

# Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

## Access to Justice: The Gram Adalat Model

By Dr Mizanur Rahman

Effective legal recourse and the settlement of disputes remain a core component for maintaining a truly democratic order and achieving the goal of sustainable human development. In Bangladesh, appropriate mechanisms and processes for effectively safeguarding human rights and providing speedy and judicious remedies to cases at all levels of society have yet to be developed. To ensure the transition to an effective legal system, the independence of the judiciary and law enforcement agencies is necessary, but in the context of Bangladesh's majority poor at grassroots levels, access remains a key to the experience of the poor. This lack of access to legal services and the delays in adjudication, inter alia, militate against the effective dispensation of the law. The result is a quagmire of society based on participation and socio-economic empowerment.

Ultimate objective of a people-oriented government is to ensure speedy, easy, inexpensive and substantial justice to the common people of Bangladesh and within that context the main purpose of creating Grameen Courts (Gram Adalats) is to facilitate access to

justice for them, most of whom live well below the poverty line. Empowerment of people, today recognised as indispensable for establishment of just and democratic society and the rule of law demand an environment of participatory democracy. In the same order, one of the pre-requisites of participatory democracy is participatory administration of justice. Establishment of the Gram Adalats is but the first real step towards implementation of participatory justice in Bangladesh.

Access to justice is generally defined as the mechanism and procedures through which people can enforce their rights and privileges. In this context it is believed that the mechanism evolved through the Gram Adalats will ensure speedy, inexpensive, substantial and effective justice to the common people of Bangladesh without disturbing the social harmony and fabric of our rural society.

However, my perception of the proposed Gram Adalats is based on the following assumptions:

a) As long as state (the political organisation of a particular society) is in existence, it pre-

dominantly protects the interests of a particular class or groups of classes.

b) as long as state exists, ensuring access of people to justice remains a fundamental responsibility of the state itself.

c) unless state becomes a vehicle of majority rule i.e. people takes over state powers, access of people to justice will continuously be hampered and impaired.

d) access to justice is primarily a management problem and is in no way related to existing poverty in the society.

Moreover, as Justice D K Basu quite aptly mentioned that any justice mechanism in order to produce the expected results must take into account the temperament of the land, more specifically, the temperament of rural Bangladesh.

In the backdrop of this scenario we can now proceed towards unveiling the spirit of the proposed Gram Adalats (Grameen Courts).

### Basic Features of the Philosophy of the Gram Adalat

Responses to the overall conclusions of the Draft Bill on Gram Adalat have been overwhelmingly favourable; criticism was almost universally confined to the detail of particular recommendations. The reaction of all concerned quarters i.e. the common stakeholders like the rural poor, women, lawyers, judges, representatives of the media, NGOs, teachers and voluntary associations and consumer bodies have been strongly supportive.

The final draft, takes into account the many submissions and recommendations, which we have received since the first National Workshop on Grameen Courts, held on September 18, 1997. The Final Draft also benefits from the extensive further consultations, which had taken place over the last ten months including six regional workshops, two-day national workshop and a number of in-house small group consultations.

Needless to say that the core Draft is based on the basic propositions laid down by rural poor through the grass-roots survey conducted on behalf of the Project.

I. Litigation will be avoided wherever possible.

II. Litigation will be less adversarial and more cooperative.

III. Litigation will be less complex.

IV. The timescale of litigation will be shorter and more certain.

V. The cost of litigation will be more affordable and more predictable.

VI. Parties of limited financial means will be able to access justice machinery on a more equal footing.

VII. There will be clear lines of judicial and administrative responsibility for the justice system.

the community would be responsible for management of disputes. It is recommended that the Grameen Courts would initially try to mediate the dispute failing which the dispute shall be sent for trial. Meanwhile, the Court has to follow a predetermined timetable: resolve a dispute within 45 days and involving not more than 5 sittings of the Court.

One of the major findings of the grass roots survey and of the Consultants is that the Grameen Court has to sit in collegia, and a three-member court composition is proposed. Though unanimity of opinion

the disputes justly' embodying the principles of equality, economy, proportionality and expedition which are fundamental to an effective contemporary system of justice. These requirements of procedural justice, operating in the traditional adversarial context, will give effect to a system which is substantively just in the results it delivers as well as in the way in which it does so.

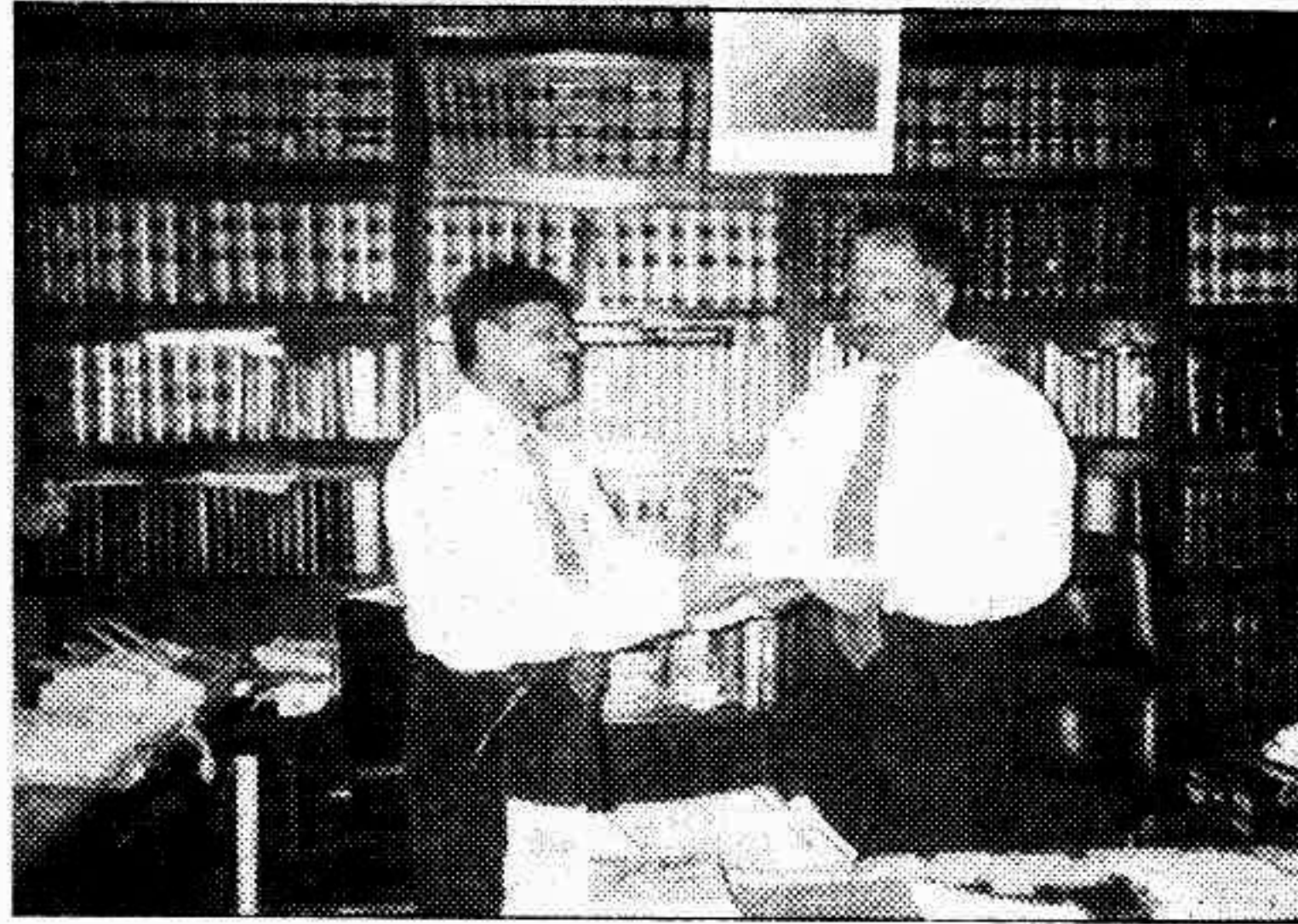
The making of the Gram Adalats Bill has opened a new era in legislative mechanism. For the first time in the history of the country, a bill has been drafted basing on the opinions and recommendations made by the users. With the functioning of the Gram Adalats, the people will feel themselves involved and integrated in the process of administration of justice, and not alienated from it. Gram Adalats will be people's courts and the Gram-Hakims will be people's judges. There will be a strong sense of ownership of the people, which will be the source of strength and success of the Gram Adalats.

### Towards a Pro-People Legal Mechanism

The system of petty disputes resolution in Bangladesh, especially in rural areas, urgently needs reform. The time is ripe for change. The public, the consumers, the judges and majority of the legal profession agree. The judiciary has strongly supported the final draft Act. Let me very explicitly state that the Final Draft is a comprehensive and coherent document. Each and every provision (Sections) has been discussed at length before giving it a final shape. Each section contributes to and underpins the others. Therefore, the Draft's overall effectiveness could be seriously undermined by piecemeal implementation. Its implementation as a whole will ensure that all the supporting elements of the Gram Adalat are directed towards ensuring access of all to justice, which is the ultimate objective of the project.

We must, therefore, pay heed to the spirit of the Final Draft. A democratic government cannot but take it seriously and in the spirit that the collective wisdom of the nation represents.

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Dr Mizanur Rahman, former National Consultant to Grameen Court Project is seen handing over the final draft bill of the proposed Grameen Court to Mr. Abdul Matin Khasru MP, Minister for Law, Justice and Parliamentary Affairs, Government of the People's Republic of Bangladesh.

VIII. The composition of the courts and the deployment of judges will be designed to meet the needs of litigants.

IX. Judges (Hakims) will be deployed effectively so that they can manage disputes more efficiently.

X. Gram Adalats will be responsive to the needs of the litigants.

XI. Gram Adalats would be a model for participatory legislation and participatory administration of justice.

The Final Draft sets out a blueprint for a system where the Grameen Courts with the assistance and participation of

among diverse groups of stakeholders could be attained on this point, however, difference of opinion could not be avoided on the question of modalities concerning the nomination/selection of Gram-Hakims i.e. the Grameen Court judges.

Therefore, a number of alternatives are provided for in the Final Draft, though the bias of the consultants in this particular case as elsewhere involving more than one alternative, remains with the alternative with collegial composition.

With full confidence I beg to submit that if the recommendations made in the form of the Final Draft are implemented, the landscape of dispute resolution in Bangladesh will be fundamentally different from what it is now. The Proposed Bill puts forward a structure to deal with

## Lawscape

### Final Draft Gram Adalat Bill, 1998

Whereas it is necessary to establish Gram Adalats for easy, informal, expeditious and less expensive resolution of certain disputes in the rural areas, this law therefore enacted:

#### Sec. 4: Composition of the Gram Adalat

(1) Gram Adalat shall be composed of three gram Hakims of which one shall be a woman. They will be nominated by the chief Hakim as per rules.

(2) The nominating authority shall appoint one chief Hakim and one assistant chief Hakim for each Gram Adalat from among the enlisted Hakims.

(3) A nominating authority composed of the District and sessions judge or the district and sessions judge, district magistrate and the President of the local bar association, or concerned local member of the parliament, district and sessions judge and the district magistrate shall select for each Thana 15-25 Gram Hakims for a period of three years. One third of this shall be reserved for women.

(4) Gram-Hakims will be selected from the lists of names submitted by the TNO, Union Parishad, Gram Parishad, Thana Parishad, educational institutions, individuals, professional organisations, NGOs and social workers.

The nominating authority shall forthwith fill in any vacuum appearing in the panel of gram Hakims.

Proposed names for consideration as gram Hakims must be accompanied by detail curriculum vitae and letter of consent of persons concerned.

Any proposal of names must explicitly refer to social work, honesty, impartiality of the persons concerned as well as their high moral standard. It must also contain his/her willingness to work as a Gram-Hakim on the basis of a predetermined work-based honorarium.

Provided that none of them shall be a member of any tier of local government or an office-bearer of any political party.

(5) Panel of Gram-Hakims should be constituted in a manner that all the unions in a thana are represented.

(6) During the resolution of only dispute at least one Gram-Hakim of the place of occurrence or of the union where the resides, shall be included.

(7) A Gram Hakim may be dismissed as per prescribed rules on grounds of improper behavior, partiality, corruption etc., and may also be punished otherwise according to existing laws.

#### Sec. 5: Jurisdiction of Gram Adalat etc.

(1) Generally the Adalat shall resolve a dispute in the thana headquarters within its jurisdiction. However, for reasons of expediency, in the interest of justice and as a mobile court, the Adalat may sit in the union where the offence has been committed or where the cause of action arose or where the victim resides.

(2) For proper dispensation of functions of Gram Adalat, each thana shall be divided into a number of circuits.

(3) On a predetermined date, Gram Adalat shall resolve a dispute in the prescribed place of a particular circuit.

#### Sec. 7: Limitation period for

#### complaints.

A complaint has to be filed in accordance with sec. 13 within 30 days for disputes mentioned in schedule I (Criminal offences) and within 60 days for disputes mentioned in schedule II (Civil cases).

#### Sec. 8: Finality of decisions of Gram Adalats

(1) Mediation award or the decision of the Adalat shall be binding upon the parties and shall be enforced as per rules of this Act.

(2) Majority decision shall be regarded as the decision of the Adalat.

(3) The decision of the Gram-Adalat shall be final.

Provided that within 15 days after the decision, on the basis of an application of the aggrieved party, if it satisfactorily appears to the District and Sessions Judge that there has been a denial or miscarriage of justice, then he may, within 30 days, recall the files of the dispute, and within 30 days of such recall make necessary orders.

#### Sec. 13: Procedure

(4) Any Aggrieved person may file a complaint in a prescribed form on payment of prescribed court fees.

(5) If the aggrieved person is illiterate or physically handicapped, the recorder of the Adalat, shall, as a special case fill in the prescribed form on the basis of the oral statements of the former.

(6) After registration of a dispute and at least seven days prior to the hearings, the Adalat shall duly notify all the parties indicating the place date and time of hearing.

The opposite party may, if it so wishes, on the first day of the hearing or prior to that submit written statement.

A dispute shall be resolved in a maximum five sittings within 45 days from the first day of hearing.

(8) Before hearing, the Adalat shall try to mediate the dispute. Chief Gram Hakim or a Gram Hakim nominated by the chief shall function as the mediator. If mediation fails, the dispute shall be decided by the full bench of the Adalat provided that no Hakim shall sit in the resolution of a dispute in which he acted as a mediator.

(9) All family disputes covered by schedule III shall be mediated by the Adalat in full bench.

#### Sec. 14: No appearance through Counsel

(1) Notwithstanding anything contained in any law in force, lawyers are barred to appear before Gram Adalat to represent any party.

(2) On an application of any party, and if the Adalat deems fit, a dispute may be heard and decided in camera.

#### Sec. 18: Gram Adalat Monitoring and Research Cell.

The government shall establish a Gram Adalat Monitoring and Research Cell (MRC) to supervise and monitor the Gram Adalat. This cell shall keep records of the Adalats, shall organise and conduct training for Gram Hakims and recorders, prepare and provide sociological explanation of disputes, conduct research and make recommendations to enhance and develop the efficacy of Gram Adalats.

#### Unofficial translation from Original Bangla Draft

## Wake Up Readers!

Judges, lawyers, lawmakers, teachers, researchers, social and human rights activists and thinkers, law students — you all are sincerely invited to contribute to 'Law and Our Rights' Page. It's your page. You can share your valued experience, opinion, thoughts, comments, critique, reaction and so on. So wake up readers! Send your write up to:

Page In-charge, Law And Our Rights, The Daily Star, House #11, Road #3, Dhanmondi R/A, Dhaka-1205. Fax: 880-2-863035. E-mail: dstar@bangla.net or mkabir@bdcom.com

## The Genesis of Lok Adalat

By P N Bhagwati

THE strategy of Lok Adalats was innovated during the time when I was the Chairman of the Committee for Implementing Legal Aid Schemes. I always held the view and this view is shared by most of the social and legal activists, that the legal aid programme which is necessary to be set up in a country like India must be comprehensive and dynamic legal aid programme which must not be confined only to traditional litigation oriented legal aid programme but must also concentrate on strategic legal aid programme and Lok Adalats are an important facet of such strategic legal aid programme. The objective of any activist and effective legal aid programme must be to reach justice to the common man and one of the strategies which can be adopted for realising this objective is the institution of Lok Adalats where disputes involving small people can be resolved by mediation. The strategy of Lok Adalats started in a small way during the period 1980 to 1985 and over the years it has now taken firm roots in the soil and aid is being largely utilised for resolving disputes in an amicable manner.

Unfortunately, our system of administration of justice suffers from the main drawbacks, namely, delay and expense. The legal process has become so expensive that it is only the rich and the well-to-do who can afford the luxury of litigation. The litigation for their final culmination takes for years and years. The result is that the poor and the disadvantaged are priced out of the legal system. They are just unable to take the advantage of it. Moreover, every court is burdened with a huge backlog of cases. It is, therefore, essential to develop alternative method of dispute resolution which are speedy and inexpensive. This should not be difficult for us because we have an indigenous system of panchayat justice. This indigenous system was working quite well until it was replaced by the British court system. Lawyers, judges and jurists are all agreed that the British system of justice which we have inherited is not only slow and expensive but it is also not suited to the genius of our people as it promotes disharmony and dissension rather than amity and goodwill. It is for this reason that as Chairman of the committee for implementing Legal Aid Schemes, I concentrated on the strategy of Lok Adalats as a means of bringing about conciliation in various fields. When a litigation is decided in a court, there is always one party which is the victor and the other party which is the vanquished. But when a dispute is resolved by a Lok Adalat, there is no victor and no vanquished. Both parties go away happy and contented and it has the effect of restoring peace and goodwill amongst the people.

We can take in Lok Adalat different types of cases, such as cases for compensation arising out of motor accident claims, family disputes, tenancy cases, non-cognisable criminal cases. People can bring before the Lok Adalat for settlement before it not only cases which are pending before the court but also cases which have not reached the court. The Lok Adalats are held by retired judicial officers, leading lawyers, social activists and experts in various fields. No lawyer is allowed to appear before the Lok Adalat on behalf of any party. The cases are settled in terms of the settlement arrived at the lok adalat. In cases where no settlement is arrived, the matter will go back to the court for its disposal. Through Lok Adalats the cases are disposed of without much delay, it brings justice to the door steps of the poor people and it brings down the problem of court arrears with which the judiciary suffers today. It is, therefore, necessary, for all of us to support the strategy of lok adalats and to help spread its gospel.

The writer is former Chief Justice of India.

## People Vs .....

### The Slaughter of Consumers

By Amina Rahman Chowdhury



Is it worth travelling in this?

IN 25 years of our independence, 'we' — the people of this republic have learnt how to remain ignorant and non-challant about the rights we are entitled to and duties we need to do for the society. To name few they are, consumer rights, rights to access to medical care and education, voting rights etc. Among educated lot, let alone the illiterate have notes, only few may be aware of existence of our rights, privilege and civic duties, some may not be even aware of some rights as consumer's rights and those are to be protected by the government. For such ignorance of people, of our country, consumers rights are being suppressed by a vicious circle of government servant, unethical business strategy and rampant malpractice of business community. Violations of said rights become, in a vivid shameless manner, prior to our prime public festival holidays, celebrations, observances. To mention a few, during this Ramadan, price of daily necessities sky high ignoring our chief, executive's all assurances to keep it stable. Just the delay in declaring Eid caused a consumer four times the price existed an hour before. During this holiday, what rights hundreds of homecoming could get from our transport sector? During Bishwa Jitna, we will see the same violation of passengers rights if not more wider. In our country, the affordable modes of long journey are bus, train and launch. But for the whims of owners of these modes, people awaiting these, face unexplainable hardship, frustration and misery. In exchange of our hard earned money, we get, sudden arbitrary fare hike, artificial vehicle shortage leading to dangerously overloading, rough and indecent conduct of concerned staffs, last not the least, rough and reckless driving of an unqualified driver. Actually, at all the time, we get more or less — similar journey package from the public transportation agencies. During this Eid-ul-Fitr, without any notice, bus owners had increased the fare 25% to 35% from the normal one. It is the owners who seemed to have possessed the absolute right to fix the fares the way they felt. From their attitude in the rule of law of the Peoples Republic of Bangladesh, to behave the way they like. Apart from these, we the rest of the citizens remained non-challant and complete complacent on the happenings when the journey of hundreds of passengers, from and to the northern and southern districts disrupted at Doulatdia and Aricha for a flimsy row between owners and workers association. (DS 25 Jan. 99). We took that as if, the ordeal those passengers faced would never come to our way in coming days. All class of people have encountered such imbroglio in one way or the other, (due to mismanagement, malpractice and anarchy in the system) with an acceptable mood — 'It happens'. So by this way, we have come to a stage that any amount of kicks we commoner get from any directions, we don't even whimper. We have the voting right, as if, to vote someone to power to disburse taxpayer's money, seemingly not to oversee how our hard earned means of living grabbed by others illegally. May, we then, urge our readers to be conscious about the rights and duties we have and raise the voice, if anywhere, they are being deprived. Also may we all, in our own way, appeal to the concerned authorities to enact the 'Consumer's Protection Act' as soon as possible. Without that our voice would unlikely to become loud and clear. The writer is Organising Secretary of Law Watch, An Alternative Platform for Legal And Human Rights Studies And Action.

## "Effective Community Participation is a Must for Ensuring People's Access to Justice"

By A H Monjurul Kabir

Appointing government judicial officer as the principal actor of such court will not secure active community participation. It may create another tier of formal justice delivery system with all its disadvantages."

A day long intensive workshop on 'Access to Justice Towards a People-friendly Legal System' was held on 26 December 1998 at the British Council Auditorium. It was jointly organised by the British Council Bangladesh and the Ministry of Law, Justice and Parliamentary Affairs, Government of the People's Republic of Bangladesh. It was an effort to initiate a dialogue among the concerned segments of society for promoting the idea of non formal mechanism of justice that works better and is most effective.

In Bangladesh, people's access to justice is still an opportunity for them. Formal justice delivery system is costly and time consuming. The Judiciary is already overburdened with numerous litigations. Backlog of pending cases hinders the desired materialisation of a number of constitutional promises and guarantees.

#### Inaugural Session

Tom Cowin, Director, The British Council Bangladesh opined that access to justice is an important issue specially for downtrodden people and the Council is committed to support initiative like this. He said that non formal mechanisms as a tool to justice should be encouraged. Justice Naimuddin Ahmed, Member, Law Commission, termed non formal mechanism as an alternative (within limited periphery) for those who can not afford formal justice delivery system. Various international and national legal and human rights instruments stresses the importance of the theme of the workshop. He admitted that we have set up courts for providing justice but could not secure it. Poverty, ignorance, corruption fear etc. act as hindrance to justice. Still majority of women are deprived from their due share. He called for a concerted effort to cease such existing disparity and to speed up the stir of justice. In his speech, the Guest of Honour, Dr. Abdullah M. Omor, Hon'ble Minister for Law and Justice of South Africa apprised the gathering that the Government of South Africa is still facing the problems of colonisation that lasted for more than 350 years. The struggle led by African National Congress (ANC) was not



Justice Dilip Kumar Basu, former Judge of Calcutta High Court, India.

against white people but against white domination. The ANC is a non racial organisation although 90% of its members are black. The state objective is not to continue discord any more. The sole emphasis is on social harmony and peace. "We are still in the process of negotiation, reconciliation and transformation and it is not an overnight process," he added. Achieving equality at all level is the governmental choice and priority as inequality is the root of many evils.

Inaugurating the workshop, the Chief Guest of the event, Abdul Matin Khasru, MP, Hon'ble Minister for Law, Justice and Parliamentary Affairs told that the government has taken steps for establishing Grameen Courts to ensure easy access to justice at the door steps of the poor.

Access to justice is a precondition to ensure fundamental rights of the people. If the vast majority of masses, owing to poverty or remoteness of judicial institutions, can not avail the opportunity of seeking redress against wrongs, then the fundamental human rights will be denied to them," he said. The Law Minister said that the government has taken initiative for establishing Grameen Courts as a pre-trial settlement forum throughout rural Bangladesh to ensure easy access of poor people to institutional judicial forum to seek justice in respect of petty civil

and criminal disputes. "I hope will be able to introduce a bill in the House (Parliament) soon in this regard." Taking a question from the audience, Mr. Khasru said that the proposed Grameen Court would be headed by an Assistant Judge nominated by the respective District Judge. "At present, the lowest stratum of the judiciary is at the district level" he said. "But for most of the population, it is very difficult to come to the district headquarter for justice embracing proverbial lengthy procedure, cost and harassment for years together." He said that Grameen Court is going to be established at the villages with an ambitious hope for dispute resolution through conciliatory arbitration. It is mainly a concept of compromise between parties who wish to live as good neighbours setting their disputes locally avoiding the troublesome, expensive time-consuming legal formalities in traditional court, the Law Minister said.

The British Council is actively involved in support to improve access to justice for the dispensation of speedy justice.

In our country the number of pending court cases are thousands. Therefore if the system of Lok Adalat which attempts to resolve cases at the pre-litigation, through mediation conciliation and counselling, is a concept worth listening to and investigating into," Farah Kabir, Governance And Gender Adviser, the British Council Bangladesh, said.

#### Working Session

In his key note address, Justice Dilip Kumar Basu, Chairman, Legal Aid Services West Bengal (LASWEB) said, "Lok Adalat (People's Court) and Samjhota Adalat (Arbitration Court) initiate a process which through community participation enhance people's access to justice. A culture of settlement has been created through the activities of these courts." These courts have a success rate of nearly 70 percent. The Lok Adalat deals with pending cases while Samjhota Adalat bases, said the former Judge of Calcutta High Court, Calcutta. Lok Adalat is mainly a concept of compromise, and means a court for people and by the people. The Lok Adalat, as a