



Testimony to Matrimonial Commission, May 9, 2005

Purvi Shah, Executive Director, Sakhi for South Asian Women

On behalf of Sakhi for South Asian Women and the women and communities we serve, I would like to thank Chief Judge Judith Kaye, Justice Miller, and the members of the Matrimonial Commission for undertaking this crucial work to better matrimonial processes – and consequently the lives of those who utilize these courts. I admire your efforts to hear the range of important issues faced in matrimonial processes before making recommendations for change. I especially applaud the spirit for reform – change is hard to agree upon but you have an opportunity now to suggest and implement reforms that could affect people for their whole lives.

My name is Purvi Shah and I serve as Executive Director at Sakhi for South Asian Women, a New York City non-profit community-based organization which supports survivors of domestic violence and advocates for change in our communities towards attitudes which perpetuate violence. Sakhi, which was founded in 1989, has witnessed a tremendous rise in recent years in our community's need for domestic violence services – and especially in the need to access the courts. In the past 5 years, Sakhi has responded to more than 2,000 pleas for assistance. Last year alone we handled 581 new requests for support and conducted more than 50 outreach presentations on the issue of domestic violence in our communities.

Sakhi works with survivors of abuse from various South Asian countries, including Bangladesh, India, and Pakistan, as well as members of the South Asian Diaspora including the Indo-Caribbean community. The vast majority of women Sakhi works with are immigrant women who have few resources of support or avenues to information.

Thank you for giving me the opportunity to testify today. I would like to focus on the importance of language access in the courts and especially in matrimonial proceedings. Before I speak to language access concerns, however, I want to recognize that there are a number of other pivotal issues facing immigrant survivors of abuse including the need for safety and confidentiality measures in the courts, access to counsel for matrimonial cases, and the importance of economic settlements which consider health insurance and immigration status.

I know you have heard from a number of my colleagues in the anti-violence movement; I would like to extend that base of information. For immigrant women who are caught in abusive relationships, reaching out for help and services is a tremendous act of courage. Many survivors of violence are threatened by their abusers if they speak out – threatened

with further violence, deportation, or retaliation. In fact, we have routinely seen abusers manipulate the court system by filing false orders of protection or complaints with various agencies in order to trap women and discredit them. Through our 15 years of work, we at Sakhi have noticed that immigrant women often have very little access to information about their legal rights and options or how the courts work. Unfortunately, abusers tend to have much more information and familiarity with U.S. laws and agencies and often use this knowledge to further jeopardize an already vulnerable population.

Immigrant women who do take the brave step to address the abuse in their lives are faced with a number of significant challenges. One key challenge for women who are limited English proficient is communicating their experiences to the court. Survivors of domestic violence may go to family and criminal court for a range of vital reasons including to obtain orders of protection, child custody, maintenance, divorce, etc. If a court interpreter does not adequately present a survivor's case, her whole life – and her children's lives – can be affected.

While the courts do utilize interpreters, in our experience as advocates who accompany survivors to court, we have witnessed interpreters who at best simply do not speak the language in question fluently and at worst offer legal advice, break ethical standards, and harass survivors of abuse.

Let me share a few experiences of immigrant survivors with you: in one situation, a survivor indicated that she believed the interpreter would translate in favor of whichever party paid him the most money. She described the experience stating, "He didn't translate in an accurate manner. He'd tell me the wrong thing. But I understood a little bit – that's how I knew. I think he was in conspiracy with my husband. It seemed like they were involved in a scam – it seemed like a money thing. He'd translate in favor of whoever gave him money."

Another survivor described to us that an interpreter spoke to the other party for a long time. She summarized her experience with court interpreters by saying, "Interpreters rushed and did not explain properly. Of the five interpreters that I used, one was good, another okay and three were bad. One of the three kept speaking in English. He wouldn't translate in Bengali."

Finally, one survivor attested to her mixed experiences and the positive role an interpreter can play by saying, "The first two translators were not professional. One of them spoke Punjabi and that is not my language. So I couldn't understand the translator. The third translator was professional and translated everything."

In a sample study Sakhi conducted of 7 women with 12 different court cases, 3 out of the 7 indicated their cases had been delayed due to interpretation. The delays were up to 9 months. None of the 7 women knew how to file a complaint against a court interpreter. We know that if more extensive research were conducted, additional disheartening findings would be discovered.

Sakhi's daily experience of working with immigrant women accessing the courts has shown us that women who are not able to share their experiences are often voiceless before the court.

On behalf of Sakhi and the many advocates working to ensure immigrant women can access the courts, I would like to propose seven recommendations. First, it is essential that the courts implement clear testing, training, monitoring, and grievance procedures for court interpretation. With adequate testing and training, court interpreters would be assessed for proficiency and understand their legal and ethical obligations as interpreters.

Second, it is imperative that court interpreters are provided with specialized training around domestic violence, sexual assault, and child abuse. Such training should underscore the need for confidentiality of survivors' stories and the importance of not divulging information about any ongoing case to other community members since it could jeopardize the safety of the survivor and her children.

Third, judges and attorneys should also be given specialized trainings in reference to interpreters which specifically build skills to assess when an interpreter may not be performing their duty appropriately. Such trainings would enable judges and attorneys to fulfill their duties in the courtroom or on behalf of their clients more effectively. While enhancing the interpretation process overall will take time, this kind of training can help individual judges and attorneys ensure language barriers do not prevent access to the courts or legal remedies.

Fourth, court interpreters should be requested to undergo background checks to identify if they have cases before the court or a conflict of interest, including being an abuser.

Fifth, there should be a clear grievance procedure that enables parties and the courts to hold interpreters accountable for egregious behavior or failing to perform their duties professionally. This procedure should be explained to all parties requiring interpretation.

Sixth, the courts should recognize that more than one interpreter may be needed in certain situations. For example, if a witness needs an interpreter, who will explain to the other parties what is happening in the legal proceeding while the witness speaks? Attorneys may also make comments while the interpreter is performing another duty: without a second interpreter to translate the attorney's comments, there is no way for a client to know what is happening. If two interpreters cannot be present, it is critical for the judge to slow the proceedings to ensure no piece of information is left without interpretation.

Finally, as in New Jersey, court interpreters should be given incentives to obtain training and additional skills development. We need to take the profession of interpretation seriously and understand it is a highly complex set of skills and cognitive abilities.

If these recommendations are not adopted, we will continue to face failures of justice in the court. For example, we will continue to have supervised visitations where an abuser threatens children or makes comments against the mother in another language – and nobody will know. We will have situations where law guardians cannot interview children and make any informed basis for a recommendation.

Ensuring the availability of qualified interpreters is certainly a resource issue and opens up a complex series of challenges. But in our increasingly diverse society, we must strive to

address these challenges head-on. The Matrimonial Commission will not achieve its goal of reducing trauma in the courtroom if it does not ensure that interpretation processes are enhanced. To underscore this point, I will leave you with one final statistic from a National Center for State Courts study currently in process on access to temporary orders of protection. In a preliminary finding, this study discovered that 8-11% of the 158 courts surveyed nationwide had utilized minors to interpret. This is a shocking statistic given that minors should never be forced to detail experiences of violence. It is traumatic for children to record such experiences, usually on behalf of their mothers. The experience is also painful and threatening for women who, understandably, will not fully disclose their experiences of abuse in such a situation.

Without access to qualified interpretation inside and outside the courtroom, we are keeping immigrant survivors of violence who seek to make a new life shackled to abuse. By making substantial and substantive language access reforms, however, we can ensure that immigrant survivors of violence and their families are able to access the courts and build a life free of violence.

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