



HUMAN RIGHTS analysis

Ship breaking: Irony of "iron"

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BREAKING of ship started in Bangladesh reportedly in the 60's when, due to the devastating storm, a large ship ran aground and was left abandoned that inspired the local people to remove parts of it and sell the same to market. The business, however, started getting organized in the 70's at a time when other major ship breaking countries gradually started to switch to other businesses. The reason for their withdrawal and our increased investment were on two different considerations, respectively force of environmental laws and availability of cheap labour. It is also said since Bangladesh has no deposit of its own iron ore, the market for scrap iron available from the ship breaking industry expanded here. The fact remains, all countries need iron and whether they have their own deposit or not, switch for other practical options that Bangladesh perhaps has not fully explored. It rather opted to patronize the extremely hazardous and polluting industry of ship breaking making its own precious ecosystem and poor and helpless people hostages and making mockery to its environment and labour related laws.

At present, a total of 68 companies are engaged in the business that operates in 32 yards stretching an area of 10 kilometres in the southern part of Sitakunda, Chittagong. The industry claims to employ around 20,000 people although a common allegation against the industry is that it does not keep the records of employment. Records obtained from various sources indicate that 33% of the total employment of the sector comes from the Chittagong district, while respectively 30% comes from the poverty stricken northwest and another 25% comes from Mymensingh. While the locals get the more skilled and less hazardous work, it is just the opposite for the non-locals. The industry takes full advantage of the helplessness of the poor people who travel all the way from the North to the South for earning a minimum living. These non-locals are given the risky works and sadly often get "exploited" in the name of "employment" that even the government likes to cherish to keep the unaccountable industry going.

The fact that the industry has categorically failed to maintain the minimum level of labour

protection and welfare as per the labour laws is evident from the reports of ILO, UNDP, Det Norske Veritas and Green Peace. According to a joint report of the Green Peace and the International Federation of Human Rights Leagues (FIDH), on an average one ship breaking worker dies at the yards in Bangladesh every week and every day one worker gets injured.

So far the argument from the ship breaking industry is that they are not classified as industry and hence are not bound by the laws on labour protection. The 2006 Labour Act has clearly defined "ship breaking" as industry being part of production process. This definition however, has not helped much in terms of ensuring the monitoring of the yards by the labour inspectors. Records suggest that this year alone the number of deaths have already risen to 10, that again in a period of just three months, i.e. from end April till date. The number of deaths kept low from November-March as the ship breakers opted not to undertake any breaking operation in that period allegedly to increase the price of iron.

An inquiry into the accidents suggests that in most cases they took place due to explosions (indicates callous certification by the Explosives Department) and fall of heavy metal plates on the labourers. After each of the deaths, the ship breakers tried to evade their legal responsibility of depositing taka one lakh as compensation for the family of the deceased workers. They instead opted to give a token amount to the families of the workers and got them to sign on a legally untenable agreement stating that they had received some money and did not hold any further legal claims. It was only after the much delayed intervention from the Labour Directorate that some of them have deposited the money very recently although the death might have taken place in 2006.

It is evident from these facts that the ship breakers deny the labour even minimum protection in terms of employment documents, personal protective devices, primary treatment, regular check ups, minimum wages and so on. None of the companies maintain any credible records of employment and do not give employment letters to the workers which makes it difficult to monitor the deaths. In no single instance a report into the death has been made public nor is there any report to suggest the measures taken by the ship breakers to prevent



future casualties. Many instances reportedly go unaddressed due to lack of record keeping. All these are clear violations of the Labour Act, 2006 the monitoring of which apparently is nobody's duty.

While the industry categorically fails to protect its workers from hazards and deaths, in protecting the industry, it shamelessly brings forward the issue of 'employment' and sells the same as their trump card in protecting the business. In the event of the unusually high number of deaths in the last few months, the government must come forward in assigning the liability of the deaths against the employers. Someone must take the responsibility of these deaths.

The industry is widely blamed for not being

technically or scientifically organized where the management is very primitive. Considering the environmental consequences of ship breaking operation, the global community is increasingly terming ships destined for breaking as "wastes" and is subjecting the same to stricter regulations including pre-cleaning, moving from beaching to dry dock options and so on (Basel Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships). The Environment Conservation Act, 1995 and the Rules of 1997 clearly require the industry to obtain "environmental clearance" prior to operation. Unfortunately, none of these 68 companies or 32 yards have ever taken any clearance and are operating in clear violation of legal provisions. The common environmental

hazards that unregulated ship breaking can cause include contamination of soil and water by discharge of oil and waste water while the risk of asbestos, chemicals, hydrocarbons, toxic items and radiation remain there all the time. In the event of lack of containment to prevent toxins from entering into the water, soil and air, it has been found that the ship breaking facilities of Chittagong has high concentration of oil in the adjoining water and high levels of heavy metals, PCBs and TBTs in the soil while asbestos is omnipresent.

Despite such legal requirement and clear findings on the pollution created by the ship breaking industry, none of the yards reportedly have obtained clearance nor has any government agency ever attempted to stop the functioning of the industry. The recent proposal of the DoE to bring ship breaking from the list of "orange" category to "red" for the purpose of imposing stricter regulations has also not materialized.

In a writ petition (3916 of 2006) challenging the legality of the entry of Green Peace listed ship named MT Alfaship into the territorial waters of Bangladesh, a division bench of the High Court comprising Mr. Justice Awlad Ali and Mr. Justice Zinat Ara observed that the government should take immediate steps to frame necessary rule and regulation so that hazardous ships that are threat to the environment of the country may be prevented from entering into territorial waters of the country in any manner. Mysteriously, the Department of Shipping has opted to formulate non-binding policy to regulate the operation despite observation from the Highest Court to frame binding rules.

Legal Actions against Unregulated Ship Breaking

- Writ Petition No. 2911 of 2003 d e m a n d e d environmental clearance for ship dismantling eventually resulted in proposal for changing SB from category 'orange' to 'red'
- Writ Petition No. 23 of 2008 demanded complete statement on accidents, causes, preventive modes taken, compensation paid and basis of computation
- Writ Petition No. 3916 of 2006 (Alfa ship-SS Norway) Resulted in Court's observation for the government to immediately frame rules. One may wonder about such leniency and

reluctance of the law implementing agencies in punishing the polluting industry of ship breaking. The government answer perhaps is simple: the ship breaking industry supplies 80% of the iron for the market. It is an irony to see that the government is sticking to such an observation even in the policy it is proposing when the fact is that the BSBA itself has given newspaper advertisements (Daily Prothom Alo dated 31 January, 2008) maintaining that they supply only 25%-30% of the total iron demand of the country. Why is then the government overstating the number? The nation must find out an answer to such bias of the government in order to get the proper regulatory direction in regulating the industry. If it is only 25% that this industry supplies and the rest 75% is met from import of iron scrap, then the search for alternative gets simpler. Why should the country loose so many lives and lease out its fragile coastal area for indiscriminate pollution when alternative is viable?

Few months back a high powered government committee inquired into the sudden rise in the price of iron - the supply of which seems to be the only reason why the industry is allowed to undermine all legal provisions. For some inappreciable reason, the committee has kept its report "confidential" at a time when the government has in principle approved the ordinance on Right to Information. Perhaps the government is following the footsteps of the ship breakers who deny access to human rights activists and even news media to their yards!

It is high time that the government spells out measures to be immediately taken by the ship breakers to avoid any loss of life and any further contamination of the environment. The business must operate in a transparent way and to ensure that an impartial fact finding mission needs to work to define the parameters. The government has accepted the Basel Guidelines and the ILO guidelines on ship breaking, but has not developed the regulatory regime in line.

It is crucial that the government wastes no more time and immediately embarks upon developing rules to bind the defiant industry, as has been observed by the High Court.

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LAW campaign

Cyber Law: Netting the web with law

MUFASSIL M M ISLAM

WHEN dreams are organised and channelled through an extension of limitations, imaginations take form and when imaginations work in conjunctions with capabilities, inventions take place in our lives.

Our poets imagined a window to the soul and our philosophers imagined an ear to hear everything. Our inventors imagined a magic broom to fly anywhere and to see any land with the clapping of hands in the land of Satyajit Roy's Hirok Raja's Deshey. Now, we have all that in the purple world of the 'Internet'.

Like may blessings of the modern times, we have this unfathomable pipeline of information and communication which attracts child and crabbled alike with its magical responses to many wishes which we can think of with a click on the keypad. This powerful genie enriches our bank accounts, keep us informed and keep us in touch with the people in lands where we may never travel but we often fail to control this floodgate of appetite for it with the required wisdom.

Our morals, principles, sensibility and thirst often blur our souls and we slip into the web of law-breakers. People get dragged into immoral activities, criminal

prosecutions and civil litigations. There remains an international brotherhood of underworld law-breakers who are engaged in activities far beyond any imaginable precedents in legal history. Patent violations, paedophilia, international organised crimes, cyber virus injection, packed advertisements and junk-emails are a few of very common abuses of this gift of modern technology. There are salient features of misleading the common people who are not cautious enough with wrong information of the webs as well whilst using this media as a public alternative for television, newspaper or book.

The following will clarify as to how far the law is being broken even in developed countries like that of USA and Canada (www.chamber.ca):

- U.S. organizations lose over \$67 billion a year (2005 computer FBI Crime Survey).
- 9 out of 10 organizations experienced a computer security incident. 20% of the respondents suffered 20 or more attacks over a one-year period. 44% reported intrusions within their own organizations.
- Types of attacks: Viruses are 83.7% and Spyware 79.5% had experienced Spyware.
- 20% experienced network or data sabotage. Source of attacks, from 36 different countries: 26% from the US and 23.9% from China.
- Only 9% of incidents were reported to law enforcement establishments. Identity theft is growing; phishing attacks now reach roughly one in four Americans each month (FBI). Privacy fears threaten Canadian electronic commerce: 40% of Canadians avoid online shopping over security concerns, compared to 24% of Americans.
- 91% of internet users in the US have altered online behaviour inhibiting e-commerce growth

from 1 3%. 74% Canadian consumers are changing online financial behaviour fearing email fraud.

- 80% of consumers in Canada, US, UK and Germany are fearful that identity theft will compromise their bank accounts.

Various countries have promulgated several regulations thwarting cyber crimes by maintaining vigilante organisations against dissemination of potential criminal abuse of the net-world. But there are obstacles as well in the forms of public privacy and Data Protection Acts. But the need to have concerted global effort to stop foes from corrupting our senses remains. Criminals and law-breakers use various apparent innocent means to creep into our unchecked and unguarded lacuna of acceptable e-mails, websites and other features. People often break laws innocently and get trapped into the locked room of crimes where there is no door to come out. But ignorance of law is never an excuse to break law and Governments often fail to make us aware of the responsible way to use the net. The internet service providers are not in many cases made obliged to keep their customers aware of the abuses of the net as well. Disclaimer declarations by many websites and lock-systems for adult users to prevent children from using the adult sites are being publicised by the service providers in the west.

Uncontrolled use of the net may give ways for addictions in the forms of chat-room addictions, music addictions, even may teach ways to learn means to break the law at home as in the case of 'learning how to have abortion at home' in Ireland where 'Abortion' is illegal. The recent capture of the paedophilia ring in USA, UK and Australia proved the far-reaching hand of the abusive use of this technology. But we do not expect a Talibani system where Internet would be banned in totality. It is

like any technological means where the use will benefit and abuse will wrack. With a knife we chop our vegetables and at the same time criminals often use it as a weapon.

John Thompson, Chief of the Norton Anti-Virus company Symantec (www.Norton-online.com) puts the problem in clear perspective thus;

- There's a requirement for the stricter punishment of cyber criminals
- The degree to which cyber crime is going unpunished around the world is unconscionable
- International cooperation in combating cyber crime is minuscule, almost non-existent
- Clearly, Thompson recognizes that the crisis is now and that urgent and effective action is required. Anything less is not an option.

Our Government needs to:

1. Update the criminal code, reflective of the modern techniques and technologies employed in cyber crime, with deterrents which are substantial and effective.
2. Proceed with the establishment of a Cyber Security Task Force.
3. Vigorously pursue every opportunity for international cooperation in combating cyber crime (such as the London Action Plan, Council of Europe Convention on Cyber Crime, Security and Prosperity partnership of North America, et al).
4. Move to enact legislation to enable law enforcement to investigate crime in the face of rapidly evolving communications technology and prevent criminals from taking advantage of new technologies to hide their illegal activities from the law.
5. Work in cooperation with leading business organizations.
6. Create a series of forums across the country, to both gather objective data as well as raise awareness to the full

extent of the problem.

7. Designate an existing government agency to manage the Cybercrime Central file.

The following agencies can form as models for various prospective organisations in Bangladesh:

1. Internet Crime Complaint Centre (www.ic3.gov/alliances.aspx);
2. National Internet Fraud Watch Information Center (www.fraud.org);
3. National Crime Prevention Council (ojjdp.ncjrs.org).

We also need to bring this new area of legal practise within our legal academic and professional trainings. As we have a serious lack of expertise in this field of Cyber Law, we primarily need to bring in visiting professors, legal practitioners and trainers to bring up a strong professional group to help our legislators, judiciary and legal practitioners to guide and regulate the society in using this innovation of modern life within the boundaries of law.

Some of the laudable foreign Cyber Laws are as follows:

- The Information Technology Act 2000 (India);
- Cyber Security Enhancement Act (thomas.loc.gov/);
- Several Cyber Laws in UK. (www.cyberlaws.co.uk)

There have been several international conferences in this field and we can take note of the deliberations there as our guideline. The following two conferences are worth mentioning:

- The Council of Europe's Cyber Crime Convention 2001;
- UNESCO Freedom of Expression in Cyberspace Conference, 2005.

Our Government need to be aware that if they do not engage in promulgating the required laws in Cyber use, yet they leave a legacy where the future Government will feel the emphasis on working in this area of modern legal practise.

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LAW amusements

A person must be 18 years old to play a pinball machine
Playing pinball machines (South Carolina 20-7-8915)
It is unlawful for a minor under the age of eighteen to play a pinball machine.

No reptiles in church
Use of reptiles in religious services (Kentucky 437.060)
Any person who displays, handles or uses any kind of reptile in connection with any religious service or gathering shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100).

In California, bulls are required to be in the company of at least 30 cows
(California Food and Agriculture Code 16233)
Bulls must be in the company of at least 30 cows while grazing.

In Oklahoma, it is illegal to injure fruit at night
Injuring fruit, melons or flowers in the night time (\$21 1772.)
Every person who shall maliciously or mischievously enter the enclosure, or go upon the premises of another in the night time, and knock off, pick, destroy, or carry away, any apples, peaches, pears plums, grapes, or other fruit, melons, or flowers of any tree, shrub, bush, or vine, or having entered the enclosure or gone upon the premises of another, in the night time, with the intent to knock off, pick, destroy, or carry away any fruit or flowers, as aforesaid, be actually found thereon, shall, on conviction thereof, be punished by fine not exceeding One Hundred Dollars (\$100.00) and not less than Ten Dollars (\$10.00), or by imprisonment in the county jail not exceeding thirty (30) days.

In Vermont, you can be fined \$20 per day for opening a bowling alley next to a school
Setting up alley near schoolhouse or church (\$ 509)
A person as owner or keeper, who sets up or uses a bowling alley upon land adjoining the land on which a school building, college, academy or church is located, shall be fined \$20.00 for each day or time he permits such alley to be used.

Beware kids: Stink bombs illegal in Oklahoma City
Prohibition of stink bombs (Oklahoma City, Oklahoma 30-371)
(a) No person shall sell or offer for sale, either as an individual or as an officer, member, agent, servant, or employee of any firm, partnership, association, or corporation, nor shall any person possess, within the City limits, a novelty item, commonly known as a stink bomb, that when activated gives off a distinct and noxious odour.
(b) Each sale, attempted sale or possession shall constitute a separate offence against the City and, upon conviction thereof, may be chargeable as such.

Baseball on public streets prohibited
(Bartlesville, Oklahoma 12-92)
It shall be unlawful for any person to pitch or bat a ball on the public streets of this city.

Racing a horse on public highway illegal
(Rhode Island 11-22-11)
Every person who shall drive any horse over any of the public highways, for the purpose of racing or trying the speed of the horse, shall be fined not more than twenty dollars (\$20.00) or imprisoned not exceeding ten (10) days.

Source: www.theattorneystore.com

