

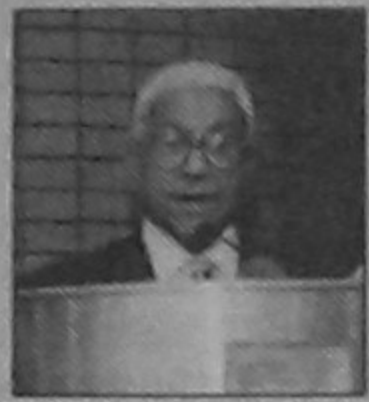
# Woman Lawyers' Convention 2007

## "Strengthening Women Rights in the Democratization Process in Bangladesh"

Bangladesh National Woman Lawyers' Association (BNWLA) organized the 3<sup>rd</sup> National Convention of the Women Lawyers on December 02, 2007. The convention with the theme "Strengthening Women Rights in the Democratization Process in Bangladesh" was attended by the representatives of development partners, national and international non-government organizations, civil society organization, print and electronic media, members of the higher & lower judiciary and, of course, the lawyer members of the association from across the country.

Chaired by the President of BNWLA Advocate Fawzia Karim Firoze, the Convention was addressed by Honourable Chief Justice of Bangladesh, Mr. Justice Md. Ruhul Amin as the Chief Guest. The keynote paper titled "Judicial Activism to Combat Violence against Women and Children" was presented by Mr. Justice Md. Imman Ali, Honourable Justice, High Court Division of Supreme Court of Bangladesh. Ms. Justice Salma Masud Chowdhury, Honourable Justice, High Court Division, Supreme Court of Bangladesh delivered her speech on "Women Rights within Islamic Framework". Ms. Josodhara Bagchi, Chairman, Women Commission of West Bengal, India, Honourable Mr. Justice Laxman Prasad Aryal, Former Justice, Supreme Court of Nepal; Honourable Mr. Justice Samarash Banerjee, Lokayuta, West Bengal, India also spoke on the occasion.

Congratulating the government for making the judiciary independent-the long cherished desire of the citizens of Bangladesh, the Woman Lawyers demanded increased involvement of women in the current democratization process of the country. BNWLA experience that in an undemocratic society it is not possible to uphold the rights of the women whether legal or social. To make a society democratic in real sense, the voices of the women constitute about half of the total population, must be heard. The participants urged to establish Women Commission in Bangladesh to coordinate the activities of government and non-government organizations concerning the rights of women. They also voiced for reform of law and related institutions to pave the way for a women friendly judiciary in the country.



**Honourable Mr. Justice Ruhul Amin**, Chief Justice of Bangladesh who attended the convention as Chief Guest said our constitution by Article 27 has enriched the equality provisions but yet about half of the population-women are struggling to secure equality in their personal laws, social attitude, patriarchal dogmas and strictures of unequal distribution of resources.

He said that the country born out of a war of liberation promised to bring new era, aspiration and freedom from all tiers of oppression and to create free and fair society in the country. With this motto the country moved past years to separate the judiciary to create a free and fair society, strengthen equilibrium in imbalance power structure. The utmost aim of those associate with administration of justice are to ensure to all, ensure protection from abuse for all members of the society irrespective of caste, race, sex and religion.

The past situation created question of accountability, transparency, good governance as well as the protection of the people from the atrocities of malpractice and anarchy in different spheres of state and society and lack of democratic practices. These situations created unstableness in the country where independent judiciary was the most wanted platform to redress the inequality, imbalance in the society, discrimination in allocation of resources and abuses of the actors who are responsible to render services to the people.

In the critical and crucial moment we had to act prudently to safeguard the rights and hopes of the people. The separation of Judiciary is the achievement of our struggles to make Bangladesh move forward to the democratization process.

He pointed out that the effort of BNWLA in bringing a large numbers of women lawyers into a platform for ensuring rights of the disadvantaged group is praiseworthy. He expected that this convention would strengthen the concept and spirit of independence of Judiciary and bring the fruit of Separation of Judiciary and its potential impact to a large section who would benefit from this.

He expressed that the broader theory of "Separation of Powers" from which the concept of Separation of Judiciary emerged, requires the powers of a given State to be allocated among three separate organs i.e. executive, legislature and judiciary, so that neither of them act beyond the limit as the constitution provided. The judicial view has been provided to ensure that citizens guaranteed rights are not destroyed or frustrated by the State. As such we have not been very much cautious to keep theories of separation in practice to protect rights.

Indeed, there are countries where this separation theory applies well not because of vitality of the theory but because those countries have developed national sense of respect towards their democratic institutions. So, it is more of political culture than of mere introduction and implementation of theory. We have come a long way in shaping our legal and institutional structure towards ensuring justice and now we must focus on nurturing the democratic values and spirits, both in political and legal spheres.



**Mr. Justice Md. Imman Ali**, Honourable Justice of the High Court Division of Supreme Court presented the keynote paper titled "Judicial Activism to Combat Violence against Women and Children". In his keynote paper he mentioned that judicial activism is when courts do not confine themselves to reasonable interpretations of laws, but instead create law. Alternatively, judicial activism is when courts do not limit their ruling to the dispute before them, but instead establish a new rule to apply broadly to issues not presented in the specific action. "Judicial activism" is when judges substitute their own political opinions for the applicable law, or when judges act like a legislature (legislating from the bench) rather than like a traditional court. In so doing, the court takes for itself the powers of Congress rather than limiting itself to the powers traditionally given to the judiciary.

As a general usage, "activist judge" is used to describe a judge who actively and knowingly subverts, misuses, grossly misinterprets, ignores, or otherwise flaunts the law and or legal precedence due to personal opinion, be that opinion ideological, religious, philosophical, or other. Judicial activism in litigation, he mentioned is a helpful mechanism used by the courts to assert their powers and jurisdiction and to do justice strictly according to law. Public Interest Litigation for example opened a new dimension to judicial activism. Its meaning before the 1990's was taken to be a pejorative term for misuse of judicial power.

Judicial activism is the term used to describe the actions of judges who go beyond their constitutionally prescribed duties of applying law to the facts of individual cases, and "legislate" from the bench. These judges create new constitutional rights, amend existing ones, or create or amend existing legislation to fit their own notions of societal needs. In practice, a speaker may use the term "activist judge" to mean that a judge has simply made an important decision. Nowadays it commands popularity from the quarter benefited and scorn from others.

It is said, "Judges must be sometimes cautious and sometimes bold. Judges must respect both the traditions of the past and the convenience of the present. Judges must reconcile liberty and authority; the whole and its parts." In our judgments, what we have aimed at is to do justice to the case and at the same time ensure that failure of justice is avoided, bearing in mind that the right of the citizen, be s/he accused or victim is to be dealt with even-handedly, in accordance with law affording to him/her all the facilities and benefits provided by the law.

He believes that the judges dealing with cases of violence against women and children have not been making any new laws, but have propounded the law in its correct spirit and perspective keeping in mind the subjects whom the laws were enacted to protect and always bearing in mind the structure of the society, its cultures, mores, difficulties and drawbacks, and above all keeping in view the rule of law.



**Ms. Justice Salma Masud Chowdhury**, Honourable Justice, High Court Division, Supreme Court of Bangladesh delivered her speech on "Women Rights within Islamic Framework". In her paper she said that the primary source of the Islamic law of inheritance is the Holly Quran, which provides that daughter, mother and wife would under all circumstances will be entitled to the resources under the law of inheritance. Muslim Family Law Ordinance 1961, amongst others, conferred inheritance rights to the children. Marriage is a very important matter in life of a woman especially in a country like Bangladesh where majority of woman have no independent avocation of their own. Marriage amongst the Muslims is not an agreement but in the nature of a civil contract. Such contract undoubtedly has spiritual and moral over tones and under tones but legally in a sense it remains the contract between the parties which can be subjected to dissolution for the good cause. Every Muslim of sound mind who has attained the puberty may enter into a contract of marriage. She however emphasized on the correct interpretation of the Quranic text on the provision for women in the Holly Quran.

The women of Bangladesh are supposedly fortified with theoretical legal right but there is gulf of difference between the theory and its actual application. There are considerable number of women educated and uneducated who have no idea about their legal rights or important legislations to safeguard their interest. They must be made more conscious about their legal rights and this can be done by launching legal literacy programs. The woman lawyers can take active part for this and conduct such program and take these programs to grass roots level.



**Honourable Mr. Justice, Samarash Banerjee**, Lokayuta, West Bengal, India while talking about the importance of holding this convention during the fortnight to fight Violence against Women said that there is discrimination all over the world with differences only in degree and form and keeping such discrimination in place we can not really establish rule of law in the society or a state can be really ruled by the Constitution.

Referring to some of the judicial improvements in the western societies he said while in this part of the world we are still debating on the question on judicial activism and pro-activism, fortunately in the other part of the world has already have it. They are demanding that the judgment should be delivered considering the social context and only by sensitization of the judges. This helps protect the rights of women and establish rule of law in the society in real sense. As because only a sensitised judge can understand the problem not with sympathy but with empathy and he viewed only then the gender equity can be established.



**Honourable Mr. Justice Laxman Prasad Aryal**, Former Justice, Supreme Court of Nepal said judicial activism is a changing concept, which was introduced by Justice Marshall while interpreting the clause of due process of law in the Constitution of the USA. The concept has been changing being dynamic one as Law itself is constitution and constitutional principles are dynamic, they are not static. In brief judicial activism boost up the responses of black letters law but also just laws. These are conducive to promote the rights of all human being in the form of woman, man & children and guarantee the equality principle of human rights. He said at present time the test of our goodness of laws and our constitutional system is whether these conforms to the principals Universal Declaration of Human Rights. According to Justice Aryal it should be the major area of consideration right now as all of us have to be human being as because once you will be given the status of human being then you will get certain rights, which are indivisible and inalienable. These rights are ensured once a human child is born not as grant of state in the form of law, there is rights before law. His experiences of being involved in the judiciary suggest that we all should pose our real faith & respect to the basic ideal of Human Rights and there will have judicial activism i.e. judiciary is active in promoting & protecting the rights not only being actively involved in judiciary but also activating the government and public institutions who are concerned with the protection of human rights. In Nepal around one hundred cases were listed by the Supreme Court considering the main area covering human rights especially the women's right. Talking about the developments of international instruments for human rights he pointed out that CEDAW gave the main focus on women and no other laws/convention. Unless the rights of women are respected no nation or society can prosper as they constitutes of the total population. We not even think of a system whether legal system, constitutional system or judicial system can deny the equal rights of women. Mentioning a judgment by the Supreme Court of Nepal relating to "Marital Rape" where it was found that a husband can commit rape also and for this different direction came out. On the basis of the interpretation new law named "Equality Bill" was introduced, which recognized "Marital Rape" as offense. In this way the judiciary in Nepal is playing a leading role in addressing Violence against Women in general and Domestic Violence particularly in the name of judicial review.



**Advocate Fawzia Karim Firoze**, President, BNWLA and the Chairperson of the Convention at the beginning of her speech requested all to express solidarity with the victims of Sidr by "One minute of being Silence".

She shared that BNWLA tried to organize this kind of convention with a motive to reflect that in the society the lawyer is not a lawyer only but as a Change Maker, who speaks on behalf of the women and children to establish their rights. In this context BNWLA develops some process and play a complementary role in making judiciary really functional. One of such endeavors is to bring the women lawyers from across the country under an umbrella to discuss judicial activism for seeing the rights of women. BNWLA believes that law itself sometime, when being practiced in different platforms need some guidelines and fresh interpretations to be brought to ensure the rights of women and children. We have seen various citations from different judgments which have taken place in Bangladesh as well as in other neighboring countries encompassing "how judicial activism i.e. pro-activism has

helped to ensure the rights of women and children?" The rights are given but sometime we have experienced that rights are not being properly ensured and for that reason judicial activism has been very important for BNWLA. We have seen in number of judgments specially the judgments on Children Act 1974 some of the laws have wonderful provisions but in reality while implementing these laws we find loopholes which prevents the inequality for disadvantaged group in getting their rights and they are not protected under those laws. In this respect she mentioned that there is provision of "Camera Trial" under the Women and Children Repression Prevention Act 2000 (amended in 2003) but somehow most of the lawyers do not take up the application of the provision in the court to get the benefit of "Camera Trial". Sometimes due to lack of sensitisation of some of the judges, victimisation of women and children doubled by becoming traumatised.

In attaining the rights of women by eliminating all forms of discrimination, CEDAW is much talked about but still yet it has not been incorporated in our laws and we would like to see that our judgments reflects the provisions of CEDAW which has been ratified by Bangladesh. Stating that BNWLA has established large number of Legal Aid Clinics in Bangladesh she requested the Chief Justice to initiate establishing Separate Legal Cell in each districts having provisions and arrangements to provide shelter support by using the Legal Aid Fund.



**Advocate Salma Ali**, Executive Director of BNWLA, expressed deep concern for the Sidr affected people in her welcome speech and urged upon the government to take special care of the displaced women and children in the affected area who become victims of the plight. She mentioned in the post Cyclone period, vulnerabilities of women and children greatly increases for which every one need to be more conscious and monitor the situation to address the cases of violence.

Speaking on the ongoing democratization process she mentioned that it is important for a society to be democratic with a view to ensuring access to justice, promote gender equality, move towards a transparent society free of repression and injustices.

In Bangladesh, different citizen groups emphasized the need for democratization of Political process, for clean, honest and responsible representation in Parliament, for a judiciary that is sensitive to human rights. For realization of fundamental rights and elimination of discrimination, different women professional and citizen groups initiated campaign for establishing liberal society and demand for an independent judiciary & human rights commission.

Mentioning that recent separation of Judiciary is a major step of the Caretaker Government in promoting democracy and good governance in the country, she hoped that separation will ensure judges independence to protect the basic rights of the citizens and uphold the supremacy of the judiciary. Citing organizational expectations from the government of maintaining accountability and transparency she hoped that the concerned authorities would appoint the Judicial Magistrates based on merit and knowledge for providing qualitative services to all.

Mentioning that concept of National Human Rights Commission (NHRC) has been around for several years in Bangladesh Ms. Ali talked on the urgency of establishing National Human Rights Commission which can be an important mechanism for strengthening human rights protection and combating Violence against Women and Children. She suggested that National Human Rights Commission should be based on existing legal and other institutions in order to make these more effective instruments on human rights protection. Initiatives should be taken following committed government policy to ensure that those who violate human rights cannot get impunity.



**Ms. Josodhara Bagchi**, Chairperson, Women Commission of West Bengal, India who attended the convention as special guest said the Woman Lawyers' Convention organised at the fortnight dedicated to fighting Violence against Women around the world is the most appropriate occasion for attending and delivering a speech. Ms. Josodhara Bagchi appreciated the organizers-members lawyers from across the country who gathered here to discuss the problems of Human rights in a democratizing society. Ms. Bagchi lauded Advocate Salma Ali, Executive Director of BNWLA for her dynamic leadership which helped to bring this kind of gathering.

She mentioned that Women Commission in association with State Legal Services Authority which was formed in 1987 has organized the Paribarik Mohila Lok Adalat, similarly this can be established in Bangladesh with the help of women lawyers. Paribarik Mohila Lok Adalat, are functioning in Calcutta as well in the districts with the help and accreditation from the State Legal Services Authority. Many family disputes have dissolved. She also shared in collaboration of the National Commission of Women they have organized regional conferences and took integrated plan to combat trafficking in the eastern region. Talking about the sensitivity of the people involved in prosecution and judiciary where men and women approach to law is different. According to her "The Blindness of the Goddess of Justice who holds up the Scales is not really a blindness of neutrality its blindness towards the disadvantaged". She said National Commission for Women had many interactions with the judiciary, lawyers and the prosecution in particular to explore the ways in which the proper sensitization can come about so that Gender Justice, which is absolutely vital to any democratizing society. She mentioned that discrimination against women do not happen at family level only but it extends to the work place even in form of sexual harassment. Women's Commission has prioritized this area as the Supreme Court of India has given a Landmark Judgment, which is now considered as guideline almost equivalent to a law called the "Bishakha Guideline".

For considerable contribution selected members of the association and staffs were rewarded during the convention. The convention was followed by a cultural program and dinner.



# Bangladesh National Woman Lawyers' Association (BNWLA)