

EDITORIAL

We greet you again after a year to celebrate the International Women's Day, that binds women all across the globe. It is a day to celebrate, to protest, to mourn. We celebrate all the women who have achieved so much, sometimes against severe odds. We protest against all the inequity, injustice and untold violence suffered by women in India and all over the world. We mourn for all the dead and dying, who have perished under the mighty unjust blows of those who wield power of unprecedented magnitude in recent history. Women are under siege, economically, ideologically, militarily.

We, the members of the Women's Commission, have been aware, as never before, of the mantle of the women's movement that has fallen upon us. It was the Status Committee, under the leadership of Phulrenu Guha and Vina Mazumdar who had mooted the idea of Women's Commissions both at the National and at the State levels. Like Eleanor Roosevelt's proposal at the U. N., this proposal, too, took nearly twenty years to materialize, and it was in 1993 that the West Bengal Commission for Women saw the light of the day. We salute those who began the work of the Commission by looking back today at some of the journey we have undertaken.

Locally the past year has been a year of forging alliances. War-ravaged Iraq has followed the decimated Afghanistan and the crying Palestinian women have seen the face of terror. The march of global capital has taken fundamentalism and war as its boon companions. Women in India and anywhere in the world, who are not butteressed and cushioned by the unbridled market, have had to fight hard to survive. At the World Social Forum in Mumbai held in January, 2004, we heard women vent their anger, not just through speeches and slogans, but through music, dance, painting and performance. Despite the carmouflage of 'shine', thousands of women spoke in one voice Another world is possible!

Some Activities of the West Bengal Women's Commission, March 2003-February 2004.

All through last year we have protested violence against women, as we had pledged a year ago on this occasion.

- ❑ We have had women from all political parties and different walks of life tell us their views on the urgent need to maintain women's right to safety outside home.
- ❑ Along with members of the National Commission we have organized public hearing of women who have suffered violence at home, workplace as well as in the world outside. A distinguished body of concerned citizens of Kolkata heard them as Jury.
- ❑ We have collaborated with the State Legal Service Authority in discussing with the body of distinguished Judges, the issue of violence against women under the present Justice Delivery System. Flavia Agnes and other activists focussed on the problems faced by women.
- ❑ The Women's Commission has just successfully completed holding three Parivarik Mahila Lok Adalats, one in Kolkata, one in the district of Hooghly and one in the district of Coochbehar. These were held in collaboration with the State Legal service Authority and the National Commission for Women.
- ❑ The contraception-hazards faced by women of West Bengal was given a graphic exposure by the presentation of the results of a rigorously conducted survey with the collaboration of some scholars at McGill university, Canada on the persistence of Quinacrine used illegally for termination of pregnancy in West Bengal.

□ This is to inform you that the West Bengal Commission for Women has launched their official website. The Website address is <http://www.wbcw.org>.

Glimpses of the Past

Narikantha August , 1998 (Editorial)

What is the Women's Commission? In 1972 the Government of India set up a Committee on the Status of Women in India in accordance with the recommendations of the **United Nations**. One of the proposals mooted by this Committee in its Report was that a fully-empowered Commission for Women should be set up at the national level. Women's organisations also led agitations for the implementation of this proposal and at last in 1990, in acknowledgment of the importance of this recommendation the Parliament passed a bill for setting up of a National Women's Commission. The Commission was formed in 1991 and the states were also asked to make statutory provisions for setting up Women's Commissions at the state level. In West Bengal the statute for setting up a state commission was passed on 22 June, 1992, and the West Bengal State Commission for women had its first meeting on 3 February, 1993.

The Constitution of the State Commission for Women. The Commission is reconstituted every three years. The total number of Commission members is 11. The Chairperson and the Vice Chairperson, as well as the other members are nominated by the Government. The members are generally women who have knowledge of and experience in women's welfare activities/trade union movements/women's legal rights/women's studies. There is one member from the scheduled castes and one from the scheduled tribes. An officer serving the state government is appointed as the member-secretary of the Commission by the Government.

Powers and responsibilities of the Commission. The Commission has been set up as a statutory autonomous institution, linked with the Department of Social Welfare, and vested with the powers of a Civil Court for purposes of investigation and calling of evidence in cases of complaints of discrimination against or torture of women in the state. It can give its counsel on the basis of hearings, and where need arises, recommend measures to be taken in the interest of justice to the proper authorities. While it has no judicial or punitive powers, it can offer counselling on the basis of written complaints and supporting documents and draw the attention of the administration for taking strong measures for the prevention of discrimination, injustice and oppression against women in family or in society, in education and employment and for proper implementation of laws. It can also recommend amendments to the laws, assess the status of women in the state and advise the government regarding improvement of the condition of women in jails, reformatories and custodial homes.

The West Bengal Commission for women is calling upon women of West Bengal and women's organisations in the state through this newsletter, to enable us to build up wide contacts so that the Commission may succeed in its objective.

Narikantho March 1999

The West Bengal Commission for Women opens a complaints and prelitigation counselling cell.

From its inception the Women's Commission has been receiving cases from women regarding disharmony within the family and torture on women. In several cases the Commission has made spot visits, called upon the police to investigate cases properly and has tried to resolve disputes in the family by counselling both parties. They have also intervened where inordinate delay is being made in submitting chargesheets.

Apart from this since 1997, the Commission has been holding quarterly meetings with police administration in Kolkata and the districts to discuss pending cases. This too has been helpful in some cases. However in spite of this, members have felt that in view of the fact that the work-load of the Commission has increased, we have not been able regularly to monitor the complaints that come to us. For sometime, we have been thinking of setting up a 'cell' to give immediate and proper attention to the cases that come to us from the districts. Increase in government funding this year has enabled the Commission to implement this plan.

On 21 January, 1999, the cell was inaugurated at the Commission's Office at 10, Rainey Park, by Sri Nisith Nandan Adhikary, Minister, Department of Judicial Affairs, West Bengal. Justice Mukulgopal Mukhopadhyay, Chairman, West Bengal Human Rights Commission was present as Chief Guest. Representatives of the State Police Commission were also present.

Two counsellors have been appointed to run the cell. They are sitting on Tuesdays, Thursdays and Fridays at the Commission's office from 12.00-4.00 to receive cases. They are being guided in this by Women's Commission member and advocate Manjari Gupta. Any woman residing in the state may meet them at the Commission's office on the stipulated days with written complaints and attested copies of any relevant documents.

The following kinds of cases may be taken up by the cell—

- (1) Cases of neglect or torture by husband or other relatives where the complainant has not reported the matter to the police and would like to come to settlement through counselling ;
- 2) Cases where a report has been made to the police, but adequate measures have not been taken by the administration ; cases of domestic violence and death might be included under these.
- (3) Although the Commission's power of intervention in *sub judice* cases is very limited, the Commission may offer legal advice in such cases.

In the inaugural function, both the Minister Nisith Nandan Adhikari and Justice Mukulgopal Mukhopadhyay offered some valuable advice. They advised the Commission on how to make effective the powers of a Civil Court statutorily granted to the Commission in certain matters. They further proposed that a panel of lawyers be formed to help the Commission in legal matters. Further to give legal status to and to make binding upon the parties the solution offered by the Commission in specific cases, it was proposed that these might be finalised through the jurisdiction of the Family Court. The Commission is taking steps to implement these proposals.

Narikantho, March 2003 (Editorial)

[From address given by Jasodhara Bagchi, Chairperson, West Bengal Commission for Women at the Central rally of women's organizations in Kolkata on 8 March 2003]

Today all over the world, the International Women's Day is being observed. This is the day on which we call for recognition of women's labour and work—labour that extends from the sphere of our everyday activities within the family to the sphere of social production and public life. Today women recall their struggle for their rights, and prepare to carry it onwards. Today we also commemorate with love and admiration those who fought against all odds and reached the objective of success.

Both within our country and outside we find a number of destructive powers working together, against which we must be on our guard. American warships are ready on the Indian Ocean, fighter planes are about to make attacks on innocent citizens of Iraq—the monstrous possibility of millions of women and children being killed is imminent. Since the Gulf War, arbitrary sanctions against Iraq have brought the lives of ordinary people on the brink of ruin. Many people are being forced to live unfed and shelterless. But the imperialist governments of U.S.A and Great Britain are still greedy for more. As one day white men had taken charge of America by destroying native American Indians, this war too is being waged to bring oil in the Middle East under control. This war has intensified state terrorism and communal fundamentalism is causing deep cleavages within society.

In this state, people from different communities have been living together in peace and amity for over a number of decades. We have to withstand the machinations through which violence against women and communal hatred are being sought to be spread even in this state where democratic norms are prevalent. We cannot yield an inch to these forces. As communalism is being fomented through distortion of religious faith, so the market is being controlled in the interest of capitalism, and all national institutions are being reoriented under the aegis of a new liberalism. Many people are losing their jobs. Women on one hand are among the first to be axed; on the other hand, in families whose income has been decimated, women are being forced to take any job to save their families. To turn our attention away from this state of joblessness, the bogie of terrorism and illegal migration is being raised.

Even in our state effects of economic and social turmoil may be found in increased incidence of violence against women and trafficking in women. We must be prepared to face these dangers and always demand punishment for the real culprits. We must also fight against the tendency to postpone and water down the demand for one-third reservation for women in Parliament and legislative assemblies.

Empower the Women's Commission to Empower Women

The West Bengal Commission for women set up by a decision of the West Bengal State Legislative Assembly in February, 1993, has completed eleven years of its existence. The National Commission for Women, which provided the framework for the tasks outlined for our State Commission, had been set up only a year earlier by an Act of Parliament.

Background

It may be recalled that the recommendation for setting up of National and State Commissions for Women, had been one of the main proposals put forward as far back as 1974 by the Status of Women committee headed by Dr. Phulrenu Guha and accepted by the then Government of Sm. Indira Gandhi as far back as 1976. That Government had framed the Status of Women Committee to formulate a report on conditions of Indian Women

based on a detailed questionnaire circulated by the United Nations Organisation which had declared the year 1975 to be observed as the International Year of Women with the slogan of equality, development, peace. 1975 marked the 30th anniversary of the victory over fascism in 1945 and the formation of the United Nations Organisation. The declared aim of the International Women's Year was "to right a historical wrong"—the gross inequalities imposed on women to a lesser or greater extent in all patriarchal societies. The Status of Women Committee in India had collected an immense lot of information from all over the country concerning various aspects of women's lives in rural and urban areas including education, health, employment, etc. It had met the representatives of the State Government, women's organisations, trade unions and set up special women's research groups in several universities to collect relevant data on different aspects of women's conditions. In fact, the Report of the Status of Women Committee in India entitled towards equality was one of the most comprehensive documents submitted by any of the UNO member states on the eve of the International Women's Year.

It was clear that though the Constitution of free India provided for full equality of men and women, the existing reality was far from this even after 28 years of independence. The Report showed that the general belief that benefits of national development were reaching all sections of the population, was far from correct. The Report showed that any growth in national income was not necessarily reflected in a corresponding betterment of the living standards of the poorest sections of society and that any rise in the general standard of living of families did not equally reach all members of the family. In fact, the Report claimed that women in India, rather than benefitting from the general development, had become its victims because of their low levels of education and limited participation in income generation activities. The development process instead of improving their status, had marginalised them even further.

In 1975 at the first United Nations Conference on Women held in Mexico City, it was announced that one year was hardly enough to fulfil the aim of eliminating the inequalities created in decades and centuries of discrimination. It was therefore, decided to observe the United Nations Decade for women from 1976 to 1985. A UN Convention for Elimination of all Forms of Discrimination Against Women (CEDAW) was launched for adoption by all member states of UNO which would have the authority of international law for all signatories. Since then UN conferences for women have been held at Copenhagen (1980), Nairobi (1985), Beijing (1995) and, at the end of the millennium, in the year 2000 at the UN Head Quarter in New York. Though women's issues have acquired increasing importance over a quarter of the century, it can hardly be claimed that the principles embodied in CEDAW are respected in all or most of the signatory states.

Changing World Scenario

India was the 92nd member of the UNO to endorse CEDAW. In fact, although the recommendation of the Status of Woman Committee for setting up an autonomous high powered National Commission for women had been generally approved as far back as 1976 by the Government of India, it was not until about 16 years later in February 1992 that the National Commission for Women was ultimately formed, and even then with very limited power circumscribed by a bureaucratic framework. In the intervening years, the entire social, economic, political scenario had changed beyond recognition on a world scale. The breakup of the Soviet Union and the Socialist System in a large number of countries in Eastern Europe and the emergence of the United States as a single superpower dictating terms for economic relations between states, their trade with each other, their budgetary allotments and priorities regarding their own internal needs, has changed all the goals and programmes announced during the International Women's Year and Decade by each of the different United Nations's specialised agencies for achieving the aims of improving the status of women.

Limitations & Achievements

West Bengal was among the first states in India to set up a State Commission for Women following the formation of the National Commission. However, though formed by a Statute of the State Assembly which was not necessarily bound to follow constraints imposed by the Lok Sabha -made-National Commission, it is bound by many of the same bureaucratic constraints limiting the autonomous functioning of the National Commission.

Its staff pattern, allocation of funds and plan of activities have to be approved by the State Department of Social Welfare. By law the Commission has been given the powers of a civil court with right to call for evidence and examine such evidence. However it has no machinery of its own to enforce these powers and its findings are only recommendatory. Moreover sub-judice matters are outside its purview. Unlike the National Commission members who are highly paid full-time functionaries, all members of the State Commission including the chairperson, are part-time honorary functionaries, except the member secretary who is an IAS Officer. They are supposed to submit recommendations and reports to the State Government every six months which are supposed to be placed before the Assembly with an action taken report. However, the Commission gets neither any feedback on this, nor any 'action taken' report from the Government. In fact even the rules under the Womens' Commission Act, which should have been framed within the first months of its formation, were framed as late as more than two and a half terms or over seven years after the formation of the Commission.

In the recent period there has been closer and more regular contact between the State Commission of Women and the different Women's Organisations and NGOs functioning in West Bengal. Representatives from the Women's Cell at Lalbazar and the State Police Headquarters at Bhawani Bhawan are invited to periodic meetings where representatives of women's organisation and NGOs are able to raise questions and problems about pending cases of violence against women. Commission members have addressed sensitisation programmes organised by the police authorities and for members of the judiciary. They have also visited women inmates at the Lilooh Home, various jails and submitted reports on their conditions to the concerned authorities. A major undertaking of the State Commission jointly with the State Social Welfare Board was to supervise a survey on Bengali widows at Brindaban, their conditions and steps needed for the rehabilitation of those among them who might want to return to West Bengal.

The State Commission also organised a three-day national seminar on Law concerning Rape which was addressed by participants, some leading lawyers from Delhi, Maharashtra and other states. This was followed up with the formation of a working group to propose amendments to the laws, suggesting change in the basic definition of rape as well as special procedures to deal with child rape. A *bilingual* booklet, *Women and Sexual Violence*, was the outcome of this exercise.

Over the course of the last five years, The State Commission has built up a fairly sizeable collection of books on women's issues for reference by those interested. However the specialised contents of this collection require wider publicity and space for readers still remains a major constraint.

The State Commission has undertaken a major task to prepare a report on the changing status of women in West Bengal from 1970 to 2000. As far as I know the report is in the final stages of its compilation. I am sure that when published it will be a substantial contribution to the women's movement in the state and in India.

Relationship Between the National & State Commissions

Here I would like to mention that the National Commission needs to reexamine its relationship with Women's Commissions in the different States. I do not know whether the experience of all existing State Commissions in this regard is the same as in our case. However, here we have seen National Commission members coming to make their own enquiries about allegations of atrocities against women or about women prisoners etc., without any prior information to the State Women's Commission about their visit. They have also asked some particular NGOs in the State to organise seminars in certain specific agenda without seeking cooperation of the State Commission. Greater cooperation would improve efficiency on both sides.

Welcome Development

A welcome development in the Women's Movement in West Bengal is the closer coordination between those NGOs who consider themselves as feminists and others who have thought that increased participation of women in social production can by itself lead to women's equality and advance. Even as late as 1987 there were feminist organisations in West Bengal who considered that the demonstrations of women against high prices and against anti-Sikh riots following the assassination of Prime Minister Indira Gandhi, were not really on women's issues.

Today after the experience of Post-Godhra riots in Gujarat or the continuing burden of ever-rising cost of all daily necessities, no one will raise such questions. On the other hand, those who considered women's economic participation as the total solution to the problem of their inequality are coming to accept the fact that the way patriarchal society educates and socialises girl children has to be fought and corrected as a particular obstacle through the joint efforts of all women as well as men who believe in gender equality.

Judiciary & Police

I would like to say something here about our experience with the two major law-enforcing agencies—The judiciary and the police. It is true that judicial activism has contributed considerably to the strengthening of gender equality both at the all-India and State levels. The directive of the Supreme Court on sexual harassment of working women at place of work or the judgement in the Geeta Hariharan case regarding the right of the mother as guardian of her children are two such instances. Though the Supreme Court judgement in the Shahbanu case was counteracted by the Rajiv Gandhi Government's provision for 'protection' of divorced Muslim women in 1986, the Calcutta High Court as well as some others have since tried to overcome the limitations imposed on helpless Muslim victims through their innovative judgements. However, the Judiciary in our country usually come from a class where patriarchal norms prevail. Surveys conducted by Sakshi a national-level NGO, and Swayam, an NGO in West Bengal, have shown that a large number of the judiciary continue to believe that an occasional slap or two by a husband to his wife in case of disobedience or negligence of duty, can hardly be regarded as domestic violence. Little wonder then that the draft law against domestic violence in Parliament, also has expressed similar views. Just a few days ago I read in a press report that a 'national convention of harassed husbands' in Calcutta was inaugurated by a Judge of the State High Court who opined that the permanency of the 'Sacred Hindu bonds of marriage' should be restored.

As for the police, one has to bear in mind that the police code in our country is based on the rules framed by Britain for its police force in Ireland for suppressing their movement for freedom. That code, despite attempts to alter it, still remains unchanged. During Police sensitisation courses I have myself been told by police officers that we 'do not realise how disobedient some women have become these days'—as though disobedience is enough excuse for physical aggression or murder of a wife.

Women on Globalisation

On 8th March last year 37 Women's organisations in our state came together on a common platform against war, violence, hunger and fundamentalism and for peace and friendship in a mass rally where the main resolution was moved by the Chairperson of the State Women's Commission. This is a new and welcome phenomenon reflecting the common understanding arising out of the effects of globalisation on the lives of different sections of women. It is clear that globalisation has reversed much of the programmes set forth during the International Women's Year and Decade by various UN agencies like UNICEF, WHO, UNESCO, FAO, etc. by insisting on a cut in all subsidies for education, health, food security or other forms of positive state intervention to overcome gender inequalities. Globalisation has thus devalued women and increased their exploitation.

While working in the Women's Commission, I have repeatedly felt that the media, both print and electronic, have an important role to play in highlighting the problems facing women. While there are many instances where media attention has brought into focus serious events of individual or group violence on women requiring intermediate intervention, media also exploit women indiscriminately for promotion of multinational global market not just through advertisements but also in the name of lifestyle and good living. It is necessary, I feel, for the State Women's Commission to maintain a much closer liaison with the media, particularly in view of the fact that a very large number of media personnel these days are young women.

The Government of India as well as the United Nations declared the year 2001 as the year of Women's Empowerment. Perhaps a major step towards empowering women may be first of all to empower the National and

State Women's Commissions by freeing them from the shackles of bureaucratic control.

Vidya Munsî

(Former member,

State Commission for Women)

“Parivarik Mahila Lok Adalat”—a New Institution in the Justice Delivery System

India remained a British colony for nearly 200 years and Great Britain wrote laws of its colonies named as “Government of India Acts”. There were several “Government of India Acts”. The last one was “Government of India Act, 1935.”

India was independent in the year 1947 and the Constitution of India was drafted which came into force effectively on 26th January, 1950. The Constitution of India was amended from time to time to meet the needs of the country.

Article 39A of the Constitution was inserted by the Constitution (Forty-second Amendment) Act, 1976. The mandate of the Constitution was that the State shall ensure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

In 1987 “Legal Services Authorities Act” was enacted to constitute Legal Services Authorities at National, State and District level to provide free legal services to the weaker sections of society and to organise “Lok Adalats”. The objective of “Lok Adalats” was to settle the disputes between the parties without delaying the process. “Lok Adalat” deals with the disputes where formal and elaborate examination of evidence is not necessary to bring the parties to compromise or settlement. The award passed by the “Lok Adalat” is deemed to be a decree of a Civil Court or order of Court of tribunal and is legally binding on both the parties. District Level Aid & Advisory Boards were constituted (DLAAB) to co-ordinate free legal service and organise ‘Lok Adalats’ with the respective districts.

The disputes which could be settled or compromised in a “Lok Adalat” include disputes regarding marriage and other family matters. The family disputes, specially the disputes in respect of marriage require quick disposal for providing redressal to the women who are suffering from injustice and are subject to torture and violence in their marital life.

Considering the plight of women to whom justice was denied due to long pendency of the proceedings before the Courts, the National Commission for Women evolved the concept of “Paribarik Mahila Lok Adalat” (PMLA). Marital disputes and other family disputes may be settled or compromised in the PMLA. Apart from pending cases, the dispute can also be resolved at the pre-litigation stage and the parties can avail themselves of the opportunity to resolve their dispute without aid of any lawyer. They do not need to incur any expenditure. PMLA supplements the effort of the DLAAB for redressal and speedy disposal of such cases. In the year 1995 the first PMLA was organised and till date 76 + 3 PMLAs have been organised throughout the country. Three PMLAs have been organised by the State Women’s Commission in collaboration with National Women’s Commission and State Legal Services Authority. Paribarik Mahila Lok Adalat is the alternative forum where

redressal will be available to the destitute wives or other family members within the shortest span of time. For making the PMLA more effective necessary amendments are to be made in the "Legal Services Authorities Act", We demand speedy remedy of all disputes, specially the family disputes and if more and more PMLAs are organised, a new arena of delivering justice to the weaker section will be established.

Parivarik Mahila Lok Adalat (P.M.L.A.)

Recently with the financial help of the National Women's Commission, and in collaboration with State Legal Services Authority, West Bengal, the West Bengal Commission for Women has organised three PMLA.s, the first in Kolkata, within the premises of the National University of Juridical Sciences and the second and the third respectively in the districts of Hooghly and Coochbehar. The three events were held on the following dates respectively : 22 November, 2003 ; 31 January and 1 February, 2004; and 21 and 22 February, 2004. Full reports of the third event are yet to come; but at the session held at NUJS, 22 cases were presented before 4 benches, presided over by Justice Indira Banerjee, Justice Amarabha Sengupta, Ms. Bandana Roy, W.B.H.J.S, and Ms. Kalpana Dey, W.B.H.J.S. In about 8 cases out of these, some settlement could be reached. On the second occasion, in 2 days, 30 cases were presented in front of 5 benches, presided over by Justice Amarava Sengupta, Justice Sunil Ranjan Sarkar, Sri Mahadeb Ghosh, W.B.H.J.S., Sri Santimoy Ghosh Hajra, W.B.H.J.S and Sri Mridul Ranjan Roy. Here, too, in about 10 cases, some settlement could be arrived at while PMLA has been effective in some cases,

the Women's Commission members who had been present at the session, also observed some problems. They pointed out these later in a discussion with Justice Samaresh Banerjee and deliberated on possible measures to plug these loopholes in this useful institution.

Role of Justice Delivery System in Combatting Violence Against Women : A Seminar

This Seminar was organised by the Commission in collaboration with State Legal Services Authority, West Bengal on Sunday, 7 December, 2003 at T.T.T.I., Salt Lake City.

Professor Jasodhara Bagchi, Chairperson explained the objectives of the Seminar at the outset and pointed out that it was part of the programmes to observe the fortnight of protest against violence on women. Justice Shyamal Kumar Sen, Justice Indira

Banerjee, Justice Pradipto Ray and the Hon'ble Minister of Judicial Affairs, Shri Nisith Nandan Adhikari also addressed the inaugural session over which Justice Samaresh Banerjee, Chairperson, State Legal Services Authority, Presided. Flavia Agnes, lawyer and activist gave the keynote address which was followed by very fruitful discussion. Rama Das, Vice Chairperson, Women's Commission, gave the vote of thanks.

Flavia Agnes Speaks at the Seminar

Violence against women is a very important issue of the women's movement and we have been dealing with

it in the last two decades. Yet the problem persists. so somewhere we need to find where things are going wrong and how do we address where things are going wrong. I think that's very very important. the whole justice delivery system ; how do we perceive it, how we understand it, how does it act upon us. For this session I will take only two issues : one is the issue of violence against women and the new laws that have come and what is going wrong there ; and the second is a more civil kind of issue, that of maintenance to women. Though not directly related to violence, non-availability of maintenance is what keeps women trapped into this relationship. In fact, according to me, the whole issue of violence against women within the home is framed within the issue of dowry ; precisely by the patriarchal system which does not want to give the daughters anything—no dowry, no inheritance, no nothing! daughters should be just married off! and they should stay there and nothing should be given to the daughters. But even giving and not giving dowry does not cause violence, it happens where there's a persistent demand later. Why does violence happen there? It happens because the family to which the daughter belongs, doesn't want the daughter back. They would much rather give the dowry, more presents, more dowry, to keep her married. So, the power structure not only operates in the husband's home, the power structure also operates in the girl's natal family, for which all of us are responsible; each one of us!

And then why does she die? She doesn't die suddenly. She doesn't die without a warning. Whether she commits suicide or she is murdered, she knows she will die. She comes and tells her parents 'Yes, I am going to die; if you don't do this, they will kill me,' and yet she is sent back. And then she dies. Whether it is suicide, whether it is murder. And somewhere we feel that the responsibility lies with the judiciary, with the police, with some N.G.O.S., with somebody else. We have no responsibilities. If our daughter dies, we have no responsibility. And according to me, no daughter will die if she has an assurance that her parents will support her if she breaks the marriage. But my concern is not just that this girl will die, but my concern is that not every death is caused by the demand of dowry. Somehow by highlighting dowry, we have suppressed so many other reasons (as to) why women are killed. Going back to what Justice Banerjee had said, the man in Patna killed his wife because the wife gave birth to daughters. Can we call this a dowry death? What will we call it in the legal system? It was not a dowry death. A lot of deaths happen like that. We are continuously suspecting the woman's character. The man is bringing another woman into the home. The woman is not being able to meet the expectations in the marital family. A whole set of reasons are being clubbed together as dowry death. Let's begin with 498A, which is said to be much abused; it is said that even when there is no dowry torture, women are registering cases in 498A. Are we saying that these women were not beaten? Are we saying there was no cruelty? Is 498A only a dowry-harrasment law? Is it not beyond that? And if it is beyond that then why every woman is forced to put a clause of dowry demand? She is forced to put that clause because the police do not want to register the case if there is no dowry demand. The police believe that the husband has a right to beat the wife. But he has no right to harass her because of dowry. Dowry is an offence. But if there is no dowry, then what's the problem? Every husband beats the wife. By highlighting dowry to such an extent, we have somehow made all violence in the home as dowry-related violence.

And my next question is—304B. 304B is an offence for which we had demanded that there should be a separate provision, because it is very very difficult to prove murder. So we came up with a new name called dowry death. So for murder, we made it dowry death. By making it dowry-death what did we do? It has to be within seven years. So judge has to prove that it is within seven years. And since marriages are not registered there is no proof as to when the marriage took place. Sometimes there is ambiguity, and benefit of doubt to the accused. According to the legal myth there are only two kinds of offences—either it is murder, or it is abetment to suicide. But we have created a new offence—We felt very good about creating this new offence. But there are few convictions under 498A and no convictions under 304B. Murder

becomes actually suicide. Instead of bringing it under 302, charge is brought under 306. Where there was actually cases for 302, 304, 306, convictions are now relegated to 498A with a maximum of three years' punishment ; but what actually is given is up to three months or one year.

So, murder of a woman, or suicide of a woman therefore becomes dowry-harassment or cruelty. And the percentage of conviction is around two percent. I don't see, what is the advantage of 304 B. as to what was 302. They say rules of evidences are changed under 113A and B. But these rules of evidences are seldom invoked.

I want to talk about another issue here. Two more issues I want to very briefly touch upon. In the case of women, when they are dying, there is a legal provision under evidence act called section 32 : 'Dying Declarations'. Dying Declaration is related to the maxim, 'Truth sits upon the lips of dying men'. More important is that, there is an issue that dying declaration should not be tutored. So her family member should not be present. If her family members are present, then it is discarded as tutored evidence. But there is no premise to say that the husband or his mother should not be present. So, dying declarations are recorded in the presence of the husband or in the presence of her mother-in-law. Then she is told that if she survives and she gives evidence against her husband, she will not be taken back, and her children will not be cared for. So, it is in this situation that the woman says that the stove burst, or I tried to kill myself or whatever. So, truth does not sit on the lips of the dying women because their concerns are different. She will not implicate a husband. So how will our judges, sitting as Session Court Judges, in a District Court complex look at such evidence? What is their conditioning to appreciate such evidence? They are taught they are neutral arbitrators, they cannot intervene. In this civil system, they have to just sit back and see what is the evidence that is coming before them. And evidence doesn't come. Or they are not conditioned to interpret the evidence in a new manner.

The second issue I want to take up, is the issue of maintenance. Maintenance comes in many different provisions. There's one provision that comes in a magistrate's court. That is 125 CRPC. Even in the Family Court, it will come. But I am very sad to say this from this public forum, that the state of Family Courts in West Bengal is so dismal, that it seems that the whole machinery has not paid any attention either to setting of Family Courts or to their effective functioning. So, actually if there is a Family Court, maintenance will come in the Family Court, where District Level Judges will decide on maintenance. But if it is not there it will go to the Magistrate Court, but that is a lower judiciary.

Now we say we have equality. Article 15, Article 16 say, women have equality. Then we also have a special provision, 15(III), which says you can make special laws, special provisions for women. Then we have a Hindu Marriage Act which says men and women are both entitled to maintenance. A man can claim maintenance only in Hindu law. Not in Christian, not in Muslim, not in Parsi. Only a Hindu husband can harass his wife by resigning his job and asking for maintenance. Under Section 125, we have sub-clauses IV and V ; that is, if a woman is adulterous or if she remarries she is not entitled to maintenance. And she has to be a wife or ex-wife to claim maintenance. Woman is bad, so she is not entitled to maintenance. Or husband can say I have an earlier wife, so this marriage is not valid. So his sexuality also comes as against her claim for maintenance. He comes to court and says that she is not my wife because I have a valid subsisting marriage; where he is not dispensing his obligation to the maintenance of that wife either. But that can be a cause of defence for him not to give maintenance to the second wife. Or you can say, that yes, I was living with her. But now I have married and got another wife. When she is my real wife, this woman is not my wife. So, when we say equality, what kind of equality? Can maintenance be pitted against sexuality? Maintenance has to be pitted against his income, her income; his capacity to maintain her, her capacity not to maintain herself. But instead, Court goes into lengthy arguments, questioning paternity—go

and do paternity test ; prove that this child belongs to your husband. So all the time, the proof is on her. For two years, three years, five years, ten years, this one is in court, from one court to the other, again and again she is asked to prove that she is the wife; not only because of her problem with her sexuality, but the problems of his sexuality. He can be bigamous. he can lead her on to say that O.K. let us live together as husband and wife and all that. And our Court says bring proof that you are the wife. Then they will talk about maintenance. She's not supposed to claim any right on her natal family. She has no right to inheritance. These issues never come up. In the husband's house she has no roof over her head.

And the last thing I want to say, though we don't have a law, civil law to protect women, I don't think any court can give the order, the husband has the right to beat wife. In a civil case, in the civil law can the judge say, yes, if the husband beats the wife, its all right! So, can we not get injunctions? under civil law? under CPC as well as specific relief act? That this woman has the right to stay in her matrimonial home. The husband has no right to throw her out. The husband has no right to beat her. She has a right of peaceful residence, and peaceful occupation of the matrimonial home, because she is married and she is coming to this house. I've just got this right for a woman whose husband has a valid marriage. He filed for divorce, But because of his affair with this woman, he did not get divorce. Now he wants to throw out this woman in the same manner and says, actually I have a valid marriage. And this one is only my mistress. And we have a child of 13 years. So, recently we filed it not in the Family Court, but we filed it in the Civil Court. And we got interim order that he cannot throw her out. Now the case is coming to a final hearing. And what comes for final hearing is this woman's moral character, the woman's sexuality. How can a virtuous, Hindu woman live with a man who is already married? So, she doesn't deserve anything. She deserves to be thrown out on the street. She doesn't deserve maintenance. Maybe her child, if paternity is proved, can be given some amount for maintenance. And these are the values we're questioning today. That when we see a woman before us as judge, what do we see? Do we see an economic relationship of which she is deprived? Do we see a woman who is in a subordinate position in the power-relationship in a marriage? Do we treat her equality? An equality that cannot be compared ; when you compare maintenance with sexuality, what is the measure of equality that we are looking at? There is no measure at all. There are two different issues, two different yardsticks and the way they are applied is different. One is the issue of economics, one is the issue of this woman's survival and the other is the issue of moral. So, is the judge there to enforce morality? or, is the Judge there to enforce her maintenance rights? These are the questions we need to ask.