



KHAN FOUNDATION

National Focal Point in Bangladesh for Human Development Network in South Asia

Report

**In Country Workshop
on
Gender Equality & Access to Law :
A Basic Human Right**

Abdul Momen Khan Memorial Foundation

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PREFACE

This report is an outcome of in-country workshop entitled “Gender Equality & Access to Law : A Basic Human Right”, organized by Khan Foundation and BELA in collaboration with Asia Pacific Forum on Judicial Education on Equality Issues.

If we traverse the telltale situation of the women in a holistic approach, the necessity of such a program will be palpable easily. Although sex is determined by nature but the sense of gender, is imposed by the society. From the very beginning of her childhood, the elements of gender are imposed upon a girl by every possible manner. The nature of imposition of gender includes socio-cultural, socio-religious beliefs, taboos and practices. Even in the same society classes of different people, towards gender are frequent to impose discrete beliefs and practices.

Gender equality is a way to overcome all prejudices, taboos, misbeliefs and thus to create a congenial environment for the women to exercise their rights and liberties guaranteed under the constitution or any other existing law. Gender equality is also concerned for qualitative development of a country and for a new sphere of understanding.

The object of the whole program is to aware and sensitize the participating judges and to get them a process to consider the dynamic concept of gender equality. Sharing NGO experience by such kind of workshop and thus pave the way for sustainable materialization of rights of women in adjudicating process. As the judges are not supposed to sit with the community people and can not share their feelings and beliefs with them. This kind of experience is definitely useful and as an eye opener.

The judges can play a very important role in this context as the prime objective of law is to guide and control the social relationship and this very weapon “the law” is at the disposal of judges for dispensation of justice, having regard to gender equality from the positive point of view in this country, in the court of law gender equality will only be possible when the judges tend to dispose of cases before them upon objective test rather subjective satisfaction as in most of the cases traumatized victims fail to recall all the facts of the case strictly from the material point of view.

The Secretary Mr Afzal Hossain Ahmed, Ministry of Law, Justice and Parliamentary Affairs, Mr. Justice Mohammad Fazlul Karim, Appellate Division, Mr. Justice Amirul Kabir Chowdhury, High Court Division, Ms Justice Nazmun Ara Sultana, High Court Division, Supreme Court of Bangladesh, Barrister Syed Ishtiaq Ahmed, Honourable Advisor to the Caretaker Government, Mr. Justice B B Roy Chowdhury, Honourable Advisor to the Caretaker Government, Mr Justice Douglas R. Campbell, Federal Court of Canada, Mr. Justice Arunava Barua, High Court of Calcutta, India and participants judges coming from different districts of Bangladesh play a vital role to materialize the in-country workshop.

I am grateful to them.

Advocate Rokhsana Khondker
Executive Director
Khan Foundation

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INAUGURAL SESSION

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The vulnerable situation of women in the society causes us to ponder over the matter as a crucial problem and the intellectuals to take initiatives which allow women to have access to law for redress. With regard to the socio-legal, socio-political socio-economic and socio-religious condition of women, Khan Foundation and BELA in collaboration with Asia Pacific Forum on Judicial Education on Equality Issues, organized a In-country Workshop on “Gender Equality & Access to Law : A Basic Human Right”. The Inaugural Session of the workshop started on 31st August 2001 at 9:00am in Sonargaon Hotel. The Chief Guest of this session was Barrister Syed Ishtiaque Ahmed, Honourable Advisor to the Caretaker Government while Mr. Justice Douglas Campbell, Federal Court of Canada, was the distinguished Keynote speaker. Judges from different districts of the country were also present in the workshop. The session was chaired by Honourable Justice Fazlul Karim, Appellate Division, Supreme Court of Bangladesh. Advocate Rokhsana Khondker, Executive Director of Khan Foundation inaugurated the Session.

In her inaugural speech, Advocate Rokhsana Khondker focused on some crucial issues regarding free and effective access to law for women and pave the way, for them to the objective test over facts and circumstances with consideration victimizing women.

In her address she expressed skepticism over the fact whether a women victim of violence would receive justice, which is sensitive to her gender. In this regard she endeavored to draw the attention of the learned Judges, as to how the judiciary viewed women who approach courts of law for redress in situations of violence.

Advocate Rokhsana Khondker Executive Director of Khan Foundation observed that economically, women are mostly dependant on male members of the society and are often manipulated by the male members. In Bangladesh Personal Law guides the property laws of the Muslim and the Hindus where women are evidently discriminated in getting their shares of the property. She sought the support of the Honourable Advisor to the caretaker Government Barrister Syed Ishtiaque Ahmed particularly in regard to the equality of women regarding inheritance which is crucial for ensurings their socio-economic status in the society.

She further observed that participation of women in political life has also been rather insignificant as they are yet to be economically and socially empowered in spite of the fact that in Bangladesh women had held the two most important positions of the Prime Minister and Leader of the opposition for the last ten years. Reflecting over the present scenario of participation of women in politics subject to 7th National Parliament, she pointed out we can see that only 5 women members were elected in the general Election in house of 300. Thus there are ample indication that just holding high positions in statecraft does not necessarily improve the plight of the women in the society nor necessarily in the political power structure.

In her address, Advocate Rokhsana Khondker focused very briefly on the major categories of violence and abuse of women which have their base perhaps in the conventional orthodox thoughts. These are murder, rape, abduction, acid throwing, battering, harassment, mugging, mantel torture etc.

She opined that after becoming victim the non-cooperation of different organs of the state starts with the women subject to her socio-legal socio-economic and socio-religious

perspective. In most cases women victims are prevented threatened not to file cases either by the offenders themselves by the social power structure who try to patch up the incidents, a very common practice in our society thus depriving the basic, right of the women to have access to law. Thereafter, even if the case is filed at the insistence of the victim, it has been observed that non-cooperation of the law enforcing agencies citing various reasons where medical reports are necessary, are delayed intentionally causing irreparable damage to the merit of the cases at the time of the hearing. Thus in most of the cases the judgment depends upon the discretionary powers and strong legal sense of the judges. Under the circumstances the judges often consider the matter on humanitarian ground rather than on legal stringency in order to ensure basic human rights of women.

In her address she expressed one of the major concerns of the Khan Foundation, “Democracy for Development and Development for Democracy” which encompasses the issues related to basic human rights and the organization's initiatives in this regard.

In this specific area the Khan Foundation has mobilized a “Women Lawyers Network” the members of which are committed to assist the women victims at times, with legal aid in their court process and to assist the Elected Women Members of Union Parishad to advise the women population on legal remedy which the grassroot people of the localities could have in their day to day life.

She opined that the judiciary was the most important organ of the state regarding dispensation of justice to vulnerable group of women in need of protection from the wrath of social stigma. They don't just serve as the mechanism for this purpose, but also remain as the source of moral strength for the affected and the underprivileged in the society as their protector and redeemer. In the context of access to law it is also important to note that women face even worse experience inside the court room where they are subjected to : i) humiliation, shame , guilt, ii) social stigma, ostracism, social pressure, iii) mental agony, upheaval, iv) fear of not getting help. v) fear of being deprived to justice. Thus a little support from the judicial institution can greatly enhance the moral strength of the women to seek redress under law once they are humiliated by the offenders.

People in this country are naturally used to considering the judiciary as the ultimate guardian of their rights and liberties, thus the effective access to the court on the basis of gender equality is sine qua non to sustain this noble belief of our people which had existed over centuries in this part of the world, She observes.

In conclusion she drew the attention of the learned judges and other concerned personnel to have a pro-active approach towards gender equality and to take concrete initiative and to create the appealed to all the women ample opportunity so that they have access to law and thus ensure protection of their basic rights.

The Chief Guest of the Inaugural session was Barrister Syed Ishtiaq Ahmed, Honourable Advisor to the caretaker Government of Bangladesh. In his address he pointed out that under the constitution of Bangladesh access to law has been guaranteed irrespective of sex, in spite of that we feel we ought to do something for women in this regard. Actually the government used to take some initiatives to provide the women an ample opportunity to have effective access to law. In a bid to do this the government has set up some courts and tribunals. He was hopeful about the workshop Judicial officers organized by the joint collaboration of the Asia Pacific Advisory Forum on Judicial Education on equality issues, Khan Foundation and Bangladesh Environmental Lawyers Association, and confident that the judicial officers attending the workshop are would have a clean understanding of the issues concerning

women and will also apprise themselves of the various viewpoints that prevail in the society on women's empowerment and justice.

Having responded to protect the lawful rights of women, he observed that in the last two or three decades we have witnessed a number of significant events and movements. In 1975, the first UN World Conference for the Women was held in Mexico, the last of which was held in Beijing in 1995.

He called the gender bias in the dispensation of justice as a malady of the legal system like all other sectors in society and opined that the two day long workshop will increase the understanding of the participating judges on gender issues while considering cases of violence against women.

He observed that the issue of justice is a complex one but demand for it is an inherent right of human being. Lack of appreciation of women issues may result in discrimination and injustice. This collaborative programme will enlighten all the participants to benefit from the judicial knowledge and NGO experience with respect to women's human rights issue.

He concluded with a note of optimism that the workshop would be a great success to educate the judges and throw new light for their future guidance.

The Keynote speaker of the session was Justice Douglas R Campbell, Federal court of Canada. Basically he was a judicial educator and has been acting as judge for 21 years and justice for last 6 years.

He observes that on judicial education equality issues are pertinent for effective delivery system. "Gender Equality and Access to Law : A Basic Human Right", it is very difficult to understand the sense of the terms. The Judges should be in a process of education in order to understand in the strict sense of the terms. In dispensation of justice regarding the case of a woman victim the judges should have a holistic approach.

Women are bound to work more than 15 hours in a week in Asia and Africa. Thirty to forty percent last the equal work. The women are mostly involved in household works which have a productive value in the economic of a country. In spite of that they are a vulnerable class in the society and deprived of equal rights from the material point of view. A couple of major step for the attainment of equal rights of women was taken under the United Nations initiatives namely (i) Convention on the Elimination of all forms of Discrimination (CEDAW) against women of which Bangladesh is a signatory state and afterwards ratified by the parliament. Mew the provisions of CEDAW are part of the domestic law of Bangladesh and the judges are supposed to apply the provisions of CEDAW in their judgment. (ii) The United Nations Declaration on the Elimination of Violence against Women.

According to cultural prejudice and practice, male members of the society are treated as superior and the women are treated as inferior. The judges should have a pragmatic approach in this regard.

Judging is a social phenomenon, it's not a clinical work, the subject is very complicated. In course of dispensation of justice, a judge has to take into consideration – evidence argument, legislation and judicial precedent. In spite of that in a bench comprising of several judges, the judges are, in most of the cases, of different opinion, as they are coming from different places having different experience and their looking are also different. So for a effective justice delivery system on equality issues, the judges should be on equality issues, the judges should be on education process.

Chairperson of the Inaugural session was justice Mohammad Fazlul Karim, Appellate division, Supreme Court of Bangladesh. In his address before the judges coming in the workshop with reference to the discrimination against women he emphasized on the awareness of the people of the community as a whole.

He asked the judges not to forget about the traumatic experience of women as a victim of rape on violence and glance over the gender bias which is not intentional but due to myths and stereotype of social baggage a judge carries with him.

He observes that the workshop is designed to sensitize the participant judges who deal with the cases of violence against women and suggest that no victim should leave the court room with a wounded feeling of discrimination and justice denied.

Advocate Syeda Rezwana Hasan, Director (Programme) BELA, regards Advocate Rokhsana Khondher as the Heroine of the whole programme and treats herself merely as an actress and Foundation as well as other persons concerned to materialize such a Kind of workshop which is first of all in Bangladesh.

WORKING SESSION
VIOLENCE AGAINST WOMEN : MYTH AND REALITY

WORKING SESSION

VIOLENCE AGAINST WOMEN : MYTH AND REALITY

The working session started on 31st August at 3:00 pm., in the Democracy Auditorium of Khan Foundation. This session was chaired by Mr. Afzal Hossain Ahmed, Secretary, Ministry of Law, Justice and Parliamentary Affairs, Prof. Dr. Mahmuda Islam, Department of Sociology, University of Dhaka was the Keynote Speaker.

The prime concern and the matter fixed for discussion of this session was “Violence Against Women : Myth and Reality”. Keynote speaker, Prof. Dr Mahmuda Islam Submitted a paper named Violence Against Women : Myth and Reality. In her paper she suggested working towards an integrated approach for combating violence against women. Some detail strategy to materialize this approach were also inserted in her paper. These are as follows:

Different governmental departments may be involved in an integrated strategy to materialize this objective e.i. Health department, Police department, Social welfare department and Judiciary (the courts).

In a bid to materialize this we have to work with specific objective as :

Responding to the needs of survivors of violence. Firstly the judiciary should be responsible for interpreting and applying law with gender sensitivity, making protective orders, ensuring victim-friendly proceedings, maintaining an adequate record of cases of violence against women, training of personnel on gender equality and justice and the domestic application of international and regional human rights instrument relevant to the human rights of women.

Secondly, taking appropriate action with regard to the perpetration of the violence. The judiciary should play an important role to provide for sufficient punishment and order the offender to attend counseling sessions.

Court proceeding are mostly lengthy, dilatory and complicated. The environment in the court premises is not at all congenial for a waiting women. Laws of Evidence involve delicate personal and conjugal matters about which women in Bangladesh are temperamentally shy and reticent. The defense lawyers play on and take advantage of the situation and comments on personal intimate matters with the approval of the court. As a result, real evidence is either suppressed or lost. The kind of evidence and witness in a rape, trafficking, dowry, cruelty and similar cases can not be as thorough and elaborate as in other criminal proceedings, but the court does not make any logical and practical distinction. The judges are still predominantly male; many of them seldom rise above the male instinct of relishing quips about women.

With reference to the UN Declaration on the Elimination of Violence Against Women. She stated the definition of violence against women as “violence against women is a manifestation of historically unequal power relations between men and women which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women”

The Chairperson of this session, Mr. Afzal Hossain Ahmed, Secretary, Ministry of Law, Justice and Parliamentary Affairs, in his speech focused that oppression against women, murder of women for dowry, abduction, trafficking of women, rape, acid throwing on girls and other forms of violence against women have almost become a regular phenomenon.

Incidents like burning to death and stoning to death in a pit have also taken place in the country based on religious misinterpretation given by village arbitration council. A matter of recent concern is the oppression on women in the police custody. Quite a number of women have been oppressed, raped and even killed by police in the near past. Adequate forensic facilities have not been made available yet for investigation into the cases of violence against women. As a result, special difficulties are being faced while conducting investigation and other works related to women. The government has set up a support center to assist women and girl-child. Assistance in conducting cases, free legal advice and shelter to oppressed women are provided in this center. Simultaneously oppressed women are given opportunity to become self-reliant through different vocational training. Ten courts have been set up in ten districts with a view to resist oppression on girls and women.

He observed that our constitution in its fundamental principles of state policy provides for ensuring participation of women in all spheres of national life to secure economic and social justice. In fact, women experience differently in our traditional legal system. In dispensation of justice judges are not supposed to discriminate between men and women litigants.

Ms K Geeta, Programme Coordinator, Sakshi (A Delhi based women's rights organization) conducted an exercise in this session. She stated a case in brief and invited legal study opinion of judges in this case. It was pointed out that over the same fact judges were of different opinion. She endeavoured to seek a common course to minimize the difference of opinion of judges in the same fact. She made an empirical analysis of women victim being subjected to pragmatic approach, in course of getting redress in the court of law. A victim stands below the equality line, she observed to make it clear she sets forth some criteria which a victim used to face, as fear, second rape, humiliation, disbelief, public resistance, silence. Social degradation, blame, no marriage etc.

After tea break, judges coming from different districts of the country took part in an open discussion, and then this session was concluded.

Working Session
Violence Against Women : Procedural Barriers to Justice

Working Session

Violence Against Women : Procedural Barriers to Justice

The working session on “Violence Against Women : Procedural Barriers to Justice” was started on 1st September Saturday, 2001 at 10:00 am in the Democracy Auditorium of the Khan Foundation. The Keynote speaker of this session was Justice Nazmun Ara Sultana, Supreme Court of Bangladesh. Justice Amirul Kabir Chowdhury, Supreme court , High Court Division was the chairperson of the session. Commentary over the Violence Against Women and Procedural Barriers were presented by Justice Arunava Barua, High Court of Calcutta, India.

Justice Nazmun Ara Sultana, the Keynote speaker of the session, submitted a paper named “Procedural complications is the main hindrance in the case of violence against women”. In her address she observed, various enactments of stringent laws to combat the violence against women and to protect their interest, have been passed and perhaps no other country of the world has enacted so many special laws to safeguard the women. In spite of that, violence against women have been increasing alarmingly.

The reasons behind as it she observed was that all the cases of violence against women do not come up to the courts. Save a few sensational cases of murder and acid throwing only, the incidents of domestic violence are treated as very trivial, unimportant.

She opined that most of the cases of domestic violence against women are buried at the very inception. Taking advantage of poverty, illiteracy and other handicaps of the helpless victim of violence, in most of the cases, the perpetrators manage to suppress or conceal the act of violence they perpetrate on the women. If case is lodged, police follow up is often minimal and rudimentary. Judges view the victim of violence skeptically and tend to hold them responsible for bringing violence upon themselves. She suggests to re-think all the matters concerned to overcome the procedural complication.

The Chairperson of the session, Justice Amirul Kabir Chowdhury in his address before the Judges emphasised over the Legal awareness of the commoners and the whole community. In a bid to make comprehensive awareness he suggested that, first of all, women should be literate. Most of the cases of domestic violence do not come to light and remain unreported crime.

He observed that if the women are legally aware, miscreants will not dare to commit offence in most of the cases.

He also observed that due to procedural complications and dilatory process women avoid going to the court. This scenario of the court should be changed.

In course of his commentary, over “Violence Against Women : Procedural Barriers to Justice”, Justice Arunava Barua, High Court of Calcutta, India endeavored to make the judges comprehend, the mental, psychological and physical condition of a girl victim. When such traumatic incident is inflicted upon her sometimes she fails to recollect exactly all the facts, from the material point of view.

In this context, he cited a leading case of Supreme Court of India. The *State of Punjab V. Gurmit Singh & others*. In this case Supreme Court of India points that the appreciation of

evidence by trial court is not only unreasonable but also perverse. The acquittal is liable to be set aside for offences of abduction, wrongful confinement and rape.

A Mock Trial, in pursuit of Justice was performed by Legal cell of Khan Foundation. The session was followed by a short tea break.

CONCLUDING SESSION

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Concluding Session, of the workshop Gender Equality and Access to Law : A Basic Human Right was started on 1st September 2001 at 2:00 pm. The Chairperson of the session was Justice Mohammad Karim, Appellate Division, Supreme Court of Bangladesh. The Chief Guest of the session was Justice B B Roy Chowdhury. Advisor to the Caretaker Government of Bangladesh.

Justice B B Roy Chowdhury in his Address observes that the conscience of the modern world is shaken today by the plight of women. In our society the women work the hardest, but have no say in the affairs of the family as in most cases their work apparently does not bring in returns and being dependent on men they not only suffer discrimination but also indignity and torture. Except in a relatively few well to do and enlightened families, the women not only have no access to the court of law for realization of their rights, they are completely unaware of the rights to which they are legitimately entitled to

He opined that most people live in village where religious fanaticism is endemic to certain extent. Pseudo-religious leaders in the villages control the public opinion and their views almost go against the women for selfish ends. The net result is that in most cases the women are deprived of their due rights unless some of the men folk come to their aid. In such a situation, even if discrimination is removed under the law, it will be a paper work yielding no fruitful results for them.

The Chairperson of the session was Justice Mohammad Fazlul Kairm. The chairperson urged all the judges to ponder over the matter wholeheartedly and consider the victims of violence against women positively in the court of law in the course of dispensing.

Recommendations

1. The definition of section 2 (Ka) of Nari-o-Shisu Nirjatan Ain should be amended. It should be enhanced upto 16 years instead of 14 years.
2. The Postal address of all witnesses should be mentioned in the Charge Sheet.
3. The rural people should be made conscious through effective means.
4. Police officer and concerned medical officers should be brought under such workshop.
5. DNA test should be introduced in our country for ascertaining the real culprit in charge of rape.
6. Separate investigation cell should be introduced for effective investigation.
7. Medical examination of female victims should be made by female doctor.
8. There should be a research work on Nari-o-Shisu Nirjatan Ain and Safe custody of victim.

9. Juvenile offences are tremendously expanding now a days. So, the concept age of minority should be reduced to 12 years of age.
10. Punishment for the offences for the VAW women and children should be reduced.
11. Women Sub-Inspector should be appointed in every police station, for the investigation of cases concerning women.
12. To minimize the offences, terrorism should be curbed politically.
13. Provisions should be made empowering the judges to start a case suo moto for offences against women.
14. Investigating agency should be under the court of district judges.
15. Ambiguity about the age of minor girl should be removed.

Annexure 1



KHAN FOUNDATION

In country workshop on Gender Equality & Access to Law : A Basic Human Right

**INAUGURAL SESSION
FRIDAY 31 AUGUST 2001
HOTEL PAN PACIFIC SONARGAON DHAKA**

**ADDRESS BY
ROKHSANA KHONDKER**
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JUSTICE MR MOHAMMAD FAZLUL KARIM
Chairperson of the Inaugural Session

HONORABLE ADVISOR TO THE CARETAKER GOVERNMENT
Barrister Syed Ishtiaque Ahmed
Respected Chief Guest of the Inaugural Session

Distinguished Keynote Speaker
Justice Mr Douglas Campbell
Federal Court of Canada

Advocate Syeda Rezwana Hasan
Director, BELA

Learned Judges from the various Districts of Bangladesh

Eminent Guests , Ladies & Gentlemen

This is indeed a great privilege for me this morning to welcome you all to the Inaugural Session of the In-country Workshop on “Gender equality & Access to Law : A Basic Human Right”, an issue of great topical interest being organized by Khan Foundation & BELA in collaboration with the Asia Pacific Forum on Judicial Education on Equality Issues.

The continued vulnerable state of women in our society forces us not just to ponder but take some practical initiatives to make available to our women adequate opportunities to have access to law for redress from repression and injustice commonly faced by them. In our view this has to be contemplated by our society as a challenge towards establishing the basic human rights for our underprivileged and the repressed women.

Today we have amongst us the respected judge of our Supreme Court, Justice Fazlul Karim of the Appellate Division who had been involved in this noble exercise since the past several years in a number of SAARC countries through the auspices of the Asia Pacific Forum on Judicial Education on Equality Issues. We also have amongst us Barrister Syed Ishtiaque Ahmed, the most respected lawyer in the country for almost the past half a century. We are also privileged to have amongst us Justice Douglas Campbell from as far as Canada as the Keynote Speaker of the Inaugural Session and Justice Arunava Barua as the Principal Facilitator for the workshop, both leading personalities in their respective countries in this area. The idea behind this programme is to make the existing laws not only effective and judicious but also to make it more equitable having regard to the real place of women in the society. Does a woman, when a victim of violence receive justice, which is sensitive to her gender? In this regard we endeavor to draw the attention of the learned Judges, how the judiciary views women who approach courts of law for redress in situations of violence. Given the constitutional promise of equality for men and women, this program seeks to find ways and means which will enable men and women to have access to legal rights and valued justice irrespective of their gender status and without any discrimination on account of sex alone. In the present context of our social behavioral pattern, it is not difficult to have a firm assessment of the reality of present status of the women in our Society. In order to get a realistic picture of the women in the society we have to look into the matter from various angles.

Economically, they are dependent on male members of the society and are often manipulated by the male members even as a mechanism for earning money as dowry during the marriage. In Bangladesh Personal Law (Mohammedan & Hindu Law) guides the property laws of Muslims and Hindus, where women are discriminated evidently to get their shares of the property. We seek the support of the Honourable Advisor to the caretaker Government of Bangladesh Barrister Syed Ishtiaque Ahmed, particularly in regard to the equality of women in regard to inheritance which is key to ensuring their socio-economic status in the society. Given the present social status of women in our country, discrimination against women is evident, they are oppressed, suppressed, tortured, and even treated as subservient to men in every respect of their social life.

Participation of women in political life has also been rather insignificant as they are yet to be economically and socially empowered in spite of the fact that in Bangladesh we have seen the unique case where women had held the two most important positions of the Prime Minister & Leader of the Opposition for the last ten years. If we look over the present scenario of participation in politics of women subject to 7th National Parliament, we can see that only 5 women members were elected in the general election in a house of 300. There is ample indication that just holding high positions in the statecraft does not necessarily improve the plight of the women in the society nor necessarily in the political power structure. It is amazing that the society specifically starts glorifying the equal rights of women at the time of general elections, the would be leaders highlighting the role of women in their campaign trails, no wonder only to bag their votes since half the votes (and at times more than half) come from them. This situation does not reflect any genuine attitude of our people towards gender equality, rather their craftiness to gain votes. This approach needs to be altered by any means.

Let me very briefly go on to the major categories of violence and abuse of women, which have their base perhaps in the conventional orthodox thought process of men resulting mostly from the socio-religious traditions of this sub-continent. These are:

1. Murder
2. Rape/Abduction
3. Acid throwing
4. Battering / Harassment
5. Mugging (often resulting in Murder)
6. Mental Torture (Often resulting in deaths and suicides)

After becoming victim, the non-cooperation of different organs of the State starts with the women subject to their socio-legal, socio-economic and socio-religious perspective. In Most of the cases women victims are prevented or threatened not to file cases either by the offenders themselves or by the social power structure who intend to patch up the incidents, a very common practice in our society thus depriving straight away the basic right of the women to have access to law. Thereafter, even if the case is filed at the insistence of the victim, it has been observed that the non-cooperation of the law enforcing agencies on account of various reasons (pecuniary and socio-political) make it virtually impossible for them to follow-up the cases. In cases where medical reports are necessary, they are delayed intentionally causing irreparable damage to the merit of the cases at the time of hearing. Thus, in most of the cases the judgment depends upon the discretionary powers and strong legal sense of the judges. Under the circumstances the judges often consider the matter on humanitarian ground rather than legal stringency in order to ensure the basic human rights of women. But one has to appreciate that this is not always easy on their part.

One of the concerns of the Khan Foundation is “Democracy for Development and Development for Democracy” which encompasses the issues related to basic human rights

and the organization has taken some initiatives in this regard. In this specific area the Khan Foundation has mobilized a “Women Lawyers Network” the members of which are committed to assist the women victims at times with legal aid their court process and to assist the Elected Women Members of Union Parishad to advice the women populace on legal remedy which the grass-root people of the localities could have in their day to day life.

In recent years, various organs and institutions of the State have become more and more attuned to gender issues especially in view of the worlds conference on women held in Beijing in 1995. A gradual recognition of the need to draw the attention of various institutions to the issues of Gender equality has been expressed both within and outside the framework of the Government. The judiciary is the most important organ of the State in regard to dispensation of justice to vulnerable group of women in need of protection from the wrath of our social stigma. They don't just serve as mechanism for the purpose but also remain the source of moral strength for the affected and the underprivileged in the society as their protector and redeemer. Thus the role of the Key players in this area of concern, so to say the role of the learned judges at the local levels is crucial in upholding the rights of women and having effective access to law on the basis of gender equality guaranteed under our constitution. In the context of access to law it is also important to note that the women face worst experience inside the court rooms. For instance :

1. Humiliation, Shame, Guilt
2. Social Stigma, Ostracism, Social Pressure.
3. Mental agony, upheaval,
4. Fear of not getting help
5. Fear of society.

all contribute against women towards their fair access to law. Thus a little support from the judicial institutions can greatly enhance the moral strength of the women to seek redress under law once they are humiliated by the offenders.

People in this country are naturally used to consider the Judiciary as the ultimate guardian of their rights and liberties. Thus the effective access to the court on the basis of Gender equality is a sine qua non to sustain this noble belief of our people which had existed over centuries in this part of the world.

The judges can play the most vital role in this regard. Most of the violence against women is within the family, the experience of speaking openly in a public forum is for most women complainants' at first. The judge often show great regard to this social norm of ours and can be crucial ensuring gender equality and access to law. The in-camera trial may receive prime consideration in such cases at the discretion of the judges, as female litigants are often subjected to disrespectful forms address by opposing lawyers court personnel referring sex-specific comments. Some degree of gender inequality is evident and to over come this problem, the thought process of the learned judges can very easily have an effective and positive result in this regard.

In conclusion, I want to draw the kind attention of the learned judges and other concerned personnel to have a pro-active approach towards gender equality and take added initiative to create for the women an effective and ample opportunity to have access to law, which is their basic human right.

ANNEXURE 2

Written Speech of Mr justice Fazlul Karim

VAW is the increasing phenomenon at the arithmetic ratio in almost all developing / under developed Countries of the Globe. Our South Asia Pacific region is no exception. In order to combat the traumatic menace Sakshi has thought over some means to ameliorate the sufferings of the victims of VAW in setting up a protocol meeting in Delhi in 1997 with the object of judicial education or gender equality issues. Soon the subject and messages crossed the border with the setting up Asia Pacific Forum, holding of protocol meetings at Delhi, Pakistan, Sri Lanka, Nepal and in country workshops in Nepal, Colcatta, Bombay and Bangladesh. The sole object of the workshop is to make everybody aware of the gender bias in a judge a which is not international but due to myths and stereotype, of the social baggage a judge carries with him sitting as a judge, which sometimes lead a judge forget about traumatic experience of women as a victim of rape / violence.

This workshop Gender Equality & Access to Law - A basic Human rights is designed to make the participants judges who are the women and children Repression Act Adalats in Bangladesh and dealing with offences of VAW and children to give a first hand idea about of the traumatic experience of the women victims so that upon administration of Justice, victim go out of the Court room with a wounded feeling of discrimination on ground of sex which is our cherished goal enshrined in our Constitution.

Ms Naina Kapur, the brain behind the forum and her team with the active co-operation, ideas, thought and supervision of Justice D Campbell of Federal Court of Canada have been tirelessly experimenting on the issue and during the course of this workshop the participants would feel every bit of it how a initially apparent non-issue to a judge as to bias is really an issues always to be kept mint which dispensing with Justice in cases of VAW.

I hope that our participants and Judges would be immensely benefited out of the workshop. I also take the privilege in introducing our newly elevated only lady judge of the Supreme Court of Bangladesh Madame Justice Nazmun Ara Sultana, who would also participate in the workshop and interact with the participants regarding the procedural loopholes of our present law on the subject and share her experiences.

Our workshop in 1999 was graced by the then senior most judge of the Supreme Court of Bangladesh Mr. Justice Latifur Rahman, the present Chief Adviser of the Caretaker Government of the Republic and the workshop was a grand success.

Today we have amongst us a legal illuminery of our Country Barrister Syed Istiaque Ahmed, an Adviser to the Caretaker Government who was also the Adviser in the last Caretaker Government whose presence, deliberation and blessings shall, inspire us in making the workshop a success.

I shall be failing in any duties if I do not speak something about Adv. Rokhsana Khondker of Khan Foundation who worked days and nights to make the workshop a success, which you can well appreciate as morning shows the day with the gala opening at the Pan Pacific Sonargaon Hotel, co-sponsored by BELA, Bangladesh, a M T member of the Forum and all the helping hand attached to them.

I thank my law-lords present at this occasion in spite of their extreme preoccupations and even sacrificing part of autumn vacation. This is indeed a great source of inspiration to us.

Finally, I thank you all to be with us this august morning.

Allah Hafez

ANNEXURE 3

Written Speech of Barrister Syed Ishtiaque Ahmed

The Chairperson of the inaugural session Mr. Justice Mohammad Fazlul Karim, Honourable Judge, Appellate Division, Supreme Court of Bangladesh, participants Judges distinguished guests, ladies and gentlemen.

I am happy to note that this workshop of 25 judicial Officers have been organized by the joint collaboration of the Asia Pacific Advisory Forum on Judicial Education on Equality issues, Khan Foundation and Bangladesh Environmental Lawyers Association (BELA). I am confident that the judicial officers who are going to attend this workshop will have a clear understanding of the issues concerning women and will also apprise themselves of the various view points that prevail the society on women's empowerment and justice.

Women constitute almost one half of the global population but their contribution to society has been limited, not because they are not capable of making a contribution as significant as that by men but because the social structure and power practices keep women confined to certain roles only with no actual empowerment. To tackle such discriminatory practices prevailing worldwide, the global community responded to protect the lawful rights of women and the last two or three decades have witnessed a number of significant events and achievements for the international women's movement. In 1975, the first UN world Conference for Women was held in Mexico, where thus international Decade for Women was officially declared. This was followed by world conference for women at five-yearly intervals, last of which was held in Beijing in 1995. These conferences provided women from across diverse regions, religions, cultures and classes the opportunity to share their experiences and understand each others concerns, develop shared goals and collectively establish new principles, strategies and platforms for action. A major step for the attainment of the goal of equal rights for women was taken on the 18th of December 1979 when the United Nations General Assembly adopted the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) which our country has ratified. CEDAW is the first UN Convention that has acknowledged gender and viewed it in a holistic manner, comprehensively defined discrimination and helped to take the concept of equality beyond the conventional understanding of the term. In 1993, the Vienna World congress declaration gave universal recognition to women's right as human rights as human a long fight for justice finally won. And the same year saw the UN Declaration on the Elimination of Violence against Women.

In Bangladesh, the scenario for the women is no different. Our constitution in Article 28 has described women as backward section of the populace that reflect the reality of inequality and discrimination. Women they are faced with problems associated with discrimination, violence, inequality, injustice and lack of access. To check these evils, the Constitution of Bangladesh ensures equal right to all citizens and prohibited discrimination and inequality on the basis of sex and strives to promote social and economic equality. Specifically, with respect to women, Article 28 states "Women shall have equal rights with men in all spheres of state and public life". However, in reality women enjoy fewer rights than men and the gap between women and men persists, resulting in continuous discrimination against women. Women organizations have for long been pursuing the causes of gender equality, and demanding actions to be taken to movement was ensure that women and men have equal rights, opportunities, responsibilities and participation in all spheres of life, the initial task was hard and had to address the complex social and legal dilemma. Although the movement has to go a long way to achieve the noble goals, some changes in the policy level suggest a progress and

reflect the commitment of the government is upholding the spirit of equality. In the respect during recent years some of the actions by the government towards achieving equality between women and men were :

- The Government of Bangladesh became a signatory to the Beijing Declaration and endorsed its Platform for Action (BFA), in 1995.
- Formulation of a national policy for the advancement of women, which was declared on 8, March, 1997.
- Establishment of the Ministry of Women and Children Affairs to act as a facilitator and catalyst in implementing, coordinating and monitoring of WID programmes by all government line ministries through a network of 42 WID focal points.
- Finalization of the Institutional Review of WID (Women in Development) Capability, which suggested changes in policies and programmes.
- Establishment of a 44 member National Council for Women's Development (NCWD) charred by the Prime Minister, 1997.
- Adoption of National Action Plan (NAP) bases on the Beijing PFA in 1997.
- Withdrawal of some reservations to the CEDAW, which relate to family benefits guardianship, trusteeship and adoption of children in 1997.
- Affirmative action for selection of women in the public sector and elected bodies. For example one forth (3 out of 12) of the seats in the Union Parishad have been reserved for women to be elected by direct election.

Despite these policy and legal commitments, ensuring equal rights for women still appear to be difficult tasks. The political commitment and prevailing social systems need to be more responsive to the demand of equality. Although in many sphere of our national life, we find women creating places for them, that is yet to be made a general practice as opposed to limited and exceptional cases. It is not easy to bring a radical change in the long standing social practices and believes that bar women's empowerment. And that is where the women organizations have to make the difference with constant, well-focused and persistent endeavor.

The issue of justice is a complex one but the demand for it is inherent rights of every human being. Lack of appreciation of women issues may result in discrimination and injustice. There exist many laws that are tamed at addressing violence against women and to check discrimination. Due to ineffective implementation of these laws such laws fail to punish the offenders against women's rights-as a human being and a women. Lack of understanding and sensitivity of women issues among police, judges, doctors and social workers contribute to lack of punishment and inadequate redress to the victims.

As judicial officers, you are, in performance of your professional obligation, responsible to ensure that the spirit of these laws must not be frustrated or undermined. The application of law must consider all special and regular circumstance to address the social vices and Many reasons exist for the judiciary to seize the initiative and pursue awareness training on social context issues, including gender, racial equity and aboriginal justice. There is the need to ensure that our justice system operates fairly and equality, the need to ensure that judges do not rely on improper myths and stereotypes, the recognition that because judges make law, they must be aware of other values, cultures and perspective the recognition that this knowledge as also required because in making law, judges often weigh or choose competing values; the need to ensure that judges understand the context in which law operates because equality is a constitutional norm; common law and finally the fact that judicial awareness training is new for most judges.

Gender bias in the dispensation of justice is a malady of the legal system like all other sector in society I believe this two day long workshop will increase the understanding of the participating judges on gender issues while addressing cases of violence against women. The workshop as I understand will focus on justice issues at the implementation level touching upon specifically the courtroom environment, procedure, attitudes of courtroom personnel, lawyers and judges while addressing issues of women victims etc.

The Collaborative programme will enlighten all the participants to benefit from the judicial knowledge and NGO experience with respect to women's human rights issue.

I conclude with a note of optimism that this workshop will be a great education for the judges and throw new light for their future guidance

Thank you all

Syed Ishtaque Ahmed, Bar-at-law
Advisor to the Caretaker Government
and Senior Advocate
Supreme Court of Bangladesh.

ANNEXURE 4

Speech for Workshop Organised by Khan Foundation at 03:30 Pm on 31.08.2001
Afzal Hossain Ahmed
Secretary
Ministry of Law, Justice & Parliamentary Affairs

Distinguished Guests
Dear Participants
Ladies and Gentlemen

Assalamu Alaikum. It gives me immense pleasure to be present here this fine afternoon to preside over this session titled : **Violence against Women : Myth and Reality**. It is indeed a timely initiative and let me first convey my heartfelt thanks to the organizers for arranging the prestigious workshop and inviting me to preside over this important session.

Violence Against Women does not show a significant decline though a number of laws have already been enacted. Oppression against women, murder of women for dowry abduction, trafficking of women, rape, acid-throwing on girls and other forms of violence against women have almost become a regular phenomenon. Incidents like burning to death and stoning to death in a pit have also taken place in the country based on religious misinterpretation given by village arbitration council. A matter of concern is the oppression on women while in the police–custody-nay in the custody of State. Quite a number of women have been oppressed, raped and even killed by police in the near past. Adequate forensic facilities have not been made available yet for investigation into the cases of violence against women. Till now, adequate number of women police constables, police inspectors, assistant sub inspectors could not be posted in number of places. No women police officers have yet been posted in the higher echelon of police administration. As a result special difficulties are being faced in conducting investigation and works related to women. Cases are not filed on many occasions and the trial is delayed for various reasons. The government has set up a support center to assist women and girl-Child. Assistance in conducting cases, free legal advice and shelter to oppressed women are provided in this center. Simultaneously oppressed women are given opportunity to become self-reliant through different vocational Training. 10 (ten) Court have been up in 10 districts with a view to resisting oppression on girls – child and women. 18 other similar courts are leaving set up within a north.

Dear Participants,

You know several existing laws have been amended and a few new one have been enacted in Bangladesh for the violence against women and girls-child. Among these laws , the important ones are : Muslim Family Law, Dowry Prohibition Act, child Marriage Restraint Act, Women Repression Act, etc. Cells for prevention of repression on women and child and rehabilitation center for women have been set up to provide legal assistance and counseling against repression on women and child. Beside this, there is a fund at the disposal of District & Session Judge to provide for lawyers fee and also to meet other expenditure. Through several acts have already been enacted, yet obstruction are being faced in achieving equality between men and women.

Dear participants,

Convention on Elimination of all forms of Discriminations Against Women (CEDAW) was adopted in the year 1979 in the United Nations in order to eliminate all sorts of discrimination against in all spheres of life including State, Economic, Family and Society. This came into effect from 3rd September 1981. Identified as international **Bill of Rights for Women**, this document is considered as self-considered and self-contained standard in protecting women's rights. Bangladesh signed this convention in 1984 with reservation on four Articles 2.13(a), 16(c) and (f). Ministry of Women and Children Affairs has already prepared the **National Policy for the Advancement of Women** in consultation with all ministries, organizations, NGOs and also in the light of all international documents like CEDAW, CRC, Beijing Declaration and Platform for Action and the basic right of women is acknowledged in the Constitution of the Country.

Distinguished guests

Our constitution in its fundamental principle of state policy provided scope for ensuring participation of women in all spheres of national life to secure economic and social justice and has also protected the fundamental rights of all citizens, male and female, who are equal before law and are entitled to equal protection of law, without any discrimination on grounds only of religion, race, caste or place of birth. Our constitution also provides equal opportunity for all irrespective of sex and caste and provides the protection of law or to be treated in accordance with law. Infact, women experience differently in our traditional legal system.

Dear Participants and Fellow Judges :

You know justice is sublime. You are dispensing justice as representative of the Almighty. You should not discriminate between men and women litigants, lawyers, male and female child. As a presiding judge take care to maintain the dignity and prestige of women litigants. You will try the cases of women victim with full respect and dignity and as such make the court environment free and friendly.

Staring at the women, passing comment on physical appearance suggestive comment brushing and touching, inappropriate discussion, offensive invitations are subtle forms of sexual harassment.

A judge is responsible morally and legally if it, occurs in the court environment. A judge should not speak in a derogatory manner to women litigants, lawyers etc. No jokes and remarks should be made may demean the mind of women litigants and lawyers. I am quite confident at the end of the workshop we will have a bagful of rich harvests in the form of innovative-suggestions and recommendations which will surely help in ensuring justice in our land.

Before parting, I thank the organization whole-heartedly for their ardent support, I also thank the keynote speaker or panelist of workshop and participants for their valuable contribution and remarks I also thank the representative of the media and hope that by reaching the deliverance of this workshop to the people it will help them to be more conscious. Therefore, help them in raising their voice against gender discrimination. I also thank the mediators, reporters and all concerned who have contributed to make the workshop a grand success.

ANNEXURE 5

SPEECH OF MAHMUDA ISLAM

Violence against women : Myth and Reality

Combating violence against women : A Case for integrated approach; Commonwealth Secretariat.

Different government departments may be involved in an integrated strategy and possible roles; such as :

Health Department
Police department
Social Welfare department
Judiciary (The Court)
Justice Department (directorate of Public prosecution)
Women's national Machinery.

Work with specific objectives such as :

* responding to the needs of survivors of violence against women :

Judiciary (the court) responsibility/ role are

- interpreting and applying law with gender sensitivity;
- making protective orders(e.g. peace orders);
- ensuring victim –friendly proceedings;
- maintaining an adequate record of cases of violence against women handled;
- training of personnel on gender equality and justice, and the domestic application of international and regional human rights instruments relevant to the human of women.

* taking appropriate action with regard to the perpetrator of the violence

Judiciary (the courts) responsibility/ roles;

- sufficient punishment;
- order offender to attend counselling sessions.

Court proceedings are mostly lengthy, dilatory and complicated. Environment of the Court premises is not congenial for waiting women. Laws of evidence involve delicate personal and conjugal matters about which women in Bangladesh are temperamentally shy and reticent. The defense lawyers play on and take advantage of the situation and indulge in character assassination and comment on personal intimate matters with the approval of the court. As a result, real evidence is often suppressed. The Kind of evidence and witness in a pare, trafficking, dowry cruelty and similar cases can not be as thorough and elaborate as in other criminal proceedings. But the court usually do not make the logical and practical distinction. The Judges are still predominantly male; many of them seldom rise above the male instinct of relishing quips about women. Its reflection in the judicial decisions; e.g; a case in India; a woman was raped by policemen in a police station while her brother and her lover waited outside. The policemen were acquitted on the ground that the prosecution failed to prove that she had not consented to the sexual act. The improbability of girl consenting to sexual act with utter strangers in a police station while she knew that her relations were waiting outside is the outrageous manifestation of the male bias of the legal system which is same in most of the countries in the region. This is a major advantage of the male culprits to evade legal action.

Violence Against Women : Myths and Realities.

1. My observation, research findings reveal that violence against women is rooted in a global culture which denies equal rights with men and which legitimizes the violent appropriation of women bodies for individual gratification or political ends. It is not confined in one country or in one region.
2. Definition of violence against women: There is no universally accepted definition of violence against women. Some human rights activists prefer a broad-based definition that includes “structural violence” such as poverty and unequal access to health and education. Others have argued for a more limited definition in order to restrict the term to its general understood meaning. However, there is need to develop specific operational definition.

UN Declaration on the Elimination of Violence against Women, General Assembly Resolution, December 1993, defines:

“Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women”

In reality, when women are abused in custody, when they are raped by armed forces as spoils of war. When they are terrorized and molested in the home, unequal power relations between men and women are manifested and violence takes place.

3. A global epidemic : Violence against women and girls continues to be a global epidemic that kills, tortures, and maims physically, psychologically, sexually and economically. It is one of the most pervasive of human rights violence, denying women equality, security, dignity, self-worth and their right to enjoy fundamental freedom.
4. Scope and magnitude of the problem : Global dimensions of the violence are alarming. It is often a cycle abuse that manifests itself in many forms throughout their lives e.g. pre-birth, infancy, girlhood, adolescence and adulthood elderly.
5. Calculating the socio-economic costs of violence against women calculating the costs of violence is a strategic intervention to make policy-maker aware about the importance and effectiveness of prevention. Canadian study reveals that the state spends over CDN \$ 1 billion annually on services including police, criminal justice systems counseling and training.
6. Need of training of the police prosecutors, magistrates judges and doctors has been increasingly felt. They mostly adhere to traditional values and support the family as
The reality is that even though most societies proscribe violence against women, the violations against women’s human rights are often sanctioned under the garb of cultural practices and norms. Moreover, when the violation takes place within the home as often happens the abuse is effectively condoned by the tacit silence and the passivity displayed by the state and the law enforcing machinery.

7. Failure of the state to ensure women's rights to freedom from torture : Experience shows some of the many ways in which states around the world fail to fulfill their responsibilities for the protection of women.

Apologists for violence against women including governments have sometimes argued that customs and traditions which result in abuse of women must be respected as genuine manifestations of a nation's or community's culture and may not be subjected to scrutiny from the perspective of human rights. Such views fail to recognize that cultural practices are sometimes both the context of human rights violations and a justification for them concealing an unwillingness to take positive action to end discriminatory practices.

Failure takes place at different phases ; such as,

- (i) failure to provide legal redress;
- (ii) failure to investigate gender bias in the police;
- (iii) Failure to prosecute and punish; gender bias courts; social and cultural hurdle to redress,
- (iv) failure to provide legal redress : governments around the world failed to fulfill their duty to secure legal redress for abused women . Gender discrimination in this area includes the persistence of inadequate laws against abuses and institutional failing on the part of the criminal justice process, including the police and the judiciary. Often these failings mutually reinforce each other.

Annexure 6

SPEECH OF MS JUSTICE NAZMUN ARA

Procedural Complications is the main hindrance in the case of

Violence against women

Violence against women have been increasing alarmingly both in number and severity in Bangladesh despite enactment of stringent laws. Various special laws have been enacted so far to combat the violence against women and to safeguard the interest of women. Perhaps other countries of the world have enacted so much special laws to safeguard the interest of women. In Bangladesh in 1983 the first special law namely cruelty to women deterrent punishment ordinance 1983 was promulgated for the first time with a view to combat violence against women. The said law was a brief one with 10 sections only. Offences like kidnapping of women, trafficking in women, causing death and grievous hurt for dowry and causing death in committing rape only were incorporated in that special law of 1983 and those offences were made triable by special tribunal constituted under Special Powers Act 1974. Soon it was felt that the said law of 1983 was not exhaustive. Then in 1995 another more exhaustive law namely নারী ও শিশু নির্যাতন (বিশেষ বিধান) আইন ১৯৯৫ came into force with the repeal of previous law of 1983. In this law of 1995 some more offences like causing death and grievous hurt by corrosive substance, rape etc. were included along with the offences of the previous act. But it appeared that the provision of this act of 1995 also were not sufficient to contain the crime against women and children. Thus the present act namely নারী ও শিশু নির্যাতন দমন আইন ২০০০ came into force. Some stringent provisions are included in this law and some new offences also have been and some new procedure also have been laid down in this present law.

Despite enactment of stringent laws the act of violence against women still continues to increase. Though such harsh laws are in force in the country to punish the perpetrators of violence against women, but in many cases they are able to escape the punishment easily. All the cases of violence against women do not come up to the courts. Save except a few sensational cases of murder and acid throwing only, the incidences of domestic violence are being treated as very trivial, unimportant and also private phenomena and perhaps for this reason incidence of domestic violence in Bangladesh have remain under-reported crime till date the dispute within the privacy of the family, even if this involve outright physical abuse, are not interfere with much social remorse or protest and even not perceived as criminal act, either by the perpetrators or by the victim themselves. So, most of the cases of domestic violence against women are buried at the very inception. Taking the advantage of poverty, illiteracy and other handicaps of the helpless victim of violence the perpetrators manage to suppress or conceal the act of violence they perpetrate on the women. It becomes difficult and in some cases dangerous for the victims of violence to pursue justice. Where these victims of violence are able to lodge a complaint against the perpetrator they face many hurdles and in many cases they are ultimately denied of justice. These victims of violence have to first confront the law enforcement system at police stations. They often encounter abusive treatment and rejection of their complaint. Women who have been raped or otherwise sexually assaulted frequently find that they are insulted and treated as if they were the guilty party, not the victim. If a victim of sexual assault succeeds in registering a complaint police follow up is often minimal and rudimentary. Because police are often

hostile or unsympathetic to women who have been battered or sexually assaulted and are ignorant of the legal; remedies open to them many perpetrators are not arrested or charges against them are dropped without investigation. In those cases that do go to trial bias on the part of the prosecutor of a failure to secure key medical evidence of the assault that often perpetrator escape justice . Prosecutors often are unable to successfully build a case against a perpetrator of violence against women because of Shoddy police work in case of sexual assault or lack police concern in cases of domestic abuse. Further, public prosecutor too often lack adequate training to effectively evaluate and use physical medical evidence at trial.

In Many cases judges view victims of violence skeptically and tend to hold them responsible for bringing violence upon themselves, Thus, at the trial stage judges frequently consider the behavior of the women as a factor when weighing the evidence and , if there is a conviction, in determining the punishment. On the basis of presumption of female consent and a belief that women tend to lie in rape cases, judges also ascribe undue significance to bodily evidence of the use physical force by the accused and physical as opera to violence resistance by the women. As an example a case of Pakistan may be mentioned here where the presiding judge dismissed a women's allegation of rape because he determine that she had not struggled enough, this judge further denounced women for agreeing to sex and them bringing spurious cases to court.

Like other in the criminal justice system judges seldom receive adequate training on the significance of medical legal evidence and do not know how to interpret it at trial. Thus crucial information that could convict the accused may be disregarded or even used against the complain. In many cases court allows irrelevant evidence of women's previous sexual activity to be admitted to show that she is of general immoral character and undermine the seriousness of her claim.

However, in these sessions, you the learned participants will final out the procedural complications which the victim of violence face getting justice from court and the remedies there of as well through discussion and share of views. You as the presiding judges of the special court namely নারী ও শিশু নির্যাতন দমন ট্রাইবুনাল are very much acquainted with the procedural complication that act as the hindrance in the fair and effective trial of the cases. You also know the loopholes of the new existing laws under the cases of violence against women are being tried. In disposing of cases under this Act নারী ও শিশু নির্যাতন দমন আইন ২০০০, you face some complications and inconvenience that affect fair justice. For example – accepting to this Act sexual intercourses with a girl of below 14 years of age is rape. But perhaps you have come across same cases where facts and circumstances demanded that respecting sexual intercourses with innocent girls of above 14 years even without her consent should be punished as rapist.

Section 9 : of this act provides for punishment of maximum 10 years imprisonment only few the police personnel under whose custody the victim was when she was raped. There are so many cases where circumstances demand that this police personnel should be awarded the same punishment which is fixed for the rapist.

Section 10 of the Act provides punishment for sexual assault and sexual harassment. You may express your opinion whether this section needs any modification or amendment or not?

In this Act a time limit for completing investigation/trial has been given but nothing is mentioned as to what will be the consequence if the investigation/trial is not completed within that time.

Section 31 of the Act provides that the tribunal if consider proper can direct that any women or children may be kept in safe custody. But this section is silent as to whether the consent of such women is necessary for keeping her in safe custody.

ANNEXURE 7

OBSTACLES TO WOMEN'S ACCESS TO THE COURTS

By

B B Roy Chowdhury

Honourable Adviser

Ministry of Local Government Rural Development

Cooperative and Disaster Management and Relief

The conscience of the modern world is shaken today by the plight of the women. The Mac Donald Report of 1991 puts the wide horizon of the scenario in a nutshell as follows:

"Women and children are prominent among the victims of social discrimination and deprivation. Especially in poorer even in wealthier counties, women tend to be less educated, less nourished and to work hard for smaller returns. And children are in many countries employed for pittance in menial tasks and are naturally vulnerable to diseases, malnutrition and to mistreatment by adults. Eight percent of refugees are women and children, and refugees generally, already fleeing from persecution or at least grave misfortune are too frequently compelled to live in degrading conditions and to have their fates decided without adequate procedural safeguards. Workers are often deprived of the right to form trade unions and decent wages and working conditions." [See "Put our World to right"; a report by a non-government Group chaired by the Hon. Flora Mac Donald, published by the Commonwealth Human Rights Initiative, August 1991]

This is the consequence of the past tradition that confronts the mankind. The world woke up in 1948 when the General Assembly of the United Nations, through the Universal Declaration Human Rights proclaimed civilized norms for all peoples, nations, and organs of the, society. By this declaration, human rights were set out forbidding, *inter-alia*, discrimination of any kind on the ground of sex, besides others.

There have been a number of conventions Convention on Elimination of Discrimination against women (CEDAW) in particular, on the rights of women and children emphasizing the method by which they count be retrieved from their degraded position in the family, society and the statecraft, The 1993 Vienna Conference brought out the situation of the women and the children in sharper focus and also stated certain remedial measures. It was recognized that the human rights of the women and the children were inalienable, integral and indivisible. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels and the eradication of forms of discrimination on grounds of sex are priority objectives of the international community.

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and trafficking incompatible with dignity and worth of the human person must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields economic and social development , education, safe maternity and health care and social support. All the Conventions and Conference in respect of human rights, women and children have urged upon all governments, intergovernmental and non-governmental organization to intensify their efforts for the protection and promotion of human rights of the women and the children.

Enough has been guaranteed in the National Constitutions of the members of the United nations for protection of the rights of the women and children Bangladesh not excepted. In the preamble of the Constitution of Bangladesh our people have pledged that the fundamental aim of the state is to realize through a democratic process a socialist society, free from exploitation - society in which

the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social will be secured for all citizens.

Part II of It embodies the fundamental principles of state policy as the nations dream for social and economic revolution. In articles 9 and 10 it has been enjoined on the State to promote local government institutions and in all spheres of national life through the participation and representation of women. Among other things, article 19 is to the effect that the state shall endeavor to ensure equality of opportunities to all citizens and it shall be the responsibility of the State to adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens and of opportunities in order to attain a uniform level of economic development throughout the Republic.

Part III of the constitution has guaranteed a list of basic human rights to further the rule of law and fundamental freedom. Articles 27 and 28 are of particular interest. They read as under :

"27 : All citizens are equal before law and are entitled to equal protection of law.

28. (1) The state shall not discriminate against any citizens on grounds only of religions, race, sect caste sex or place of birth.

(2) Women shall have equal rights with men in all spheres of the state and of public life.

(3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.

(4) Nothing in this article shall prevent the State from making special provision in favor of women or children or for the advancement of any backward section of citizens."

It is obvious on a plain reading of sub-articles (4) that the framers of constitutions were alive to the fact that mere preservation of status -quo would not ameliorate the situation for important segments of the citizenry who suffer owing to severe discrimination of the past and that there was necessity for protective welfare legislation for women and children against the attack of reverse discrimination.

In accordance with the mandates of the Constitution, a number of legislation has been made to safeguard, promote and protect the rights of the women and children Various judicial forms have been created for enforcement of these constitutional and statutory rights of the women and children I might mention the following statutes as examples,

- 1) The Dowry Prohibition, Act, 1980
- 2) The Family Courts Ordinance, 1985
- 3) নারী ও শিশু নির্যাতন দমন (বিশেষ) আইন ২০০০

Notwithstanding the care taken in the Constitution and other laws to protect the interests of women, they remain the victim of gross discrimination because of lack of enforcement of the rights ensured to them.

In our society the women work the hardest, but have no say in the affairs of the family as in most cases their work apparently does not bring in money returns and being dependent on men they not only suffer discrimination but also indignity and torture. Except in relatively few well to -do enlightened families, the women not only have no access to the Court of law for realization of their rights, they completely unaware of the rights they are legitimately entitled to.

Some of the a personal laws governing the rights of women are discriminatory. Though the Constitution proclaims equality and non-discrimination, they cannot approach the Court for

removal of such discrimination. Even whatever the law allows to them , they are not in a position to get that. The reason is mostly social and economical and partly ignorance about the available rights.

The society is essentially patriarchal and the men do not favor conceding the rights to the women to which they are entitled and the women from their childhood are brought up in such a way and mentally so conditioned that, they hardly think of fighting their foes of inequality for their rights. When the food falls short, the deficit is to be borne by the women. When there is lack of amenities in the family, they more often, cannot conceive of trying to realize their rights, far less to speak of going to Court against their adversaries in the society. Even if they want to realize their dues they do not in most cases have the means to afford the cost of litigation. Poverty is one of the greatest obstacles to the women's access to Courts of law. Furthermore, the people in the society do not tend to accept women fighting for their rights in the Courts of Law.

Most people live in villages where religious fanaticism is endemic in certain, parts. Pseudo religious leaders in the village control the public opinion and their views almost go against the women for selfish ends. Added to it, we find a new phenomenon of physical oppression and cruelty to women and children. But in the recent past this has taken the shape of serious criminal acts of rape, murder and acid -throwing. This has definitely created a serious obstacle to them in taking legal measures to protect their rights.

The net result is that in most cases the women and children are deprived of their due equality unless some of the men folk come to their aid. In such a situation, even if the laws discrimination is removed, it will be a paper work yielding no fruitful result for them.

Of late, some organizations have come up with the objective of creating awareness among the women about their rights and to help them realize their rights through Courts, if necessary. Social obstacles to employment of women are gradually being removed and we see more of female workers employed in different fields of economic activity. But a lot more has to be done to ensure the basic rights of women.

Our government has introduced a system of legal aid which may help women seeking redress in courts of law. Nevertheless, it remains a fact that a change of heart and conscience on the part of the men must necessary for proper recognition of the human dignity and fundamental freedom of the women and the children for installing them in their proper position in the family and society with which the human history started its initial journey.