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BLAST holds seminar on compensation for the violations of fundamental rights



PHOTO: BLAST

On October 10, 2018 Bangladesh Legal Aid and Services Trust (BLAST) hosted a seminar titled 'Compensation as a Constitutional Remedy for Violations of Fundamental Rights' as part of its Law in Practice Seminar Series at the BILIA auditorium. The focus of the seminar was on the growing importance of public law compensation and to identify the extent to which the

Judiciary has recognised and granted constitutional compensation to redress fundamental rights violations.

Mr. Taqbir Huda, Research Specialist, BLAST, conducted the keynote presentation which was titled 'Rights without Remedies: Activating Public Law Compensation in Bangladesh'. He explained that Article 102 of the Constitution of Bangladesh is worded broadly enough to cover constitutional compensation and has been invoked by public interest lawyers and rights bodies to remedy victims of human rights violations. However, through a chronological analysis of compensation cases under Article 102 he highlighted the judicial conservatism in this area and the tendency to either tokenise compensation awards or conflate it with compensatory cost awards. He argued that until tort law remains cumbersome and outside the reach of victims of fundamental rights violations, public law compensation will continue to be the only effective remedy, which is precisely why we need to activate it.

Dr. Ridwanul Hoque, Professor of Law, University of Dhaka, was the designated discussant who contended that thus far there has been no judgment in Bangladesh which could adequately qualify as public law compensation. He argued that even though the principle of public law compensation has been embedded in the purposive wording of our Constitution since 1972, our courts have unfortunately failed to utilise this. He referred to foreign jurisdictions where public law compensation has seen significant development such as India and South Africa, and cited a recent Indian Law Commission report which specifically recognised the importance of public law compensation.

The panel discussants included Barrister Anita Ghazi Rahman, Advocate, Supreme Court of Bangladesh and Founder of Think Legal Bangladesh and Barrister Abdul Halim, Advocate, Supreme Court of Bangladesh and counsel in the landmark *Zihad* case. They addressed the question of what practical hurdles are involved in filing compensation claims through writ jurisdiction.

Barrister Rahman submitted that the hurdles are threefold. The first is fault attribution: which specific branch of State should bear the brunt of paying damages in a constitutional compensation case? Secondly, what should be the quantum of compensation? Should the writ petitioners be expected to specify the amount of compensation and the specific branch of State who should pay it in their writ petitions or is this the duty of the court to do so? She contrasted

the differing compensation amounts awarded in the cases discussed in the keynote presentation and pressed for the need to establish proper guidelines on quantum of compensation for the purposes of consistency. Thirdly, she said that the realisation of compensation even when the court rules in one's favour is 'half the battle' and takes an unduly long time.

Barrister Halim spoke about the hurdles he personally experienced when pursuing the *Zihad* case, such as the great judicial reluctance to accept the notion that compensation should be paid for fundamental rights violations and the lack of domestic precedent on public law compensation. He highlighted that the *Zihad* case should be considered a benchmark for the development of public law compensation in the judicial system of Bangladesh since it marks the first time that the High Court Division, embraced judicial activism, analysed gross negligence and breach of statutory duty of a government authority and applied principles of constitutional tort.

The panel discussion was followed by an open discussion among the participants which consisted of Supreme Court and District Court lawyers, university lecturers, academics, researchers and officers from the UN OHCHR. The closing address was given by Justice Md. Nizamul Huq, Chief Legal Advisor, BLAST and former Justice of the Appellate Division of the Supreme Court of Bangladesh, who remarked that there is immense potential for the growth of compensation law in our country and that this will be the first of many compensation seminars which will be organised by BLAST.

THE EVENT WAS JOINTLY COVERED BY BARRISTER ABDULLAH ANBAR ANAN TITIR, RESEARCH SPECIALIST BLAST AND FAHAD BIN SIDDIQUE, INTERN, BLAST.