

Law and Our Rights



Poverty, Children and the Law

On the Streets or Behind Bars

In Bangladesh, the gap between laws in theory and the cultivation of socio-economic grounds which make the applicability of these laws feasible has never been comfortably narrow. Two cases in point are the abandonment and the imprisonment of children.

In the recent past, a child named Sagar was rescued from the streets and the jaws of death by a private organization called Women Health's Coalition and handed over to a NGO for his rehabilitation. Prior to dumping him far away from home, Sagar's father had falsely assured his son that he would return to fetch Sagar, but the child had somehow known, even then, that it would be otherwise. Yet, there was little he could do at the time. Although about seven years old in actuality, severe malnutrition has ensured that the emaciated, shrunk, and skeletal boy looked no older than three years. Presently, Sagar's health is improving under the medical treatment, food, and shelter being provided by an NGO and the Inner Wheel Club of Gulshan, Dhaka.

Regular occurrence of such incidents mocks laws such as those encoded in article 317 of the Bangladesh Penal Code. According to this article, guardians found guilty of abandoning their wards less than twelve years old may be fined or sentenced to prison for a period of up to seven years or both. Should a child's death result from such abandonment, the guardians may be charged with murder. It is perhaps rhetorical, yet important to ask, were Sagar to die of starvation and malnutrition while under the care of his extremely poor parents, who should be charged for this untimely death? Sagar's parents? Non-governmental organizations working for the welfare of children? Or the government which promises food, clothing, shelter, and medicine to every citizen of the country prior to election? Strong messages may be conveyed to guardians by exemplarily punishing some of those found guilty of abandoning their children. However, such a solution is thoroughly short-sighted. In order to devise long-term solutions, we also need to ask what the reasons are behind what is an obviously heinous act. Time and history have borne out the

truth of parents' almost unconditional love for their children. Should parents be forced to abandon this boundless love under certain circumstances, can laws really deter them even if they are aware of them? The locking up of street children with convicted and under-trial prisoners is another case in point. On 27 January, 1995, the release of six children was arranged. They were Feroz (9), Jashim

by **Salma Ali and Maimuna Huq**

reception Home in Tongi at least, even though the children I am talking about did not commit any wrong as such? Who is responsible for the hapless children who roam the streets of our towns and are often used by rioters and criminals? Who is responsible for limiting the vision of a significant number of our children to mugging, theft,



These young boys were released from Dhaka Central Jail in January — photo BNWLA

(10), Shah Alam (9), Aynal Haque (9), Nur-e-Alam (8), and Azizul Islam (7). Another seven boys were released on 30 January. They were Nabian (10), Nurunabi (9), Litan (10), Kamal (10), Hanif (9), Full Mia (10), and Majid Rashid (10). All these youngsters were found sleeping in the stadium prior to a brawl and were picked up by the police and then dumped behind bars, lest they contribute to the chaos to be created by the brawl. The effectiveness of emptying the streets of urchins prior to a brawl is open to debate. But what is far more important is where these youngsters, who supposedly constitute the future of our nation, should be taken and kept. What is an appropriate place for street children and juveniles? Cells overcrowded with convicted and under-trial men and women at the Dhaka Central Jail? I would think not. Could the children above not have been taken to the juvenile Cor-

picketing, hooliganism, and disregard for laws and morals? Can the government not build more juvenile centres and appropriate homes where street children may be kept for certain periods of time when necessary and be provided with counseling and medical treatment? The root cause underlying the abandonment of children and production of street children is by and large poverty. Recent studies have shown that almost all abandoned children are born of extremely poor mothers. Since most women who abandon their children are either unmarried or widowed or abandoned by unscrupulous husbands, the financial status of the mother plays the most important role in shaping the child's fate. Many might think that in a society such as Bangladesh where tongues constantly itch to wag against women who "fall" to retain their honor or preserve a marriage for in-

the husband abandons the wife prior to the child's birth. Studies show that while members of the middle class and upper class may abandon "illegitimate" children to preserve their place and status in society, illegitimacy is not a matter of much concern to lower class folk. A mother does not usually abandon her child as long as she is able to feed it. Given the increasing number of luxurious cars, plazas, restaurants, and palatial houses in our towns, it is extremely difficult to believe that an increasing number of parents are abandoning their children because the former cannot feed the latter. Poverty together with a horrendous lack of social awareness regarding human and therefore women's and children's rights, child rearing, and family planning, can lead to catastrophes of incredible proportions. In order to establish justice and human rights in our society, the trend

of husbands abandoning their wives at will must be severely curtailed through legal measures. Women must be encouraged to report to appropriate non-governmental and governmental organizations when their husbands abandon them. Legal forces must be made accessible to those for whom these laws exist.

Since illiteracy is widespread amongst members of the low and lower middle classes, the electronic media can be used to socialize men into regarding abandoning their wives as an amoral and cowardly act. Islam certainly permits divorce but only under extreme conditions.

Also, women's consciousness must be raised concerning the need for "official" marriage and the preservation of marriage documents. With an "official" status comes the privilege of official papers which can later enable a woman to find justice swiftly: after all, the sphere of laws is an official and formal one. A reduction in the rate of husbands abandoning their wives is likely to have a positive effect on the rate of abandonment of children.

Social awareness training for low and lower middle class parents concerning child rearing might be organized at both governmental and non-governmental levels. Parents can be informed regarding how to treat their children, respond to the temperaments of individual children, when to punish them and how and when to simply ignore them, when to answer their questions, when to encourage them and when not, etc. Parents can be made to realize the vital effect the treatment of their children has on the children's psychological and character development.

Speaking of a child's development of character, one wonders whether law enforcement authorities are helping or hindering this process when they place street urchins together with criminals and potential criminals in the jail. The government's attempt to exert some control over the range of destruction caused by harkals by sweeping harkal scenes clean of roaming children who might be encouraged to participate in stoning the police or breaking up vehicles or burning down buildings would not have been a bad one were the street youngsters

picked up and returned to their guardians or taken to correction homes suitable for youngsters of different types. Instead, these children are exposed to the severely detrimental influence of established criminals in jails.

Articles have been written previously concerning the housing of safe custody prisoners with prisoners of all categories in Bangladesh jails, in gross violation of human rights and the international code for the treatment of prisoners, in order to prevent children from participating in destructive harkal activities; shall we facilitate their turning into even greater destroyers? When a child kept for months in the same cell as a murderer, later on grows up to be one, who should be held responsible?

When one of the children released from Dhaka Central Jail was returned to his family, six-year-old Nur-e-Alam's mother was not excited at all, although Nur-e-Alam ran over to his siblings and broke down into tears of joy. Although this might sound callous and shocking to many, Nur-e-Alam's mother has probably gone through experiences which would shock readers even more. It is likely that she herself grew up between and betwixt jails, streets, and slums. Perhaps constant pangs of hunger, lack of clothing, and perpetual inaccessibility to medicine have sobered her natural love for her child and reduced Nur-e-Alam to no more than one more mouth to feed. Perhaps this was not the first time that Nur-e-Alam had been missing for days on end.

Who is responsible for Nur-e-Alam's mother's numbness? How many more children must be sacrificed at the altar of the constantly widening gap between the rich and the poor in this country? Sincere attempts made towards an egalitarian distribution of wealth through economic reforms, reduction of luxury expenses on both individual and organizational levels and more charitable disposition of the richer section towards constructive projects would surely and gradually soften down the edge to such "rhetorical" questions concerning poverty and poverty-related conditions.

Salma Ali is Executive Director of the Bangladesh National Women Lawyer's Association. Maimuna Haq is a member.

Lawscape

Students Receive Human Rights Essay Prizes

The Coordinating Council of Human Rights in Bangladesh (CCHRB) recently held its prize giving ceremony for an essay competition organised on the occasion of World Human Rights Day '94.

Students of nearly all the leading colleges and universities participated in the contest on the topic, "The role of political groups in protecting human rights". First, second and third prize crests, as well as cash, certificates and human rights publications, were distributed on April 19 to the following students respectively: ATM Jahed Rahman from Chittagong City College, David Samul Barry from Dhaka University's Law Department and Mushfiqur Rahman Sumon from Notre Dame College.

Chief guest at the ceremony, Janakantha's editor Borhan Ahmed said that the human rights situation in this country was very disheartening and painful. Politicians enter politics only to come to power, he said. They pay no attention to the rights of ordinary people.

He also noted that human rights were violated widely in our prisons. Our prisons were still run according to laws established in 1868. Ahmed also pointed out that despite provisions in the Children's Act 1974 to keep juveniles separate from adults, in practice children are being sent to jail and even harassed by the police.

Other speakers on the occasion included Brother Jariath D'Souza, Chairman of CCHRB; AN Rasheda Professor at Notre Dame College; and ANM Aminul Islam Executive Director of the CCHRB.

Tobacco Companies Want Class Action Suit Put on Hold

NEW ORLEANS (AP): Tobacco companies are seeking to delay a federal class action lawsuit by some 50 million smokers and former smokers until courts decide whether they have enough in common to remain a class.

The lawsuit, which seeks \$100,000 for each plaintiff, is the biggest class action case in history. It accuses tobacco companies of manipulating nicotine levels to hook smokers, and of hiding knowledge that nicotine is addictive.

The defendants are cigarette giants: R J Reynolds Tobacco Co, The American Tobacco Co, Lorillard Tobacco Co, Philip Morris Companies Inc; Liggett Group Inc.

The tobacco companies want lawsuits against them tried separately. But plaintiffs' lawyers argue that very few people can afford to sue on their own. Sixty law firms pledged \$100,000 each toward the suit.

Tobacco company lawyers sought a delay in papers filed Monday with US District Judge Okla Jones II, who ruled in February that anyone who ever ignored a doctor's advice to quit smoking may join the cigarette suit.

The tobacco companies are relying heavily on a recent appeals court ruling that thousands of hemophiliacs who got the AIDS virus from blood-clotting medicine cannot join together to sue drug companies.

Lawyers who filed the lawsuit plan to notify possible plaintiffs through media advertisements and by notices on nationwide computer services such as CompuServe, America OnLine and Prodigy, and a 900 telephone line.

But the tobacco attorneys said it makes no sense to seek potential plaintiffs until there is a ruling on whether the class meets legal standards.

The 7th US Circuit Court of Appeals in Chicago ruled 2-1 that allowing one lawsuit against companies that make blood clotting medicine would let one jury "hold the fate of an industry in the palm of its hand," and could "hurl the industry into bankruptcy."

It said the companies should not have to risk everything on one "roll of the dice" when individual suits could be tried and that differences in state negligence standards make it impossible to try all of the claims as one. The 7th Circuit also found that a single nationwide trial about negligence could prejudice individual trials for fault and cause.

Upcoming Seminar on Environment

A seminar on "The Right to a Clean Environment" will be held at Hotel Purbani at 4:30 pm on Friday, April 28. Dr Kazi Aktar Hamid, Chairman of the Society for Emancipation of the Least Fortunate (SELF) will preside. Canadian High Commissioner Jon J Scott will be the chief guest.

High Legal Fees, Not Enough Lawyers

by **P.K. Minn from Seoul**

In South Korea they is a saying, "Yujon Mujoe, Mujon Yujoe", which means if you don't have money, you get convicted at trial and if you have money, you get a not guilty verdict.

In other words, if you can afford a defense lawyer in a criminal case, you have to pay a retainer fee of minimum 5 million won (US\$ 6,250), and then a minimum finishing fee of the same amount, while in a civil case, your lawyer normally takes 10 to 20 per cent of the money at stake in a trial.

A civil servant who was recently arrested on charges of taking a 500,000 won (US\$ 625) bribe, hired a lawyer at a cost of 37 million won (US\$ 46,000) to get himself freed from detention and defend him at trial. But to raise the money to pay the lawyer he tried to extort a businessman and was arrested again for prosecution, according to a local press report.

Why then are lawyer's fees so high? It is because of a terrible shortage of practising lawyers in the country although the demand for them increased sharply with the economic progress of the society.

We have to reform our judiciary system, as it is intolerable that the poor people cannot afford to have access to lawyers," declared President Kim Young Sam who added that, "existing tradition of giving special favors to the judge turned lawyer must end forthwith for the sake of justice."

Taking the cue, the Consti-

Rape Victim in Custody While Rapists Run Free

HAMIDA, the victim of traffickers and five policemen wants her freedom. She has been in safe custody in Delhi for the last two years. The young girl would like to leave the place, but cannot find a way out. Her plight has the Delhi newspapers abuzz. It has even generated discussion in parliament. But the Bangladesh representatives in Delhi have not taken any action.

The sensational rape case has been going on for nearly two years. From the plaintiff (legal document) it can be seen that nearly two years ago, Rashid Khan lured Hamida (not her real name), to Delhi. From thereon, Hamida's dignity has been violated almost every night.

One day Rashid handed Hamida over to his associate, Mehtab, who along with his neighbour Om Prakash, took Hamida to his jhuggi (slum). They reassured Hamida that they would lodge a case against rapist Rashid. Instead, Mehtab and Om Prakash repeatedly raped the girl. Then one day, they take Hamida to the police. She feels reassured. But after a while, the five members of the police rape Hamida by turn at the police station.

After the whole affair came to light, Hamida, with the help of a Bengali couple, went to the Simapuri police station and lodged a complaint. After registering her case, Hamida underwent a medical examination and identified the five policemen. Mehtab and Prakash were also arrested at the time. Rashid fled as soon as these events took place. Two years have elapsed since then and the policemen have been released on bail. But in the name of safe custody, rape victim Hamida is still living in jail.

After receiving the news, Bangladesh National Women Lawyer's association representative advocate Seema Juhur

Hares Sue Government

TOKYO (IPS) — Hares and birds in Japan's Kagoshima prefecture are hopping mad. Their habitat is being turned into a golf course. So, with help from humans, they are suing the local government.

This is not a fairy tale. The Amami black hares, Amami woodcock, Lidith jay and White's ground thrushes of Amami-Oshima island were named co-plaintiffs in a suit filed by the Environment Network Amami last month.

The green group says it is suing the prefectural government of Kagoshima on behalf of the animals to revoke a permit extended to developers who plan to build two golf courses on the island. It notes that Amami-Oshima already has a large golf course and more of the same would only destroy the area's ecology.

If the island's human residents had their way, the hares and the birds will take the stand with them when the case is finally heard in court.

But the Japanese legal system does not recognise non-humans as plaintiffs, and the Kagoshima District Court is treating the likes of the Amami black hare as human beings.

It has now asked the Environmental Network Amami for the "full name and address concerning a certain person called Amami no Kurousagi (the black hare)."

"There has never been such a trial before in Japan," observes the *Mainichi Shimbun*, a leading national newspaper.

But lawyers for the group are unfazed, and say the obstacle can be overcome by making four members of Environmental Network Amami represent the animals in the suit. Says Takaaki Kagohashi of the group: "The request is a formality and does not worry us too much."

The lush Amami-Oshima lies at the tip of southern Japan. The Worldwide Fund for Nature (WWF) calls its vast trove of wildlife and plant species as "a treasure that belongs to the world."

Hares Sue Government

The Amami black hare, for example, is the oldest species of hare in the world and the Japanese call it "veritable fossil." With tiny bodies but large ears, the hares can be found only in the thick woods of Amami-Oshima.

The underlying purpose of the suit is not only to protect the animals but to get across the message that development must not be carried out at the cost of animals and plants, says Environmental Network Amami head, Hiroaki Sono.

"We are also trying to tell the authorities that ordinary people must be consulted before development plans are made," he adds.

Sono says rapid postwar development programmes on the island have destroyed Amami-Oshima's environment. As a result, the black hares that venture out at night number less than 200 today.

While the Amami-Oshima suit represents the first time animals have taken local authorities to court, many

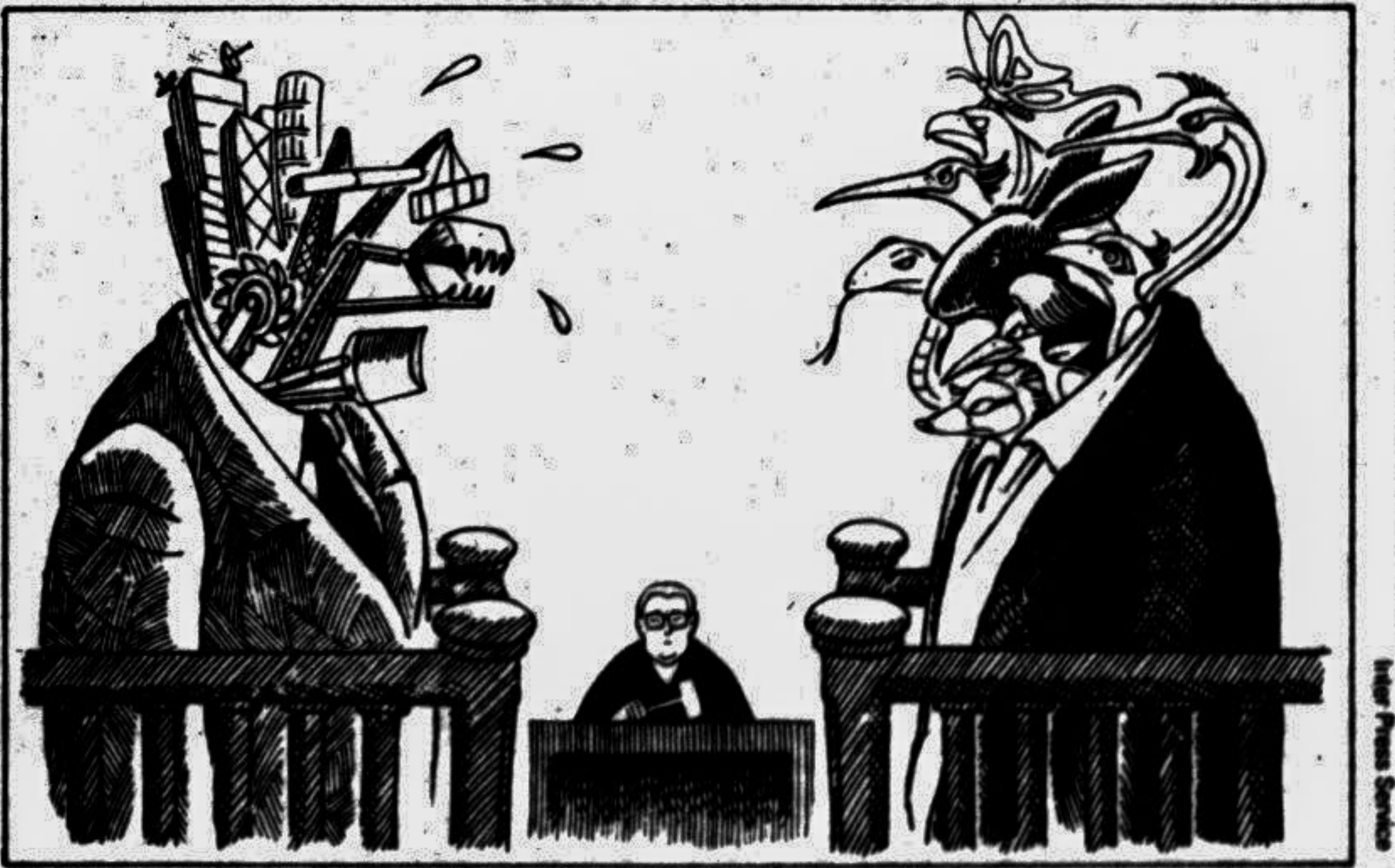
Japanese grassroot organisations have filed suits on the behalf of wild animals and plants in the past few years.

A growing number of Japanese, tired of waiting for the government to establish measures that would protect rare plants and animals, have also taken action outside of the court. In Osaka, people have begun a fund-raising campaign so they could rent a 14-hectare portion of a nearby mountainous forest.

They want to have the authority to control development projects in the area, where local resident patrols have already been set up to protect wildlife such as the rare Zephyrus hairstreak butterfly.

But environmentalists say time is running out despite the efforts, pointing out that Japan's postwar development boom has already resulted in much environmental damage.

A 1991 report by the Environmental Agency points out that a total of 22 per cent of Japan's wildlife are either ex-



Suvendrini Kakuchi