

Law and Our Rights

Child Labour in Bangladesh: Interview with Andrew J. Samet Between a Rock and a Hard Place

by Lamis Hossain

orts in any way. If the discussions are successful then the U.S. government has funds through the IPEC (International Programme for the Elimination of Child Labour) which we would be willing to invest in Bangladesh. We are also here to discuss with labour representatives, government officials, about general policy on labour standards and trade issues.

How do you feel the response to your visit has been? Is there a change in attitude with regards to the issue?

We are quite conscious of our Ambassador's efforts here. We are hopeful it will have the support of all interested segments.

It is not possible for me to compare any change in attitude. It is up to the people here to decide to what extent it is an issue and to what extent to collectively recognise that you have to invest in children. The education of children is essential to economic development. We are concerned with the exploitation of children where the opportunity for education is being taken away, which we agree is not appropriate.

Do you feel that U.S. has made mistakes in its approach to child labour by taking a coercive method instead of a cooperative one?

The Secretary of Labour and the administration is generally sympathetic to the objectives of Senator Harkin.

The issue has to be important to Bangladesh whether it is important or not to the U.S. or the U.S. government. Positive development is very hard to achieve without children. Social progress depends on how we treat our children. I don't see our policy as coercive in any way. The government of Bangladesh shares our view that exploitation of children is not acceptable.

Do you think that the attitude in the U.S. towards the issue has changed, perhaps seeing it as straightforward to realising its complexity?

Our Minister of Labour spoke at the June conference at the ILO. The Secretary of State never suggested it was a simple issue. We have looked at pragmatic solutions. It's not

the idea that children are performing any work but that children are being exploited, coerced.

If an agreement can be reached in Bangladesh, then the Ambassador and the Secretary of Labour would be supportive of this effort. There are still few problems that remain in reaching an agreement.

The apparel sector sees that regardless of the U.S. government, there are market forces at work: consumers and importers concerned will not be purchasing products by child labour. The question is whether the apparel sector could be a model sector of how the issue could be addressed.

What are the chances that the Child Labour Deterrence Act also known as the Harkin bill will be passed?

The issue will continue to exist. The administration is sympathetic to the objectives of the bill. We will continue to pursue our approach in a variety of international forums.

Is the U.S. thinking of ratifying the Rights of the Child

Convention?
That is a State department issue.

Will the U.S. continue to focus only on the apparel sector or are you planning a more broad based approach?

It is not true that we have focused only on the apparel sector. The report focuses on all sectors. Apparel happens to be a sector where we find children, though it is not necessarily the most hazardous.

What about allowing light work?

Light work is fine if it doesn't affect children. But I would be surprised if anyone said that the education system was sufficient now. You have to be careful not to justify less hazardous work this way. We are primarily concerned with the opportunity for education.

Would you be able to compare or comment on the situation in other countries vis a vis Bangladesh?

I could not really compare, but we could say that we are not prepared given the current situation in Pakistan to use IPEC funds there.

There are very large issues of bonded child labour in India and Pakistan. It is not so large

in Bangladesh by comparison. But this makes the efforts all the more useful for Bangladesh because it is not such a large hurdle.

Are there other labour issues on the U.S. agenda?

Our general policy is not a protectionist policy. It is not a new American conspiracy. It is based on three propositions: that the basic core of labour standards are an important ethical objective, it is good economics and as we pursue greater liberalisation, free trade, we have to redirect our efforts. Free trade is not to create a lot of benefit for a few but to create some benefit for many.

Our agenda is that we have to collectively find a method to advance the importance of a very small list of standards: freedom of association, the right to organise, prohibition of forced labour, the implementation of minimum standards for the employment of children and non-discrimination. We are not talking of setting wages, looking at pension standards and so forth. There are 170 different ILO conventions on these different items.

How is the situation in Bangladesh with regards to these core rights?

The laws of Bangladesh are generally oriented towards compliance.

Lawscape



Classes of the new Legal Education Institute, inaugurated by the Chief Justice began this week in the old High Court Building. —Star Photo

Tough Anti-Piracy Laws Pay Off

MIAMI — Countries in Latin America and elsewhere that adopt policies to aggressively protect and police intellectual property rights will be best poised to benefit from the next global revolution — the information revolution — according to a senior executive of the world's largest software producer.

Those countries with strong anti-piracy policies will move ahead in commercial markets and through offering a better quality of life to their people. Philip Welt, director of the Latin American Southern Region at Microsoft Corporation, told a Feb. 8 panel at the three-day Latin American Market Conference sponsored by Forbes magazine and the Council of the Americas.

Welt, based in Mexico since 1991 and director of the software company's anti-piracy program for the region since 1993, teamed with representatives from the two other industries most affected by intellectual property piracy, entertainment and pharmaceuticals, to address a panel on "Trends in the Development and Management of Intellectual Property in Latin America."

Software may be the most difficult commodity of all to protect since it can be copied in perfect imitation, unlike patents and trademarks, Welt said. The problem is further complicated, he said, because few judges and government administrators understand the sometimes complicated terminology of computer technology and many fail to value its importance.

Yet the plague of piracy may hurt governments worst of all in the way of lost tax revenues, employment and exports, Welt added.

Peter Nolan, vice president and assistant general counsel for The Walt Disney Co., stressed cooperation and sensitivity when seeking to enforce anti-piracy laws and programs.

"No one region is alike and each country offers a very different culture, traditions, judiciary and statutes. Companies have to be selective and careful when going into a country and doing business there," Nolan said.

Disney's assistant legal counsel cited a case in Thailand where his company lost a lawsuit at the local, superior and supreme court levels against a local merchant selling "Donald Duck" ice cream. Despite what Nolan felt was a solid case, the Thai courts favoured the local merchant against the well-known entertainment giant and even levied a suit against Walt Disney and him personally for alleged slander.

Valerie Fedovich, senior patent counsel for Pfizer, Inc., the New York-based health care company with extensive presence in Latin America, echoed the call for cooperation with local governments.

One of the most important ways to protect patents is to ensure local laws are enacted and enforced," Fedovich said.

All the panelists focused on education campaigns that include advertisements, penalty warnings and media announcements of prosecuted violators as a cogent factor to combat the counterfeiting and piracy of intellectual property in the region.

—Michael Malone, USIA Special Correspondent

How Lawyers Abuse the Law

Question: What would you call 6,000 lawyers at the bottom of the sea?

Answer: A good start.

Judging from a recent survey by US News and World Report, a leading American weekly, this is no longer a harmless lawyer joke, but an indication of how Americans feel about the law and the legal profession in the US.

The US News poll reveals that 69 per cent of Americans feel that lawyers are "only sometimes honest or not usually honest", 75 per cent also believe that "average Americans have less or much less access to the legal system than the rich".

The poll was part of the US News magazine's cover story on "How Lawyers Abuse the Law" in its January 30, 1995 issue.

The legal profession is in the forefront of a heated debate in the US partly because it is Item 9 on House Speaker Newt Gingrich's Contract with America. This includes a controversial reform package which aims to curb product liability suits.

According to the US News, however, tort figures have remained constant since 1945 and have even fallen since 1990. Only 10 per cent of civil cases are tort and only 3 per cent of those concern product liability.

The real problem the article says, is that most lawyers are increasingly acting in the interests of no one but themselves. This is not an epidemic of litigation but of injustice. The magazine also blames the incentive of "mind bogging" amounts of money available through the contingency fee system.

Another opinion piece in the same issue, "The Death of Common Sense," observes that the system of regulatory law in the US has outlawed common sense. It criticises the drive for certainty and the need to legislate and regulate every possible eventuality. "In our obsessive effort to perfect a government of laws and not of men, we have invented a government of laws against men."

The article also criticises the tendency to create new rights to help victims every time there is a perceived injustice.

The article concludes that the American people do not hate the government and its aims, but hate how the law works. By exiling the exercise of judgment, the morass of regulatory laws in the US is no longer a "useful tool", but a "brainless tyrant".

—L.H.

International Conventions Ratified by Bangladesh

International Covenant on the Elimination of All Forms of Racial Discrimination
International Convention on the Suppression and Punishment of the Crime of Apartheid
Convention on the Elimination of All Forms of Discrimination Against Women
Slavery Convention of 1926
1953 Protocol Amending the 1926 Convention
Slavery Convention on the Abolition of Slavery the Slave Trade and Institutions and Practices similar to Slavery
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
Rights of the Child Convention

The Safety of a Slum?

Eviction of slum dwellers violates the citizen's right to shelter, argues Isaac Robinson

NATURAL disasters, and socio-economic problems cause members of the rural population to face city-slums, and to construct ramshackled shelters in the nooks and crannies of the cities. In Dhaka alone, slum-dwellers form 40 per cent of the population—nearly 20 lakh people living in appalling conditions, usually on government land, facing continuing threats of dire poverty, social instability and pollution.

It is probably because slums crop up in government land that the government has no qualms about evicting slum-dwellers. Indeed, it has almost become a daily routine. Continuous settlement on a piece of land cannot ensure a slum-dweller's safety from eviction. Eviction of slum dwellers takes place without proper notice and amidst violence — these are classed as acts of forced eviction.

A standard government provision warning comprises of a person who rides around the slum area in a rickshaw and calls out to the slum dwellers with a microphone that they have 48 hours (sometimes even less) to vacate the land. As soon as the slum empties out, the government authorities arrive on scene accompanied by bulldozers, razing the hovels to the ground. This sort of eviction occurred in 1990 on the 8th of August at Agargaon BNP bazaar, Shah Alibag, and west Agargaon slums where 20,000 homes were demolished in a single day.

Another easy way of illegal slum eviction, next to bulldozing it to the ground, is by setting the slum on fire. After the 1990 blaze at the Agargaon slum, slums in Kamalapur, Mohammadpur, Tejgaon, Roopnagar, Babupara, around the Sonargaon Hotel, Balu Math, Maghbazar, Pearabagh, Kajipuri Agarghat and about 15 to 16 other slums have received eviction notices or have been evicted. In some areas, public protest has put a stop to evictions. Recently, the slum dwellers of Agargaon Goalerlek have been threatened to be evicted by the governmental authority.

Unprecedented and illegal slum evictions are contrary to state policy. Even then, innocent people are being deprived of their right to life and livelihood in the name of "development". They are being pushed towards the brink of an uncertain future.

The Goalerlek slum at Tal-tola in Agargaon grew soon after the war of liberation. A few hundred rural families deprived of livelihood due to the war came to Dhaka to settle down.

An NGO has for the last 4 years helped slum dwellers by offering loans to start small businesses. Seven thousand women have been helped this way. What is ironic is that on the one hand, the government has given approval to the NGO bureau for the distribution of these loans and on the other hand, this same government is carrying out unprecedented eviction programmes. It is a case of watering a plant after cutting off its roots.

The right to shelter is a basic human right. The government of Bangladesh has been created to ensure the people of their basic human rights and social security. The government has a duty to look after homeless people. Article 15 of the Constitution lays down such state guarantees.

The government is responsible for the slum eviction, Article 25 (1) of the Universal Declaration of Human Rights states that everyone is entitled to food, shelter, clothing, medical aid and all other forms of basic human rights. Bangladesh has also signed several international conventions guaranteeing people these rights and the country treaty-bound to secure these rights to its citizens.

The government has been ignoring its responsibility, but this has not escaped the notice of those responsible, and alert social and human rights organisations. From 1990, the Auro-Salish Kendra, Nijera Kori, the Manobik Shahajia Shangkha and other such human rights organisations have taken cases of illegal eviction to the High Court division of the Supreme Court, which has shown a keen interest in such cases. Recently, a writ was fled under Article 102 of the Constitution concerning the eviction proceedings at the Goalerlek slum. On January 29, 1995, Justice A M Mahmudur Rahman and Justice Mahfuzur Rahman issued a rule nisi against the Chief Engineer of the PWB and others to move as to why the eviction was not illegal. As per court order, a ten week stay order was granted to the plaintiff and further eviction was to be stopped for such time.

Slum evictions not only deprive citizens of their right to shelter, but robs them of their right to livelihood as well. Article 52 of our Constitution guarantees right to livelihood as a fundamental right.

Slum dwellers at the Goalerlek slum enjoy some advantages that they would never receive if they left the slum or are evicted. Some obtain loans from an NGO and have set up small businesses, some other organisations have started to monitor the health and well-being of children and expectant mothers. The children study at schools set up adjacent to the slum. Eviction from the slum would deprive the slum-dwellers from even these basic necessities of life. On December 13, 1993, the Prime Minister approved and passed the National Housing Policy. Clause 5.7.1 of the policy states that slum evictions should be avoided as far as possible.

We have a right to shelter. The government has an obligation to look after the welfare of slum dwellers. We have a housing policy. Yet people are being evicted from slums. This does not only happen in Goalerlek. Slum dwellers all over the country live in the fear of being evicted.

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Human Rights and Refugees

Exodus From Hell

Lack of communication between communities and ignorance of basic rights, worsens the plight of minorities and refugees in the subcontinent, writes M M Sunnah

for reasons cultivated and nourished in the overlooked state policies. As a result, inordinate numbers of Hindu, Muslim, Shia Muslim, Kadiani Muslim and Chakma minorities, for example, lost their lives and property, because of several riots which took place in the subcontinent. These riots took place between the majorities and the minorities of the civilian population, most of the time because of trifling



Then, soon after the emergence of Bangladesh as a secular state, the Muslim refugees from India became somewhat more unwanted in both Bangladesh and Pakistan for cultural reasons and also because of the economic uncertainty. It curtailed mass exodus from India to a remarkable extent, despite the continuation of violations. But minorities from Bangladesh, specifically Hindus and Chakmas, are

It is abundantly clear that unless ways can be found to counteract the withholding of, or outright violations of, human rights, unless there is a more equitable sharing of the world's resources, more restraint and tolerance, the granting to everyone, regardless of race, religion, membership of particular social group or political party, the right to belong — or alternatively to move in an orderly fashion to seek work, decent living conditions and freedom from strife — the world will continue to have to live with the problem of mass exodus. This problem, if left unchecked, will increasingly pose a threat to peace and stability around the globe.

Bearing in mind the fact that human rights violations are a major cause of mass exodus, one may look into the history of the Indian subcontinent since 1947, in order to sharpen our perception about the problems of minorities in the area.

In 1947, the majority of Muslim leaders of the subcontinent voiced for a separate state because they did not want Muslims to remain a minority in an independent India. As a result, India and Pakistan were created, unfolding a new situation of minorities. The leaders of both countries foresaw only the problems of minorities in Punjab and immediately reached an agreement on the exchange of citizens — transferring Muslims of East Punjab to Pakistan and Hindus and Sikhs of West Punjab to India. Soon after the exchange of citizens was over, along with history's most brutal riot, the new migrants were compensated by both Governments.

A similar situation was ignored in East India, where Bengal was divided into two countries: West Bengal being a predominantly Hindu area became part of India and East Bengal being a predominantly Muslim area, became part of Pakistan. But the question of providing compensation to the new migrants of Bengal for resettlement was avoided by the top leaders of both countries with an understanding that the displaced people would go back to their homes once the communal anger subsided.

But the anger never subsided and those displaced people never felt secure enough to return home for the last 47 years. Moreover, from time to time, the anger sparks

Chakma refugee camp in Tripura, India — AKM Mohsin

reasons which were magnified by politicians for electoral advantage. As a result, a continuous flow of Hindu migrants to India and Muslim migrants to Pakistan lasted until 1971.

There is hardly any evidence regarding the government's direct involvement in these riots, but the ineptness of government machinery played a vital role in its escalation and casualties. Apparently, the decision makers hardly had any perception about violations of civil rights guaranteed under the Constitution, not to speak of universally accepted standards of human rights. Probably, the hatred nurtured by religious education preponderated over all reasons

(different reasons) never found it a safe country.

Legally and policy-wise, the minorities and majorities are equal in status. But whenever a riot or social disorder erupts, it is the minorities who feel threatened due to their vulnerable position. As it is the majority who maintains and monitors the law and order, and side by side leads the riot, it is extremely difficult for the minorities to rely on them. Moreover, the history of the Indian subcontinent is the history of the failures of the governments to protect the basic rights of minorities.

A lot of government officials of the region boast of comparative peace in their locality for a certain period, such as

having no riots in ten years. Some even argue about the negligibility of the isolated incidents, that one or two houses were burnt in each city after the Babri Mosque incident. This means that, the responsible personnel who are in charge of maintaining peace and ensuring rights of minorities do not understand the cumulative effects of isolated incidents. One must understand that even one big riot against the minorities in a life time or a few isolated agitations against the minorities over the years, are enough to create a sense of insecurity amongst the minorities about their future existence and their psychological make up, and is bound to give them a feeling of being discriminated against. This is happening in front of the very eyes of the responsible people who lack the necessary perception. However, it is generally understood that the minorities are thinking of a safe place, and if another Babri Mosque like incident takes place in the region, then another mass exodus like 1947 is inevitable.

One thing is clear — all the governments of the region are incapable of protecting minorities. The root cause of this incapability is the lack of human rights perception and inter-community lag. Most of the people, including law implementing officials to ordinary citizens lack the necessary knowledge about basic rights.

This ignorance is further worsened by ignorance of one community about the other. The overall education policy in the region is such that it only educates the children about their own community.

Because of these weaknesses, the corrupt politicians abuse their vocabulary to stultify their opponents and which ultimately results in transforming the ignorance to hatred. It is obvious now that in order to establish communal harmony and eradicate communal hatred, the governments should first take the task of eradicating inter-community communication lag and of infusing in them a perception about human rights.

Such an objective can be achieved only if the governments of the region undertake a variety of programmes to improve communal relations and to promote equality for all people. The task should include creating, conducting or supporting research and educational programmes at primary and secondary levels. All the states should have a body to monitor the implementation of equal opportunity laws and that body should impart its specialized knowledge and advice to other persons interested in the eradication of discrimination.

We must recognize the fact that, within the frontiers of any country, the peaceful co-existence of different national, ethnic, linguistic or religious groups is an asset — a source of social and cultural enrichment. This is not a dream. Many States have succeeded in reconciling the paramount considerations — equality, non-discrimination, national security, territorial integrity and political independence — with respect and protection for the identity of various groups of their citizens. (World Campaign for Human Rights)

— The writer is a human rights lawyer.