

Law and Our Rights

Right to Water and Sanitation

The Harsh Reality

by Zakia Afrin

Adequate sanitation is the foundation of development — but a decent toilet or latrine is an unknown luxury to half of the people on earth. It (adequate sanitation) is also fundamental to improving living standards. In its absence diarrhoea and other illness prevail, leading to high death rates and forcing families to spend their scarce savings on medical care. But when this fundamental problem is solved, specially when the people play a leading role in solving it, they are strengthened, and the stage is set for advance.

MARZINA with her children use the kutchra latrine near her slum like other slum-dwellers at Agargaon. She uses the nearby pond water indirectly connected with the latrine. Her children always suffer from diarrhoea. But she has nothing to do. Like her most of the poor people in our country lack safe water and adequate sanitation. The face of the problem can be termed as diarrhoea. Every year about 70 million children suffer from diarrhoea. An alarming death rate proceeds from this disease. The citizens have always been deprived of their right to access of water and sanitation. A great part of the population remain hesitated with their health problem throughout the years and thinking of the development of the country is just a luxury to them.

Access to Safe Water And Our Dream

Safe water means germless, usable, testless and colourless water. But in our country water disqualifies in all the above requirements. Even we don't meet with the demand. In the capital city, daily demand for water is 130 Cr. litre. The Water Supply Authority (WASA) only manage 84 cr litre to meet 63% of the total need.

The worse is to follow. This limited supply is also polluted. The International Diarrhoea Research Centre in Dhaka once declared that the supply of water in the city is filled with bacteria. The Department of Environment reported 200 Coliform bacteria in 100ml water in Mirpur. Again the same authority found 100 Coliform in 100 ml. water in the supply of Khulna City and declared the water undrinkable.

Not only that, the residents of Fakirpool, Gopibag, old town, and Mirpur often complain about the rubbish and unclean materials in their water. Because of the holes on the water pipes, the water becomes polluted.

The villagers and the slum-dwellers face more problematic situations. They get water from nearby rivers, ponds or tubewells. The river water, contaminated by human waste may cause Cholera, Typhoid, Dysentery, Polio and Hepatitis virus. During the last four years tubewell water brought painful death by arsenic which is mixed with the soil from pesticides, insecticides etc. It causes Hyperkeratosis, Spleen, respiration, brain and gastro intestinal disorders.

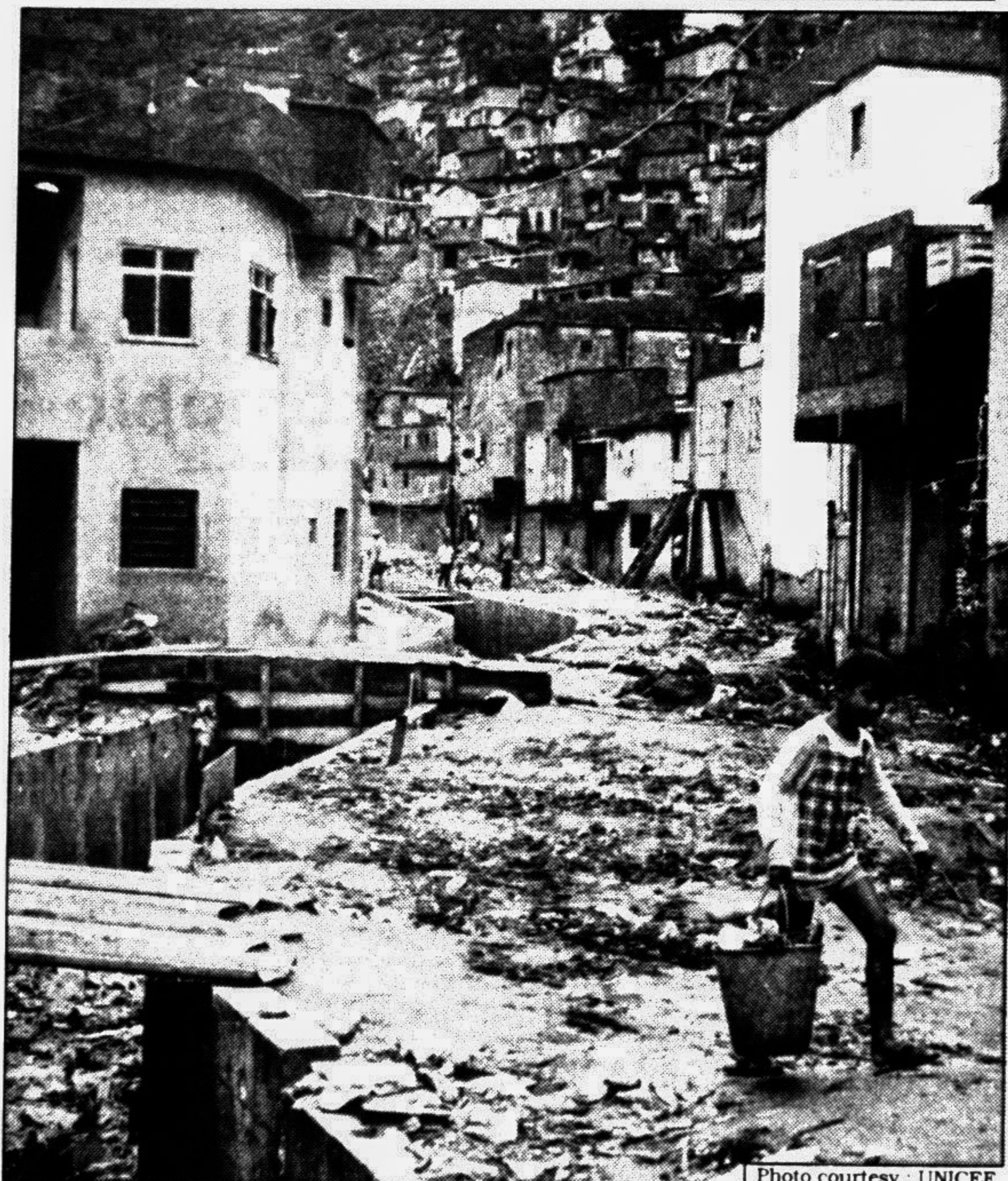


Photo courtesy: UNICEF

orders. On 8th July 1997 our Health Minister told that right at the moment 1420 people are affected by arsenic. WHO reported on 24th July '97 that in many parts of Bangladesh, drinking water contain 900 times more arsenic than the normal rate of human edurability (which is only 50 microgram per litre). WHO declared it as 'Higher risk of chronic arsenic poisoning'. Another non govt. source confirmed that 15 million people are already affected and 40 million live with the risk.

The govt indirectly con-

fessed about the unsafe drinking water as they encourage the people to drink boiled water. In a survey, it was found that of all the residents of Dhaka, almost 80 per cent boil water to drink and this costs us 2.7 million cft extra gas.

This is the reality, the grim picture of our water facilities. So, when UNICEF informed us that 97% of the people of Bangladesh have access to safe water, we are surprised.

The Sanitation Scenario

A safe means to dispose bodily wastes is a basic right of human beings and it is also a precondition to development. But from the initial stage, till now our country has neglected people's very right to sanitation. Only 48% of the total population have access to adequate sanitation.

Generally poor villagers and the slum dwellers use open space near the water sources or kacha latrine for excretion. This pollutes the water as well as the environment. People specially children moving through those places get germs easily.

The condition of public toilet is horrible. The few public toilets that we have can not meet the demand. The qualitative condition of this toilets and system of maintenance is also miserable.

School sanitation is another striking feature. Most of the schools in our country do not provide the students with proper sanitation facilities. A statistics shows that every year about 7.5 lakh children die of poor sanitation. It also negatively affects the presence of the students specially the girls.

Another important field is women's sanitation. Like other matters, women are again victim here. Schools, colleges, offices and market places have no arrangement for women's sanitation. As a result a lady staying outside her home for 8 or 9 years often suffers uneasiness. Not only that, the pressed urge to dispose of bodily waste may cause her Hydro-nephrosis, (a kidney disease) kidney failure or urinary tracked infection.

According to a statistics about 70% to 80% people in many parts of Bangladesh do not use latrines for excretion. Again few use Kacha latrines with the same damage. This human waste pollutes our rivers, ponds and the whole environment. Some big cities in Bangladesh do not have adequate sanitation system. With 33 lakhs of people in Chittagong, our business capital lacks the system. All the waste go to nearby ponds or drains in lieu of safety tanks and pollute the Karnafuli. Other rivers are also being polluted by human wastes.

A Reform Agenda

From the above discussion we can easily realize the importance of taking corrective measures. Urgently Law Watch would like to place the following suggestions for active consideration before the concerned authorities.

1. Like most of the developing countries we suffer budget deficiency. But choosing the proper technology can help decreasing the sanitation cost.
2. The water supply system is defective in many ways. The supply pipe with lot of holes leaks in such a way that about 30% to 60% of the water do not reach the end. Besides dirt enters into the water pipe by these holes. The authority must take urgent steps to prevent the wastage of water and pollution occurred in this way.

3. Water purifying process is neither expensive nor complex. Bangladesh University of Engineering and Technology (BUET) can be treated as an example of successful water supply system. Even a little much expenditure doesn't bother people.

4. People are eager to get adequate sanitation even in a higher price than as usual. Media should come forward to make the people conscious. Various social welfare organisations — the NGOs have a role to play here. It may be mentioned that in the year 1995, 494 NGOs distributed 'water sealed toilet' through 576 centres which benefited more than 8.5 million poor villagers.

5. Generally, the water for the use of cooking food, drinking, taking bath and other domestic needs is chosen by the women in the family. In all developing countries — 60% of the villagers are women and they collect and use the water. They teach the primary sanitation process to the children. Thus they play an important role in water and sanitation process. They should be aware of the necessity of safe water and adequate sanitation system. Government can rise the level of consciousness of the whole country by making them aware.

6. Schools, Colleges and all professional places must have proper sanitation facilities. Adequate number of public toilet both for men and women should be ensured.

Adequate sanitation is the foundation of development — but a decent toilet or latrine is an unknown luxury to half of the people on earth. It (adequate sanitation) is also fundamental to improving living standards. In its absence diarrhoea and other illness prevail, leading to high death rates and forcing families to spend their scarce savings on medical care. But when this fundamental problem is solved, specially when the people play a leading role in solving it, they are strengthened, and the stage is set for advance.

We are waiting for an effective governmental initiative with people's active participation. NGOs should also join in this movement. And the time is now.

The writer is the Research Secretary of Law Watch, an alternative forum for Legal and Human Rights Studies and Action. This is the reduced version of the paper presented in a Round Table organised by Law Watch, in collaboration with Unicef on 14th August 1997.

PIL On FAP-20 Pilot Project

A People-friendly Pronouncement

by Abul Hasnat Monjurul Kabir

Before parting the case we are inclined to observe that the people of Bangladesh live with flood and fight with flood for centuries. The people of Bangladesh faced the painful experience of flood causing colossal damage to crops and properties. Faced with a peculiar geographic and climatic situation it becomes a difficult task to control flood and other catastrophes that falls on the people of Bangladesh. Flood water comes from outside. No action can be effective until the upstream flow can be checked and controlled. Under the international law the upstream states got a tremendous responsibility to play part in regulating and taking integrated approach in tackling flood-related hazards. And the burden of the load of flood can not be placed on Bangladesh alone.

IN the wake of severe floods in the year 1987 and 1988, a project entitled "Bangladesh Action Plan for Flood Control" commonly known as FAP was initiated in 1990 for a period of five years. The FAP had 26 components supported by various donors. One of the components is FAP-20 or Compartmentalisation Pilot Project undertaken in the district of Tangail. The FAP-20 aroused criticism and protest for being anti-people and against environment. The project is financially supported by the Netherlands and the German governments.

In June 1994, Dr. Mohiuddin Farooque representing Bangladesh Environmental Lawyers' Association (BELA) filed a public interest litigation (PIL) against the Secretary, Ministry of Irrigation, Water Resources and Flood Control; Chief Engineer, Flood Plan Coordination Organisation; Chairman, Bangladesh Water Development Board; Project Director, Flood Action Plan, Component-20, Secretary, Ministry of Land, Revenue and Land Reform and Deputy Commissioner, Tangail district, in the writ bench of the High Court Division (HCD) of the Supreme Court. Subsequently another case was also filed by a local resident of Tangail. In both the petitions, the legality of the activities in the name of CPP was challenged.

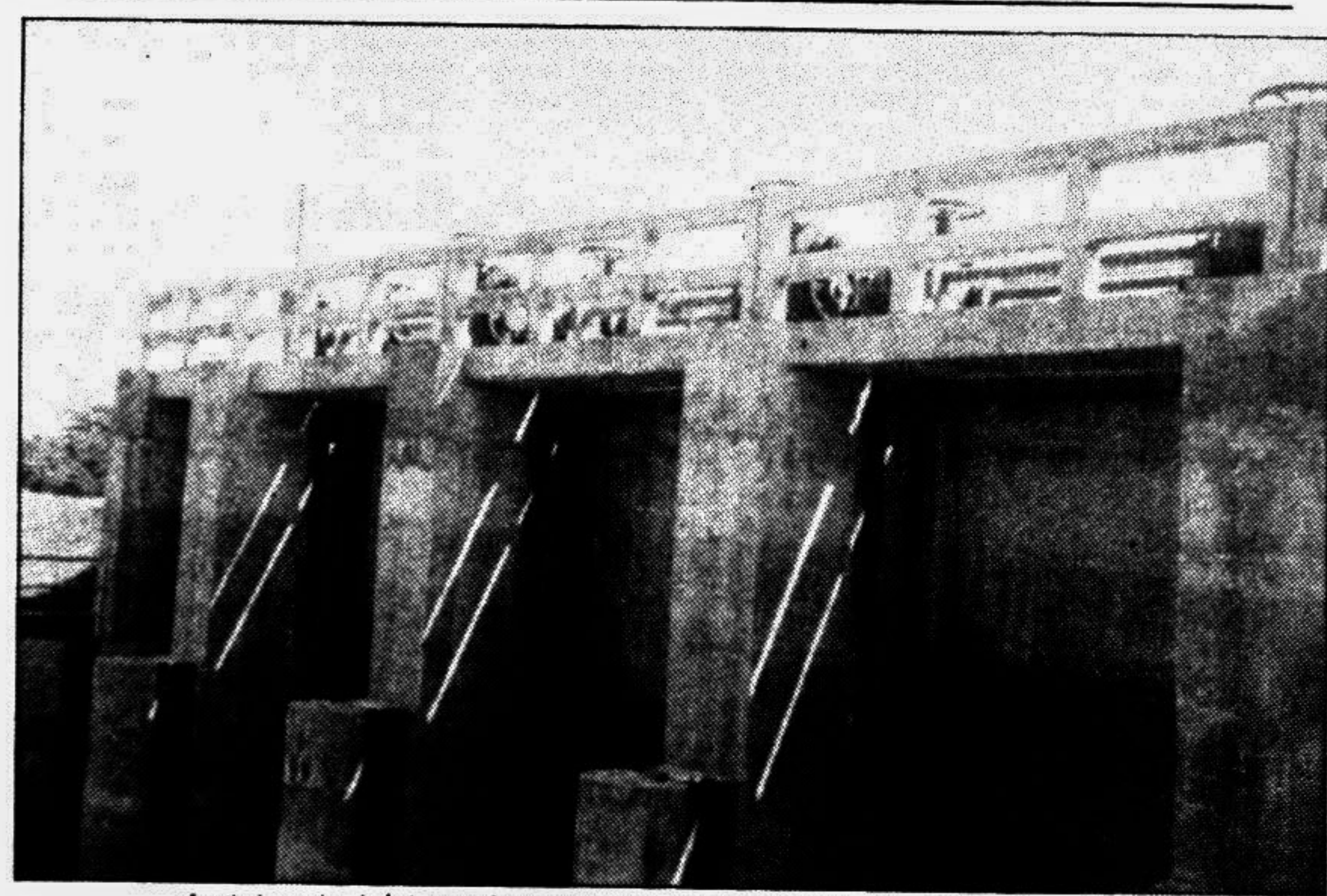
A Division bench of the High Court Division comprising Mr. Justice Kazi Ebadul Hoque and Mr. Justice A K Badrul Huq heard both the cases together and delivered judgment on 28 August of 1997. Extract from substantive portion of the judgement of the hon'ble court is reproduced below:

"From the materials and records it appears that the FAP-20 project is a development project, though experimental, aimed at controlling flood. A substantial amount has been spent and project work has been started long before. Success and not the failure of the project is expected. In the event of interference into the FAP-20 activities the country would be deprived of foreign assistance in the development work of the country and in future donor countries would be apprehensive in coming way for assistance in the wake of natural disaster. But in implementing the project the respondents can not with impunity violate the provisions of law referred and discussed here in above. We are of the view that the FAP-20 project work should be executed in complying with the aforesaid requirements of law.

In the facts and circumstances and having regard to the provisions of law we propose to give some directions to the respondents for strict compliance of the same, in the greater public interest."

The learned judges directed the respondents the followings:

- a) Comply with the provisions of Sections, 28, 30 and 31 of the Embankment and Drainage Act, 1952. These sections require that any land other than land required or taken by the engineer, or any right of fishery, right of drainage, right to the use of water or other right of property which have been injuriously affected by any act done or any work executed. The person in whom such property or right is vested shall be allowed to prefer claim by petition to the collector for compensation. When any such claim is made, proceedings shall be taken for determination of the compensation



Jugini main inlet regulator in Sub-Compartment of a CPP, Tangail.

mining the amount of compensation which should be made and the person to whom the same should be payable as far as possible in accordance with the provisions of the Acquisition and Requisition of Immovable Property Ordinance 1982 or other law for the time being in force for the acquisition of land for public purposes.

In every such case which is referred to the judge and assessors or to arbitrators for the purpose of determining whether any, and if so, what amount of compensation should be awarded, the judge and assessors or the arbitrators shall take into consideration the market value of the property or

which would otherwise be decreed to such person. However, such determination shall not take into consideration

— the degree of urgency which has led to the act or work being done or executed, and

— any damage sustained by the claimant, which if caused by a private persons, would not in any suit instituted against such person justify a decree for damage.

b) Comply with the Article 11(1) (C) of Bangladesh Water and Power Development Boards Order, 1972 which requires that every scheme prepared shall be submitted for approval, to the government with a

Bangladesh faced the painful experience of flood causing colossal damage to crops and properties. Faced with a peculiar geographic and climatic situation it becomes a difficult task to control flood and other catastrophes that falls on the people of Bangladesh. Flood water comes from outside. No action can be effective until the upstream flow can be checked and controlled. Under the international law the upstream states got a tremendous responsibility to play part in regulating and taking integrated approach in tackling flood-related hazards. And the burden of the load of flood can not be placed on Bangladesh alone.



Krishnapur Sub-compartment regulator — construction cost Tk 12.88 lakhs Photo courtesy: UNICEF

right injuriously affected at the time when the act was done or the work executed; the damage sustained by the claimant by reason of such act or work injuriously affecting the property or right; the consequent diminution to the market value of the property or right injuriously affected when the act was done or the work executed, and whether any person has derived, or will derive, benefit from the act or work in respect of which the compensation is claimed or from any work connected therewith, in which case they shall set off the estimated value of such benefit, if any, against the compensation

statement of proposal by the BWDB for the resettlement or rehousing of persons likely to be displaced by the execution of the scheme.

c) Secure archaeological sites of the Attia Mosque and the Kadim Hamdani Mosque falling within the FAP-20 area from any damage, destruction, alteration, defacement, injury by the FAP-20.

The judgement of the hon'ble court further concluded as follows:

"Before parting the case we are inclined to observe that the people of Bangladesh live with flood and fight with flood for centuries. The people of

Before concluding we express our deep appreciation to Dr. Mohiuddin Farooque and his organisation Bangladesh Environmental Lawyers' Association (BELA) who is championing the cause of the public and the down-trodden people of the community who as helpless citizens can not ventilate their grievances before the courts of law and BELA is coming forward with public interest litigation before the courts of law."

In the result the rule is made absolute in part. The respondents are allowed to execute the FAP-20 activities subject to the strict compliance with direction made above.

Show Cause on Government and Occidental for Violation of Law

A Writ Petition was filed by Dr. Mohiuddin Farooque, representing Bangladesh Environmental Lawyers' Association (BELA) against the secretary, Ministry of energy and mineral resources, chairman, Bangladesh Oil, Gas and Mineral Development Corporation (Petrobangla), Director General, Department of Environment and the Occidental of Bangladesh Limited. The Petition accused

the statutory authorities and the Occidental of Bangladesh Limited for not complying with the relevant provisions of laws and failing to perform the contractual requirement specified in the Production Sharing Contract and expected as 'good oil-field practice' that caused the devastating fire which broke out in the Magurchara Petroleum (gas) exploration drilling well and in its adjoining areas in the late

hours of 14 June 97.

The Petition alleged that the Project and the activities under the contract were alleged to have started unlawfully as no Environmental Impact Assessment was undertaken or Environmental Clearance obtained by the Occidental of Bangladesh Ltd as required by the law. The absence or inadequacy of proper disaster management measures, support services and logistics for efficiently avoiding or combating the disaster led to an aggravation of the situation causing serious, irreparable damage to our national wealth and resources.

Upon hearing the petition, the division bench comprising of Mr. Justice Mainur Reza Chowdhury and Mr. Justice MM Ruhul Amin issued a Rule Nisi upon the Respondents to show cause as to why the fire blowout/explosion at the gas/petroleum drilling well at Magurchara should not be said to have occurred because of their failure to implement the law and standards relating to petroleum operation, environmental protection and environmental clearance and the provisions of the production sharing Contract.

The learned judges further directed to show cause as to why the respondents should not be directed to perform all necessary duties and requirements before further petroleum operations and explorations undertaken by the Occidental of Bangladesh Limited.

The Rule has been made returnable within 4 weeks from date.



Ultimate Prey of Fire — The Nature

LAW WATCH

Matters of Life and Death

by Larry Reibstein

THE current US Supreme Court, it seems, has a hard time finding a state's right it doesn't like. Or a congressional act it does. Deciding several momentous cases last week, the court once again implied that the 50 state legislatures, not Congress, should shape some of the major issues of the day — from assisted suicide to gun control. "I see an era of manifest deference to the states," said A E Dick Howard, a law professor at the University of Virginia.

The most controversial case centered on the right-to-die movement: whether terminally ill patients have a right to end their lives with the aid of a physician. A unanimous court, led by Chief Justice William Rehnquist, said no, upholding state bans in New York and Washington. It wasn't a surprising decision, since the Rehnquist Court has long been reluctant to read new rights into the Constitution. Yet even though the court said there was no history or tradition of assisted suicide in America, Rehnquist suggested the issue was best left to the state legislatures to decide one way or the other — that is, if a state wants to legalize the practice, it may be able to. "Our holding permits this debate to continue, as it should in a democratic society," he wrote.

The debate certainly isn't going away. In fact, shortly after the decision was handed down last week, Dr Jack Kevorkian, who pushed the subject to the national agenda, apparently assisted in the suicide of a 40-year-old woman. It was at least his 50th death. And many other doctors clandestinely assist in their patients' suicides.

Still, opponents of assisted suicide will have the upper hand in their state legislatures. More than 40 states ban the practice, and, strengthened by the Supreme Court's pronouncement, they aren't likely to alter that stand any time soon. At most, some legislatures may explicitly allow doctors to administer heavy doses of sedatives until death comes — a fairly common procedure in desperate cases that the court hinted it may endorse. The court's decision could also hurt right-to-die supporters in a critical Oregon referendum set for November. A defeat there could undermine support in states like Florida, which are more favorably disposed toward assisted suicide.

The court also took the opportunity to chide Congress for overreaching on gun control. In a 5-4 decision, it struck down a key portion of the Brady law, overturning the requirement that local police run background checks on prospective handgun buyers. (The ruling left intact a five-day waiting period before someone can buy a gun.) Making the case for states' rights, Justice Antonin Scalia wrote, "Such commands are fundamentally incompatible with our constitutional system of dual sovereignty." In other words, Washington should butt out. Justice John Paul Stevens, taking the unusual step of reading his dissent, argued that the court should defer to Congress if lawmakers believe that a statute "will benefit the people of the nation."

The ruling was important in sending a clear constitutional warning to Congress, but the White House hoped it would have little practical effect: 27 states already have similar laws in place, and the decision won't affect those requirements. Meanwhile, President Clinton urged local law-enforcement officials to voluntarily run background checks on gun purchasers in every state until a national system for instant checks is operating, probably by November 1998.

The court clearly relished instructing Congress on the Constitution. "The power to interpret the Constitution in a case or controversy remains in the judiciary," wrote Justice Anthony Kennedy. The message was clear: congress shouldn't forget its civics lessons.

Courtesy: Newsweek