

# The Daily Star

FOUNDER EDITOR  
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DHAKA WEDNESDAY SEPTEMBER 2, 2020, BHADRA 18, 1427 BS

## Remove regulatory curbs on online news portals of newspapers

Registration requirement will create unnecessary red tape

**T**HE cabinet on Monday approved a draft amendment to the National Online Media Policy 2017 with a provision that requires separate registration for the online news portals of newspapers, television channels and radio stations. A total of nine chapters of the policy have been overhauled while five new chapters have been incorporated, according to the cabinet secretary. It's the provision for the registration of online portals of newspapers that naturally worries us, and for good reason.

The registration requirement for online news sites has been in place since the publication of the National Broadcast Policy 2014 and was reiterated in the National Online Media Policy 2017. These policies require online media outlets to register with an independent Broadcast Commission which, unfortunately, has never been formed. Instead, "government-nominated agencies" now review applications and the process of verification has been marked by inordinate delays and controversies. In the initial list of news portals "allowed for initial registration" that was published on July 30, the names of many established and popular news sites did not appear. If this is a sign of things to come, newspapers and other news organisations with online outlets have reasons to worry.

Newspapers are already governed by several regulatory policies and mechanisms that also allow for their "declarations". The same regulations should apply to any digital outlets run by these organisations, and hence any requirement for re-registration is unnecessary. We acknowledge the need to regulate online media. But subjecting already registered organisations to a second layer of verification will lead to more red tape and consequently more impediments for the independent press, which will be unfortunate. Many of the newspapers and TV and radio stations have been operating for decades. If the purpose of registration is to verify their eligibility, that box is already ticked. If the purpose of registration is to establish the legality of their operation, they already have "declarations" approved by the government to make them legal.

We feel that the new provision serves no real purpose for established news organisations and should, therefore, be done away with. We also urge the government to expedite the process of verification for news portals now seeking registration and form the National Broadcast Commission, with the inclusion of civil society members, to handle the whole registration process.

## In remembrance of Pranab Mukherjee

A towering statesman and a true friend of Bangladesh

**W**E are shocked and deeply saddened by the passing of former Indian President Pranab Mukherjee, a dear friend of Bangladesh. He was the first foreign national who proposed recognition of the Bangladesh government in exile on June 15, 1971 during a budget session on the floor of the Rajya Sabha. And being the first Bengali Indian President, he also played a crucial role during Bangladesh's Liberation struggle.

Mukherjee was a towering statesman who was deeply loved by everyone across the political spectrum. And during his half a century long political stint, he occupied several positions, including the role of India's finance minister at the age of 47—making him India's youngest finance minister. From then on, he went on to head the ministries of external affairs, defence and finance.

The many awards and honours bestowed on him include India's second highest civilian award, Padma Vibhushan in 2008, the Best Parliamentarian Award in 1997 and Best Administrator in India Award in 2011. In 2013, former President of Bangladesh Zillur Rahman handed him the Bangladesh Liberation War honour.

The help that he gave Bangladesh during those turbulent times was illustrative of his character as a man of great principles and someone who always fought for humanity and against oppression. His death is not only a loss to India and Bangladesh, but to the whole world.

We would like to extend our deepest condolences to his family and to India, which has lost one of its greatest statesmen. His legacy and his lessons, however, will forever live on and in Bangladesh, his friendship will forever be cherished.

## LETTERS TO THE EDITOR

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### Chaos with e-commerce

E-commerce platform Evaly recently came under the spotlight after widespread criticism over its transactions. There are allegations against the company for delaying in delivering products even after taking money from customers. I have had terrible experiences with the company. Still many of my orders from February and March are pending which Evaly took prepayment for, not to mention the awful hassle caused by the third-party courier services. Their customer service is utterly disappointing. I had to call them numerous times regarding the delivery of my products, only to be disappointed at their unprofessional approach. When it comes to reliability and sustainability, Evaly simply doesn't tick the boxes. Thanks to the newspapers who have reported about their misappropriation. I am sure there are any more victims out there who have suffered a similar fate like me.

S M Jonaied Ahmad, by email

# PK Halder and the incredible landscape of our financial system

A CLOSER LOOK



TASNEEM TAYEB

**P**RASHANTA Kumar Halder's financial misadventures and subsequent escape from the country with Tk 3500 crore, which made the headlines recently, has brought into the

fore Bangladesh's struggles with systemic irregularities in its financial sector.

While the case of PK Halder has exposed the loopholes in the financial sector, it is not the first time such a thing has happened. In fact, bad debt and money laundering remain some of the persistent ills rotting the financial sector at its core. According to a report published by Transparency International Bangladesh (TIB) earlier this year, around USD 3.1 billion (Tk 26,400 crore) is laundered out of the country every year.

And perhaps the greater problem is that while we talk about these individual cases and ask for justice to be delivered by bringing the financial criminals to book, we mostly ignore the problems within the system that enable such frauds and criminals to escape the net of justice.

This one man, in a Bollywood style manoeuvre, exploited not one or two, but at least four non-banking financial institution (NBFI), namely: People's Leasing and Financial Services, International Leasing and Financial Services Ltd, Reliance Finance Limited and FAS Finance and Investment Ltd. He also exploited some other banks, or at least exploited his friends working in senior management positions in those banks, to siphon money to various companies that existed only on paper, which eventually ended up abroad.

PK Halder and his relatives and associates, working in management positions at various NBFI and other companies, dried up these leasing companies and razed them to the ground. And all this happened not in one night, but over a prolonged period of time, and despite the stringent regulations that govern the financial sector. Or perhaps under the very noses of the regulators?

One might be pardoned for wondering why it took the regulators and several financial crime units of this country almost a decade, and why it took a drive against illegal casino operators, to uncover a financial scam of this scale.

"The amount and the crudeness of the process that has been exposed may be shocking to many, but the reality is that this is just the tip of the iceberg. He benefited from a cancerous dysfunctionality of the system caused by a two-way malignancy. One, by those who

have pushed the financial sector to the brink of collapse—the big shots who have captured the state to a level that among those who dictate terms for the banking and financial sector are the swindlers, launderers and defaulters, not the laws, rules or regulations. Second, such grand corruption is never a one-way street. The hero in question could have never done this without inefficiency, real or manipulated, and indeed a win-win game involving those whose job it is to prevent and control it. It is the latter's collusion, protection and promotion that brought the sector to the state it is in today," said Dr Iftekharuzzaman, Executive Director of TIB, with reference to the curious case of PK Halder.

Similar thoughts were echoed by Zahid Hussain, former lead economist for World Bank, who suggested that without patronage, it is not possible to evade the stringent laws we have in place to stop such exploits.

Terming PK Halder's exploitations as fraud, Zahid Hussain further suggested that in an environment where people can get away after committing such crimes with the help of patrons, criminals start "investing in building networks so that they can find themselves on the right side of this inequality." And perhaps this relationship building mechanism fuels the system that enables exploitation and financial fraud.

According to Zahid Hussain, there is another aspect that leads to such crimes:

*Politicians belonging to different prominent political parties, industrialists and nobodies like PK Halder, have all from time to time been found guilty of committing financial malpractices. But this has not stopped them or others from committing such crimes.*

"selective application of the existing regulations". He says that the practice of selectively applying the rules and regulations in case of certain individuals while others walk away scot free for the same crimes, emboldens criminals with the assurance that with the right kind of

patronage, they too can escape the hands of the law. Since we have set a precedence of bringing to account big shot criminals who have in the past committed such crimes, why can we not do it uniformly for all?

This concern has also been shared by Dr Iftekharuzzaman, who said "Unscrupulous law breakers including the corrupt, swindlers and money launderers get away for many reasons,



IMAGE: KAZI TAHSIN AGAZ APURBO

not least because of the incompetency, procedural delays and complexities in the investigative and prosecution processes, but because of the culture of precedence granted to the identity—especially political affiliation, status and connection—of the individuals. Hence, examples of big fish being brought to the net are rare. Not that it didn't happen in Bangladesh. It did at least in one case when stolen assets were repatriated from Singapore, although it was a relatively small amount. Be that as it may, if one swindler could be brought to justice, the relevant authorities should face the mirror and try to seek an answer to the question—why not many more?"

While some of the laws and regulations in place might need amendments to modernise them and make them more time relevant, appropriate and consistent application of the existing laws and regulations can also address the ills of the financial sector, believes Zahid Hussain.

One might add here that to make the Banking Companies Act more time relevant, amendments have already been proposed, as suggested by documents available on the website of the Bank and Financial Institutions Division under the

Ministry of Finance. The amendments suggested in these documents propose constructive reforms, especially in aspects that can lead to more transparent corporate governance practices. Although this amendment proposition seems to have taken a backseat in policy level dialogue due to the sudden outbreak of the ongoing global health emergency, one would only hope that the policymakers would soon turn their attention to these much needed reforms in the financial sector.

That PK Halder—or his associates for that matter—are not alone in this grand scheme of things, is clear to all. Former managing director of at least one local bank and director of another had received crores of Taka in payments from various shadow companies controlled by PK Halder in many instalments. PK Halder was himself the managing director of NRB Global Bank. Although it remains a mystery how such a fraudster escaped the stringent scrutiny of the regulators when he was cleared to get appointed as MD of NRB Global Bank, it is only a tiny piece of the puzzle.

Politicians belonging to different prominent political parties, industrialists and nobodies like PK Halder, have all from time to time been found guilty of committing financial malpractices. But this has not stopped them or others from committing such crimes. Perhaps the financial criminals have found magical powers to evade the long arms of the regulators and law enforcers, as has happened in the case of PK Halder, who now sits on a bed of money in the safety of Canada, while helpless, innocent people of this nation are struggling to make ends meet, especially during the pandemic. When the government itself is grappling with the global health crisis.

It is high time the regulators and policymakers took this issue of financial crimes seriously and rooted out the people and the loopholes that enable such crimes. The financial sector of this country has been under stress for some time now, and the pandemic has only made the situation worse. The administration cannot afford to allow such fraudulent activities and exploitations to go on for long. With the people and the nation succumbing to the economic challenges posed by the pandemic, the regulators and the policymakers must do all they can to dismantle this system of exploiting public resources. Otherwise, the financial sector, already crumbling under external pressure, is doomed to collapse. The financial sector is stuck between a rock and a hard place in this man-made disaster, and in need of emergency evacuation.

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## Force majeure: Apparel buyers' deadly weapon



ANUSHA ISLAM RAHA

**T**HE biggest problem faced by our textile industry right now is not the coronavirus. Rather, it is a small term in a sales contract that was initially created to protect contracting parties is now being

misused by foreign buyers as a deadly weapon to avoid liability. It has become the worst nightmare for about 15 million Bangladeshis, without their knowledge.

Essentially, centuries ago when the first contract was made, the most imperative element that the parties relied on was trust—a trust that the parties will fulfil their obligations, come what may. But as society progressed, this trust was codified into a document and a number of clauses were invoked to protect all the parties involved. One such clause is "force majeure", a concept exhibited in Bangladeshi law under Section 56 of The Contract Act 1872.

Professor Anwar Zahid, an expert in international trade law, defines force majeure as something unexpected and beyond reasonable human foresight, an occurrence of which makes the performance of the contract impossible and, therefore, discharges the parties from the contractual obligations. Such events could be war, hurricanes, fires, earthquakes, terrorism etc.

Nevertheless, whether or not a party can plead Covid-19 as a force majeure event depends on whether or not the contract contains a clause in this regard. If it is there, it still depends on how it is crafted. For example, if (the force majeure clause) may include terms like "pandemic", "epidemic", "quarantine", "illness", "plague", "outbreak" or "disease". Even depending on the context, Covid-19 could arguably be included within the scope of broader catch-all phrases, such as "Act of God," or "circumstances beyond a party's reasonable control".

But if the aforementioned terms like "pandemic" or "epidemic" are not

included in the contract, Covid-19 might not be considered as a force majeure event unless the contract is being carried out in areas where the government has instructed all non-essential businesses to discontinue operations, consequently, deferring the performance of the contract.

If the force majeure clause itself is not included in the contract, a party may still rely on the principle of *rebus sic stantibus*, when the circumstance



PHOTO: AFP

under which the contract was originally made has fundamentally changed. This is an exception to the principle of *pacta sunt servanda* (promise must be kept). However, the court of law takes a very restricted approach to give effect to the force majeure clause or the *stantibus* principle and performance will only be exempted if the event that caused the party's non-performance is specifically identified. Essentially, the court wants to be satisfied of two important things, namely that the force majeure has a direct effect on the performance of the contract, and that the party relying on this clause has taken steps to avoid and mitigate that effect.

At this point, it is crucial to understand that if an event such as the Covid-19 pandemic results in economic hardships,

that hardship does not amount to a force majeure event. According to a report by CNN Business, "More than half of the 316 Bangladesh suppliers surveyed by Penn State University's Center for Global Workers' Rights said that most of their finished or in-process orders have been cancelled since the pandemic began".

Much attention should be given to the part "since the pandemic began" because this clearly indicates that foreign buyers

are using Covid-19 as a force majeure event and cancelling their orders without monetary compensation, way before their performance could be affected by Covid-19. Some of the orders that were cancelled have already reached the buyer's ports!

Such cancellation is utterly illegal because as mentioned, one simply cannot terminate or cancel an order because of economic hardships as it does not constitute a force majeure event. Furthermore, a force majeure clause can only be invoked in the case of an executory contract, which is a contract that is yet to be executed. Because the orders cancelled by the buyers are basically contracts that have been executed, there is no scope for the application of a force majeure clause. As

President of the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) Rubana Huq said, "I don't want any grant, I don't want any kind of charity, I just want the bare minimum justice for our workers". This justice can only be achieved if foreign buyers are made to fulfil the terms of their contracts.

These illegal cancellations have led to huge disruptions in society as millions of workers lost their jobs and almost all of them experienced unjustified pay cut. Workers, both female and male, who were the only bread-earners of their family, are now struggling to buy a day's meal, according to BBC Bangladesh. Rubana Huq told Deutsche Welle that BGMEA is trying to secure workers' wages and keep the factories open, alluding to a potentially calamitous situation that is principally being caused by these illegal cancellations.

To settle such illegal cancellations, the appropriate first step would be for the buyers and sellers to enter into negotiations with the aim of reaching a common ground. However, due to a lack of dispute resolution provisions in the contract, negotiating becomes a difficult job to pull off, especially when the foreign buyers cannot be reached on phone or email. Hence, it is very important to draft a contract incorporating sufficient dispute resolution provisions such as arbitration, which can ultimately help both the parties settle disputes that may arise during the performance of a contract, without having to go to court, thus maintaining privacy and speed.

It is important we understand the force majeure clause and what can be done if it is unjustifiably invoked. The incorporation of a dispute resolution provision in the contract is equally necessary. I urge people to take actions and not remain silent out of fear of losing garment orders. This is about our rights and the rights of 15 million workers—this is about Bangladesh's rights.

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