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ARTICLES

A Legal Study on Fatwa regarding Hilla Marriage in Bangladesh

Transnational State Responsibility for Violations of Human Rights

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State of Minimum Wages in Bangladesh –Problems and Perspectives

বাংলাদেশের বিচার ব্যবস্থায় পদ্ধতিগত জটিলতা: শিশু-কিশোর প্রসঙ্গ

নারীদের উপর এসিড-নিষ্ক্ষেপ: গণমাধ্যমের ভূমিকা ও আইন

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Authors' Name	Article	Page
Dr. Begum Asma Siddiqua	A Legal Study on <i>Fatwa</i> regarding <i>Hilla</i> Marriage in Bangladesh	01-14
Dr. M Abdul Hannan	Transnational State Responsibility for Violations of Human Rights	15-54
M. Ehteshamul Bari	The Economic and Social Council and the Specialized Agencies	55-70
Md. Abdul Alim	The Role of NGO'S in Protection and Promotion of Human Rights of Women in Bangladesh	71-84
Md. Abdul Awal Khan	Blasphemy and Criminality: An Islamic perspective; Special Reference to Bangladesh	85-98
Md. Abdur Rahim Mia	Sexual Harassment in Bangladesh: Law and Realities	99-118
Mohammad Azharul Islam	Land Management in Islam: A Legal Study	119-138
Dr. Muhammad Faiz-ud-Din	The Role of selected Non-Governmental Organizations (NGOs) in the Protection and Promotion of Human Rights: An Analysis	139-166
Muhammad Shaheen Chowdhury	State of Minimum Wages in Bangladesh – Problems and Perspectives	167-194
নাহিদ ফেরদৌসী	বাংলাদেশের বিচার ব্যবস্থায় পদ্ধতিগত জটিলতা: শিশু-কিশোর প্রসঙ্গ	195-210
মুসতাক আহমেদ ও মো. সাহাল উদ্দীন	নারীদের উপর এসিড-নিষ্ক্ষেপ: গণমাধ্যমের ভূমিকা ও আইন	211-230

The Role of NGO'S in Protection and Promotion of Human Rights of Women in Bangladesh

Md. Abdul Alim^{*}

Prelude

Human rights are the rights that all individuals are entitled to by virtue of their humanity, regardless of their gender, race, colour, religion, political or other opinion or social status. The rights we strive for are enshrined in the Universal Declaration of Human Rights. Those rights are embedded in International Law through the United Nations human rights treaties. They consist of civil and political rights such as equality before the law, freedom from torture, freedom of opinion and expression, freedom of thought, conscience and religion, and the right to take part in the government of one's own country. Economic, social and cultural rights include the right to employment, to a decent standard of living, health and education.

Human rights include the most fundamental right of all the right to life. Human rights have legal obligations on States. It is the State that has the primary obligation to protect and promote human rights for all individuals within its jurisdiction. States must not themselves violate those rights or, through action or negligence, allow those rights to be abused by non-state actors. Only States or their representatives can violate human rights obligations, since only they can sign and ratify the human rights treaties. But any individual or group can abuse the rights of others. Gender based Violence against Women, adopted by the UN General Assembly in 1993, defines violence against women as: "any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to woman, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life".¹ Gender based violence is now defined very broadly to include

^{*} Assistant Professor, Department of Law & Justice, Rajshahi University, Rajshahi.

¹ M.A.Mannan, *Neither Freedom Nor Choice: A Study of Wife Abuse in Rural Bangladesh* (Dhaka: Forum on Women in Security and International Affairs Bangladesh Freedom Foundation, 2003), p 2.

any act "involving use of force/coercion with intent of perpetuation/promotion of hierarchical gender relation in all social structures: family, community, work place and society".² Defined this way, it includes any violation of woman's basic rights on the ground of gender as an act of violence.

In this regard, human Rights NGOs work to protect people's rights. NGOs may seek to change government policies and they do not endeavor to acquire state power themselves. NGOs do not seek to overthrow governments by force. This distinguishes them from liberation movement and armed opposition group. NGOs may work nationally or internationally to promote the enjoyment of the rights of women and to achieve the goal of gender equality; bring into play our bilateral and multilateral contacts to promote the integration of gender issues into every aspect of government's policies and everyday life. The positive involvement of civil society and NGOs are required to eliminate discrimination against women and to encourage the male counterpart to protect women's human rights.

NGOs participation in the UN Human Rights system

NGOs participation as non-state actors and the degree of autonomy they enjoy within the sphere of the state, it is private association which devotes significant resources to the promotion and protection of human rights which is independent and does not seek political power.³ They operate in a private and non-official capacity. They are voluntary organizations and in most cases are regulated by their internal regulations or charter.

Generally non state actor includes multinational enterprises, educational institutions, religious organizations, private individuals, the media, NGOs and multi-lateral financial institutions like IMF and the World Bank.⁴ NGOs have contributed in standard setting through drafting many international human

² *Ibid.*

³ L.Wiseberg. *Protection Human Rights Activists and NGOs*, 13 Human Rights Quarterly, (1991), p.525.

⁴ Abdullah al Faruque, "The Role of NGOs in Protection and Promotion of Human Rights:a critical Assessment" in *Human Rights and Non-State Actors* edited by Mizanur Rahman (Dhaka:ELCOP, 2005), pp.7-8.

rights instruments procedures and mechanisms for the implementation of human rights.⁵ Although they are not legally entitled to participate in the drafting of treaty, in practice but can play a key role in creating awareness of the need to adopt international instruments. NGOs can provide information on general human rights condition as a fact finding commission, human rights practice and individual human rights violation cases. They have an important role in promoting knowledge and understanding rights and duties and making the general public aware of the significance of the process.

Protection of Human Rights

The protection of the human rights is seen as an integral and essential element for the reservation of world peace and cooperation. Preamble of UDHR recognizes protection of inalienable human rights as foundation for justice and peace in the world. The Preamble of the UN Charter reaffirms "faith in the fundamental human right, in the dignity and worth of the persons, in the equal rights of men and women." Article 1(3) of UN Charter, one of the purposes of UN is the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.⁶ Article 55 of the UN Charter declares states universal respect for and observance of human rights. UN sets out standard, norms, and basic principles of human rights.⁷ The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one of the core international human rights treaties. It requires equality between women and men, and sets out measures to promote the enjoyment of all human rights by all women in the world.

⁵ Henry I, Steiner and Philip Alston, *International Human Rights in Context: Law, Politics* (London: Oxford University Press, 2000), p.940.

⁶ Charter of the United Nations Article 1(3).

⁷ Charter of the United Nations Article 55.

Human rights may be grounded in international law through⁸:

- international convention,
- international customary law,
- general principles of law,
- decisions of international court and tribunals
- International soft law norms

Human Rights NGOs in Bangladesh

There are over 1,000 local and national organizations in Bangladesh that generate self-employment opportunities for over 8 million poor.⁹ They are mostly women, through different program like micro credit, literacy training, technical skills and legal rights. Civil society or Non Government Organization (NGO) particularly women's organizations, have been a strong force in bringing women's issues in forward and interests on the country development agenda. Moreover, Bangladesh has more than 18,000 registered NGOs of a diverse nature working on a broad range of development issues.¹⁰ A major part of the implementation of the NAP (national action plan) is the responsibility of NGOs women and human right organization. Poverty alleviation of women is an integral part of all NGOs and women's organization. Grameen Bank, BRAC, ASA, Proshika, CARITAS are large NGO engaged in micro finance operations. In Grameen Bank about 95% loaners are women and repayment rate is more than 90%. About 400 NGOs help the Government to deliver adult education program. BRAC, ASA, Proshika, CARITAS and Ahsania Mission has been running a huge number of schools to provide education to children who are not able to avail GOB school education program or never enrolled in any school.

⁸ Rhona K.M. Smith, *International Human Rights*, 2nd edition, (London: Oxford University Press, 2005); p.133.

⁹ Shamsun Nahar, "NGO Coalition for Beijing Plus Five (NCBP) Inventory of GO-NGO programs on PFA implementation" in *PFA and NAP Implementation in Bangladesh: Role of NGO*, edited by Salma Khan, (Dhaka: NCBP, 2003), p. 243.

¹⁰ See <http://www.un.org/womenwatch/daw> accessed on 03 January 2009.

BLAST has been popular as the largest legal aid and human rights NGO in Bangladesh. In Bangladesh several human rights organizations are working to create human rights concern and it will benefit human rights movements in two ways (a) human rights organizations will be able to help the courts in devising pro-people judgments and, (b) it will compel the government to observe the human rights standards. It cannot be denied that in Bangladesh so far judicial activism through public interest litigation mainly is initiated by the human rights organization. For example Bangladesh Legal Aid Services Trust (BLAST), Ain O Salish Kendra (ASK), Bangladesh Environmental Lawyers Association (BELA) pleaded writ petitions which were accepted and enriched the human rights jurisprudence in Bangladesh and inspired the government to undertake legal aid program.¹¹

Bangladesh Mohila Parishad (BMP), Bangladesh National Women Lawyers Association (BNWLA), and Women for Women these organizations inform women about their human rights and ways to get that. BNWLA has hotline number to receive any kind of information regarding violence of women. Women for Women has conducted research on national women's policy of Bangladesh and discussed with the grass root level people. Bangladesh Mohila Parishad and BNWLA maintain shelter home for violence victim of women and children and rehabilitate child prostitute. BMP provides legal aids to all women, specially the poor and powerless, to enable and protect them against violence and also to negotiate their rights. BMP adopt informal and alternative method of dispute relation arising out of desertion, divorce, dowry, polygamy etc. BMP also extends its full cooperation in filing criminal cases like rape, murder and trafficking and bringing the culprit to justice. BNWLA maintain a strong social support service like providing safe shelter and rehabilitation access for seeking a normal life for victim. Women's organizations have reviewed existing laws that are discriminatory to women and have recommendation to change the policy which are discriminatory to women.

¹¹ S.M Masum Billah and Nittyando Sarker, "Non-State actors being the prism: Need for Judicial Activism in Bangladesh to Nurture Human Rights" in *Human Rights and Non-State Actors* edited by Mizanur Rahman (Dhaka: ELCOP, 2005), pp.85-86.

The Situation of Women in Bangladesh

When a boy is born in Bangladesh, friends and relatives congratulate and his parents gain mental strength. A son means insurance. A son is a walking stick for the old father. He will inherit his father's property and get a job to help support the family.¹² When a girl is born, the reaction is very different. Some women weep when they find out her baby is a girl. Because, the society thinks a daughter is just another expense. Her place is in the other home, not in the world of men. Bangladesh is one of the countries in the world where the status of women is much lower than that of men. Traditional, cultural, social and religious values and practices have reinforced the lower status of women accorded to them in society. They have limited opportunities for education, technical and vocational training, employment and participation in the overall development process. While poverty affects the household as a whole the women bear a disproportionate burden attempting to manage household production and consumption under conditions of increasing scarcity. Women are discriminated against intra-household allocation of resources in terms of food, education and health care.¹³ Though women play a major role in the functioning of the household and the economy, they are generally not seen outside the domestic sphere. National statistics have not been able to account for their contribution in the form of domestic work and unpaid labour in family ventures.

The majority of women in Bangladesh have not yet been empowered to participate actively in the social, cultural, economic, and political life of the country. Gender discrimination is widespread in all spheres and at all levels as indicated by official statistics on health, nutrition, education, employment, and political participation. The Constitution of Bangladesh guarantees equal rights to all citizens, but in family matters such as marriage, divorce, custody,

K.M. Ashraful Aziz and Clarence Maloney, *Life Stages, Gender and Fertility in Bangladesh* (Dhaka: International Centre for Diarrhoeal Disease, 1985), P.134-135.

Khaleda Salahuddin, "Feminization of Poverty: Bangladesh Perspective" in *PFA and NAP Implementation in Bangladesh Role of NGO*, 1st ed by Salma Khan, (Dhaka: NCBP, 2003), pp. 172.

maintenance, and inheritance laws discriminate the women. The policies and programs of the Government, some NGOs, and other institutions do not sufficiently address the need for women's empowerment. The "welfare" approach is visible in some development interventions in which women are viewed as beneficiaries and handicapped but not as potential contributing partners.¹⁴ Less aptitude to accept new ideas, a nonconductive environment, and inadequate resources are the major factors for the continuing "welfare" approach. On the other hand, bilateral and multilateral donors and their non government development partners have a general tendency to design development interventions on efficiency and equity grounds.

Patriarchy and Cultural Issues for Women

By custom, a patriarchal and paralegal social system exists in Bangladesh. The life of a woman in Bangladesh is therefore dominated by this social system.¹⁵ Such a system upholds a rigid division of labor that controls women's mobility, role, responsibility and sexuality. Traditionally, a woman in Bangladesh derives her status from her family. Her role includes the maintenance within her family as a social institution and as an economic entity. Most importantly, through childbearing and child rearing, she ensures the existence of succeeding generations. Increasingly, women's role responsibility and mobility are changing due to persistent poverty and the gradual erosion of the familial through NGOs support.

The traditional patriarchal society of Bangladesh is based on class and gender divisions. Class mobility allows movement between rich and poor, but the division of social space and the difference in behavioral norms between men and women are rigidly maintained. The family, which constitutes the basic unit of social control, sets the norm for male and female roles. Within this system, the father, or in his absence, the next male kin is the head of the household. As a result, both decision-making powers and economic control are vested in the

¹⁴ M.Lakshmi Narasaiah, *Gender Inequity and Poverty* (New Delhi: Discovery House, 2004), pp.2-5.

¹⁵ K.M. Ashraful Aziz and Clarence Maloney, *op cit*, pp.134-135.

hands of men. Furthermore, the family operates through a clearly defined system of rights and obligations. This is demonstrated when Muslim women do not claim the right to inherit their fathers' property in favor of brothers or in the event of inheriting property, pass control to their husbands or sons. In both cases, the men give protection to the woman in return for control over her property, thus directly reinforcing a patriarchal tradition.¹⁶

Violence against Women

A research by International Center for Diarrhoeal Disease Research - Bangladesh (June 2006) shows between 50 and 60 percent of women in Bangladesh experience some form of domestic violence. One Stop Crisis Centre, a Bangladesh-based NGO reports that women victims of violence, reveals that almost 70 percent of sexual abuse suffered by women occur within their own homes. And yet, domestic violence goes unnoticed and disregarded. While there are laws against other forms of violence against women such as rape and acid attacks, there is no clear law defining domestic violence. In Bangladesh, the impact of this violence is undoubtedly immense and widespread. Of even greater concern is that only 6% of the physically abused women ever sought help for the violence. Over half of the women who did not seek help, reported that. They did not think the violence was serious and 37% kept silent from feelings of shame or because they feared they would not be believed.¹⁷ News of rape, assault, trafficking, death due to dowry, etc., is common features of Bangladeshi society. The four broad categories of violence against women in Bangladesh are domestic violence, violence at the workplace, trafficking in women and forced prostitution, and sexual abuse.

The present form and nature of trafficking can be explained by poverty and social disintegration. The spread of wage employment or bonded labor such as domestic labor, women working in the sex trade, in entertainment (camel

¹⁶ Shahnaz Huda, "Protection of Women's Human Rights in Bangladesh: Legal Framework" in *State of Human Rights in Bangladesh : Womens Perspective*, (Dhaka: Women for Women, 2002), pp.150-151.

¹⁷ Source: Bangladesh Centre for Communication Programs with the support of WHO was held at ICDDRDB on 30 November 2006.

jockeys), child abuse, and organ trading can be identified as demand factors. Supply factors are the economic situation and social vulnerability e.g., a poor abandoned woman might give her child for labor more easily than a wealthier woman.¹⁸ The frequent natural disasters result due to many shelter less and abandoned children and women. Bangladesh's location adjacent land border of 4,222 km with India and 288 km with Myanmar facilitates trafficking of women as it is loosely patrolled. Common means of trafficking are kidnapping, abduction, marital migration (through fake marriage), selling of small children by parents or guardians and close relatives, selling of wives by their husbands, and deceiving migrant workers.

Recently, violence against women has reached another dimension with the rise in the number of trials through the "fatwa" (religious judgments) in rural areas. Village elders usually form a "salish" or tribunal to settle some local disputes. This traditional custom of excluding women in the rural salish can be manipulated by the local mullahs (religious leaders) and the social elite to find women guilty of extramarital sexual affairs and other acts. Punishments are meted out in accordance with religious laws as interpreted locally in contravention to the existing penal code.¹⁹ Some women were flogged publicly and a few among them have committed suicide. In such cases it is necessary to prompt protest and local actions by women's organizations, NGOs, and human rights groups forced local administrators to take legal measures against the perpetrators.

Legal Measures Taken by NGOs

Several legal measures were adopted to safeguard women's legal rights. In 1983, the Cruelty to Women Ordinance was promulgated. This law made kidnapping, trafficking, rape, and attempt to cause death, acid throwing, etc., as

¹⁸ M.A.Mannan, *Neither Freedom Nor Choice: A Study of Wife Abuse in Rural Bangladesh* (Dhaka: Forum on Women in Security and International Affairs Bangladesh Freedom Foundation, 2003), pp.21-23.

¹⁹ Dina M. Siddiqi, "Gender-based Violence in Bangladesh: Political and Social Dimensions" in *PFA and NAP Implementation in Bangladesh Role of NGO*, edited by Salma Khan, (Dhaka: NCBP, 2003). p.41.

offences with a maximum penalty of lifetime imprisonment or the death sentence. The Anti-Terrorism Ordinance (1992) provide for punishment for all kinds of terrorism including harassing and abducting women and children. The Immoral Trafficking Act (1993) provide for punishment for forcing a girl into prostitution. In 1995, the Women and Child Repression (Special Provision) Act provide capital punishment to offenders. An increasing incidence of rape and violation of women by the police and law enforcement agencies in several well-publicized cases brought to light loopholes in its execution. Hence, the Act has been replaced as the Women and Child Repression Prevention Act of 2000. In spite of these provisions, loopholes in existing laws, lack of proper implementation, and the weak commitment of law enforcement agencies are major obstacles.²⁰ It may be concluded that laws alone cannot be the only deterrent against violence. They must be backed up by conscious public opinion, prompt action, and efforts to change society's attitude towards women. NGOs and civil society can play an important and significant role in this regard.

Constitutional Obligation and NGOs Interventions

The Constitution of Bangladesh explicitly provides for the right to every citizen in the directive principles or fundamental rights. Article 31 states that every citizen has the right to protection from 'action detrimental to the life liberty, body, reputation, or property', unless these are taken in accordance with law. It added that the citizens and the residents of Bangladesh have the inalienable right to be treated in accordance with law. If these rights are taken away, compensation must be paid. Article 32 states: "No person shall be deprived of life or personal liberty save in accordance with law". These two articles together incorporate the fundamental 'right to life'. The High Court Division in the case of *Dr. M. Farooque v. Bangladesh*²¹ expanded the fundamental 'right to life' to include anything that affects life, public health and safety. It includes 'the enjoyment of pollution free water and air, improvement of public health by creating and sustaining conditions congenial to good health and ensuring

²⁰ *Ibid.*

²¹ (1996) 48 Dhaka Law Reports, p.438.

quality of life consistent with human dignity.' The court added that, if right to life means the right to protect health and normal longevity of any ordinary human being, then it could be said that the fundamental right to life of a person has been threatened or endangered.

The Constitution of Bangladesh provides that all are equal before the law and shall be accorded equal protection of the law. Equality before law means that, among equals, law shall be equal and shall be equally administered. Equal protection of law means that all persons in like circumstances shall be treated alike and no discrimination shall be made in conferment or imposition of liabilities. If article 27 is infringed, it can have an impact on the women and human rights. The Constitution of Bangladesh provides similar rights to the citizens. Article 27 provides that all citizens are equal before the law and are entitled to equal protection of law. The principle requires that no person or class of persons shall be denied the same protection of law which is enjoyed by other persons in like circumstances in their lives, liberty and property and pursuit of happiness.²² Right to equality along with the right to life can guarantee the right to a healthy environment.²³ The right to equality before the law does not require that all persons must be treated exactly the same way. What is required is that the justification for differentiation must be legitimate.

Right to property implies that an owner is entitled to non-interference in the enjoyment of his property, in particular, non-interference by the Government. The individual right guaranteed through the Constitution is a private property right. The owner has the overall ownership over the land. Property right begins where the government's right to interference ends. This is, in another word, known as individual autonomy. Article 42 of the Constitution of Bangladesh provides that subject to any restriction imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of the property.²⁴ It shows that, in Bangladesh, the constitutional definition of property is very

²² *Jibendra Kishore v. East Pakistan* 9 DLR (SC) 21.

²³ *Dr. M. Farooque v. Bangladesh* (1997) 49 DLR 1.

²⁴ The property right was considered in *Dr. M. Farooque v. Bangladesh* (1996) 48 DLR 438.

restricted. The article relating to property right provides that no property shall be compulsorily acquired, nationalised or requisitioned save by lawful authority. The restriction put on the right to transfer property has to be reasonable, so that the Parliament will not have unfettered power to impose any restriction it chooses.

Very recently, in 2006, the Government of Bangladesh has enacted a law to establish a Labor Welfare Foundation to ensure the welfare of labors of formal and informal sector under the Bangladesh Labor Welfare Foundation Act, 2006. This is definitely a groundbreaking step in the legal history of Bangladesh. Now the Government should take steps to establish and operate the law immediately so that the domestic workers get the benefit of this law. The Government's Food-for-Work Program and the stipend scheme for girls up to grade 12 are some of the important factors behind the rise in enrollment of girls at the primary level. Various program and policy measures have been undertaken to increase enrollment and arrest dropout rates, especially for girls. Adult education for women has also been emphasized. There is also provision for increasing teachers' training of women for both the primary and secondary levels. Non formal education programs run by Bangladeshi NGOs such as the Bangladesh Rural Advancement Committee have been internationally highly praised. Some large NGOs like BRAC run thousands of schools providing education to children who are not able to avail of Government-sponsored education. The Government has recognized this contribution of NGOs and there is significant collaboration between them. There is a special emphasis on girls' education as education and the eradication of illiteracy are considered to be the first steps toward the empowerment of women.

The Government of Bangladesh has been pursuing a policy of providing at least minimum essential health care for all and for reduction of maternal and child mortality. It has approved a Health and Population Sector Strategy, which includes the National Health Policy. The thrust of the Policy is to ensure primary health care to all with a special emphasis on vulnerable groups such as

poor women and children.²⁵ To combat malnutrition, the Government has formulated a Food and Nutrition Policy and a National Action Plan for Nutrition. During the last decade, the Government pursued maternal and child health and family planning as the key approaches to primary health care. The role of NGOs in addressing issues of women's health is significant. Successes achieved in family planning have been due to coordinated efforts between government organizations (GOs) and NGOs. Providing health education has been the thrust of most development NGOs. Providing health education has been the thrust of most development NGOs. Previously women suffered in silence on account of their inaccessibility to the formal legal system, the NGO assisted Salish has given them the opportunity of challenging within familiar settings, injustices done to them.²⁶ NGO assisted mediations increase the potential for community mobilization in dispute settlement.²⁷ A coordination body to monitor progress on commitments made at the International Conference for Population and Development is comprised of representatives of NGOs and women's organizations.

Ensuring women's equal access to the benefits of public health care is critically dependent upon gender-specific health strategies. The health of adolescent girls is a major area of concern, as they are more vulnerable to reproductive health problems, STDs, and HIV/AIDS. Only recently, domestic violence and rape have been viewed as public health problems because they are a significant cause of female mortality and morbidity. Violence against women leads to psychological trauma and depression, injuries, STDs, HIV/AIDS, suicide, and murder.

²⁵ Halida Hanum; M. Hafizur Rahman and Shehlina Ahmed, *Reproductive Health Issues and Implementation Strategies in Bangladesh* (Dhaka: Bangladesh Institute of Research for Promotion of Essential and Reproductive Health and Technologies, 1996), p.12.

²⁶ Sumaiya Khair, *Legal Empowerment for the Poor and the Disadvantaged: Strategies Achievements and Challenges* (Dhaka: The University Press Limited, 2008), p.251.

²⁷ *Ibid*, p.253.

Conclusion

Non-Governmental Organizations work for awareness building on different issues like safe drinking water & sanitation, food and nutrition, environmental degradation etc. Beside this, health services are provided to the victims of violence. In rural areas, human rights groups, NGOs and press reports indicate that vigilantism against women for perceived moral transgressions occurs, and may include humiliating, painful punishments such as whipping. NGOs can play a vital role in changing perceptions, therefore NGOs should continue create awareness, raise consciousness of the community through providing information regarding VAW and also disseminate such information at all levels of society. The phrase "Women's Rights are Human Rights" is far more than a catchy slogan. It is the underlining that violence against women is a human rights violation and is unacceptable. Human rights are a universal concept reflected in all cultures. Human rights principles, when used as a campaign tool, are effective (a) in highlighting human rights violations; (b) in influencing and mobilizing public and community opinion; (c) in pressuring social actors, even at a very modest, localized level. International human rights tools and mechanisms are also useful for women's rights advocates to make violations perpetrated. Violence against women is perhaps the most shameful human rights violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace.²⁸ The NGOs of Bangladesh can think of counseling service for men and boys. Countries like Austria, Denmark, and the Republic of South Korea, counseling and anger-management programs are made available to men and boys. A long term plan to bring in change in the socialization process would be to educate mothers to bring up male and female children on equal footing. In spite of multifarious efforts undertaken at different levels including NGOs, national, regional and international scenarios, the current challenge continues to exist in combating violence against women. It has been difficult to implement the existing human rights instruments to ensure that the root causes and consequences of violence against women are tackled at all levels within and outside the country.

²⁸ Kofi Annan, UN Secretary-General, Speech on International Day for the Elimination of Violence against Women, 1999.