

## RIGHTS WATCH

# Apex court guidelines to ensure quick compensation for accidents

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Accident is undoubtedly a regular phenomenon in the country. Families or well-wishers of accident victims approach the higher court of the country seeking appropriate compensation.

The High Court Division (HCD) of the Supreme Court (SC) of Bangladesh, as a constitutional court, issues orders and rules and delivers verdicts on regular basis for compensating the victims' families in relevant cases.

However, most of the HCD directives are not implemented instantly because appeals are moved before the Appellate Division (AD) challenging the HCD directives. As such, victims often have to wait for a long period of time, even for years, to get compensation.

In this reality, a specific guideline may come from the AD of the SC for determining the amount of compensation and their early payments for the family members of victims of accidents. Certain examples are enumerated below.

On April 29 this year, the AD has directed Dhaka's United Hospital to pay Taka 25 lakh each in initial payment in 30 days to the families of the four patients killed in a fire at its Covid-19 isolation unit on May 27 last year. The hospital authorities have paid the money as an initial compensation to the victims' families in compliance with the top court directive.

Earlier on January 11 this year, the HCD had directed the hospital authorities to pay Taka 30 lakh as initial costs to each of the families of four victims in 15 days.

The same day, the HCD also issued a rule asking the authorities to explain in four weeks why they should not be directed to pay Taka 15 crores to each victim's

family as compensation. The four victims were Vernon Anthony Paul (75), Riyajul Alam (45), Khodeja Begum (70) and Md Mahbob (50).

The HCD bench of Justice JBM Hassan and Justice Md Khairul Alam delivered the order and rule following three separate writ petitions filed by some SC lawyers closed to the families of victims seeking necessary directives for adequate compensation.

Following the same writ petitions, a virtual HCD bench led by Justice M Enayetur Rahim on July 15 last year had directed the United Hospital authorities to pay Taka 30 lakh to each of the four victims' families as an initial payment in 15 days of receiving the copy of the HCD order.

The United Hospital authorities filed a petition with the AD on July 20 last year, seeking a stay on the HCD directive.

The AD in August last year stayed the HCD order and asked the writ petitioners to again move the same writ petitions before a regular HCD bench for issuing a rule and necessary directives of the issue.

In continuation of the legal battle, the AD on April 29 issued the order for compensation which the hospital authorities must comply with.

Meanwhile, the HCD rule is still now pending, and a complete compensation might be determined by this court after hearing the rule.

Lawyers Aneek R Haque and Niaz Mohammad represented the victims, told The Daily Star that the SC has delivered for initial

costs under constitutional tort, which is now developing in Bangladesh in ensuring compensation for damages.

Tort law involves claims in an action seeking to obtain a private civil remedy, typically money damages.

Article 104 of the Constitution says, "The [AD] shall have power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it, including orders for the purpose of securing the attendance of any person or the discovery or production of any document".

Aneek R Haque said, "The idea of constitutional tort is not new. In our country, we have no framework for tort itself. Hence, we are trying to introduce this jurisprudence. The idea is to ensure that all the parties are responsible and show due diligence and observes the duty of care.

"In this case, the negligence of United Hospital in building the corona unit was palpable which is reflected in the reports. This jurisprudence will open up accountability to the people and will help to regulate the service," he added.

Similar attempts have been made in other cases. Some notable examples include the Tarek Masud and Mishuk Munier accident case in which the HCD ordered the defendants to pay a compensation of taka 4.61 crore to the victim's family. However, the defendants moved to appeal – which is now pending. Another notable case is the Jaha Alam case. In this case, the HCD ordered BRAC Bank to pay 15 lakhs taka as compensation to jute mill worker Jaha Alam who was wrongfully imprisoned for four years. BRAC Bank moved to the AD seeking a stay on the HCD order. The matter is currently pending.

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## LAW LETTER

# Laws protecting victims from cyber harassment



REZWANA RASHID AND TANHA TANZIA

Even though Bangladesh claims to be a digitally progressive country, the cases of cyber harassment are continuously on the rise. In the view of recent public outcry against cyber harassment, people need to be made aware of the relevant laws to protect themselves. Of the most prominent forms of harassment taking place digitally, defamation and victim-blaming are the most common. Somehow the general people of the country have gotten the idea that they are allowed to say whatever online without facing consequences.

From minor offences like sending obscene comments and pictures to a woman to major ones like blackmailing using private pictures of a woman who were taken without consent, the cyberspace is providing an unsafe environment for these women. There are cases of editing a person's pictures in an obscene way to ruin their reputation in the society. That cybercrimes like identity theft and others have become so common, most of the time the victims do not even realise the severity of these offences and ignore them without seeking legal help. A lot of times, even minor children fall victim to this kind of abuse and often take drastic steps without seeking help.

Since our society is yet to be victim-friendly, it is very often seen that the victim is blamed and stigmatised, specially when it comes to a woman. Whenever a private picture or information goes viral, most people tend to focus on a victim's actions and character rather than the criminal and offence. That is why in maximum cases the victims often tend to take the blame upon themselves for sharing the pictures privately and the most frightening thing is that it leads them to take drastic steps like suicide. Sadly, these women who are constantly subjected to victim-blaming also do not get adequate support from their family or society, so they do not feel the urge to take legal steps.

Even if the victims try to express their views and demand justice for the harassment, they face restrictions and intimidation from the elders of their family who fear for the family's reputation in society. They also face judgment and harassment from law enforcement officials while filing a case. These events are more

common than we can imagine because, sadly, these cases remain outside the public domain for fear of further harassment or mockery. They are being constantly suppressed due to this stigma, the tendency of blaming the victims, ingrained gender stereotypes, fear of repression, power norms, and lack of protection for victims.

The laws which can be availed by victims of cyber harassment in Bangladesh include the Information and Communication Technology Act, 2006 (ICT Act); the Pornography Control Act, 2012 (PC Act); and the Digital Security Act, 2018 (DS Act). Section 63 of the ICT Act ensures punishment for disclosure of confidentiality and privacy with imprisonment or with a fine or both. Section 24 of the DS Act penalises identity fraud and provides sanctions for it whereas section 25 protects a person from the transmission or publication of offensive, false or threatening information regarding them through any digital medium. Section 29 of the DS Act protects a victim against defamation. Finally, section 8 of the PC Act has made the possession, distribution or use of any sort of pornographic material illegal. It has also included sanction for blackmailing using such materials and distributing them using the internet. With the proper implementation of all these laws, it is possible to ensure the safety of the people accessing the digital platforms.

Towards realising our dream of 'Digital Bangladesh', it is necessary to build safe cyberspace for everyone accessing it.

Many victims are not aware of the help available in these cases. The law enforcement agencies have recently undertaken several initiatives to tackle such offences and have launched a hotline where victims can complain using the profile link or screenshots of the offender. Legal aid organisations like Ain o Shalish Kendra (ASK), Bangladesh Legal Aid and Services Trust (BLAST), Bangladesh National Women Lawyers' Association (BNWLA), etc. also provide assistance. A specialised branch of the police called the Police Cyber Support for women also provides the necessary advice and legal assistance.

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## GLOBAL LAW UPDATES

# Human Rights Council recognises the right to healthy environment

On 8 October 2021, UN High Commissioner for Human Rights Michelle Bachelet urged states to take steps to implement the right to healthy environment. In its resolution 48/13, the Human Rights Council (HRC) recognised the right to healthy environment as a human right and asks states to work in collaboration with other stakeholders to bring this right to effect. The High Commissioner recognised the interconnectedness of the natural systems with the lives and livelihood of people and reaffirmed that bold steps are now required to "push for transformative economic, social and environmental policies that will protect people and nature." The HRC resolution also underscores the differentiated impacts of environmental hazards and climate change, noting that the most vulnerable groups are most affected by the brunt of such hazards.

The High Commissioner also noted that environmental action and human rights should not be separate as one cannot be achieved without the other and called for a "human rights-based approach to sustainable

development".

The issue will be raised for further discussion before the UN General Assembly.

In Bangladesh, the judiciary has consistently noted the intertwined aspects of environment and human rights. In the landmark case of *Mohiuddin Farooque v Bangladesh*, the case which is most noted for its contribution to the development of public interest litigations in Bangladesh, the court reaffirmed that the right to life under article 31 of the Constitution is a multifaceted right. The petition, which questioned flood action plans, first paved way for recognition of environmental sustainability as a facet of human rights. Subsequently, several judicial pronouncements also reiterated healthy environment as a necessary precondition for lives and livelihood of the people. In Bangladesh, there is still further progress to be made not only with regard to proper implementation of the laws but also with regard to raising public awareness on the issue of environmental protection.

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## LAW EVENT

# Swedwatch organises training programme on business and human rights

Swedwatch, a Sweden based non-profit organisation, organised a four day long online training programme on business, human rights and environment for youth in Bangladesh. Held on 20-30 September 2021, the programme was attended by twenty-four students of various disciplines including law, business, engineering, from different institutions across the country. The training aimed at providing theoretical and practical knowledge regarding businesses from human rights and sustainable development perspective, putting specific focus on the environmental concern. The training was part of a pilot project to determine the methodology in bridging the knowledge gap among the youth in Bangladesh on business, human rights and environment identified during the 2<sup>nd</sup> UN-South Asia Forum on Business and Human Rights held in March 2021.

The training was divided into four modules. First module included the basics of human rights and sustainable development. The second and third modules respectively comprised of the United Nation's Guiding Principles on Business and Human Rights (UNGPs) and Human Rights and Environment Due Diligence along with businesses' accountability. The last module was related to grievance mechanisms in case of violation of human rights.

The sessions were conducted by three experts: Sanjida Shamsher and Charlotte Junghus, researchers at Swedwatch; and Mohammad Golam Sarwar, Assistant Professor of Law at the University of Dhaka and National Consultant for this project at Swedwatch. Sanjida Shamsher specifically focused on businesses' human rights due diligence and reflected, as is recognised in the UNGPs, that the business entities should respect human rights within their business operation. This is not philanthropy anymore, as 'doing good' is not the same as 'doing no harm' to the people and planet. So, no business should violate human rights within their operations or through their



business relations. She also explained the requirements set out in the UNGPs that a business should stop causing or contributing to adverse human rights impacts and perform human rights due diligence to identify and mitigate actual and potential adverse impacts. Sanjida emphasised, corporate responsibility does not merely mean refraining from causing harm directly, rather it also means corporations have a responsibility to avoid contributing or having their operations linked to human rights abuses.

Mohammad Golam Sarwar discussed the legal framework of the environmental protection in Bangladesh and how they relate to business. Mr. Sarwar, who was also the moderator of the Bangladesh country session at the 2<sup>nd</sup> UN-South Asia Forum on Business and Human Rights, identified that the environmental consideration of sustainable development is rarely practiced by the companies and business enterprises operating in Bangladesh. Corporations and industries remain largely unaccountable despite their constant contributions to the causation of environmental degradation. He stressed the necessity of integrating the UNGPs into the domestic legal framework concerning the environment. Implementation of corporate environmental accountability shall facilitate not only to achieve sustainable development but also to address the

forthcoming challenges of post-LDC graduation of Bangladesh, he opined.

Charlotte Junghus elaborated on the requirement of the compliance with the UNGPs and the need for social dialogue. She mentioned that social dialogue benefits all the stakeholders including the employers, employees, and the government and contributes to better working conditions and is an effective tool to address conflicts and human rights adverse impacts. She also highlighted findings from a Swedwatch report, published in 2018, indicating that Bangladesh struggles to fulfil the ILO's preconditions for a functioning social dialogue, preconditions which need an accelerated inclusion across the country.

The participants and the facilitators were engaged in lively discussions throughout the training sessions. As part of the practical dimension of the training, the participants were divided into four groups which worked on case studies in different industries delving into their human rights compliance and environmental impact.

In the last session, participants expressed their experiences and key take-aways from the training. Mahfuzul Hoque and Adhara Tanisha Kabir from Bangladesh University of Textile said that they really loved the multidisciplinary approach from Swedwatch. They added that the workshop introduced them to many international guidelines on human rights and environment related to business which would be very beneficial for their career as a textile engineer. Rubiaat Sawon from the University of Dhaka said that he learnt a lot from the training, specially the detailed analysis and functioning of the UNGPs.

In the end, the facilitators and the participants vowed to continue developing their knowledge and skills within the field of business and human rights and share their experiences with other students. The participants have also planned to stay connected with each other and encourage business and human rights discourse in the future.

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