Seminar Paper

On

Effectiveness of legal Mechanisms against False Cases under Nari O Shishu Nirjaton Daman Ain, 2000

Submitted to

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Course Director & Module Coordinator (Module-02)

129th ACAD Course

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I am especially thankful to my research supervisorDr. Mohammad Amjed Hossain, Director,BPATC. I am really indebted to him for his counitnuosguidence. I extend my thanks to other faculty members and MDS's of BPATC for making my work easier with their administrative and academic assistance.Moreover, my sincere thanks go to all the respondents of the study.

Most of the quantitative data were taken from Mithapukur Thana. So, I extend my sincere gratitude to the police officers of Mithapukur Thana. An important part of my study lies to the result of Nari O Shishu Nirjaton Daman Tribunal-2, Rangpur. I must thank the related court officials and staff.

List of acronyms&abbriviations

BPATC-	Bangladesh Public Service Training Center
FGD-	F ocus Group Discussion
FRT-	Final Report True
FRF-	Final Report false
FR-noCog-	Final Report Non-cognizable
FRMF-	Final Report Mistake of Fact
FRML-	Final Report Mistake of Law
KII-	Key Informant Interviewee
PC-	Penal Code
CrPC-	The Code of Criminal Procedure
NaSNDA-	Nari o Shishu Nirjatan Daman Ain, 2000
IO-	Investigation Officer
MDS-	Member, Directing Staff
OC-	Officer in Charge
PP-	Public Prosecutor
PS-	Police Stations

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Chapter One: Introduction

The issue of false cases is as old as the criminal justice system. However, every society has different remedial mechanisms against false acquisition fitted to its own culture and level of tolerance. Having this in mind the framers of penal codes essentially keep the provisions of prosecuting and punishing people for instituting false, frivolous and malicious acquisition. However, the special and minor acts have their own mechanisms slightly different than the provisions stated in major legislations.

1.1 Background of the Study

Oppression of women and children is a perennial issue in Bangladesh. The subordinate status of women with respect to entitlement, education and knowledge perpetuated this social issue. However, the state is fully aware of it. Even our founding leaders addressed this issue in our holy constitution. Apart from our constitutional obligation, the first special law enacted to redress the women from oppression against dowry demand was 'Dowry Prohibition Act, 1980. However, the law was subsequently replaced by 'JautokNirodh Ain' 2018 (Act 39,2018). This law deals only with the dowry demand related offences. Having only 11 sections, this law has the provision to punish the false case lodgers at section 6 with upto five years of imprisonment or a maximum fine of fifty thousand taka or with both.

The second special law incorporating various offences against women and children was, 'Nari O Shishu Nirjaton (BisheshBidhan) Ain. 1995. This law was also replaced by another improved law named 'Nari O Shishu Nirjaton Daman Ain, 2000. This law also underwent an amendment in 2003 (Act 8 of 2000). This is one of the toughest laws in the annals of Bangladeshi justice system. Among the penal sections seven sections/subsections offer death penalty, five sections/sub sections offer life time imprisonment, one subsection offers 14 years of imprisonment, three sections/ subsections offer 10 years of imprisonment. To many it is one of the modern time draconian law where any man could be prosecuted at any time. Crime statistics of Bangladesh Police shows that 10-12% of all registered cases in the police stations are lodged under Nari O Shishu Nirjaton Daman Ain, 2000. Although the conviction rate under this law is very low, only three percent (ProthomaProkashon: 2018), special tribunals formed under this law are overburdened with excessive number of cases to try.

Under section 17(1) of Nari O Shishu Nirjaton Ain, 2000, protection is given to the innocent persons against false cases under this law. If any person caused to lodge cases under this act with intent to cause harm although he believes that the accusation is false, then the complainant would be punished with seven years of rigorous imprisonment with an additional monetary fine. However, the tribunal will take cognizance of this section only upon the application of the aggrieved parties, not, suo moto.

The Nari O Shishu Nirjaton Daman Ain 2000 set rolled a ball of controversy since its inception. The toughest enactment paved the way to justice for potential oppressed women on one hand, and, on the other hand, this has provided the crook section of the citizenry with a heavy weaponry which could be misused very easily. Media reports reveal that false cases under this law are being lodged rampantly.

Even the judicial officers view that most of the cases under this law are false. In an inhouse working session on 25th December 2016 with the participation of more than 40 Nari O Shishu Nirjaton Daman tribunal the tribunal judges singled out false cases to be the number one problem against speedy disposal of cases (ProthomAlo, 29 December, 2016)

1.2 Objectives

The objectives of this study are-

1. To assess the effectiveness of legal mechanisms against false cases under Nari-O-Shishu Nirjaton Daman Ain, 2000
2. To find out the causes of ineffectiveness of those legal mechanisms
3. To recommend a way out

1.3 Justification of the Study

The problem of false cases under Nari O Shishu Nirjaton Daman Ain 2000 has come to the notice of the government also. In a seminar in 2013 the then Minister for Law and Parliamentary affairs and his deputy categorically opined that 80% and more cases under this act were false (Prothom Alo 22 June, 2013). However, these assumptions are based on anecdotes and personal experiences of the related persons. There are few studies on Nari O Shishu Nirjaton Aing, 2000 were done without investigating the false case aspect. Though an important legal remedial issue, the effectiveness of legal mechanisms under the Nari O Shishu Nirjaton Daman Ain, 2000 remains uninvestigated. So, a study on this issue is warranted upon its own merit.

1.4 Theoretical Framwork

The study will use the feminist theory that enables to analyze women's issues from a rights-based perspective. As the study the effectiveness of legal mechanisms against false cases under Nari-O-Shishu Nirjaton Daman Ain, 2000 in relation to women rights and identifying how that domestic legislation has adopted international obligations, the study consider the Feminist legal theory to apply in current study. Here, the section explains the reasons for using feminist legal theory.

Firstly, the feminist legal theory offers new visions that reveal women's engagement with the law over the past two centuries and it looks at women's status in society over time through the lens of the law (Thomas and Boissuea, 2011). Feminist legal theory advocates that there is a need to revise the law that creates discrimination towards women and outlines how there are great amounts of violence against women in society rises and how the political process failed to address constitutional rights in those laws (Fineman, 2005). Furthermore, it mentions that there is a barrier in the question of gender when it comes to equality in the society and the law has failed to protect the rights of women (Sally, 2010; Thomas, 2011). While the law has and continues to operate as a restraint upon women's full participation in society, the law has also worked as a weapon to dominate women in society (Thomas and Boissuea, 2011; Bowman, 1998).As such, here, this theory indicates law as a barrier or constraint upon ensuring women's rights (Cain, 2013.). This theory also provides evidence of how law operated as a barrier to limit women's power and show the law's facilitation of women's agency and power, often based on the same gendered norms that elsewhere produced limitations (Thomas, 2011) To sum it up, feminist legal theory purses to deliver how the law played a role in women's previous lower ranked status and focuses on changing women's previous status by a revising of the law and taking alternate approaches towards sex and gender (Sally, 2010).

Furthermore, feminist legal theory is premised upon the belief that the law has been instrumental in women's subordination in society. Feminist legal scholars start with the assumption that law's treatment of women has not been fair or equal, and they are suspicious of legal standards (Nocolson, 2000; Fineman, 2005). Besides, feminist jurisprudence seeks first to explain the ways in which the law has played a role in creating discrimination against women (Cain, 2013). The inquiry describes the nature and extent of discrimination and then asks how and why women continue to occupy a subordinate position. The feminist legal theory then moves reasonably to seek effective strategies to change women's status by re-conceptualizing the law (Cain, 2013).So at this point, this theory makes me to figure out the extent of discrimination against women, situated within the legal instruments.

Moreover, legal feminists who argue for "accommodation" as well as those who urge "acceptance" believe that differences of law should be explicitly addressed in order to cure legal inequality (Bowman, 1998). As a result, feminist legal theorists have taken a lively interest in various law reform efforts within the profession itself (Bowman, 1998). Another important thread in feminist legal theory is that social and legal forces operate differently as a result of the intersection of sex with race, class, sexual orientation, disability, and other variables. (Bowman, C.1998). So this point assists me to find out the differences of legal instruments in social, cultural and legal context.

Finally, the study uses legal feminism as it finds out the gaps and limitations of laws for dealing women related cases.

2. Literature Review

Though literature on the issue of low conviction under the Nari O Shishu Nirjaton Ain, 2000 are huge in numbers, no systematic research has yet been conducted on the problem of false cases lodged under this law. Whatever piecemeal reporting and partial studies were conducted on this issue, case studies of false cases and paucity of conviction occupied the focus of those studies. The issue of legal redress to the victims of false cases and the effectiveness of the legal mechanisms found no place in those reports or studies. Prothom Alo did splendid work under the leadership of Qurratul-Ain-Tahmina (Prothom Alo:2018) without investigating the legal mechanisms against false cases under section 17 of Nari O Shishu Nirjaton Daman Ain, 2000. In an unpublished study on conviction of rape cases under six metropolitan police jurisdiction commissioned by Police Staff College, Bangladesh, Professor Md. Rezaul Karim analysed 575 rape cases under Nari O Shishu Nirjaton Ain, 2000 during the time span of 2013-2017. But his study did not touch the problems of false cases.

The Annual Administrative Report published regularly by the Planning and Research Section of Police Headquarters sheds some light on the extent of false cases viz-a-vis true ones.

Analysis of the report published from 2013 to 2019 time span revealed that the number of false cases under the penal code is very little. The report categorizes the false cases into heads, such as, Maliciously False Cases Declared by the Magistrates and False Cases Received by Complaint. The report also docketed the number of cases where persons were convicted for the allegation of false cases. Statistics show that from 2012 to 2019 on an average 193,607 criminal cases were lodged each year. Among them 1,330 proved false and only 40 cases ended in conviction of the false case lodgers. The percentage of false cases is less than one percent and the conviction is lamentably insignificant.

Table-1. False cases docketed in Annual Administrative Reports

Year	Total Number of Cases	False Cases Declared by the Magistrate	False Cases Received by Complaint	Number of Cases Convicted
2012	183381	1500	759	31
2013	178733	1055	694	29
2014	180300	918	498	17
2015	178965	653	473	17
2016	180763	738	418	32
2017	212649	501	368	40
2018	212649	433	695	140
2019	221419	368	569	21
Total	1548859	6166	4474	327

2.1 What is a False Case?

As the definition of crime and criminality, the term 'False Case' happened to be a plastic conception. No universally accepted definition of the offence of false case is possible, for every society defines offence or crime by their own levels of tolerance and acceptance. The concept of crime is also subject to change along with the change of collective notion of a society. So, the definition of false case is a relative term. The term, 'false case' itself is not universal, let along its definition. Sometimes, the term 'unfounding' is used to refer to a false case. But the 'unfounded' of a crime is broader than the false allegation. The most important variance of this term is that criminologists differ greatly from the police categorization of false cases. Police officers show a tendency to term any allegation as false if they have slightest ground. So the FBI,(1999,2004,IACP, 2005b) had to issue guidelines to remind the police agencies when they should not term the allegation as false. According to FBI guidelines allegations should not be categorized as false only if the following grounds are present-

1. If the victim does not cooperate to the investigation,
2. If the evidences are not sufficient to prove the case,
3. If the victim delays the lodging of the case,

Any of the above conditions present in the case a police officer may term the case as false. But without being investigating the other conditions and situation, the American Police are requested not to term the case as false or undfunding.

So, FBI reserved for the categorization of false cases in the narrowest term as, ' a complaint that is determined through investigation to be false or baseless'. In simple term if investigation reveals that no offence occurred or even attempted, the allegation could be termed as 'unfounded' or false.

Definition of false cases or allegations in Bangladeshi criminal justice system is very much similar to those of the FBI guidelines. When an allegation is taken as FIR according to the section 154 of the Code of Criminal Procedures(CrPC), investigation would be conducted according to the procedures set up under the fourteenth chapter of the code. The police will submit a report under section 173 of the CrPC. In the report the case might end with a charge sheet or a final report. If the police find from their investigation is that the crime did occur or people responsible for it could not be identified then they submit a charge sheet to the court. Otherwise they submit a final report to the court where no persons are sent or recommended for prosecution. According to regulation 279 of Police Regulations, Bengal, final reportswould be categorized as 'true', 'false', 'non-cognizable', 'mistake of fact' and 'mistake of law'. Another way to differentiate false allegations from the true ones is the trial by the court. According to section 250 of CrPC a magistrate can punish a complainant for

Frivolous Accusations. That is the declaration of the trying magistrates is the proof of a false case. However, our investigation was confined only to the cases under NaSNDA.

2.2 Extend of false cases: international perspective

Literature in false cases is not many. In Bangladesh no such study has actually been conducted. The Bangladeshi researchers have a tendency to confine their focuses on low conviction rates only. No study of false cases is available in Bangladesh till today. However, the annual administrative reports published by the Police Headquarters have some data on false cases handled by the court.

In the western wold study on false cases also focused only to the sexual assaults and rape cases. Studies extending to the other areas do not get much attention. Some studies revealed that in the USA false reports of sexual assault was estemated as less than 10%(Fergson&Malouff,2016, Liska, Gardinier, Niska, & Cote, 2010, Lonsway, 2010). In 2005 the British Home Office analysed some 2,643 rape cases to the police and classifed only 216 cases as false whlich constitute only 8.2% of the total allegations (Kelly et. al.,2005). The Australian scenario of false cases is not much different from the west. The State Police of Victoria commissioned a study where 812 cases were investigated. The Australian police were not sure about the veracity of 77 (9.5%) cases and classified as, No Further Action' while 17(2.1%) were classified as false (Heenan&Murryay, 2006) . If we consider the two categories of cases as false, the percentage would be 11% supporting the findings of British Home office. Studying a ten years' sample (1998-2007) from the Northeastern University Police Department, Lisak and his colleagues found that the average rate of false cases was estimated at 5.9% (Lisak, et. al,2010,).

2.3 Extend of False Case in Bangladesh

It was observed that false cases are lodged at a higher rate under the Nari O Shishu Nirjaton Ain than the other laws. A sample of 16 police stations collected by the researcher shows that the number of final reports-false(FRF) during the period of 2014 to 2019 was less than 1%.

During 2014-2019 in Bangladesh a total number of 1205364 criminal cases were lodged in Bangladesh of which 116036 were under the Nari O Shishu Nirjaton Daman Ain 2000. Nari o Shishu Nirjaton cases comprises nearly 9% of total caes (Table-).

2.4 Research Area

My research area,MithapukurThana of Rangpur district, covers the whole of Upazila. The total area of Mithapukur is 515.62 square kilometers having a population of 527,457. Male and female ratio is nearly equal. With respect to religion and ethnicity Mithapukur is a diversified locality. All the major religions Islam (80%), Hinduism (14%), Buddism (3%) and Cristianity (3%) are practiced here. Beside these there are some indigenous community, dominantly Shantal and Orao, practising their ancestral pantheism (3%). The lion share of the population is farmers. There is no remarkable industry or other establishments. The Landscape of Mithapukur diverse with rivers, marshes and highland (parts of BarandraBhumi). The overall literacy rate in Mithapukur (46%) is lower than national average (51%). However Mithapukur is one of the greatest Upazial with respect to land area and population. The diversity of population, geography and religions and ethnicity contribute to Mithapukur becoming one of the highest reported cases under Nari O Shishu Nirjaton Daman Ain,2000.

3. Methodology

Research methods are the process of investigating an empirical phenomenon and are followed by a set of pre-specified accepted procedures. However, one of the core issues to any kind of research is its methodology and steps which are applied to collect the relevant data and analyze them for arriving at a conclusion. In this study, a qualitative method of reviewing criminal cases involving formative and summative evaluation techniques were used to ascertain the causes that led to the lodging of false cases. Besides, some additional secondary information and data was reviewed from related research reports, case diaries and published reports of government and non-governmental agencies, clipping of daily national newspapers, published books. Effectiveness of legal mechanisms against false cases was investigated by analyzing the official statistics of the Mithapukur police station and relevant Nari O Shishu Nirjaton Daman Tribunal.

Primary data was collected from the personal interviews of the purposively selected victims of false cases under the Nari O Shishu Nirjaton Daman Ain, 2000, FGD with the police officers involved in lodging, investigating and supervising the cases under the said law, victims of false cases, local political and community leaders and lawyers. Key Informant Interviews (KIIs) of Judicial Officers, public prosecutors, senior police officers were performed to get a better insight into the research problem. Interviews and KII were conducted by both face-to-face interaction and over telephone and email correspondence.

Thus, it is primarily a qualitative research involving reviewing the execution of legal provision of selected criminal cases investigated by the police and tried in the tribunal. For the time constraint the study area was confined in the Mithapukur Thana of Rangpur district covering the concerned Tribunal. Cases under Nari O Shishu Nirjaton Daman Ain, 2000 of Mithapukur Thana extended from 2014 to 2018 were analyzed. For the core purpose of the research only the category of Final Report False(FRF) reports were scrutinized from the lodging of FIR to police station to final disposal of the case through the issuing of process under section 17 of the act.

3.1 Key Informant Interviews & FGD

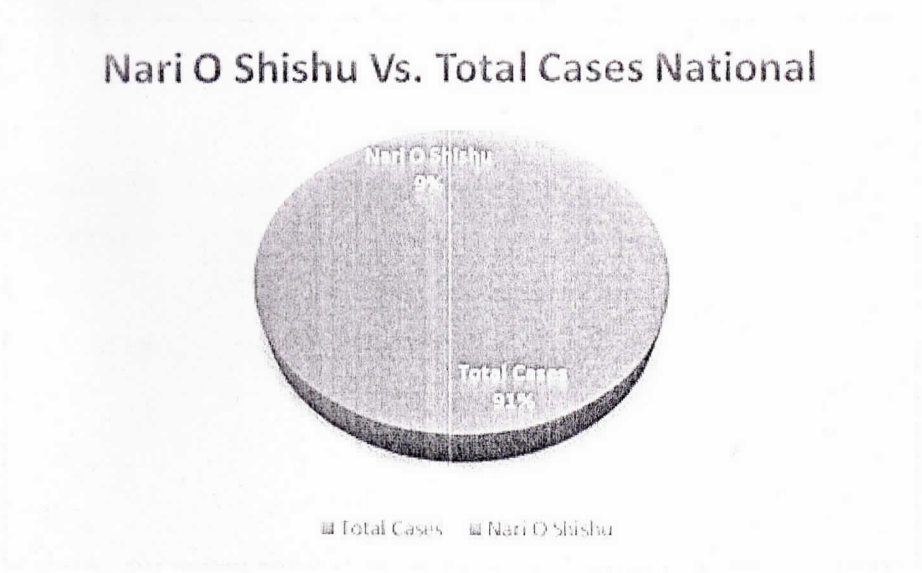
The problem of false cases under NaSNDA is extended from root level society to the tribunal. The local elites and touts/middlemen are very much active at the root of lodging false cases under this act. So the key informants were selected from all the levels of the cases. Three judicial officers having long experience of trying NaSNDA cases were interviewed of whom one is from the research area. Two lawyers were interviewed. One lawyer was a public prosecutor (PP) of the concerned tribunal belonging to Mithapukur Police Station. One court inspector, one OC of concern police station were interviewed. A victim of a false case was interviewed to understand the problem from the victim's point of view. A local political leader having the ruling party portfolio and elected UP chairman was interviewed. A Focus Group Discussion was conducted at Dhaka where all relevant stakeholders were present numbering 10 participants.Data were analyzed by using MS Excel program and presented either in tabular or pie-chart form.

Chapter Two: Analysis and Discussion

1 NaSNDA cases of research area outwit the national average

I collected data from the recorded cases of Nari O Shishu Nirjaton Ain,2000 from Mithapukur Thana extending from 2014 to 2018. I also trail the cases up to the Nari O Shishu Nirjaton Daman Tribunal-2 of Rangpur district.In my research area the percentage of Nari O shishu Nirjaton cases were more than the national average. During the period of investigation a total of 3,661 criminal cases were lodged in Mithapukur Police Station while 445 were under the Nari O Shishu Nirjaton Daman Ain, 2000. The percentage of NaSNDA cases is 12% in contrast to total cases (figure-). The percentage of NaSNDA cases in Mithapukur PS is higher than the national average (9%) (Chart-1)

Chart- 1 NaSNDA Vs. Total cases (National)



2 Rate of False cases in Mithapukur PS:

It was previously said that no overall studies on false cases were conducted in Bangladesh. So, it is very difficult to compare the local figures to national ones. The study was confined to the cases lodged during the period of (2014-2018). In this period to the Mithapukur Police Station a total number of 445 cases were lodged under the Nari Shishu Nirjaton Daman Ain, 2000. Of these cases only 65 of the cases ended in a final report false(FRF). That is, the rate of false cases was 12% which is much higher than that of national trend(Chart-2).

Chart-2 (Rate of False case)

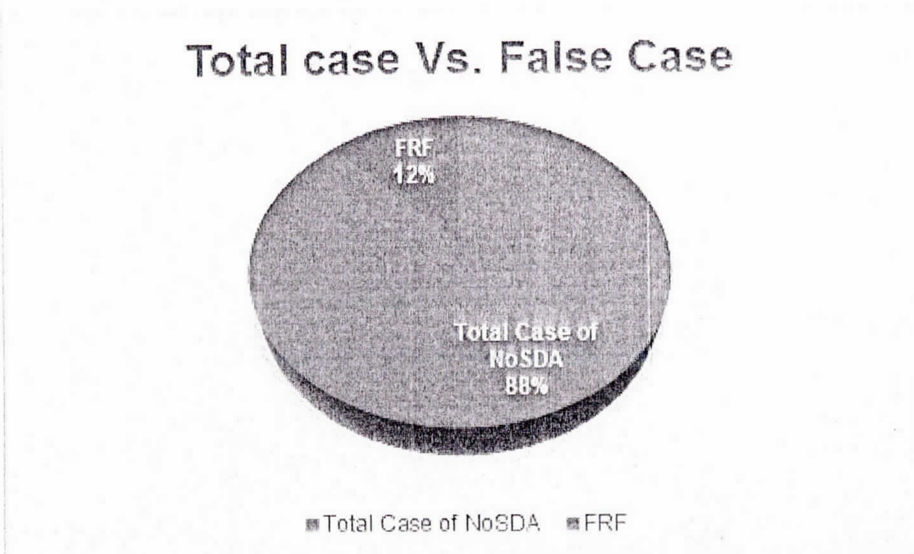
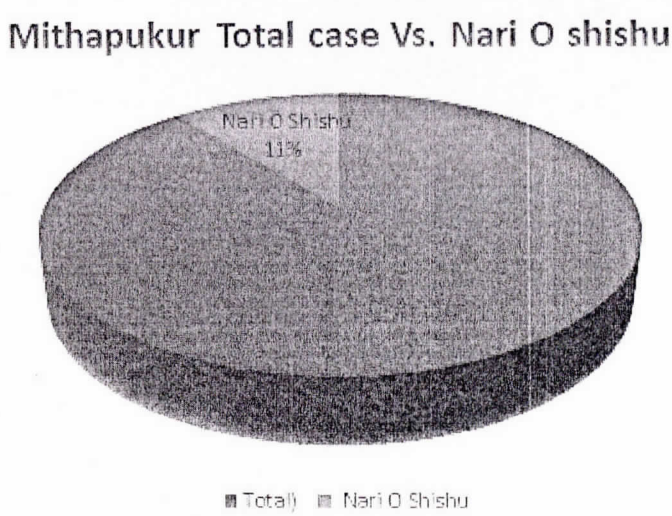
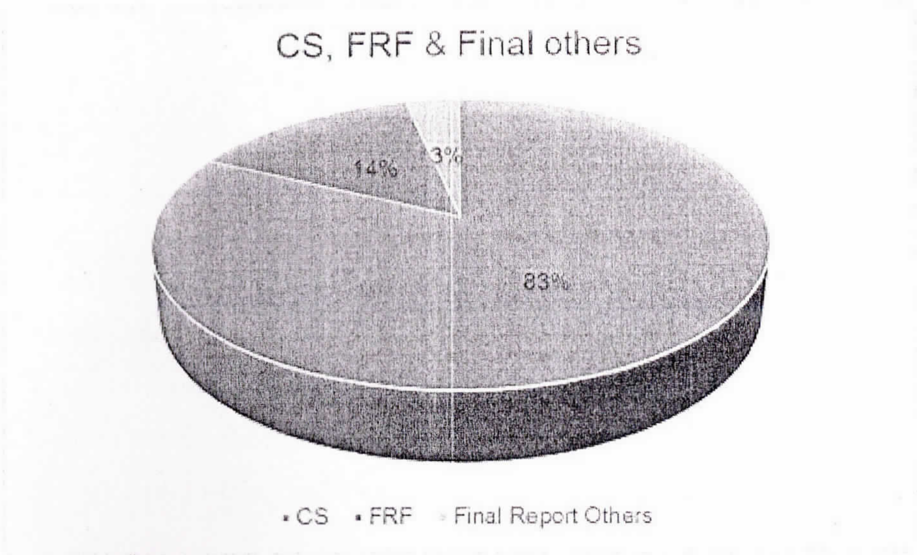


Chart-3- NaSNA vs. Total case (Mithapukur_



If we make more analyses in the cases lodged in Mithapukur PS during the five years of our investigation we find that more than 83% cases ended with charge sheets. The remaining 17% cases were not sent to the court.Majority number of final reports falls under the category of False (14%) only 3% fall under the other 4 categories. The analysis though does not support the general belief that most of the cases under NaSNDA are false, but the percentage of false cases under this law is invariably higher than the cases under any other laws including the penal code.

Chart-4- Final report Vs. charge sheets.



3 Is that all?

The percentage of false cases under NaSNDA is lower than the popular belief in Bangladesh. People working in the field of law enforcement, criminal justice arena and even in the media world sometimes may not accept the rate of false cases. Because general experiences hint at a bigger percentage. In the qualitative data collection process it is found that many false cases were not categorized rightly. If a case was made out for the harassment of the opponents might ended in a charge sheet and even it might be classified as a final report non-cog or mistake or fact. Sometimes the both parties compromise the case and the investigating officers complete the investigation submitting a final report classifying it as a mistake of fact or other categories. So, here the classification is compromised in favour of the case lodger so that he might not be prosecuted under section 17 of NaSNDA. Sometimes the investigating officers were allured or pressured to classify the case in other categories. By this way both the parties and even the investigating officers are benefitted. However, how many cases are misclassified was not in the scope of this research.

4 Causes of false cases

According to the respondents interviewed and stalk holders attended in the FGD the causes of false cases are enumerated as bellow

1. Revenging the opponents;

2. Acquiring political,
3. Monetary profit:
4. Family dispute:
5. Divorce/ Breaking marital relation:
6. Land dispute:
7. Third party gain,
8. Pakage deal

The caused numbers 1-6 are self explanatory. But number 7 and 8 need to be explained. **Third party** gain refers here the people who are neither conntected to the complainants nor with the accused. They are intermediatory persons who are called DALAS or brokers to the local thana area. These people instigate the potential complainats to lodge cases to the police station only for gaining some money initially form the complainats and ultimately from the accused.

Pakage deal is a term used by some lawyer participants in the Focus Group Discussion. Some lawyers make deals will the potential complainants of false cases in a package lot. They contracted from lodging the case to the PS from arresting the accused. They got hingh amount of money from the complainants and invest some portion of it to bribe the police and court officals.

The following case study will give a deeper understanding of the causes of false cases under NaSNDA

Fasle case was lodged against Retd. School teacher

Retired Primary School Teacher Afzal Hossain (65) of Gilazuki village of Mithapukur Police station was living a smooth life with his wife and a young son. The Afzal family engaged Rahima Begum(35)to help their day today household work. Rahima Begum had been working with the family for 3 years. She was a widow who had two juvenile children.

There was a land-related conflict between Mr. Afzal Hossain and his neighbor Nur Ali (63) for a long time. Rahima Begum was a distant relative of Nur Ali. Recently Afzal won a civil case against Nur Ali. So the latter was unhappy and wanted to avenge his defeat on Afzal.

So Nur Ali hiredRahima to lodge an attempted rape case against Afzal. Hossain. Being an accused of an attempted rape case Afzal became very upset. He had been a teacher for some 35 years. Nobody could blame him for any immoral activity.Now at the fag end of his life people came to know that he was a rapist a man with bad character. Police came to his house for investigation. He somehow escaped arrest by hiding in the storeroom of his neighbor. He felt so much humiliated that he evenattempted suicide.

Now came some people among one was the local tout LalMiah. He offered a way to get out of the case. Following a long negotiation the complainant agreed to withdraw her complain at a cost of five lakh taka. The local police station was managed with another two lakh taka. Spending a huge amount of money Afzal saved his prestige. The investigating officer submitted a final report terming the case as a mistake of fact. Afzal Hossain did not prosecute the complainant for the following reasons- firstly, he did not know that the complainant could be prosecuted; secondly, the allegation was technically not false, and, last he did not want to get into any legal complexity by lodging a case.

The master mind of the false case was Nur Ali, Afzal's opponent of land disputes but the mastermind remained behind the scene.

5 Prosecuting the complainants of False Cases

General procedures of prosecuting the complainants of false cases lodged under the Penal Code are described in the CrPC and in Police Regulations, Bengal (PRB). Regulation 279 of PRB states:

(a) Whenever a case reported to the police is found after investigation to be maliciously false, the investigating officer shall, if evidence is available for prosecution of the complainant under section 182 or 211, Indian penal Code. submit to the Magistrate, through the Circle Inspector a formal complaint, attached to his final report, to enable the Magistrate to take cognizance of the case under Section 190, Code of Criminal Procedure [under proviso (aa) to section 200 of that Code the Magistrate need not examine the complainant]. The investigating officer shall at the same time furnish the Court officer with a brief of the case.

(b) Prosecutions against complainants in false cases shall be instituted only when the charges made are deliberately and maliciously false and not when they are merely exaggerated.

(c) The Circle ASP or Addle SP shall, after satisfying himself that the complainant is well founded and that all possible enquiries have been made to collect the requisite evidence, forward the complaint to the Magistrate.

(d) If a complaint case referred to the police for investigation is found to be maliciously false, the investigating officer shall submit, together with the final report, a report to the Magistrate through the Circle ASP/Addl SP giving the grounds on which the case is held to be false and recommending as to whether the complainant should be prosecuted.

However, these provisions are applicable to the cases lodged under the penal code or other special laws where the procedures are not clearly mentioned.

6. Existing Legal Mechanism against False Cases

In our society, harassment of innocent people by lodging false and trivial cases is very common. Opponents are often seen to be socially and financially harassed in the pursuit of their own interests. Such allegations are also made focusing on various issues. But in case of being the victim of a false case, punitive action could be taken against the person who filed the case in accordance with the law.

Section 211 of the Penal Code, 1860

It is a general provision against false cases. It provides for the punishment of filing a false criminal case. If a person files a complaint for the purpose of causing harm or commits a crime for the purpose of committing a crime, the plaintiff is liable to imprisonment for two years or fine or both. Normally special laws have their own sections against false cases. In case of no different provisions in special cases, section 211 of the Penal Code applies.

Section 250 of the Code of Criminal Procedure, 1898

This section applies when the charges are found false, frivolous or vexatious. If the magistrate finds evidence at the time of acquittal that the case is false and harassing, the magistrate may order the plaintiff to pay compensation with a show cause notice. However, this section should only be executed by the Magistrates. No other judges can apply it.

Provision in JautokNirodh Ain, 2018

Section 6 of the Dowry Prohibition Act, 2018 describes if a person files a suit or complaint against that person with intent to harm another person knowing that there is no fair or legal reason to file a complaint under this Act, he is liable to imprisonment for a term not exceeding 5 (five) years or not more than 50,000 (fifty) thousand taka fine or both.

Provision in Acid Niontron Ain, 2002

Section 40 of the Acid Control Act, 2002 provides, if a person files a lawsuit against another person for an offense under this Act, and if, through investigation or evidence, it is proved that the allegation is false or harassing, shall be punishable with rigorous imprisonment for not exceeding 5 (five) years and additional fine thereof.

Provision in Acid Aporath Ain, 2002

Section 8 (1) of theAcid Crime Suppression Act, 2002states,if any person lodges or causes to lodge any case or complaint against any other person with intent to cause harm to him, knowing that there is no proper and lawful reason to lodge any case or complaint under any section of this Act, the person who lodges the case or complaint and, the person who causes to lodge the complaint, shall be punished with rigorous imprisonment for not more than seven years and in addition to that shall also be liable to fine.

Provision in Ain SringkholaBighnokari (DrutoBichar) Act, 2002

Section 6 of the Crimes Disrupting Law and Order (Speedy Trial) Act, 2002 provides if a person files a case or complaint against a person with intent to harm another person knowing that there is no just or legal reason for committing a law-breaking offense against that person, the person is liable to imprisonment for a term two 2 (two) to 5(five) five years and shall also be liable to fine.

Provision in ParibarikShahingshota(protirodh o shurakha) Ain, 2010

Section 32 of the Domestic Violence (Prevention and Protection) Act, 2010 says if any person with the motive of causing loss to any other person knowing that there is no cause of complaint under this Act, nevertheless makes a complaint, shall be punishable with imprisonment which may extend to 1(one) year, or with fine which may extend to 50(fifty) thousand Taka, or with both.

Provision in ManobPacharProtirodh o Damon Ain, 2012

Section 15(1) Prevention and Suppression of Human Trafficking Act, 2012states, if a person who files a false or harassing case or false complaint under this Act for the purpose of causing harm to another person or abuses the legal process or forces another person to do so shall be deemed to have committed an offense and shall for the offence be punished with rigorous imprisonment for 2-5 years imprisonment and a fine up to 20 thousand taka.

Provision in Pornography Niontron Ain, 2012

Section 13 (1) of the Pornography Control Act, 2012 provides if any person, officer or authority empowered under this Act to file a case or complaint under any section of this Act for the purpose of causing harm to any person shall be deemed to have committed an offense if he files a false or harassing suit or allegation without knowing any justifiable or legal reason. He will be sentenced to a maximum of 2 (two) years rigorous imprisonment and a fine of up to 1, 00,000 (one lakh) taka.

Section 13(2) says in any case filed under this Act, if the court or, as the case may be, acquit the accused at the tribunal hearing and trial and the court expresses the opinion that the allegation against the accused is false, baseless and harassing, then the plaintiff The person shall be deemed to have committed an offense and for such offense he shall be punished with a maximum of 2 (two) years rigorous imprisonment and a fine up to Rs. 1,00,000 (one lakh).

Section 500, Penal Code, 1860

Besides the provisions stated above, the person against whom false cases are lodged, after getting acquitted from that false case or after getting the F.I.R quashed, can file a criminal defamation case against the person who has falsely implicated him in the previous case, shall be liable for imprisonment upto 2 years, or with fine, or with both, under section 500 of the Penal Code, 1860.

Provision in Nari O Shishu Nirjaton Daman Ain, 2000

Section 17(1) of The Prevention of Oppression Against Women and Children Act, 2000 (Amendment, 2003) states if a person files a case or complaint against that person with the intention of harming another person under any other section of this act knowing that there is no just or legal reason to do so, then the person filing the complaint or the person who has lodged the complaint, the person shall be punished with imprisonment for a term not exceeding 7 (seven) years and with an additional fine thereof.

Table No-02 Existing mechanisms against false cases

Sl	Offence	Law	Section	Punishment
1	The Code of Criminal Procedure, 1898	Lodging False, Frivolous or vexatious accusations	250	fine upto one thousand taka or upon failed to paid fine simple imprisonment upto 30 days
2	Nari O Shishu Nirjaton Daman, Ain, 2000	Lodging false cases under the law	17	Imprisonment up to seven years and also fine
3	JautokNirodh Ain, 2018	Lodging false cases under this law	5	Up to five years of imprisonment and up to fifty thousand taka fine
4	Acid Niontron Ain, 2002	Lodging false cases under this law	40	2-7 year imprisonment and also fine
5	Acid Aporadh Daman Ain, 2002	Lodging false cases under this law	8(1)	Imprisonment up to seven years and also fine
6	Ain SringkholaBighnokari (DrutoBichar) Ain, 2002	Lodging false case under the act	6	Imprisonment not less than two years and not more than 5 years and also fine
7	ManobPacharProtirodh o Damon Ain, 2012	Lodging false case under the act	15	2-5 Years imprisonment and a fine up to twenty thousand taka
8	Pornography Niontron Ain, 2012	Lodging false case	13	Up to two years of imprisonment and up to one lakh taka fine

7. How effective are the Present Mechanisms

False cases under the penal code are prosecuted under section 211 of the came code. The special laws have their own arrangement to punish the false complainants. An evaluation of the present mechanisms shows that if the case is triable by the magistrates under regular process the process of punishment is easier. The trying Magistrate can take cognizance of the offence of false cases as per the provisions of the CrPC. But trial against a false case lodger is difficult when the case is triable in the tribunal. Normally judges of special tribunals do not enjoy original cognizance power. So they cannot take the cognizance of false-case/ offences suo moto. However, in depth analyses of the present mechanisms revealed two special laws have provisions fairly suitable to punish thecomplainats of false cases.

Section 15(2) of ManabPacharProtirodh of Damon Ain, 2012 has given a wider power to the trying judge. If the allegation against the accused is found false andharassing the judge can take the offence cognizance against the complainant. He/she can also do it at the halfway of the trial of the original case by ordering stay of the original case. This provision is an example of the way the NaSNDA could be amended.

Section 13(2) of the Pornography Ain, 2012 has a clear instruction to punish the complainant of false cases. Unlike the NaSNDA the judge may act suomotto under this section.

8. How effective is Section 17 of NaSNDA

It is evident that although sometimes section 17 of the NaSNDA is applied, conviction under this section is few and far between. Data from the concern tribunal shows that during the time span of the investigation (2014-2019) not a single application from the aggrieved party was filed to the tribunal for prosecuting the complainants of false cases. The concerned Public Prosecutor did not experience any conviction under this section during his 22 years of lawyer life. Among the cases lodged under NaSNDA in Mithapukur Police Station About 11% ended with final reports-false. But there were no instances of convicting the culprits (complainants) which is the firm proof of the ineffectiveness of the section.

9. Why is this section ineffective?

The first and foremost problem of prosecuting a false case lodger under NaSNDA is the ambiguity of the concern section. According to section 17(2) of the act the tribunal can accept the complaints and then try only when a person applies to it. Most of the respondents termed this section highly ambiguous. Who will be the person to apply? Is he the police officer who investigated the case? Is he one of the accused against whom the false case was instituted? Or can any person apply to the tribunal as per the general rule of lodging an FIR under 154 of the CrPC? According to the judicial officers interviewed, the accused of the original case is the right person to apply to the tribunal to institute a case under section 17(1) of the NaSNDA. They hold out strong logic that being a tribunal the Judges of Nari O Shishu Nirjaton Daman Tribunal do not have power to take cognizance of an offence as the Magistrate can do. So, suo moto action is not possible for the judges.

One option remains open to institute cases against the false complainant. It is only the accused of false cases(victim here) can apply to the tribunal for the redress of his/her harassment. But the accused of false cases do not proceed for the following reasons:

1. They do not actually know the provision of section 17 of NaSNDA,
2. The original case are compromised at the cost of the accused,
3. The accused are already harassed and fed up with the complicacy of the legal process. So, they lose their interest to prosecute their harassers.
4. They have already spent a huge amount of money to encounter the false cases and do not want to bear the burden of spending additional money.

10 How could section 17 of NaSNDA be effective?

Respondents suggested the following amendment to make the section 17 of NaSNDA effective:

1. If the case is ended with a final report-false, the section should allow the investigating officer to file a separate case against the complainant and submit the report to the tribunal.
2. The tribunal taking cognizance of the final report-false may consider the case against the complainant at his/her own discretion.
3. The amendment should also allow the trying judge of the tribunal to act suo moto against the complainant of false cases.

11. Preventing False Cases

Majority of the respondents opined that the police officers can do very little to prevent the false cases under NaSNDA as section 154 of the CrPC leaves no option for the Officer-in-Charge of a police station to avoid lodging regular cases upon having the information of a cognizable offence under NaSNDA. However, some respondents suggested that police should have some pre-enquiry of the information. Some respondents suggested mass awareness against false cases. The role of lawyers may also be crucial as they represent the complainants. However, one judicial officer (interviewee) suggested that the judges of the tribunal can scrutinize the complaints that come to them with more judiciousness. A through test of the complainants at the beginning may reduce the number of false cases considerably.

Chapter Three: Conclusion and Recommendations

Conclusion

The study was simply a glimpse of the problem of ineffectiveness of legal mechanisms against false cases under NaSNDA. My study area was only a police station and period of analysis was only five years. The sample size was very limited. On the other hand due to the covid-19 lockdown and social distancing protocol data collection was severely hampered. I could not study the nature of the false cases which is a very important factor behind instituting false cases. All the interviews were taken over telephone and email communication which was a barrier to understanding the problem deeply. For an all out research on this problem sufficient time, scope and resources were needed. My present assignment did not permit me that. However, what revelation was made is not insignificant at all. To me a full fledged research on the problem of ineffectiveness of legal mechanisms against false cases is a must.

Recommendations

To make the legal mechanism to give redress to the victims of false cases under the Nari O Shishu Nirjatan Daman Ain, 2000, the following recommendations are suggested. The recommendations are driven from the key informant interviews and focus group discussion.

1. Section 17(1) of the NaSNDA should be amended in such a way that the trying judge may takesuo motto cognizance of the offence of instituting false cases,
2. For the complaint-cases the tribunal should invest more time and good discretion to scrutinize the false allegation at the very beginning;
4. For the cases lodged to the police station, the investigating officers should be given authority to to file a separate case against the complainant and submit the report to the tribunal for taking cognizance.

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KII for the Lawyers

* Required

1. Email address *

2. When do we call as case false in legal definition?

3. When do you call a case false under NaSNDA?

4. Tell me about the usage of section 17 of NaSNDA.

5. What is the duty of the accused of false cases?

6. According to you how much effective is section 17 of NaSNDA to prosecute the false case lodgers?

7. What are the causes of ineffectiveness of section 17 of NaSNDA?

8. How the lawyers can contribute to prevent false case?

9. People complain that some lawyers create false cases. What do you think?

10. What measures does the court take to prevent false cases?

11. What amendment do you suggest to make section 17 of NaSNDA effective?

KII for the Judicial Officers

* Required

1. Email address *

2. When do we call as case false in legal definition?

3. What remedies can a victim of false case get according to law?

4. What is the duty of a police officer in case of false cases?

5. To my experience I saw the investigating officer apply to the court to prosecute the complainant. Is it the right prosedure?

6. The investigating officers complain that they apply to the court for prosecuting the false case lodgers. But the court are not interested in issuing process. What do you think?

7. When do you call a case false under NaSNDA?

8. Tell me about the usage of section 17 of NaSNDA.

9. What is the duty of the accused of false cases?

10. According to you how much effective is section 17 of NaSNDA to prosecute the false case lodgers?

11. What are the causes of ineffectiveness of section 17 of NaSNDA?

12. How many times did you issued processes against the complainants of false cases during your service time?

13. What measures does the court take to prevent false cases?

14. What amendment do you suggest to make section 17 of NaSNDA effective?

Kii Questionaire for the Victim

1. To my view you had been an accused of a false case under NaSNDA. Tell me about that
2. What treatmen did you get from the police?
3. How did you get rid of the case?
4. Did you prosecute the complainant of that fasle case? if not why?
5. How we can prevent lodging false cases?

KII Questionaire for Police Officers

1. For how many years you are serving in the police?
2. For how many years you are engaged in investigative duties?
3. What is the causs of false case?
4. According to your opinion what classes of persons file false cases more?
5. Which sort of cases proves false more?
6. Police officers usually believe that most of the false cases come from the court. What do you think?
7. How can police prevent lodging false cases?
8. What measure can officers in charge take to prevent lodging of false cases?
9. What is the duty of the investigation officer if he finds the case false at the onset?
10. What does the investigation do when he finds the case is false unde the NaSNDA?
11. What is the drawback of secntion 17 of NaSNDA to prosecute the complainant of false cases?
12. How section 17 of NaSNDA could be effective? What amendmend do you suggest?
13. Why people do not prosecute the false case lodger?

Isues for FDG

1. Why a flse case originate?
2. What is the nature of false cases?
3. What is the extend of false cases
4. What is the role of police to originate or prevent false cases?
5. What are the legal mechanisms against false cases?
6. How the police, advocate, judges or general people can ensure remedies from false cases?
7. Are the institution responsilbe for giving remedies agaisnt false cases are capaple?
8. How this legal mechanism could be make more effective?