



# RAMPAL PROJECT Environment before development

### BANK TRACK FINDINGS

- Rampal project violates three environment acts
- Incomplete and weak Environment Impact Assessment
- No functioning grievance mechanism to address concerns of the affected people
- Coal transport through the Sundarbans to endanger the forest and wildlife
- Insufficient provisions for waste disposal

**MOHAMMAD TAREQ**

THE Rampal Power Plant is a proposed 1,320-megawatt coal-fired power plant promoted by the Bangladesh-India Friendship Power Company Limited (BIFPCL), a joint venture of the Bangladesh Power Development Board (BPDB) and India's largest power producer, NTPC Limited. The project is a result of a Bilateral Investment Treaty (BIT) between Bangladesh and India for the promotion and protection of investments.

International Investment Law and International Customary Law have provided some obligation under the BIT Agreement and it would be better to follow the obligation for both sides. The proposed 1,834-acre plant site is on the Passur River in the Ganges tidal floodplain in the southwest of Bangladesh. The site is 14 kilometers north of the Sundarban mangrove forest, a UNESCO World Heritage site. The Sundarban is a national conservation area in Bangladesh and a designated Ramsar Convention's wetlands

and a part of the UNESCO World Network of Biosphere Reserves. The physiognomic features of the Sundarban have been substantially altered by human activities and the mangrove forests are being destroyed due to commercial activities and human-induced climate change.

The present analysis focuses on an array of international instruments relating to the protection of species, habitats, ecosystems, biodiversity *lato sensu* on the operations of foreign investors. The law relating to the protection of biological and cultural diversity, the obligations may potentially conflict with investment disciplines. Several environmental agreements provide for the protection of areas like, the establishment of natural reserves or other protected areas and species. Pursuant to Article 4(1) of the Ramsar Convention, the States shall promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the list or not, and provide adequately for their wardening. Similar obligations

arise from Article 4 of the World Heritage Convention, Article 2(1) of the Convention on Migratory Species and Article 8(a)(b) of the Convention on Biological Diversity.

The potential incidence of this type of obligations on foreign investment schemes must be appraised in the light of the more specific regulations issued by the bodies responsible for the management of these treaties to implement such obligation. Such obligations focus inter alia on the contents of the management plans that the States are required to submit, the legal status must be granted to the relevant area to qualify for recognition by an international body, the buffer zone that must be established in the surroundings of the protected area or requirements in terms of environmental impact assessment and monitoring attached to the creation of such protected areas. An early example of how protection of cultural heritage may collide with investment schemes is provided by the *SPP v Egypt* case also known as the Pyramids case. A foreign

investor planned to build a tourist resorts near pyramids, for which it had received the initial approval of Egypt, most notably through an investment agreement concluded.

The International Court of Justice (ICJ) analysed the impact of the World Heritage Convention as a potential justification for the acts of Egypt. Specially, The tribunal concluded that the effect of Article 4, 5(d) and 11 was to create an obligation that had become binding not on date of entry into force of the Convention (1975) but only on the date which the World Heritage Committee accepted the nomination.

F. Francioni and F. Lenzerini in a book titled *The Destruction of the Buddhas of Bamiyan and International Law* articulated that the States have an obligation to protect natural and cultural heritage irrespective of whether a particular site is listed or not. So Bangladesh is a signatory party and has accepted the World Heritage Convention for the reason host country Bangladesh and investor India has an obligation to protect Sundarban and take steps ensure biodiversity. Bangladesh is an observer State to the Energy Charter Conference and according to Article 19 of this Charter 'each contracting party strive to minimize, in an economic efficient manner, harmful environmental impacts resulting from all operations within the energy cycle in its area'.

Bangladesh should ensure the participation of civil society and establish adequate means to monitor and enforce the environmental commitments under taken by the investor. Under international law, the investor requires (a) to establish environmental management plans, (b) to meet certain environmental motoring obligations regarding water and wildlife, (c) to submit detailed compliance report, and (d) to post security bond of several million dollars to back compliance. Bangladesh and India cannot deny the international law obligation while undertaking Rampal Project.

THE WRITER IS AN LL.M STUDENT AT SOUTH ASIAN UNIVERSITY, NEW DELHI.



## In the name of honour...

**ANUPOMA JOYEETA JOYEE**

'HONOUR killing' is an iconic oxymoron, going beyond all logic, implying that somehow there happens to be 'honour' in killing a family member.

On July 15, 2016 the murder of Pakistani social media star Qandeel Baloch left the whole world dumbfounded as she was killed for living life the way she pleased. The victim's brother nonchalantly and without remorse publicly confessed having drugged and strangled her. Beyond the underlying hopelessness of the whole endeavour what is even sadder is that this particular case has turned heads and taken social media by storm only because the victim herself had been a talk of the town for a long time.

Since time immemorial it has been proved that women are not safe simply because they are women. There are examples of men being killed for practicing homosexuality or even for acting in a feminine way. Very strategically the society has reserved the moral policing and judgements for females, to be exact, for femininity.

Honour killing, also known as shame killing, is carried out generally on females who have brought shame to the family. The perpetrators are mostly but not exclusively men. Ironically and pointlessly the concept of honour killing blows up on the face of its own foundation. The legal system year after year considers inter-caste marriage to be a valid reason for a family member to kill another. However, the killing itself remains amenable to pardon, honour gets a twisted meaning- where there is deemed no shame in taking away a human's right to live.

Honour killing is quite understandably a result of strong patriarchal views on women. Every raised eyebrow on how a woman should dress, women's submission to male authority, being viewed as property are silent



contributors to violent punishments for one gender which has been asking for equal rights for years.

Widney Brown, advocacy director for Human Rights Watch, holds that the practice of honour killing "goes across cultures and across religions." To the surprise of many people it even exists in the jurisdiction of Great Britain, Italy, German, Norway, Sweden but mostly is practiced upon migrant Kurds, Muslims. The archaic Napoleonic Code (Article 324, 1810) permitted murders of an unfaithful wife at the hand of the husband but not the other way around. Even though it has been abolished in 1975, the Middle Eastern countries grabbed the opportunities to adopt and implement this sexist, unequal and anti-human rights piece of legislation to overpower women.

Even to this day Jordan's Penal Code of 1960 in Article 98 states, he who commits a crime in a fit of fury caused by an unrightful and dangerous act on the part of the victim benefits from a reduction in penalty. Unbelievable as it may be, only six months is the usual penalty for such killers in Jordan where capital punishment is for murder, terrorism or sexual offence.

The segregation in punishment is an outrageous acquiescence and silent go-ahead gifted by the legal system for an offence. This may be called by a different name and be explicable by the patriarchal overlords, sugar coated as the saviour of honour but is above all nothing less than homicide.

Apparently, in Pakistan the legal heirs of the victim are permitted to forgive the killer in which case he walks free. The newly proposed legislation on honour killings recommends 25 years' imprisonment even if the heirs of the victim pardon the convict whereas under Section 302 of the Pakistan Penal Code the convict in a simple murder case may only get the life imprisonment of 14 years or a maximum of the death penalty. The loophole perseveres as a person may declare it to be a simple murder to avoid the higher punishment. As Tariq Mehmood Jahangiri, a criminal law expert and the president of the Islamabad High Court Bar Association, said the legislation on honour killings would fail to get the anticipated results as the accused may claim that he had committed the murder for different reasons such as a dispute over property etc.

It's a shame to be asking to not be killed for living life according to one's choice. The issue was hidden in plain sight before the society collectively lost Qandeel. Now the ancient laws need to be entirely reformed into one that condemns murder in no matter what form it is from one that remorselessly blames the victims.

THE WRITER IS A STUDENT OF LAW, UNIVERSITY OF LONDON INTERNATIONAL PROGRAMMES.

### LAW LETTER

## Reliance upon justice system



Right to Life guaranteed by many national and international instruments is one of the fundamental human rights. The Constitution of Bangladesh specifically and categorically enshrines some fundamental rights for the citizens and others, and guarantees their protection by the supreme judiciary of the country. The Constitution prohibits any kinds of deprivation of life of a person without legal process and to ensure the due process of law it provides for establishment of judiciary in higher and lower level in the country. Article 31, 32, 33 and 35 Constitution and others existing penal laws ensure the fair practice of criminal proceedings through which an offender undergoes different stages from arrest to execution of punishment.

Extra judicial killing of an accused person by law enforcement agencies are completely evasive of existing criminal justice system which is set up to control crime, punish the offenders, prevent crimes, protect innocents, and to maintain a fair degree of cohesion and stability in the society. Executions of punishment without the mandate of law by the law enforcement agencies not only violate the rights of the accused but also diminish public confidence in the judiciary.

It is alarmingly observed that extra judicial killing in the names of 'cross fire', 'encounter', 'shoot out', 'gunfight' have recently increased in Bangladesh - specially in the backdrop of militancy uprising. There runs a risk of people including the criminals losing faith on criminal justice and they might try to solve any matters extra judicially. If the law enforcement agencies are allowed to continue extra judicial killing with express or implied immunity, the justice seekers must show reluctance to take shelter of criminal justice administration.

In a democratic system, extra judicial killing can never be a tool of curbing crimes in the society; rather this culture definitely creates an environment of violence which multiplies the offences in turn. By denying an accused's right to fair trial and right to defend in impartial and independent court of law, the State challenges the independent and impartial functioning of the criminal courts. To prevent the society from militancy and terrorism, the criminal justice system should be emphatically considered as the sole forum for solution and criminal courts should strive to retain public confidence by proper functioning.

**Md. Abdur Rahim**  
Assistant Professor  
Department of Law and Human Rights  
University of Asia Pacific (UAP)

### LAW NEWS

## Legal aid for workers

MUHAMMAD MAHDY HASSAN

HONOURABLE Prime Minister of the People's Republic of Bangladesh, Sheikh Hasina made a declaration in 2013 to establish separate Legal Aid Cell Office aiming to provide legal aid at free of cost for the workers who are deprived of getting access to justice. Although the government enacted the Legal Aid Services Act (LASA) 2000 (last amended in 2013), workers have been continuously victimised by their employers. Female workers are particularly facing discrimination in the workplace, including denial of maternity leave, child care on site, sexual and verbal harassment and termination of job without following due process.

People experienced a shocking disaster of Rana Plaza collapse on 24 April 2013. In the aftermath of the incident, a new concept of providing legal aid for the workers was endorsed by the Ministry of Law, Justice and Parliamentary Affairs and thereby National Legal Aid Services Organisation (Hereinafter NLASO) established for the first time a Worker's Legal Aid Cell at the premises of Dhaka Labour Court on 2 May 2013 with the technical support from Justice Sector Facility (JSF) project of the United Nations Development Programme (Hereinafter UNDP) and DFID.

The Cell is now fully functional to provide free legal aid services; like (i) providing legal advice, (ii) conducting mediation to settle disputes as Alternative Dispute Resolution (ADR) process and to draft grievance petition, (iii) engaging Legal Aid Panel Lawyers and representing cases in the labour courts, (iv) raising awareness about worker's rights in industrial areas, (v) providing capacity development of Panel Lawyers, (vi) running a hotline services for both national and migrant workers in providing information, and (vii) conducting training programs for Trade Union leaders and so on. Workers from all 17 districts of Dhaka division are now enjoying the legal aid services from the Cell. Since its inception, it is reported by NLASO that a total of 6,027 workers accessed the services and thereby an

amount of BDT. 2,759,618 was recovered from the employers as compensation to directly provide the victims by the intervention of the Cell.

To expand the legal aid services, NLASO has recently established another Worker's Legal Aid Cell Office at Chittagong Labour Court that is fully operational from 21st of July 2016 while UNDP Bangladesh provided technical support under its Women's Access to Justice Project to establish the Cell as Chittagong is considered to be the commercial capital of Bangladesh having the most number of industries in different sectors like RMG, ship breaking, steel manufacturers, packed foods etc.

To safeguard the interests of thousands of workers employed in those sectors, the Cell will be providing more or less the similar services compare to the services provided by Dhaka Cell Office. The Cell is now under the direct supervision of the Chairman of the Labour Court. A special committee will be formed soon to monitor the daily activities. In addition, NLASO will also monitor the progress.

It is worthy to note that workers from different areas are coming to both Cells to avail legal aid services. However, the two Cells should be equipped with utilising innovative ways; e.g. disseminating SMS, developing and distributing awareness materials like posters and leaflets, broadcasting Public Service Announcement (PSA) through community radios and televisions, and using social media so that target people can reach the Worker's Legal Aid Cell. Two Cells are not adequate to provide the legal aid services to the workers of whole Bangladesh. The government, policy makers, civil society, local and international NGOs, UN specialised agencies like UNDP and ILO, donors like USAID and DFID, and existing Labour Union leaders and other stakeholders should work altogether to establish more Cells in remaining divisions of the country in order to achieve the goals of Worker's Legal Aid Cells.



THE WRITER IS WORKING AS TIP PROGRAM ASSOCIATE WITH RELIEF INTERNATIONAL, BANGLADESH COUNTRY OFFICE.

**Dear reader,**  
You may send us your daily life legal problems, queries, write ups, opinions to: Law Desk, 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: 9144330, 8124944, fax 9144332; email: dslawdesk@yahoo.co.uk.