



FACTORY BUILDING COLLAPSE

Human casualty and safety issues

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FACTORY fire and factory accident have recently been a recurring event, especially in garment sector. The garments is no doubt a very vital industry for Bangladesh. Its contribution to national economy in terms of foreign exchange is the highest, about 80 percent and the bulk of it comes because of the women workers who constitute four-fifths of the labour force. However, these garment factory owners, despite repeated incidents of death by fire and stampede, have never paid any heed to the call for maintaining better working and safety condition in their factory premises. First factory fire occurred at Mirpur in 1990 and then on, two dozen garment factories happened to be blazing at regular intervals, killing over 450 workers and injuring another 2000 or more. The very recent Spectrum Garment industry collapse at Savar killing 70 and injuring more than 100, KTS textile tragedy in Chittagong killing 53 and injuring more than 100, the collapse of Phoenix building at Tejgaon killing 23 provide vivid picture of horrendous conditions. One commentator has termed this incident as "Clear incidence of murder and not mere accident". He lamented, it is because none of the factory owners has so far been punished for turning industrial units into death traps.

Another commentator has, against the background of recent accidents in various factories and garment industries, expressed the view that Bangladesh is not only a land of natural disaster but also a land of man made disaster. Each time factory fire occurs the government and the BGMEA which is the garment sector's apex body reiterate the same old thing - "the offenders will be taken into task and that the victim's family will be compensated for loss of lives" but we never know what comes it next.

Fire by accident can occur anywhere. But if there were adequate precautions taken, these fires would not have caused so many deaths. In the fires in garment factories, people die because there are no safety standards or these standards are flouted as government is reluctant to enforce it. Reports have come to the press where the management of the garment factories, far from assuring special exist in case of fire, close down even the normal exits as if their factories were prisons, and thus people roast to death, making their acts despicable



murder of the first degree. Unfortunately, so far no one from the management of the garment factories has been made to pay accordingly for any of the misdeeds.

The government, on the other hand in allowing these factories to run, flout the safety standards, and thus is as guilty as the management. The government is also guilty of failing to prosecute any of these guilty owners for their misdeeds that arise from greed. The government should immediately conduct an inspection of all the garment factories in the country and close down those which do not abide by the safety standards.

The main law dealing with the health and safety conditions in factories is the Factories Act 1965. Apart from health matters there are some safety conditions prescribed by this legislation which are hardly followed by owners of factories. Safety is a basic and primary requirement in a factory. Unless body, mind and life of workers are secured, smooth and proper working cannot be ensured in any factory. The safety provisions are absolute and obligatory in nature and the occupier of every factory is bound to follow them. They are contained in sections

22 to 42. Of these section 22 only deals with safety measures in case of fire which are as follows:

Precautions in case of fire: (sec. 22)

(i) Every factory shall be provided with such means of escape in case of fire as may be prescribed.

(ii) In every factory the doors affording exit from any room, shall not be locked or fastened so that they can be easily and immediately opened from inside while any person is within the room.

(iii) All doors, unless they are of the sliding type, shall be constructed to open outwards.

(iv) Where the door is between two rooms, it shall be constructed to open in the direction of the nearest exit from the building.

(v) No such door shall be locked or obstructed while work is being carried on in the room.

(vi) In every factory every window, door, or other exit affording means of escape in case of fire shall be distinctively marked.

(vii) In every factory there shall be provided effective and clearly audible means of giving warning in case of fire to every person employed therein.

(viii) A free passage-way giving access to each means of escape in case of fire shall be maintained for the use of all workers in every room of the factory.

Penalties: In order to protect the interest of workers in factories, both the occupier and manager of a factory are jointly and severally liable to a fine for an offence under the Act. Under section 93 any contravention by the occupier or manager of any provision of the Act or Rules would expose them to penalty of fine which may extend to Taka one thousand and, if the contravention is continued after conviction, with a further fine which may extend to Taka seventy-five for each day of the period over which the contravention continues.

It is to be noted that the general penalty remains with an offence punishable with fine only and the amount of the fine is so meagre that every manager and owner of a factory can easily flout the whole provision. Secondly, the Act does not make any provision for imprisonment in case of contravention of the provisions. In India there is a provision of imprisonment up to two years as general punishment. Thus the provisions of this Act are toothless to frighten employer-cum-owners and managers to ensure safety measures in factory.

Penalties under Penal Code: Apart from penalties in the Factories Act, 1965 which is largely a civil punishment in essence, there are penalties under the Penal Code. A factory owner or manager or occupier may be charged under section 340A (Negligence leading to murder), Mischief under section 427 etc. in case of incidences of death from fire and stampede where the negligence of the owners is the main factor.

Authorities under the Act: Chapter II of the Factories Act, 1965 sets a number of authorities who are made responsible to enforce the provisions of the Act and rules framed thereunder. The government is empowered to appoint Chief Inspector and Inspectors for this purpose. Every Deputy Commissioner is an inspector for his respective district for the purpose of this Act. Apart from DCs in districts different inspectors have been appointed by the government for this purpose in big cities. Every inspector has wide power under this Act to inspect any factory any time with or without notice to the manager of the factory. Section 96 provides that whoever wilfully obstructs an Inspector in the exercise of any power conferred on him under the Act, or fails to produce on demand by the Inspector any

register or other document in his custody kept in pursuance of this Act or of any rules made thereunder, or conceals or prevents any worker in a factory from appearing before, or being examined, by an Inspector, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to Taka five hundred or with both. Section 107 provides that it is only the Inspector who can file a case for taking cognisance of an offence under the Factories Act. Any other person may file a complaint but it must be under the authority or with the previous permission of the Inspector.

The Law needs changes: In view of the above, the Factories Act, 1965 needs to be amended so that it conforms to the demand of the modern times. Breach of any of the provisions of the Act should meet with both penal and civil provisions and amount of fine in case of breach of safety standards should be in the range of 25,000 taka at the minimum. Negligence on the part of the authorities under the Act should be subject to penalty also. If an Inspector fails to visit factories at a regular interval or makes any faulty report, or does not visit, or fails to prosecute the owner and manager of the factory in case of breach of safety standards, the Inspector himself should be rigorously penalised and fined. The real problem lies with the enforcement of the law by the authorities under the Act. There is inherent lack of checks and balances among government bodies. If some authorities under the Factories Act, 1965 were punished for the incidence of mass killing by fire and stampede due to non-compliance of laws pertaining to safety and security, the authorities would never forget to take care of safety measures which is their responsibility. It is the weakness or lack of enforcement by the authorities which encourages the owners to flout and violate the safety devices under the law.

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The United States decision not to seek election to the new United Nations Human Rights Council undermines its claims to leadership in promoting human rights, Human Rights Watch said. Human Rights Watch called on the United States to live up to its promise to participate actively in elections to the council and to help make the new body effective.

"Despite this regrettable decision, it's important that Washington helps make the new Human Rights Council as strong and effective as possible," said Kenneth Roth, executive director of Human Rights Watch. "The council needs active support if it is to get off to a good start."

Improving membership standards was at the heart of the decision by the U.N. General Assembly last month to replace the Commission on Human Rights with a more selective Human Rights Council. Abusive states had joined the commission to prevent it from taking effective action against violators. The United States was one of only four countries to vote against the change, arguing that the reform did not go far enough, but announced that it would still cooperate to strengthen the council.

Previously, candidates for the commission were put forward by regional groups and often rubber-stamped by the U.N. Economic and Social Council. Now, election to the council will require an affirmative vote of 96 of the 191



members of the General Assembly, based upon the human rights records and commitments of candidate countries.

The U.N. resolution establishing the council permits extensive participation in proceedings by non-member states, as well as by nongovernmental organizations. The United States can still play a very useful role in helping to shape the council's rules and procedures, and in bringing human rights abuses to the council's attention.

"The Bush administration's disturbing human rights record would have complicated its candidacy this year," said Roth. "We hope that the U.S. will make a serious effort to address its own rights abuse so that it can be in a stronger position to present itself for election to the council next year."

Human Rights Watch repeated its call to member states to reject council membership for abusive countries. It said states that could make positive contributions to the council should declare their candidacies 30 days before the May 9 elections and present their human rights agendas so that the elections produce a council ready to address crises and protect victims.

On June 19, the new council will meet in Geneva for the first time.

Source: Human Rights Watch.

LAW in-depth



COMPUTER BASED CRIME

A new legal challenge in Bangladesh

KHALEDA PARVEEN

COMPUTER and its extended application through World Wide Web have penetrated almost all branches of legal scholarship including criminal laws. Owing to the atypical nature of this virtual world with so many actual legal challenges, innovative legislative approach is chosen in many countries to maintain law and order. For example in Bangladesh the issue of amending existing Criminal Procedure Code, the Penal Code and the Evidence Act is on top of the agenda after some recent development on computer-based criminal activities.

Background

On 30th of October 2004 an email was sent to a leading national Daily threatening the life of the leader of opposition Sheikh Hasina. Sender of the message claimed him to be an agent of Al-Qaeda, (alleged international terrorist group), later discovered as fake, and promised her assassination as early as possible either in Bangladesh or in USA. During this time Sheikh Hasina was visiting the USA.

On 25th of April of every year since 1999, almost all national Dailies published a news with reference to Bangladesh Computer Council that Chernobyl Computer virus, commonly known as 'CIH virus' is supposed to be activated at 00:00 hours of 26th April and might be potential risk for computer's memory. Consequently, on 27th of April, 2004 it was reported that Over 1,000 computers were affected by the Chernobyl virus. The virus erased data from hard disk drive and corrupted the BIOS of computer motherboard.

In 2003 some hackers hacked the password of Barishal District Commissioner and made unauthorized access to internet via this account. Sources said the computer hacking incident was revealed after the DC office received a heavily bloated internet bill.

These are some of the isolated incidents took place in different times in different places of Bangladesh, however with one thing in common in all these criminal activities computer and/or internet has been used as tool.

Existing criminal laws in Bangladesh

As there is no existing IT law in our country, offences like, threat to life via email, intentional or knowingly causing destruction of any property or wrongful loss or damage via computer viruses, etc. are still dealt with traditional criminal laws. One major problem is that our existing laws do not clearly address the uniqueness of the internet and its related activities.

As our existing criminal laws are neither up to date enough nor all IT related crimes are covered by the existing criminal laws, moreover, these penal provisions do not define computer-based crime and do not provide penalty for that. As well as Procedural laws, e.g. the Code of Criminal Procedure, the Evidence Act, do not provide effective legal procedure to try such cases. In the absence of appropriate laws sometime it is difficult to detect the criminals and made such types of activities punishable offence. Therefore, new laws or in some cases necessary amendments in the existing laws are required.

As a result, with the growth of technology and its essay access paved the way for frequent occurrences of these types of computer based crime. Think tank and people of different spheres of life are more concerned about the issues than before. Keeping this necessity in mind, Law Commission of Bangladesh proposed a law in order to embark upon these criminal activities, named "Information Technology (Electronic Transaction) Act".

Proposed Information Technology (Electronic Transaction) Act:

Law Commission of Bangladesh, proposed a

final report on the "Information Technology (Electronic Transactions) Act", with some necessary amendments to the relevant existing laws.

In the proposed IT law of Bangladesh, Law Commission proposed some provisions related to computer based crime and its adjudication procedure. The proposed IT law defines computer related offences e.g., hacking with computer system, damage to computer and computer system, computer virus etc.

In order to deal with these offences some procedural provisions are also incorporated in the proposed law, such as-

- Appointment and power of Adjudicating Officer (section-50 & 51)
- Establishment of Cyber Appellate Tribunal (section-52)
- Composition, qualifications, term of office, conditions of service, etc. of Cyber Appellate Tribunal (section-53)
- Procedure and powers of Cyber Appellate Tribunal (section-59)
- Power of investigation of offences under this Act (section-87)
- Power of police officer and other officers to enter, search, etc (section-90)
- Besides, the proposed law also includes-
- Penalty for damage to computer, computer system (section-45)
- Punishment for tampering with computer source documents (section-66)
- Punishment for hacking (section-68)
- Punishment for publishing obscene information in electronic form etc. (section-69)
- Punishment for unauthorized access to protected systems (section-76)
- Punishment for publishing false Digital Signature Certificate (section-81)
- Punishment for publication for fraudulent purpose (section-82)
- Punishment for using computer for committing an offence (section-83)
- Punishment for using computer for committing a crime (section-84)

In order to comply with this new law,

Amendment to the Penal Code 1860, the Evidence Act 1872, the Bankers' Books Evidence Act, 1891, the Bangladesh Bank Order, 1972 are also proposed and given in four schedules.

Recommendations

Computer security and related crime is increasingly becoming a major issue for corporations and government agencies. Law enforcement in Bangladesh has endured many challenges over the years. While committing the crime, Lawbreakers have integrated highly technical methods and developed crimes of creative nature. Moreover, the evidence of these crimes is neither human nor physical, rather electronic impulses and programming codes. So it is very difficult to put those activities under the general purview of the existing legislations.

Though Law Commission of Bangladesh propose a comprehensive IT law covering all aspects of information technology, but issues are very new in our country. Gradually people of all sphere of life are consciously thinking about the problem. People need to be more concern. Computer related crime, basic computing etc. are not taught in our law school and lawyers and judges are not specially trained, as a result they are not reasonably aware of such trial.

Though our proposed law is a comprehensive one, it is incomplete in many aspects, like it failed to address the offences related child pornography, computer related fraud, offences related to infringements of copyright and related rights etc. We need a separate Cyber legislation, which will exclusively deals with computer related crime. In addition some amendments need to be made in the Criminal Procedure Code.

Concluding remark
Computer related crimes are also crime; however, of unique nature and based on computing technology and its misuse. One major difference



between these crimes and the traditional ones is that computer related crimes are very much global in nature. Bangladesh has taken steps towards fighting such crimes by way of enacting new laws and amending existing penal provisions. Due to a very unique character of these

crimes success is likely to depend not on enactment or amendment of laws rather largely on enforcement of laws, which is always a big challenge for Bangladesh.

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