



HUMAN RIGHTS *analysis*

# Strict enforcement of law can contain garments disasters

ALOK SARKAR

WHEN we talk about the law enforcing agencies generally we think of the police and others related to police department, working under the ministry of home affairs. But we do not know that, in matters of labour law, the law enforcing agency happens to be mainly the Department of Factory Inspection. The Chief Factory Inspector is given the power to stop functioning of any factory if it contravenes any of the provisions of Factory Law. As the law enforcer he can prosecute any factory owner for violation of rules laid down in the Factory Law. One can find the utter negligence of this department in inquiring the causes behind the series of catastrophic disasters occurred in the garment sector of the country.

The fire in KTS Garment at Chittagong which left 55 workers instantly dead and several others injured with serious burn injuries gradually raising the death toll above 60, once again surfaced the question of non-compliance of law in the industrial sector especially in the garment sector believed to be the most important one in respect to our economy in the present time.

During the last 15 years since the beginning of the decade of 90s of the last century till to date, apart from other accidents, 24 fire incidents in this sector alone claimed around 300 lives and caused injuries to several hundred more, living some of them partially or fully disabled. At present about 2 million workers are employed in this sector and from this it may be considered as the most labour intensive sector in the country. It is admitted by the quarters concerned that this sector is contributing 76 per cent of the total foreign currency earning of the country and in consequence the sector is blessed with the facilities extended by the government and its functionaries. But during the last 15 years or more it was experienced that the million of workers who made significant contributions to the garment sector were not ensured the minimum justice for them. The entire blessings for this sector made fortune for the employers and the unfortunate workers of whom more than 75 per cent women were the victims of the international market competition on one hand and on the other, the utter negligence of the concerned quarters responsible for the implementation of labour law.

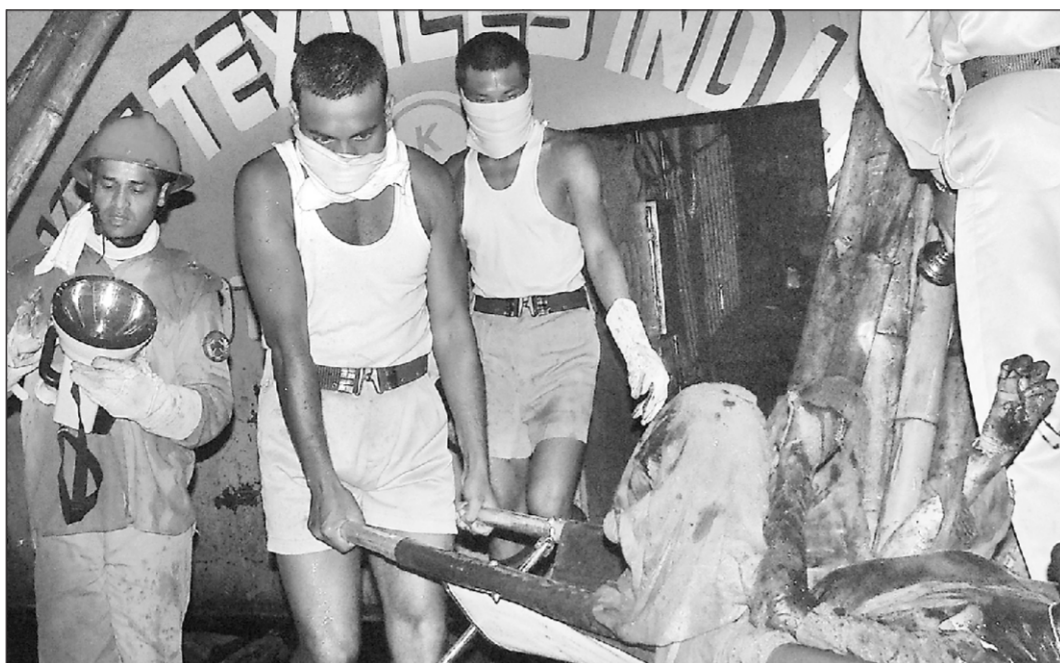
To all, death is natural and inevitable but the guarantee of natural and normal death for the helpless workers of the garment sector is absent due to the gross violation of

the labour law relating to the safety measures. When death occurs in consequence of the acts or negligence of any person or persons then it is an offence under Penal Code though not amounting to murder yet at least abatement of killing by negligence, and deserves trial under the sections of penal code. The series of fires in this sector caused the most painful deaths of hundreds being helplessly burnt behind the locks. More than 300 workers were burnt to death in confinement behind the illegally locked exits of the factories.

But each time whether it is the building collapse Spectrum Garment or Phoenix Group in Dhaka or fire in the Sun Knitting Factory of Shiddhirganj, Narayanganj or devastating fire inside the factory building of KTS in Chittagong, the persons liable to be accused and punished were not brought under law and even the liability was not fixed and this is the main cause of unimpeded recurrence of the unfortunate accidents claiming lives of the helpless workers. Now it is imperative to contain the situation with strong hand.

In the Spectrum disaster it was found the factory building was not built with the permission of any of the authorities like RAJUK, Savar Municipality, or the Cantonment Board for estate administration. One can raise an unauthorised construction but it is subjected to demolition by the concerned authority, if found illegal. The Factory Law of our country doesn't allow a building to be used as a factory unless it has initially, at the time of construction, obtained clearance from the office of the Chief Factory Inspector for the particular nature of factory building. But after the disaster of the Spectrum Garment the office of the chief inspector expressed their inability to ensure the compliance of factory law by the factory owners with the excuse of limited manpower. But the excuse could not satisfy the concerned quarters, which know this sector closely.

After the MFA phase out this sector, the most labour intensive one amongst the industries, is facing the challenge of global competition. Considering the occurrence of the series of fatal accidents it was needed especial attention and the safety of the sector should have been dealt with priority by the department of the factory inspection. At least the big factories should have been inspected and which could be done even with the existing limitation of manpower. It is always heard specially after such kind of disaster, that there are only 12 or 13 Inspectors for whole of the country



and with this excuse the department escapes its responsibility and also the liability. But question can obviously be raised, what these 12 or 13 Inspectors do? Do they find out factories running without licences from the department? Do they inspect the factories running without compliance of Factory Law? Do they find out the factories compelling the women workers to work in night time? Obviously the answer is no. Because no one have any knowledge of filing any case against any factory owner for his non-compliance of Factory Law. But even a layman can see the violations of factory laws moving round the city areas and its outskirts.

History says that, the Factory Law in British India was the result of the pressure of Lancashire Chamber of Commerce and Manchester Business Group who were facing uneven competition in the market with the British Indian employers privileged by the unfettered right to exploit the workers in India. It was a resultant effect of business and market competition among the employers group of British India and Great Britain. However the British Parliament passed the law for India in 1881 and that was the first law for the workers. This factory law was reformed in 1922 after the acceptance of the convention of working hours in the ILO in 1919.

The present Factory Law is the amendment of the Indian Factory Law of 1934, which was amended in 1965 to make it more befitting for the purpose and was adopted through legislation after the emergence of independent Bangladesh. The

factory owners are bound to abide by the rules and provisions of this law and the persons responsible from the govt. side are bound to ensure the compliance of this law without fail.

Chapters 3, 4, and 5 of Factory Law in sections starting from 12 to 48 lay the provisions for health and hygiene, safety and welfare including the specifications for a building and premise to run factory. The section 6 of this law requires a possessor or user of a factory building to furnish a notice to the Chief Factory Inspector at least before 15 days of its functioning as the factory building. So it is implied that no factory can start without the written permission from the Chief Factory Inspector or of his representative empowered for the purpose. If it is other then it is primarily the failure of the Department of Factory Inspection.

KTS garment is a factory, which was running its business in the industrial area of Bangladesh Small Cottage Industries Corporation (BSCIC) at Chittagong and the place in no way can be considered as a secret one and remaining out of the sight of the concerned personnel of the govt. department.

But it is unfortunate that the law-enforcing agency in respect of factory laws, which is responsible for this disaster through its utter negligence to prevent the violation of factory laws, let it go unaccounted for in all the cases. At least the person or persons responsible should be brought under the purview of the existing law of Bangladesh. Penal Code (BPC) lays the provisions of punishment

for their negligence of duties being the public servants. The existing law (Section 119 of Bangladesh Penal Code) states that:

"Whoever being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as public servant to prevent, voluntarily conceals by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design, shall if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the longest term of such imprisonment or with such fine as provided for that offence or with both."

In penal code death caused by negligence is considered as punishable offence and the offender is liable to imprisonment, though the offence is not culpable homicide or murder. The negligence of the factory owners comes under section 304 A of BPC and the concerned govt. officials are subject to be prosecuted under section 119 of BPC for abatement. But in none of the cases of garment incidents where scores of lives of the helpless workers were lost and also some hundreds of them left either fully or partially disabled, no such instance has been set.

It is learnt from the reports in newspapers that there exists a social compliance forum for the garment sector, headed by the commerce minister, though it is not clear why this forum is headed by the commerce minister leaving the

ministers of the more concerned ministries like labour or industries and who from private and public sectors represent as the members of the task force, still it is the right of the members of the public to know what progress has so far been achieved in this regard. A report also said quoting the source from the commerce ministry that govt. declared a deadline of two weeks starting from 5 March to detect the non-compliant garment factories and consequent shutting of those. But there was no report of any such detection or such shutting down in consequence of non-compliance.

The factory law, perhaps the first effective law in the industrial sector, was promulgated in this subcontinent in 1881. Before that the enactments relating to industries cannot be considered as labour law because those were only the tools for the repression of the workers favouring the most privileged employer class blessed by the then imperial rule in British India. "The workmen breach of contract act" of 1959 can be mentioned as one of those which gave unfettered right to arrest the workers and bring back and punish those who used to seek safety by fleeing away the workplace, being unable to bear the inhuman physical labour and torture by the employers, and ultimately this law was repealed. But the law on fatal accident, "The Fatal Accident Act of 1855" is the act which can be considered as the law very much befitting any kind of fatal accident caused by the negligence of any person or persons. In this law the court has been given the power to assess the amount of compensations to the victims considering the loss occurred by accidents in consequence of the negligence of any person or persons.

So there is law and to face the situation like fire in KTS garment, Sun Knitting garment and building collapses in Spectrum garment and Phoenix group, to provide the compensations for the victims and award punishments to those who are responsible for the unfortunate and undesired incidents. The strict implementation of labour laws and the laws applicable for different cases can only bring the solution and combat the disorderly situation of the sectors related with industrial production and thus ensure the friendly environment for the workers, employers and the economy, else a very gloomy future is awaiting for all of us.

Alok Sarkar, an advocate and human rights activist, is presently working for Karmojibi Nat, an initiative of working women.

## Benapole, Teknaf Land Ports Tk 142cr bribes exacted in 2yrs

Businessmen have to pay bribes at fixed rates at 30 different points at Benapole land port and seven points at Teknaf land port to release consignments. The illicit practice is delaying the business process, increasing prices of goods and depriving the government of revenue, a Transparency International Bangladesh (TIB) report revealed. The report on 'Benapole and Teknaf land port: A diagnostic study' also revealed that customs officials and port officials of the two land ports received no less than Tk 142.08 crore in bribe in 2003-2004 and 2004-2005 financial years. Government officials have been depriving the government of taxes from consignments for years by false declarations, the report said. The government have lost nearly Tk 100 crore of tax in the last four years; the report said quoting a customs official. The report stated that businessmen on an average have to pay bribes of Tk 17,203 at Benapole and Tk 4,927 at Teknaf land port to release a consignment. The publication ceremony of the report was held in the VIP lounge of the National Press Club. - *The Daily Star, April 17.*

## Police Attack on Journalists CMP DC (Port) closed, sergeant suspended

Amid countrywide protests against police attack on journalists during Bangladesh-Australia test match at the Chittagong stadium, the authorities yesterday suspended a police sergeant and closed the deputy commissioner (port), who led the attack. Journalists, political leaders, artists, intellectuals and sports organisers staged angry protests in the capital, Chittagong and elsewhere in the country against the police attack in which at least 20 journalists were injured. They demanded that the government dismisses and arrests DC (Port) of Chittagong Metropolitan Police Ali Akbar Khan and other policemen involved in the assault on journalists within the next 24 hours. Bangladesh Federal Union of Journalists (BFUJ) and Dhaka Union of Journalists (DUJ).

Decided to observe a token work stoppage in all newspapers and news agencies if their demands are not met. The programmes were announced from a protest rally organised by BFUJ and DUJ outside the National Press Club. Chaired by BFUJ President Iqbal Sobhan Chowdhury, the rally was addressed by political leaders including Abdur Razzak MP, Tofail Ahmed, Rashed Khan Menon and Hasanul Haq Inu. Different sports personalities also addressed the rally. - *The Daily Star, April 18.*

## Cabinet Approves Contempt Bill Media can publish news on judges' personal activities

The cabinet approved contempt of court bill allowing the newspapers to publish news on the judges' personal behaviours and activities. In a meeting presided over by Prime Minister Khaleda Zia, the cabinet also approved Micro-credit Regulatory Authority (MCRA) Act, 2006, and bills on cable TV operation, and accreditation. The proposed contempt of court legislation if enacted will permit newspapers to publish news; constructive criticism and features on the way judges conduct their personal lives. It also permits the media factual criticism of the appeal cases. In the approved bill, contempt of court has been specifically defined. Contempt charges can be brought against any person for intentionally defying or ignoring or showing disrespect to any court's verdict, decree, or order by any written or oral expression or gestures or visual means. The draft law provides for a maximum six months of jail and a fine of Tk 5,000 as punishment for committing contempt. However, an accused will be able to secure bail on paying a bond until passing of a judgement. - *Prothom Alo, April 18.*

## Electoral Reforms 14-party sit-in before PMO

Awami League (AL) and its allies seek to stage a sit-in outside the Prime Minister's Office (PMO) to press home the demand for electoral reforms while a ban on gathering around the PMO takes effect from midnight. Amid 'indiscriminate arrests and police harassment', the AL led 14-party opposition combine at a meeting at the office of Bangladesh Workers Party decided to defy the ban and stage a peaceful sit-in programme from 11:00am to 1:00pm. Addressing a huge gathering of her party's youth front, Jubo League, on city's Paltan Maidan, AL President Sheikh Hasina said the ruling coalition will not be able to escape public outcry by clamping bans or unleashing the police after opposition activists. Around 12 thousand law enforcers including 400 Bangladesh Rifles (BDR) men and 400 members of Armed Police Battalion will be deployed on the city streets to thwart movement of 14-party leaders and activists towards the PMO for the sit-in there. Movement of all modes of vehicles will be stopped at 17 concerned roads. Temporary barbed-wire fences have already been set up at different crossings in those roads. - *The Daily Star, April 19.*

## RIGHTS investigation



# Hamdan's case tests legality of Guantánamo military commission

On 28 March 2006, the US Supreme Court begins to hear arguments in

evidence obtained under torture, as well as severe limitations to the right



the case of Salim Ahmed Hamdan regarding the legality of trials before military commissions at Guantánamo Bay. Far from abandoning military commissions, or putting cases on hold pending the Supreme Court's decision, the US government is going ahead with these sham trials, with preliminary hearings scheduled to take place in the coming week.

Military commissions breach fundamental standards for fair trial. At worst, they can entail the death sentence and the admission of appeal and restrictions on the right to a lawyer of one's own choice. Salim Ahmed Hamdan told his military lawyer that whilst in US custody in Afghanistan he was "beaten, held for about three days in a bound position, cold...dragged, kicked, and punched." In Guantánamo he was held for almost a year in solitary confinement. He said that he had considered signing false confessions in the hope that this would improve his situation.

Among the detainees who will appear before the commissions in the following weeks are Omar Khadr, a Canadian citizen who was just 15 years old when taken into US custody in Afghanistan, and Binyam Mohammad al-Habashi, a victim of the US practice of "rendition". Both Omar Khadr and Binyam Mohammed al-Habashi have alleged that they have been subjected to torture and other ill-treatment at Guantánamo and elsewhere. Omar Khadr is facing trial by military commission on the basis of alleged acts committed when he was a child.

Ten detainees held at Guantánamo Bay have been charged by the US authorities and are facing trial by military commission. All those held at the detention centre at the US naval base in Cuba face the prospect of unfair trial by these commissions, as do any foreign nationals designated by President George W. Bush as "enemy combatants". The Supreme Court faces an enormous responsibility with the Hamdan case. At stake are principles of fair trial, constitutionality and equality before the law.

The US authorities should stop trials before military commissions and the President should revoke the Presidential Order that established them.

Source: Amnesty International.

## FACT file

# The right is wrong for women

ELAYNE CLIFT

Women across Central and Eastern Europe are deeply concerned about the growing fundamentalism in the region. In countries like Lithuania, Poland and Macedonia, they have been actively strategising to combat the religious and political collaboration that threatens women's sexual and reproductive rights.

Women from the Central and Eastern Europe Network, a coalition of women's organisations in the region, and from a coalition of NGOs known as ASTRA sounded a call to action, registering alarm at Poland's recent election, in which arch-conservative Lech Kaczyński became president.

"Why is fundamentalism, which leads to discrimination against women, being supported by governments and societies?" one woman asked. "Why do we put so much faith in the State?" another queried. "Nationalism and politics work against women. We cannot take for granted that governments will work on our behalf. We must be constant watchdogs, monitoring and maintaining our gains. It's not sexy work. It's boring. But it is necessary."

Nowhere is it more necessary than in Poland. Wanda Nowicka, Director of the Federation for Women and Family Planning, a Warsaw-based NGO and an active ASTRA member, was among the women expressing fear and dismay at current events in her country. "Abortion became legal in Poland in 1956," she says, "and then in 1993, in the name of freedom and democ-



racy' we saw the introduction of anti-abortion laws. Since then, the Roman Catholic Church has forced abortion under ground. It is still safe but expensive. That means poor women cannot have one. Now, the new president is building coalitions with conservative groups such as the League of Polish Families, which advocates a full ban on abortion (even in cases of rape and incest). This is very worrying."

Even before the election, the situation in Poland was bad. Alicia Tysiac's case is an example. Denied an abortion by her doctor even though she received permission on medical grounds, Tysiac suffered an exacerbation of her condition rendering her nearly blind. She sued her doctor but the Polish courts denied her case; it is now before the

European court. (Poland is a member of the European Union.)

Feminists in Poland, and elsewhere, are working overtime to advocate for changing anti-woman laws, for sexual and reproductive rights and education, and for abortion and contraception. The Federation for Women and Family Planning and groups like it are actively monitoring laws, submitting reports to the United Nations Human Rights Commission, and offering help to individual women like Tysiac.

Daniela Draghici, a leader in Romania's nascent movement for sexual and reproductive health, is also worried. "Reproductive law is taking a long time to be promulgated in my country," she says. "The president has yet to sign into law

what the parliament has passed and I'm afraid Romania might follow the example of neighbouring conservative countries that are already European Union members and restrict our rights. Policymakers are only thinking of population numbers [which have been dropping in Eastern Europe] and not women's rights."

That's why ASTRA was formed in 1999 among NGOs active at the United Nations level. "There was a need for a regional network because countries in transition were invisible to the European Union and the United Nations," according to Wanda Nowicka.

Beyond women's rights, there is general concern about the direction governments are taking in Eastern Europe. Poland's powerful new president, who is also mayor of Warsaw, represents a party committed to "law and justice". It wants to have "truth and reconciliation committees" - like those in South Africa - to confront corruption among former communists, while promising the electorate the same benefits enjoyed under that regime (e.g., free health care and education). Unwilling to build coalitions with the defeated liberal party, the new

government is moving to the extreme right to find its partners. That means active campaigns against homosexuals, abortion rights advocates and others. "We are very scared," says Nowicka. "They are dangerous to democracy." The EU, she says, has expressed concern, but "so what?"

The NGOs remain concerned that the move toward conservatism among the governments of both East and West Europe will mean a huge backlash against women's civil and human rights, including disastrous funding cuts, since EU funds are passed to governments to disperse. Further, the increasingly repressive attitudes of European governments could mean that the EU itself begins to lean decidedly right. Activists cite the recent election of Chancellor Angela Merkel in Germany as an example of the change sweeping Europe.

"Despite all the international documents that have been signed and ratified," says a sombre Daniela Draghici, "we still have a long way to go before women's rights are recognised as human rights."

Source: News Network.

## Corresponding with the Law Desk

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