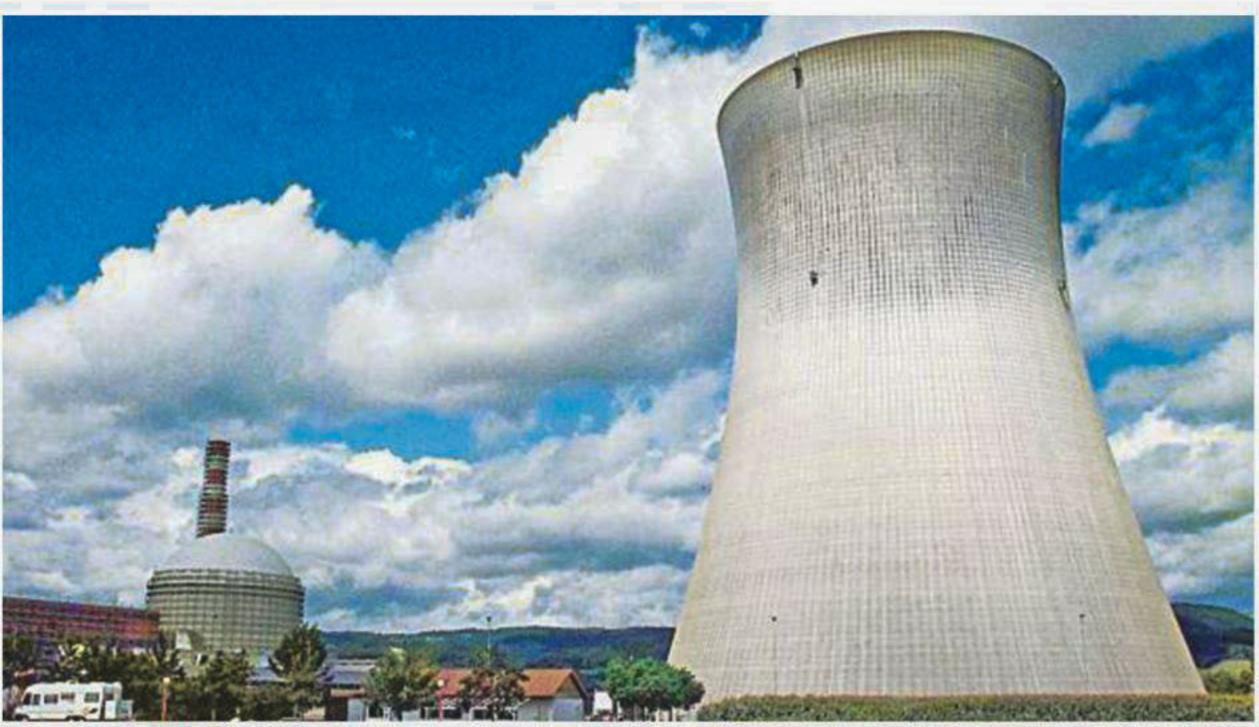


RAMPAL POWER PLANT

Right to Environment v. Development



EMDADUL HAQUE

HE age old unending controversy between right to environment and development continues more or less in all countries. To be frank Bangladesh is not an exception to this contradiction rather right to development is valued here with heightened priority than that of environment which is treated as a mere secondary issue. The recent conflict as to compliance and non-compliance of environmental norms and standard with the proposed joint venture Rampal Power Plant project close to the Sundarbans, the world's largest mangrove forest has ignited high voltage conflict of interest between the stakeholders with developmentalist and environmentalist approaches. This article endeavours to look into the pros and cons of the proposed Rampal power plant along with its construction as boon or bane for the nation and entails the feasibility as well as construction obligations in compliance with domestic and international environmental law.

The UN Declaration on the Right to Development 1986 identifies the responsibilities and duties of states with regard to right to development. However, the striking balance between right to environment and development rephrased as sustainable development is a concept of the UN Brundtland Commission's report titled as 'Our Common Future' published in 1987. The report denotes sustainable development as a development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. Later on, in 1992 the Earth Summit echoed the same term and subsequently some principles like intraand inter-generational equity, common by differentiated state responsibility evolved for its materialization accompanied by domestic laws.

The preamble, fundamental principles of the state policies and fundamental rights of Bangladesh Constitution do not expressly mention neither any right to sustainable development nor any right to safe and healthy environment but a leading public interest environmental litigation group

of the country in Dr. Mohiuddin Farooque vs. Bangladesh, (1997) 49 DLR (AD) 1 was able to convince the Apex Court to widen the concept of right to live extending protection and preservation of ecology and right to pollution free environment maintaining holistic and harmonious construction of the Constitution. The 15th Amendment has increased pro-environment attitude of the state adding article 18A which envisages that the state shall strive to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the existing and future citizens. Unfortunately the added part in the Constitution is not enforceable as per article 8(2).

The country is not lacking environmental legislation because at present there are about 200 laws directly or indirectly involved with environmental issues. Even there are special laws such as Bangladesh Environment Conservation Act 1995, Bangladesh Environment Conservation Rules 1997, and Environment Court Act 2000 for the conservation and protection of environment with supremacy clauses. Moreover, the country is a party to many international environmental documents such as The Ramsar Convention 1971, the Climate Change Convention 1992, the Bio-diversity Convention 1992 and the Kyoto Protocol 1999. Because of being party to the Ramsar Convention, it is obliged to take initiatives for the conservation and protection of the world's natural forests and wetlands. In 2011, the Ramsar Convention Secretariat expressed concern about the Rampal power plant proposal.

Pertinent to mention as per experts opinion that to produce 500 megawatt of electricity from a coal-fired power plant the waste produced is an astounding medley of 37 lac tonnes of carbon dioxide, 10,200 tonnes of nitrogen oxide, 220 tonnes hydro carbon, 720 tonnes carbon monoxide, 170 pound mercury, 225 pound arsenic, and 114 pound lead. So the amount of chemical waste this plant is going to generate can easily destroy the biodiversity and the ecology of the Sunderbans- the hub of mangrove forest and Bengal

Tigers, two national heritage components we are so proud of. Undoubtedly, once implemented it will meet a large portion of the demand for electricity by the consumers but not without considering the balance of convenience and inconvenience we reckon. No cause can be greater than the very existence of the mangrove forest and Bengal Tigers, two national heritage components we are so proud of.

Under section 8(3) of the Right to Information Act 2009, green bodies have sought the EIA report which was approved by the DoE on August 5 and the DoE also issued Environment Clearance Certificate to construct the power plant after eight revisions in three years and imposing a number of conditions to protect the world heritage site and river Pashur which is a sweet-watered dolphin sanctuary. They also sought minutes of the meeting where it was decided that the environmental clearance certificate would be issued coupled with the documents showing why the DoE had earlier rejected seven EIA reports provided by PDB. Basically, EIA is an assessment of the possible positive or negative impacts that a proposed project may have on the environment, consisting of the environmental, social and economic aspects. It is alleged that the PDB started works on constructing the power plant even before getting the environmental clearance certificate and has completed over 70 percent of the land filling. After questionable approval of the EIA report the independence and impartiality of the DoE are questioned.

Bangladesh and India in 2009 signed a deal to set up two power plants and in 2010 it was finalized after Indo-Bangla joint communiqué. A total of 1,834 acres of land has already been acquired to set up the 1320 megawatt power plants with 50:50 shares and the project is expected to be inaugurated next month at Rampal in Bagerhat district near the Sundarbans.

The Indian state-owned national thermal power corporation (NTPC) is not allowed to set up any thermal power plant within 25 kilometres of any of India's forest reserves, wildlife sanctuaries, agricultural plots and others but Bangladesh government has allowed PDB to set up a coalfired plant at Rampal in Bagerhat, just 12 to 15 kilometres off the ecologically critical area of the Sundarbans. Indian Supreme Court in M.C. Mehta vs. Union of India (Taj Mahal Case), AIR 1997 SC 734 delivered a historic Judgement in December 1996 to uphold the sanctity of the Taj Mahal from pollution. The apex Court also gave various directions including banning the use of coal and coke and directing the industries to switch over to Compressed Natural Gas (CNG).

The Sundarbans, the world's largest mangrove forest and UNESCO declared heritage site is a unique place of biodiversity and safe home to a few extremely endangered species of Bengal Tigers and also a natural shield against natural disaster. If the coal-fired plant is set up so close to the forest then the ecosystem, ecology of flora and fauna of the forest, biodiversity and wildlife will eventually be perished. As a result, environmentalist groups including NGOs along with eminent citizens, academics and environment experts, have been urging the government to weigh the pros and cons of constructing the coal-fired power generation plant close to the Sundarbans and reconsider its decision for the sake of national interest.

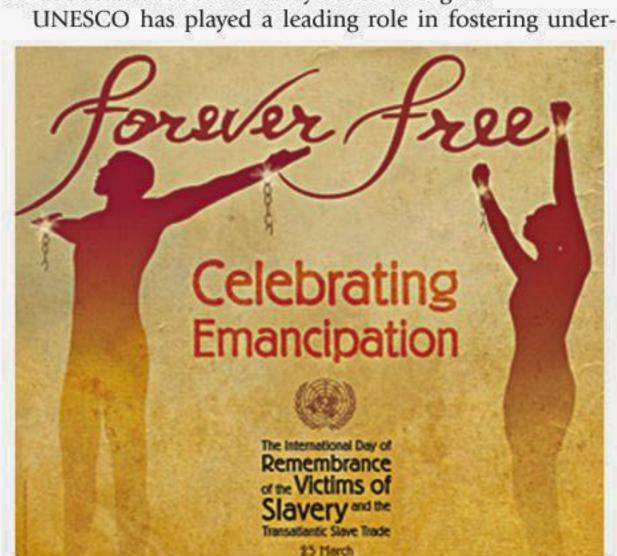
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Urge to raise awareness about history of slave trade

ARKING the anniversary of the first successful slave uprising in the Western hemisphere, the head of the United Nations Educational, Scientific and Cultural Organization (UNESCO) said on August 23 that telling the story of the slave trade was a crucial way to pay tribute to the freedom fighters and "honour their contributions to the affirmation of human rights." "We must teach the names of the heroes of this story, because they are the heroes of all humankind," said UNESCO's Director-General, Irina Bokova, in a message to mark the International Day for the Remembrance of the Slave Trade and its Abolition, which is observed annually on 23 August.

The significance and implications of this history should be known to all and taught in and outside schools, through the media and in the public arena, Ms. Bokova said. "May it be a source of respect and a universal call for freedom for future generations." "Studying this history is tantamount to paying tribute to freedom fighters and to acknowledging their unique contributions to the affirmation of universal human rights," Ms. Bokova noted, adding that through their struggles, their desire for dignity and freedom, slaves contributed to the universality of human rights.

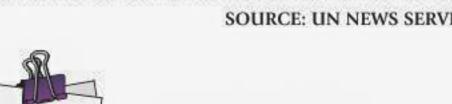


standing and recognition of the slave trade. Since the establishment of the Slave Route Project in 1994, the agency has worked to reveal the extend and consequences of the trade and portray the wealth of the cultural traditions - in art, music, dance and culture in its broader area - that African people forded in the face of adversity. The project consists of creating opportunities to promote mutual understanding and international reconciliation and stability through consultation and discussion. It also raises awareness, promotes debate and helps build consensus on approaches to be taken on addressing the issue of the slave trade and slavery.

In her message, Ms. Bokova stressed that transmission of this history is a cornerstone of the UN agency's efforts to build peace, intercultural dialogue and mutual understanding. "The slave trade is not merely a thing of the past: it is our history and it has shaped the face of many modern societies, creating indissoluble ties between peoples and continents, and irreversibly transforming the destiny, economy and culture of nations," she noted.

Earlier this year, the UN honoured the memory of an estimated 15 million innocent victims who suffered over four centuries as a result of the transatlantic slave trade; highlighting the plight of millions more who still endure the brutality of modern slavery. Nearly 21 million people are trapped in jobs into which they were coerced or deceived and which they cannot leave, according to 2012 estimates by the UN International Labour Organization (ILO).

SOURCE: UN NEWS SERVICE



Accreditation course on mediation

BIAC Accreditation Course on Mediation Bangladesh International Arbitration Centr Centre for Effective Dis Resolution

Two trainers from the internationally-renowned Centre for Effective Dispute Resolution (CEDR), UK began their accreditation course on Mediation on Monday, 26th August at Sonargaon Hotel. Twelve trainees selected from the group of twenty-four who had received the foundation training in May 2013, are to undergo an intensive three-day programme. Those who complete the course and pass the

tests will become CEDR-accredited Mediators. To reduce the burden on our courts, where the backlog of cases is over 2.5 million, and to allow for quick settlement of appropriate cases, some of our laws have made mediation mandatory. In the absence of certified mediators, the mediation scheme has not been effective. Now, for the first time in Bangladesh, we hope to have a group of trained mediators who can handle suitable disputes.

Speaking at the Opening of the training programme, Chief Executive of the Bangladesh International Arbitration Centre (BIAC), Dr. Toufiq Ali, stated that the plan is to provide alternates for the quick settlement of certain categories of civil and financial cases. In most developed countries, and in many developing countries, mediation is the preferred method of settlement of disputes. Those who will be CEDR-accredited will automatically be included in the panel of BIAC and will get the opportunity to mediate disputes. The training is being financed by the IFC.

The two trainers from CEDR are Andy Grossman and John Quilter, while the trainees are lawyers, bankers, company executives and NGO representatives.

FROM LAW DESK



Viability of CSR to break the gridlock of development

MUHAMMAD REZAUR RAHMAN

→ ORPORATE Social Responsibility (CSR) has advent from the realisation of the business entities, which had visualised the people, separating from the source of business. From the genesis of the modern CSR, the term has encompassed numerous aspects in its peripheries and evolved into a comprehensive welfare mechanism. The term which has born as benevolence through charity as a part of familiarising the business interest, now echoing the mandates of human rights.

The linkage can be found from the very factor that has created societies and countries; that is 'people'. People form a society and make everything for their convenience. That include corporate as well, therefore, it is not only responsibility of corporate to fulfill the business needs but to do something which will ensure the sustainability of the society vis-à-vis people. This realisation has worked as a catalyst to familiarise CSR as policy to serve the people through sustainable business. Through this development CSR has included human rights within its ambit.

Rationality of ensuring human rights through

CSR in Bangladesh Can CSR be used to develop human rights in Bangladesh? Before, answering that question, it is pertinent to mention that, human rights encompass wide range of rights. Our constitution has divided these rights into directives and rights paradigm. In particular, civil and political rights are enforceable whereas, fundamental principles are directives of running the state. It is clear from the language used in the Constitution that that state is primarily responsible to ensure fundamental rights. State may able to ensure negative rights i.e. civil and political rights but as to socio economic rights, state is not well equipped and constitutionally responsible to enforce those rights. However, within the socioeconomic rights paradigm lie the most basic human rights like fundamental necessity, equality of opportunities, right to work, public health, social welfare, social security, environmental protection, and indigenous rights etc. These are indispensable for existence of human beings. Apart from that sustainable development, child rights, women empowerment also trending at human rights discourse. The reason for non enforceability of economic, social and cultural rights is from the fact that it requires socio-economic stabil-

ity of the government. This is the point we take to rationalise

our proposition that is financial support by way of CSR. It is

not that we are suggesting that money should be paid to

government rather what we are proposing that corporate can ensure these rights by adopting in their CSR policy and try to develop a sustainable business policy as an ultimate plan. But it cannot be sporadic and has to initiate with wider vision under definite regulation. For example, a corporate may be committed to ensure child rights but that would not be enough by donating some books in schools. It has to be much more than that depending on the capacity of the company. Moreover, the policy has to collective e.g. under Public-Private initiative or any other joint venture. Whatever human rights issue it may it has to address it with the mission to contribute overall human rights pictures of Bangladesh. There are some constraints like lack of policy,



regulation with lack of transparency and accountability from both quarters but that can be blotted away with negotiation, willingness and pro-people mindset of the corporate and government.

Potentialities of corporate social responsibility as a mechanism of development

In Bangladesh, CSR is always considered outside the corporate overall policy. However, Corporate around the world started or rather force to relinquish this attitude due to constant pressure from the stakeholder, international bodies and other Actors. For that reason, corporate adopted a policy to do business with the people and for the people; by way of sustainable business. Therefore, even issues like human rights development are been entangled with corporate responsibility together with government to ensure overall development of the people. This will definitely ensure the development of the corporate because healthy, wealthy and develop community creates more business. It may be argued that in order to realise such a massive development as drawn above require exquisite investment, which is practically or theoretically impossible for the corporate. But, one thing needs to be remembered that we are not imposing individual obligations to the corporate rather as a partner in action with Governments. The small contribution can be used to fill up the gap in finance of the state. It is also possible that through intensive social and human

rights promotion by the corporate will facilitate to realise the existing action plan of the state regarding social welfare and human rights. CSR can be an effective mechanism to develop overall condition of the State. This is because for the government there is an uncertainty that important sector like education, health, social welfare, agriculture etc may not fulfill their target due to insufficiency of money.

CSR and dream of developed Bangladesh

In our country, we have numerous political, social and economical problems due to lack of resource, corruption, abuse of power etc. It is argued by some quarters that if we can subdue these problems, our country will flourish. But this contention is partially true. This is because without economical solvency we may able to make some progress but that will not change our overall backward pose tends to create deadlock of overall development. To break this deadlock, we may consider a solution in the name of Corporate Social Responsibility. We believe it will work as a boon to achieve greater objectives. The instances as depicted ponder endless possibili-

ties, which can be achieved through CSR. It may appear a little as to approach on the part of corporate. CSR is not a business; rather it is for the people and development of the society. Therefore, corporate have to find the way of the people rather than self righteous media attractive CSR. If corporate can realise the gravity of the term human rights and strives to protect it, It will be a matter of time Bangladesh will find among the developed countries of the world. But to make that dream a reality, corporate society of Bangladesh must come out of their glass ordained houses and see the tangible needs of the people.

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