

"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

SAVAR TRAGEDY THROUGH LEGAL PRISM

Corporate greed and government inaction

PROFESSOR M RAFIQUL ISLAM

THE Savar building collapse tragedy on 24 April 2013 is one of the major human-made industrial accidents happened in succession after the Ashulia Tazreen Fashions factory fire in November 2012. The Savar tragedy not only shocks the conscience of humankind throughout the world, but also solicits our attention, assaults our moral propriety, and offends our sense of justice. These tragedies are attributable to certain legal reasons and responsibilities, which are briefly explained below.

Existing law on the occupational safety and health (OSH) of workers

The Labour Act 2006 of Bangladesh covers the safety and security of the workers at workplace. There are plenty of international standards for OSH, such as safety requirements to certain special type of industry, personal protective equipment, protective clothing, safety signs, radiation exposed environment, and the use of electrical appliances. These requirements are not covered by the Labour Act, except only eye protection. Many national laws, such as the Nepalese Labour Act, cover OSH issues in a comprehensive way and the relevant provisions are more specific conforming to the international OSH standards. Bangladesh Act does not use the term 'OSH' and thus the fundamental protective spirit and requirements are missing in the Act. Bangladesh needs to have a separate law to embrace and implement the international OSH standards, perhaps like Thailand, which has a separate OSH law titled: The Safety, Health and Work Place Act (revised in 2011).

Existing compensation provisions and penal sanctions

Employers are liable to compensate for any injury or death caused to workers during the course of employment (Labour Act s150), though the amount of compensation is not clearly defined. The annexed schedule for the calculation of compensation in terms of the per cent of wages warrants articulation like the Labour Act of Nepal, which categorically defines all types of compensation in legal provisions such as compensation against injury, compensation in cases of grievous hurt resulting in physical disability, and compensation in cases of death. In cases of compensation for death, the amount is equivalent to the three years wages or remuneration.

Section 309 of the labour Act 2006 states that 'whoever contravenes any provision of this Act or any rules or regulations shall be punishable with imprisonment for any term' up to four years or with fine of up to one lac taka or both if the such contravention results in death. If it results in bodily injury for any term, the punishment is the maximum imprisonment of two years or fine of up to ten thousand taka. These penal sanctions are grossly inadequate and do not correspond to the gravity of the offence.

Non-enforcement of the right to work in safe environment and compensation

Social compliance under multi-stakeholder codes or buyer company codes is limited to large scale compa-



nies. Big European, North American, and Australian multinational retailers offer lowest possible price forcing local producers to cut costs in industry maintenance and OSH. Yet they always shrug off their responsibility to local sub-contractors whenever disasters occur. Self-regulation by the RMG industry has never been sincere and effective. It is used as a convenient tool to minimise costs and maximise profits. The lack of government initiatives and obligation to ensure OSH standards for workers is evident from its non-ratification of ILO Convention on OSH. The OSH inspection system under the Labour Act is poor, reportedly understaffed, and corrupt that cuts corners of legal requirements. There is no specialised governmental department to deal specifically with OSH. Penal sanctions for the violation of OSH requirements are negligible for industrial tycoons, who manage to ignore the OSH requirements with impunity often under political patronage and cover-up.

Impediments to active trade unionism in RMG
The governments are less worker-friendly and more owner-biased, as owners are seen as the creator of employment amid massive unemployment and earners of much needed foreign currencies. Strict trade union registration requirements (such as under the EPZ Act 2004) were an impediment to trade union functioning. These restrictions have been relaxed in a recent Cabinet meeting. Bangladesh has also ratified the ILO Convention on the right to organisation, but the concerned department is yet to embrace and implement the long overdue expansion of trade union practice in RMG.

The owners associations, notably BGMEA and BKMEA, do not promote union practice to maintain employer-workers relation and dialogue in their industrial units; instead they form pliable participation committees to manage industrial relations to their advantage. Their role is thus a part of the problem as they are stakeholder in the vested interest of the industry. They are not meant and expected to be representing the interests of the workers. Most of the trade union leaders are not from the workers, particularly in RMG. They are

like mercenaries and grab leaderships politically as conduits of different political parties' influence on the workers. There is no effective workers representative body. As such, existing workers organisations are more political than the representative of the workers. As a result, there is hardly any serious pressure to be brought to bear on government and owners to improve working conditions of labourers who are mostly powerless and voiceless.

The consequence this corporate greed boosts the profit-margins, the rate of return from investment, and bargaining power of the owners and foreign retailers. Chronic unemployment and highly competitive job markets have resulted in the lower wages, inferior working conditions, inadequate OSH, suppression of legitimate rights, and erosion of collective bargaining power of the workers.

Government responsibility and inaction

Workers' right to OHS is a core human right under the ILO Convention on Occupational Safety and Health 1981, the ILO Convention 187: Promotional Framework for OSH 2006, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 (Art 7(b)). Bangladesh is a signatory of both ILO Conventions (not ratified) but has ratified the ICESCR under which the government is obliged to provide 'effective remedy' under Article 2 for the violation of Article 7(b).

The Labour Act deals with safety of building and machinery (s 61-62), authorising the Inspector/Chief Inspector for Labour to order the employer to provide necessary OSH arrangements, such as means of escape, connecting stairway with each floor, and active fire-fighting apparatus. The Inspector is authorised to serve notice on the employer in writing prohibiting the use of any machineries and/or buildings dangerous to the workers until they are properly repaired. The Building Construction Act 1952 is still in force and its s3A(1) states that no owner or occupier of a building shall, without obtaining previous permission from authorised

officer or the committee, use the building for the purpose other than mentioned in the approved building plan. If a building is used for purposes other than the authorised one, the responsible government office is mandated to issue a written order directing the owner/occupier/person in charge of the building to discontinue such use and dismantle the building. The Labour Act (s323) also prescribes that the government constitutes a council, to be called the National Council for Industrial Health and Safety, to prepare national policy for ensuring safety in industrial establishments and maintaining healthy and hygienic working conditions and to frame guidelines for implementation of its policy. This Council is yet to be established.

Suggestions for improvement

The forming of an independent body/agency to look after OSH with mandate for periodic inspections, monitoring, and reporting system may be a viable option. Trade unionism led by workers' representatives needs to be strengthened. The existing Labour Act is to be revised to articulate and raise in conformity of international OSH standards (a) the standards of OSH, (b) the amount of compensation for specific injuries or deaths, and (c) penal provisions for non-compliance. Negligent manslaughter under corporate criminal responsibility may be introduced like Australia. Multiple checks for ensuring OSH standards may be introduced through (a) industrial licensing requiring the examination of workplace building construction in terms of its safety and security; and (b) the requirement of obtaining environmental clearance certificate for the plant/industry under the Environmental Conservation Act 1995. The establishment of the National Council for Industrial OSH with broader responsibility is an immediate necessity. The workers should be given training about the obligations and rights pertaining to OSH at the initial stage of employment.

Permission for industrial/factory operation should not be granted in a commercial building constructed for other purpose. The Building Construction Act 1952 needs to be revised to reflect this requirement. The National Building Code (NBC) 2008 should include mandatory governmental responsibility for inquiry into the construction process and design. The government's belated move only recently at the aftermath of the Savar tragedy to set up an authority to enforce the NBC is a right step, which the High Court had asked the government to set up on 3 November 2011. Reportedly, many existing legal requirements were ignored in the construction of the Rana Plaza in Savar and responsible officials demonstratively failed to perform their statutory and administrative duties. All those responsible should be brought to justice as a deterrent to avert future tragedies. Given the significance of RMG in the GDP growth, the government is better off by being proactive in addressing the perilous working conditions that touch the boundary of slave labour and in averting mind-boggling successive industrial tragedies.

The author is a professor of Law at Macquarie University, Sydney, Australia.

Consequence of the non compliance of law

OMAR H. KHAN

RECENT collapse of Rana Plaza and loss of lives and injury in consequence has once again brought the issues of safety and security of workers particularly working in the garments sector under limelight nationally and internationally. Most of such tragedies taken place so far are due to fire or collapse of building. The Bangladesh Labour Act 2006 (BLA) is the primary law for the workers.

Safety of building, machinery and precaution against fire are dealt by BLA in separate chapters. However, the requirement to provide fire fighting apparatus and alternative stairway seems to be ineffective in practice. It is also needed to keep means of exit distinctively marked in Bengali open at all times. But on most of the occasions of fire, it is seen that alternative exit is not provided and the only gate is kept locked by the factory staff. Moreover, the owners do not comply with the requirement to hold mock fire fighting in a year. Considering, dangerous state of building, the inspectors have been empowered to serve written order to the employer in order to remove such danger to human life or safety. But doubt remains over the adequacy of this provision as it is almost impossible for the inspectors to monitor and ensure compliance by the factories across the country.

BLA provides for compensating workers for death, permanent disablement and partial disablement. However, the amount to be compensated seems to be inadequate as far as earning capacity of the aggrieved workers is concerned. Had the amount been more, the owners would have been practically bound to ensure compliance and recurrence of such tragedies could have been prohibited.

BLA does not contain any penal provision as far as non compliance with the provisions of safety is concerned. But it imposes imprisonment up to three months or fine up to one thousand taka or with both for any non compliance (like safety of building, fire) which is not specifically dealt with. Hence, this punishment seems to be inadequate considering severity of such non compliance by the owners. Moreover, considering the safety of building there are legislations to address it. However, the penal provision containing therein is also inadequate. For instance: the Building Construction Act 1952 imposes penalty of imprisonment up to seven years or with a minimum fine of fifty thousand taka or with both. Apart from the legislation, approving authorities like RAJUK have also failed to monitor overall construction of building.

Moreover, due to the existence of corruption in every department of such approving authorities, it has become easier for unscrupulous people to construct building in violation of the Building Code thereby endangering lives of innocent people.

BLA also provides for constitution of trade unions. But in practice, such trade unions are not effective due to lack of harmony between the workers and the owners. Moreover, infiltration of politics in trade unions has also kept the leaders of the workers to remain focused on their own welfare. Practically workers are unable to enforce their rights provided under the law and also to get redress for any grievance. This is mainly due to the lack of intention on part of the owners which warrants change of attitude.

The recent collapse in Savar, could be the outcome of the negligence of everyone concerned ranging from the building owner, approver, engineer, contractor, politicians and even manufacturers of construction materials. As corruption has polluted every sector of the country, everyone concerned with the building were busy for making their own profits.

Therefore, it may be concluded that such tragedies are recurring due to non enforcement of law which is adequate albeit requires reform to some aspects. The existing legislations have to be reformed in such a manner so that illegal gaining by violating legal provisions does not outweigh the consequences of violating law. In consequence, people will not only be respectful as far as compliance of law is concerned but the tendency of getting rich with the deliberate violation of legal obligations shall also be reduced.

The writer is an Advocate, Supreme Court of Bangladesh.



MD. ASHRAFUL ALAM

THE stakeholders pass law for the protection of Wildlife because they can hear the weeping of wild animal but they never hear the weeping of workers who have been earth grieved in Rana Plaza Tragedy. Because who have died in the tragedy are not men, they are workers, more aptly to say garments workers. The repeat flow of workers death has proved that the existing legal framework has failed to stop death of workers. There are two main lacunas in the existing legal framework. Firstly, the existing law has been made on punitive strategy and secondly, failure to effective implementation of the existing law. The framers of the law existing on safety and security of worker ignored the human rights approach in determining the preventive action as well as compensation under the legal provision. There is a great deal of failure in the implementation of the existing law. Corruption and political mercy are two diseases which have been fleshed in our blood and vitiated the effective implementation of

the existing law. Corruption starts from very beginning of making factory building by passing building plan and ends with the hiding of death body of the crashed workers. Political blessing starts from more early than that of corruption. If corruption is fleshed with our blood, then political unfair mercy is rooted in our heart. Accused owners and managing persons always are escaped by the grace of their political god father. They are never brought

Stop odour of death body in wind

under the limelight of punishment.

Social exclusion is another reason for non-implementation of the existing law. The owner of industry thinks that workers are slave, they are not human being. They are hungry after more profit even need to grave thousands of workers. While workers are not treated as men, how can it be imagined for their rights? Article-20 of Bangladesh constitution provides that Work as a right and duty. (1) Work is a right, a duty and a matter of honour for every citizen..... . This constitutional provision vests four obligations on government. (a) work is a right of a Bangladeshi citizen. He can claim this right to work in Bangladesh. This right does not mean to forced work in risky building. (b) Work is a matter of honour for every citizen. This right has distinguished between slavery and labour. That means government should keep in mind that who are working in factory are not slave rather human being as enshrined in the article. (c) A worker shall be paid for his work. None can deprived him for his due payment. (d) para-2 provides the final strike as says- The state shall endeavour to create a condition in which a person shall become a fuller expression of creative endeavour and of the human personality. Moreover, Article provides for right to form trade union for collective bargaining to ensure workers' rights. But now a days trade union is an important mean to implement political agenda rather interest of the workers. They are motivated to ensure the interest of their leaders who have elected him by money or support. They never have any headache as to the death of workers. This flow of workers' death will never be stopped unless and until workers' right are reshaped from human rights perspective, corruption is minimized and political blessing is swept away from garments and factory. We do not want to odour of more death body of workers in the wind of Bangladesh. May the political leader be gracious the tragedy for a single moment?

The writer is Assistant Professor, Dept. of Law, Uttara University.