



Way to compensatory justice system

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BANGLADESH as a State under current government is moving with a vision of getting out of the culture of impunity that has been embedded in our politico-legal culture for a long time. However, tragic death like artist Khalid Mahmood Mithu, innocent boy Zihad and also fire in a resident of Banani due to gas pipe leak have reiterated the issues of 'breach of statutory duties' and 'gross negligence' of public authorities in Bangladesh.

In the all aforesaid incidents two things are common, firstly, the sufferings of ordinary citizens, secondly, refusal of public authorities to take their responsibilities for such miseries. It is of little surprise that the concerned public authorities are vehemently unwilling to acknowledge or retrospect their responsibilities the failures of which have caused irreparable losses to the families and friends of the victims. Unsurprisingly, a sound legal system refuses to believe that bank of justice is bankrupt. Thus, citizens have been inflicted harms but none may ultimately be held responsible for the breach of statutory obligations that caused such damage.

Our Constitution as supreme legal document of the land guarantees right to

life and liberties of the people under articles 31 and 32 that none is allowed to take away except in accordance with legal mechanisms. In this aspect, we may logically put a question that do our citizenry have any legal recourse if they have been derived of right to life as consequence of the action or inaction of any public authorities? Relevantly, reply to the said query would unfold the scope of making concerned authorities responsible in case of their breach of statutory duties and further to award compensation to the victims or to their families.

In the backdrop of recent fire incident of Banani, Titas Gas, as a State owned corporation has allegedly violated its statutory obligations of providing safe gas pipe line system to users. In our constitutional scheme, under article 21 everyone in the service of republic has a constitutional duty to strive at all times to serve the people. Do our public authorities bear the same sense and spirit in their minds while they perform their jobs?

In the instant case as reported by media, Titas has been informed several times by the inhabitants of affected house of Banani to take appropriate steps to avoid potential catastrophe, even day

before the incident, surprisingly it did not respond accordingly. Titas Gas as authorised agency to manage and distribute the gas among the residents of Dhaka has vested with a statutory duty under section 7(2)(a) of Bangladesh Gas Act, 2010 to maintain a secured gas line system. Its role and response to the imminent danger that has been notified by the residents of house may logically be questioned, and may further be termed as violation of its statutory duty under said Act. Furthermore, Titas Gas may also be put under scrutiny lenses because of breaching its commitments to ensure safe gas pipe line for the users that it has promised in the citizen's charter.

Concomitantly, the breach of statutory or legal duties may raise another legal question of 'negligence' or even 'gross-negligence' on the part of concerned authority. If the issue of 'negligence' or 'gross negligence' is proved the victims may claim compensation for the damage that they had suffered. Even court may order the concerned authorities to provide punitive damages so that it may deter other authorities from repeating similar miscarriages.

Regrettably, compensatory justice is yet to be firmly established in our legal system. However, the recent landmark ruling of High Court Division of Supreme Court of Bangladesh in *Children's Charity Bangladesh Foundation (CCB Foundation) v Government of Bangladesh and others* (Writ Petition No-2388/2014 filed in the High Court Division (HCD) on the tragic death of 4 years old innocent boy Zihad) may pave the way to the trajectory of compensatory justice in Bangladesh. In this writ petition, the HCD has ordered to pay the compensations to the victim Zihad's family by concerned authorities for their breach of duties. Although government has applied for staying the HCD's order and presumably may challenge the said order in Appellate Division, however, we may hope that jurisprudence of HCD would be sustained in the apex court as well.

Thus, our legal system must find its way forward to the compensatory justice system that may ultimately mitigate sufferings of citizens in one hand and deter our public authorities from breaching their constitutional and statutory duties on the other.

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The tragic death of 4 years old innocent boy Zihad may pave the way to the trajectory of compensatory justice in Bangladesh.



THE MOOTERS OF DHAKA UNIVERSITY

Dreams unbound, inspirations all around

SHYIKH MAHDI

DHAKA University Moot Court Society (DUMCS), the pioneer moot platform of the country started its journey in 2007. Bearing the long legacy of success all around the world, in last few months, DUMCS have successfully sent four international teams to represent Bangladesh in the global platforms. The journey started from Dhaka, then moved around New Delhi, Lahore, Hong Kong, Oxford, and have not stopped yet.

The first DUMCS team of 2016 participated in the Professor N R Madhava Menon SAARC Moot Court Competition and Law Students Conference, held in India. Organised by Lloyd Law College of Greater Noida, this Competition focused on comparative paradigms of international law. DUMCS team of Jubair Ahmed and Sayeed Sarwar represented Bangladesh in this Mooting Competition, while Emraan Azad on behalf of Dhaka University presented a research paper on the issue of Bangladesh's legal education in the Law Students Conference.

The second team of the year, comprised of Mohammad Omar Faruque, Nadia Rahaman and Masrur Ansari went to Hong Kong to represent Bangladesh and South Asia at 14th Red Cross IHL Moot Court Competition. The journey of this team in the complex realm of international humanitarian law was more than a fairy tale. At the national round of Henry Dunant Memorial Moot Competition, they became the champion of Bangladesh by reigned supreme among 20 universities. Then, at the regional phase (held at Lahore, Pakistan), Dhaka University appeared one of the toppers among the best teams of South Asian region, and we won the Best Memorial Award

for excellent research and articulation. And the fairy tale was not finished yet.

At the global round of the Henry Dunant Mooting Competition, Dhaka University again bagged the Best Memorial Award; this time winning it from the best universities around the world. This was the first time Bangladesh ever winning a major trophy in an international moot competition.

Our third team, comprised of K M Ashbarul Bari, Atikul Haque, Nusrat

tough, challenging the nerves of the mooters by dissecting the sensitive right to freedom of expression; in the end, Dhaka University was on their way to England, 'Eastern Oxford' was meeting 'The Oxford'.

In the grand stage, Dhaka University again shined in glory by beating the University of Sao Paulo (Brazil) and the University of Amsterdam (Netherlands) and qualified to the Octo-Finals, the 'Top 16' among the forty participating teams

Highest marks among 27 teams) in the 6th Dr. Paras Diwan Memorial International Energy Law Moot Court Competition, held at Dehradun, India. The team of Naeem Hasan, Salvia Jannat and Moniruzzaman Monir represented both Dhaka University as well as Bangladesh in this Competition on an intriguing issue of energy law. DUMCS was awarded as the Best International Team of the Competition while Naeem Hasan won the Best Mooter Award.

The stories might sound so sweet, but the journey was not. The major problem regarding our moot competition is the lack of funding and logistic support. We have not been successful to tap into the CSR and other sponsorship sources to fund the teams, which hold us back from representing Bangladesh in some of the major moot competitions around the world. Keeping in mind the limited opportunities and resources available in a public university, we strive to figure out solutions for all the problems with passion, hard work and sincere supports from our teachers, specially Professor Dr. Nazmuzzaman, the moderator of DUMCS.

Nevertheless, the hard work, dedication and passion of the law students as mooters from DUMCS will be a source of sheer inspiration for the future mooters and law students of Bangladesh, who will come forward to uphold the Red and Green in front of the whole world, in moot competition, and in real life legal battles. The dream to represent Bangladesh in international courts as lawyers and judges - the long journey has begun, and the light at the end of the tunnel is blazing red.

THE WRITER IS THE VICE PRESIDENT OF DHAKA UNIVERSITY MOOT COURT SOCIETY (DUMCS).



The best International team awardee in 6th Dr. Paras Diwan Memorial International Energy Law Moot Court Competition.

Jahan, Romana Afroze and Sayed M Shafayet, also bears a legacy of success in their own journey. Based on the quality of research, we were the only team selected from Bangladesh in the South Asia Round of the Oxford-Price Media Law Moot Court Competition, and eventually qualified for the global round, which was hosted by the Faculty of Law, University of Oxford. The New Delhi round of the Competition was a bit

around the world. Although they lost to the National Law University of India (NLU Bhopal) for the narrowest margin of 2 marks, their performance was widely acclaimed, and the Bangladeshi community of the UK including the Bangladesh Law Association in the UK honored the team by arranging formal receptions.

Our fourth team fought their way out (stormed in preliminary round, qualified to Quarters with 2nd



Rape incidents: Silence to be broken

KH. KOHINUR AKTER

RAPE incidents, irrespective of time do make our hearts bleed and hurt us deep. The recent rape incidents were deep enough to create a social reaction that has come from every section of the society. According to the recent statistics of Bangladesh Ain o Salish Kendra (ASK) of last two months (from January to February) of 2016 on rape cases found shocking. It shows that 105 women have been raped by offenders and among them 20 victims are between 7-12 years old. Further, 3 victims are killed after rape and 2 committed suicide. Evidently these numbers demonstrate the gravity of these incidents.

In Bangladesh rape is considered as a brutal sexual crime but still the numbers of incidents are rising day by day. In our legal arena, rape has been defined in the Penal Code 1860 and it also provides punishment for rapists. It is provided that whoever commits rape shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for rape has also been described in section 9 of the Prevention of Oppression against Women and Children Act 2000. It is provided that whoever commits rape with a woman or a child shall be punished with rigorous imprisonment for life and with fine. If in consequence of rape or any act by him after rape, the woman or the child dies later, the man shall be punished with death or with transportation for life and also with fine not exceed-



ing one lakh taka. Moreover, if more than one man rape a woman or a child and that woman or child dies or is injured in consequences of that rape, each of the gang shall be punished with death or rigorous imprisonment for life and also with fine not exceeding one lakh taka. Further, whoever attempts on a woman or a child to cause death or hurt after rape, he shall be punished with rigorous imprisonment for life and also with fine.

Rape in custody has got attention by this Act which states that if a woman is raped in the police custody, each and every person, under whose custody the rape was committed and they all were directly responsible for safety of that woman shall be punished with imprisonment for either description which may extend to ten years but not less than five years of rigorous imprisonment and also with fine.

It must be mentioned here that the section 155(4) of the Evidence Act, 1872 regarding the rape cases seems discriminatory and troublesome for female rape victims. In the court proceedings they are being harassed by opposition lawyers as the lawyers try to establish that the victims possess immoral characters. It prevents victims to come to court for justice so the section must be revised and amended considering inconvenience of the female rape victims.

In Bangladesh, though there are laws but still the victim or family members of the victim remain silent due to the lack of support services or provision of protection for victims and witnesses, social stigma associated with rape, prevailing patriarchal attitudes, protracted court proceedings, inadequate investigations by the police, lacunae in the law, particularly the absence of rape shield provisions, etc. Moreover the rape victim has to undergo severe mental and social constraints. That's why rape cases in Bangladesh remain largely unreported. So, immediate legal reforms, enforcement of laws, exemplary judicial decisions, effective government rape prevention policies and social awareness including education programs for boys can improve the scenario of this heinous violence.

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