



RIGHT investigation



Fresh blow for Bangladeshi arsenic victims

BANGLADESHI medical and legal experts have expressed frustration over the rejection of a lawsuit worth millions of pounds in compensation to victims of arsenic poisoning in Bangladesh. The House of Lords, the upper house of Britain's parliament, on 5 July dismissed a case brought by Binod Sutradhar against the British Geological Survey (BGS). Sutradhar claimed the BGS was negligent in not testing for arsenic during a water evaluation in Bangladesh.

Sutradhar, from the Brahmanbaria district east of Dhaka, suffers from arsenic poisoning after he drank water from tube-wells dug by international aid agencies in the 1990s. In 1991 the BGS carried out a pilot research study into the chemistry of groundwater in central and northeast Bangladesh. At the time, there was no evidence that arsenic was present in water-soluble form, so the teams did not test for it. But many feel that the BGS is responsible because although they saw that there was massive use of the tube-well water for drinking, they did not use the technology they had to determine whether this water was safe, says Shahdeen Malik, a member of Sutradhar's legal counsel.

Mahmudur Rahman, coordinator of Dhaka Community Hospital Trust and member of the National Arsenic Expert Committee, said that the BGS team has knowledgeable people who cannot deny



responsibility. "Why did the BGS not determine water quality despite arsenic testing guidelines set by the World Health Organization?" he asks. Millions of people continue to suffer from drinking water that contains dangerously high levels of arsenic. It causes cancer of the skin, bladder, lungs and kidneys, killing 270,000 a year in Bangladesh. The House of Lords upheld an earlier ruling by the UK Court of Appeal that the allegation, which could have cost British taxpayers millions of pounds, was "hopeless". Sutradhar could not be reached for comment, but Malik told SciDev.Net that the House of Lords' decision means that nobody is responsible for the sufferings of millions of people. "This is really unfortunate," he said.

The rejection of the lawsuit has eliminated the last ray of hope for arsenic victims counting how many days they have left to live, according to Quazi Quamruzzaman, chair of the Dhaka Community Hospital. "We are frustrated at the outcome of the case," he said. The BGS argued that its report was a minor survey and that the local authorities responsible should have been aware that it did not determine whether the water was safe to drink. Alan Thorpe, chief executive of the UK Natural Environment Research Council, BGS's parent organisation, said that the ruling confirms that "scientists cannot be held responsible for the research they decide not to do".

Source: SciDev.Net

COURcorridor



Order is not signed yet! Where shall you go?

WELL, after a long legal battle the Honourable Court of the High Court Division has decided in favour of you. You failed to calculate how much money you have spend to come here. The peons of the Honourable Judges' run after you for baksheesh. Security police will also give you salam. Usually no peon or security police chases when you lose your case. Bench clerk must get speed money for typing the order. Now you must also pay lubrication fees for the file to get to the section office of the Court in time. You also have paid that in advance. That's not the end of all payments! Now you also have to pay for the certified copy. When your loved one is inside the custody you are ready to do anything to get him or her free. Now a second seems to you to be an hour. However the judgment or order you are longing for is not signed yet for some reason! For example the Honourable Judge did not check it yet or second Judge yet to sign etc. How long will it take? Well that depends. The learned judges of the lower judiciary sometimes fix a date "For Order". However for some unknown reason no such date comes in the near future. A case is now pending in the Nilphamari District Court. It is pending there for about 20 years and has travelled to the Appellate Division of the Supreme Court even. However now it is only waiting for an order. You can anxiously wait and only wait for that day to come. Now you wonder where to go? You are simply hopelessly helpless.

Barrister Mokdadul Islam is an advocate of the Supreme Court, Bangladesh, who can be reached at mail@legalsteps.net

This regular column will publish on every alternate Saturday.

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star 10 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, fax 8125155; e mail <dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net

LAW alter views

The draft Bill on domestic violence: Some recommendations

SUROBI CHOPRA

THE Law Commission of Bangladesh recently took the initiative of drafting a Bill on domestic violence. Ain-o-Salish Kendra (ASK), a well-known human rights and legal aid organization has welcomed the Law Commission's initiative.

Domestic violence is one of the most widespread and least recognized human rights abuses in the world. Bangladesh is no exception in this regard. Recent research by the One Stop Crisis Centre (OCC) revealed that almost 70% of sexual abuse suffered by women occurred within their own homes. The Draft DV Bill is an important step towards the legal recognition of domestic violence in Bangladesh.

In its introduction to the Bill, the Law Commission recognizes the fact that domestic violence is not restricted to those who are economically disadvantaged, but cuts across all barriers of class and community. Importantly, it also recognizes that multiple strategies are needed to combat domestic violence, and that domestic violence legislation is necessary but not sufficient.

The Law Commission has tailored this Bill to the Bangladeshi context, and attempted to address the particular manifestations of domestic violence in Bangladesh, such as harassment on the failure to have a son, violence related to dowry, and acid attacks. It has also adopted a number of innovative measures, including interim protection orders, protection orders, compensation for the victim, and counseling orders.

This Draft Bill combines civil law and criminal law measures, which acknowledges the fact that many victims of domestic violence do not want criminal prosecution of the abuser as a first resort. Its structure, in brief, is as follows: a victim of domestic violence can contact an enforcement officer who will investigate the complaint and put it before the Family Court. The Court is empowered to issue protection orders that bar the abuser from committing a range of

acts and provide for safe accommodation for the victim if needed. If the abuser breaches the protection order, he is liable to a fine and imprisonment for this breach, in addition to being liable to prosecution for any other offences (such as assault or dowry demands) that he might have committed when he abused the victim.

ASK has responded in detail to the Draft Bill on Domestic Violence, with a view to making it more comprehensive and effective in the Bangladeshi context.

The Draft Bill has many strong positives. These include the following:

- The Bill extends to the whole of Bangladesh and grants jurisdiction to Family Courts.
- The Bill is gender neutral, and includes a range of domestic relationships within its ambit.
- The Bill provides for a person other than the victim of domestic violence to make an application to the court on behalf of the victim.
- The definition of domestic violence extends beyond merely physical violence, to include sexual and psychological violence as well.
- The Bill provides for interim protection orders while an applicant's complaint is being investigated.
- The Bill provides for a range of measures that can be included in a protection order, including barring the abuser from entering the shared home.
- The Bill empowers the court to grant compensation to the victim where appropriate, of any amount.
- The Bill empowers the court to order counseling for the abuser and/or the victim.

However, ASK also has concerns about some aspects of the Draft Domestic Violence Bill, and feels that other aspects of the Bill need further development and clarification. Therefore, ASK has offered suggestions on possible amendments to these aspects of the draft Bill, which it hopes would open up avenues for discussion on the future development of the Bill. These include the following:

- ASK is concerned about the role

of "enforcement officer" in the draft Bill, which makes the police directly responsible for receiving and investigating complaints under the Bill.

- In addition, the Bill lacks any punishment or complaints mechanism for enforcement officers.

Recommendation: Rather than "enforcement officers" the DV law should create a distinct cadre of "protection officers", who are trained to deal sensitively with problems of domestic violence. In addition, the Bill should include a robust oversight mechanism to monitor the performance of these officers.

- The current Bill does not offer protection to those who are separated or divorced.

Recommendation: The Bill should be amended to offer protection to persons who live in a shared household, or have ever lived, in a shared household.

- The Bill includes domestic servants below the age of eighteen within the ambit of domestic relationships. ASK feels that a detailed discussion is needed on whether domestic servants should be included under a DV law or whether they should be protected by labour / employment laws.

Recommendation: There is a need for further discussion on the appropriateness of including domestic servants under a DV law and analysis the protection available to domestic servants under current law. This must be followed by the appropriate legal and policy steps needed to ensure that domestic servants work in safe, violence-free conditions and are fairly remunerated.

- The definition of domestic violence in the draft Bill excludes some important aspects of such violence, like economic abuse, marital rape and forced marriage.

Recommendation: Economic abuse, marital rape and forced marriage should be included within the definition of domestic violence.

- The draft Bill provides that protection orders can last for a maximum of 12 months. This could seriously undermine civil



law protection for the victim of DV. Recommendation: There should be no maximum limit for protection orders.

- The draft Bill provides that the offender can be excluded from the shared home, but also provides that if alternative accommodation can be found for the victim, it is the victim who must move out of the shared home rather than the offender.

Recommendation: The Bill should ensure that it is the offender who, if necessary, moves out of a shared home rather than the victim. Otherwise, the fear of losing the home and access to children would prevent victims from complaining about domestic violence.

- The draft Bill states that when a protection order is breached, an "offence of domestic violence" is committed. The current language of the Draft Bill creates inconsistencies with many provisions of the existing criminal law, because it creates the possibility that the same action by an abuser, for example, harassing a spouse for dowry, could be prose-

cuted under anti-dowry legislation as well as DV legislation, with different procedures and penalties under each law.

Recommendation: The draft Bill should make the action of breaching the protection order a criminal offence (rather than creating a separate "offence of domestic violence", and enjoin the magistrate trying the breach of a protection order to lay charges against the offender for any other offences that he has committed under existing criminal law.

- The draft Bill provides for rather weak protection to the victim, as compared to DV laws in other countries. If the abuser breaches the protection order, the protection order is renewed. The abuser faces criminal prosecution only on a second breach of the protection order. Moreover, the punishment for the second breach is restricted to a maximum of 6 months imprisonment and/or a Tk 10,000 fine. The punishment for a third breach is also restricted to a maximum of 1 year's imprisonment and/or a Tk 20,000 fine.

Recommendation: The very first breach of a protection order should be followed by arrest and prosecution. The maximum penalty for breaching the protection order should be higher; the maximum fine should be raised to Tk 1 Lakh.

- ASK also recommends ensuring that the court can rely on the sole testimony of the victim to conclude that a protection order is required and that the abuser has breached the protection order.

There is a need for general procedural clarification in the Bill, including time limits for investigation and trial.

In analyzing the draft DV Bill, ASK has reviewed DV laws in other jurisdictions, and done a section by section review of the present draft Bill. The above discussion is a summary of ASK's comprehensive comments. These comprehensive comments and recommendations have been submitted to the Law Ministry by ASK.

The writer is a practicing lawyer and working as associates of Ain O' Salish Kendra (ASK).

LAWweek

Tax ombudsman to start work in six months

The newly appointed tax ombudsman will start receiving complaints and other tax related grievances from taxpayers within the next six months. Khairuzzaman Chowdhury, the first ever tax ombudsman of the country, told The Daily Star at his residence that his first responsibility is to protect those persons who face harassment even after paying taxes rightly. Clarifying the details about the ombudsman services, he said a complainant has to file a complaint along with an affidavit mentioning the particulars of a tax case.

"No fictitious name will be accepted and every complainant has to file an affidavit first to have a proper investigation into a case" he said. Although, Khairuzzaman Chowdhury has already been appointed as the tax ombudsman, the government has yet to recruit the manpower necessary for commencing the services or to establish an independent office. The ombudsman will start his office at the Directorate of Taxes Inspection in the capital on a temporary basis but a permanent office will be set up in the newly constructed Audit Bhaban in Kakrail. The office of the tax ombudsman will start its work with a few government officials on deputation but it will require 60 permanent officials for its initial operations. The National Board of Revenue (NBR) sources said the government is likely to appoint AS Jahir Mohammad, a member of the NBR (Income Tax), as the adviser to the ombudsman. The tax ombudsman said in addition a head office in Dhaka for the department and a branch in Chittagong will be set up soon. He said it will take about six months to start taking complaints. -- The Daily Star, July 10.

President back to work

President Iajuddin Ahmed returned to work after 45 days and agreed to give an appointment to Leader of the Opposition Sheikh Hasina to meet him in person. However, Hasina, also president of Awami League (AL), has decided not to visit the president. "Our party chief (Sheikh Hasina) wanted to meet the president when he was sick. But as he is doing quite okay now, there is no need to meet him," Obaidul Quader, AL joint general secretary, told The Daily Star. The president's return put a lid on speculations about his illness and not returning to work. A Bangabhaban press release said the president went to his and did a number of routine work for more than one hour before leaving for his residence. Press Secretary to the President Mokhesur Rahman Chowdhury said the president signed a number of government files and a message on the World Population Day and diplomatic documents. AFM Solaiman Chowdhury, secretary to the president, and Mokhesur welcomed the president back to his office with bouquets. High military and civil officials of Bangabhaban were also present on the occasion. The press secretary to the president said in line with the doctor's advice the president has to take adequate rest and medication and the number of visitors is limited. -- The Daily Star, July 10.

HC Verdict on Shazneen Case Death penalty of 5 confirmed

The High Court (HC) upheld the death penalty for five of the six people sentenced by a lower court and acquitted the other in the sensational Shazneen rape and murder case. The HC Death Reference Bench on Shazneen murder case in its judgement said the prosecution proved beyond doubt the charges against the five convicts for the gruesome killing of Shazneen, a class IX student at Scholastica School in the capital, eight years ago. The five are Shahidul Islam alias Shahid, a domestic help at the

Gulshan residence of Shazneen's family, Syed Sajjad Mainuddin Hasan alias Azad, a contractor for renovation of their house, Badal, his assistant and two maids, Estema Khatun Minu and Parvin. The bench comprising Justice Ali Asgar Khan and Emdadul Haque found that mason Shaniram Mandal was not involved either in the conspiracy or rape or murder of Shazneen. He just supplied a chisel to the killers, it said and acquitted him. The convicts will get 30 days for filing appeal with the Supreme Court (SC) against the HC judgement. The HC ended its three-day delivery of judgement on the appeal of the six persons against the lower court verdict. Apart from the relatives of the convicts, a number of lawyers thronged the court of the death reference bench at the annex building of the Supreme Court as they were eager to hear the judgement of this sensational case. Hasan masterminded the conspiracy of raping and killing of Shazneen in a bid to stop her from disclosing to her family the incident of his grabbing her on April 1, 1998, and got his plan executed by his accomplices 22 days later, the court observed. Counsels and relatives of the convicts rejected the judgement and said they would appeal against it with the Supreme Court. The prosecution and Shazneen's family expressed their satisfaction, saying the judgement rightly upheld the lower court order, which proves the five were truly involved in the crime. -- Prothom Alo, July 11.

Draft bill okayed to amend Constitution

The cabinet in its weekly meeting with Prime Minister Khaleda Zia in the chair approved a draft bill to amend the constitution incorporating a provision for extending time limit for holding by-election in a vacant parliamentary seat to 180 days from 90 days. The hurried move to pass the bill in parliament during its current session through extending its scheduled duration was taken to avoid holding two by-elections in the remaining tenure of the current Jatya Sangsad. The two parliamentary seats -- Dinajpur-3 and Comilla-8 -- fell vacant following death of two ruling BNP lawmakers Khurshid Jahan Haque and Col (ret) Akbar Hossain last month. When a lawmaker is elected for a short period before dissolution of a parliament, he/she does not get any scope to represent the constituency, Law, Justice and Parliamentary Affairs Minister Moudud Ahmed yesterday said. "Through the proposed provision, spending of a big amount of public money and hassles of the administration for holding by-elections would be avoided," Moudud said, explaining the rationale of bringing the amendment. The draft amendment of the constitution (15th amendment), if passed, will be the second amendment of the constitution during the present BNP-led alliance government. Section 4 of article 123 of the constitution provides for holding by-election in a constituency within 90 days of its becoming vacant due to any reason. However, if it is not possible due to 'any act of God', 90 more days are allowed. "In the amendment, we will propose not to hold by-election in any vacant seat if the tenure of a parliament remains for only 180 days or less," Moudud said. -- The Daily Star, July 11.

EC to 'display' updated voter list, but says it won't publish draft

The Election Commission (EC) decided to make the updated voter list, prepared through door to door visits, open to the public for inspection before publishing the final list. The move is an obvious compromise between the popular demand for publishing a draft voter list and Chief Election Commissioner (CEC) MA Aziz's staunch resistance to publication of a draft list. The latest back-peddling by the EC on its previous statement is also evidently in line with its usual practice of creeping out of its intransigence after much controversy. The EC decided to display the updated

voter list for public inspection, so the people can lodge objections to correct the flaws on it. The process of settling claims and complaints about the voter list 'on display' is the same as the procedure for lodging complaints after publication of a draft voter list. But the EC is not terming the 'voter list on display' as the draft voter list saying that the procedure being applied for updating the existing voter list does not allow publication of a draft list. "The prepared voter list will be kept open for all...anybody can inspect it and can lodge objections, if they have any. After settling the objections and claims, if any is lodged, the voter list will be printed," Abdur Rashid Sarkar, the newly appointed secretary to the EC Secretariat told reporters. -- The Daily Star, July 12.

TIB refuses to withdraw graft reports

Transparency International Bangladesh (TIB) refused to withdraw its corruption index reports on two ministries that threatened to sue the organisation terming the reports "baseless" and "untrue". TIB Honorary Chairman Prof Muzaffer Ahmad in an interview with satellite television channel ATN Bangla said, "We have no reason to withdraw the reports as we have all the facts and figures on what the reports are based." "So, there is no question of rejecting the report," Prof Muzaffer said. The TIB report titled "Corruption Database 2005" and launched on July 5 ranked the LGRD and cooperatives ministry and the environment and forest ministry as the two most corrupt institutions. LGRD Minister Abdul Mannan Bhuiyan and Environment and Forest Minister Tariqul Islam held press conferences and rejecting the reports. They raised questions over the sources of TIB's funds and motives of such reports. They also threatened to sue the TIB if it does not withdraw the reports. On the issue of TIB funds, Prof Muzaffer said the government knows all the sources of our money and there are government departments that release the funds. "We can get funds from any donor if their conditions are acceptable to us and our project is acceptable to them and if the government permits acquiring of the funds," he said in the interview. -- The Daily Star, July 12.

16 charged with Jamal Uddin murder

A charge sheet was submitted to the Chief Metropolitan Magistrate's (CMM) Court, accusing 16 people of killing business magnate Jamal Uddin Ahmed Chowdhury, Anwar Hossain, CID inspector and investigation officer (IO) of the case, filed the charge sheet with the court. Earlier the investigation officer submitted the charge sheet to Assistant Commissioner (Prosecution) Mohammad Abu Taher for approval.

The IO however did not include the name of Maruf Nizam, brother of BNP lawmaker Sarwar Jamal Nizam, in the charge sheet. Family members of Jamal Uddin have repeatedly been accusing Maruf Nizam as the mastermind of the whole episode ranging from Jamal's sensational abduction back in July 2003 to his killing later on. Chief Metropolitan Magistrate (CMM) Sheikh Mohammad Mobarak Hossain fixed July 17 for hearing on the acceptability of the charge sheet. Kanchannagar Union Parishad (UP) Chairman Kashem, Anwara Sadar Union Chairman Shahidul Alam alias Shahid, Kala Mahub, Lomba Mahub, Ishaq alias One Piece, Sobhan, driver of the microbus used in the abduction, and Boli Mansur are among the chargesheeted accused. Of them, Kashem chairman is still at large while 15 others are now in jail. -- UNB, Dhaka, July 12.