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Star LAW *analysis*

Labour laws befitting the workers

ALOK SARKAR

SINCE 1992 a process of reforming the existing labour laws of the country has been process on. Demand from the concerned quarters to remove the lacunae in regards to implementation process and the complexities within the laws, resulted in a commission headed by a Parliament member and comprised of the members from the representatives of the owners and workers, law experts, Govt. officials and the industrial relations expertise. The commission proposed a recommendation compiling and amending all the existing labour laws and ordinances and subsequent rules and orders. The draft recommendation for the proposed reformation of the labour law could hardly bring forward any significant change except compiling the Acts, Ordinances, Regulations, Awards et cetera in a single volume which were scattered in different volumes in different names.

The law of minimum wage

The Minimum wage ordinance and subsequent rules of 1961 laid the responsibility on the Government to declare the minimum wages for the workers of different industrial sectors. The ordinance was a promulgation to replace the minimum wage act 1957, which was in fact the result of the persuasion of the Royal Commission for labour law formed in 1929 in the then British India and taking into account the law was passed by the provincial assembly of the then East Pakistan. Initially the act of 1957 was effective only for the scheduled sectors of Inland water transport, Textile (Cotton, Wool, Synthetic Silk and Jute), Sugar, Safety Matches, Rubber, Tea and Paper & pulp industries sectors. But The Ordinance of 1961 includes all other industries within the purview of minimum wage act. The minimum wage ordinance of 1961 also bind up the concerned authority with responsibility the periodical review of minimum wage rates for all sectors in every 3-years considering the expense of livelihood in respect to prevailing economic condition.

If implemented this law of minimum wage can solve the problem of the workers to the great extent. Example can be cited from the fixation of minimum wage for the garment sector in 1994. It was Taka 930.00 for workers joining anew in a factory. But after the expiry of long 11/12 years no periodical review was made for the minimum wage in this sector, which is claimed to be the sector, earning the 76% of the foreign currency for the country. Prices of the essentials and consequently the cost of living has been increased many folds by this 10 to 12 years but the minimum wage for the garment workers as per the legal provision remains as same as that of, declared in 1994. It is true that, some of the garment factories pay their workers more than Taka 930.00 as minimum wage which are the few exceptions and also not sufficient as per the provision of law. In majority cases the minimum wages of the garment workers are paid as of and some times less of that fixed in 1994, last 10/12 years back. So far off from the future savings for livelihood, the garment workers live on at the cost of utter sufferings including malnutrition, mal treatment or no treatment in illness, dwelling in the unhealthy and insecure slums and so on.

Factory Law

Long back in 1881 under the pressure of the Lancashire Mills owners Association and the Manchester Chamber of Commerce "The Factory Act" in British India was first introduced. Though it was enacted to serve the purpose of competition with the products of the then British India by two above mentioned business groups still it was the first law which effectively helped the workers of British India. In the then Pakistan The Factory Act, 1965 and the subsequent rules of 1979 came into effect, which may be considered as the continuation and enrichment of the factory law of 1881. Like many other laws this Factory act and rules were accepted in Bangladesh and was included as labour law. The Factory Act, 1965 and the subsequent Rules of 1979 provides the provisions of compulsory prior permission from the Chief Factory inspector regarding the construction and expansion of any part thereof, of the factory building, it fixes the limit of the daily and weekly working hours of the workers, make provisions for the compulsory weekly holidays or compensatory holidays, festival leave, annual leave, casual and sick leave and as per the Maternity Benefit Act of 1939 the law provides the full pay maternity leave for the women workers. But due to lack of implementation, rather it should be said that the absence or negligence of the law enforcing authority in this sector made these provisions of law ineffective. Without going into the in-depth inquiry any one can observe the frequent violation of the Factory Act and the Maternity Benefit Act in our industrial sectors run by the private entrepreneurships.

In the eighties of the last century there was open opportunity for the garment business, especially in the least developed or developing countries. Eventually with few exceptions the garments factories were established in and around Dhaka city without the compliance of factory laws. Most of the buildings in the residential areas, built for residential and the purposes other than the factories were turned to Garment factory buildings. The factory law of the country imparts corroborative responsibilities upon the employers and the chief factory inspector from the part of Government to ensure the specifications for the buildings to run those as factories. But as it mentioned except the few exceptions, the factory laws were grossly ignored. To prove the ignoring of factory laws one need not put fingers to the disastrous incident of Spectrum Garments of Savar or series of fire incidents and consequent stampede in Garment factories over the years claiming hundreds of lives of helpless workers. One can see the deadly stair cages hanging from the top of the garment buildings indiscriminately situated in the city areas used to be called the emergency exit and far off to serve the purpose of emergencies as contended in the factory law and it will not be an exaggeration to mention that there is no instance of any punishment for any of the owners running the factories within those buildings which do not comply the provisions of law. So accidents in garment factories and possibilities of disasters continue to exist. The authority responsible for also ignores the gross violations of the provisions of laws to ensure the working hours and holidays and the overtime payments for the workers. Very often the clamours against the employers by the workers are observed specially in the garment sector on the above issues.

Law of profit sharing

In 1968 the "Companies profit (workers' participation) Act" was enacted and in 1976 the rule was made accordingly. The contention of the law is that if a company having fixed capital of Taka 10 million and paid up capital of Taka 5 million at the end of the financial year and employs at least 100 workers in any time at any shift in the year, shall create a "Profit sharing fund" depositing 5% of the neat annual profit. The amount will be distributed as participation fund and welfare fund in a proportion 90% and 10% respectively. Trustee Board formed under this law shall manage the scheme of participation fund and the welfare fund. The law also ensures the distribution of 2/3 of the participation fund among the workers in cash each year. Apart from this the 1/3 of the participation fund and the welfare fund has to be utilized for the purpose of the workers as decided by the trustee Board.

AS per the existing situation in the industrial sector, there seems no policy to ensure the future of the workers. For the Industries, exit may cause for different reasons. The product may loss market, the company may change the business and for many other reasons stemmed out in this competitive free market economy. But Law in practice provides only one months salary for every year of service to leave a worker out of job. The above legal provision, which is also not always abided by the employers, can ensure the minimum subsistence of a worker who loses his or her job especially at the age when it is difficult to acquire skill and knowledge for different job. This "Companies profit (workers' participation) Act" can help the workers in absence of any exit policy for the industries run by the private sector if implemented. But unfortunately there is no such authority to compel the companies to implement this law.

Effective reformation of labour law can help

The concerned quarters who found the difficulties in implementation of labour laws and its complex nature and that is why demanded a reformation in no way will be satisfied with the mere compilations of laws in a one volume. It needs the removal of the lacunae those keeping the laws as ineffective and thus termed as obsolete.

There are laws both for the workers and employers. Only the strict provisions for the surety of their implementations can make the reformation of labour laws befitting for a real and good production relation and a healthy economy for the country.

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LAW *alter views*

Crocodile tears for separation of judiciary

MD. ZAHIDUL ISLAM

JULY 9, 2001. Afternoon. The Paltan Maidan overflowed with mass gathering. I can vividly remember the day, time and scene. It was a meeting of four party alliance. I was waiting to hear Begum Khaleda Zia, then the opposition leader. Suddenly a great cheer blew up in the gathering; I saw her in her bright white sari with her ever-innocent beautiful sacred appearance stood before mouthpieces. Thousands of people seemed full of breathless excitement to hear from the queen of their hearts. At a time she assured that her party and four party alliance, if voted to power, would make the judiciary independent and separate from executive.

This was not just one day's expression. Begum Zia uttered the same thing in her various meetings. It may be noted that in the past Barrister Ishtiaq Ahmed, an adviser to the past caretaker govt., had taken necessary preparation to separate the judiciary. However, he was persuaded by Begum Zia that her govt. would implement it. Thus the present govt came to power strongly pledged, amongst others, separation and independence of the judiciary. But in the last four years after coming to power what it has done is diametrically opposite to its promise.

As a matter of fact, govt's reluctance to separate the judiciary was evidently noticed from the very beginning. For the purpose of realization of the Supreme Court's directives under the judgment of Masdar Hossain lawsuit, the govt. began to take time extension, and passed the time effortlessly. mending the Code of Criminal Procedure in the light of directives was the simplest work for the govt. with vast majority in the parliament , but it did not do so. Conversely, it tried to recruit and appoint the judges of the lower courts through 24th BCS bypassing the judgment, which directed that no appointment for the judiciary could be made through PSC. However, following a writ petition the HC made an order, which stayed the process. Consequently, it formed a seven-member Judicial Service Commission, which also was formed allegedly in contravention of SC directives. Soon after that, the govt. appointed 10 additional judges in the High Court Division of the Supreme Court. One of those additional judge was a Law Secretary. This appointment was in violation of the said directives of the Supreme Court.

The intention of the govt., however, became more visible when it denied confirming the appointment of the judges of the High Court Division, who were appointed in the previous regime. Some of these judges were really competent and the honourable Chief Justice himself appreciated their contribution and recommended for them, but they were not confirmed only for reasons widely thought to be political. This disrespect for the Chief Justice's recommendation was a serious breach of constitutional convention that created a serious controversy. Controversy again deepened when the govt. appointed some judges in the HC Division whose integrity and competenc were allegedly questionable.

However, the govt. reached the climax of its controversy, when

one of HC Division judges was reported to obtain forged certificates of academic qualification, and the govt. did not take any appropriate action against the alleged judge. Conversely, contempt petition as brought against those journalists who published the reports. This incident stirred a shock wave amongst public consciousness . Crossing away the purview of lawyers, it rapidly spread among common people. Citizens became anxious thinking that what would be our future if the integrity of such a judge of our highest judiciary remained questionable.

And now, the situation is leading to a national frustration. The Judiciary and govt. of the state seem going to be entangled with a serious conflict. Last time when the govt. appealed to the Supreme Court for another time extension (21st time) for separation of the Judiciary from the Executive, the court rejected the same, and stayed the hearing of the case until February 1, 2006. What situation may follow henceforward?

Apparently, there are two options before the govt.: either it has to take the necessary steps for the implementation of the judgment before the date of next hearing, or it has to face contempt of court. The petitioner of Masder Hossain Case, who had brought the contempt petition almost a year ago, has reportedly said to have submitted some more fresh complaints against the govt. We don't know what will happen next; we do not even want to imagine it.

It is however learnt that the govt. is contemplating to a file review petition. But why move review petition? Why any more delay? It is told that actually there remains no ground why the govt. can validate any time extension to do it. It is obvious that if the judiciary was separated, the govt. would loose its control over lower judiciary and magistracy; it could not use them to serve their ulterior motives. Is this the only reason? When a govt. comes to power with overwhelming public support, how can they think of such unfriendly control over judiciary?

As a matter of fact, not only the present govt. but also all other previously elected governments have shown a little interest to make the judiciary separate and independent. The Awami League is making a lot of hue and cry against the way the govt's dealing with judiciary, but its previous activities show that it never believes in the independence of judiciary. By 4th amendment it hit out against the Constitution for the first time and it was so severe that it, in a word, buried the independence of judiciary. During it's rule from 1996 to 2001, the AL did not take any step to make the judiciary separate; rather despite the directives from the Supreme Court in Masdar Hossain case it spent time in dillydallying. Hence, it may be concluded that the Awami League is also shedding crocodile tears for the independence of judiciary, and nothing more.

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HUMAN RIGHTS *advocacy*

UN calls for strong action to eliminate violence against women

The United Nations marked the International Day for the Elimination of Violence against Women with calls for states to take legal action against the global scourge, for societies to change a mindset that permits such abuse, and for women themselves to stand up and speak out against a culture of shame.

"Violence against women remains pervasive worldwide," Secretary-General Kofi Annan said in a message. "It is the most atrocious manifestation of the systemic discrimination and inequality women continue to face, in law and in their everyday lives, around the world. It occurs in every region, country, and culture, regardless of income, class, race or ethnicity."

Noting that leaders at September's UN World Summit pledged to redouble efforts to eliminate all forms of violence against women and the girls, he stressed that this required a change of the mindset, still all too common and deep-seated, that violence against women is acceptable.

"That means leadership in showing, by example, that when it comes to

violence against women and girls, there are no grounds for tolerance and no tolerable excuses," he declared.

The UN Development Fund for Women (UNIFEM) said violence against women is both a cause and consequence of rising rates of HIV infection: a cause because rape and sexual assault pose a major risk factor for HIV transmission, and a consequence because HIV-positive status makes women more likely to be targeted for abuse.

"Violence against women is the most pervasive violation of human rights, occurring every day, in every country and every region, regardless of income or level of development," UNIFEM Executive Director Noeleen Heyzer said, citing a UN World Health Organization (WHO) estimate that nearly one in four women will be raped, beaten, coerced into sex or otherwise abused in her lifetime, sometimes with fatal consequences.

She called for three major actions to break "this vicious cycle" of violence: countries must pass and enforce laws to deter acts of violence against women and reduce the spread of HIV; women who have suffered abuse must speak out to break the culture of shame and stigma; and awareness must be raised on the links between violence against women and HIV/AIDS, especially by the media.

"Together we must prevent and punish violence against women," UN Population Fund (UNFPA) Executive Director Thoraya Ahmed Obaid said. "Social norms and attitudes that condone discrimination and violence against women and girls can be changed. This is the first step, which requires awareness raising, behaviour change and social mobilization."

She, too, called for strengthened legal protections as well as the provision of health information and services.

Urging stronger efforts to fight violence against women, UN High Commissioner for Human Rights Louise Arbour also called for a change of mindset.

"We urge States to challenge societal values that support discrimination against women and legitimize violence against them, adopt specific legislation addressing domestic violence and end impunity for crimes committed against women," she said in a message co-signed by the Special Rapporteur of the UN Commission on Human Rights on violence against women, its causes and consequences, Yakin Ertürk.

The first-ever WHO study on domestic violence, released, shows that intimate partner violence is the most common form of violence in women's lives - much more so than assault or rape by strangers or acquaintances. The study reports on the enormous toll physical and sexual violence by husbands and partners has on the health and well-being of women around the world and the extent to which partner violence is still largely hidden.

"This study shows that women are more at risk from violence at home than in the street and this has serious repercussions for women's health," WHO Director-General Lee Jong-wook said. "The study also shows how important it is to shine a spotlight on domestic violence globally and treat it as a major public health issue."

The Women's Health and Domestic Violence Against Women study, based on interviews with more than 24,000 women from rural and urban areas in 10 countries: Bangladesh, Brazil, Ethiopia, Japan, Namibia, Peru, Samoa, Serbia and Montenegro, Thailand and Tanzania, calls for action by policy makers and the public health sector, including integrating violence prevention into a range of social programmes.

Saying protecting refugee women from violence was one of his top priorities, UN High Commissioner for Refugees António Guterres said in a message to all UNHCR staff: "We know that they are constantly subject to violence, abuse and exploitation in many operations around the world."

"Discussions with women and girls across all regions, be it Colombia, Darfur, Bangladesh, (the former Yugoslav Republic of) Macedonia, or Pakistan, unfortunately confirm that in addition to rape and sexual abuse, girls can be harassed and subject to violence as they go to school, collect firewood, or go to work, as well as through traditional harmful practices and domestic violence."

Source: UN News Centre.