

G GENDER AND JUDGES



A Pilot Study in Bangladesh

Naripokkho
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Gender and Judges : A Pilot Study in Bangladesh

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GENDER AND JUDGES: A PILOT STUDY IN BANGLADESH

The Conference on "Regional Perspectives on Gender Equality" held in Delhi on January 4-5 1997, organised by Sakshi, India resulted in the formation of the "Asia-Pacific Advisory Forum on Judicial Education on Gender Equality Issues" and a decision that Sakshi should proceed to establish a process for developing and delivering gender equality education in this region. As a first step Sakshi initiated a multi-country study to examine judicial attitudes to gender. In Bangladesh the pilot study was carried out by Naripokkho.¹

1. Background

1.1 Gender bias in the dispensation of justice is a malady of the legal system like all other sectors in society. Naripokkho was particularly sensitized to this issue after a district judge delivered a judgment which was relayed through a loud speaker to the mob waiting outside the courtroom. The case was sensational - a young woman, Rima had been brutally murdered by her newly wed husband, Munir. The family, society and the judge blamed the husband's mistress, Khuku an older woman who was also sentenced to death. The judge in his judgement blamed the mother of Munir, Dr. Meherunessa and Khuku for leading astray a young man. The judgement was printed in 'toto' in the major daily newspapers. Naripokkho's stand in relation to the media hype and the women's organisations mobilization around the Rima murder case took on board the issue of capital punishment and the representation of women in media.²

1.2 In January 1993 a young woman named Nurjahan was tried in a village *shalish* (informal court) composed of about a dozen male village "elders" on charges of adultery. The judgment subjected her and her partner to be stoned 101 times each, and her elderly parents to be caned 50 times each. After the sentence had been carried out, Nurjahan ran to her father's house, and while her parent's punishment was being carried out, she reportedly took poison and committed suicide. Since then innumerable cases of such illegal *fatwas* (sentences in the name of religion) on women by self appointed village bodies to punish "incorrect or improper behaviour" have been a frequent occurrence. In 1993, the International Women's Day Committee led by Naripokkho, took on the theme of women and justice and campaigned against such *fatwas*.³

1.3 In one case in 1994, a woman lawyer filed an application for "bail" of a rape victim who was in prison under "judicial custody".⁴ The woman had no where to go and the police had applied for judicial custody for purposes of the investigation. The lawyer was asking for her client's release from such custody. After her submission, the learned judge commented to her client, "you are a young and beautiful woman, if you go out you may be raped again." The lawyer could not believe her ears. The judge not only belittled her client, but by deliberately calling a 45 year old woman, who is in the traditional sense "not beautiful"

¹ Sakshi, Regional Perspectives on Gender Equality (January 4-5, 1997), New Delhi, 1997.

² Azim, Firdaus and Huq, Shireen, "Deflected Focus", Holiday, Dhaka, 18 May, 1990.

³ International Women's Day Committee, Leaflet on International Women's Day, Dhaka, March 1993.

⁴ The practice of placing women and minors in prison for protective custody under court order is common in Bangladesh. This relegates complainants to a similar status as that of offenders, and their release from such protective custody is popularly referred to as "bail".

because of her dark complexion, "young and beautiful" he was making fun of a grievous offence.⁵

1.4 In 1988 when the government proposed a Constitutional Amendment to make Islam the State Religion, Naripokkho organised the first major protest and took the issue of secularism to the streets. Traditionally, political parties have been reticent about taking on religious issues for fear of losing "rank and file support and potential voters". Naripokkho's protest activities opened the space for many others to mobilize public protests. Despite the protest movement the Constitutional Amendment went through. Naripokkho decided to challenge it in court and filed a writ petition as the accordance of official status to any one religion would privilege members of that religious community vis a vis others and thereby undermine the equal status of all citizens. Moreover, such an act would contribute to further justification and reinforcement of the religion based personal laws existing in the country which were discriminatory towards women.⁶

1.5 Naripokkho's ongoing research on Violence Against Women and the work with acid survivors has led to an examination of the litigation process and the role of the court. Those who sit in judgment, whether in informal village courts or in the Supreme Court of Bangladesh are not sensitized to the context of the lives of women over whom they are passing judgments. Often it is the personal lives of women, whether accused or petitioners, that become the subject of interrogation in courts and not the reported crime or offence. It is not unnatural that the judges, who have been born and brought up in a society where male dominance and inferiority of women are socially accepted norms, will reflect these norms in their handling of cases. Naripokkho's on-going concern with the establishment of women's rights and our work on violence against women have led us to the realisation that the legal process is crucial to of the establishment of women's rights and to ensure justice for women. Naripokkho's engagement in the movement for women's rights leads logically to an examination of the criminal justice system and the courts as an ultimate arbiter of a rights claim.

2. Introduction

In August 1997, Naripokkho was approached by Sakshi, New Delhi to conduct a pilot study on "Gender and Judges". This provided an opportunity for Naripokkho to develop its interest in addressing the problems of bias in the judicial system and to bring these concerns under the scope of a systematic study. In Bangladesh, currently there are programmes for training and orientation of law-enforcing agencies, arbitrators of the village court and others related to the justice system but not judges themselves. In other words, the need for gender sensitization and training is recognized in the case of all others in the criminal justice system, but the need for special training and orientation for the judges remains unrecognized and the idea is to some extent unacceptable. It meets with resistance based on the assertion that judges are by definition fair, objective and neutral and are concerned only with the correct application of law. Sakshi's initiative to conduct a pilot study to examine the nature and extent of bias against women in the courts presents an opportunity to establish the need for sensitization of judges at all levels.

⁵ Personal communication U. M. Habibunessa, December 1997.

⁶ Writ Petition against the 8th Amendment filed by Naripokkho in July 1988.

Naripokkho is a women's activist organisation in Bangladesh founded in 1983. It undertakes advocacy, research and training on various issues related to women's rights and development. Particular fields of interest have included violence against women and human rights, gender issues in environment and development, reproductive rights and women's health, and the representation of women in media and cultural politics. The pilot study on Gender and Judges could assist Naripokkho to concretise another dimension in our activism and struggle for justice for women.

3. The Pilot Study

The pilot study on Gender and Judges is the result of a resolution of the Asia Pacific Advisory Forum on Judicial Education on Gender Equality Issues adopted in New Delhi, India in January 1997 where it was decided to develop a program for gender equality education for judges in the region. The forum consisting of 26 judges and 12 non-judges, emerged from a consultation entitled "Regional Perspectives on Gender Equality" organized by Sakshi. In accordance with this resolution of the Forum, Sakshi initiated this pilot study in different countries of this region.⁷

3.1 Scope of the study

The objectives of the study are to:

- a) assess the extent of gender bias/gender inequality on the part of judges sitting in the different Courts when addressing cases of violence against women including trafficking, sexual assault, sexual harassment, dowry abuse, child sexual abuse, family violence and property issues etc.
- b) assess the extent of the judiciary's understanding of specific concepts related to gender crimes and contrast this with specific testimonials by women victims, women NGO's and women lawyers.
- c) document the environment in which women are required to access justice i.e. the courtroom paying special attention to courtroom environment, procedure, attitudes of courtroom personnel, how lawyers and judges address women victims etc.
- d) assess the extent of judicial knowledge and NGO experience with respect to CEDAW in addressing women and violence as a human rights issue.

In fulfilling these objectives, Naripokkho's obligations included the examination of all judgements related to women and violence in Bangladesh, in particular those provisions and judgements related to rape, trafficking, spousal violence, sexual harassment and the like. Special attention should be given to Islamic laws relating to women and property issues which are of specific relevance to Bangladesh. The judgements researched should cover the period from 1977 to the present day with a view to assess aspects of gender bias/gender inequality in such cases. To carry out interviews/discussions with women's NGOs, women

⁷ Sakshi, Regional Perspectives on Gender Equality (January 4-5, 1997), New Delhi, 1977.

victims and women lawyers to document their experience and understanding of the legal system in terms of gender bias/gender inequality.

3.2 Methodology

Thirty eight case documents of violence against women and cases under personal law, covering the last ten years including High Court and Appellate Divisions of the Supreme Court, have been collected. Of these, thirty one have been analysed. In addition courtroom observations and interviews of women litigants and complainants in current cases in the Dhaka district court and the legal aid organizations have been carried out. Three workshops with women lawyers, male lawyers, and NGO workers involved in legal aid were conducted to get their views. Twelve litigants and twelve complainants have been interviewed.

4. Limitations of the Research

As an initial pilot study the research was done on the basis of limited interviews and case studies, and addressed fewer variables. The research exercise encountered difficulties at a number of points.

4.1 Case Collection

Accessing case records was most difficult. The people working in the record rooms were highly uncooperative. Moreover, there is no system to provide documents or duplicates to legal researchers. Once we managed to get access, we found the records are not properly kept. Only the judgment is preserved. There are no records of the arguments of the case in the dockets, which would be important to capture nuances which reflect attitudes. Many records have become illegible over time.

4.2 Interviews

Women interviewed were not willing to talk about the business of courts, police and lawyers. Both women litigants and clients opined that these people are far away from them and they do not have access to them. However, they want services and support from these institutions and felt that these should be made accessible. They recommended special education on women's issues for judges, police and lawyers. The women did not feel free to talk to the interviewer about their complaints or the treatment received by them.

4.3 Court Observation:

We did not face any difficulty in observing court proceedings, though congestion and overcrowding and noise level in the courtroom made it less congenial. Court service staff are reluctant to assist in any way and do not provide any information. In one case observation was not possible because of the lengthy process involved in a single case. Frequent adjournments permitted by the court cause delays in completing trials.

5. Case Research

Each case has been classified according to the nature of the offence, relevant legal provision, concerned court and date and position of judgement (Annexure I). The information from the case records was documented as per format given by Sakshi and then subjected to detailed analysis in terms of gender bias in representation and judgement (Annexure II). The relevant legal provisions applicable to the cases reviewed are included in Annexure III.

The main conclusions from the analysis is given below.

5.1 Kidnapping and Abduction:

A total of 12 cases with judgements were collected from 1984 to 1996. Of these 12 cases, one could not be proved for lack of evidence. Six cases were incidents of elopement. Five were cases of trafficking. Convictions were made in six of the cases of which three were elopement cases and three were trafficking cases.

Acquittal = 5

Conviction = 6

Case dismissed for lack of evidence = 1

Total Cases = 12

A. Elopement cases

A.1 Acquittals

Generally the FIR filed by the family of the girl who has eloped, indicates that she is a minor. However, at the witness stand, the girls claimed to be adults and stated that they had not been abducted or kidnapped. In one instance, at the time of the trial, the young woman had already given birth to a child. It is quite clear that in these situations, the girls had committed "**the social crime**" of eloping. In other words, the girls and in some cases the boys have acted against social norms by eloping. Social norms require that the boy and girl will marry with the approval of their guardian, other kin members and people in their locality. In some instances, an affair between a girl and a boy is accepted by their parents, but not without a feeling of shame and dishonour. Eloping at an early age is, however, not accepted. In cases where the girl is an adult, the judgement acknowledges her decision and the accused is acquitted. This suggests that there is an underlying acknowledgement of her right to make such a decision, i.e. of her right to choose her own husband.

However, the girl is not necessarily making an informed choice, as in most cases she does not have know everything about the boy, her own legal rights, or have the provision to make such choices. Often she does not know about the boy's family and the situation she is going into. Knowing the family of the boy is important because usually the girl moves in to the boy's family. Therefore, information about them and her legal rights in that family is an important aspect for the girl. In actual terms, most girls take the decision to elope primarily for romance which is expected to end in marriage, and secondly, for a sexual relationship, which is not allowed in either the girl or the boy's house.

A.2 Convictions

Attainment of adult status is not a guarantee that a young woman can exercise such a right in the eyes of the judge. In the case of State vs. Babul Ahmed alias Kartik Chandra Bonik (Case No. 33/91 Mohammadpur P.S.), the survivor Afrina Mahmud Rimpi aged 18 married the accused and they stayed together for six days. The accused had converted to Islam in order to marry Afrina. The case was filed by the victim's uncle. When the victim gave her testimony she stated that she had been forced into the marriage. The judge made the conviction on the grounds that the evidence provided by the defence and the testimony from the witnesses did not prove that the victim had willingly married the accused. Much evidence was placed by the accused to prove the consent of both parties in the marriage. Evidence which resulted in acquittal in similar cases led to conviction in this one. The police in their investigation had submitted a Final Report for Termination (FRT), in other words had recommended dismissal of the complaint. The victim's family objected to the court and made a statement to the magistrate.

The judge in his judgement referred to the FRT and said that police had given the final report because they could not locate the residence of the accused. The judge did not consider the possibility of coercion by the family on the victim. The fact that the accused was originally Hindu appears to have influenced the decision to ignore the original report made by the police as well as the circumstantial evidence that suggested that the marriage had been in accordance with the religious law. The judge may have been biased by communal prejudice against inter-religious unions and social prejudice against the exercise of autonomous marital decisions by young women. However some concessions were made to the accused as maximum sentence was not given.

In the other two cases, the convictions were made because the girls were minors. In these two cases, both the victims and accused were Muslim. In the case of State vs. Shahnewaz where the accused was also a minor the sentence was given for three years and Tk 1000 fine or additional one month imprisonment in case of failure to pay the fine. However, in the case of State vs. Nasir (GR No. 67/91 Mathbaria P.S.), where the accused is an adult, the sentence was for ten years and Tk. 2000 fine or three months imprisonment in case of failure to pay fine.

The highest punishment provided under this section is fourteen years of imprisonment and fine, but the judge gave a lighter and less punishment without any explanation. This may have been because the victim had been found in a house which was not locked and therefore it did not look like that she had been detained there. There was no proof of force applied on her to make her stay there. Her age was not verified and confirmed in the proceedings. Therefore it was not known whether she was a minor or an adult. Supposing she was an adult, in that case her right of choice to marry was not respected nor given any importance, instead she was forced to give a statement which might not have been true.

B Kidnapping and Abduction

Of the five cases that were examined, two were acquitted and three resulted in convictions.

B.1 Acquittals

In the case of State vs. Israfil (Case No. 58/95 Cantonment P.S.), Israfil was accused of kidnapping and forced abortion. The case details reveal that a young woman Sufia went to work in Kuwait in May 18, 1995 with the help of Israfil. When she reached her destination in Kuwait, she discovered that she was pregnant. Her employers sent her back and she arrived in Dhaka on August 10, 1995. She was missing from the time she returned until September 25, 1995. A case was filed at the local police station by her father the next day against Israfil on the grounds of kidnapping, forced abortion (Sections 343, 313 and 318 of BPC). After investigation the charge was framed only on the grounds of kidnapping.

During the trial, the victim's testimony was declared hostile by the prosecution. The victim in her testimony was vague about the role of the accused. During the investigation, she said that she could not say if the accused had misbehaved with her or if the accused had sexually assaulted her.

The Judge closed the case on the grounds that there was no allegation against the accused. However, the case was one of kidnapping and it is not clear, where Sufia was for the 47 days between her arrival in Dhaka and the time she was found. It would perhaps not be too harsh to say that the judge defaulted in his responsibility to establish the truth. Instead, he cleared the name of the accused.

The judge failed to take into account the hostile environment both in the society and in the court in which a woman has to testify against the accused for "illicit sexual intercourse" or abduction. The accused Israfil is involved in transporting people across borders for jobs. Their connections to the underworld are well-known. The possibility of threats to Sufia and her family for filing this case is obvious. Sufia's ambiguity when asked about Israfil makes it clear that she could not speak freely. From the statement of the judge, it appears that he did not even perceive a situation which is obvious to even the most naive court-room observer.

In the case of State vs. Jamaluddin and others (Case No. 24/94 Cantonment P.S.), it was alleged that the accused had engaged in the trafficking of women from Bangladesh to Saudi Arabia. The case records reveal that five Bangladeshi workers from Saudi Arabia were deported in August 1993. The deportation was linked to a brawl which involved four Bangladeshi men and one Bangladeshi woman named Nasreen, who are all accused in the case. Upon return to Bangladesh, the five were arrested by the Immigration Police for engaging in anti-social activities. The Cruelty to Women (Deterrent Punishment) 1983 was used to detain the accused persons. The case was filed by the police on information received in Bangladesh by a "witness" that the deported persons had engaged in kidnapping and other anti-social activities.

The judge dismissed the case on the grounds that there is no evidence of anti-social activities from the testimony provided. Moreover, it was stated that the accused had used Nasreen for anti-social activities but Nasreen herself was an accused in the case.

It was not clear from the trial proceedings whether Nasreen was cross examined or given any kind of assurance for her protection to describe her part of the story. Instead she was accused. It was not even mentioned whether she was forced into anti-social activities by her

companions or if she was involved in such activities at all. In fact she was not given an opportunity to talk freely even though she was acquitted later. Many illiterate, poor women are trafficked from Bangladesh on false promises of jobs abroad. If she had been given an opportunity she might have told her real story, which in turn might have helped save other women's lives in future. But the court did not ask for her testimony. The judge also overlooked the statement that she had been forced into immoral activities even though she had refused in the beginning to comply with the others who were accused of the same crime. This issue was very important as she had been detained twice on this charge.

The case is confusing. It appears more to have resulted out of personal grudge and the Cruelty to Women Ordinance has been used to settle personal scores. **It is surprising that the Judge did not take a tough stand against those that brought the case and demand a more rigorous investigation.**

B.2 Convictions

In the case of State vs. Rani Sardarni (Special Tribunal No. 1166/94 Kotwali P.S.), the victim Rupa (14) was abducted and taken to a brothel. She was sold to a brothel madam, Rani Sardarni for Tk. 2000 by the people who had abducted her. Rupa (14) left home in January, 1994. She was found two months later on March 15, 1994 in the Kandupatti brothel in Dhaka with the accused. A case was filed by Rupa's uncle the next day on March 16, against Rani Sardarni and four men, Mofizuddin, Delwar, Mobarak and Faruq for trafficking.

In this case, Rani Sardarni was sentenced to four years and given a fine of Tk. 2000 or additional six months imprisonment if the fine is not paid. The court acquitted the others on the ground that their involvement in the matter was not proved beyond any reasonable doubt.

The case leaves the very basic question of how this minor girl, Rupa, came to be in the brothel unanswered. The defence commented that Rupa herself was a "bad girl" and went willingly into prostitution. They said that Rupa was an adult and she herself chose to become a prostitute. However, the doctor's report certified that she was a minor. The proceedings of this trial and the judgement uphold attitudes which only blame women for their predicament. The men accused of abducting Rupa went scot free. The suggestion was made that Rupa used to associate with a girl of "bad character" with an implicit suggestion that Rupa went to the brothel knowingly and of her own free will. The crime therefore was Rani Sardarni's because Rupa is under-age.

The allegation made by Rupa that she had been sold into the brothel for Tk. 20,000 was not further investigated. Although no proof of this was presented, there is no evidence that this issue had been investigated by the prosecution. The Judge in his judgement made no reference to the accusation by the victim that she had been sold.

This case reveals the tendency to blame women for crimes perpetrated by others on them. The crime, in the first place, is made light by a blatant character assassination of the victim which the judge allowed in his court. Secondly, as the girl is a minor, the brothel madam, Rani Sardarni is convicted for conducting her business with an under-aged girl. The judges belief that the victim was involved in this is implied in the sentencing. Rani Sardarni was sentenced only to four years of imprisonment for a crime

that carries a maximum sentencing of up to 14 years and the men accused as accomplices were acquitted.

In the case of State vs. Jamila Khatun & Abdul Kalam (Session Case No. 36/97 Keraniganj P.S.), it is alleged that the accused were engaged in trafficking of children. Two children were found in the custody of Jamila Khatun. The villagers notified the police and a case of trafficking was filed. On 24.10.96 police searched her house and found two children. At the time Jamila's son, Abdul Kalam was also in the house. The two children aged 6 years and 8 years respectively were taken into custody and Jamila and Kalam were arrested under Section 54. After the police investigation it was found that Jamila used to work in Abu Dhabi and had returned home about three weeks earlier. On her return she started looking for two young boys that she would send abroad to work. When no one agreed, she found these two boys and kept them in her house. The police filed a charge sheet against both Jamila and her son Abdul Kalam.

The judge recognised that the crime Jamila had committed had its origin in an international racket in which Jamila was a minor player. For this reason she was given a life sentence instead of capital punishment. However, the judge missed an opportunity to address the crime at its root. He could have used his suo moto powers to open a new case against the international traffickers. It is well known that small boys are used in the camel races in Abu Dhabi and the middle east. Numerous Pakistani and Bangladeshi boy children are victims of this trade. **It is unfortunate that the distinguished judge, while recognising the international dimension of the case, did not rise to the challenge of exposing a gang of international traffickers.**

In the case of State vs. Harry and others (Case No. 41/93 Sutrapur P.S.), it is alleged that Harry had engaged in trafficking of women. Eight women from the rural areas of Bangladesh were handcuffed and "rescued" from a hotel. They stayed in the hotel for about eight weeks. Since women normally do not stay in hotels in Bangladesh, this was considered suspicious activity and the police came and "rescued" the women and took them to the jail for safe custody and filed a complaint of trafficking against Harry and four others.

Each woman had paid Tk. 15,000 to the group of the accused to get jobs in Malaysia. When questioned in court, the witnesses all said that they had willingly agreed to travel to get jobs. Only two women said they thought these jobs may not necessarily be good jobs, but their economic condition was such that any form of employment was attractive. Moreover, six of the women said they had never heard of Harry, the only accused who had been arrested. Two of the women said they knew Harry and that Harry was in no way involved in this racket. The judgement acquitted Harry and the other four were given life sentence in absentia. The judge stated that because the other accused had not been present during the trial, they were given a stiff sentence.

The case was filed by the police. **What is striking in this case is the total denial of any kind of agency women may have in determining their lives. All the women said that they had paid money to be able to go and work in another country. From their testimony, it is quite apparent that they realised the travel would involve illegal movements into another country. Of course it is quite possible, as is frequently the case, that the women were not fully informed of the situation they were heading for nor did they have the information to understand the full extent and nature of the "illegality" of the**

arrangement they were entering in to, or its consequences. The women had opted to seek employment outside Bangladesh, had paid money for such an opportunity and had believed that this arrangement did not involve any further risks.

The women were staying at the hotel in Dhaka because the border security forces were particularly alert at the time. The judge in his statement acknowledged that they were adult women and were aware of their circumstances. It is unclear, that given his awareness, why the judge did not give more credence to the women's testimonies.

The case and the judgement raises many questions. Firstly, the police encroached upon the fundamental rights of the women by "handcuffing" them and "rescuing" them. Secondly, the police disregarded the women's own decision to travel by "rescuing" them and putting them in jail. Is it a crime for women to want to go and work in another country? Men are always paying money to agents for the opportunity to work illegally in another country. They are not taken to court as victims of a crime against the state. Thirdly, the question arises as to who informed the police? Why was no investigation made on the promises made by the accused for which the women had paid a total of Tk 120,000.00? What would happen to the women? Would they get their money back?

One can speculate that the gang of accused persons paid money to the police to "rescue" the women as they could not send them across the border, and of course there was no question of returning the Tk. 120,000.00 to them. Nor could they indefinitely keep the women in the hotel - the bill for which was also mounting. Looking objectively, one would have to say the winners in this case are Harry and the accused. Harry as the only accused arrested and brought before the court was honourably acquitted. It is well known that the other four who were convicted in absentia, will never be found.

Did the women fall prey to a regular gang of traffickers who are sending women illegally across borders or to a bunch of frauds who had ripped the money off these poor women? In either case the judge should have sent this case for further investigation and given an opportunity to the women to file a case for fraud against the men who had promised them jobs and had accepted money.

5.2 Rape

Six cases were collected. Of the six, one is a case of rape while in police custody; three involve victims who are minors. Conviction was made only in one case.

A.. Rape of adult:

Three of the rape cases collected for analysis involved adult victims. In all three cases the judge acquitted the accused. The judgements in the three cases reflect the concern for the societal sensitivities rather than the interests of the victim. The question before the court was not so much on whether indeed the victim had been violated, rather the focus was on the best negotiation for material "compensation" for the victim's family.

In the case of State vs. Imarat and Abul Hossain (Case No. 86/79 Motijheel P.S.) it is alleged that the accused, two police constables, entered into the house of Hafiza Begum on the night of 23 November 1976 and raped her. The Judge commented that he could not believe a woman

could be raped just three days after child-birth. In other words, the physical condition of a woman having just given birth was seen to be a deterrent to rape. The judge seemed to have no concept about rape, which occurs regardless of the physical condition of the woman and hardly ever in the presence of witnesses. Women are raped regardless of their physical condition, age, colour or race. It is heard that even female corpses have been raped. People have a general perception that infants and small girls, elderly women, sick women, pregnant women and women soon after childbirth, as well as boys and men can not be raped. This perception is ingrained in people's mind in spite of numerous such occurrences reported almost everyday. People engaged in the legal profession hold the same perception as rest of the society.

Moreover, a girl or woman subjected to rape usually tries to hide the incident. After a rape a woman is completely unsettled and most people do not know what to do after a rape occurs. The judge should not have expected a systematic report in terms of evidence from an illiterate woman of Hafiza Begum's socio-economic class and physical condition after being raped at that hour of the night. It was the duty of the investigating officer to find the evidence, which he failed to do, perhaps, because the accused were his colleagues. The judge should have taken into consideration that most poor and illiterate women are not aware of their rights in general, especially legal rights. The judge in this case failed to show any consideration for the woman's situation and therefore could not deliver an unbiased verdict.

There may be questions on the veracity of the victim's statement, but to suggest that she must be disbelieved because in the Judge's conception this was an impossible crime, is to do injustice to the victim. May be it was not a true case but the judge chose to give precedence to a socio-cultural assumption rather than to the possibility of such an incident. It is not a rare incident nor an unbelievable one. The judge's comment is therefore not only unacceptable but it also indicates that **the judge does not have the ability or the willingness to consider "unusual" events and all the "improbable" circumstances in which rape occurs.**

In the case of State vs. Badiuzzaman, (Case No. 10/85 Tejgaon P.S.) the accused was charged on the grounds of rape of Shamsun Nahar. It is alleged that Badiuzzaman took advantage of a lost young woman named Shamsun Nahar and behaved "badly" with her. Shamsun Nahar was given shelter by Badiuzzaman in his mother's house in Tongi where she stayed for several months while he tried to trace her relatives. Once her father's house was located and Shamsun Nahar went back home, Shamsun Nahar's father filed a complaint on 18 December 1983, accusing Badiuzzaman of abduction and rape. The father had heard of the incident from her mother.

In this case the prosecution never brought the victim herself before the court or her mother. Shamsun Nahar was not questioned by the police or the court. It is not known whether she was a minor or major. There was no medical examination to determine her age. These were important issues in this case. Shamsun Nahar was not given a chance to state her reasons for her long stay at the accused's house nor the reason for filing this presumably false case.

The prosecution presented before the court the testimony of the father, a friend of his and the testimony of the investigating officer. The Judge in his verdict referred to the lack of testimony presented by the prosecution and acquitted the accused. It is presumed that this case

did not involve any violence or assault against Shamsun Nahar, but the family used her to make money.

The victim's absence from the court appears to be a principal reason for acquittal of the accused. Why did the judge not order that the testimony of the victim be placed before the court? After all, it is not merely the settlement of a dispute between two parties, but a crime against a person that was being determined.

In the case of State vs Mithu Kazi and Jakir Hossain (Case No. 175/95 Sabujbagh P.S.) the accused were alleged to have abducted and raped a minor girl, Hashi. Hashi's mother filed a case on the grounds that Hashi was a minor and was abducted and raped. Upon closer inspection, it was found that the girl had eloped with the accused #1, Mithu Kazi and they had gotten married. It is not clear whether the girl was actually a minor or not. The court treated the matter as though she were an adult. The victim was living with the accused at the time the case was filed and continued to live with him which is proved by the fact that she gave birth to a child of the accused almost two years after the case was filed. **The Judge appears to have given greater consideration to the concern for social legitimacy of the child than to the more technical issue of age of consent; and the accused was acquitted.** The Judge did not consider the issue of the age of the girl - whether she was an adult or minor. The Judge also did not consider whether the pregnancy was forced or by choice.

B. Rape of minor:

A total of two cases were collected regarding the rape of a minor. The victims are young girls under the age of 10. Conviction was made in one case and not the other.

In the case of State vs Mofazzel (Case No. 44/84 Rupganj P.S.) the victim is a minor girl aged between 9/10 years. The victim, Selina was called by the accused when she had gone to the market to collect fuel. She returned home two hours later with blood in her panties and on her legs. She told her mother that she had been gagged and raped by Mofazzel. Selina was taken to the hospital and her brother filed the case. Mofazzel was arrested by the police where he made a confessional statement. He said that Selina had come provocatively to him and opened her panties. Out of curiosity, he had inserted a finger in her vagina. He denied having "raped" her. Later Mofazzel went to the magistrate and denied the earlier statement saying that he had made the confessional statement under duress. The prosecution stated that the matter had been settled amicably between the two parties and the witnesses were no longer willing to come forward to depose. The Judge in his verdict cleared the name of the accused on the grounds that the prosecution had failed to establish the allegations against the accused.

It is clear that justice has not been served in this case. A crime was committed - a nine year old girl was raped. She described to her mother the trauma of being gagged and raped. She was taken to the hospital for treatment. A case was filed for a crime committed.

When the judge considered the case, it appears that he was only considering whether the accused had committed the crime. He did not consider the basic issue of whether the girl had been raped or not. For instance, he did not seek the medical advice on whether the girl had been sexually assaulted or not. **If indeed the girl had been raped, it is the court's responsibility to deliver justice. Quite clearly, there had been a compromise and an out of court settlement which the Judge chose to ignore. One must ask the question again as**

to whether the Judge realises that this is a crime against the state, rather than a dispute between two parties.

The existing definition of rape under the penal code clearly states that penetration is sufficient to define sexual intercourse, and sexual intercourse with any girl below the age of sixteen is to be considered statutory rape. Penetration has conventionally been interpreted to mean penetration of "penis in to vagina". A more expanded definition or interpretation of rape would have allowed the judge to deal with the case differently.

The myth is that a minor girl can not be raped and children always tell the truth. Therefore, it is difficult for general people including the judge to comprehend the situation. It also indicates the lack of knowledge and ignorance of the people and the judge about the numerous incidents of child rape in the mass media, research and survey reports. Rape of a girl child is a source of great shame and dishonour to her family. Moreover if the accused or his family possess financial and political power, they can easily intimidate the victim and her family and can often influence the total judicial process.

In the case of State vs. Jahangir Alam (Case No. 207/96, Tejgaon P.S.), the victim an 8 year old girl had gone to a shop to buy a jackfruit. A confectionery shopkeeper called her over and then raped her. Afterwards she went home and fainted. At the time her father was away and her uncle rushed over and heard what had happened. Two days later, the victim's father, filed a case. There were six witnesses in the case including the victim, Mimi. During the trial, Mimi and her parents said that rape, i.e. penetration of penis had not occurred. However, they did state that the accused had taken off her panties and tried to kiss her when she fled. The Judge stated that there was no doubt that the testimony of the victim and her parents were genuine. However, he did not sentence the accused on the grounds of attempted rape instead Jahangir Alam was charged with kidnapping and abduction and sentenced to seven years imprisonment and a fine of Tk. 5,000.00 or on non-payment of fine an additional one month in prison.

It is clear from the Judgement that the judge considered the accused guilty of attempted rape. However, he was reluctant to find him guilty as such because there is no section for attempted rape under the new law. Only rape which is conventionally understood as penetration of "penis in to vagina" is recognized. The medical examination suggested that rape could have taken place. The prosecution did not, however, question the medical doctor who had examined the victim. One year after the crime, the Judge blamed the police for their sloppy attitude and investigation. **Why the judge did not order the prosecution to present all the witnesses including the medical doctor is not comprehensible.** In a country where most cases drag on for years, the Judge talked about the prolonged legal process and the time the accused had already spent in custody, and gave the minimum sentence on the charged section. In this trial what was the crime that was judge? Whether the victim Mimi had been raped or not was an unimportant issue for the court. They did not even question the medical doctor who had done the examination. **Who did the court protect? It is not the protection of the victim that the court concerned itself with.** Clearly an out of court mediation had taken place and the judge by changing the section of the crime and reducing the sentence lent support to such a process.

Here the Judge appears not take the offence seriously at all. The Judge acquitted the accused only considering the confessional statement of the accused.

C. Custodial rape

In State vs Uttam Kumar and others (Case No. 21/97 Raozan P.S.), it is alleged that Shima Chowdhury, a sixteen year old, was raped by the police in Raozan P.S. Shima was arrested under Section 54 and was detained by Kakdia Mugdai patrol police under Raozan P.S. on the night of 8 October 1996.

It is stated that Shima Chowdhury, a Hindu girl, had wanted to marry Hafiz, a Muslim man. They had come to this area to try and get married. The police detained them on grounds of suspicious movement and upon finding that a young Hindu girl was escorted by a Muslim man their suspicions were further reinforced. It is stated that the police were not able to locate any guardians of the girl and therefore considered it appropriate to detain her in the police station and arrested Hafiz who was allegedly an accused in a prior criminal case.

On 9 October 1996 both Shima and Hafiz were brought to Raozan P.S. It is alleged that Shima was raped by the police in Raozan P.S. while in their custody. On the morning of 10 October 1996, the officer in charge of Raozan P.S. found her in an unconscious state and immediately arranged for treatment. The local doctor referred her to Chittagong Medical College Hospital where she was taken on 10 October 1996. Upon regaining consciousness Shima stated in the presence of the doctor that she had been intoxicated and raped by four policemen.

The investigating doctor upon being convinced that a violation had taken place brought the matter to the attention of the police. A complaint was then filed on 14 October 1996 by a Sub-Inspector of Raozan P.S. The charge sheet was finally submitted on 2 February 1997. Shima died in the Chittagong prison hospital on 7 February 1997 before the trial had begun.

Some women's organizations were refused permission to see Shima while she was under "safe custody".

The judgement reveals that the court never addressed the question of why Secma was detained in the first place, especially as her mother's house is located close to the outpost. The investigating officer has commented during his testimony that the police investigation of Shima's antecedents had revealed that Shima is "clever, precocious and a floating prostitute" and had also discovered earlier filed General Diary entries dated 18 May 1996 and 19 July 1996 to this effect. The judge never questioned the truthfulness, relevance and appropriateness of such a comment. Shima's status as a minor claimed by the detaining police was never questioned nor was any medical examination required to determine her age although Shima herself claimed that she was a major. Hafiz himself appears to have become invisible during the entire investigation and trial, whereby it is clear that he could have been a principal witness in the case. It is mentioned in the narrative description of the incident in the court papers that Hafiz was released on the next morning on the basis of an undertaking in spite of the fact that he was allegedly an accused in another case. It is also mentioned that no attempt had been made by the police to get Shima Chowdhury herself to file a First Information Report. The judge did not question or bring to notice why she did not complain and or whether she was unable to complain. He simply highlighted the fact that Shima herself was not the complainant, when it is totally irrelevant to the case itself.

The judge concluded in his judgement that the weakness of the case lies in the fact that the complainant, accused and investigating officials are all police implying that there would be an inherent tendency to protect fellow workers and colleagues.

The Police Department is very corrupt in general. Although they are supposed to protect the one who seeks safe custody or is kept in safe custody (judicial custody), they have no inhibitions about abusing their power to commit crimes like rape, torture and murder. Since police is the investigating authority they tend to protect their own people when police are accused of rape, murder, physical torture, harassment or other crimes.

Moreover, most police stations do not have any special facilities for women such as separate cells, toilet facilities or female police/guards. This makes women more vulnerable to custodial abuse.

The widespread use and abuse of Section 54 has never been challenged by any individual or institution. Section 54 is the most easily used provision to detain persons on suspicion of allegations ranging from the unlawful possession of weapons and narcotics to a suspicion that the person may commit a serious offence.

It is reported in newspapers that during 1997 a total of 26 persons died in police and jail custody; three others have died of police torture in different places in the country; and, eleven women have been raped by members of law enforcing agencies.

Although, the judge himself in his comment has indicated "problems" with the fact that the complainant, accused and investigating officials all belong to the police, nowhere in the proceedings do we find any attempt on the judge's part to rectify the situation by demanding further investigation with specific instructions summoning Hafiz and Shima's mother to testify. The judge clearly stated that a proper investigation was not done. **The mysterious circumstances of Shima's death in custody so soon after the charge sheet was submitted should have made the judge more alert and proactive in seeking verifications, additional information and further investigation.**

The judge further observed that instead of collecting essential information the prosecution merely pretended to prove the case by proceeding on the basis of fabricated information provided by the investigation. The judge further commented that the prosecution appears to have consciously presented very short arguments whereas the defence in spite of lack of evidence presented very long arguments. He finally commented that the case can be described as a witness and evidenceless case.

The judge's attitude can be described as one of shifting responsibility. He appears to have fulfilled his responsibility by condemning the investigating and prosecuting authorities for having done a poor job. During the trial period, he could have ordered further investigation.

5.3 Dowry: Four cases of violence related to "dowry demands" have been collected and analyzed.

In *State vs Anwar Hossain* (Case No 235/86 Demra P.S.), it is alleged that Anwar Hossain would regularly torture his wife Roushan Akhter in order to extract more money from her family. Finally, at one point Roushan Akhter left her husband's home and filed a complaint.

The case was acquitted. The complainant could not produce any evidence of physical injury and treatment or any "neutral" witness. Although Roushan Akhter in her petition described greivous hurt resulting in her loss of consciousness, in her testimony in court she described physical violence but did not claim grievous injury. It is clear that the judge was concerned more with the technical legal points relating to the particular legal provision under which charges were filed and less with the actual fact of physical abuse. **Thus the judge put too much emphasis on proof of grievous injury and/or threat to life. She made no effort to reframe the charges to reflect physical torture.**

The judge did not consider wife beating to be a legal offence and did not look at the position of a wife in the family. The accused had married for a second time without the consent of the victim who was the first wife. **This fact, even though stated by the victim in her complaint was ignored by the judge.** The statement given by the victim later ommitting grievous hurt could have indicated insecurity or want of money on the part of the victim. The judge did not explore the reasons for this retraction. **The court should have demanded that the prosecution produce medical certificates instead of making the victim liable.**

In State vs Abdul Latif Sikder (Case No. 57/88) it is alleged that Sikder frequently tortured his wife Shefali until one such time when she had to be hospitalized with serious head and body injuries. At this point Shefali's father filed a complaint against Sikder. However, when Shefali was produced in court to testify she claimed that she had slipped and injured herself. Her father also then denied the offence. Yet the police had found the charge justified and submitted a charge-sheet against Shefali's husband.

In State vs Mintu Mia and others (Special Tribunal Case No. 256/89), it is alleged that Mintu Mia beat his wife, Masuda Begum, causing greivous injury. It is stated that Mintu Mia had earlier demanded and received from his in-laws Taka 10,000 cash. He then demanded a bicycle and a wristwatch which they were unable to provide. This angered him and he brutally beat up Masuda Begum.

Once the trial began Masuda Begum testified that she had no complaints against her husband who she continued to cohabit with. This was affirmed in testimonies by Masuda's parents. The judge acquitted the case.

The judge did not query further into why the police took the case and later filed a charge-sheet, or why the complainant denied the content of her First Information Report. This is a crime against the state and irrespective of later claims by the petitioner should not have prevented a thorough examination of the incident and its liabilities.

In State vs Rafiqul Islam and others (Case No 48/96 Kotwali P.S.), it is alleged that on 4 December 1995 Rafiqul Islam set his wife, Rina Akhter, on fire. She later succumbed to her injuries. According to the hospital report, her condition became worse after 6 December 1995 due to infection resulting from the injury and she expired on 10 December 1995. The dying victim described the incident to many people including her family members and doctors of the hospital. They all reported the story to the investigating officer in a consistent manner. Usually a dying patient does not lie.

Rafiqul Islam was acquitted. Rafiqul Islam in his statement said that Rina had caught fire accidentally while she was cooking on the gas stove. Several witnesses said there was no gas stove in Rina's house at the time of the occurrence. This statement was never verified by the prosecution.

The judge questioned the procedure in which Rina's dying statement had been recorded, i.e. not in the presence of a magistrate. Why the 'dying declaration' was not recorded or made in the presence of a magistrate in the six days that she survived after the incident is not explained in the proceeding. Two doctors and the investigating officer of the police was present at the time Rina made her dying declaration. The doctors testimony was discredited by the judge as he had to be brought to court under arrest warrant as he did not respond to summons on two occasions. Whereas the doctor was the main witness to the dying declaration. Instead of dismissing the dying declaration on procedural grounds, the judge could have sought further verification by requiring all witnesses to the dying declaration to testify. Furthermore, a simple but very important information about the existence of the gas stove was not collected from the place of occurrence. This itself could have been enough evidence to prove the falsehood of the accused's statement.

Wife beating is a common phenomena and many men consider this to be their natural right. This attitude and behavior is the root cause of violence which can often be lethal. Judges do not appear to take this social phenomena into consideration at all. Dowry demands are a frequent cause for wife beating. The inability to meet dowry demands is one of the most important and common causes for domestic violence against women/wives often leading to death. The judges appear to have ignored or overlooked this social fact and failed to be proactive in demanding better investigation and presentation of testimonies in court.

All these cases are filed under the Dowry Prohibition Act, however, the reasons behind many of these cases are not dowry induced. Frequently, cases are filed under the Dowry Prohibition Act because the existing legal framework does not allow for the recognition and or serious consideration of marital discord and maladjustment as grounds for divorce; or because women want to try and get back estranged husbands; or because women who want to subject their husbands to harassment out of revenge for having abandoned them. Although there are provisions under the Penal Code to file against physical abuse and violence by husbands, lawyers and police frequently advise women to file under the dowry prohibition act because the offence then becomes non-bailable.

5.4 Murder:

Five murder cases have been analysed.

In State vs Rahajuddin (Sessions Case no 72/83) it is alleged that Rahajuddin has murdered his wife Basirunessa. It is stated in the case report that Rahajuddin found his wife hanging in a jackfruit tree on 28 October 1982. He reported the matter to the police station. The autopsy report revealed injuries on the body of Basirunessa. Basirunessa's father Kandu Bepari filed a case against his son-in-law Rahajuddin on charges of murder under Section 302 of BPC. Rahajuddin was acquitted in court. Neither Kandu Bepari nor any other witness ever appeared in the court.

There are reasons to believe that this is a case of dowry death. The FIR filed by Kandu Bepari mentions frequent demands for cash by Rahajuddin. In fact this was the subject of local shalish on one occasion. In the trial an important piece of evidence, the post-mortem report, was not produced. Reasons for the murder were not clearly focused in the trial. The court could have asked for further investigation which it did not do. The prosecution failed to bring witnesses, including Kandu Bepari the complainant and father of the victim, and other evidence before the court. The judge could have demanded that the prosecution pursue the collection of evidence and witnesses. **Instead of taking such an initiative the judge made the complainant responsible for failing to attend the court. Thus the deceased was not given justice and as a result the accused was acquitted.**

In State vs A.N.M. Faqru Islam (Case No. 85/85 of Tejgaon P.S.), it is alleged that Shefali was murdered by her husband, Fakhrul Islam who was absconding. The court did not issue any order to search seriously for the accused. The judge appeared indifferent as to whether the accused is apprehended or not. Fakhrul Islam was acquitted.

In State vs Anwar Hossain (Case No. 62/85 Tejgaon P.S.) in which Shahida was allegedly murdered by one Anwar Hossain, a family friend. Shahida's husband in his complaint stated that on return home from night duty at his job in the airport he found the dead body of his wife. A sum of Taka 180,000 cash was also missing from the house.

The minimum evidence required for a fair trial was not produced during the proceedings. The judge did not pay any attention to issues such as time of death, proof of Shahida's husband Abdul Hai's presence at the airport till 6.00 a.m. The possibility/opportunity for both men to have killed Shahida existed, but this was not investigated at all. The husband being a low income employee (peon) of Biman claimed he had 180,000/ taka in his house, which sounded implausible. The investigation did not present proof of this nor did the court question this point.

Shahida was brutally murdered. **Instead of looking for the real cause of her death and finding out the murderer, her personal character was given emphasis to prove her immorality and possible illicit relations with Anwar Hossain during the whole proceedings. Discussion of her personal character was not at all necessary during the trial.** The whole procedure showed negligence on the part of the prosecution. Her death was made "morally acceptable" by the court which focused on Shahida's "immoral" character. Further investigation into the crime could have been ordered by the court.

In State vs Faruq and others (Case No. 152/87) Khodeja Begum complained that her husband was murdered by her step-children. The case was acquitted. Possibly it was a false accusation. But attention was given to the personal character of the complainant which did not have any relevance to the case. Consequently, the main issues remained obscure.

In State vs Abdul Motalib and others (Case No. 112/96 Dinajpur Kotwali P.S.), police personnel are accused of attempting to conceal evidence in relation to the rape and murder of a young girl named Yasmin. Yasmin was picked up by the police from a tea stall on a highway with the stated purpose of reaching her safely to Dinajpur town. She was later found raped and murdered.

The office of the Superintendent of Police stated to journalists that Yasmin was a prostitute who had been picked up by a police patrol who for no known reasons jumped out of the moving patrol car and died. Yasmin's body was declared unidentified and unclaimed and handed over to a charitable organisation for burial. All this was done with haste and without any effort to locate her family.

However, the accused police personnel were all acquitted from this charge for lack of proof. Yet the autopsy report itself indicated rupture of uterus incident and severe head injury. Yasmin's identity was confirmed as the 14 year old domestic helper in an urban household in the capital city Dhaka who was running away to see her mother in Dinajpur. The incident caused a huge public outcry and protest movement in which the police were accused of both rape and murder as well as of attempting to mislead the public through false statements.

5.5 Acid Attack

Only one case of acid attack was collected. In State vs Salahuddin and others (Case No 87/95 Demra P.S.), Salahuddin attempted to kidnap Selina and on facing obstruction he threw acid at her. Salahuddin was convicted to life imprisonment and a fine of Taka 10,000 and another two years of imprisonment on failure to pay the fine.

In awarding the sentence the judge commented that given that acid attacks on young girls had become a frequent phenomena and could be termed as a social disease, an exemplary punishment was in order. The court believed that such exemplary punishments can prevent the recurrence of such incidents. Leaving aside the efficacy of exemplary punishments, it may be mentioned here that the highest sentence for conviction in case of acid attacks is capital punishment. In reducing the sentence, the judge introduced the considerations that the accused are all young men and that the injury had caused disfigurement but not "ugly disfigurement".

5.6 Appeal Cases

Ten cases of appeal were collected but only three were analyzed.

In Hefzur Rahman vs Shamsunnahar Begum and others (Civil Appeal No. 2067/92), Hefzur Rahman was appealing a sentence by the High Court to restore his maintenance payments to their original amount which had been reduced earlier by a district court.

At the time of their divorce in 1988 their son was only eight months old. The Family Court in Daudkandi awarded Shamsun Nahar a maintenance of Tk. 1,000 per month. Three years after their divorce, Hefzur Rahman filed for reduction in maintenance payments in the District Court. The District Court reduced the amount of maintenance. This was contested by Shamsunnahar and four years after the reduction, the Civil Revision Jurisdiction of the High Court Division restored the amount of maintenance to the original amount.

The High Court Judgement seems fair in its judgement as no decline in income was reported by Hefzur Rahman and the original amount payable as maintenance is commensurate with his income.

In *Abdur Razzaque vs Mosammat Jahanara Begum* (Civil Appeal No: 92/95), Abdur Razzaque filed a suit for the custody of his adolescent daughter Rekha who was in the custody of Mosammat Jahanara Begum, her mother who had cared for her solely since their divorce. Abdur Razzaque claimed that Mosammat Jahanara Begum was involved with another man and therefore Rekha was not being brought up in an environment congenial to her welfare.

The court dismissed the petition for custody on the grounds that the mother had looked after the girl for many years since their divorce whereas the father's only role in the child's upbringing was in the form of giving gifts occasionally and visiting her in school.

The fact that the father had remarried and the mother had remained single was also given a lot of weight in the decision taken by the court. Here it is worth adding that had the mother remarried or had the father remained single then these arguments would not be valid in deciding who should get the custody of the child. Therefore it seems that the real issue of the child's welfare is confounded by other relationships in the lives of the parents.

In *Khairunnessa vs Illy Begum* (Criminal Appeal No: 8/95), Khairunnessa contested the decision of the High Court to refuse to hand over her daughter Illy Begum in to her custody. Illy Begum, a minor girl of probably 15-16 years of age, ran away with a man whom she stayed for one month and twenty two days. Her mother lodged a case with the police but was refused custody on the grounds that the girl gave a statement claiming she was an adult and married to a man of her own choice. She refused to return to her mother. When all evidence pointed to the fact that she was a minor she was put under judicial custody in Sylhet Jail as per the decision of the High Court. Eight months later Illy Begum gave the same statement in court again. However, when the case went to the Appellate Division of the Supreme Court, the court decided that the girl being a minor should be with her mother. Moreover, Illy Begum had in the meantime written to her mother from jail expressing her wish to be removed from jail.

The judge in this case is obviously more concerned with the minor status of Illy Begum and less with the fact that she has of her own volition left home and married a man of her choice. It may be mentioned here that child marriage itself is not illegal although those involved in solemnizing a child marriage are punishable by law.

6. Interviews

6.1 Litigants

A total number of ten women litigants were interviewed. They were contacted through Bangladesh National Women Lawyers Association and Naripokkho's programme with acid survivors.

From the interviews with the women litigants, it was apparent that they are very frustrated with the long cumbersome legal process. Many are reluctant to pursue their case as they are intimidated and threatened by their opponents. Most survivors of violence are afraid of the accused party. The court does not provide them with an environment in which they feel secure enough to speak. Many times they are intimidated by the defence lawyer. The

defense lawyer is often unethical in his/her cross-examination and the judge rarely intervenes to ensure a fair treatment.

For example, there was a case where a group of tribal girls/women had been confined and raped by the owner of a beauty parlour. The girls were working there as hair dressers. The defense lawyer during the cross-examination asked one of the girls, "tell me, who is the most beautiful in your group? is it you? do you know the wife of my client is also beautiful and a famous beautician?" The girl was silent. The judge said nothing. Eventually the girl started crying. A woman was assisting the prosecution and she raised objection on the ground that this was irrelevant and humiliating. The judge did not support her objection and continued in stony silence.

6.2 Clients

Ten women clients of legal aid organisations who have sought assistance but do not want to pursue a court case were interviewed. They were contacted through Bangladesh National Women Lawyers Association and through personal contacts. These women are all extremely apprehensive of the court, law and police. They are fearful of the legal process and feel that they have no access to the legal system. One of the complainants we interviewed said, "The court is not for powerless people like us." They were more interested in arbitration and had therefore approached a legal aid organisation.

7. **Workshops :**

Three workshops were held over a period of two days with women lawyers, men lawyers and staff of ngos providing legal aid.

The Objectives of the workshops were :

- To share experiences of the situation of women in the legal profession.
- To analyse the situation of women survivors of violence seeking justice in the courts.
- To identify limitations and lackings of the judicial system from the point of view of fair treatment of women.
- To make recommendations for future action.

The workshops were supported with funds from UNICEF, Dhaka and the voluntary contribution of time and skills by Naripokkho members.

7.1 **Women Lawyers :**

A total of 15 women lawyers participated in a one day workshop. On average the women lawyers had 10 years court experience. They discussed about the success, limitations and barriers for women in legal practice and in their own life, such as the attitude and behavior of family members, male colleagues, Judges, seniors and court staff towards women lawyers, women clients in the court premises, in the lawyers chambers, in police stations, and in the judgement documents.

According to the women lawyers the problems faced by women clients are the following:

- Lack of awareness of law and the legal system.
- People are frightened of the police and the court.
- Lengthy process and procedure for trial and costs.
- Incomprehensibility of the legal language.
- Misleading by touts.
- Misguided by lawyers (sometime).
- Sense of insecurity in public places.
- Sexual harassment by men.
- Non-acknowledgment of the women clients by the Judges.
- Difficulties faced by a woman to come out from her home and make a complaint against male family members due to lack of knowledge and confidence, financial dependence on others, difficult communication and transport system, discouraging social customs etc.

Experience of women lawyers

An interesting finding from this workshop was that the women lawyers had never talked about their own life or how they are treated in the profession as women.

The experiences of women lawyers themselves are listed below:

Positive :

- Most of the women lawyers expressed that family support, mainly from parents, had helped them to reach this position.
- They are proud of their non-traditional occupation and can play a strong role in the family and in society.
- The black coat facilitates a certain level of acceptance to people which in turn gives women moral strength.

Obstacles :

- Due to social stereotypes the family is reluctant to permit them to go out after sunset and work in the lawyers chambers at night.
- Social and physical insecurity.
- Discriminatory attitudes faced by women lawyers from male lawyers, judges and clients.
- Lack of confidence on the capability of women lawyers by clients, male colleagues and judges.
- Sexual harassment by seniors.
- Threats from case opponents.
- Judges insensitivity to women's issues.

Issues that are perceived as both positive and as obstacles :

- Less financial responsibility for family which in turn facilitates women to do more social work.
- "Ladies first" culture.

The above issues were debated in the workshop. Some participants felt the less financial responsibility is positive for them so that they do not need to press their clients for more and more money as is done by male lawyers. Some participants felt that this ignored women's role and contribution to the family.

Some participants observed that "Ladies first" attitude gives women some advantage. Others felt that it merely reinforced women's vulnerability and sympathy constituted the basis for assistance and cooperation.

7.2 Male Lawyers workshop :

A total of ten male lawyers participated in the workshop. They had an average of 15 years experience. The main discussion in this workshop was on perceptions and attitudes of male lawyers regarding women in the legal profession as well as regarding women clients.

Women Clients

Listed below are the comments and observations made by male lawyers on women clients.

- Women clients get more sympathy than men.
- Women clients can not usually pursue litigation because of financial constraints and social pressure.
- Court environment is not women friendly.
- Sometimes more attention from different people put them into more crisis or problems.
- Threats from the opposite party or perpetrators.

Women Lawyers

- They always get attention and favour from the Judges and senior as women.
- Women lawyers are more visible than men.
- Women lawyers are reluctant to take responsibility and do not want to work hard.

An important part of the workshop with male lawyers was the administration of a questionnaire to assess their attitudes toward women in general. The questionnaire was prepared by Sakshi and translated in to Bangla by Naripokkho. The findings of this exercise are:

- Most of the male lawyers indicated that conjugal relations is a condition of marital life, and therefore women can not deny sexual services to their husbands unless they are medically unfit. Women therefore do not have or should not have the right to say no.
- By the same reasoning they do not consider sex without the wife's consent as "marital rape".
- Men can have relations with more than one woman, but women must be monogamous.
- Men can drink alcohol some times but women should never.
- Women can not take sex work as a profession even if it is for survival.

7.3 Workshop with NGO Staff :

Eight women and two men from different organisations, a total of 10 ngo staff members, participated in a half day workshop. They discussed about the problems faced by violence survivors, by themselves as legal aid workers and what can be done for survivors by the NGOs.

The main findings are:

- Legal aid or development workers do not have any access to the judges and courts.
- Women lawyers are not competent in criminal practice.
- Concerned institutions and agencies tend to blame "women survivors" for the violence not the perpetrator.
- Judges are reluctant to protect women victims from further intimidation.
- Judges are not aware and sensitive about women's issues and rights.
- Threats by the opposite party of the clients are frequent.

What NGOs can offer to violence survivors :

- Temporary shelter.
- Free legal services.
- Counseling.

In addition they can provide legal awareness in general. Coordination of human rights organisations is very much needed for greater movement.

In all three workshops participants were asked about their knowledge and understanding of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). All fifteen women lawyers had heard of CEDAW but did not have in depth knowledge of its contents or any understanding of its relevance to their work. The male lawyers universally had not even heard of CEDAW. Most of the ngo staff knew about CEDAW and knew that it represented a bill of rights for women but did not have detailed knowledge about it.

It is in these workshops that for the first time there was public acknowledgement of the fact that both women clients and women lawyers were subjected to sexual harassment by senior lawyers and colleagues.

The workshop with male lawyers clearly showed that male lawyers continue to view women's entry in to the profession as contingent upon the generosity of their husbands and male colleagues. Their understanding of women's rights appear to be restricted to the narrow confines of what exists in written law.

The workshop with women lawyers revealed that most women still consider their occupation as a bonus or at best a supplementary activity, and do not treat it as a serious professional engagement.

It was apparent from the workshops that both lawyers and non-lawyers engaged with ngos were more aware than practicing male or female lawyers.

8. Courtroom Observation:

The special tribunal court, special court for women and children and the family court were observed through six working days. This court watch revealed that intimidation of victims and witnesses by the defence counsels is a regular practice and judges are mostly silent about this situation. The court environment including attitude of judges and lawyers, except the female court officers, are not friendly at all. Often the language used by the judges and the defence lawyers are not understandable to the litigants. Counsel has to repeat the question to the witnesses in more colloquial language. The court rooms are congested, noisy, overcrowded and there is no sitting arrangement for litigants. Litigants, particularly women litigants, do not feel free and comfortable in the court.

9. Concluding Remarks

Three months is too short a period to comprehend gender bias on the part of judges. Moreover, we did not get cooperation from all agencies concerned. All one can do in this time is to scratch the surface, as we have done, and indicate where problems are likely to exist.

As bias varies from person to person, i.e. from judge to judge, it is necessary to conduct in-depth interviews with a more diverse sample.

The storage of court records is in a dismal condition. One can not easily locate, nor read the documents. They are for the most part in damaged condition and often quite unreadable. Moreover, some documents are destroyed after a fixed period of time.

The main proceedings of the trial, i.e. arguments, are not documented as a result the analysis has to depend almost entirely on the judgement documents. Yet, it is in the course of arguments that the most explicit expressions of bias and prejudice appear.

In cases of rape and sexual assault, social values and norms regarding shame and honour are given greater importance than the fact of violation. The character and social background of the victim is given more attention than her testimony. In the case of rape of minors the wishes and financial status of her guardian appears to play a greater role than the fact of her violation.

Courts appear to have great difficulty in recognizing assault and abuse by husbands as a crime. The fact that women themselves often retract accusations against husbands out of a sense of loyalty, social shame or because of financial dependence further reinforces the courts non-recognition of the violation.

The arbitrary use of Section 54 by police in curtailing women's freedom of movement is not ever questioned or challenged by the courts.

International conventions and instruments appear to have no role in the work of the legal profession and the judiciary. Conventions related to the rights of women such as the Convention on the Elimination of All Forms of Discrimination Against Women are not known to most in the legal profession and its relevance not understood.

A general observation from this study and from years of courtroom experience is that judges, if they had the motivation and the willingness to be proactive, can set precedent through their judgements to bring about changes in social attitudes, and reforms in various laws and regulations.

Finally, one can conclude without any doubt, on the basis of the observations, workshops, interviews and case research, that women simply because they are women suffer various disadvantages, difficulties and discriminatory behaviour from law enforcement agencies, investigating authorities, judiciary and lawyers. When women are extended cooperation or certain facilities, it is again because they are women and what they represent in terms of sexual value to society and to men.

This "Pilot Study" reveals the tip of an iceberg. A more comprehensive study of the judiciary, including judicial procedures and actions and the treatment of women complainants and defendants, can direct us to the kind of inputs that has to be made to judicial training if the judiciary is to rise above cultural attitudes and gender stereotypes and women are to receive fair treatment in courts. Such a study will require the full cooperation and support of members of the judiciary.

Appendix :

Case classification

Date	Case No	Provision of law	Name of the Case	Name of the Court	Date of Judge -ment	Decision
Rape Case :						
1.FIR-25.11.76	86/79	Sec.376 of the Penal Code and Sec.26 of the Special Powers Act 1974	State Vs Emarat Hossain & others	Special Tribunal Judge Court-Dhaka.	31.12.81	Acquitted.
2.FIR-14.10.83	44/84	Sec. 376 of the Penal Code.	State Vs Mofazzel	Special Tribunal Judge Court-Dhaka.	3.6.84	Acquitted & discharged
3.FIR-18.12.83	10/85.	Sec. 366 (A)/376 of the Penal Code	State Vs Badiuzzaman	Add. Dist & sessions Judge court.	30.6.86	Acquitted
4.FIR - 17.5.94	175/95	Sec. 366 (A)/376/109 of the Penal Code	State Vs Mithu Kazi, Jakir Hossain	Add. Dist & sessions Judge court.	29.3.97	Acquitted
5.FIR-9.7.96	207/96	Sec.6(1)/9(b)of the Women & Children Oppression Act, 1995	State Vs Jahangir Alam @ Bellal		5.8.97	Convicted
6.FIR-14.10.96	21/97	Sec. 6 (3) of the Women & Children Oppression (special provision) Act. 1995.	State Vs Uttam Kumar, Sadeq Ali, Abul Bashar, Gaur Chandra	Woman & Children Oppression Special Court, Chittagong	13.7.97	Acquitted

Date	Case No	Provision of law	Name of the Case	Name of the Court	Date of Judgement	Decision
Causing death for dowry						
7. FIR- 26.8.86	235/86	Sec. 6 of the Cruelty to women (deterrent punishment) Ordinance. 1983	State Vs Anwar Hossain	Add. Dist & sessions Judge court.	27.2.88	Acquitted
8. FIR- 9.10.87	57/88	Sec. 6 of the Cruelty to women (deterrent punishment) Ordinance. 1983	State Vs Abdul Latif Sikder	Add. Dist & Session Judge Court, Dhaka	8.11.89	Acquitted
9. FIR-4.2.89	256/89	Sec. 6 of the Cruelty to women (deterrent punishment) Ordinance. 1983	Stats Vs Mintu Mia & Others	Special Tribunal Court, Dhaka	22.11.89	Acquitted
10. FIR- 6.12.95	48/96	Sec. 10(1)/10 (1)/14 of the Cruelty to women	State Vs Rafiqul Islam & Forfunessa	Woman & Children Oppression Special Court, Dhaka	26.8.96	Acquitted

Date	Case No	Provision of law	Name of the Case	Court	Date of Judgement	Decision
Murder						
11. FIR-15.11.82	72/83	Sec.302 of the Penal Code.	State Vs Rahazuddin	Add.Dist.& Sessions Judge Court,Dhaka.	20.11.84	Acquitted
12. FIR-3.10.79	85/85	Sec.302/380 of the Penal Code	State Vs Fakrul Islam	Add. Dist & Session & Judge Court, Dhaka	10.3.86	Acquitted.
13. FIR-12.2.85	62/85	Sec.302/380 of the Penal Code.	State Vs Anwer Hossain		30.1.86	Acquitted
14. FIR-29.4.87	152/87	Sec.304/34 of the Penal Code.	State Vs Faruk,Panna, Halima,Parvin	Add.Dist & Sessions Court,Dhaka.	27.7.89	Acquitted
15. G.D.-24.8.95	112/95	Sec.201/34 of the Penal Code.	State Vs Abdul Motaleb,Mahtab, Sawpon,Motiur& Others.	Sessions Judge Court. Rangpur		One is convicted & others are acquitted
Acid Throwing						
16. FIR - 25.3.94	87/95	Sec. 326 (A)/34 of the Penal Code	State Vs Salauddin, Tajjuddin, Shaheen, Makbul	Add. Dist. & Session Judge Court, Dhaka	17.5.97	All are convicted

Date	Case No	Provision of law	Name of the Case	Name of the Court	Date of Judgement	Decision
Kidnapping						
17. FIR-29.8.85	76/86	Sec.4 of the Cruelty to Women (deterrent punishment) 1983	State Vs Shanewaz, Rashida,Amirun &Others	Add. Session &Dist Judge Court,Dhaka.	29.2.86	Convicted 3 years
18. FIR - 23.5.87	321/88	Sec. 4(b) of the Cruelty to Women (deterret punishment) 1983	State Vs Md. Kashem, Shahidullah, Zabbar & Others.	Special Tribunal Court, Dhaka	11.4.91	Acquitted
19. FIR-24.2.88	349/88	Sec. 4 (b) of the Cruelty to Women (deterrent punishment) 1983	State Vs Nasir Uddin	Special Tribunal Judge Court, Dhaka	2.9.89	Acquitted
20. FIR-12.1.91	200/91	Sec. 4 (a) of the Cruelty to Women and Sec. 366 (a) of the Penal Code	State Vs Babul Ahmed @ Karitik Chandra Bonik	Special Tribunal Judge Court, Dhaka	27.2.92	Convicted
21. FIR - 24.4.91	11/92	Sec. 4 & 9 of the Cruelty to women (deterrent punishment) 1983	State Vs Nasir Masud, Jalal Lal Mia	Special Tribunal Judge Court Perojpur	30.11.93	Convicted
22. FIR-25.8.93	1620/93	Sec. 4 (a)/5 of the Cruelty to women (deterrent punishment) 1983	State Vs Haru, Janab Ali, Ahtashemul Kabir & Others	Add. Dist & Sessions Judge Dhaka	30.4.97	4 persons are convicted & one is acquitted
23. FIR-	225/95	Sec. 5 of the Cruelty to women (deterrent punishment) 1983	State Vs Jamaluddin & Others	Add. Dist & Sessions Judge Dhaka	25.6.97	Acquitted

Date	Case No	Provision of law	Name of the Case	Court	Date of Judgement	Decision
Kidnapping						
24. FIR-15.1.94	161/95	Sec.4(c) of the Cruelty to woman children oppression (special provision) Act. 1995.	State Vs Khokon & Others	Add. Dist & sessions Judge Court	6.7.97	Acquitted
25. FIR-16.3.94	1166/95	Sec. 4 (a)/5 Cruelty to Women (deterrent punishment) 1983	State Vs Rani Sardami Minu & Others	Add. Dist & Session & Judge Court, Dhaka	28.8.96	One is Convicted & Others are Acquitted
26. FIR-28.9.95	394/96	Sec. 366/343/313/318 of the Penal Code.	State Vs Israfeel	Add. Dist & Session & Judge Court, Dhaka	30.11.96	Acquitted
27. FIR-27.12.05	3/96	Sec.9 of the Women & Children Oppression (Special provision) Act. 1995	State Vs Abdus Salam.	Women & Children Oppression Special Court, Dhaka.	12.5.96	Acquitted.
28. FIR-23.10.96	36/97	Sec. 12/14 of the Woman & Children	State Vs Jamila & Abdul Kalam	Woman & n Children Oppression Special Court, Dhaka	2.6.97	One is convicted & Another is acquitted

THE CONTROL OF OPPRESSION ON WOMEN AND CHILDREN (SPECIAL PROVISION) ACT, 1995

(ACT NO. 18 OF 1995)

An Act to enact special provisions for some heinous offences relating to oppression on women and children.

WHEREAS it is expedient to enact special provisions for some heinous offences relating to oppression on women and children;

It is hereby enacted as follows :-

1. **Short title.**- This Act may be called as the Control of Oppression on Women and Children (Special Provision) Act, 1995.

2. **Definition.**- Unless there is anything repugnant to the subject or context, in this Act.

(a) "offence" means an offence punishable under this Act;

(b) "court" means a court established under this Act;

(c) "rape" carries the same meaning as referred to in section 375 of the Penal Code, 1860 (Act XLV of 1860) :

Provided that for the purpose of this Act, the word "sixteen" shall be deemed to have been substituted in both the cases for the words "fourteen" as referred to in the fifth sub-clause and the word "thirteen" as referred to in the sub-clause entitled "Exception" of section 375;

(d) 'women' means a women of any age;

(e) 'Criminal Procedure' means the Code of Criminal Procedure, 1898 (Act V of 1898);

(f) "dowry" means 'dowry' as defined in section 2 of the Dowry Prohibition Act, 1980 (XXXV of 1980);

(g) "Child" means "child" as defined in section 2(f) of the Children Act, 1974 (XXXIX of 1974);

(h) "High Court Division" means the High Court Division of the Supreme Court of Bangladesh.

3. **Act to override other laws.**- The provisions of this Act shall have effect, notwithstanding anything contained in any other law for the time being in force.

4. **Penalty for causing death by erosive, poisonous or corrosive substance.**- A person shall be liable to the sentence of death if that person causes death of a child or women by erosive, poisonous or corrosive substance.

5. **Penalty for causing grievous hurt by erosive, poisonous or corrosive substance.**- Where a person causes such grievous hurt to a child or woman by erosive, poisonous or corrosive substance as a result of which -

- (a) the eye sight is lost;
 - (b) the head or the face is decomposed;
 - (c) the audible power is lost;
 - (d) any limb or knot of the body is lost; or
 - (e) any other part of the body is deformed.
- in that case, the person -

(i) shall be punishable with imprisonment for a term not exceeding fourteen years but not less than seven years, and shall also be liable for a fine for any hurt as referred to in clause (a) where the child or the women has lost the eye-sight permanently;

(ii) shall be punishable with or with death or imprisonment for life and shall also be liable to a fine for any hurt as referred to in clause (a) where the child or the woman has lost eye sight of both the eyes, permanently;

(iii) shall be punishable with imprisonment for a term not exceeding fourteen years but not less than seven years, and shall also be liable for a fine for any hurt as referred to in clause (b) where the head or the face is decomposed in part permanently;

iv) shall be punishable with death or with imprisonment for life and shall also be liable to a fine for any hurt as referred to in clause (b) where the whole of the head or the face is decomposed permanently;

v) shall be punishable with imprisonment for a term not exceeding fourteen years but not less than seven years, and shall also be liable for a fine for any hurt as referred to in clause (c) where the audible power of one ear is lost permanently;

vi) shall be punishable with imprisonment for life and shall also be liable to a fine for any hurt as referred to in clause (c) where the audible ponder of both the ear is lost;

vii) shall be punishable with imprisonment for a term not exceeding fourteen years but not less than seven years and shall also be liable to a fine for any hurt as referred to in clause (d) where the limb or the knot of the body is lost permanently;

viii) shall be punishable with imprisonment for a term not exceeding fourteen years but not less than seven years and shall also be liable to a fine for any hurt as referred to in clause (e) where the part of the body is deformed permanently;

ix) shall be punishable with imprisonment for a term not exceeding fourteen years but not less than seven years and shall also be liable to a fine for any hurt as referred to in clause (a) and (e) where the lost or decomposed condition is not, in some cases, permanent.

6. Penalty for rape.- (1) Where a person commits rape upon a child or woman, that person shall be punishable with death or an imprisonment for life.

(2) Where a person causes death of a child or women by way of rape or after the rape upon that child or women, that person shall be punishable with death.

(3) Where a gang of person commits rape upon a child or women, everybody of that gang shall be punishable with death or with imprisonment for life.

(4) Where a gang of person causes death of a child or woman by way of rape or after the rape upon that child or woman everybody of that gang shall be punishable with death.

7. Penalty for attempt to cause death or to cause hurt by rape.- Where a person attempts to cause death or hurt of a child or woman by rape, that person shall be punishable with death or to an imprisonment for life.

8. Penalty for trafficking in woman.- (1) Where a person imports, exports, buys or sells or lets to hire or otherwise disposes of any woman with the intention of using that woman in prostitution or using for illicit intercourse or for any unlawful and immoral purpose, shall be punishable with imprisonment for life and shall also be liable to fine.

Explanation I.-When a woman is sold, let for hire or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person who has disposed of that woman, until the contrary is proved, be deemed to have sold or disposed of that woman for using in prostitution.

Explanation II.- Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a woman shall, until the contrary is proved, be deemed to have obtained possession of that woman for using in prostitution.

(2) where a person keeps any woman in his possession or zimm or puts under his custody for prostitution or illicit intercourse or imports or exports or lets to hire or otherwise disposes of any woman for any unlawful an immoral purpose, that person shall be punishable with imprisonment for fourteen years and shall also be liable to fine.

9. Penalty for kidnapping or abduction for unlawful or immoral purposes etc.- Where a person kidnaps or abducts any woman -

(a) to employ or use in prostitution or for any unlawful or immoral purpose-

(b) to compel to marry any woman against her will, or

(c) in order that the woman may be forced or reduced to illicit intercourse.

that person shall be punishable with imprisonment for life or with rigorous imprisonment for ten years but not less than seven years and shall also be liable to fine.

10. Penalty for causing death, etc. for dowry.- (1) Whoever, being a husband or father or mother or guardian or relation of the husband or any woman or any other person on behalf of that husband causes death to that woman for dowry, such husband, father, mother, guardian, relation of the husband or person shall be punishable with death.

(2) Whoever, being husband or father or mother, guardian or relation of the husband of that woman or any other person on behalf of that husband attempts to cause death to that woman, shall be punishable with imprisonment for life.

11. Penalty for causing greivous hurt for dowry.- Whoever, being a husband or father or mother or guardian or relation of the husband of that woman or any other person on behalf of that husband causes greivous hurt to that woman, shall be punishable with imprisonment for life or with imprisonment for fourteen years which shall not be less than five years and shall also be liable to fine.

12. Penalty for trafficking in child.- Where any person exports, imports, or sells or obtains possession of any child with intent to export, import or sell that child, or that child is found in the possession of any person for such purposes, that person shall be punishable with death or with imprisonment for life.

13. **Penalty for claiming ransom.**- Whoever kidnaps or confines any child for the purpose of ransom money shall be punishable with imprisonment for life.

14. **Penalty for abatement.**- Whoever abets any offence punishable under this Act shall, if the act abetted is committed in consequence of the abatement, be punishable with the punishment provided for that offence.

15. **Trial of offences.**- The offences punishable under this Act shall only be triable by the Special Court established under section 16.

16. **Special Court.**- (1) There shall be established a Special court to be known as the "Court for Control of Child and Woman Oppression" in each district for the purpose of trial of offences under this Act.

(2) The Government may, if necessary, also establish special courts in other places and in such case, the Government shall specify the local area of jurisdiction of that court by notification in the official Gazette.

(3) The Special Court shall consist of a District and Sessions Judge and the Government shall appoint Judge of the Special Court from amongst the District and Sessions Judges.

(4) the Government may, if necessary, appoint a District and Sessions Judge as judge of the Special Court in addition to the normal duty.

Explanation : In this section, District and Session Judge includes additional District and Sessions Judge.

17. **Jurisdiction of the Special Court.**- (1) No Court shall take cognizance of any offence except with a report in writing from a police officer not below the rank of a Sub-Inspector or from a person or in general specially empowered by the Government for that purpose :

Provided that where the court is satisfied that the complainant has been failed after a request is made to submit a report of the offence to any person empowered under this sub-section, the court may, directly take cognizance of the offence.

(2) The report of the offence may be submitted for taking cognizance to the court under whose the jurisdiction the offence complained of, or part of it is committed, or where the offender or in the case of more offenders any one of them is found, the place is situated, that court shall hold the trial of it.

18. Investigation of offence.- (1) The investigation of the offence committed under this Act shall be conducted within 60 days of the report of the offence or the passing of the order by the Magistrate for investigation of the offence :

Provided that, where the investigation officer satisfies the court by showing special reason to the effect that it is expedient to extend the time for investigation for ends of justice, the court may extend the time for investigation for another 30 days.

(2) Where the court is satisfied after the expiry of the period fixed and extended as referred to in sub-section (1) on an application or otherwise, that it is expedient to investigate into the offence further, in that case, the court may subject to its order relating to bail of the accused other connected matter, upon an order for investigation within additional time.

(3) No accused shall be granted bail within the period of investigation prescribed in sub-section (1).

(4) Where the investigation is not completed within the extended period prescribed in sub-section (1), the court may release the accused on bail and if bail is not allowed, the court shall record its reason.

19. Power of penalty.- The court may pass any sentence for the offence prescribed for it, of which the trial is held.

20. Procedure for trial.- (1) The court shall follow the procedure for trial and disposal of cases as prescribed in chapter XX of the Code of Criminal Procedure.

(2) The court shall conclude the trial of the case within 90 working days from the date of receipt of the case for trial.

(3) Where the court is unable to conclude the trial of the case within the period prescribed, in that case, the court shall, by recording reason, conclude the trial of the case within 30 additional working days after expiry of the prescribed period.

(4) Where a judge of the court is transferred without concluding the trial of the case, the judge who takes over, shall start trial of the case from the stage kept by his predecessor and it shall not be necessary to re-examine the witnesses already examined by his predecessor :

Provided that where the judge deems it essential to re-examine any witness for ends of justice, the judge may record its evidence by recall.

(5) Where there is any reasonable grounds for believing by the court that

(a) the accused person has absconded or is concealing himself to avoid any warrant of arrest or process of court for his surrender for trial. or

(b) there is no immediate prospect of arresting, the court may by order published in at least one national daily Bengali Newspaper, direct such person to appear before it within such period as may be specified in the order, not exceeding 30 days and if that person fails to appear within that period, the court shall try in his absence.

(6) where in a case after the production or appearance of an accused before the court or his release on bail, the accused person absconds or fails to appear, the procedure laid down in sub-section (5) shall not apply and the court recording its decision so to do, try such person in his absence.

(7) The court may during trial, suo moto or on any application, order any police officer to submit any report after further investigation into any offence within the prescribed period not exceeding 30 days.

21. Power of the magistrate to take evidence in any place.- (1) Where it appears to any investigating police officer or any other person investigating any offence committed under this Act, the deposition of a person who is aware of the occurrence may request in writing to the chief Metropolitan Magistrate or the District Magistrate of the class specially empowered by the Government in this behalf, to record the deposition of that person for the interest of speedy trial of the offence.

(2) Upon a request made under sub-section (1), the Chief Metropolitan Magistrate, or the District Magistrate shall forthwith order a Metropolitan Magistrate or a Magistrate of the First class to record the deposition of that person.

(3) A Magistrate who is requested under sub-section (2) or a person empowered under sub-section (1) shall, immediately record the deposition of the person in the place of occurrence or in any other appropriate place and shall send such deposition to the police officer or the person who has been investigating the offence for submitting it with the report of the investigation.

(4) Where the trial of any person accused of an offence referred to in sub-section (1) commences in any court and it appears that the evidence of the person who has given deposition referred to in sub-section (3), is necessary, but he is dead or is incapable of giving evidence or he has not turned up to depose despite the service of summons upon him or he is not found after search or his attendance can not be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such deposition may be used as evidence.

22. Chemical examiner, serologist etc.- Any document purporting to be a report under the hand of any Chemical Examiner, or Assistant Chemical Examiner or any serologist, handwriting expert, fingerprint expert or fire arm expert appointed by the Government upon any matter submitted to him for examination or analysis and report in the course of any proceeding under the Code of Criminal Procedure may, without calling him as a witness, be used as evidence.

23. Application of the Code of Criminal Procedure.- (1) Unless there is anything contrary to the provisions of this Act, the provisions of the Code of Criminal Procedure shall apply to investigation, trial and disposal of cases and the court shall be deemed to be a Court of Sessions.

(2) The person who prosecutes in the court on behalf of the complainant, shall be deemed to be a public prosecutor.

24. Appeal.- Any party being aggrieved by any order, judgment or sentence of the court may prefer an appeal to the High Court Division within thirty days from the date of the order.

25. Confirmation of the sentence of death.- Where the court passes sentence of death under this Act, the proceedings shall be submitted to the High Court Division under section 374 of the Code of Criminal Procedure, and the sentence shall not be executed unless it is confirmed by the High Court Division.

26. Taking cognizance of offence, etc.- (1) All the offences punishable under this Act shall be cognizable.

(2) Subject to the provisions of this Act, the accused person shall not be granted bail, unless -

(a) the complainant has been given an opportunity of being heard on the application of bail, and

(b) the Court is satisfied that there are reasonable grounds of his being convicted on the allegation brought against him.

27. Power to make rules.- The Government may, by notification in the Official Gazette, make rules for carrying out purposes of this Act.

28. Amendment of Act XIV of 1974.- Paragraph 4B and 4C of the Schedule of the Special Power Act, 1974 (XIV of 1974) shall be omitted.

29. Repeal and Savings of Ordinance No. LX of 1983.- (1) The Cruelty to Woman (Deterrent punishment) Ordinance, 1983 (LX of 1983) is hereby repealed.

(2) Upon repeal of the said Ordinance, all cases triable under the said Ordinance and all orders, judgments or appeal against the sentence passed in such cases shall be disposed of in such manner as if the said Ordinance and the paragraphs 4B and 4C of the Schedule of the Special Powers Act, 1974 (XIV of 1974) have not been repealed.

(3) All the cases arising out of offences committed under the said ordinance of which the ejahar has been lodged or charge sheet has been submitted, shall also be deemed to be the cases under sub-section (2).