



LAW vision

INTERNATIONAL OZONE DAY

Air pollution: Rampant violation of environmental laws

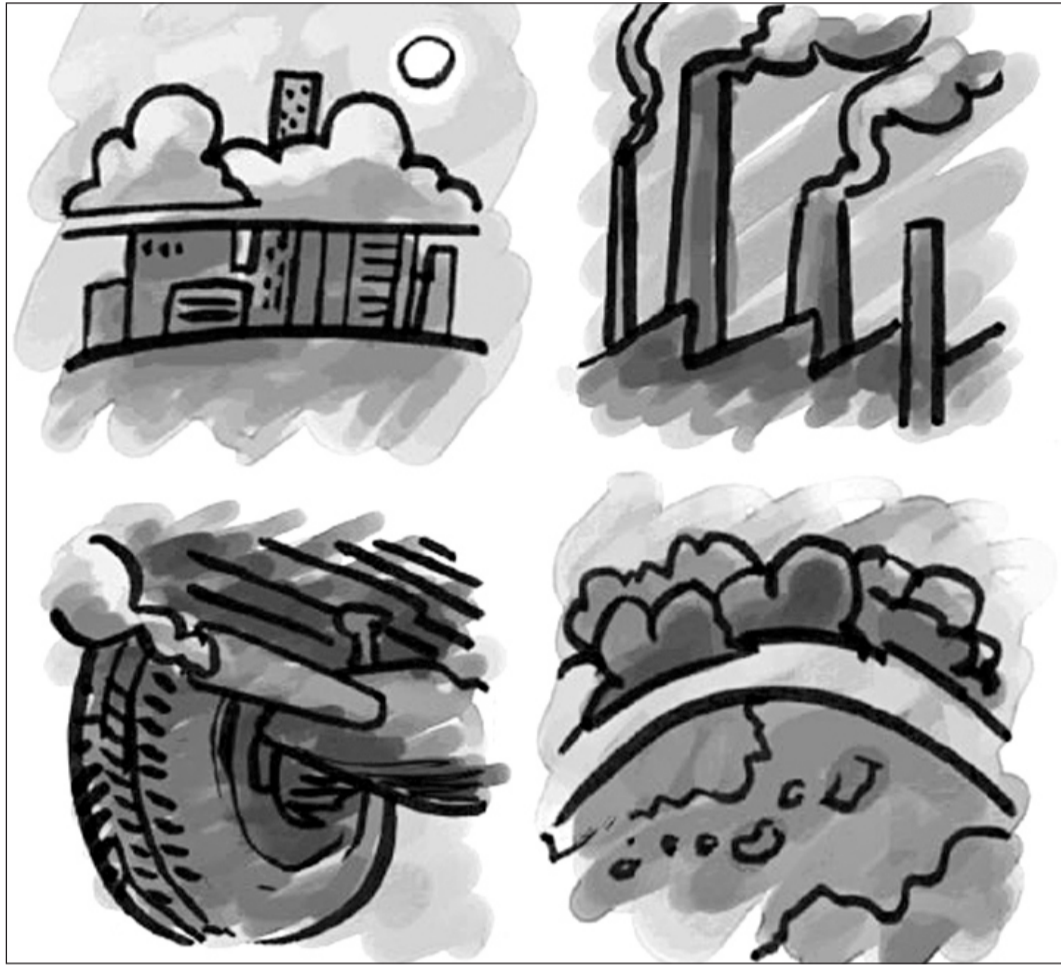
ABU NOMAN MD. ATAHAR ALI

AIR is indispensable for the survival of all living organisms on earth, including human beings. It is even more important than water – without water a person can survive for days, but without air not more than a couple of minutes. But this very air is being polluted all over the world. In Bangladesh it is rampant and awesome. The industrialisation of society, the introduction of motorised vehicles, and the explosion of population are factors contributing toward the growing air pollution problem.

The principal sources of air pollution in the rural areas are brick kilns and cooking stoves. During the monsoon, rural people cook inside their houses without adequate ventilation systems. This gives rise to severe indoor air pollution which brings health hazards, particularly for women and children.

In fact, there are two major sources of air pollution in Bangladesh, industrial emissions and vehicular emissions. These are mainly concentrated in the cities. Other than those there are numerous brick kilns operated seasonally, mainly in dry season all over Bangladesh. Almost all of these kilns use coal and wood as fuel, resulting in the emission of particulate matter, oxides of sulfur, and volatile organic compounds. In addition to these usual sources of fuel, used rubber wheels of vehicles are also burnt, which emit black carbon and toxic gases. For this reason, the city's average SPM levels are about 2 times higher than the country's standard of 200 µg/m<sup>3</sup> in residential areas and are more than 10 times higher than the WHO guidelines of 120 µg/m<sup>3</sup> (24 hours) in commercial areas.

Trees play a very vital role in regenerating our environment. The poisonous gases given out by automobiles and industries – carbon-dioxide, carbon-monoxide etc – are taken in by the trees through the process of their leaves and in exchange they give out life giving oxygen in the air for us. The trees known as the best friend of mankind are also maintaining balance of atmosphere, particularly protecting the ozone layer. Hence, it is widely



predictable that due to indiscriminate felling and use of trees, especially in brick fields as fuel, the ozone layer in undergoing rampant depletion which makes a permanent negative impact on the world climate.

It is more important to note that, this depletion of ozone layer is so serious that it has caused slits in the ozone layer permitting the ultra violet ray exposure to come this earth direct.

As a result of this dangerous ultra violet ray we are being attacked by cancer and many other diseases. According to Dr. Surian Batagoda, about 1 million people die each year worldwide as a result of urban air pollution. In Bangladesh 15 thousand people die per year and the country loses 800 million dollars for the air pollution in four major cities.

This is the state of air pollution and its awesome effect. But what's about the law in this context? Article 32 of the Constitution of the People's Republic of Bangladesh deals with the protection of right to life and personal liberty. Although it does not explicitly recognise the right to environment but in two recent cases [48 DLR (1996) 438 and 17 BLD (1996) (DLR) 1] the Supreme Court of Bangladesh has resolved that the "right to life" enshrined as a fundamental right includes the "right to a healthy environment". So we can demand a healthy air as a right. It should be noted that, there are a good number of Acts in the country to deal with environmental problems. But some of these laws are so old that they cannot fulfill the present demand of the society. It is more important to

mention that, most of the laws are not enforced due to alleged practice of corruption among the enforcing authority. The new laws also need amendment to accommodate the present environmental hazard.

It has been noted earlier that, the main reason of air pollution in Bangladesh is the black smog produced by industrial and vehicular emissions. Especially the huge number of brick-kilns and the indiscriminate felling of trees for use as firewood there of affecting the environment a lot. These are because the laws are not in action. Parliament of Bangladesh passed the Brick Burning Control Act, 1992 which provides that a brick field can be set up on 1.5 acres of land but many brickfield owners use 3 to 6 acres of land, in some cases more than that,

for setting up brickfield. Certainly the land should be fallow land but in most cases it is not. It is also mandatory to install a minimum 50 feet high chimney with filter in every kiln for emission of smoke. But the owners are violating the law using lower chimneys and sending vaporous waste, dust, carbon dioxide, carbon monoxide, sulfur dioxide, fluorine etc in the immediate atmosphere. According to Brick Burning Control Ordinance of 1992 and 2001 (revised) the owners are prohibited from using all kinds of fire wood in kilns and that a law breaker will be fined Taka 50,000 or sentenced to six months imprisonment.

According to section 12 of the Bangladesh Environment Conservation Act (ECA) 1995, no industrial unit or project shall be established or undertaken without obtaining, in the manner prescribed by rules, an Environmental Clearance Certificate from the competent authority (Director General under ECA). Section 15(8) of the said Act provided 3 years imprisonment or 3 lac taka fine or both for the violation of section 12. But it goes without saying that the rules are violated rampantly in exchange of money and we hardly saw anyone to have been punished under the law.

In the urban areas the black smog produced by vehicular emissions is going on in violation of the traffic law as well as the Bangladesh Environment Conservation Act, 1995. The four major cities of Dhaka, Rajshahi, Chittagong and Khulna are the main victims of this.

According to section 6 of the Bangladesh Environment Conservation Act, 1995 vehicles emitting smoke or gas injurious to health or environment shall not be operated nor shall such vehicles be switched on except for the purpose of test-operation. And "smoke or gas injurious to health or environment" means any smoke or gas which exceeds the standards fixed by the rules. According to section 15(3) of the said Act any violation of this law would entail a penalty of 5 or 10 thousand taka in different cases.

Black smog is mainly produced by the old and unfit vehicles. And so to haul old and unfit vehicles under section 47 of the Motor Vehicles Ordinance, 1983 (Extracts) seems the only option to check it. There is a system of carrying a fitness certi-

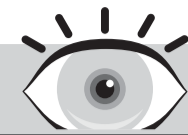
cate. It can create a very positive impact for reducing air pollution in Dhaka city. But a section of corrupt officials of Bangladesh Road Transport Authority (BRTA) are allegedly issuing fitness certificates to unfit vehicles. So, in fact, the environmental laws could not be enforced for the corruption, which seems to be the main national problem of Bangladesh.

It is also a reason of air pollution in Dhaka that the Dhaka City Corporation (DCC) Ordinance, 1983 does not deal much with the total environmental problems. Bangladesh Environment Conservation Act (ECA)-1995 and Environment Court Act-2000 are two important legal instruments for control and conservation of environment. These laws have got the provisions for imprisonment up to 10 years or fine up to Taka 10 lac or both. But in fact, punishments for violation of environmental law in seldom occurs Bangladesh.

After coming to power the present government, made some laws like the prohibition of polythene shopping bags, banning 2-stroke 3-wheelers and other old-unfit vehicles. No doubt, these laws were too much welcomed by all classes of people across the country. But, all such laws go in vain only for the practice of corruption at levels of enforcing authorities as well as in the higher level of government. For this reason we see huge number of old vehicles on the road causing rampant environmental pollution.

Finally, in 2000 the earlier government also had given the highest priority to environment pollution and passed 'Environmental Court Act 2000' for completing environment related legal proceedings effectively. But all should bear in mind that to enact a law is easier than to implement it. Since the birth of Bangladesh many laws have been enacted for the protection of environment. But, we all know how much effective these laws have been. So this is high time to implement and make effective the already existing laws.

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LAW week



Crack down on Proshika, Over 100 staff arrested

The government has launched a countrywide crackdown on Proshika, one of the largest non-government organisations (NGO) in the country, ahead of opposition programme to lay siege to the Prime Minister's Office (PMO). The crackdown on Proshika staff was allegedly launched in suspicion of the organisation's preparation to send a large number of people to Dhaka to take part in the 14-party siege programme tomorrow and grand rally on September 18. The opposition's programmes were aimed at pressing home its demand for reforms to the election commission and the caretaker government. According to Proshika sources, law enforcers arrested more than 100 officials of the organisation in different parts of the country. Police also raided many Proshika offices across the country. Sources said most of the arrestees are area coordinators and staff of Proshika's different development areas. Many police officials across the country said the Proshika staff were arrested for their 'anti-government activities'. --The Daily Star, September 11.

EC admits chance of fake voting

Election Commission admitted that there is possibility of fake voting as the updated electoral roll contains more names than the actual number of voters. "There is possibility of fake voting due to duplication of names as some people registered their names in more than one place while many names that should have been dropped are still there," said Abdur Rashid Sarker, secretary to Election Commission (EC) Secretariat. "But people will resist fake voting," he told reporters. The EC secretary said, "If any irregularity in the election observation work is proved against any organisation, the EC will ban them for a minimum of three years." Asked about fund misuse by some NGOs in the name of election observation during the union parishad elections in 2003, he said, "We are trying to finalise a policy on election observation." "There has been no policy so far in this regard and we could not take any action against these organisations." The EC secretary said they are planning to give those who have not registered their names in the updated voter roll a chance. He, however, said the EC will finalise the matter. --The Daily Star, September 11.

Home ministry for dropping 2 cases filed on 'political ground'

The government decided to withdraw two cases filed against two brothers in connection with the possession of 520 bottles of contraband Phensidyl saying the cases were filed with 'political motivation'. The two brothers Mohammad Sobahan and Mohammad Selim lived in the South Begunbari slum in the city's Tejgaon area. Metropolitan Public Prosecutor (PP) Abdullah Mahmud Hasan on September 7 submitted two separate petitions along with a home ministry letters recommending the withdrawal of the cases saying the cases were 'politically motivated'. Judge Mohammad Aman Ullah of the Fifth Additional Metropolitan Sessions Judge's Court, Dhaka fixed October 10 and November 5 for hearing on the petitions. According to the prosecution, a team of Tejgaon police led by its then officer-in-charge (OC) raided Nannu's shanty at South Begunbari and arrested Sobahan with 280 bottles of Phensidyl on November 11, 1999. Sensing the presence of police, his brother Selim and two others fled the scene. Sub-inspector Sirajul Islam filed a case in this connection under the Special Powers Act, 1974 against Sobahan, Selim and the two others with Tejgaon Police Station on the same day. --The Daily Star, September 12.

EU mission asks BNP leaders about electoral reform dialogue

Visiting members of the European Union (EU) Election Observation Exploratory Mission asked BNP leaders if a dialogue is possible between the ruling alliance and the opposition coalition on the issue of electoral reforms. In reply to the query BNP leaders told the delegation that the ruling alliance is ready for a dialogue if the opposition proposes one. The exchange occurred when the mission delegates met the leaders of BNP in the party's central office at Nayapattan in the capital. During the meeting, which went on for about two hours, BNP leaders led by its Secretary General also LGRD Minister Abdul Mannan Bhuiyan, and the EU mission led by Andrew Bruce discussed the matter of monitoring the upcoming election and the pre-election circumstances of the country. The ruling party leaders gave their consent to deploying the EU mission for observing the next election. Declining to disclose the meeting agenda, the leader of the EU mission said, "We have just listened to their views."

But meeting sources said the EU mission asked the ruling party leaders about their position regarding the proposal for electoral reforms and also wanted to know about the views of BNP regarding Justice KM Hasan, the likely chief adviser to the next caretaker government, and Chief Election Commissioner Justice MA Aziz. The leaders of BNP told the EU mission that Justice Hasan will take over the charge of the next caretaker government as its chief adviser in accordance with the constitution, the sources said. --Prothom Alo, September 12.

Phase-wise RMG wage increase proposed

The National Wage Board at its 24th meeting failed to reach a consensus on minimum wages for garment workers despite a hectic seven-hour long negotiation. Failing to reach a consensus the board sent to the government, for its consideration, a three-tier proposal to be implemented in three years with Tk 1,604 as gross minimum salary in the first year. The board proposed Tk 1,604 as gross minimum wage for entry-level garment workers for the first year up to June 30, 2007. Minimum gross salary would be Tk 1,890 in the second year during July 1, 2007 to June 30, 2008 and it would be Tk 2,117.50 in the third year starting from July 1, 2008. Anisul Huq, representative of Bangladesh Garment Manufacturers and Exporters Association (BGMEA) on the board did not agree to the proposal, and Nazma Akhtar, representative of workers on the board did not sign the proposal, saying it did not match the expectation of the workers. However, Board Chairman Anwarul Haque, independent member on the board Iqbal Ahmed, and permanent representative of the workers on the board Zaful Hasan signed the proposal. Permanent member of the employers on the board Kazi Saifuddin Ahmed was absent in marathon meeting held at the board office in Dhaka. --The Daily Star, September 12.

Judiciary Separation

The much-talked-about bill for separation of the judiciary from the executive has been gathering dust in parliament for over six months due to the government's insincerity towards Supreme Court (SC) directives in this regard. The possibility of passage of the bill during the tenure of the current parliament is also fading fast as its last session will be prorogued on September 27 with the parliamentary body tasked with submitting a scrutiny report on the bill having made no move yet. The Parliamentary Standing Committee on Law, Justice and Parliamentary Affairs held its last meeting yesterday but did not discuss the bill styled Code of Criminal Procedure (Amendment) Bill, 2006. The bill was the last on the meeting agenda.

Committee member Justice Mozammel Huq admitted that they did not discuss the bill at yesterday's meeting. If the bill is not passed by the parliament during its ongoing session, its effectiveness will be lapsed with dissolution of the current parliament on October 27. In that case, a new bill will have to be moved in next parliament which will be formed after the next parliamentary election scheduled for January next year. Sources said sensing the government's stance for not passing the bill, the parliamentary body, which has held at least six meetings since the bill was sent to it for scrutiny on February 26, did not even start the process of scrutinising the bill. --The Daily Star, September 14.

Corresponding with the Law Desk

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HUMAN RIGHTS monitor

India: Impunity fuels conflict in Jammu and Kashmir

Abuses by Indian Army and Militants Continue, with Perpetrators Unpunished

THE Indian government's failure to end widespread impunity for human rights abuses committed both by its security forces and militants is fueling the cycle of violence in Jammu and Kashmir, Human Rights Watch said in a report released today. The 156-page report, "Everyone Lives in Fear: Patterns of Impunity in Jammu and Kashmir," documents recent abuses by the Indian army and paramilitaries, as well as by militants, many of whom are backed by Pakistan. Indian security forces have committed torture, "disappearances" and arbitrary detentions, and they continue to execute Kashmiris in faked "encounter killings," claiming that these killings take place during armed clashes with militants. Militants have carried out bombings and grenade attacks against civilians, targeted killings, torture and attacks upon religious and ethnic minorities.

These abuses have taken place against the backdrop of almost two decades of the failure of the political and legal systems in India and Pakistan to end abuses or punish the perpetrators. Since 1989, the armed secessionist struggle against Indian rule in Jammu and Kashmir has claimed more than 50,000 lives. Kashmir remains a potential flashpoint between the nuclear-armed neighbors India and Pakistan.

"Human rights abuses have been a cause as well as a consequence of the insurgency in Kashmir," said Brad Adams, Asia director at Human Rights Watch. "Kashmiris continue to live in constant fear because perpetrators of abuses are not punished. Unless the Indian authorities address the human rights crisis in Jammu and Kashmir, a political settlement of the conflict will remain illusory." The new report, based on research from 2004 to 2006, documented

abuses that have occurred since the election in 2002 of a Jammu and Kashmir state government with an avowed human rights agenda and the resumption of peace talks between India and Pakistan that same year (after the countries nearly went to war in 2002).

Indian security forces claim they are fighting to protect Kashmiris from militants and Islamic extremists, while militants claim they are fighting for Kashmiri independence and to defend Muslim Kashmiris from an abusive Indian army. In reality, both sides have committed widespread and numerous human rights abuses and violations of international humanitarian law (or the laws of war).

Extrajudicial executions by Indian security forces are common. Police and army officials have told Human Rights Watch that security forces often execute alleged militants instead of bringing them to trial in the belief that keeping hardcore militants in detention is a security risk. Most of those summarily executed are falsely reported to have died during armed clashes between the army and militants in "encounter killings." The Indian government has effectively given its forces free rein, while Pakistan and armed militant groups have failed to hold militants accountable for the atrocities they have committed. Through documentation of the failure to prosecute in recent cases and some older, key cases, the report shows how impunity has fueled the insurgency. If the Indian authorities had addressed these abuses seriously when they took place, public confidence in the authorities would have increased and future abuses may have been substantially reduced. Instead, India failed to prosecute or discipline the perpetrators.

Impunity has been enabled by Indian law. The report documents cases where Indian security forces have shot civilians under the

authority of laws such as the Jammu and Kashmir Disturbed Areas Act and the Armed Forces (Jammu and Kashmir) Special Powers Act. These laws, enacted near the beginning of the conflict, allow lethal force to be used "against any person who is acting in contravention of any law or order for the time being in force in the disturbed area." Other laws offer state agents effective immunity from criminal prosecution. For example, Article 197 of the Indian Code of Criminal Procedure only allows the prosecution of state actors with the permission of the relevant ministry. This is rarely provided. Prosecutions of security force personnel, even where the facts are well established, are therefore rare.

Human Rights Watch also stated that the work of both the National Human Rights Commission and the State Human Rights Commission in Jammu and Kashmir is severely hampered by laws that prohibit them from directly investigating abuses carried out by the army or other federal forces. Although government officials claim that disciplinary measures have been taken against some security personnel, it is unclear this happens, as details are almost never made public.

"It's absurd that the world's largest democracy, with a well-developed legal system and internationally recognized judiciary, has laws on its books that prevent members of its security forces from being prosecuted for human rights abuses," said Adams. "It's time for the Indian government to repeal these laws and recommit itself to justice for victims of all abuses, whoever the perpetrator may be."

The report also documents serious abuses by militants, many of whom continue to receive backing from Pakistan. Numerous massacres, bombings, killings and attacks on schools attributed to the



militants are often intentionally downplayed by supporters of Kashmiri independence or its accession to Pakistan. Militant groups have targeted civilians, including women and children, whom they consider to be "traitors to the cause" or for expressing views contrary to those of one or another armed group. Alleged

militants have murdered nearly 600 Kashmiri politicians since the conflict began, usually as retribution for joining in the electoral process. Officials conducting the polls have been killed or tortured, some with their noses or ears chopped off.

Militants have also been responsible for bomb attacks that targeted

civilians. They have attacked religious minorities in Kashmir such as Hindus and Sikhs, as well as ethnic minorities such as the Gujjars, whom the militants target because they believe them to be government informers. Although many of the militant groups currently operating in Jammu and Kashmir have become increasingly unpopular, Kashmiris are afraid to speak out against them. A conflict over Kashmiri identity and independence has slowly but visibly mutated into a fight under the banner of religion, pitting Islam against Hinduism and drawing religious radicals into its heart.

There is considerable evidence that over many years Pakistan has provided Kashmiri militants with training, weapons, funding and sanctuary. Officially, Pakistan denies ever arming and training militants. Under pressure from the United States after the attacks of September 11, 2001, Pakistan banned several militant groups in January 2002, including the Jaish-e-Mohammad and the Lashkar-e-Toiba. But these groups have continued to operate after changing their names. India blames these groups for many armed attacks. Pakistan appears to be keeping its options open should peace talks collapse by continuing to support these groups. Pakistan remains accountable for abuses committed by militants that it has armed and trained.

"The militants and their backers must end the bombings and the targeting of civilians," said Adams. "Continued abuses ensure that the cycle of violence will continue. And these abuses only add to the suffering of the people in whose name the militants are ostensibly fighting."

Source: Human Rights Watch.