



LAW LETTER

Labour law should be revisited

Unlike any other days, today is another ordinary day for Garment's worker Halima. She is preparing to go to her working place. Her three years old daughter is crying for food. She opens the rice pot and sighed, "Enough for today but what about tomorrow?" The existence of workers is indivisibly linked with their work. In simple words, without the work they will starve with their family. Bangladesh is a country with trifling working opportunities. For that reason, if one becomes unemployed or otherwise incapacitated, the whole family suffers. The life of many is entangled with the one who earn. Every day family anxiously waits for his or her safe return. Our Halima may have returned to her daughter safely. But the parent of Shamima and Jakaria were not that lucky!! The infants lost their parents in recent catastrophic blaze in Tazreen Garments in Ashulia. Many others have lost their father, mother, brother and daughters. The authorities are currently investigating matter to find out the possible reasons of fire. Nevertheless, among other factors the definite reasons of the massive causalities and injuries is lack of precautionary measures to prevent fire and inadequate fire fighting facilities. Experts opined that the reasons of this fire are lack of infrastructural measures, negligence from both Government and the entrepreneurs. From this, one may pose a question why the owners are not complying with these important obligations and why the concerned authority deals with rights of the worker remain reluctant? The answer lies within the statutory deficiency and legislative lacunae of the existing Labour Law of Bangladesh i.e. the Shromo Ain 2006 (the Labour Act 2006).

Statutory provisions related to 'Safety of Establishment' in the Shromo Ain

The Labour Act 2006 is a consolidated Act which has incorporated rights and obligations of employers' workers and regulating authorities of government. It provides the rules and regulation necessary to run any establishment, factories. Moreover, penal provisions and monetary compensation can be imposed in case of breach of the Act. In relation to 'Safety of Establishment', the statute has incorporated an individual Chapter and substantial numbers of sections. Chapter VI (Section 61-78) of the Shromo Ain has provided, inter alia, statutory protections regarding safety of Building and machinery, Precaution in case of fire, Fencing of machinery, Protection in case of work on or near machinery in motion. The chapter also deals with other safety related measures which are necessary to ensure safety of establishment and of workers.

Indeed, the statutory dispensations of the Labour Act are admirable and apparently impressive.

Nevertheless, the vagueness of expressions, lack of



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monitoring and implementation mechanism hinders the process of its effectiveness. And most importantly inadequate penal provisions have made its application and compliances, a futile expectation. The owners are reluctant towards the statutory obligations related to safety of establishment because chances of get redressed are nominal. As a result, number of accidents occurred in different industrial establishment like on in the Ashulia causes more than hundreds death and substantial number of injuries.

The legislative lacunae related to Safety of Establishment in the Shromo Ain

The Present Labour Act is the culmination of number of Act. It is indeed an achievement, since it consolidated the all other Acts and brought uniform paradigm in the Labour Law. Ironically, same contributes to narrow down the scope of the Act. In the process of accumulating the entire subject matters under one code it fall short to incorporate some indispensable issues. These shortcomings have collectively obstructing the broader objectives of the Act that is welfare of the employer and workers. Among other shortcomings of the Act, legislative lacunae related to 'Safety' require special importance. Following are some of the shortcomings in provision related to safety:

- The inspectors in absence of any counter monitoring mechanism posses nearly absolute power to clear any irregularities.
- In relation to fire precaution the employers are under obligation to take certain measures. Under section 62, the inspectors are required to oversee whether the proper precaution is taken or not. However, there is neither any provision for mandatory inspection of establishment in rooster nor any provision for submission of 'the record book' related to fire precaution from the employers.
- The inspector has no definite power to enforce fire precaution if the employer failed to comply with

the written order.

- There is no provision to mandatorily collect the Fire Clearance Certificate.
- There is no specific penal if an employer breach rules and regulation under section-62.
- Although, there are some trivial penalty available in section-307 under the heading of Penalty for other offences. The punishment may extent to only fine amounting to twenty five thousands. This trivial punishment has failed to oblige the owners to comply the rules which evident through many blazes or explosion in the industries due to lack of precaution measures.
- In section-309 there is greater punishment in case of death or injury caused due to non compliances of the provisions of the Act. However, that also extent to four years imprisonment or

taka one lakh or both. The question arises whether it is enough to condemn death of a person by imposing only four years imprisonment or providing taka one lakh. One may argue that, the punishments are trivial due to presence of a fact that it caused during an accident. However, grave punishment will creates mandate among the employers to adopt the rules.

Towards Reforms of Labour Law of Bangladesh

It is a universally recognised that right to work is to be guaranteed in a healthy and safe environment. The preamble to the Shromo Ain 2006 enshrined the principle of safe working condition for the workers. But in reality, the application of these spirited enthusiasms has remained far cry. Statutory insufficiency, monitoring mechanism and implementation of law coupled with administrative reluctance resulted in many catastrophic accidents. Hundreds of workers have died in these due to negligence of employers and reluctance of the government. These lose has creates sense of insecurity and alienation among the workers, particularly in RMG sectors. As a result, the worker discontent, clashes, protest, vandalism, lockout have become everyday's story. It is important that both entrepreneurs and the Government should identify the main reasons for present issues rather than 'bidding in the bushes' by alleging one another. In particular, the government should realise that they will able to suppress the problem with defective legislative dispensation. Therefore, Government should take prompt steps to review the presents Labour law to minimize the legislative lacunae relating to safety measures and ensure proper monitoring and implementation of the law through transparent mechanism. Life lost in the Ashulia and the tears of shamima and jakaria will be wasted if this recorded as yet another accident.

Muhammad Rezaur Rahman

Student of LLM, Northern University Bangladesh.

SHAKHAWAT SHAMIM

T HE farewell & reception program of BGC Trust University Bangladesh was held on 8th December 2012. The program was presided over by ABM Abu Noman, Co-coordinator, Department of Law, BGC Trust University Bangladesh. Advocate A.F Hassan Ariff, Former Advisor to the Caretaker Government & Attorney General of Bangladesh graced the occasion as Chief Guest.

"Completion of the academic graduation does not mean the end of study rather it is the beginning to the University of Life", stated by Engineer Afsar Uddin Ahmed in the speech of Chief patron. He also added that law is the mother of all knowledge and no man is complete without studying of Law.

Advocate A.F Hassan Ariff, Former Attorney General & Advisor of Caretaker Government of Bangladesh stressed on the presence of Law in every aspect of life. He also suggested the students to be attached with information technology while studying law which will help them to cope with the global competitive world. "For ensuring rights of the marginalised section of the society, the concept of Public Interest Litigation (PIL) should be expanded in our country", he commented. Finally he suggested that the ADR system is supposed to be made more effective to remove the excessiveness of cases in our court. Moreover the curriculum of Law should be modernised to keep pace with the modern world.

Professor Dr. Saroj Kanti Singh Hajari, Vice Chancellor of the university & patron of the program told that Law has become a demandable subject in the present world. He also told that law student should make the common people aware of their rights as we are the people of poor country.

In the speech of the President of the program Mr. ABM Abu Noman, Co-ordinator, Department of Law of the university has expressed his hearty gratitude to all the guests, organisers and the students to make the program successful. He also point out how the law students can contribute in our society and why lawyers are the social engineers.

The writer is a senior faculty member, BGC Trust University Bangladesh.



YOUR ADVOCATE



This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Query
I want to know about the maintenance procedure after iddat period of a divorced woman. If anyone files a suit after three months of divorce usually this three month is iddat period during which a muslim husband is obliged to pay maintenance. my query is during the transitional period meaning after iddat period to till the court made decree for maintenance, can any women entitle to maintenance from her husband.? what are the legal supports in this regard?

**Mayessa
Chittagong**

Response
Thanks for your query. From the given queries it appears that you are desirous to know about the laws regarding maintenance. It is noteworthy that in Bangladesh family matters are governed by the personal laws of the religious community to which an individual belongs to. Accordingly, the issues like Marriage, Divorce and Maintenance of Muslims are dealt by the Islamic Law along with pertinent statutory laws of the land.

As far as your query regarding right to get maintenance is concerned, the husband is bound to provide maintenance during the validity of the marriage. On the other hand the husband would not be so bound if the wife has left him without any reasonable excuse like cruelty. But, it is worth mentioning that maintenance is available even after divorce following the period of Iddat. In addition, the failure by the husband to provide maintenance may also be one of the valid grounds for obtaining a decree for dissolution

of marriage under the Dissolution of Muslim Marriage Act 1939.

If the husband denies providing maintenance, the wife may have the following options: Firstly, the wife should communicate with her husband to settle the matter amicably. The wife may also decide to take the help of the elder members of both the families to settle the matter. After reasonable efforts, if

Besides, Section 9 of the Muslim Family Law Ordinance 1961 contains provision for Maintenance. Accordingly, if the husband fails to provide maintenance, in addition to seeking any other legal remedy, the wife may apply to the Chairman of Union Parishad/Paurashava or Mayor of the City Corporation, as the case may be, who will constitute an Arbitration Council to determine the matter and specifying the amount to be paid as maintenance. The amount has to be equitable and adequate. The financial position of the husband along with the standard of living to which the wife is accustomed shall also be considered.

However if the marriage ends up in Divorce then the husband is bound to provide maintenance to the wife. Under Muslim family laws in Bangladesh, women have no right to maintenance beyond 90 days after notice of divorce (or birth of a child, if the woman is pregnant at the time of divorce). A Muslim woman in the event of divorce is entitled to maintenance by the husband till the expiry of the period of Iddat and not further. However the Court has ruled (in accordance with classical Hanafi law) that a wife is not entitled to arrears of maintenance. Therefore, the former wife may not claim past maintenance unless the parties have a previously established agreement.

I hope that the above shall clarify your query. However, even after giving reasonable efforts, the things do not change or the problem remains, you should go for the aforesaid legal remedies.

For detailed query contact: omar@legalcounselbd.com.

LAW WEEK

HC stays withdrawal order of 5 cops

The High Court on December 12 stayed a lower court order that directed the inspector general of police (IGP) to withdraw five policemen from their posts for producing a judge before media without taking permission from a magistrate. The stay order will remain in force until further order, the HC said. The HC bench of Justice AHM Shamsuddin Choudhury Manik and Justice Farid Ahmed stayed the metropolitan magistrate's withdrawal order after the five policemen filed a petition seeking a stay on the order. Metropolitan Magistrate MA Salam on December 6 ordered the IGP Hassan Mahmood Khandker to withdraw the policemen on charge of violating constitution by producing the judge, Javed Imam, before the media without any permission from any magistrate. The magistrate also asked the IGP to take departmental action against them for producing the judge before media. - *The Daily Star online edition December 12 2012.*

Jail killing appeal hearing now Jan 15

The Supreme Court on December 12 adjourned until January 15 the hearing on an appeal filed against a High Court verdict that acquitted six former army personnel in the jail killing case. A five-member bench of the Appellate Division headed by Chief Justice Md Muzammel Hossain also appointed Barrister Abdulla Al Mamun as a lawyer for Dafadar (dismissed) Marfat Ali Shah and Dafadar (dismissed) Abdul Hashem Mridha, the two accused of the case who are on the run. The apex court passed the order during hearing on a petition filed by the government to exempt it from issuing notice to Marfat Ali and Abdul Hashem to face the trial. The government on December 12 moved the petition before the apex court saying that a lawyer can be appointed to move the case on behalf of Marfat Ali and Abdul Hashem as they are on the run. Earlier, the government filed the appeal with the apex court last year challenging the HC verdict in the case filed for killing four national leaders -- Syed Nazrul Islam, Tajuddin Ahmad, AHM Quamruzzaman and Captain Mansur Ali -- inside the Dhaka Central Jail on November 3, 1975. - *The Daily Star online edition December 12 2012.*

HC quashes case against Mohiuddin

The High Court on December 10 scrapped the proceedings of a corruption case filed against former mayor of Chittagong City Corporation (CCC) ABM Mohiuddin Chowdhury in 2007. The Anti-Corruption Commission (ACC) filed the case against Mohiuddin and three others on charge of illegally drawing Tk 1.47 crore from the city corporation fund to launch Bijoy TV, a private television channel. The HC bench of Justice AHM Shamsuddin Choudhury Manik and Justice Farid Ahmed delivered the verdict after hearing a petition filed by Mohiuddin in 2008 for quashing the proceedings against him. The court quashed the proceedings on the ground that the charges brought against Mohiuddin were not proved. In 2008, the HC had stayed the proceedings of the case against Mohiuddin and issued a rule upon the ACC and government to explain why

Dear reader,

You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: Law Desk, 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: