



Access to justice for the poor

OLI MD. ABDULLAH CHOWDHURY

ALL are equal before law and are entitled to equal protection of law' said in the constitution. Legal process, nevertheless involves spending at different stages of court procedure and it is really difficult for poor people from disadvantaged communities to spend personal resources for a consid-

erably period to seek justice. There are instances where victims decided to withdraw cases against powerful opponent because financial burden proved too heavy for them. It is true that there is a provision of legal aid for the poor and disadvantaged in the country, oppressed and simply unaware of it.

It was reported in *The Prothom Alo* on May 13, 2010 that there is a significant amount of legal aid money unspent in Manikganj. An amount of Tk 774,000 was spent to provide legal assistance against a deposited sum of Tk 1107,000 until the year 2010. The fund remains unspent, as there had not been sufficient applications requesting support for legal aid. Although information is not readily available for all the district legal aid funds, there are unspent fund in other places too. On the one hand, there is unspent money in the district legal aid due to limited number of applications. On the other hand, vulnerability of the victims

defend cases in courts. Legal Aid Committees headed by the respective District Judges have been constituted with government officer, lawyer and representatives from voluntary and woman organizations in each district. A statutory body called National Legal Aid Organization has been established and there is a national board of directors consisting of 19 members. This body is headed by the minister of the Ministry of Law, Justice and Parliamentary Affairs as chairman. The board also has the authority to consider application already rejected by the District Legal Aid Committee.

District Legal Aid Committee

Formation of District Legal Aid Committee has been described in the Section 9 of Legal Aid Act. While District Judge is the chair of the committee, government officials and other actors of justice work as members. The chair could nominate a member from voluntary

organization. Nominated members function for 2 years providing that their nomination remains valid for the period.

Legal aid fund

Sources of funds and operation procedure of the fund have been described in Section 14 of the act. District Legal Aid Committee could accept contribution from both the person and the organization. Chair (District Judge) and Secretary (Secretary of the District Bar Association) jointly operate the bank account of District Legal Aid Fund as enshrined in the act. Apart from the government fund, there are also separate funds managed by different non-government legal aid service providers.

Shalis and Alternative Dispute Resolution

Although a system of 'Shalis' exists in the country for a long period, the process has largely failed to ensure justice for the poor and disadvantaged. Let alone victims from marginalised communities, views of the women are seldom heard during mediation or arbitration process. Proceedings are mostly dominated by influential males and they hardly follow the procedures of mediation. Village Courts Act (Act XIX of 2006) provides an opportunity for the spontaneous flourishing of dispute resolution at the grassroots, village courts are yet to be established in the localities. Physically handicapped, Ethnic, cultural and religious minority groups and culturally bound occupational groups have to rely on formal justice system and the time and cost involved with process add to their miseries.

Conclusion

To recapitulate, there should be a central monitoring system in order to ensure best use of the legal aid fund. Many of the victims from disadvantaged communities are simply unaware of the existence of such a fund and there is no mechanism in place to make people aware on the process of getting aid from the existing legal fund. A nationwide campaign involving NGOs and government departments would be helpful in raising awareness on the legal aid. Immediate but lasting steps also need to be taken in order to facilitate access to justice for the poor victims through utilization of legal aid fund.

Oli Md. Abdullah Chowdhury is a human rights worker.



First convictions for 1984 Union Carbide disaster in Bhopal

FOLLOWING convictions on June 7, 2010 of seven Indian citizens for the 1984 Union Carbide gas leak disaster, Amnesty International has called on the Indian and US governments to take the next step by bringing the US-based Union Carbide Corporation (UCC) to justice.

Seven Indian nationals, who formerly worked for the Indian company Union Carbide India Ltd (UCIL), were found guilty by the Bhopal Court of causing death by negligence, a charge that carries a maximum two year sentence.

"These are historic convictions, but it is too little, too late. Twenty-five years is an unacceptable length of time for the survivors of the disaster and families of the dead to have waited for a criminal trial to reach a conclusion," said Audrey Gaughran, Director of Global Issues at Amnesty International.

More than 25 years after the disaster, the site has not been cleaned up, the leak and its impact have not been properly investigated, more than 100,000 people continue to suffer from health problems without the medical care they need, and survivors are still awaiting fair compensation and full redress for their suffering.

US-based UCC and its former Chairman, Warren Anderson, were charged in 1987. However, both have refused to face trial.

"While the Indian employees have now been tried and convicted, the foreign accused have been able to evade justice simply by remaining abroad. This is totally unacceptable," said Audrey Gaughran.

US-based UCC has been a wholly-owned subsidiary of The Dow Chemical Company (Dow) since 2001. Survivors and human rights groups have been campaigning for Dow to address the ongoing impacts of the disaster, including contamination of water by chemical waste, but the company has consistently ignored these calls, denying any responsibility for UCC's liabilities in Bhopal.

"All too often, complex company structures and the fact that companies operate across multiple jurisdictions are major obstacles to holding companies accountable," said Audrey Gaughran. "The convictions of the Indian accused in this case are clearly not enough; the governments of India and the US must ensure that the foreign accused, including UCC, are also made to face trial."

The massive gas leak killed between

7,000 and 10,000 people in its immediate aftermath, and a further 15,000 over the next 20 years. More than 100,000 continue to suffer from serious health problems as a consequence.

Criminal prosecutions in Bhopal have neither been timely nor effective. In the decades between arrests and prosecution, thousands of people have died from gas-related illnesses.

The Indian state has failed to fulfil its international obligations, by allowing criminal prosecutions to drag on for years, denying both victims and the accused the right to have criminal accountability determined promptly and without undue delay.

All efforts to extradite Warren Anderson have been unsuccessful. UCC continues to defy Indian jurisdiction,



A Bhopal disaster victim little girl.

failing to abide by repeated summons to appear before the Bhopal criminal court. As a result, criminal prosecution of Anderson and UCC has not been possible.

On 2 December 1984, thousands of pounds of deadly chemicals leaked from

UCC's pesticide plant in Bhopal, central

India. Around half a million people were exposed. Between 7,000 and 10,000 people died in the immediate aftermath and a further 15,000 over the next 20 years.

Only hours after the tragedy, nine individuals and three corporations were accused. These included 8 Indian individuals working for UCIL or the Bhopal plant, and Warren Anderson, a US national and Chairman of UCC at the time. The companies accused were Indian-based UCIL, its US-based parent company UCC, and UCE, a wholly owned subsidiary of UCC based in Hong Kong but incorporated in the USA. Arrests were made swiftly afterwards, although charges were only pressed in 1987.

In 2005, the Bhopal Court issued a summons for Dow to attend the proceedings and give account as to why it should

not produce its fully owned subsidiary and proclaimed absconder, UCC, in court. Dow's subsidiary in India, Dow Chemical India Private Ltd, successfully applied for the summons to be stayed.

Source: Amnesty International Press Release

LAW interview

The Constitution should have provisions on environment



Syeda Rizwana Hasan is a big name in the green movement of Bangladesh. Goldman Prize Winner 2009, Rizwana, also the Chief Executive of Bangladesh Environmental Lawyers Association (BELA), is devoted to pro-people lawyering to establish environmental justice in Bangladesh. The efforts of BELA through public interest litigation have truly sensitized the concept of 'environmental justice' in the country that now has special courts to deal with environmental wrongs. The credit can largely be attributed to Syeda Rizwana Hasan. 'Law and Our Rights' faces this 'Green Crusader' with some pertinent questions on environment.

LD: Do you think that Bangladesh has a comprehensive legal regime on environment? Comment on the efficacy and role of the Environment Courts in Bangladesh.

SRH: The legal regime that we have, if implemented, can deal with most of the environmental problems we are confronted with. For a large part, I do not blame absence of law as the reason behind the environmental anarchies; it is

rather the poor or no enforcement of law that is responsible for the havoc. At the moment the environmental courts are not effective due to a number of factors.

First, the jurisdiction of the court is not clear. Second, since the court is at the lower judiciary, for a final result of a case the litigant may have to cross at least four tiers. This will discourage ordinary litigants to approach the system. Third, the court is primarily meant for the department of environment (DoE). Ordinary citizens can file cases only on receiving a report from the Director, DoE and for that one has to wait for 60 days. This frustrates the litigants as well the purpose of the law, which is to ensure "speedy trial". Again, the DoE is reluctant to file cases and as the jurisdiction of the court is limited only to offences under the Environment Conservation Act, 1995 a large number of environmental issues cannot be tried by the existing courts. Hence to avoid complications, litigants would prefer higher judiciary. Fifth, although required, not all the divisions have environmental courts. This forces the litigants to move to the higher court that has wider jurisdiction and mandate to grant relief. Apart from these legal reasons, there are other socio-economic reasons for which the sufferers of environmental pollution who are mostly poor are not enthusiastic about filing cases against their all powerful opponents. In most cases people are not aware of their legal rights and do not automatically place confidence in the system to deliver!

LD: Bangladesh is the worst victim of climate change. In different international forums, Prime Minister Sheikh Hasina has called for establishing the Multi-Donor Trust Fund at the earliest and quick dis-

bbursement of the fund among the least developed countries (LDCs) to enable them to face the impact of climate change. Is it that the victim countries have the right to receive compensation in the form of climate justice from the developed world?

SRH: The developed countries have not officially recognized the concept of climate justice. They are not considering payment of compensation, rather the way the negotiations take place, they at times appear to be more bribing and breaking the unity rather than following any clear guidelines. Raising the capacity issues of the developing world and for the sake of "transparency", the developed world wants to involve IFIs to manage the climate funds to be disbursed. I think this is ridiculous as the IFIs only work in countries that give them impunity. How can they be transparent? The fund that is being committed is far from satisfactory. I am not very concerned about money, what concerns me more is the lack of definite and legally binding commitment to cap the pollution. Even the best adaptation may not give you climate justice and hence what we should be asking for in addition to money is mitigation. To make the claims for damages well-founded, vulnerable countries like Bangladesh should constantly assess the damage and create world opinion in favour of our needs and demands. The greatest challenge for us is to link events with "climate change". One thing that worries me the most is that anything and everything has now become a climate issue, yet all successive disasters that we had in the last few years are not being branded with climate change! How do we then find events that relate to climate change and how do we assess the loss? I think this is

where we need to put in efforts so that hypotheses do not undermine realities. The money should of course come from the developed world, but that does not mean that if they don't move, we die. Since the changes will happen in phases, let us take the preparations at the domestic level. If we still do not have adequate cyclone shelters but more cars than roads can deal with, it is our problem.

Wherever the money comes from, I believe that the local government agencies should be trained and given the funds for their proper utilization as per local priority.

LD: The Higher Court in Bangladesh seems to be very proactive in upholding environment rights, the directives in the ship breaking yards, reviving the Buriganga, replacement of tannery from Dhaka city etc being the recent examples. A concept of Public Interest Environmental Litigation (PIEL) has developed and moulded over the recent years. How do you view this phenomenon?

SRH: Amongst many frustrations, judicial activism is the only ray of hope. However, I do not separate the issue from the general debate on the independence of judiciary. I strongly feel that there is need and scope for more judicial activism. It hurts to see that the verdicts of the judiciary go unheeded and that wrong politics linked to vested quarters take over. The degree of lawlessness that we have, only judgments do not take you there. We should think of mechanisms that will foster implementation of its verdicts. There are cases where the government is less enthusiastic in implementing court orders and as the wise saying goes "you can't solve the problem with the same set of mind that

created the problem"! Look at how the Indian judiciary started setting up committees and commissions with reputed civil society leaders to help the courts with proper analysis and also to monitor implementation of the court orders. While the current level of activism gets us the right orders, we need to work to advance it further so as to ensure implementation.

LD: BELA has long eminence of 18 years to fight for environmental justice in Bangladesh. The responsibility that Dr. Mohiuddin Farooque shouldered back in 1992 has taken the present shape in the able hands of you. How would you evaluate the role of BELA in this journey?

SRH: BELA has tried its level best to popularize the concept of environmental justice in the country. It is a pleasure to see that no discussion on environment ends without referring to environmental laws. Effective or not, the country has an environmental court and people are keen to see that it works. When we started, we had six staff and one office. Now we have 60 staff and offices in all divisional headquarters. When we started, we used to get clues from newspapers. Now people come to us with their complaints. When people are usually scared of law and the lawyers, I think their confidence in BELA and their expectations from us can be treated as exceptional. Thanks to the founder and his followers- BELA shall never compromise with its stance.

LD: Thank you very much

SRH: Thank you too, and thanks to The Daily Star for its continuous support to the works of BELA.

The interview is taken by Law Desk via e-mail.