

"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW" - ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH



Corporate Manslaughter: Imminent to stop fire burnt death of Labour

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CORPORATE manslaughter is a crime which enables a corporation to be punished and censured for culpable conduct that leads to a person's death. The offence is recognized in England, Hong Kong, Australia and so other countries of the modern world. The concept has been shaped to a uniform legal framework in England to bring corporation under criminal liability. The notion of corporate manslaughter has become an issue to be accepted as statutory provision after a series of fire burnt death of labour in various garments factory especially in Tajreen garments and Smart garments in Bangladesh. The existing laws have been proved to be failure and insufficient to prevent random fire burnt death of labour in those garments factory. The Failure and insufficiency of the existing law on safety of labour has led us to think to recognize corporate manslaughter to punish and censure corporation.

Basis of corporate manslaughter: Lifting the corporate veil is the basis of corporate manslaughter. Generally it is recognized that corporation is an artificial person that can not be liable for any criminal offence. But a corporation can be brought under criminal liability only under the principle of lifting the corporate veil. The principle of lifting corporate veil accelerates to bring the natural human beings who are actually behind the corporation. Since corporation is an artificial person it has no hand and mind to carry forward the activities for it. All most all the activities are done by the natural persons who are in the managing of the corporation. Not only the management but also all the benefits go to those natural persons. If they can enjoy all the benefits from corporation, why they should not be liable for any criminal activities done by them in the name of corporation?

Corporate manslaughter and duty of care: For the first time England has passed the Corporate Manslaughter and Corporate Homicide Act 2007 as a uniform law on corporate manslaughter. The Act gives a comprehensive definition of corporate

manslaughter and duty of care. The Act defines corporate manslaughter as an offence if the way in which its activities are managed or organised (a) causes a person's death, and (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased. The definition provides two conditions need to be fulfilled for corporation manslaughter. Firstly, the offence must have caused a person's death and secondly, there must have a gross breach of relevant duty of care owed by the organisation to the deceased. Therefore, it is necessary to define relevant duty of care under the Act.

The Act defines relevant duty of care as a breach of a duty of care by an organisation is a "gross" breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances. It includes any duties owed by the organisation under the law of negligence (a) a duty owed to its employees or to other persons working for the organisation or performing services for it; (b) a duty owed as occupier of premises; (c) a duty owed in connection with (i) the supply by the organisation of goods or services (whether for consideration or not), (ii) the carrying on by the organisation of any construction or maintenance operations, (iii) the carrying on by the organisation of any other activity on a commercial basis, or (iv) the use or keeping by the organisation of any plant, vehicle or other thing; (d) a duty owed to a person who, by reason of being a person for whose safety the organisation is responsible.

Elements of corporate manslaughter: There are six essential elements of corporate manslaughter. The elements are- committed by individual, collective knowledge, actus reus, vicarious liability, mens rea and breach of duty care. Clarkson identifies six



lish corporate manslaughter. In the U.S., where an employee commits a crime within the sphere of his employment and with the intention of benefiting the corporation, his criminality can be imputed to the company. The principle has sometimes been used in England for strict liability offences concerning regulatory matters but the exact law is unclear.

Management failure model: This is the approach to be taken under the Corporate Manslaughter and Corporate Homicide Act 2007 which came into force in the UK in April 2008. Where a corporation's activities cause a person's death and the failure was because of a breach that falls far below what can reasonably be expected of the organisation in the circumstances, the offence is made out.

Corporate mens rea (guilty mind): A further approach is to accept the legal fiction of corporate personality and to extend it to the possibility of a corporate mens rea, to be found in corporate practices and policies. This approach has been widely advocated in the U.S., as the corporate ethos standard and introduced in Australia in 1995. Level of mens rea should be identified on the basis of ill motive of the natural persons governing and managing a corporation.

Necessity of corporate manslaughter in Bangladesh: Bangladesh needs recognition of corporate manslaughter and transformation of the offence into statutory framework for many reasons. Some of the important and vital points of immanency can be denoted under the following heads.

Firstly, lacuna and loophole of the existing law framework. The Labour Act 2006 is the main law relating to the safety and security of labour in Bangladesh. The code is based on preventive theory of jurispru-

theories of corporate manslaughter to justify the essential elements of corporate manslaughter. The doctrines are-

Identification doctrine: This approach holds that the offence of corporate manslaughter is made out when an individual commits all the elements of the offence of manslaughter and that person is sufficiently senior to be seen as the controlling mind of the corporation. If the offence is not done by an individual, corporation can not be liable under corporate manslaughter.

Aggregation doctrine: This approach, known as the collective knowledge doctrine, aggregates all the acts and mental elements of various company employees and finds the offence if all the elements of manslaughter are made out, though not necessarily within a single controlling mind. This approach is used in the U.S. but has been rejected in England.

Reactive corporate fault: This idea was proposed by Fisse and Braithwait. They proposed that where an individual had committed the actus reus of manslaughter, a court should have the power to order the employing corporation to institute measures to prevent further recurrence and should face criminal prosecution should they fail to do so.

Vicarious liability: The broader principle of vicarious liability is often invoked to estab-



Violence against women: A severe violation of right to life

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"The history of mankind is a history of repeated injuries and usurpations on the part of a man towards a woman, having direct object the establishment of tyranny over her"

-Women's Rights Convention Manifesto, Seneca Falls, 1848.

MAN and woman are like two wheels of carriage. Life can never be smooth sailing if one of its parts is neglected. They both contribute to the development of each other's personality. Women are the supreme inspiration, embodiment of love, pity and compassion. Women play a vital role in men's life as wife, mother, sister, daughter and any other relations. There is no doubt that we are in the midst of a great revolution in the history of women. Now a day, violence against women increasing day by day and Crime against women is one of the gravest of all crime. It is the most reprehensible act among all. Violence against women continuous to be a global epidemic that kills maims and tortures women physically, sexually, emotionally and economically. Islam says that man and women both created for each other. "They are a vestment for you (man) and you are a vestment for them." (The Holy Qur'an 2:187). Unfortunately, it is merely consider by our society or society members.

The term "violence against women" has no universal accepted definition; but, it may be define as, any act of physical, mental or sexual violence, and any attempted such violence, as well as the forcible restriction of individual freedom and privacy or arbitrary deprivation of liberty of a woman.

Article 1 of the UN Declaration on the Elimination of Violence against Women (proclaimed by the UN General Assembly in its Resolution 48/104 of 20 December 1993

(83)) defines 'violence against women' as: 'Any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'

The Council of Europe in its Recommendation Rec (2002)5 (84), 'violence against women' defines more closely as: "Violence occurring in the family or domestic unit, including, inter alia, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages."

The position of women in Bangladesh is not satisfactory since time immemorial. Women were treated as goods and chattel before, and until now the situation did not changed. Violence against women is amongst the most serious threats to overall development and progress in Bangladesh. Widespread violence and repression in numerous forms puts women's life at risk in almost all parts of the country. Daily news report are seen to be filled with atrocities including physical and psychological torture, sexual harassment, sexual assault, rape, dowry related violence, trafficking, forced prostitution, coerced suicide and murder. According to reports compiled by women's rights organizations, over 5,500 women were subjected to violence last year. It is very alarming for us. In Bangladesh, a victimized woman usually tries to avoid the legal process. The reason behind that avoidance is the stigma by the society. She dares not to file complaints; fearing negligence



and harassment in police station, courts and society. However, FIR lodged or complaint made by the woman but subsequently the female victim compel to compromise. This situation is been negated by the Federal Shariat Court of Pakistan, which is reported in 2011 Pcr.LJ 1252.

Right to life is a phrase that describes the belief that a human being has an essential right to live, particularly that a human being has the right not to be killed by another human being. Everybody has right to life, which recognized by the Universal Declaration of Human Rights under Article 3 and under Article 31 & 32 of Bangladesh Constitution. Life within the meaning of Article 31 denotes something more than animal existence. With reference to *Vikrama v Bihar*, [AIR 1988 SC 1782] and *Chameli Singh v V.P.*, [AIR 1996 SC 1051] the court held that- "Right to life includes the right to live consistently with human dignity and decency." But how much decencies and human dignity can ensure for the women by the society or government? Every movement our women are deprived from their

dignity and right to get decencies. In another case, Bangladesh Jatiya Mahila Ainjib Samity Vs. Ministry of Home Affairs, 28 BLD (2008) 580, the court held that- "Right to life includes right to security of life" But the women of our country continuously suffer the unsecured life for violence against women activities. The women have the right to life and liberty just as the men. For the women liberty includes the right to work with dignity free from sexual harassment. Apparently, it seems that each an everyday our women, from different part of the country are victim for the sexual harassment. In light of *Visaka Case* [AIR 1997 SC 2011], *Salma Ali v Bangladesh* [29 BLD (2009) 415] and *Advocate Salahuddin v Bangladesh* [63 DLR (2011) 80], the court held that, "It is the constitutional obligation of the government to enact law to protect the women at their work place and educational institution in order to preserve their fundamental right." A women has right to lead a peaceful life, none can violate her right by unlawful acts. Therefore, violence against women is not only a crime but also

severe violation of right to life of a woman. In the case of *Lomas v Parle* [2004, 1 ALL ER 1173] the court of appeal of England observed committal for breach of injunction protecting against domestic violence no leniency should be given in punishing the criminal.

The Supreme Court of India in *State of M.P v Babulal* [AIR 2008 SC 582], held that, "Rape is the ultimate violation of the self. It is humiliating even in woman's life which leads to fear for existence and a sense of powerlessness." In the case of *Sanjay Kumar Jain v State of Delhi* [2011, 11 SCC 733 in Para 45] his lordship Mr. Justice Dr. Dalveer Bhandari observed that, "This dowry system is a big slur and curse on our society, democracy and the country. All efforts must be made to combat and curb the increasing menace of dowry death." We have enough laws to protect the women right and security. Problem is with the loopholes need to be resolved. In addition, it is to be ensured that the law in this regard should effectively implement. Concrete steps should be taken by the government, civil societies and the women activists for some development of this area. All the human rights organizations can take initiative to change this miserable situation as well. It is also important that parents and senior members of the family should educate youngsters in respect of moral and cultural values. On January 22, 2013 in the Daily Star editorial, the editor observed, "A strong coalition and united voice needed to fight violence against women." It is obviously true to overcome this matter.

Therefore, we should always remember that "Their lives God where women are respected"

- (Manu Smiriti)

The people who are the owner of a corporation are economically very much solvent. They can be put in a category of rich men in our country. They need more and more profit from corporation even though blood and flash of labour is burnt in fire. They always intend to get maximum profit by minimum expenses. It is unlikely that they look to safety and security of the labour of their own industry or organisation. Can the government avoid the demand what the soul of deceased labour echo to us?

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