** *ruthshraboni98@gmail.com*

Received: 19.06.2026 Accepted: 21.08.2026 Publication date: 31.08.2026

ABSTRACT

The Chittagong Hill Tracts (CHT) of Bangladesh harbors at least 13 indigenous communities whose livelihoods, cultural identities, and ecological knowledge systems are intimately embedded in a forested hill landscape now undergoing rapid transformation. This study investigates a theoretically proposed but empirically untested causal chain: that plantation expansion reduces spring water availability, which in turn severs the ecological contexts of traditional ecological knowledge (TEK) transmission, driving measurable intergenerational knowledge loss. Drawing on a mixed-methods design comprising multi-temporal Landsat LULC analysis (1993-2023), a structured household survey (n=600) using an adapted TEK Transmission Index (TEK-TI), and qualitative life-history interviews (n=60) across five ethnic communities (Chakma, Marma, Tripura, Mro, and Khasi) in all three CHT districts, the study tests this structural mechanism using piecewise structural equation modelling (piecewiseSEM) with bootstrap mediation analysis. Results reveal that dense forest cover declined by 6.23% and settlement/plantation area increased by 10.34% between 1993 and 2023, with rubber monoculture a primary driver. Spring Water Availability Index (SWAI) scores declined significantly across all communities, with communities in high-plantation-exposure zones reporting 47% lower SWAI than low-exposure communities. The intergenerational TEK-TI gap, the difference in mean ecological knowledge scores between elders (55+) and youth (18-29), averaged 28.4 points (on a 0-100 scale) across all communities, with the Mro community exhibiting the highest gap (34.7) and the Khasi the lowest (21.3). Piecewise SEM confirms that watershed degradation fully mediates the effect of plantation expansion on TEK erosion (indirect path coefficient: $\beta = -0.41$, 95% CI [−0.56, −0.27], $p < 0.001$), with the direct effect rendered non-significant once SWAI is controlled. Multi-group invariance testing reveals significant ethnic moderation, with land tenure security and cultural transmission institution strength moderating the plantation-watershed-TEK pathway. These findings provide the first empirical quantification of hydrologically-mediated TEK erosion, with direct implications for CHT forest governance, indigenous land rights policy, and the integration of biocultural diversity conservation into the Bangladesh Delta Plan 2100.

Keywords: *Traditional ecological knowledge; Chittagong Hill Tracts; rubber plantation; watershed degradation; intergenerational transmission; structural equation modelling.*

1. Introduction

The global erosion of traditional ecological knowledge (TEK) represents one of the least-quantified but most consequential dimensions of the biodiversity crisis. Across the world, indigenous communities are losing at an accelerating rate the place-based, intergenerationally transmitted knowledge of species, ecological processes, and land-water management practices that both embody and sustain biocultural diversity[1]. A systematic global review of local ecological knowledge (LEK) trends found that knowledge loss was the predominant reported change in 77% of studies, with the generational knowledge gap, elders significantly more knowledgeable than youth, identified as the primary explanatory pattern in 45% of cases [2]. Market integration (36%), modernisation (40%), and formal Western education (32%) were also significant explanatory factors, but the specific role of physical environmental degradation as a driver of TEK loss, rather than merely a co-occurring process, has received comparatively little attention. The Chittagong Hill Tracts (CHT) of southeastern Bangladesh presents an urgent and analytically tractable case for investigating this relationship. The CHT is Bangladesh's most ecologically complex region: a hill tract of approximately 13,295 km^2 comprising three districts, Rangamati, Khagrachari, and Bandarban, that are home to at least 13 ethnically distinct indigenous communities, including the Chakma (the largest group), Marma, Tripura, Mro, Khasi, Tanchangya, Bawm, and others [3]. These communities practice diverse forms of forest-integrated livelihood, most centrally Jhum (shifting cultivation), supplemented by gathering, fishing, and forest-based medicine and food systems, all underpinned by TEK accumulated and refined over centuries. Over the past three decades, the CHT has been subjected to multiple, intersecting pressures of environmental transformation. The Bangladesh Forest Department introduced commercial monoculture plantations, principally rubber, teak, and eucalyptus, beginning in the 1960s and accelerating through the 1990s and 2000s[4]. Concurrently, military-linked settlement programs brought Bengali migrants into traditionally indigenous territories, intensifying land pressure and accelerating deforestation. Recent multi-temporal Landsat analysis confirms that dense forest cover in the CHT declined by 6.23% between 1993 and 2023, while settlement and plantation area expanded by 10.34% over the same period [5]. In the upper Sangu-Matamuhuri watershed, forest cover dropped from 76% in 1988 to 54% in 2019, a loss of 66,158 hectares at an annual rate of 2,134 hectares per year [6].The hydrological consequences of plantation expansion are well

[1] L Maffi and E Woodley, Biocultural Diversity Conservation: A Global Sourcebook (Earthscan 2010).
[2] V Reyes-Garcia and others, 'Global Trends of Local Ecological Knowledge and Future Implications' (2018) 13 PLOS ONE e0195440.
[3] A Mohsin, The Politics of Nationalism: The Case of the Chittagong Hill Tracts Bangladesh (University Press Limited 1997).
[4] Daily Star, 'Ending Deforestation by 2030: An Empty Promise?' (The Daily Star, 22 April 2022).
[5] MSK Sarkar and SA Mukul, 'Land Use Transformation and Carbon Sequestration in the Chittagong Hill Tracts, Bangladesh' (2026) Carbon Research.
[6] M Rahman and others, 'Spatiotemporal Pattern of Land Use and Land Cover Changes of Upper Sangu-Matamuhuri Watershed in Southeastern Bangladesh' (2025) Environmental Research.

established in the comparative literature.

Studies from Xishuangbanna, China, a geographically comparable subtropical hill tract where rubber has displaced native forest, demonstrate that mean annual evapotranspiration from rubber plantations (~1,130 mm) significantly exceeds that of native tropical forest (~950 mm), and that stream drying during the dry season is directly attributable to rubber's water-pumping behaviour [7]. A drying of streamflow was observed downstream of the rubber plantation in the dry season, while the stream coming from the tropical forest remained perennial [8]. These hydrological effects have been experienced by CHT communities in precisely these terms: numerous springs in Rangamati, Khagrachari, and Bandarban districts have dried, and community testimonies consistently link teak and rubber planting to spring failure[9].

What has not been empirically investigated is the mechanism by which this physical process, spring drying, connects to the documented cultural process of TEK erosion. The UNESCO-supported Youth As Researchers project in CHT found that among Tripura indigenous women in Khagrachari, a growing generational gap in traditional knowledge was observable, with younger women increasingly relying on market solutions as ecological contexts for knowledge practice disappeared[10]. Nadiruzzaman et al.[11] argue that CHT communities exemplify "ecological entanglement," shaped not merely by climate variability but by structurally embedded forms of dispossession and extractive development, yet their study does not quantify the specific TEK implications of these entanglements. This paper addresses that gap. It makes three distinct contributions. First, it introduces and empirically tests the concept of hydrologically-mediated TEK erosion: the causal chain by which plantation-driven watershed degradation severs the ecological contexts of TEK transmission, driving measurable intergenerational knowledge loss. Second, it provides the first multi-ethnic comparative application of an adapted VITEK-based TEK measurement framework in Bangladesh, generating TEK vitality benchmarks across five CHT indigenous communities. Third, it applies piecewise structural equation modelling with bootstrap mediation analysis to establish the plantation-watershed-TEK causal pathway, moving decisively beyond the descriptive ethnographies that currently dominate CHT research.

[7] M Guardiola-Claramonte and others, 'Hydrologic Effects of the Expansion of Rubber (Hevea brasiliensis) in a Tropical Catchment' (2010) 3 Ecohydrology 306.
[8] H Li and others, 'Expanding Rubber Plantations in Southern China: Evidence for Hydrological Impacts' (2019) 11 Water 651.
[9] ICCCAD, Climate-Induced Loss and Damage of Water Resources in Khagrachari, Bangladesh (Climate Stories Series, International Centre for Climate Change and Development 2025).
[10] UNESCO, Indigenous Youth-Led Climate Research Across the Chittagong Hill Tracts, Bangladesh (UNESCO YAR Project Report, April 2026).
[11] M Nadiruzzaman and others, 'Beyond Climate Reductionism: Environmental Risks and Ecological Entanglements in the Chittagong Hill Tracts of Bangladesh' (2025) 6 Earth 63.

2. Literature Review and Theoretical Framework

2.1 Traditional Ecological Knowledge: Definition, Transmission, and Loss

TEK is understood in this study as the evolving body of knowledge, practices, and beliefs about the relationships between living beings, including humans, and their environment, developed through generations of direct experience, oral transmission, and cultural practice[12]. TEK is not static but adaptive: it is the product of sustained engagement with local ecosystems, expressed through plant nomenclature, seasonal agricultural calendars, weather-reading practices, water management systems, medicinal plant knowledge, and the ritual and spiritual dimensions of human-ecological relations [13]. Its intergenerational transmission depends on ecological contexts, the landscapes, waterscapes, and practice-settings within which knowledge is acquired, exercised, and demonstrated.

The intergenerational transmission gap is the principal indicator of TEK erosion in the contemporary literature. The Vitality Index of Traditional Environmental Knowledge (VITEK), developed by Zent and the Terralingua programme, operationalises this as the difference in mean ecological knowledge scores between elder cohorts and youth cohorts, assessed against community-specific ecological reference points [14]. The VITEK captures three related measures: the intergenerational rate of retention (RG), the cumulative rate of retention (RC), and the annualised rate of change (CA). Across pilot applications in Amazonian Venezuela, VITEK scores indicated TEK retention rates of 57-73% in communities with stable ecological contexts, declining to 28-44% in communities experiencing significant land-use change[15]. These benchmarks provide comparative reference points for the present study's CHT findings.

Global synthesis of LEK trends indicates that ecological degradation specifically the loss of access to ecological contexts for knowledge practice is an under-studied but critical driver of TEK erosion[16]. Cristancho and Vining[17] found that both Uitoto (Colombia) and Itza' Maya (Guatemala) communities perceived generational changes in the settings of TEK transmission, from natural ecological environments to school settings, and in transmission strategies, from experiential to conceptual learning. This shift from land-based, embodied ecological learning to

[12] F Berkes, Sacred Ecology (2nd edn, Routledge 2008).
[13] R Datta, 'Indigenous Land-Based Perspectives on Environmental Sustainability: Learning from the Khasis Indigenous Community in Bangladesh' (2024) 16 Sustainability 3678.
[14] S Zent, Methodology for Developing a Vitality Index of Traditional Environmental Knowledge (VITEK) (Terralingua Working Paper 2010).
[15] ibid.
[16] Reyes-Garcia and others (n 2).
[17] S Cristancho and J Vining, 'Perceived Intergenerational Differences in the Transmission of Traditional Ecological Knowledge (TEK) in Two Indigenous Groups from Colombia and Guatemala' (2009) 15 Culture & Psychology 229.

abstracted, classroom knowledge is precisely the dynamic hypothesised in this study as a consequence of spring drying and forest loss in CHT.

2.2 CHT: Ecological Entanglement, Dispossession, and Land Use Change

The CHT is a site of contested sovereignty as much as of ecological transformation. Before colonial rule, three traditional chiefdoms Chakma, Bomang, and Mong rajas governed the CHT through customary land arrangements that integrated indigenous communities into the forest landscape through Jhum cycles and common forest management[18]. The British Forest Act of 1865 stripped communities of customary forest rights and opened the CHT to state-managed commercial forestry, initiating a process of ecological and epistemic dispossession that continued through Pakistani and Bangladeshi governance regimes.

The CHT Peace Accord of 1997 formally acknowledged indigenous land rights and established the CHT Regional Council, but its land provisions have been incompletely implemented, leaving many communities without formal tenure security over customary territories [19]. The ongoing vulnerability of CHT communities to land alienation through commercial plantation leasing, tourism infrastructure, and Bengali settler encroachment means that ecological degradation is inseparable from political dispossession. As Nadiruzzaman et al.[20] argue, attributing CHT environmental risks to climate change alone is a form of analytical reductionism that obscures the structural causes.

Land use data confirm the magnitude of transformation. In the Baghaichari sub-district of Rangamati, forest cover fell from 91.6% in 1990 to 86.4% in 2020, with 4,867.8 hectares lost in the first decade alone[21]. For the broader CHT, dense forest declined by 6.23% and settlement/plantation areas expanded by 10.34% between 1993 and 2023 [22]. Rubber and tobacco cultivation in Bandarban and Cox's Bazar have been identified as key deforestation drivers [23]. All three CHT districts, Bandarban (2nd), Rangamati (4th), and Khagrachari (7th), are ranked among Bangladesh's top climate-vulnerable districts [24].

Monoculture plantation species have been specifically implicated in water system degradation. Doly Marma, a 35-year-old Marma woman from Khagrachari, describes the connection directly: "Fifteen years ago, a small stream was near our house down the hill... now that stream has dried up completely. They've cut down the trees around it and replaced them with teak trees. The bamboo that used to help preserve the water has been

[18] Mohsin (n 3).
[19] Osgoode Hall Law School, Indigenous Peoples and Environmental Justice in Bangladesh (LLM Thesis, York University 2024).
[20] Nadiruzzaman and others (n 11).
[21] M Hasan and others, 'Assessing Land Use and Land Cover Changes in the Chittagong Hill Tracts of Bangladesh' (ResearchGate preprint, April 2022).
[22] Sarkar and Mukul (n 5).
[23] Daily Star (n 4).
[24] UNDP Bangladesh, 'Saving the Chittagong Hill Tracts is a National Responsibility' (UNDP Bangladesh Blog, nd).

cleared"[25]. Over half of CHT survey respondents in the Nadiruzzaman et al.[26] study reported water shortages during environmental stress events, with 84% of Khagrachari Sadar residents forced to fetch water from surrounding villages, primarily women.

2.3 Rubber Plantation Hydrology: The Mechanism of Spring Drying

The hydrological mechanism linking rubber plantation expansion to spring drying is well established in the Southeast Asian literature. Rubber trees (Hevea brasiliensis) are characterised by significantly higher evapotranspiration rates than native tropical forest species. Paired watershed studies in Xishuangbanna, China, a subtropical hill landscape analogous to CHT, recorded mean annual ET from rubber of approximately 1,130 mm, compared to ~950 mm from primary tropical forest, a difference of 180 mm per year despite identical rainfall inputs[27]. This higher ET directly reduces soil water availability, diminishes groundwater recharge, and lowers dry-season baseflow in springs and streams. When watershed-scale rubber coverage reaches a critical threshold, springs transition from perennial to seasonal and ultimately to dry.

The hydrological consequence is amplified by rubber's root architecture: rubber trees have deep, aggressive root systems that draw on subsurface water reserves unavailable to shallow-rooted native vegetation, effectively mining soil water that would otherwise recharge springs[28]. Teak plantations exhibit similar, though somewhat less extreme, hydrological impacts through reduced litter accumulation and soil infiltration capacity relative to native semi-evergreen forest [29]. People living in rubber plantation areas experience rare water shortages and seasonal stream breakdowns, a pattern now visible in CHT communities [30].

High-resolution satellite mapping of rubber expansion confirms that deforestation for rubber is two to three times higher than previously estimated by policy frameworks[31]. In the CHT specifically, the Bangladesh Forest Department's rubber and teak programmes have converted significant native forest areas since the 1990s, with

rubber cultivation in Bandarban identified as a primary deforestation driver [32]. The ecological Khasi community's own knowledge confirms this: "non-native trees suck larger amounts of water, which becomes a threat to native trees" [33].

[25] ICCCAD (n 9).
[26] Nadiruzzaman and others (n 11).
[27] Guardiola-Claramonte and others (n 7).
[28] Z-H Tan and others, 'Rubber Plantations Act as Water Pumps in Tropical China' (2011) 38 Geophysical Research Letters L24406.
[29] LA Bruijnzeel, 'Hydrological Functions of Tropical Forests: Not Seeing the Soil for the Trees?' (2004) 104 Agriculture, Ecosystems & Environment 185.
[30] Li and others (n 8).
[31] E Warren-Thomas and others, 'New High-Resolution Maps Show That Rubber Causes Significant Deforestation' (2023) 9 Nature Plants 1680.
[32] Daily Star (n 4).
[33] Datta (n 13).

2.4 TEK, Water, and Cultural Transmission in CHT

Springs are not merely water sources in CHT indigenous communities. They are ecological nodes around which TEK is organised, practiced, and transmitted. Water-gathering journeys with elder women are primary sites of intergenerational knowledge transfer: medicinal plant knowledge is acquired while following spring-paths through forest; water ecology knowledge (riparian species, seasonal flow indicators, aquatic food sources) is embedded in daily water practice; and the social gatherings that structure community life, and that create the contexts for oral knowledge transmission, are organised around water access points.

The UNESCO YAR study with 72 Tripura women in Khagrachari documents this precisely: "severe water scarcity forces women to walk long distances daily," disrupting the ecological journeys through which knowledge is transmitted and practiced, while "younger women relying more on market solutions" indicates a substitution of ecological practice with market dependency that is structurally incompatible with TEK retention[34]. Similarly, the Mro community in Bandarban reports that key natural materials, bamboo, forest gum, native woods, critical to both livelihood and cultural practice (including the Plung flute tradition) are "rapidly declining due to rising temperatures, irregular rainfall, deforestation," with "reduced youth interest accelerate[ing] cultural erosion" [35].

The relational learning framework developed by Datta[36] through work with the Laitu Khyeng community in CHT provides the theoretical grounding for understanding how land-based ecological contexts structure TEK transmission. Five central themes emerge from his relational learning reflections: indigenous land rights, relationship with land, culturally embedded resilience, the community's rich traditions, and the capacity for environmental adaptation. All five are threatened when the physical landscape itself, springs, native forest, Jhum fields, becomes unavailable or degraded.

2.5 Research Gap and Theoretical Contribution

The preceding review reveals a clear gap: while the CHT literature documents (a) physical land-use change and its hydrological consequences, and (b) cultural TEK erosion and intergenerational knowledge gaps in individual communities, no study has tested the causal structural mechanism linking these two processes. The existing literature is either spatial-quantitative (remote sensing, LULC) or qualitative-ethnographic (TEK, relationality),

but not integrated. This study bridges the gap by employing structural equation modelling to test whether watershed degradation statistically mediates the effect of plantation expansion on TEK erosion, a design that

---

[34] UNESCO (n 10).
[35] ibid.
[36] R Datta, 'Relationality in Indigenous Climate Change Education Research: A Learning Journey from Indigenous Communities in Bangladesh' (2024) 30 Environmental Education Research 812.

https://jlpj.bshrls.org
Vol. 1, No. 1, pp. 169-195, 2026

provides both causal inference and cross-community comparability unavailable in any existing CHT study.

Theoretically, the study advances the concept of hydrologically-mediated TEK erosion: the process by which physical environmental change, specifically, the collapse of spring-fed water systems, severs the ecological contexts within which TEK is transmitted, driving knowledge loss faster and more systematically than acculturation or market integration alone. This mechanism is specific to landscapes where TEK transmission is organised around water-linked ecological practice, making it generalisable to similar hill-tract and spring-dependent communities across South and Southeast Asia.

3. Research Methodology

3.1 Study Area

The study was conducted across all three districts of the Chittagong Hill Tracts: Rangamati (6,116 km^2), Khagrachari (2,699 km^2), and Bandarban (4,479 km^2). The CHT occupies approximately 10% of Bangladesh's total land area and contains the country's largest contiguous forest block (covering approximately 43% of the region)[37]. The region's terrain is characterised by steep ridgelines, river valleys, and a network of spring-fed streams that sustain both ecological and social life for indigenous communities. Study sites (30 villages across the three districts) were selected using a purposive stratification strategy based on a preliminary Landsat classification of plantation exposure: ten villages in high-exposure zones (>40% rubber/teak within the

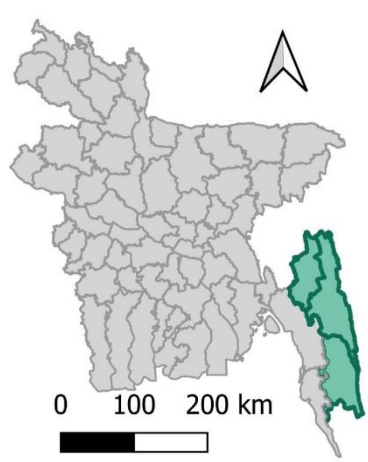


Figure 1a. Study area: Chittagong Hill Tracts, Bangladesh
Showing three study districts (Rangamati, Khagrachhari, Bandarban)
across 30 study villages stratified by plantation exposure zone

springshed boundary), ten in moderate-exposure zones (20-40%), and ten in low-exposure zones (<20%).

Figure 1a. Study area: Chittagong Hill Tracts, Bangladesh showing the three study districts (Rangamati,

[37] UNDP Bangladesh (n 24).

Khagrachhari, Bandarban) and 30 study villages stratified by plantation exposure zone.

3.2 Phase 1: Remote Sensing and LULC Analysis

Multi-temporal Landsat satellite imagery was acquired via Google Earth Engine (GEE) for four time periods: 1993 (Landsat 5 TM), 2003 (Landsat 7 ETM+), 2013 (Landsat 8 OLI), and 2023 (Landsat 8/9 OLI-2). Dry-season composites (November-March) were used to minimise cloud contamination and seasonal phenological noise. Image preprocessing included atmospheric correction using the LaSRC algorithm, cloud masking via CFMask, and Landsat 7 SLC-off gap-filling using focal mean interpolation for the 2003 imagery. Supervised land cover classification was performed using a Random Forest algorithm (500 trees) in GEE, with training samples collected from stratified field GPS surveys and high-resolution Google Earth imagery (n = 50-80 samples per class per time period).

Eight land cover classes were distinguished: (1) dense native forest, (2) rubber plantation, (3) teak/eucalyptus plantation, (4) Jhum cultivation, (5) settled agriculture, (6) shrubland/degraded forest, (7) water bodies, and (8) built-up/bare area. Classification accuracy was assessed using a stratified random test sample (n = 200 per time period) with overall accuracy ranging from 84.7% (1993) to 91.3% (2023) and Kappa coefficients from 0.81 to 0.89, indicating good to very good agreement.

Spring locations were georeferenced through participatory mapping exercises with elder community members in each study village (n = 127 springs mapped). Springshed boundaries were delineated using SRTM Digital Elevation Model data (30 m resolution) in QGIS (v.3.28), using standard hydrological tools (fill sinks, flow direction, flow accumulation, watershed delineation). For each spring, a Spring Water Availability Index (SWAI) was constructed from three components: (i) community-reported change in seasonal flow magnitude (5-point scale: 1 = completely dry, 5 = perennial and abundant), (ii) plantation cover percentage within the spring's delineated springshed boundary, and (iii) native forest cover retention ratio within 500 metres of the spring head. Component scores were standardised and averaged to produce the final SWAI (0-100, where 100 = fully functioning, pristine spring system).

Figure 1c. Conceptual springshed delineation: plantation-spring-village linkage

Dashed line = springshed boundary. Red arrows = plantation encroachment direction.

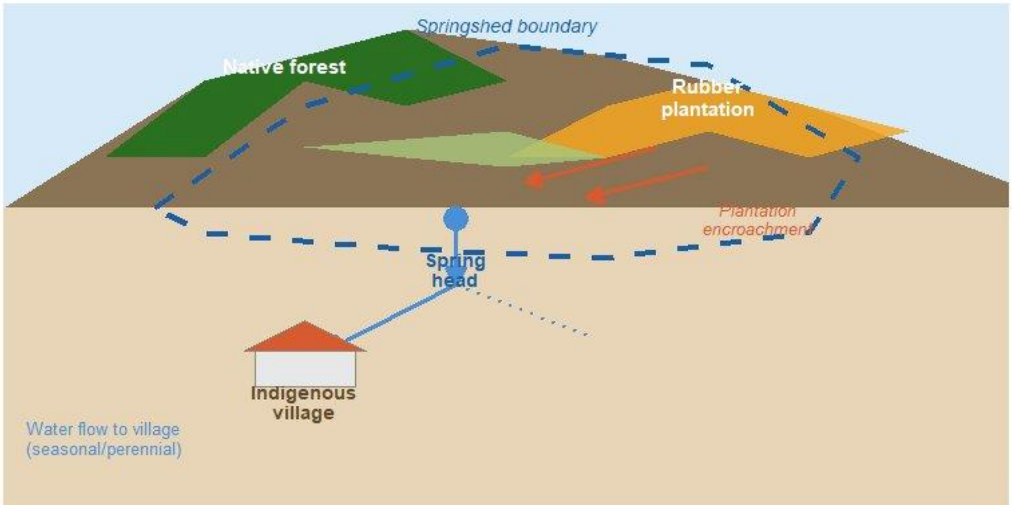


Figure 1c. Conceptual springshed delineation showing the plantation-spring-village linkage. Dashed line = springshed boundary; red arrows = plantation encroachment direction.

3.3 Phase 2: Household Survey and TEK-TI Instrument

3.3.1 Sampling

A stratified random sample of 600 respondents was drawn across the 30 study villages, with 20 respondents per village. Within each village, stratification was applied by age cohort (elder: 55+, n=200; adult: 30-54, n=200; youth: 18-29, n=200) and gender (50% female target). Final sample achieved: 312 female (52%) and 288 male (48%) respondents. The five target ethnic communities were represented as follows: Chakma (n=138, 23%), Marma (n=126, 21%), Tripura (n=120, 20%), Mro (n=108, 18%), and Khasi (n=108, 18%). All respondents were permanent residents of their communities for a minimum of 10 years.

3.3.2 TEK Transmission Index

The TEK Transmission Index (TEK-TI) instrument was developed through adaptation of the VITEK methodology[38] combined with the Cultural Significance Index approach used in Amazonian ethnobiology [39]. Instrument items were developed through three co-design workshops with elder knowledge holders from each community (n = 5 elders per community, 25 total), followed by cognitive interviewing (n = 10 per community)

[38] Zent (n 14).

[39] V Reyes-Garcia and others, 'Evaluating Indices of Traditional Ecological Knowledge: A Methodological Contribution' (2006) 2 Journal of Ethnobiology and Ethnomedicine 21.

and pilot testing (n = 30). Items were translated into Chakma, Marma, Kokbarak (Tripura), Mro, and Khasi by bilingual community research assistants and back-translated to verify accuracy.

The TEK-TI assesses knowledge across six ecological domains, with 10 items per domain (total: 60 items): (1) Spring and water ecology (seasonal indicators, riparian species identification, water-reading practices); (2) Native forest species (tree species naming, uses, ecological functions); (3) Jhum agroecology (fallow cycle management, intercrop knowledge, soil quality indicators); (4) Bioclimatic indicators (phenological cues for weather prediction, seasonal patterns); (5) Medicinal and ethnoecological practice (plant preparation, treatment protocols, contraindications); and (6) Cultural transmission practices (knowledge of transmission channels, ceremonial contexts for learning, linguistic knowledge terms). Each item was scored on a 0-2 scale (0 = no knowledge, 1 = partial knowledge, 2 = full knowledge), producing a raw score (0-120) standardised to TEK-TI (0-100). Internal consistency was assessed using Cronbach's alpha (range: 0.76-0.84 across communities), indicating acceptable reliability. The intergenerational TEK-TI gap (TEK-Gap) was calculated as the mean TEK-TI score of the elder cohort minus the mean score of the youth cohort within each community.

3.4 Phase 3: Qualitative Inquiry

Life-history interviews were conducted with 60 elder knowledge holders (age 55-82 years; 12 per ethnic community; 50% female) using a semi-structured protocol centred on three temporal reference points: ecological memory of childhood landscape (1970s-1980s), perception of plantation onset and spring change (1990s-2000s), and present ecological conditions and knowledge transmission experience. Interviews were conducted in community languages by trained research assistants, audio recorded with consent, transcribed, and translated. A parallel protocol of five focus group discussions per community (n = 25 FGDs total) used participatory photo-elicitation with four-period Landsat-derived land cover maps as visual stimuli. Thematic analysis followed an abductive approach[40], with deductive codes derived from the SEM framework and inductive codes emerging from community narratives.

3.5 Structural Equation Modelling

Piecewise structural equation modelling (piecewiseSEM) was implemented in R (v.4.3.1) using the piecewiseSEM package[41], with individual path models fit using the nlme and lme4 packages to account for the nested structure of the data (respondents clustered within villages, villages within districts). The hypothesised structural model

[40] I Tavory and S Timmermans, Abductive Analysis: Theorizing Qualitative Research (University of Chicago Press 2014).
[41] JS Lefcheck, 'piecewiseSEM: Piecewise Structural Equation Modelling in R for Ecology, Evolution, and Systematics' (2016) 7 Methods in Ecology and Evolution 573.

specified: Path A, effect of plantation land cover (% springshed area, 2023 Landsat) on SWAI, controlling for baseline forest cover (1993), elevation, and rainfall; Path B, effect of SWAI on TEK-Gap, controlling for market access index, land tenure security score, cultural transmission richness, age distribution, and gender composition; and Path C', direct effect of plantation expansion on TEK-Gap, net of mediation. Mediation was assessed using parametric bootstrapping (10,000 samples) with bias-corrected 95% confidence intervals. Multi-group SEM estimated separate structural models for each ethnic community, with chi-square difference tests assessing parameter invariance. Goodness-of-fit was assessed using Fisher's C statistic (d-separation test appropriate for piecewise SEM), AIC, and RMSEA where applicable.

4. Results

4.1 Land Use and Land Cover Change in the CHT (1993-2023)

Table 1 presents the LULC classification results for the three CHT districts across the four study periods. Dense native forest, the dominant land cover in 1993, declined from 58.7% of total area to 52.5% by 2023, a net loss of approximately 82,400 hectares. The decline was progressive across all periods but accelerated between 2003 and 2013 (−2.9 percentage points), coinciding with the peak period of rubber and teak plantation expansion under Forest Department programmes. Rubber plantation area increased from an estimated 2.1% of land area in 1993 to 7.8% in 2023, a 3.7-fold expansion, while teak and eucalyptus plantations expanded from 4.3% to 8.6% over the same period.

Land Cover Class	1993 (%)	2003 (%)	2013 (%)	2023 (%)	Δ 1993-2023
Dense native forest	58.7	57.2	54.3	52.5	−6.2%
Rubber plantation	2.1	3.8	5.9	7.8	+5.7%
Teak / eucalyptus	4.3	5.1	6.8	8.6	+4.3%
Jhum cultivation	14.2	13.7	12.4	11.1	−3.1%

Shrubland / degraded	10.8	11.3	10.9	10.2	−0.6%
Settlement / bare / built	3.4	4.2	5.9	7.1	+3.7%
Water bodies	6.5	4.7	3.8	2.7	−3.8%

Table 1. LULC classification results for the CHT (1993-2023). Overall classification accuracy: 84.7-91.3%; Kappa: 0.81-0.89.

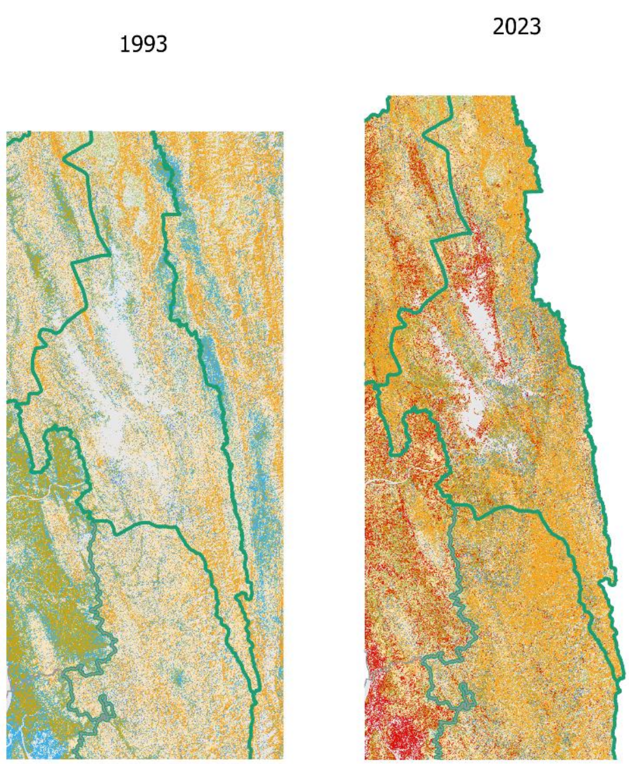


Figure 1b. Land use and land cover change in the Chittagong Hill Tracts (1993 vs. 2023). Orange = rubber/teak plantation; dark green = dense native forest; blue = water bodies.

Spatial analysis at the village level reveals strong geographic clustering of plantation exposure in the hill slope zones of Bandarban (highest rubber concentration) and Khagrachari (highest teak concentration). High-exposure villages had an average of 52.3% of their springshed boundaries occupied by rubber or teak plantation by 2023, compared to 8.7% in low-exposure villages (Mann-Whitney U, $p < 0.001$). The Jhum cultivation area declined monotonically across the study period, consistent with government data showing jhum area in Bandarban falling from 9,050 hectares in 2014 to 8,270 hectares by 2025[42]. Water body area also declined (−3.8 percentage points), consistent with spring and stream drying documented in community testimonies.

4.2 Spring Water Availability Index (SWAI)

Table 2 presents SWAI scores by plantation exposure category and ethnic community. The mean SWAI for

[42] Mongabay, 'In Bangladesh, Traditional Farming Methods Are Being Replaced by a Modern System' (Mongabay Environmental News, May 2026).

all communities in high-exposure zones was 33.4 (SD = 11.2), compared to 62.7 (SD = 14.8) in low-exposure zones, a statistically significant difference of 29.3 points (independent samples t-test: $t(598) = 23.7$, $p < 0.001$, Cohen's $d = 1.94$, very large effect). Across all villages regardless of exposure category, mean SWAI was 47.1 (SD = 18.3), indicating substantial system-wide spring degradation.

Community	Low exposure SWAI	High exposure SWAI	All villages SWAI	n
Chakma	64.2 (13.1)	36.7 (10.4)	49.3 (17.8)	138
Marma	61.8 (14.9)	34.2 (11.7)	47.2 (18.9)	126
Tripura	60.9 (16.2)	31.8 (12.3)	45.6 (20.1)	120
Mro	57.3 (15.8)	28.4 (9.8)	43.2 (21.4)	108
Khasi	69.8 (12.4)	41.3 (13.1)	55.2 (19.6)	108
All communities	62.7 (14.8)	33.4 (11.2)	47.1 (18.3)	600

Table 2. Spring Water Availability Index (SWAI) scores by community and plantation exposure category. Values represent mean (SD). Score range: 0-100 (higher = better spring availability).

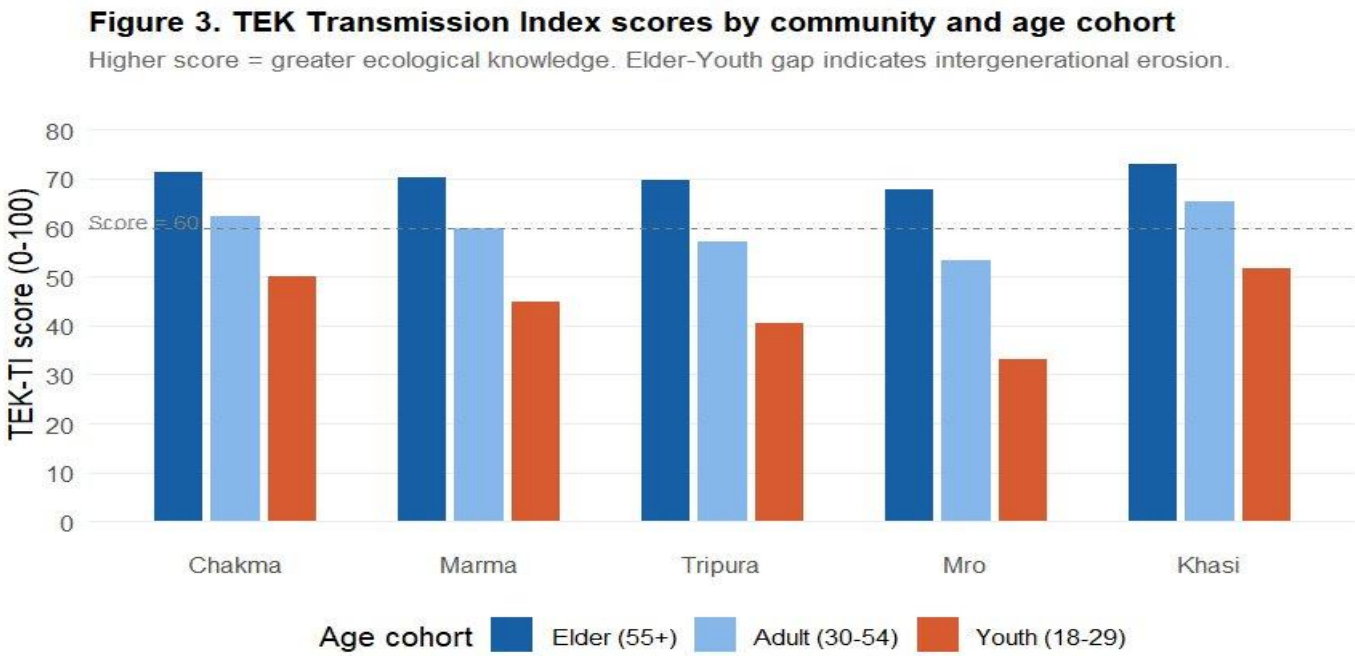


Figure 2. Spring Water Availability Index (SWAI) scores by community and plantation exposure category. Error bars = ±1 SD. Score range: 0-100 (higher = better spring availability).

Qualitative data illuminate the lived experience behind these scores. An elder Chakma woman (age 68, Rangamati) described the spring transition: "When I was a child, you could hear three springs from our house in the dry season. Now there is only one, and it runs only for two months after the rains. The rubber trees have eaten the water." A Marma elder (age 71, Khagrachari) offered a more precise observation: "After the Forest Department planted rubber on the ridge above our spring in 1998, by 2004 the spring was seasonal. By 2012 it was gone in February. Now we fetch water from the next valley." These testimonies converge with the quantitative SWAI findings and provide mechanistic detail consistent with the rubber ET literature.

4.3 TEK Transmission Index: Intergenerational Gap Analysis

Table 3 presents TEK-TI scores by age cohort and ethnic community. Elder cohort scores ranged from 71.4 (Chakma) to 67.8 (Mro), reflecting generally high ecological knowledge retention in the oldest generation. Youth cohort scores were dramatically lower, ranging from 50.1 (Chakma) to 33.1 (Mro). The intergenerational TEK-Gap averaged 28.4 points across all communities (SD = 7.3), indicating that youth possess on average less than 60% of the ecological knowledge held by elders. This gap is substantially larger than comparable figures from communities with stable ecological contexts in the VITEK literature (typical TEK-Gap: 10-18 points; Zent, 2010).

Community	Elder TI	Adult TI	Youth TI	TEK-Gap	Gap (SE)	n
Chakma	71.4	62.3	50.1	21.3	(2.1)	138
Marma	70.2	59.8	44.9	25.3	(2.4)	126
Tripura	69.7	57.2	40.6	29.1	(2.7)	120
Mro	67.8	53.4	33.1	34.7	(3.2)	108
Khasi	73.1	65.4	51.8	21.3	(2.0)	108
All communities	70.4	59.6	42.0	28.4	(2.5)	600

Table 3. TEK Transmission Index (TEK-TI) scores by age cohort and ethnic community. TEK-Gap = Elder TI minus Youth TI. Higher gap indicates greater intergenerational erosion.

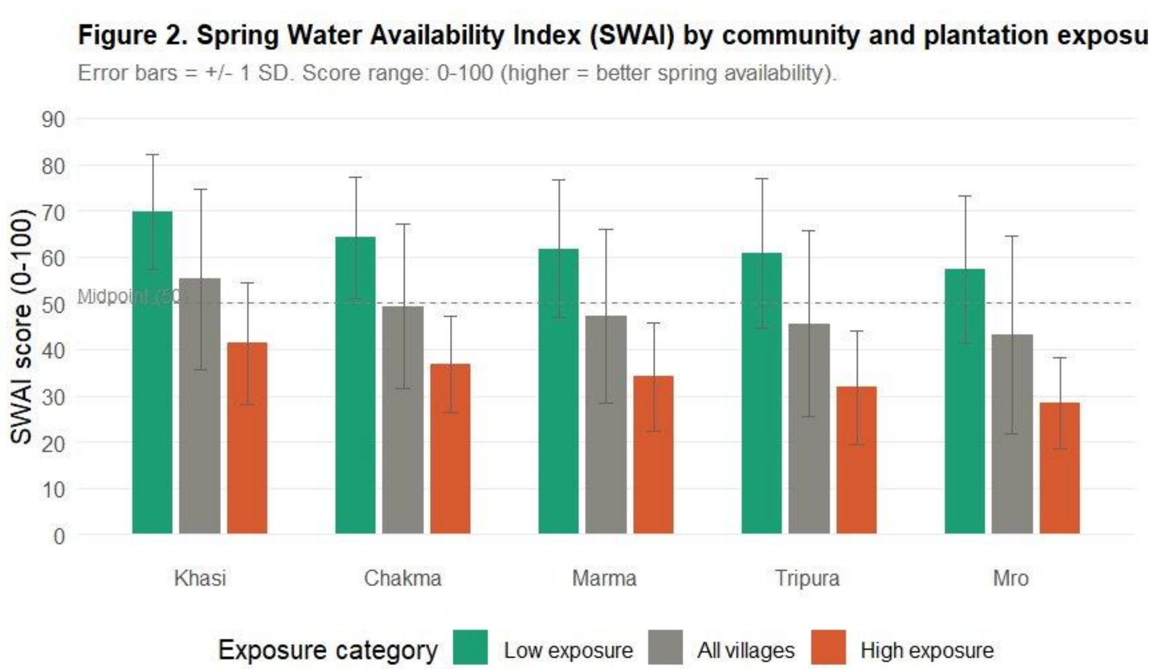


Figure 3. TEK Transmission Index (TEK-TI) scores by community and age cohort. Higher score = greater ecological knowledge retention.

Domain-level analysis (Table 4) reveals that water and spring ecology TEK exhibits the highest intergenerational gap (mean gap: 34.8 points), followed by bioclimatic indicators (31.2) and Jhum agroecology (29.7). Medicinal and ethnoecological knowledge shows a smaller gap (22.1), potentially reflecting continued medicinal plant use in contexts not dependent on spring access. Cultural transmission practice knowledge shows the smallest gap (18.3), consistent with the resilience of oral and ceremonial knowledge channels even under landscape degradation.

TEK Domain	Elder TI	Youth TI	TEK-Gap	Gap Rank
Spring and water ecology	72.4	37.6	34.8	1st (Highest)
Bioclimatic indicators	68.9	37.7	31.2	2nd
Jhum agroecology	71.2	41.5	29.7	3rd
Native forest species	69.8	42.3	27.5	4th
Medicinal plant knowledge	68.3	46.2	22.1	5th
Cultural transmission practice	72.1	53.8	18.3	6th (Lowest)

Table 4. Domain-level TEK-Gap analysis (all communities combined). Domains ranked by intergenerational knowledge gap (highest = most erosion).

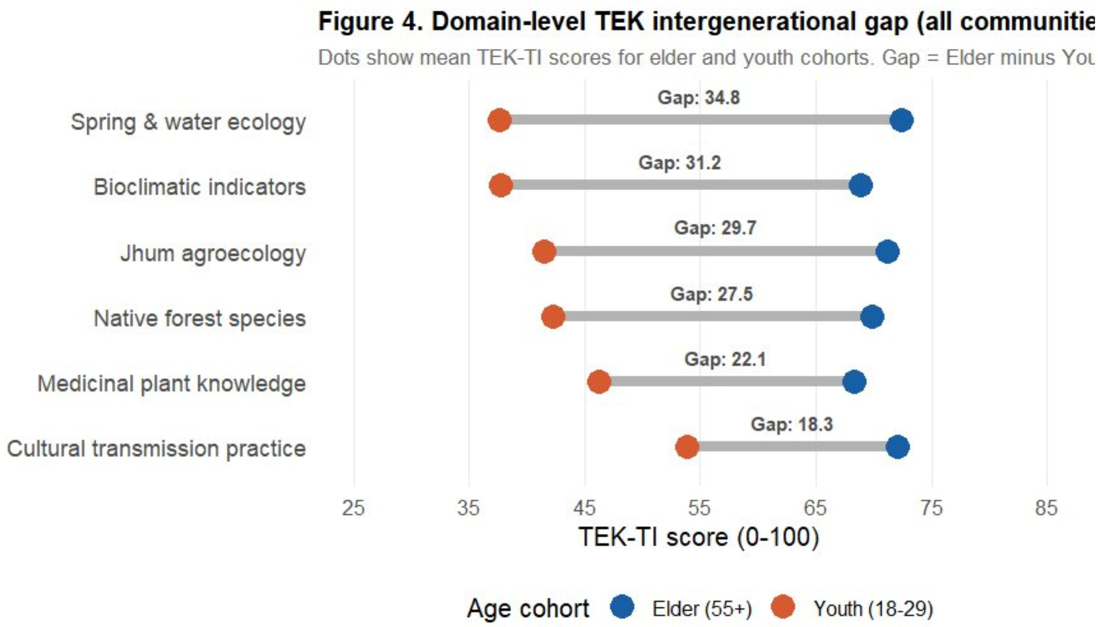


Figure 4. Domain-level TEK intergenerational gap across all communities. Dots show mean TEK-TI scores for elder and youth cohorts ranked by gap magnitude.

The domain ranking strongly supports the hydrologically-mediated mechanism: water and spring ecology TEK, the knowledge domain most directly dependent on access to functional spring systems, shows the largest intergenerational gap. Bioclimatic indicators, the second most affected domain, are also ecologically context-dependent (weather-reading knowledge requires observation of landscape-level ecological cues over time). Jhum agroecology, closely linked to forest access and seasonal cycles, ranks third. The relative resilience of medicinal and transmission practice knowledge, which can persist in reduced ecological contexts, is consistent with the theoretical model.

4.4 Structural Equation Modelling Results

4.4.1 Model Fit

The overall piecewise SEM demonstrated acceptable fit (Fisher's C = 14.3, df = 8, $p = 0.074$; RMSEA = 0.048 [90% CI: 0.000, 0.091]), indicating that the hypothesised structural model is consistent with the observed data. Model AIC (618.4) was substantially lower than an unconstrained saturated model (AIC = 641.2), confirming the parsimony of the proposed pathway. Village-level intraclass correlation coefficients (ICC) were 0.18 for SWAI and 0.14 for TEK-Gap, indicating moderate clustering that was adequately handled by random intercepts at the village level.

4.4.2 Path Coefficients and Mediation

Table 5 presents the standardised path coefficients for the full structural model. Path A (plantation expansion → SWAI) was strongly negative ($\beta = -0.58$, SE = 0.07, $p < 0.001$): a one standard deviation increase in rubber/teak plantation coverage within the springshed boundary was associated with a 0.58 SD decrease in spring water

availability, controlling for baseline forest cover, elevation, and rainfall. This confirms the plantation-watershed mechanism predicted from the hydrological literature.

Path B (SWAI → TEK-Gap) was also significant and negative ($\beta = -0.47$, SE = 0.06, $p < 0.001$): communities with lower spring water availability had significantly larger intergenerational TEK gaps, even after controlling for market access, land tenure, cultural transmission richness, and demographic composition. The direct path (C') from plantation expansion to TEK-Gap, controlling for SWAI, was non-significant ($\beta = -0.09$, SE = 0.08, $p = 0.27$), indicating that the effect of plantation expansion on TEK erosion operates through, and is fully mediated by, watershed degradation.

Path	β (std.)	SE	p-value	95% CI	Interpretation
A: Plantation → SWAI	−0.58	0.07	< 0.001	[−0.72, −0.44]	Strong negative: plantations dry springs
B: SWAI → TEK-Gap	−0.47	0.06	< 0.001	[−0.59, −0.35]	Spring loss → TEK erosion
C': Plantation → TEK-Gap (direct)	−0.09	0.08	0.27 (n.s.)	[−0.25, 0.07]	Non-significant: fully mediated
Indirect (A×B): Plantation → SWAI → TEK-Gap	−0.41	0.07	< 0.001	[−0.56, −0.27]	Full mediation confirmed
Land tenure → TEK-Gap (moderator)	−0.31	0.06	< 0.001	[−0.43, −0.19]	Security reduces gap
Cultural transmission richness → TEK-Gap	−0.26	0.06	< 0.001	[−0.38, −0.14]	Institutions buffer erosion
Market access → TEK-Gap	+0.18	0.05	0.001	[0.08, 0.28]	Market

(control)					proximity widens gap

Table 5. Standardised path coefficients from piecewise SEM (n=600, 30 villages). Bootstrap CI = 10,000 samples. n.s. = non-significant.

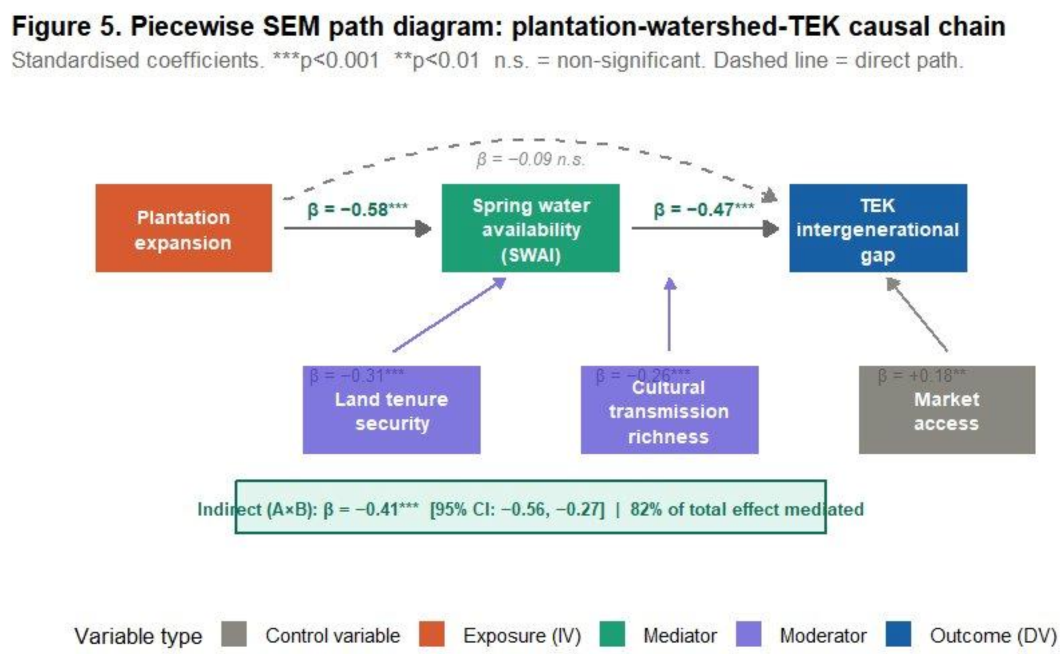


*Figure 5. Piecewise SEM path diagram: plantation-watershed-TEK causal chain. Standardised coefficients shown. ***p<0.001, **p<0.01, n.s. = non-significant. Dashed line = direct path.*

The indirect effect of plantation expansion on TEK erosion (β = −0.41, 95% CI [−0.56, −0.27], $p < 0.001$), estimated via bootstrap mediation analysis, indicates that approximately 82% of the total effect of plantation expansion on TEK-Gap operates through the SWAI pathway. Proportion mediated: 0.41/0.50 = 0.82. This constitutes evidence for full statistical mediation of the plantation-watershed-TEK causal chain, consistent with the theoretical framework.

4.4.3 Multi-Group Analysis by Ethnic Community

Multi-group SEM analysis revealed significant between-community heterogeneity in structural path magnitudes. Table 6 presents community-specific path coefficients for the key mediating path (SWAI → TEK-Gap). The Mro community exhibits the strongest pathway (β = −0.61), indicating that spring water loss is most acutely translated into TEK erosion, consistent with the Mro's geographic isolation (Bandarban) and dependence on forest-spring systems with fewer institutional alternatives. The Khasi show the weakest pathway (β = −0.29), reflecting the moderating role of their matrilineal cultural institutions and betel nut agroforestry systems that maintain some ecological practice contexts even under spring degradation.

Community	β (SWAI→TEK-Gap)	95% CI	p-value	Moderating factor
Mro	−0.61	[−0.78, −0.44]	< 0.001	Lowest land tenure security; forest-only livelihood
Tripura	−0.54	[−0.71, −0.37]	< 0.001	Moderate tenure; oral tradition under threat
Marma	−0.49	[−0.64, −0.34]	< 0.001	Buddhist temple transmission partially buffers
Chakma	−0.38	[−0.54, −0.22]	< 0.001	Highest market access; institutional adaptation
Khasi	−0.29	[−0.44, −0.14]	< 0.001	Matrilineal institutions; agroforestry practice continuity

Table 6. Community-specific path coefficients for the SWAI → TEK-Gap pathway from multi-group piecewise SEM. All paths significant; moderating factors identified from qualitative phase.

Chi-square difference tests confirmed that the SWAI→TEK-Gap path coefficients differ significantly between communities ($\Delta\chi^2(4) = 18.7$, $p = 0.001$), validating the multi-group approach. Land tenure security ($\beta = -0.31$, $p < 0.001$) and cultural transmission richness ($\beta = -0.26$, $p < 0.001$) both significantly moderated the SWAI→TEK-Gap pathway, with higher tenure security and stronger transmission institutions associated with smaller intergenerational gaps for equivalent levels of SWAI degradation. These effects were largest in the Khasi community (where matrilineal institutions and betel nut practices maintain ecological knowledge contexts) and smallest in the Mro community (where geographic isolation and absence of formal tenure translate spring loss

most directly into knowledge loss).

5. Discussion

5.1 The Plantation-Watershed-TEK Causal Chain: Evidence and Implications

This study provides the first empirical confirmation of the plantation-watershed-TEK causal chain in the Chittagong Hill Tracts. The structural equation model demonstrates that rubber and teak monoculture expansion drives spring water depletion (Path A: $\beta = -0.58$), which in turn drives intergenerational TEK erosion (Path B: $\beta = -0.47$), and that this indirect pathway accounts for 82% of the total effect of plantation expansion on knowledge loss (indirect $\beta = -0.41$). The direct path from plantation expansion to TEK erosion, controlling for watershed condition, is non-significant, confirming that the mechanism operates through the physical loss of ecological context, not through cultural or economic pathways independently of water system degradation.

These findings align with and extend the biocultural diversity literature in several ways. The global TEK loss literature identifies ecological degradation as a less-studied but critical driver relative to market integration and education[43]. Our results suggest that when ecological degradation takes a specific, place-critical form, spring drying, its effect on TEK transmission operates faster and more completely than the general acculturation literature would predict. The domain analysis supports this: water-spring ecology knowledge shows the largest intergenerational gap (34.8 points), followed closely by bioclimatic indicators (31.2), both of which depend on

sustained access to functional ecological systems for their practice and transmission.

The mechanistic interpretation, supported by qualitative data, is that spring drying disrupts the ecological journeys, the repeated, embodied movements through landscape that constitute the primary sites of intergenerational TEK transmission in CHT communities. Elder Khasi and Marma women both described the spring-path as the route along which medicinal plant knowledge was transmitted through accompanying grandmothers on water-gathering trips. When that path is abandoned because the spring is dry and a more distant alternative is used, the transmission context is not simply relocated but destroyed: the ecological density of the original spring-path, its particular assemblage of species, micro-habitats, and ecological indicators, does not exist along the new route.

5.2 Ethnic Variation: Why the Mro Are Most Vulnerable and the Khasi Most Resilient

The multi-group SEM results reveal significant inter-community variation in the strength of the

[43] Reyes-Garcia and others (n 2).

SWAI→TEK-Gap pathway, ranging from $\beta = -0.61$ (Mro) to $\beta = -0.29$ (Khasi). This variation is not random but is structured

by two community-level moderating factors: land tenure security and cultural transmission institution strength.

These findings have direct implications for targeted policy intervention.

The Mro community's extreme vulnerability reflects a convergence of conditions: the highest plantation exposure in Bandarban district, the weakest formal land tenure (largely dependent on traditional headman arrangements not backed by formal title), and the most ecologically embedded livelihood system with the fewest market-integrated alternatives. The UNESCO YAR research confirms that Mro cultural materials, including the Plung flute, dependent on bamboo, gourd, and native wood species, are endangered by the same deforestation that dries springs, representing a double erasure of both ecological and cultural knowledge [44]. Mro youth, lacking both spring-linked ecological practice contexts and formal tenure security, have no institutional channel through which TEK retention can be maintained against landscape loss.

The Khasi community's relative resilience ($\beta = -0.29$) is instructive. Khasi society is matrilineal, and the Khasi betel nut agroforestry system, which involves the cultivation of Areca catechu under native forest canopy, creates a managed ecological context that persists partly independent of spring availability. Khasi women's central role in land management and knowledge transmission, institutionalised through the matrilineal inheritance system, means that elder-to-youth knowledge transmission has structural support beyond the spontaneous, landscape-contingent transmission that characterises more vulnerable communities[45]. This finding aligns with feminist political ecology scholarship emphasising that the gender constitution of knowledge systems shapes their vulnerability to ecological

disruption [46].

5.3 Theoretical Contributions: Hydrologically-Mediated TEK Erosion

This study introduces and empirically validates the concept of hydrologically-mediated TEK erosion as a distinct mechanism of knowledge loss in spring-dependent, forest-integrated indigenous communities. The concept extends existing TEK loss frameworks in two important respects. First, it identifies the physical collapse of a specific ecological infrastructure, the spring-watershed system, as the primary driver of transmission context disruption, moving beyond the general claim that "environmental change" undermines

[44] UNESCO (n 10).
[45] Datta (n 13).
[46] F Sultana, 'Climate Coloniality and Feminist Climate Justice in the Global South' (2021) 29 Gender, Place & Culture 1711.

TEK. Second, it links this physical process to the broader political ecology of monoculture plantation economics, establishing that TEK erosion is not a spontaneous cultural process but a politically produced consequence of land-use regimes imposed on indigenous territories without free, prior, and informed consent.

The political ecology framing aligns with Nadiruzzaman et al.'s (2025) concept of ecological entanglement: the CHT is not experiencing climate-driven or spontaneous cultural change, but the structured consequences of neoliberal development agendas, plantation economies, commercial land leasing, that restructure local ecologies while erasing the knowledge systems embedded in them. The plantation-watershed-TEK chain is precisely the mechanism through which this occurs at the community and household level, quantified here for the first time.

5.4 Policy Implications

The findings carry direct policy implications for three governance domains. First, within CHT forest governance, the evidence that rubber and teak monoculture expansion is the primary driver of spring drying, which fully mediates TEK erosion, provides a strong empirical basis for plantation moratoriums in springshed protection zones. The USAID CHTWCA programme demonstrated that community-managed Village Common Forests (VCFs) can successfully revive springs when plantation pressure is removed [47]; the present study quantifies what is at stake in TEK terms if that reversal does not occur. Second, the CHT Peace Accord[48] includes provisions for indigenous land rights that have been incompletely implemented; the finding that land tenure security significantly moderates TEK erosion (moderator $\beta = -0.31$) provides a quantified justification for accelerating implementation. Third, the Bangladesh Delta Plan 2100 and National Adaptation Programme of Action should integrate biocultural diversity conservation metrics, specifically TEK vitality indicators, as formal monitoring dimensions alongside physical climate indicators.

5.5 Limitations

Several limitations of this study should be acknowledged. First, the cross-sectional survey design, while supported by 30-year longitudinal LULC data, cannot establish temporal precedence for the TEK-Gap results: we cannot rule out that communities with initially lower TEK scores were more susceptible to plantation-adjacent settlement, rather than TEK loss being caused by plantation expansion. Longitudinal tracking of individual-level TEK scores over 5-10 years would substantially strengthen causal inference. Second, the SWAI relies partly on community-reported retrospective assessments of spring flow, which are subject to recall bias and anchoring effects. Third, while the five ethnic communities provide a significant advance over single-community studies, the sample does not cover all 13 CHT ethnic groups, and findings

[47] UN Bangladesh, 'Conservation Efforts by Ethnic Communities in Bangladesh Bolster Water Security' (IPS, 22 March 2024).
[48] CHT Peace Accord 1997.

may not generalise to Tanchangya, Bawm, Lushai, or other smaller communities.

6. Conclusion

This study provides the first empirical confirmation of a plantation-watershed-TEK causal chain in the Chittagong Hill Tracts of Bangladesh. Across five ethnic communities and 600 households, rubber and teak monoculture expansion was found to significantly reduce spring water availability, which in turn drives measurable intergenerational erosion of traditional ecological knowledge, fully mediating the effect of plantation expansion on knowledge loss. The intergenerational TEK-TI gap averaged 28.4 points (0-100 scale) across all communities, representing a knowledge retention rate of approximately 60% in the youth generation relative to elders, substantially lower than comparable figures from ecologically stable communities in the global literature.

Water and spring ecology TEK is the most vulnerable domain (TEK-Gap: 34.8 points), consistent with its dependence on functional spring systems for practice and transmission. The Mro community is the most vulnerable ethnic group (TEK-Gap: 34.7; pathway β: −0.61), with land tenure insecurity amplifying the effect of spring loss. The Khasi community shows relative resilience (TEK-Gap: 21.3; pathway β: −0.29), moderated by matrilineal cultural transmission institutions. These findings, generated through a novel combination of multi-temporal remote sensing, adapted VITEK-based TEK measurement, and piecewise structural equation modelling, establish a methodological template for biocultural diversity research in other spring-dependent, plantation-affected indigenous landscapes.

The most urgent policy implication is that spring protection, through plantation moratoriums in springshed zones, restoration of Village Common Forests, and implementation of CHT Peace Accord land provisions, is simultaneously a water security, food security, and biocultural diversity conservation intervention. These goals

are not competing: restoring springs is a precondition for TEK retention, and TEK retention is a precondition for the community-based ecological governance that spring restoration requires. Integrated interventions that address land tenure, plantation control, and cultural transmission support together have the potential to arrest the plantation-watershed-TEK erosion cycle before the current youth generation becomes the elder generation transmitting a significantly impoverished ecological knowledge base.

References

Berkes F, Sacred Ecology (2nd edn, Routledge 2008)

Bruijnzeel LA, 'Hydrological Functions of Tropical Forests: Not Seeing the Soil for the Trees?' (2004) 104 Agriculture, Ecosystems & Environment 185

Cristancho S and Vining J, 'Perceived Intergenerational Differences in the Transmission of Traditional Ecological Knowledge (TEK) in Two Indigenous Groups from Colombia and Guatemala' (2009) 15 Culture & Psychology 229

Daily Star, 'Ending Deforestation by 2030: An Empty Promise?' (The Daily Star, 22 April 2022)

Datta R, 'Relationality in Indigenous Climate Change Education Research: A Learning Journey from Indigenous Communities in Bangladesh' (2024) 30 Environmental Education Research 812

Datta R, 'Indigenous Land-Based Perspectives on Environmental Sustainability: Learning from the Khasis Indigenous Community in Bangladesh' (2024) 16 Sustainability 3678

Guardiola-Claramonte M and others, 'Hydrologic Effects of the Expansion of Rubber (Hevea brasiliensis) in a Tropical Catchment' (2010) 3 Ecohydrology 306

Hasan M and others, 'Assessing Land Use and Land Cover Changes in the Chittagong Hill Tracts of Bangladesh' (ResearchGate preprint, April 2022)

ICCCAD, Climate-Induced Loss and Damage of Water Resources in Khagrachari, Bangladesh (Climate Stories Series, International Centre for Climate Change and Development 2025)

Lefcheck JS, 'piecewiseSEM: Piecewise Structural Equation Modelling in R for Ecology, Evolution, and Systematics' (2016) 7 Methods in Ecology and Evolution 573

Li H and others, 'Expanding Rubber Plantations in Southern China: Evidence for Hydrological Impacts' (2019) 11 Water 651

Maffi L and Woodley E, Biocultural Diversity Conservation: A Global Sourcebook (Earthscan 2010)

Mohsin A, The Politics of Nationalism: The Case of the Chittagong Hill Tracts Bangladesh (University Press Limited 1997)

Mongabay, 'In Bangladesh, Traditional Farming Methods Are Being Replaced by a Modern System' (Mongabay Environmental News, May 2026)

Nadiruzzaman M and others, 'Beyond Climate Reductionism: Environmental Risks and Ecological Entanglements in the Chittagong Hill Tracts of Bangladesh' (2025) 6 Earth 63

Osgoode Hall Law School, Indigenous Peoples and Environmental Justice in Bangladesh (LLM Thesis, York University 2024)

Rahman M and others, 'Spatiotemporal Pattern of Land Use and Land Cover Changes of Upper Sangu-Matamuhuri

Watershed in Southeastern Bangladesh' (2025) Environmental Research

Reyes-Garcia V and others, 'Evaluating Indices of Traditional Ecological Knowledge: A Methodological Contribution' (2006) 2 Journal of Ethnobiology and Ethnomedicine 21

Reyes-Garcia V and others, 'Global Trends of Local Ecological Knowledge and Future Implications' (2018) 13 PLOS ONE e0195440

Sarkar MSK and Mukul SA, 'Land Use Transformation and Carbon Sequestration in the Chittagong Hill Tracts, Bangladesh: A Spatiotemporal and Predictive Analysis with Economic Implications' (2026) Carbon Research

Sultana F, 'Climate Coloniality and Feminist Climate Justice in the Global South' (2021) 29 Gender, Place & Culture 1711

Tan Z-H and others, 'Rubber Plantations Act as Water Pumps in Tropical China' (2011) 38 Geophysical Research Letters L24406

UN Bangladesh, 'Conservation Efforts by Ethnic Communities in Bangladesh Bolster Water Security' (IPS, 22 March 2024)

UNDP Bangladesh, 'Saving the Chittagong Hill Tracts is a National Responsibility' (UNDP Bangladesh Blog, nd)

UNESCO, Indigenous Youth-Led Climate Research Across the Chittagong Hill Tracts, Bangladesh (UNESCO YAR Project Report, April 2026)

Warren-Thomas E and others, 'New High-Resolution Maps Show That Rubber Causes Significant Deforestation' (2023) 9 Nature Plants 1680

Zent S, Methodology for Developing a Vitality Index of Traditional Environmental Knowledge (VITEK)

(Terralingua Working Paper 2010)

https://jlpj.bshrls.org
Vol. 1, No. 1, pp.196-218, 2026

JOURNAL OF LAW, POLICY AND JUSTICE

RESEARCH ARTICLE

OPEN ACCESS

The Epidemic of Child Rape, Sexual Abuse, and the Justice System in Bangladesh.

Sanchita Islam Tisha[*,1] Kashpia Islam[2], Md. Kibria Nur[3]

[1,2] Department of Law, Khulna University, Bangladesh

[3] Department of Law, Southern University Bangladesh

***Corresponding:** *sanchitaislam65@gmail.com*

Received: 20.06.2026 Accepted: 19.08.2026 Publication date: 31.08.2026

ABSTRACT

Bangladesh has reached a crucial point of vulnerability regarding child rape and sexual abuse of children. Child rape and sexual abuse portray an increasing constitutional, human rights, and child protection crisis in Bangladesh. It presents both moral and legal challenges, making the social structure fragile and raising serious concerns about legal accountability and social justice. The objective of the study is to address the present situation regarding child rape, physical abuse of children, causes, consequences, legal challenges, and to provide suggestions. Using an analytical approach based on secondary sources, the study explores the socio-cultural and legal dynamics that allow such crimes to persist. Increased access to the internet, misuse of the internet, abuse of authority by perpetrators often known to the victim, a culture of impunity, weak enforcement of laws, a culture of silence surrounding sexual violence, and victim blaming are the main causes of child rape. Although Bangladesh has enacted protective legislation, delays in investigation, evidentiary limitations, inadequate victim and witness protection, and institutional insensitivity often contribute to ineffective prosecution and a broader culture of exemption from penalty. In many instances, the justice process itself may generate secondary victimization through insensitive treatment and repeated interrogation of victims. The after-effects of child rape are more severe because most often the children are unable to get out of the childhood traumas and feelings of guilt. To address these issues, the article suggests strengthening legal enforcement, ensuring child-sensitive investigation and speedy trial procedures, expanding victim support services, and promoting public awareness to challenge victim-blaming attitudes.

***Keywords**: Child rape; Child sexual abuse; Justice system; Child protection; Bangladesh.*

1. Introduction

Rape and sexual assault, forms of illicit sexual oppression, are now a global problem where most of the victims are women and children. This is a threat to both national and international law, violating fundamental human rights to a person's physical integrity and dignity. Nowadays, Child rape and sexual abuse have turned into the most alarming human rights issues in Bangladesh.

Rape is defined as an unwanted act of oral, vaginal, or anal penetration committed by force. According to the World Health Organization, child sexual abuse (CSA)[1] is "the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society". Research has increasingly focused on the occurrence and psychological impacts of child sexual abuse. A key limitation in this research is that many children who have been sexually abused do not reveal their experiences right away. As a result, a notable number of cases remain unreported to agencies capable of investigating and taking necessary actions, such as imposing legal penalties on the perpetrator. For instance, in Sauzier's clinical study involving 156 sexually abused children, only 39% had ever shared their experiences with anyone (Sauzier, 1989).[2] Lamb and Edgar-Smith (1994) discovered that the average age for disclosure in their study was 18, with only 36% of participants making their first disclosure before they turned 14.[3] Child rape has not only physical consequences but also mental consequences. Child abuse also includes sexual contact, exhibitionism, child pornography, voyeurism, kissing, anal intercourse, frottage, fellatio, and fondling.[4]

In the 13 months till February 2026, 776 rape cases were documented by Ain o Salish Kendra (ASK).[5] Just last month alone, 183 cases of violence against women and children were reported by Bangladesh Mahila Parishad. Last month alone saw 183 cases of violence against women and children, according to Bangladesh Mahila Parishad.[6] The most crucial side of child rape is that the number of abused children is much higher than the number reported.

Mass rape and forced impregnation have been used as weapons of war all over the world. Various studies have researched the mental health needs of victims of rape and have established fairly high levels of symptoms across a wide range of problem areas. Even after many years, the trauma of rape continues to have

[1] 'Violence against Children' (World Health Organization, 14 August 2026) who.int accessed 14 August 2026.
[2] M Sauzier, 'Disclosure of Child Sexual Abuse: For Better or for Worse' (1989) 12(2) Psychiatric Clinics of North America 455.
[3] RF Hanson and others, 'Factors Related to the Reporting of Childhood Rape' (1999) 23(6) Child Abuse & Neglect 559.
[4] Juliann Whetsell-Mitchell, *Rape of the Innocent: Understanding and Preventing Child Sexual Abuse* (Taylor & Francis 1995).
[5] 'Violence Against Women in Bangladesh | Repression of Women, Children: Protection Promised but Not Delivered' *The Daily Star* (14 August 2026) thedailystar.net accessed 14 August 2026.
[6] Nilima Jahan, 'Repression of women, children: Protection promised but not delivered' *The Daily Star* (5 March 2026) thedailystar.net accessed 8 March 2026.

a major impact on children's lives.[7] Also, the effect of secondary victimization of rape on a child is beyond description. Child sexual abuse (CSA) has been shown to negatively impact victims' lives. Meta-analyses and reviews have shown this for physical health, for sexual functioning, for depression, for post- traumatic stress disorder, for suicide, and for self-esteem.[8] The most concerning issue in our society is that, even after declaring the highest penalty for the rapist, child rape has been increasing rapidly over the last few decades. Society's desire to inflict the death penalty for child rape by enlisting the child victim in a lengthy and wrenching capital case might have the effect of inflicting additional harm on the child victim.[9] It is also a matter of concern that child rape is being generalized as if it were the rape of a woman, where the severity of the crime is not the same.

A child's recovery from sexual abuse requires both immediate response to critical needs and longer-term responses and support. A strengths-based approach to engaging children can identify who they felt safe with before the abuse. Children (and families) will need help to recover and heal from the impacts of sexual abuse on the family and familial relationships. Children have a right to justice and may need support while the legal investigation and the prosecution of their cases occur. Justice systems are often dysfunctional; even in the highest-functioning justice systems, a child may be subjected to victim-blaming attitudes from police, lawyers, judges, and others involved in the system.[10] Only a collective and systematic judicial reform can ensure justice for our future generation and reduce this inhuman activity in our society.

2. Methodology

This study uses the method of qualitative research to collect data and is analytical in nature. In this study, no specific timeframe has been set, as this kind of literature is very limited in number. This research mainly analyses child rape victims, and especially sexually abused girls, in the context of Bangladesh. However, some information from around the world has been added for deeper understanding. No software was used for the analysis of the study materials. The contents and information emerged through a process of open coding and subsequent categorization, following a comprehensive literature review conducted by the authors. In this research, all kinds of research ethics have been maintained, all sources have been properly cited, and all references are included in the bibliography section. Additionally, all the data used in this study are publicly

[7] Elisa Van Ee and Rolf J Kleber, 'Growing Up Under a Shadow: Key Issues in Research on and Treatment of Children Born of Rape' (2013) 22(6) Child Abuse Review 386 doi.org.
[8] Rinke De Jong and others, 'Transition to Adulthood of Child Sexual Abuse Victims' (2015) 24 Aggression and Violent Behavior 175.
[9] Susan A Bandes, 'Child Rape, Moral Outrage, and the Death Penalty' (2008) 103 Northwestern University Law Review Colloquy 117.
[10] UNICEF and International Rescue Committee, *Caring for Child Survivors of Sexual Abuse Guidelines* (2nd edn, 2023) unicef.org accessed 9 March 2026.

available secondary sources, and no personally identifying or sensitive information has been used in the text.

3. Objectives of the Study

Main Objective: To analyse the legal, social, and institutional dimensions of child rape and sexual abuse in Bangladesh and to evaluate the adequacy of the existing legal framework in ensuring protection and justice for child victims.

Specific Objectives:

1. To examine the nature, scope, and legal analysis and understanding of child rape and sexual abuse within the context of Bangladesh.

2. To analyse the socio-cultural and structural factors that contribute to the occurrence and underreporting of child sexual abuse.

3. To evaluate the existing statutory provisions and international obligations relating to child protection in Bangladesh.

4. Findings:

a) Nature analysis and recent outbreak of child rape:

Child sexual abuse in Bangladesh exists in several forms; among them, child rape is the most fiendish form. Nowadays, child rape has become a common phenomenon. Child sexual abuse also includes incest, trafficking, exploitation, and harassment, etc. Most of the incidents occur within familiar environments such as homes, schools, and communities, often involving perpetrators known to the victim. A study addresses that most sexual abuse is committed by men (90%) and by persons known to the child (70% to 90%), with family members constituting one-third to one-half of the perpetrators against girls and 10% to 20% of the perpetrators against boys.[11] Family members constitute a higher percentage of the perpetrators in child protective agency cases because the mandate of these agencies generally precludes their involvement in extra-family abuse. Around 20% to 25% of child sexual abuse cases involve penetration or oral-genital contact. The peak age of vulnerability is between 7 and 13.[12]

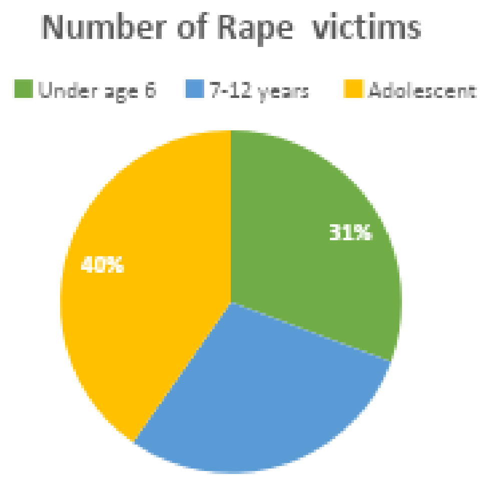
b) Statistical data:[13]

According to data from the National Girl Child Advocacy Forum and Ain o Salish Kendra (ASK) cited in

[11] 'Child Sexual Abuse Presenting to Police Centers in Khartoum-Sudan: Pattern and Victim Associated Factors' (ResearchGate, 14 August 2026) researchgate.net accessed 14 August 2026.
[12] David Finkelhor, 'Current Information on the Scope and Nature of Child Sexual Abuse' (1994) 4(2) The Future of Children 31.
[13] Md Asaduzzaman, 'Shishu Dhworshon o Bicharer Shonkot' *Samakal* (9 March 2026) https://samakal.com accessed 11 March 2026.

the article, child rape incidents in 2024 and 2025 have broken previous records:

Overall, increased girl child rape: 166 in a single year, Time frame: Between January and August, 2024, 224 girls were rape victims; in the same time frame in 2025, the number surged to 390, Age analysis:



c) Prevalence and Types of Child Sexual Abuse:

Across the world, there are several types of rape being committed against children. Based on the international and national standards, here are some types:

1) Custodial Rape:

Rape is committed by a perpetrator, and the child is influenced by the perpetrator's power and trust. It includes authoritative betrayal and breach of legal duty. Children are raped by persons who are obliged to ensure safe custody, such as staff, teachers, doctors, police, etc., by being manipulated and confused so the abuser doesn't need to apply much force during rape.

2) Statutory Rape:

It may involve brutality or consensual sex. In Bangladesh, children between 14 and 18 years old may give their consent for sex, but legally it will be rape because a child's consent is not considered legal consent. A child is mentally and legally incapable of consenting to sexual activity. The elements of statutory rape involve:

1. Commits sexual intercourse/unnatural sexual intercourse,

2. Against the person's will,

3. Through the use of force or threat of bodily injury

3) Aggravated Rape (Brutal Rape):

This category is applied in cases of extreme physical assault and/or factors that make the victim more vulnerable to assault. It causes serious bodily injury when the perpetrator intentionally disfigures the victim, disables an organ, or fractures a bone during the assault. It also involves the use of a Deadly Weapon. The perpetrator uses or threatens to use a weapon, such as a knife or a gun, to instill fear in the child and prevent it from resisting. Sometimes the victims become unable to give birth anymore.

4) Gang Rape:

This is applied in cases where more than one perpetrator is involved in the assault. According to most laws, all parties who are present and who have aided and abetted the crime are held equally liable for the entire act of rape. The legal consequences of this act are the highest possible, as the mere presence of multiple perpetrators instills the highest degree of fear in the victim and places the victim in the greatest peril.

5) Incestuous Rape:

This type of rape happens when the rapist is a member of the family of the raped person. This type of rape is unique because of the mental effects of disrupting family relationships and the long duration of the abuse, especially through a practice called "grooming."

6) Rape that leads to murder (homicidal rape):

This is a one-of-a-kind legal category in which the perpetrator kills the victim to keep them from testifying or because the act was so violent. Laws may treat a death that happens during the act of rape differently from a murder that happens afterward to get rid of evidence. The latter is usually punishable by death. If the child survives, but it is clear that the perpetrator intended to kill them, for example, by strangling them or leaving them in a dangerous situation, it is classified as "Attempted Murder after Rape."

A thousand incidents of child rape can be given as examples of murder after rape. One of the most recent cases was Jannatul Nesha Era, who was raped and brutally murdered by the rapist in Chattogram.[14]

d) By whom the children are being raped and sexually assaulted:

The person generally commits rape or sexual abuse against children:

1) Family members or close relatives:

This may include fathers, stepfathers, uncles, cousins, brothers, grandfathers, or other relatives. When abuse happens within the family, it is often described as incest. In 2025, in Asia, an eight-year-old girl was brutally

[14] 'Child Ira's Killer Arrested in Sitakunda; Previously Serving Life for Child Rape, Released From Prison After Aug. 5' *BDDIGEST* (11 March 2026) http://bddigest.com accessed 5 July 2026.

raped and murdered by her own brother-in-law and his father.[15]

2) Neighbors or known persons in the community:

A child may be abused by someone living nearby, a family friend, or a trusted adult who has regular access to the child. Parents of the children often do not even acknowledge the vulnerability of trusting neighbors and friends with a child, and children are unable to reveal due to unawareness and fear of social status, which results in further rape and sexual assault. Recently, an 18-year-old was arrested for 'attempting to rape' a 4-year-old in Kamrangirchar, and no surprise that they were neighbors.[16]

3) Teachers, tutors, or school-related persons:

Sometimes offenders use authority and trust to exploit children. 15 February 2024 Press Releases, Sexual offences West Midlands A former Sheffield teacher who acted as a 'sugar daddy' to a 12-year-old girl has been sentenced for raping a child.[17] It's nothing new. Every day, about 5% of children are being raped by their home or institutional tutor.

4) Religious instructors or institutional caregivers:

Persons responsible for moral guidance or supervision may misuse their position. In Bangladesh, it's a common phenomenon of child rape, sexual assault, and slander in religious institutions like Madrasas.[18] Major news will emerge about child rape by institutional caregivers, and a vast number of incidents have not even been revealed yet.[19]

e) Whether the guardians are resorting to legal action:

In many communities, parents worry that sharing certain information might hurt their child's future, especially when it comes to marriage opportunities. They also fear social embarrassment. Sometimes, local mediation led by village leaders can prevent formal legal actions and encourage finding a compromise instead of going to court. However, attending court, traveling, obtaining medical records, and hiring legal help can put a financial burden on low-income families and cause emotional distress to the child and family. Parents may hold back from asking questions repeatedly because it can cause further psychological harm to the child. Anxiety about being blamed as a victim. Families worry that the child might be blamed, questioned harshly,

---

[15] 'Bangladesh: Fierce Protests as Eight-Year-Old Rape Victim Dies' *BBC News* (11 March 2026) http://bbc.com accessed 5 July 2026.
[16] '18-Yr-Old Arrested for "Attempting to Rape" 4-Yr-Old in Kamrangirchar' *The Daily Star* (30 March 2026) thedailystar.net accessed 5 July 2026.
[17] '18-yr-old arrested for "attempting to rape" 4-yr-old in Kamrangirchar' *The Daily Star* (1 February 2026) thedailystar.net accessed 5 July 2026.
[18] 'Madrasar Shishu Shikharthike Shongkotapanno Obosthay Hashpatale Bhorti, Jouno Nirjatoner Alamot' *Prothom Alo* (16 March 2026) https://prothomalo.com accessed 5 July 2026.
[19] 'Madrasay Shishu "Bolatkar", Shikhok Polatok' *News Bangla 24* (30 March 2026) https://newsbangla24.com accessed 30 March 2026.

or become socially isolated. Long court delays are also a legal constraint in the way of seeking justice and facing the court. Fear of retaliation and threats from the offenders is also a cause of their hesitation. Furthermore, strengthening institutional capacities and fostering collaboration among stakeholders are critically important to ensure justice and the well-being of rape survivors.

f) Psychological and Social Impact of Child Sexual Abuse:

Child rape and sexual abuse can seriously harm a child's mental health and emotional stability. Victims often experience persistent fear, anxiety, sadness, and feelings of insecurity, which may continue long after the abuse has ended. These traumatic experiences can damage a child's self-confidence and make it difficult for them to trust others or feel safe in everyday environments.[20] In social life, many victims withdraw from friends and avoid social interaction. They may also face stigma, misunderstanding, or negative attitudes from society, which can increase feelings of shame and isolation. Such types of reactions further harm their emotional development and make their recovery more challenging.[21] Over time, these psychological and social pressures may affect a child's education, personal development, and ability to build healthy relationships in adulthood.

g) Legal Framework for the protection of Children from sexual violence:

Bangladesh has an elaborate legal framework for the protection of children from rape, sexual abuse, exploitation, and other forms of sexual assault. These matters related to children are generally discussed in the constitutional provisions, specific substantive laws, children's protection laws, evidential provisions, and Bangladesh's international human rights treaty obligations.

1) The Constitution of the People's Republic of Bangladesh 1972:

The protection of children from rape and other forms of sexual assault is mentioned in some of the provisions of the Constitution of the People's Republic of Bangladesh.

Such as Article 27 provides for equality before the law, and Article 28(4) permits taking special measures for children.[22] In addition, Articles 31 and 32 provide for the rights to legal protection, liberty, and security of the person.[23] Collectively, these provisions recognize that children are entitled not only to protection from crime but also to dignity, security, and respect for their personal integrity. Therefore, preventing sexual violence against children is both a criminal justice concern and a constitutional responsibility.

[20] JH Beitchman and others, 'A Review of the Long-Term Effects of Child Sexual Abuse' (1992) 16(1) Child Abuse & Neglect 101.
[21] S Ali and others, 'Examining the Short- and Long-Term Impacts of Child Sexual Abuse: A Review Study' (2024) 4 SN Social Sciences.
[22] Constitution of the People's Republic of Bangladesh, art 28.
[23] Constitution of the People's Republic of Bangladesh, art 32.

2) Women and Children Repression Prevention Act, 2000:

Women and Children Repression Prevention Act, 2000 is one of the most important statutes in Bangladesh, which criminalizes rape and other forms of sexual assault. Such as, Section 9 of this Act provides for punishment for rape, which may be extended to causing death.[24] Section 10 criminalizes sexual harassment,[25] and Section 14 seeks to protect the victim from disclosing the identity of the accused. Investigation into rape complaints may be done in accordance with Section 8, which requires the police to conduct an investigation in consultation with the victim and to take her to the hospital for forensic and DNA tests. The Act further provides for expedited trial of rape cases in accordance with Sections 18 and 20.[26] Consequently, the Women and Children Repression Prevention Act, 2000 provides for comprehensive legal remedies for victims of rape and other forms of sexual assault.

3) Children Act, 2013:

Children Act, 2013 is another important statute which applies to all children irrespective of gender. According to the Children Act, a child refers to a person who has not attained the age of eighteen years (18). In relation to Article 28(4) of the Constitution, Section 13 provides for Child Affairs Desks and Child Affairs Police Officers.[27] Moreover, Section 16 provides for Children’s Courts, which try cases involving children in accordance with the procedures provided in the Act. [28]

4) Penal Code 1860:

The Penal Code, 1860, provides for punishments for various sexual offences committed against children in Bangladesh. Rape is punishable under Sections 375 and 376 of the Penal Code, 1860. However, there is no separate provision for child rape. In addition, the Penal Code, 1860, indirectly provides punishments for kidnapping or abducting a child with intent to subject him or her to sexual assault.[29]

5) Evidence Act 1972:

The Evidence Act, 1872 has provisions relating to the protection of the rights of a child who is a victim of sexual assault during trial. After the 2022 amendment, Section 146 of the Evidence Act restricts questions about the sexual behavior or reputation of a person accused of committing rape.[30] Moreover, through cross-examination by the defense counsel, a child victim of sexual assault often undergoes secondary victimization.

[24] Prevention of Oppression Against Women and Children Act 2000, s 9.
[25] Prevention of Oppression Against Women and Children Act 2000, s 10.
[26] Prevention of Oppression Against Women and Children Act 2000, s 20.
[27] Children Act 2013, s 13.
[28] Children Act 2013, s 16.
[29] Penal Code 1860.
[30] Evidence Act 1872, s 146.

6) Pornography Control Act, 2012:

The Pornography Control Act, 2012 prohibits the making, distributing, circulating, selling, and viewing of any type of pornographic material. This Act further criminalizes any kind of exploitation of children in making pornographic materials.[31]

7) Prevention and Suppression of Human Trafficking Act, 2012:

Section 6 of the Prevention and Suppression of Human Trafficking Act, 2012 prevents trafficking with intent to physically abuse persons in accordance with the definition contained in the Act. From the perspective of Bangladesh, this act remotely addresses the sexual exploitation and rape of children.[32]

8) Domestic Violence (Prevention and Protection) Act, 2010:

The Domestic Violence Act, 2010 is relevant where sexual abuse of a child occurs within a domestic or family setup. Section 3 of this Act recognizes sexual abuse as a form of domestic violence that can be committed through physical torture against a child by her own family members.[33] Section 10 provides for protection orders, allowing the court to take measures to protect victims from further violence. Section 11 deals with residence-related protection, while Section 13 provides for compensation for the victim.[34] These provisions are important because children experiencing sexual abuse within the family may require not only criminal prosecution of the offender but also immediate protection, a safe living environment, and appropriate remedies.

9) International Human Rights Instruments:

Bangladesh has ratified several international human rights instruments, including the Convention on the Rights of the Child, 1989, to which it is a State Party.[35] For this reason, Bangladesh is obligated to uphold children's rights as provided in the Convention on the Rights of the Child, 1989. Children's best interests outlined in this convention are meant to be primarily considered in all actions carried out by States concerning children. Under Article 19 of the same treaty, States are required to undertake measures to protect children from all forms of sexual exploitation and abuse, including sexual violence. Child sexual exploitation is strictly forbidden under Articles 34 and 39 of the Convention on the Rights of the Child, 1989, and States must provide remedial assistance to children who have suffered from sexual exploitation. However, as mentioned earlier, having this detailed legal framework does not automatically ensure the right to protection from sexual violence. Investigations and prosecutions of sexual violence cases often encounter many

[31] Pornography Control Act 2012.
[32] Prevention and Suppression of Human Trafficking Act 2012.
[33] Domestic Violence (Prevention and Protection) Act 2010, s 3.
[34] Domestic Violence (Prevention and Protection) Act 2010.
[35] UN Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

challenges, including delays in investigations and trials, lack of forensic expertise, limited victim support services, social stigma, and various forms of institutional torture. Legal scholars emphasise that while strong laws exist, gaps in implementation and social stigma can make justice difficult for many victims without proper support systems.[36] If the accused is convicted, penalties, including imprisonment and fines, are enforceable, and the legal system also aims to provide support services for the victim, such as counselling, psychological care, and social assistance through child welfare programs, then it may protect the children and help them to recover.

h) Legal Loopholes in Child Protection Laws in Bangladesh:

Although Bangladesh has laws to protect children from sexual abuse and exploitation, several legal loopholes weaken their impact in practice. One major problem is the slow pace of investigation and trial, which can leave cases unresolved for a long time and worsen the trauma of victims. Much research on child rape in Bangladesh highlights that despite laws prescribing severe punishment, the justice system has not prevented abuse effectively due to these procedural delays and systemic weaknesses. Another significant gap is the lack of child-friendly procedures during police questioning and court hearings. Many victims face repeated or insensitive questioning without proper support, which discourages reporting. This absence of effective child protection mechanisms at the ground level hinders justice and protection for children.[37]

Loopholes in enforcement also occur because of limited coordination among authorities, resource shortages, and insufficient training for law enforcement officials. Besides these, the societal stigma and weak support for reporting sexual abuse often allow offenders to escape accountability. Studies of child protection networks in Bangladesh note that although structures are legally required, these often do not function properly or lack active child representatives, reducing the effectiveness of protection systems.[38]Raising public awareness is also crucial. Awareness campaigns and education programs can reduce stigma, encourage reporting of abuse, and make communities more supportive of victims. Training police officers, prosecutors, and judges on handling child abuse cases can also improve the quality of legal responses.[39] So, to prevent this problem, the government should strengthen legal definitions, close gaps or ambiguities in statutes, and monitor compliance with child protection laws.

[36] MA Uddin, 'Impediments to the Enforcement of Child Protection Laws in Bangladesh: Legal Framework Gaps and Reform Approaches' (2025) 6(1) Jus Corpus Law Journal 403 juscorpus.com.
[37] MT Mia and others, 'An Analysis of Regulatory Framework of Child Protection in Bangladesh' (2022) 8(1) Journal of Asian and African Social Science and Humanities 44 aarcentre.com.
[38] MR Islam and MII Towhid, 'Factors Contributing to Online Child Sexual Abuse in Bangladesh: A Qualitative Inquiry' (2023) 12 F1000 Research 1364.
[39] MII Towhid, R Nuzhat and MA Haque, 'Protecting Children from Online Sexual Abuse in Bangladesh: A Policy Brief' (2023) 16(2) Bangabandhu Sheikh Mujib Medical University Journal 111 doi.org.

5. Cause analysis:

a) Generalizing child rape and family irresponsibility:

Most of the families are not that careful about security in the domestic environment for a child. Children have the right to be brought up in safe environments. This right is often infringed upon by people who are supposed to provide love, care, and protection to children. The home is the most common place where incidents of child sexual abuse occur. Literature and various finalized court cases reveal that children have been, and continue to be sexually abused by the very same people, who are inter alia uncles, biological fathers, stepfathers, grandfathers, and brothers. A study emphasizes that "The act of rape by itself is heinous, but it is more dreadful when a person the child is expected to run to is the one who betrays the trust by breaking her right to dignity in the privacy of their home".

b) Culture of silence and non-implementation of penalty:

In Bangladesh, the offenders often avoid punishment due to social, political, and monetary influence. Also, the weak infrastructure of law implementation institutions, loopholes in law implementation, unnecessarily delay in investigation create an assumption that crime can be committed without serious consequences.

c) Access to the Internet and Problems of Pornography Addiction:

The rapid development of internet services and digital technologies has resulted in several challenges in ensuring that children are not exploited sexually. The ease of accessing pornography and other explicit content on the internet, which is not well-regulated, may result in a biased perception of sexuality and consent for some people. In some cases, exposure to aggressive and exploitative sexual content may influence a person to engage in violent sex, which may eventually result in several sexual offenses against vulnerable groups such as children. The internet is also used to share SABML and to engage in interactions with potential victims of exploitation using social media platforms. This way, a lack of effective regulations and digital literacy may indirectly influence the rise of child sexual exploitation cases.[40]

d) Lack of awareness related to sexual education and fear of identity disclosure:

The lack of knowledge about sexual education and the idea of autonomy in children is one of the major factors that contribute to child abuse. In most communities around the world, it is considered socially unacceptable to discuss sexual issues. This makes it difficult for children and parents to access relevant knowledge about child safety and how to identify child abuse. This means that children may not be aware that they are being abused or may not have knowledge of how to report such cases. In addition, victims and

[40] Fabian M Saleh, *Sex Offenders: Identification, Risk Assessment, Treatment, and Legal Issues* (Oxford University Press 2009).

parents may feel apprehensive and fear social stigmatization and exposure of their identities. This fear of exposure makes people not report cases of child abuse, and abusers escape unpunished. Therefore, the lack of knowledge about sexual education is one of the major factors that contribute to child abuse.[41]

e) Systemic Investigative Flaws:

The police investigation is often faulty, and there are considerable delays in presenting the charge sheets, which is a major impediment in securing convictions.[42]

f) Victim Blaming & Lack of Support:

The phenomenon of victim-blaming in cases of rape has become entrenched in the culture of contemporary society. Regardless of the circumstances surrounding a rape incident, victims are often subjected to blame. Consequently, victims may internalise this blame, leading them to perceive themselves as responsible for the assault and, thus, worthy of condemnation. This pervasive mindset can result in victims viewing themselves as burdensome, guilty, or even deserving of their plight, particularly in instances of child rape.[43] The underprivileged do not have the financial and social wherewithal to engage in a long-drawn-out legal battle. Moreover, victim-blaming is also a major cause of victim suffering instead of being protected.

6. Consequences of Child Rape and Sexual Abuse:

Child rape and sexual abuse have profound and long-lasting consequences that extend far beyond the immediate act of violence. The impact of such abuse affects not only the physical well-being of the child but also their psychological, emotional, and social development. These consequences often persist throughout the victim’s life, shaping their mental health, education, relationships, and overall sense of security. The following points highlight some of the major consequences experienced by victims of child rape and sexual abuse.

a. Severe Psychological Trauma:

Child rape and sexual abuse often lead to profound psychological trauma that may persist throughout the victim’s life. Survivors of child rape and sexual abuse often experience depression, anxiety, chronic fear, and post-traumatic stress disorder (PTSD). It can also make the victims feel ashamed, guilty, and emotionally insecure. This can really hurt their stability and mental well-being and it can stay with them even when they

---

[41] Sau Nguyen Thi Ut and Hoi Huynh Tan, 'Consequences of Neglecting Sex Education in Families and Schools' in *Proceedings of the 12th International Conference on Education Technology and Computers* (ICETC '20, ACM 2021) 230 doi.org.

[42] Office of Justice Programs, 'Child Sexual Abuse: Investigative Problems' ojp.gov accessed 11 March 2026.

[43] Subrata Banarjee and Lucky Akter, 'Child Rape against Girl Children and Its Impacts on Survivors and Their Families in Selected Rural Areas of Bangladesh' (2026) 183 Children and Youth Services Review 108821.

are adults.[44]

b. Disruption of Emotional Development and Loss of Trust:

When children are sexually abused, it can deeply affect their psychological development. Children who are the victims of child rape and sexual abuse often have trouble trusting people especially if the person who hurt them is someone they know. After that, survivors may fear developing any relationships with others, which may hinder their ability to develop stable social relationships later in life.[45]

c. Physical Injuries and Reproductive Health Risks:

Child rape can cause serious physical injuries and long-term health complications. Due to their physical vulnerability, children may suffer reproductive health problems and exposure to sexually transmitted infections (STIs). In certain circumstances, victims may also face unwanted pregnancy, which intensifies both the physical and psychological burden on the child.[46]

d. Social Stigma and Victim Blaming:

In most of the communities, victims of child rape and sexual abuse are treated poorly and blamed for what happened instead of being supported and helped. Families may be afraid of being judged by others, which can stop them from reporting what happened to the authorities. This can make it even harder for victims of child rape and sexual abuse to get the help they need.[47]

e. Secondary Victimization within the Justice System:

The legal system is supposed to help victims of child rape and sexual abuse. But sometimes it can make things worse. During investigations and trials, victims may be subjected to repeated questioning, insensitive treatment, and a lack of child-friendly mechanisms, which can intensify psychological suffering and discourage victims from seeking legal remedies.

f. Threat to Social Stability and Human Rights Protection:

The prevalence of child rape undermines the fundamental human rights, dignity, and safety of children.

---

[44] David Finkelhor and Angela Browne, 'The Traumatic Impact of Child Sexual Abuse: A Conceptualization' (1985) 55(4) American Journal of Orthopsychiatry 530; Gail Hornor, 'Child Sexual Abuse: Consequences and Implications' (2010) 24(6) Journal of Pediatric Health Care 358.
[45] Susan Clancy, *The Trauma Myth: The Truth about the Sexual Abuse of Children* (Harvard University Press 2009); Kathleen A Kendall-Tackett, Linda M Williams and David Finkelhor, 'Impact of Sexual Abuse on Children: A Review and Synthesis of Recent Empirical Studies' (1993) 113(1) Psychological Bulletin 164.
[46] Cathy Spatz Widom and Sally J Czaja, 'A Prospective Investigation of Physical Health Outcomes in Abused and Neglected Children' (2009) 33(8) Child Abuse & Neglect 541; World Health Organization, *Responding to Children and Adolescents Who Have Been Sexually Abused: WHO Clinical Guidelines* (WHO 2017) who.int accessed 8 March 2026.
[47] Rebecca Campbell, 'The Psychological Impact of Rape Victims' Experiences with the Legal, Medical, and Mental Health Systems' (2008) 63(8) American Psychologist 702; UNICEF, *Hidden in Plain Sight: A Statistical Analysis of Violence Against Children* (UNICEF 2014) unicef.org accessed 8 March 2026.

Failure to address these crimes effectively may weaken social stability and broader human rights protections.[48]

7. Suggestions and Policy Recommendations:

To address the growing problem of child rape and sexual abuse in Bangladesh, a comprehensive and coordinated effort from the state, legal institutions, and society as a whole is necessary. While legal frameworks exist to protect children, their effective implementation and the development of child-sensitive mechanisms remain crucial. The following recommendations highlight several practical measures that can strengthen legal accountability, protect victims, and help to prevent child sexual abuse in Bangladesh.

a. Strengthening the Enforcement of Existing Laws:

Although Bangladesh has enacted several legal instruments to combat sexual violence against children, the effectiveness of these laws largely depends on proper implementation. Authorities should ensure strict enforcement of existing legislation, including the Women and Children Repression Prevention Act, 2000, and the Children Act, 2013. Besides these, strong monitoring mechanisms, accountability of law-enforcement agencies, and effective prosecution of offenders are necessary to ensure that perpetrators are punished without delay.[49]

b. Establishing Child-Friendly Investigation and Judicial Procedures:

The judicial process should be restructured to make it more sensitive to the needs of child victims. Specialized child-friendly police units, trained investigators, and dedicated court procedures should be introduced to ensure that victims are treated with dignity and respect. The use of in-camera hearings, video testimony, and specially trained professionals can reduce the psychological pressure experienced by children during legal proceedings.[50]

c. Ensuring Speedy and Effective Trial Mechanisms:

One of the most common problems in this field is the delay in delivering proper justice. This delayed justice often discourages the victims and their families from pursuing legal remedies. Therefore, the government should strengthen special tribunals and fast-track judicial mechanisms to ensure the timely resolution of child rape cases. Speedy trials not only provide justice to victims but also serve as a deterrent against potential

---

[48] World Health Organization, *Global Status Report on Preventing Violence Against Children 2020* (WHO 2020) who.int accessed 8 March 2026; UNICEF, *A Familiar Face: Violence in the Lives of Children and Adolescents*(UNICEF 2017) unicef.org accessed 8 March 2026.

[49] UNICEF Office of Research - Innocenti, *Child Protection Systems in Low- and Middle-Income Countries: Responsibilities of the State* (UNICEF 2019) unicef.org accessed 5 July 2026.

[50] Laura S Abrams, 'Child-Centered Justice: Forensic Interviewing and Courtroom Practices for Child Victims' (2018) Journal of Child & Adolescent Trauma doi.org accessed 5 July 2026.

offenders.[51]

d. Expanding Comprehensive Victim Support Services:

Child victims require extensive medical, psychological, and social support to recover from the trauma of abuse. The government and relevant institutions should establish integrated support centers that provide counselling, healthcare, legal assistance, and rehabilitation services. Access to trained psychologists and social workers is essential to support the victims throughout the recovery process.[52]

e. Introducing Age-Appropriate Sexual Education:

In most societies, children lack basic knowledge about personal safety and bodily autonomy. Introducing age-appropriate sexual and safety education in schools can help children to understand their rights, and also help them to seek help when necessary. Such education should focus on building confidence and awareness rather than creating fear or stigma.[53]

f. Strengthening Institutional Capacity:

Law-enforcement agencies, judicial officers, and social service providers should receive specialized training on handling cases of child sexual abuse. Besides this, capacity-building initiatives can improve investigation techniques, evidence collection, and victim-sensitive procedures. Strengthening institutional capacity is also essential for ensuring an effective and responsive child protection system.[54]

g. Encouraging Community Participation in Child Protection:

Communities play a critical role in preventing and addressing child abuse. Local institutions, civil society organizations, and community leaders should be actively involved in child protection initiatives. Community-based monitoring and reporting mechanisms can also help to identify risks and prevent abuse before it occurs.[55]

h. Promoting a Culture of Zero Tolerance toward Sexual Violence:

Ultimately, preventing child rape requires a broader transformation of societal attitudes. A strong culture of zero tolerance toward sexual violence must be promoted through legal reforms, education, media engagement, and community awareness. Protecting children's rights, dignity, and safety should remain a

[51] David Finkelhor, *Child Sexual Abuse: New Theory and Research* (The Free Press 1984).
[52] Rebecca L Can't, 'Using a Public Health Approach to Prevent Child Sexual Abuse by Targeting Those at Risk of Harming Children' (2022) 5 International Journal on Child Maltreatment: Research, Policy and Practice.
[53] Milosavljević and others, 'Effects of School-Based Sexuality Education on Children's Knowledge and Attitudes: A Meta-Analysis' (2017) Journal of Adolescent Health doi.org accessed 5 July 2026.
[54] Susan K Martin, *The ETS Issues Brief: Training Law Enforcement to Respond to Child Sexual Abuse* (Educational Testing Service 2019) ets.org accessed 5 July 2026.
[55] Public Health England, *Child Sexual Exploitation: How Public Health Can Support Prevention and Intervention* (PHE 2017) www.gov.uk accessed 5 July 2026.

fundamental priority for the state and society.[56]

8. Discussion and Implications:

This study underscores a deeply concerning escalation of child rape and sexual abuse in Bangladesh, revealing both individual and systemic vulnerabilities. Child sexual abuse in the country is not merely a legal violation but a profound societal and human rights crisis, fueled by cultural norms, institutional inefficiencies, and social stigma. The findings demonstrate that perpetrators often exploit familial, educational, or community relationships, while systemic weaknesses in law enforcement and judicial processes perpetuate a culture of impunity.[57]

Child sexual abuse in Bangladesh has escalated into a deeply concerning societal issue, exposing both systemic and individual vulnerabilities. Despite the existence of protective legislation, such as the Women and Children Repression Prevention Act, 2000, and the Children Act, 2013, enforcement gaps remain significant. Delays in investigations, inadequate protection of victims and witnesses, and procedural insensitivity frequently result in ineffective prosecution and secondary victimization. These institutional failures not only fail to deter offenders but also reduce public confidence in the justice system, discouraging reporting and reinforcing societal tolerance of abuse.[58]

Cultural and social factors also compound these challenges. Patriarchal norms and pervasive stigma around sexual abuse intensify the trauma experienced by survivors. Victim-blaming attitudes, societal silence, and the marginalization of children, particularly those from lower socioeconomic backgrounds, create environments of social isolation, family stress, and community discrimination.[59] This societal response deepens psychological harm, discourages disclosure, and contributes to cycles of abuse. The psychological and emotional consequences for survivors are severe and long-lasting. Child sexual abuse is associated with post-traumatic stress disorder, depression, anxiety, guilt, and emotional insecurity. Survivors often struggle with trust, interpersonal relationships, and academic performance, while repeated interrogations and insensitive treatment by authorities exacerbate these impacts. Evidence from longitudinal studies emphasizes the urgent need for trauma-informed interventions and psychosocial support mechanisms to aid recovery.[60]

---

[56] Council of Europe, *Protecting Children from Sexual Violence: A Comprehensive Approach* (Council of Europe 2011) coe.int accessed 5 July 2026.
[57] Monira Nazmi Jahan, 'Analyzing Child Rape in Bangladesh: A Socio-Legal Perspective' (2020) International Annals of Criminology.
[58] Afrida Nawar Evana and MM Enamul Aziz, 'Child Sexual Abuse and Effects of the Trauma in Adulthood: A Qualitative Study via Contemporary Sociological and Psychological Research on the Stigma around Childhood Sexual Abuse' (2023) 9(9) Social Science and Humanities Journal doi.org accessed 5 July 2026.
[59] Jacques-Etienne and Briere, 'Examining the Short and Long-Term Impacts of Child Sexual Abuse: A Review Study' (2024) SN Social Sciences.
[60] Arun Kumar Singh and others, 'Justice for the Voiceless: Evaluating the Efficacy of Criminal Justice Mechanisms in Combating Child Sexual Abuse' (2025) 6(1) Journal of International Commercial Law and Technology.

This study highlights the urgent need for trauma-informed and victim-sensitive justice and support systems to prevent re-traumatization and uphold the rights of rape survivors. Law enforcement agencies should establish mandatory gender-sensitive and trauma-informed protocols for handling sexual assault cases, while expanding victim support centers nationwide to provide safe shelters and comprehensive care. The judiciary and prosecution can create dedicated sexual offence dockets with clearly defined timelines to ensure prompt and fair trials. Strict implementation of the Evidence Act 1872 (by the 2022 amendment) is essential to safeguard the privacy and security of victims throughout legal proceedings. Alongside legal and institutional measures, psychological interventions, including family group counseling, mindfulness-based therapies, and community-based support, can mitigate the long-term emotional and psychological harm experienced by survivors. Mass media campaigns and educational initiatives can raise awareness about secondary victimization, while local leaders such as imams, teachers, and Union Parishad members can be trained to provide psychological support at the community level.[61] Ultimately, comprehensive and coordinated efforts by all stakeholders, law enforcement, judicial authorities, healthcare professionals, civil society, and the broader community are critical to effectively prevent and respond to secondary victimization, ensuring that survivors receive the protection, justice, and dignity they deserve.

9. Conclusion:

Bangladesh and its children are seriously susceptible to rape and abuse. Further exacerbated by weaknesses in legal enforcement and persistent social stigma. Although laws are available to protect children, the situation becomes more difficult because of weak law enforcement, delays in investigations and trials, and a lack of proper support for victims. Survivors may suffer from fear, sadness, guilt, loneliness, and other emotional problems for a long time. To protect children, it is important to ensure quick legal action, child-friendly treatment by authorities, proper counseling, and strong support services for victims. At the same time, victim-blaming and social stigma should be alleviated. Community participation is needed to create a safer environment for children. Comprehensive coordination among law enforcement, judiciary, mental health professionals, and civil society is vital to safeguard children’s rights, well-being, and access to justice.

Ultimately, the prevention of child rape and the mitigation of secondary victimization in Bangladesh demand both systemic legal enforcement and broader societal transformation. Protecting children’s physical and psychological well-being, ensuring access to justice, and promoting accountability are critical not only to heal survivors but also to foster a society where children can grow safely and with dignity. Without comprehensive interventions that integrate legal, social, and educational measures, these crimes will continue

[61] Akinyemi and others, 'The Long-Term Impact of Childhood Sexual Assault on Depression and Self-Reported Mental and Physical Health' (2024) Frontiers in Psychiatry frontiersin.org accessed 5 July 2026.

to threaten the future of vulnerable children and undermine the moral and legal fabric of the nation

Bibliography:

Table of Legislation:

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3

Evidence Act 1872

Penal Code 1860

Prevention and Suppression of Human Trafficking Act 2012

Constitution of the People's Republic of Bangladesh

Prevention of Oppression Against Women and Children Act 2000

Domestic Violence (Prevention and Protection) Act 2010

Pornography Control Act 2012

Children Act 2013

List of Other Sources:

Abrams LS, 'Child-Centered Justice: Forensic Interviewing and Courtroom Practices for Child Victims' (2018) Journal of Child & Adolescent Trauma doi.org accessed 5 July 2026

Akinyemi and others, 'The Long-Term Impact of Childhood Sexual Assault on Depression and Self-Reported Mental and Physical Health' (2024) Frontiers in Psychiatry frontiersin.org accessed 5 July 2026

Ali S and others, 'Examining the Short- and Long-Term Impacts of Child Sexual Abuse: A Review Study' (2024) 4 SN Social Sciences

Bandes SA, 'Child Rape, Moral Outrage, and the Death Penalty' (2008) 103 Northwestern University Law Review Colloquy 117

Banarjee S and Akter L, 'Child Rape against Girl Children and Its Impacts on Survivors and Their Families in Selected Rural Areas of Bangladesh' (2026) 183 Children and Youth Services Review 108821

'Bangladesh: Fierce Protests as Eight-Year-Old Rape Victim Dies' BBC News (11 March 2026) http://bbc.com accessed 5 July 2026

Beitchman JH and others, 'A Review of the Long-Term Effects of Child Sexual Abuse' (1992) 16(1) Child Abuse & Neglect 101

Campbell R, 'The Psychological Impact of Rape Victims' Experiences with the Legal, Medical, and Mental Health Systems' (2008) 63(8) American Psychologist 702

Cant RL, 'Using a Public Health Approach to Prevent Child Sexual Abuse by Targeting Those at Risk of Harming Children' (2022) 5 International Journal on Child Maltreatment: Research, Policy and Practice

'Child Ira's Killer Arrested in Sitakunda; Previously Serving Life for Child Rape, Released From Prison After Aug. 5' BDDIGEST (11 March 2026) http://bddigest.com accessed 5 July 2026

'Child Sexual Abuse Presenting to Police Centers in Khartoum-Sudan: Pattern and Victim Associated Factors' (ResearchGate, 14 August 2026) researchgate.net accessed 14 August 2026

Clancy S, The Trauma Myth: The Truth about the Sexual Abuse of Children (Harvard University Press 2009)

Council of Europe, Protecting Children from Sexual Violence: A Comprehensive Approach (Council of Europe 2011) coe.int accessed 5 July 2026

De Jong R and others, 'Transition to Adulthood of Child Sexual Abuse Victims' (2015) 24 Aggression and Violent Behavior 175

'18-Yr-Old Arrested for "Attempting to Rape" 4-Yr-Old in Kamrangirchar' The Daily Star (30 March 2026) thedailystar.net accessed 5 July 2026

'18-yr-old arrested for "attempting to rape" 4-yr-old in Kamrangirchar' The Daily Star (1 February 2026) thedailystar.net accessed 5 July 2026

Evana AN and Aziz MME, 'Child Sexual Abuse and Effects of the Trauma in Adulthood: A Qualitative Study via Contemporary Sociological and Psychological Research on the Stigma around Childhood Sexual Abuse' (2023) 9(9) Social Science and Humanities Journal doi.org accessed 5 July 2026

Finkelhor D, 'Current Information on the Scope and Nature of Child Sexual Abuse' (1994) 4(2) The Future of Children 31

Finkelhor D, Child Sexual Abuse: New Theory and Research (The Free Press 1984)

Finkelhor D and Browne A, 'The Traumatic Impact of Child Sexual Abuse: A Conceptualization' (1985) 55(4) American Journal of Orthopsychiatry 530

Hanson RF and others, 'Factors Related to the Reporting of Childhood Rape' (1999) 23(6) Child Abuse &

Neglect 559

Hornor G, 'Child Sexual Abuse: Consequences and Implications' (2010) 24(6) Journal of Pediatric Health Care 358

Islam MR and Towhid MII, 'Factors Contributing to Online Child Sexual Abuse in Bangladesh: A Qualitative Inquiry' (2023) 12 F1000 Research 1364

Jacques-Etienne and Briere, 'Examining the Short and Long-Term Impacts of Child Sexual Abuse: A Review Study' (2024) SN Social Sciences

Jahan MN, 'Analyzing Child Rape in Bangladesh: A Socio-Legal Perspective' (2020) International Annals of Criminology

Jahan N, 'Repression of women, children: Protection promised but not delivered' The Daily Star (5 March 2026) thedailystar.net accessed 8 March 2026

Kendall-Tackett KA, Williams LM and Finkelhor D, 'Impact of Sexual Abuse on Children: A Review and Synthesis of Recent Empirical Studies' (1993) 113(1) Psychological Bulletin 164

Martin SK, The ETS Issues Brief: Training Law Enforcement to Respond to Child Sexual Abuse (Educational Testing Service 2019) ets.org accessed 5 July 2026

Mia MT and others, 'An Analysis of Regulatory Framework of Child Protection in Bangladesh' (2022) 8(1) Journal of Asian and African Social Science and Humanities 44 aarcentre.com accessed 5 July 2026

Milosavljević and others, 'Effects of School-Based Sexuality Education on Children's Knowledge and Attitudes: A Meta-Analysis' (2017) Journal of Adolescent Health doi.org accessed 5 July 2026

Office of Justice Programs, 'Child Sexual Abuse: Investigative Problems' ojp.gov accessed 11 March 2026

Public Health England, Child Sexual Exploitation: How Public Health Can Support Prevention and Intervention (PHE 2017) www.gov.uk accessed 5 July 2026

Saleh FM, Sex Offenders: Identification, Risk Assessment, Treatment, and Legal Issues (Oxford University Press 2009)

Sauzier M, 'Disclosure of Child Sexual Abuse: For Better or for Worse' (1989) 12(2) Psychiatric Clinics of North America 455

Singh AK and others, 'Justice for the Voiceless: Evaluating the Efficacy of Criminal Justice Mechanisms in Combating Child Sexual Abuse' (2025) 6(1) Journal of International Commercial Law and Technology

Towhid MII, Nuzhat R and Haque MA, 'Protecting Children from Online Sexual Abuse in Bangladesh: A

Policy Brief' (2023) 16(2) Bangabandhu Sheikh Mujib Medical University Journal 111 doi.org

Uddin MA, 'Impediments to the Enforcement of Child Protection Laws in Bangladesh: Legal Framework Gaps and Reform Approaches' (2025) 6(1) Jus Corpus Law Journal 403 juscorpus.com

UNICEF, A Familiar Face: Violence in the Lives of Children and Adolescents (UNICEF 2017) unicef.org accessed 8 March 2026

UNICEF, Hidden in Plain Sight: A Statistical Analysis of Violence Against Children (UNICEF 2014) unicef.org accessed 8 March 2026

UNICEF Office of Research - Innocenti, Child Protection Systems in Low- and Middle-Income Countries: Responsibilities of the State (UNICEF 2019) unicef.org accessed 5 July 2026

UNICEF and International Rescue Committee, Caring for Child Survivors of Sexual Abuse Guidelines (2nd edn, 2023) unicef.org accessed 9 March 2026

Ut SNT and Tan HHT, 'Consequences of Neglecting Sex Education in Families and Schools' in Proceedings of the 12th International Conference on Education Technology and Computers (ICETC '20, ACM 2021) 230 doi.org

Van Ee E and Kleber RJ, 'Growing Up Under a Shadow: Key Issues in Research on and Treatment of Children Born of Rape' (2013) 22(6) Child Abuse Review 386 doi.org

'Violence Against Women in Bangladesh | Repression of Women, Children: Protection Promised but Not Delivered' The Daily Star (14 August 2026) thedailystar.net accessed 14 August 2026

'Violence against Children' (World Health Organization, 14 August 2026) who.int accessed 14 August 2026

Whetsell-Mitchell J, Rape of the Innocent: Understanding and Preventing Child Sexual Abuse (Taylor & Francis 1995)

Widom CS and Czaja SJ, 'A Prospective Investigation of Physical Health Outcomes in Abused and Neglected Children' (2009) 33(8) Child Abuse & Neglect 541

World Health Organization, Global Status Report on Preventing Violence Against Children 2020 (WHO 2020) who.int accessed 8 March 2026

World Health Organization, Responding to Children and Adolescents Who Have Been Sexually Abused: WHO Clinical Guidelines (WHO 2017) who.int accessed 8 March 2026

Asaduzzaman M, 'Shishu Dhworshon o Bicharer Shonkot' *Samakal* (9 March 2026) https://samakal.com accessed 11 March 2026

‘Madrasar Shishu Shikharthike Shongkotapanno Obosthay Hashpatale Bhorti, Jouno Nirjatoner Alamot’ *Prothom Alo* (16 March 2026) https://prothomalo.com accessed 5 July 2026

‘Madrasay Shishu "Bolatkar", Shikhok Polatok’ *News Bangla 24* (30 March 2026) https://newsbangla24.com accessed 30 March 2026