

EGM/GPLHP/2009/EP.16

11 May 2009

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Introduction

I will start by analyzing a case story:

"Eighteen-year old Fahmida Islam Mishu was physically and mentally battered by her father and did not get any support from her mother who was also dominated by her husband. Her mobility was controlled and finally when she was forced to get married without her consent, compelled her to take the decision to meet her elder sister who is studying in Cyprus now. Mishu left her home in Chittagong and came to Dhaka. One day, Bangladesh National Woman Lawyers' Association (BNWLA) received a call from Fatima [Fahmida's sister] who informed them that her sister, Fahmida, is being forcefully held in Banani Road by some people pretending to be her relative. BNWLA team immediately intervened and when went there saw that she was crying. There was a Police Sergeant present there at that moment and she was even beaten up by those relatives in front of that officer. The BNWLA team rescued her by filing a GD in the Gulshan Police Station (GD no. 395, dt.04/02/2009) and brought her to the BNWLA shelter home upon Mishu's request."

Currently she is living under comprehensive shelter support in the Shelter Home of BNWLA where she is safe and is receiving psychosocial treatment. She has applied for asylum in Switzerland and her application is under process. BNWLA is helping her to process her paperwork.

Points to be followed: What we get from this incident is that:

- § She was deprived of her **fundamental rights** of Right to Freedom of Choice, Right to Mobility and Right to Education.
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Article 28(2), which affirms that women shall have equal rights with men in all spheres of the State and Public life. The fundamental rights are also enshrined in Articles 10, 11, 19, 21, 27, 28, 29, 31, 32.

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laws specially promulgated for protecting women, but the ability of women whether rich or poor to gain access to justice remains at risk, because most often their counterparts are men. In addition, women remain under-represented, often because they have been unsuccessful in obtaining legal aid assistance and they do not have sufficient financial resources to retain a lawyer privately. Therefore confidence in the legal system is lost. Several legal reform committees and commissions have been formed since the independence of Bangladesh in 1971.

Background and reasons of reforms of Women and Children Repression Prevention Act 2000

The Women and Children Repression Prevention Act 2000 had been originated based on the gaps of Dowry Prohibition Act 1980, The cruelty to Women Ordinance 1983, Women and Children Repression Prevention Act 1995 and was passed in response to the escalating problem of violence against women and children in the 1990's. Although the law contains very harsh punishments, experience with the law indicates that provisions cannot effectively deter offenders or ensure their prosecution due to various loopholes. First, theobtac9530.2915 i.ebs15 i.c9530.2TD0.00

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of welfare state to assure that people who lack resources or other capacities to protect their legal rights and to solve their law related problems have access to the justice system. .

(ii) Legal Aid and Cost Services

Access to the court mostly depends upon the financial well being of a litigant. There are laws to provide for the poor litigants but the procedure is so complicated that it is often difficult for the poor litigants to access court and thus access justice. Women would greatly benefit from the provisions of legal aid if it were administered efficiently. Different Bar Associations and some non-governmental organizations are paying legal aid to protect the human rights of the litigant public. Whereas the procedure of obtaining legal aid through non-governmental organizations is smooth, it is difficult to obtain legal aid through different Bar Associations due to a complicated procedure laid out in the Legal Aid Act.

The barriers to access to justice may be aspects of the justice system itself, e.g. complexity and cost of the system itself. The cost to be borne for the legal processes, access to legal information, and the existing services and are often unaffordable to the very poor and women.

iii) Absence of victim and witness protection protocol

A country like Bangladesh where the perpetrators represent the most influential portion of the society and who are economically, politically, and with arms are very much organized, the question of victim and witness's protection is very much pertinent. Every year thousands of cases lose merit because of victim and witnesses insecurity. Beside ensuring victim and witness's physical safety there are some other rights whose presence is needed in the law and legal system for the sake of disposal of a suit.

Victim and witness should have the right to be treated with dignity and respect, right to be protected from intimidation and harm, right to privacy and counseling, right to be informed concerning the criminal justice process, right to receive all schedule changes regarding the case, right to be informed on sentencing, imprisonment and/or release of offenders, right to compensation in certain circumstances, right to prompt and timely disposition of the case, right to get emergency shelter, right to be informed of social service agencies for addition assistance

(iv) Resource and support for existing services

There are institutions for the litigant public, which may be out of his/her reach due to long distance, lack of awareness of the service or simply from fear or illiteracy. Police stations and courts may be non-existent in remote areas. Quasi-judicial mechanism may also be non accessible. When one needs to apply for legal aid the litigant might find financial constraint or other kind of fear to approach the District Court. These services must be made available to the public through local welfare or community services.

New Initiatives taken by Government to reform legal system:

- § **Enacting speedy tribunal:** the government under its legal reform programme has enacted Speedy Trial Tribunal Act, 2002 and formed six speedy trial tribunals for early settlement of certain cases.

Legal and Judicial Capacity Building: In the age old Civil Justice System earlier the case management processes had been excruciatingly slow, costly and time consuming. Acknowledging the necessity, the Government of Bangladesh took a project known as Legal and Judicial Capacity Building Project. Under the project a good number of Reform Experts and Consultants are working in the Supreme Court and five Pilot Districts. It is desirable that the pilot projects should be replicated in districts also.

- § **Introducing Alternative Dispute Resolution (ADR):** The government introduced Alternative Dispute Resolution (ADR) in judicial system to ensure justice by amending the Code of Civil Procedure, 1908. ADR introduced earlier in Family Courts of 15

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districts as pilot project has been proved successful and envisaging introducing the same to other districts.

§ **Mediation:** The Code of Civil Procedure (Amendment) Act, 2003 has introduced mediation of civil disputes. *Shalish* the institution of customary law introduced in Family Courts Ordinance in section 10 and 16, as conciliation is the noteworthy example of judicial mediation. Along with the formal justice system informal justice system exists in Bangladesh in form of extra-judicial mediation, conciliation, arbitration, *shalish* and the like. The advent of community mediation services has facilitated changes in the mindset and codes of conduct of justice providers at local levels. The success in this context is also manifest by a considerable reduction in child marriages and dowry demands. (Khair, 2006).

The Legal Aid Services Act, 2000: It provides for giving legal aid to poor people

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	2. Mr. Abdul Gafur Vs. Secretary, Ministry of Foreign Affairs govt. of Bangladesh, Secretary Ministry of Home Affairs Govt. of Bangladesh.	* Recognizing repatriation as a fundamental right. *Emphasizing the state's responsibility in ensuring repatriation.
Sexual assault and rape	1. Al Amin Vs. State 2. Abdus Sobhan Biswas Vs State	* Established that the absence of a charge of rape in the FIR is not an evidence that it was added later for embellishment. * Unless it is proved otherwise, the statement of the prosecutor has to be believed.
Domestic violence	1.The State Vs. Md. Shafiqul Islam alias Rafique and another 2. Munir Hossain Vs. State	* Emphasized the strong suspicion against the husband in case the wife died of assault in her husband's house. * Expanded the definition of dowry to include demands made after marriage.
Enactment of special laws	1.Kamruzzaman Vs. The State 2. Managing Director, Rupali Bank Ltd. And others Vs. Tofazzal Hossain and others	* Special law provides for stricter punishment and in case of general law and special law, the provisions of the special law shall prevail.

Different areas of law including provisions in civil, criminal and Emigration law

Laws relating to civil matters:

Laws relating to civil matters affect women in civil disputes. There are specific laws, which make differential treatment to women, which may or may not be favorable to them. The laws that affect women the most are the Child Marriage Restraint Act of 1984 (amendment); the Muslim Family Laws Ordinance of 1961; the Muslim Marriage and Divorce Registration Act of 1974 and 1975 and the Family Court Ordinance of 1985 and 1989 (amended), the Hindu laws and

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by this Ordinance. This law is available to Muslims only, though polygamy is a concern for other communities also.

The Family Court Ordinance of 1985 and 1989 (amended) is the forum for application of all the family laws including those stated above. The litigants are mostly women who come with their rights to this court of law and are mostly awarded positively. There is often domestic violence leading to family dispute but such a circumstance is beyond the jurisdiction of a family court.

The Civil Procedure Code of 1908, as amended by CPC (Amendment) Act, 1999 deals with the matters of civil nature. Some specific sections of the Code include exemption of certain women from personal appearance (Section 132). In section 56 of Civil Procedure Code, Prohibition of arrest or detention of women in execution of decree for money is also in favor of woman.

The Birth and Death Registration Act 2004: This act is being used to prevent early marriage, reduces trafficking, ensure that all children are enrolled in school at the right age, protect underage children from working and ensure specia

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mention here that in 2003 there was an amendment enacted to this law. Like many other laws, this law is not also beyond criticism. The limitations of the law are as follows:

1. Definition of Trafficking: Though sections 5 and 6 of the Act deal with trafficking in women and children, surprisingly the Act didn't contain any definition of the offense. As a result demarcation line between trafficking and illegal migration can not be drawn and there fore many perpetrators of trafficking remained out of punishment.

Case Study -1 :

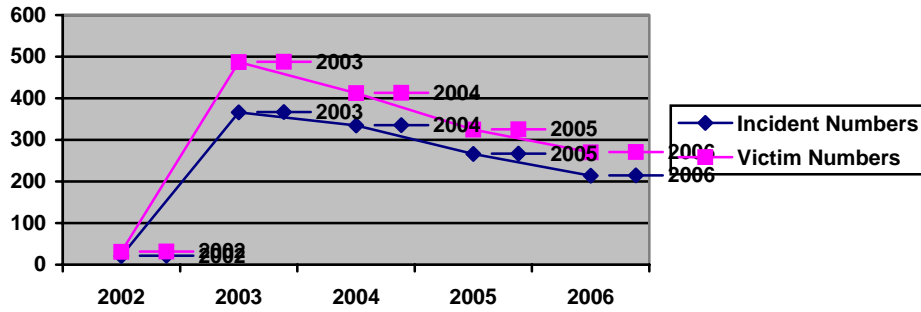
Incident details: Rina (not her real name) was abducted from her relative's home by Selim and held captive in a house where she was repeatedly raped and abused by her abductor. When her father came to know about his daughter's kidnapping he rushed to Dhaka and with the support of the community members forced the perpetrator to set Rina free. When Rina told her father about her ordeal he filed a case against Selim under Section 7/9(1)/30 of Women and Children Repression Prevention Act 2000 (Amendment 2003). The trial was held in Women and Children Repression Prevention Tribunal 2 where Selim was sentenced to fourteen years of rigorous punishment by Judge Monjurul Basit.

Remark: A camera trial was held because the victim did not want to give her testimony in the court in front of everyone. During the camera trial only the lawyers, the accused and the Judge were present. The provision for camera trial is specified in Section 20(6) of Women and Child Repression Prevention Act 2000 (Amendment 2003).

Source: Legal Cell, BNWLA

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statistics 2006, 221 and 192 people were subjected to acid violence in 2006 and 2007 respectively.



It is evident from the above chart that in each year, the number of victims are higher than that of the number of incidents, which means that th

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One Stop Crisis Center (OSCC) is an initiative of Bangladesh Government where a victim will receive multiple services (medical, legal, counseling and referral supports) at a time. In fact OSCC services helped victim to receive justice in time.

Monitoring cell in the Home Ministry:

A national coordination and monitoring committee has been formed & functioning under the Ministry of Home Affairs with the cooperation of GOs and NGOs. This committee exists at district level also.

Speedy Trial

Bangladesh government had set speedy trial for quick investigation and judgment of the cases.

National Task Force on Juvenile Delinquency

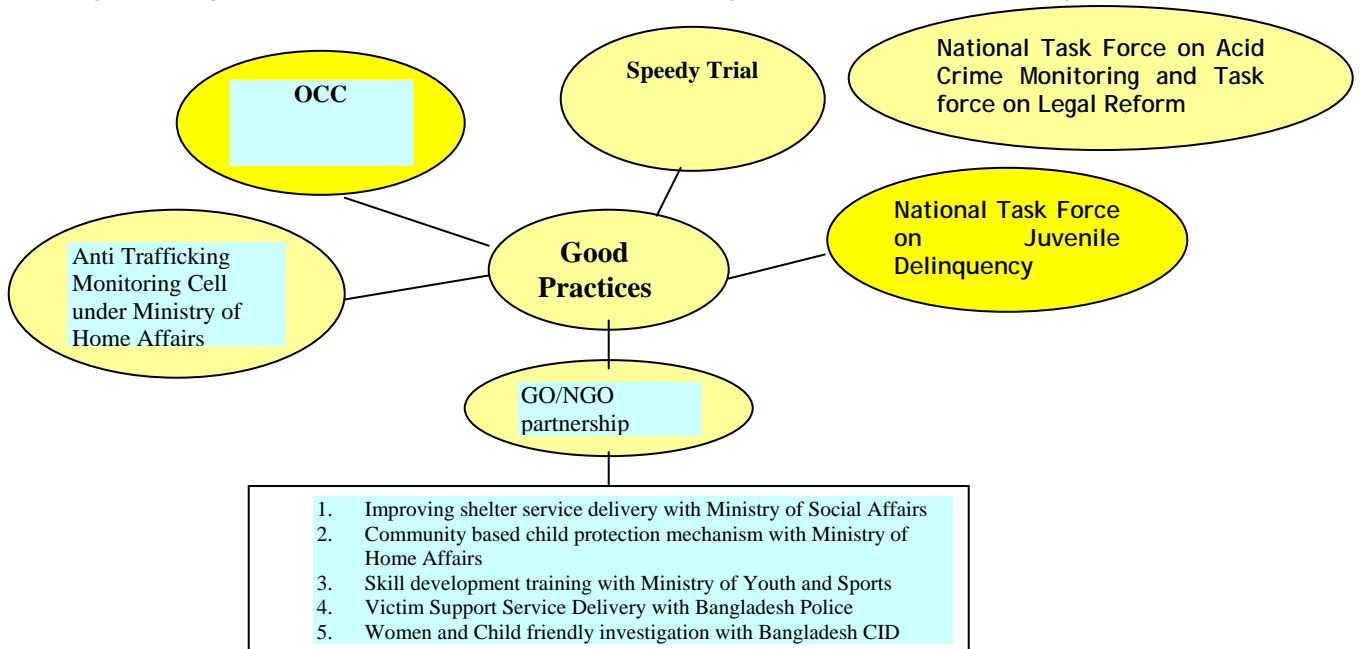
Under Prime Minister office, a task force on juvenile Delinquency formed to monitor the correction homes and to establish two Child Development Institute as model correction home for juvenile delinquency.

National Task Force on Acid Crime Monitoring and Task force on Legal Reform

Two individual Task force on Acid Crime Monitoring and on Legal Reform formed under the Ministry of Law, Justice and Parliamentary Affairs.

GO-NGO Partnership

Recently, different Ministries of Government of Bangladesh had formed partnership with different NGOs to improve their service delivery in different sectors (i.e. shelter home operation, victim support center operation, community based child protection mechanism building, creating opportunities for vulnerable people through skill development trainings).



Conclusion

The lack of state protection and absence of friendly justice delivery system have worsened the situation of people. The judicial administration does not have an effective system to ensure