



LAW event



Towards an independent human rights commission

International Conference on Institutional Protection of Human Rights: Role of National Human Rights Institutions.

SHAILA SHAHID

HE International Conference titled "Institutional Protection of Human Rights: Role of National Human Rights Institutions (NHRIs)" coorganised by the law, justice and parliamentary affairs ministry, the United Nations Development Programme (UNDP) and the Australian High Commission was held from 19th to 21st September at hotel Sheraton, Dhaka. This conference on institutional protection of human rights through national human rights institutions is the first of its kind in Bangladesh.

inaugural session was chaired by the Law, Justice and Parliamentary Affairs Minister Moudud Ahmed. Hon'ble Chief Justice Syed JR Mudassir Hussain also addressed the conference as chief guest. Among the special guests Barrister Md. Shahjahan Omar, state minister of ministry of law, justice and parliamentary affairs, Mr. Jorgen Lissner, resident representatives, UNDP, United Nations resident co-ordinator, Bangladesh, Ms. Lorraine Barker, high commissioner, Australian High Commission. Bangladesh and Professor Brian Burdekin, former special adviser to United Nations High Commission for human rights on NHRIs were presented at the

The Law Minister in his speech said that the proposal for formation of an independent human rights commission is under the cabinet's consideration. He also added that all preconditions are there for establishment of the commission and the sooner it is set up the better it is for the wellbeing of the country and the citizens. He said a strong opposition, a free media and an independent judiciary were preconditions for human rights and these were present in Bangladesh. UNDP country resident representative Jorgen Lissner expressed frustration over the delay while addressing the function. "Political competition is vigorous these days and violence has become a pervasive feature in politics and political campaigns," said Chief Justice . Syed JR Mudassir Hussain while giving his speech. Australian High Commissioner to Bangladesh Lorraine Barker said separation of the judiciary from the executive remains a key issue in Bangladesh. Professor Brian Burdekin, former special advisor to the United Nations High Commissioner for Human Rights, said time has come to set up the rights commission as people of Bangladesh deserve a human rights commission because Bangladesh has many challenges in human rights.



In the three day long workshop participants from Bangladesh, Nepal India, Pakistan, Sri-Lanka, Indonesia, Thailand, Philippines and Australia took part. Different topics and issues regarding human rights was discussed and every buzz group has came up with strong recommendations for effective functioning of human rights commission in a country. The topics were discussed protecting human rights through NHRIs, obstacles and challenges for NHRIs, cultural diversity and rights, access to justice and human rights initiatives in the region effective monitoring and protection of human rights, civil society, NGOs and media partnership with NHRIs for protection of human rights, the UN Paris principles and the independence and effectiveness of NHRIs, national security and impunity a case for human rights intervention, towards a more effective protection of human rights at the national level implication for the region?, experiences and best practices in institutional protection of human rights etc.

Speaking at the session titled 'National Security and Impunity: A Case for Human Rights Intervention', Inspector General of Police (IGP) Shahudul Huq said custodial death should be looked at somewhat differently. Sometimes police have to pick up people already in very critical condition and later when they die in custody, police have to shoulder the blame, said the IGP. The participants called for a serious approach in dealing with death in police custody as such practices deny the victims justice. They also observed that law-enforcing agencies should be more careful in use of section 54 of the Criminal Procedure Code (CrPC).

The open discussion titled "Cultural diversity and rights" was moderated by Mr. Mahfuz Anam, the editor and publisher of The Daily Star. Addressing the session he said that cultural diversity is fundamental for democracy and should be incorporated in every democratic constitution. He emphasised that if there is no diversity there is no freedom.

While addressing the closing session the Law, Justice and Parliamentary Affairs Minister Moudud Ahmed said the government would set up a national human rights commission during its tenure. The minister said there is a wrong notion that the human rights body would be adversarial to the government which is not true. "The human rights commission will be supplementary to the government, which will play its role in protecting rights of marginalised people, "he added.

Speaking at the press conference, United Nations Resident Coordinator in Dhaka Jorgen Lissner said people of Bangladesh are convinced that a national human rights commission is needed here to protect human rights. Presenting the key findings of the three-day conference, Prof Brian Burdekin,

said it is clear from repeated statements of the government and the opposition that both will support for establishment of a national human rights commission.

Despite the efforts made in past years, Bangladesh, like many other developing nations, still face severe challenges for implementation of human rights in both existing institutions and within the larger civil society. It is therefore vital for the involvement of the government bodies with the support of other key stakeholders to bridge the gaps in the process of implementation of the practice of a more rights base approach to development. The organisers and the participants from different countries envisaged that why should the people of Bangladesh be denied the facilities which are being enjoyed by the peoples in other neighbouring countries as they have their own human rights commission. The ultimate expectation of the conference was to create momentum for establishing an independent human rights commission in Bangladesh where justice should be prevailed.

The writer is working as law desk assistant of The Daily Star.

RIGHTS investigation



SEEKING ACCOUNTABALITY OF A MULTINATIONAL

Arsenic victims Vs the British geological survey

SHARMEEN MURSHID

ITH widespread arsenic found in the groundwater in Bangladesh the people of this country have lost their rights to safe drinking water and therefore their right to life. The spread of this poison did not occur on one sudden day but over a period of decades. This water was provided without quality control and without meeting standard drinking water protocols. In fact, until recently Bangladesh did not have a proper ground water policy of its own nor it did follow any of the existing international policies or protocols prevalent in other countries. The arsenic crisis in Bangladesh is a classical example of negligence and distorted development

State liability under constitutional law

Under the Bangladeshi Constitution, every citizen is entitled to the fundamental right to life. Therefore, drinking poisoned water that damages the body until the quality of life is negligible, or until the person dies, does not fulfill the right to life as envisaged by the constitution. Simply put, the right to life becomes fictional without access to safe drinking water. Article 18 emphasizes the responsibility upon Govt. for ensuring public health. Bangladesh has also ratified the United Nations Convention on the Rights of the Child that obligates its signatories to ensure the health of each child by combating 'disease and malnutrition. The Bangladeshi government therefore has a constitutional and international legal obligation to ensure that all its citizens have access to safe drinking water.

State liability under environmental law

There is a substantial body of environmental law that regulates state activity in relation to the provision of safe drinking water. To date, a writ application has been applied for to prevent the government and its agencies from installing further tube wells around the country in adherence to various environmental laws, of which the most relevant are discussed below. The Petitioners of this writ are awaiting a court hearing wherein for arguing as to the liability of the Ministry of Health and Family Welfare (MOHFW) and the Ministry of Local Government, Rural Development and Co-operatives.

The MOHFW and MOLGRD are responsible via their departments for matters relating to public health and, standardization of and quality control of water. The Pouroshova Ordinance 1977 gives a pouroshova the responsibility of providing water, and promoting the public health (Sub-section 70, 73 and 74). This certainly has interesting ramifications for claims in negligence by arsenicosis patients, as per the section below.

The first schedule of the Local Government (Union Porishod) Ordinance 1983 prohibits tube wells that are dangerous (clause 18), and charges the state with the positive duty of ensuring that this is done.

The Groundwater Management Ordinance 1985 requires local authorities to grant licenses before tube wells can be sunk. It is almost certain that very few, if any, Upazillas comply with this legislation

Culpability and accountability: legal campaigns

The involvement of government, non-government and multinational agencies has had a significant role in this problem, unwittingly or otherwise. The position of the petitioner has always been that the water providing agencies must be accountable for their actions in failing to monitor the water quality of groundwater where they have responsibility for having installed tube wells. ternational law is in accord with this sentiment: the polluter must pay.

To date, three separate actions have been taken as an attempt to begin to redress some aspects of this problem through the law courts.

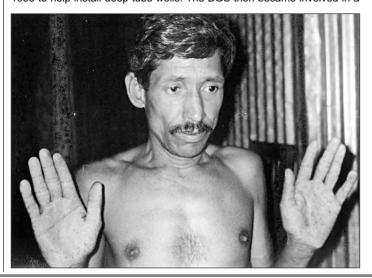
Advocate Rabia Bhuiyan applied to the High Court for a writ to declare hat the government show cause as to why they should not halt the installation of shallow and deep tube wells all over the country when they were fully cognizant of the problem of arsenic contaminated groundwater. Her suit was dismissed on the grounds that she had been unable, on that occasion, to show any provisions of law that compelled the government to satisfy her

Following this action, Brotee instructed a barrister to make a similar application to the High Court, with the relevant provisions of law. This application was successful and the High Court declared in July 2001 that the government should show cause as to why it should not immediately halt their rube well installation programme. The Petitioners are currently awaiting a hearing date before the Supreme Court.

The third case, which is the main concern of this paper, is a public litigation against a multinational called the British Geological Survey (BGS). Brotee, in conjunction with the Bangladesh International Action Network (BIAN) has instructed Alexander Harris, an English law firm, to represent two arsenicosis patients in a claim for damages against the British government department in charge of the British Geological Survey (BGS). BGS conducted a survey of the groundwater in Bangladesh in 1992 but did not test for arsenic. Alexander Harris together with Leigh Day and co., two British firms have jointly undertaken the case against the BGS on behalf of the arsenic victims in the English High Court.

The accountability of a multinational: Taking the BGS to the British Court

The historical basis of the claim: In 1970, the Government undertook a programme of tube well drilling in order to provide an alternative source of drinking water in Bangladesh. The BGS began working in Bangladesh in 1983 to help install deep tube wells. The BGS then became involved in a



studied may interact with other factors to produce factors toxic to elements of the biological environments including man" The Claimant's case: The Petitioner alleged that the work carried out by the BGS in compiling their 1992 Report was conducted carelessly as insufficient tests were carried out to assess the water supply for its fitness for

separate study, the objectives of which included, "Produce maps of ground

water environments and indicate possible conditions where trace elements

human consumption. It argued that the report itself was written in a way, which leave the reader to assume that the water was fit for human consumption. The water in Bangladesh contained arsenic and as arsenic was not tested for, it remained unidentified and the Claimants have suffered injury as a result of drinking water. The Claimants also argued that the Defendants knew that arsenic is

present in drinking water, is dangerous to humans and indeed they tested for arsenic in Britain in 1989. Moreover, the BGS would have known, or should have known, that there was a possibility that arsenic would be presented in the drinking water in Bangladesh as it had been identified in parts of India before 1992. It also argued that BGS knew the survey was intended to be for the use and benefit of the Bangladeshi Government and the agencies nvolved in the management of the country's water resources

The claimants case is that the Defendants (BGS) aught to have tested the fitness for human consumption of the water supply when undertaking the survey upon which the 1992 BGS Report was based and it also aught to have made it clear to any reader that it could not be relied on for that pur-

The obligations and duty of care of the defendants arises from the follow-

- The Defendants was paid by the UK Overseas Development Agency from development aid funds to conduct a hydro chemical baseline survey of the ground water quality to include an assessment of its toxicity
- The report was intended by the ODA and Defendant to be for the use and benefit of the Bangladeshi Government and agencies involved in the management of Bangladeshi water resources
- The Defendant is recognized as a world leaser in hydro chemical and hydro geological testing and its results are widely relied upon by government agencies, NGOs and other experts. As intended it was widely distributed to interested parties in 1992.
- The possibility of arsenic being present in the groundwater should have been known to a reasonably competent hydro geologist in the position of those employed by the Defendants and should have been included as an element to be tested for

The Defendants published a report that gave the impression that, so far as the presence of potentially toxic trace elements were concerned. there were no significant health hazards for humans in drinking the ground water that had been teste

The Defendant argued that this is a novel type of claim as there has never been a case before in which a party who has undertaken scientific study for a client has been held responsible to a third party who may have sustained injuries as a result of the study not being undertaken or reported in a particular way. They had no responsibility for the provision of water to the Claimant or to certify the safety of the water and they had no obligation to advise those who had those responsibilities. They also argued that BGS was not respon sible for the presence of arsenic in the water and had no responsibility for removing it. The Claimants and the Defendant were never in direct contact with each other and they were not even aware of each other's existence. They argued therefore that legally there were no ties between the Claimant

After hearing, the Judge considered the arguments put forward by both sides for around 4 weeks before giving his Judgement. He concluded that this was a case that should progress to full trial. This was no small victory. It at least meant that so far the Defendants failed in their attempt to prevent us from taking the case to full trial.

The Defendants next applied to the Court for leave to appeal this decision. The trial judge refused them leave. After that the Court of Appeal with Lord Justice Kennedy arrived at a split decision, that BGS was neither responsible for the hazard nor for providing potable water. It also had no control over who saw the report or how it was used.

While this is a disappointing decision the legal team feels that this as losing the battle but not the war

The case is now pending before the House of Lords - the highest court in Britain. The Law Lords adjudicate only on points of law. The Claimants are now seeking leave for appeal to the House of Lords. This case presents a novel point of law on the duty of care. The Court of Appeal held that the BGS owed no duty of care to our clients because there was no "proximity". It is a point that has not been looked at before and so cannot be decided by similar precedent cases because there aren't any. If there are no precedent cases or there is no common law on the point- and the Law Lords therefore need to decide what the law is to be. This is the first case where a claim raises issues of direct versus indirect injury; personal injury versus economic loss and the nature of the duty owed in aid projects to the developing world.

pected involvement in the bomb blast incident at Gulshan hotel of Sylhet, by

Tuesday noon to prove that he had not been detained unlawfully. A vacation

bench of Justice Md Awlad Ali and Justice AFM Abdur Rahman also stayed

the remand of Ranjit, who is also a leader of Juba Dal, youth front of the

ruling BNP, till disposal of the rule nisi, in which the court asked the govern-

ment to explain the legality of his remand and detention. It further ordered

that Ranjit could not be taken to any further remands in the case. The court

came up with the order hearing a writ petition that challenged the remand of

Another crime-busting elite force, the fourth in a row, has hit the road in

plainclothes in a bid to contain widespread crime. The force, renamed

Cheetah and originally dubbed as Panther, is now gathering intelligence

Another elite anti-crime force

The writer is a sociologist, CEO, Brotee.

Ranjit. - New Age, 23.

READER'S queries

Your Advocate

Q: In our country police enjoy unlimited power in arresting people, entering into houses, searching and seizing goods and articles. Instances of victimisation of innocent persons are not also rare. During search suppose, a police officer who is acting at the behest of any rival quarters may himself plant some weapon pistol or contraband like heroin and having staged a show of recovery from the custody of anyone may arrest him and implicate him in a false case. In such cases prospect of bail is slim and chance of conviction is not

Needless to say about the harassment and humiliations of the accused and his family and friends. The questions that disturb my mind are a) if a person is really arrested on a false case showing that heroin was recovered from his possession and charge-sheeted is there any remedy for him? b) is there any safeguard against arbitrary or intentional search by police? c) can anybody be convicted on a false case? if convicted what is the prospect in appeal? d) suppose that the conviction remain undisturbed up to the last court, should an innocent man suffer in this way e) in your opinion in the face of deep rooted conspiracy to victimise an innocent man how much he can depend upon courts e) do you think that every innocent man who may be victimised may feel 100% safe that he would be acquitted? I would be highly obliged if you kindly take my anxiety seriously and answer at your earliest convenience. Thank

Dr. Animesh Chandra Roy

Your Advocate: Your anxiety touches deep into the question of success and failure in our national life. The questions that trouble you like many others are composite problem emanating from many different aspects of our lives not to be addressed by a lawyer. The disquiet and lack of confidence that has taken root in our minds and hearts is the result of our failure in improving things around us and bringing about a feel good situation anywhere in our lives. The answer, therefore, must be given together by the lawyers, doctors, police, politicians, teachers, and all others who make up the society as whole.

Nonetheless, I, as a lawyer would try to address your anxiety from the legal point of view not as much for redress as for demonstration of legal position in this regard. Since your queries are closely interrelated it would serve the purpose if I give you a boiled reply.

There is, in your words, a reflection of some specific sufferings experienced by you. Be that as it may, I do not and no one can possibly deny that police in general have failed to inspire confidence of the people and in fact suffer mistrust in more cases than not. It is, therefore, not unlikely to suspect an investigating officer (I/O) as acting under the influence of any powerful quarters inimically disposed to the person affected. If one is damn convinced about the innocence of the accused implicated image of police is bound to be badly shattered in his estimation.

The area of investigation you have indicated is a very sensitive and intricate area of police activity. There is ample scope for victimisation in such cases if the I/O wants to for any reason. Law has taken notice of possible foul-play and provided for guidelines for search and seizure in such circumstances. Law says, the I/O, before entering upon anybody's premises must call upon at least two respectable persons of the locality to attend and witness the search and the occupant of the place also be permitted to attend during the search. Law does not allow police to go escort-free in searching a house or place possessed by anyone. There are provisions for the I/O to be searched nimself by the witnesses before he enters the premises to be

Still there are loopholes in law and scope of victimisation is there. Besides other variables lack of legal awareness of our people coupled with lack of professionalism of the police to a great extent contribute to cases of victimisation. Remedy does not lie exclusively in the police. Many different interrelated factors must interplay harmoniously to fit into the public confidence.

As for court, in cases of recovery of heroin there may not be possibility of bail and even there may be conviction if proved. Our anxiety is if somebody suffers in a false case what is his remedy, or why should he suffer anyway? Reply is not simple. Courts depend on the papers and the nature of proof presented in a particular case. I, of course, do not deny the questions of experience, acumen and ability of a particular judge to assess evidence and attendant circumstances of the case. Judgement may go wrong and less is the experience and acumen of the judge the more would be the risk of wrong judgements passed. It is no denying that if any innocent man stands convicted for any reason courts suffer substantially in terms of public confidence. hat case higher courts are there R the same. There is no alternative of the experience and acumen of the judges no matter what is the hierarchy of the court. Because people cannot afford to suffer for too long precisely because court is the last resort of suffering masses. Here again you have to take into consideration the standard of the Bar. i.e., the lawyers. Can the court reach a just decision without able assistance of the lawyers? No less the

But the question that overrides all- no organ or organizations can work in isolation. Police, Bar and the Bench are directly related to justice delivery system. All the agencies must have adequate skill, raining and experiences in their respective fields and work and be allowed to work harmoniously to the exclusion of any manner of fear, favour, affection or ill-will. These institutions must be developed by political commitments to do good to the society. Unless we can overcome our limitations your, for that matter, our inner cry will linger unabated only to destroy our souls.

Your Advocate M. Moazzam Husain is a lawyer of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

news



19 Karwan

Justice defends defence of Marriage Act

ADRIAN SAINZ

MIAMI -- The U.S. Justice Department asked a judge to dismiss a lawsuit challenging an 8-year-old law banning gay marriage, making it the federal government's first direct legal defence of the Defence of Marriage Act. Attorney General John Ashcroft is fighting a lawsuit filed by four same-

sex couples who argue the 1996 Defence of Marriage Act is unconstitutional. The law defines marriage as the union of one man and one woman and lets states refuse to recognise gay marriages from other states.

Justice Department spokesman Charles Miller said it was the federal government's first direct legal defence of the Defence of Marriage Act.

The issue of gay marriages has become a theme of the presidential race, with President Bush calling for a ban of same-sex marriages in a constitutional amendment, which Democratic challenger John Kerry opposes

Kerry also opposes gay marriage, but defends a gay couple's rights to the same legal protections as those conferred in marriage. The Justice Department's motion to dismiss, filed in Miami district court, argues that the couples have no constitutional standing to challenge the

federal law because they are not married in any state and the law wasn't being applied to them. The law is consistent with due process and equal protection provisions of the constitution, the motion said. "As far as the federal defendant is aware, every court to address this question -- including the Supreme Court and the Eleventh Circuit -- has

rejected federal constitutional challenges," the motion said. The motion also said that the nation's high court has "defined the right to

marry consistent with traditional understandings.

The author is an Associated Press Writer Source: The St. Augustine Record

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LAW week

IMF may enjoy legal immunity

The government has finalised all the formalities regarding the bill, seeking an amendment to the International Financial Organisation Order 1972. The World Bank and the International Monetary Fund will enjoy legal immunity in Bangladesh once the parliament approves the bill. The bill was scheduled to be placed in the last session of the parliament. Sources said it could not be placed for time constraints. "The International Financial Organisations (Amendment) Act, 2004" is now likely to be placed before the parliament in its next session. Finance and Planning Minister M Saifur Rahman will put forward the bill for discussion. -New Age, September 21.

Jail Killing Case

A Dhaka court put off the verdict on the historic Jail Killing Case for a second time in two weeks, as it entertained a petition a lawyer filed in his last-ditch effort to save his client. The decision pushed into uncertainty the muchawaited verdict that was set to come about 29 years after the brutal assassination of four national leaders that still stirs up emotions among people. The verdict was rescheduled from September 7 to August 21, as Judge Motiur Rahman could not attend court because of his illness. The Court of Metropolitan Sessions Judge, withdrawing from delivering the verdict, brought the case back to trial-stage, setting in motion more protracted legal arguments. Amid beefed-up security, the court fixed September 29 for deposition of witness Saifuddin Ahmed, the then deputy superintendent of police and second investigation officer, upon the petition filed by ABM Sharfuddin Khan Mukul, lawyer for accused on-bail Taheruddin Thakur.

The court did not schedule any date for pronouncement of the judgement on the killing of the leaders who gave political leadership during the War of ndependence. -Daily Star, August 22.

HR body during coalition tenure

Law, Justice and Parliamentary Affairs Minister Moudud Ahmed said the government would set up a national human rights commission during its tenure. "We are pledge-bound to the people to set up a national human rights commission and we will do it as soon as possible." Moudud said at a press conference following a three-day International Conference on Institutional Protection of Human Rights in the capital. Pressed by newsmen later to give a specific timeframe, the minister said the commission will be formed before the tenure of this government is over. -Daily Star ,August 22.

Interpol experts may visit Dhaka again

Interpol may send experts to Bangladesh again to help probe into the August 21 grenade attack on the Awami League (AL) rally, if required. "If Interpol determines that its officers can provide further assistance to Bangladeshi authorities in the investigation, others may return to Bangladesh in the future," said an Interpol press release. Interpol experts, who left Dhaka on completion of initial investigation, will now conduct further analysis and evaluation of their findings. - Daily Star, August 23.

HC rule on govt over Sylhet

The High Court ordered the government on Wednesday to produce Ranjit Sarker, an advocate of the Sylhet district bar who was arrested for susabout the hardened criminals. Home ministry sources said this new force will act like the other elite force, Rapid Action Battalion, with similar kinds of weapons and power by next week. But this force will act under Dhaka Metropolitan Police (DMP) and will not have any members of the armed forces. A top police official said high-performing policemen who had received special anti-crime training from time to time have been cobbled under the elite team. The members will undergo more training in course of time. This undercover team will strike criminals and their lairs and will be

equipped to face 'any kind of tough situation'. - Daily Star, September 24.