

REVIEWING *the views*

## Some considerations on TIP report 2009

ADVOCATE SALMA ALI

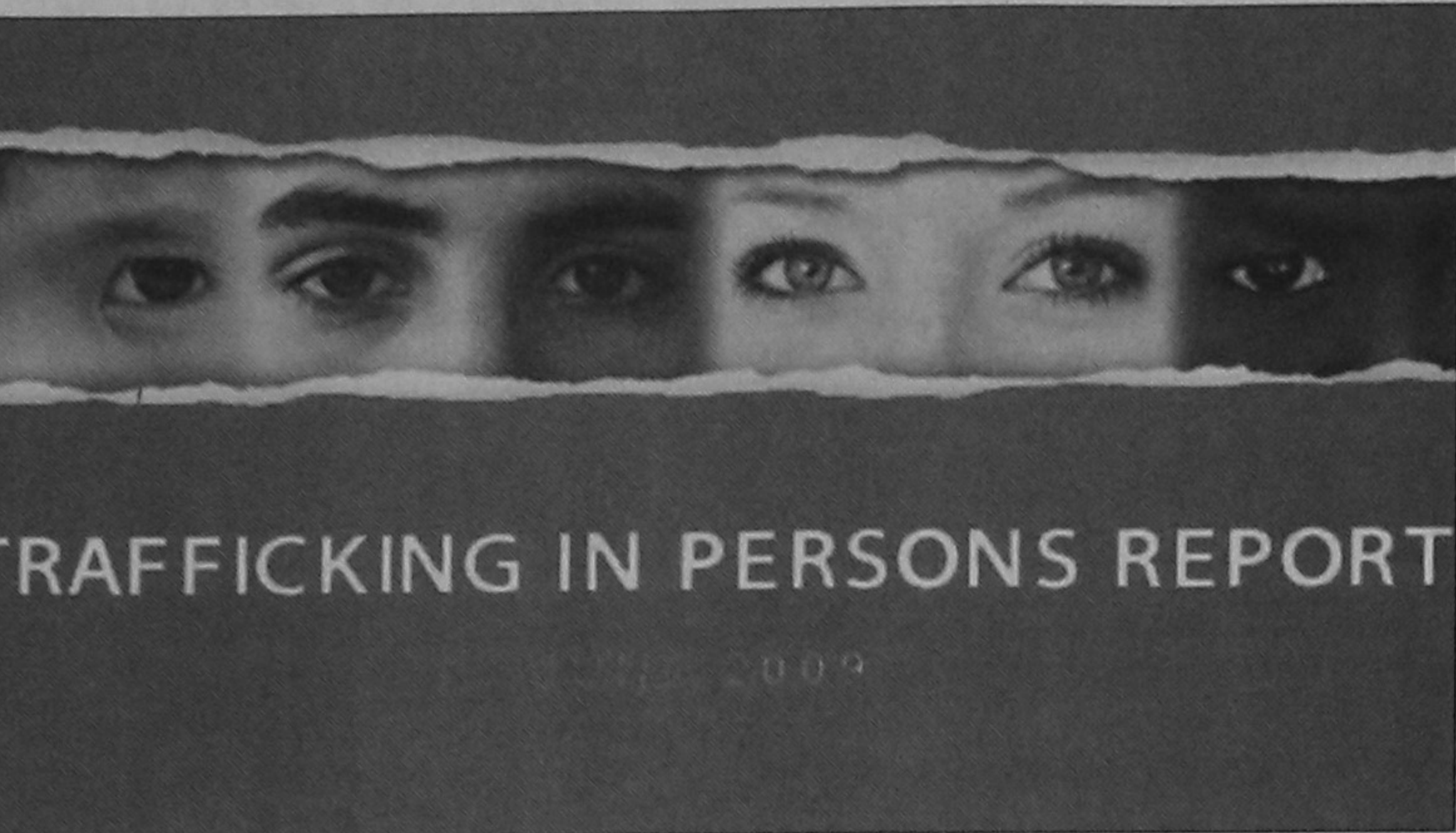
THE civil society actors, specially the members of Action against Trafficking and Sexual Exploitation of Children (ATSEC), Bangladesh Chapter are deeply shocked by the fact that USA has placed Bangladesh on the Tier-II watch-list in its Trafficking in Persons (TIP) Report (2009).

On September 9, 2009 the representatives of members of ATSEC Bangladesh Adv. Salma Ali (BNWLA), Mr. AKM Masud Ali (INCIDIN Bangladesh), Mr. Binoy Krishno Mollick (Rights Jessore), Ms. Afroza Parvin (NUS) held a press conference to express their opinion and opposition to the new placement of Bangladesh on US TIP Report at the National Press Club.

The Country report mentioned, Bangladesh does not fully comply with the minimum standards for the elimination of trafficking. At the conference it was noted that the report has failed to take note the efforts of GOB in developing methods, tools and skills to combat trafficking in persons. This has been reflected in the TIP report prepared by MoHA of GOB. Although Bangladesh has made significant progress in combating the mode of trafficking mostly addressed by the global and national actors (i.e. trafficking for sexual exploitation), the TIP report has undermined it by stating Bangladesh has made, "Only some progress in sex trafficking". The TIP report also mentions, "Bangladesh did not demonstrate sufficient progress in criminally prosecuting and convicting labor trafficking offenders, particularly recruiters". However, Bangladesh has carried out numerous capacity building efforts and logistics (shelter etc.) along with some prosecutions.

The recent TIP report has failed to recognize the following GOB achievements-

According to government record, total of 11 cases of labour traffick-



ing had been filed. The government had received total of 1 judgment of labour trafficking cases in February 2009. (Source: Police Report)

- Apart from that, the Labour wings of different Bangladesh's missions in different destination countries had taken steps for criminal prosecution for labour steps for criminal prosecution for labour trafficking offences. For example: In Jeddah of Soudia Arabia, the labour wing of Bangladesh Mission had filed total of 372 cases in labour court and 347 cases in shariah court. In Riyadh of Saudi Arabia, total of 131 cases filed under shariah court (Source: MOEWOE 2008 annual report)
- In 2008, the government had suspended 13 recruiting agencies licenses also along with cancellation of licenses of 25 recruiting agencies. (Source: MOEWOE)
- The government had instituted total of 145 trafficking case in 2008 and 29 cases during January-March 2009. Total of 20 cases

ended in conviction in 2008 and 09 cases ended in conviction during Jan-March 2009; 43 numbers of accused convicted in 2008 and 11 numbers of accused convicted during Jan-March 2009; 17 numbers of cases ended in acquittal in 2008 and 10 in 2009, 39 numbers of accused acquitted in 2008 and 11 accused acquitted in 2009, 37 numbers of cases disposed and 10 disposed in 2009, 32 received life term imprisonment in 2008 and 14 in 2009 (Source: Police Record)

- The government had received total of 1010 complaints in 2008 and 414 complaints in 2009 (up to March 2009); settled 745 complaints among 1010 in 2008 and 172 among 414 in March 2009; realized compensation against total of 90405600 BDT in 2008; total of 571 numbers of complaints are in process of inquiry up to March 2009; 13 recruiting agencies license suspended, 25 recruiting agencies licenses cancelled & 11 cases has been instituted in relates to labour

trafficking and 1 judgment had received in Feb. 09.

- Apart from that, the Government brings out a country report every year, which depicts the human trafficking situation of the country. Ministry of Home Affairs has developed a motivational policy, which allows the government of have Anti-trafficking committees from the grassroots level up to National level Ministry of Home Affairs had formulated a National Plan of Action of Combating Trafficking in Women and Children in 2008, which reflects series of efforts of GOB in combating Trafficking in Women and Children.

Although more is needed to be done, it cannot be concluded that no significant effort has been made to address trafficking by Bangladesh. On the contrary some significant achievements has been made as listed above. The TIP report has stressed on "Labour Trafficking" which at national and regional civil society level are an issue of concern. ATSEC together with the Government of Bangladesh

has already proposed to develop legal tools to bring the fraudulent recruitment agents under a stricter legal regime. Moreover, the issue of "irregular migration", "smuggling in persons" should be separated from "labour trafficking". And the legal tools should be devised so that along with trafficking, the migration wrongs (i.e. irregular migration and smuggling in migrants) are also addressed. The US TIP report has largely failed to distinguish between migration wrongs and trafficking.

Presently the members of ATSEC along with the other civil society actors, who are in this social movement, feel that prosecution is not the only way of combating trafficking. The on going work on awareness raising, mobilization and capacity building from community level to national level requires no less (but arguably more) importance. The government of Bangladesh should not be pushed away from the cause of combating trafficking for sexual exploitation of women and children by the emerging call of combating "labour trafficking". The issue of labour trafficking should be addressed with acknowledging the achievements and carrying forward the experience of fighting trafficking of women and children for sexual exploitation.

The participants of the conference recommended calling on US State Department to upgrade the status of Bangladesh on the ranking of the recent TIP Report. And also call on the government to continue with a long-run stable strategy to combat trafficking in persons without making any haste change in pace and position under any foreign pressure. The government ought to continue the positive engagement with national civil society to develop and implement policies, laws, measures and interventions to combat the crime of human trafficking.

Advocate Salma Ali is the Chairperson of ATSEC Bangladesh.

## Graft court hiring called into question

Proper procedures were not followed in appointing judges and public prosecutors to the special courts set up by the last caretaker government to try major graft cases, a deputy law secretary has alleged. The House committee on the law ministry recorded the official's allegation at its August 27 meeting attended by both the law minister and state minister, say proceedings of the meeting. Law Secretary Kazi Habibul Awal has been asked to attend the committee meeting to explain appointment of the judges and lawyers and also the now-scrapped controversial decision to send two district judges into retirement. -The Daily Star, Sept 09, 2009.

## Law Commission turns fruitless 13

The Law Commission goes to complete 13 years with its reconstituted body expecting to do something exceptional than its previous bodies, although it is facing some problems. Sources said the commission had drafted as many as 86 recommendations till September last year since its establishment. But except for only three, all of its recommendations were brushed aside as those were believably not in favour of successive governments. The commission, established on September 9 in 1996 for legal amendments, was earlier blamed for failing to modernise the laws and judicial system of the country. It happened mainly due to the lack of political will of subsequent governments, legal experts said. -The Daily Star, Sept 09, 2009.

## Orphanage case goes to trial

A Dhaka court took into cognisance the charges against former prime minister and BNP Chairperson Khaleda Zia, her son Tarique Rahman and four others in a case for embezzlement of Tk 2.10 crore by forming Zia Orphanage Trust. After hearing both the prosecution and defence, Judge ANM Bashir Ullah of the Metropolitan Sessions Judge's Court took the decision in presence of Khaleda and two other accused, and fixed October 25 for next hearing of the case. The court issued arrest warrants against former principal secretary DR Kamal Uddin Siddiqui and Khaleda's nephew Mominur Rahman as they have been absconding since the case was filed. -The Daily Star, Sept 08, 2009.

## Bill proposes strict penalty for realtors

The government placed a bill in parliament for enacting a law with provisions for punishing real estate developers for wrongdoings and protecting the interests of buyers and landowners. The Real Estate Development and Management Bill 2009 is based on an ordinance, promulgated by the last caretaker government, which ceased to have effect on February 25 this year for not being ratified in parliament within the stipulated time. Prime Minister Sheikh Hasina however announced in parliament that the ordinances, which ceased to have effect, would be placed in the House as bills for turning them into laws. -The Daily Star, Sept 08, 2009.

## 90 more pleas sent for govt review

A parliamentary committee sent 90 applications of armed forces officials to the defence ministry for verifying who were "deprived or harassed or sacked on political grounds" in the last seven years. At a meeting at the Jatiya Sangsad Bhaban the parliamentary standing committee on defence ministry also asked the ministry to submit the scrutiny report to the committee at its next meeting. Earlier on August 7, the committee sent 40 such applications to the defence ministry for verification. -The Daily Star, Sept 07, 2009.

## No roadmap to war crime trial

The government will not announce any roadmap to war crimes trial but it might start the trial before December this year even before the ultimatum placed by Ekattorer Ghatak Dalal Nirmul Committee. Law Minister Shafique Ahmed said this at a media briefing at his secretariat office also adding, "The trial will start after arranging all the logistics involved with the trial." Nirmul Committee leaders on Friday issued an ultimatum to the government to announce a roadmap for holding the trial by September 30, or they would go for a movement demanding start of the trial. -The Daily Star, Sept 07, 2009.

## Safety still missing

Five workers sustained severe burns at a ship-breaking yard in Sitakunda upazila. The victims-Hossain, 35, Ashek, 20, Md Kuddus, 32, Jahangir, 28 and Khokon, 22- were rushed to the burn unit of Chittagong Medical College Hospital. Fire broke out at Kabir Steel Yard in Baro Aulia while the workers were cutting a Korean ship with gas cutters around 9:00am, police said. Around six months ago, the High Court ordered the government to close the operations of all ship-breaking yards running without environmental clearances within two weeks. The court also directed the shipyard authorities to ensure safe working conditions for the workers. -The Daily Star, Sept 06, 2009.

## 101 more get appointed soon

The government has decided to appoint 101 assistant judges to lower courts in addition to 207 whose appointments are now almost at the final stage. Even the law ministry has already in a requisition letter asked the Bangladesh Judicial Service Commission (BJSC) authorities to select qualified candidates for the appointment of 101 assistant judges through holding necessary tests and examinations, sources said. Meanwhile, BJSC sources said the commission had already selected 448 candidates out of total 926 through a written test to finally appoint 207 candidates as assistant judges. -The Daily Star, Sept 06, 2009.

## 2 Huji men's bail cancelled

A Dhaka court cancelled bails of two Harkatul Jihad (Huji) members, granted earlier by another court, in one of the two August 21 grenade attack cases on grounds that the charges brought against them were heinous and unpardonable. Meantime, another Dhaka court fixed October 4 for hearing on the government petition seeking cancellation of bails granted to two Huji members in the other case. The Huji members are Munshi Mohibullah alias Mohibur Rahman, brother of Huji Chief Mufti Abdul Hannan, and Arif Hasan Sumon, who obtained bail from a speedy trial tribunal. -The Daily Star, Sept 10, 2009.

## Two jurists decline to comment

Two amici curiae declined to give their opinions to the High Court (HC) on the legality of forming a parliamentary committee to investigate corruption allegations against former speaker Jamiruddin Sircar. Barrister Rafique-Ul-Huq and Advocate AF Hassan Ariff expressed reluctance to deliver opinions due to different reasons. Rafique-Ul-Huq told the court that he earlier made statements to the media on the issue and therefore, he should not place any more opinion before the court. Hassan Ariff said he should not make submission as amicus curiae, since one of his junior lawyers had earlier appeared on behalf of Jamiruddin Sircar in this case. -The Daily Star, Sept 10, 2009.

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## LAW amusements



## Surreal law facts

The truth is always stranger than fiction.

## The 3-year old bride

The French are different in their own right but when it comes to young brides, they make Sharia law look like choir boy law, no pun intended.

Anyway, Charles was a young French royal heir, while only 13, in 1482, he married an Austrian woman, girl, infant, all of three years old, but with a sizeable dowry.

After the marriage, she moved to Paris and her care was entrusted to the King of France, Charles' father, Louis XI.

Months later, Louis XI died and Charles became Charles VIII of France. Since his marriage to the young Margaret had not been consummated (Pope Innocent VII later confirmed this), Charles VIII married someone else (Anne of Brittany) and returned Margaret to Austria in 1493 along with her dowry.

Ever weirder than all of this, Anne was only 14 when she married Charles. But since this new Queen of France had been previously married to Margaret's father, when she was only 13 (1490) that made her his mother-in-law!

## Conservative lawyers

When Queen Mary II died of smallpox, in 1694, her widow, the bisexual King William III ordered all judges and lawyers to attend court wearing black gowns, as a token of public mourning for the Queen.

The order was never formally rescinded and, anyway, the lawyers liked having their own distinct uniform, and the stark, intimidating presence the garb gave them in court.

Even though the funeral for Queen Mary II is long over (!), lawyers around the world still wear black gowns in Court. In the British Columbia Supreme Court, during trials at which he acts as counsel to a party, the author has to wear a black gown, black pants and shoes, black vest but white shirt and white legal tabs.

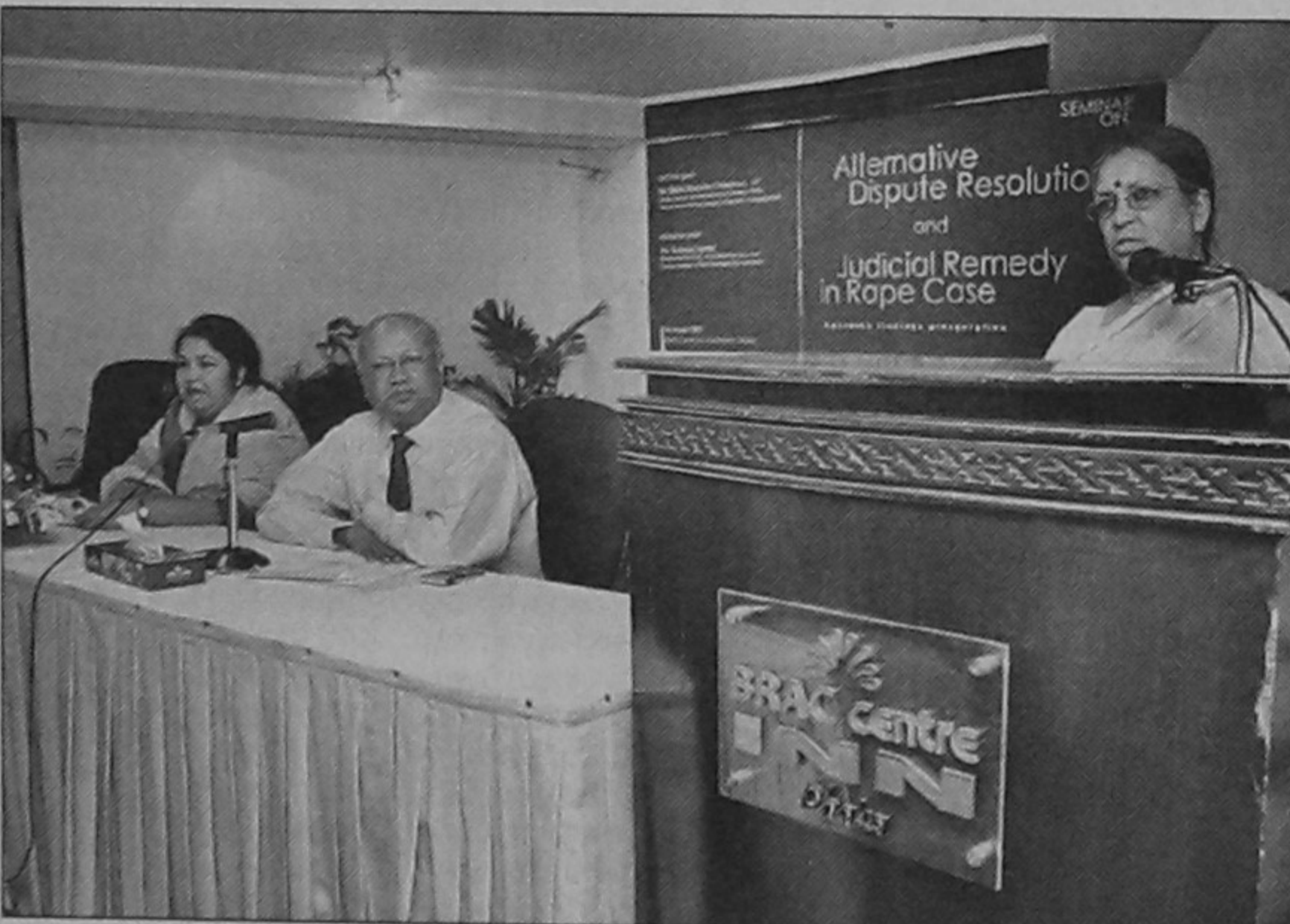
Source: www.duhaime.org.

## LAW event

## Study on alternative dispute resolution and judicial remedy in rape cases

Since 1975, BRAC Research and Evaluation Division (RED) has been working independently to provide an analytical basis for BRAC's programmatic decisions, allow BRAC to learn from its mistakes, and help BRAC to share the impact and lessons from its work with academics, NGOs, and development agencies around the world. In 2007, Social Development and Human Rights Research Unit of RED undertook two studies on alternative dispute resolution (ADR) and judicial remedy of rape cases and the role of Human Rights and Legal

constraints for bringing out family dispute in ADR and the role played by the staff of HRLS programme to assist the aggrieved women struggling against the patriarchal norms of the society. These findings have depicted a wide picture of ADR process in rural Bangladesh where local elite, religious sentiments, power relations, poverty and conservative thoughts of the community work simultaneously to affect the outcome of ADR in establishing social justice. The recommendations of this study played an important role to support HRLS



Services (HRLS) programme of BRAC in this regard. BRAC HRLS programme the largest NGO led legal aid in this world, started its work in 1986 through imparting legal education. Its present ideal is legal empowerment of the poor and marginalized through reaching justice to the doorsteps of people. In this regard, research has always been considered an effective tool to understand the programmatic implications through empirical evidence.

The study on 'Understanding the ADR for the rural women in Bangladesh: some illustrations from BRAC HRLS programme' came up with the real scenario of justice-seeking process through ADR at grassroots level using BRAC's experience. This study pointed out how rural women had to face various social

programme of BRAC in improving their ADR service.

Another study titled 'Legal challenges on the way to judicial remedy in rape case: the role of HRLS programme, BRAC' highlighted the practical reasons for least conviction rate in rape cases and the effort of the staff of HRLS programme to deal with these reasons. These reasons include intimidation of the accused after getting bail, procedural formalities in getting medical evidence, relying too much on first information report, judge's mindset to apply the doctrine of 'proof beyond reasonable doubt' and prioritize corroboration issues in rape case, lack of training of lawyers to use argument creatively drawing precedents from other jurisdictions, illegal compromise at the indulgence of

judges and lawyers in the court, etc. The crucial issue of this study was the tendency of the judges and lawyers to look for corroboration in rape case which is almost difficult to get as in cases of sexual offence hardly any witnesses are found to corroborate the statement of the victim. The study came up with the recommendation to apply the precedents from Indian and Bangladeshi apex courts. These precedents emphasize to prioritize the consistent statement of the rape victim in giving judgment. The study also highlights a judgment of a lower court where advocacy with judges on the basis of these precedents contributed to bring judgment in favour of the rape victim.

As these two studies have incorporated lessons from practical limitations of justice system of Bangladesh and the strive of BRAC HRLS programme to overcome these limitations, the findings were regarded to disseminate at national level so that other legal aid NGOs and concerned stakeholders can be benefited with these recommendations for getting productive directions in their works.

The seminar on research findings on ADR and judicial remedy in rape case was held on 26 August 2009 at BRAC Centre Inn Auditorium. Dr. Shirin Sharmin Choudhury, MP, Honourable State Minister for Women and Children Affairs as chief guest and Ms. Sultana Kamal Kamal, Executive Director of Ain O Salish Kendra and former advisor of caretaker government as special guest were present in the event. Dr. Mahabub Hossain, Executive Director, BRAC welcomed the participants. Dr. SM Ziauddin Hyder, Director, Research and Evaluation Division expressed objectives of the meeting. Dr. Faustina Pereira, Director, HRLS programme gave a short description of the programme. After that authors presented the findings followed by a spontaneous feedback from the audience. An interesting debate popped up in the event between the academics and the activists on the issue of empowerment which added constructive impetus to the event. The event explored a close link between research and programme which ultimately work as complementary to each other towards a just enlightened society.

-LawDesk

## LAW lexicon

**Uniform Commercial Code (U.C.C.)** - A uniform law governing commercial transactions. The U.C.C. has been adopted by all states except Louisiana.

**Uniform Laws** - Annotated uniform and model acts approved by the National Conference of Commissioners on Uniform State Laws.

**Unilateral contract** - An agreement by which one undertakes an express performance without receiving any express promise of performance from the other.

**Union** - An organization of workers formed for the purpose of collective bargaining.

**United States Attorney** - A federal district attorney appointed by the President to prosecute for all offences committed against the United States; to prosecute or defend for the government all civil actions in which it is concerned and perform all duties of the district to which he/she is assigned.

**United States Bankruptcy Court** - The judicial body which hears matters pertaining to bankruptcy and reorganization.

**United States Court of Appeals** - Courts which hear appeals from federal district courts, bankruptcy courts, and tax courts.

Source: Jurist International.