

“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: Towards compliance and compensation

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S AVAR tragedy which claimed more than one thousands lives and where still hundreds are missing- sent a shock wave across the nation and around the world. It remains worst man- made disaster in Bangladesh symbolising near absent of compliance with the existing laws of the land in garments industry. The Savar tragedy is not the first occurrence of such kind; rather it is the latest of the series of such disasters that underline the whole spectrum of the garments industry, which is often characterised as risky enterprise with cheap labour and minimal compliance. The Savar tragedy is the consequence of corporate greed, lawlessness and moral bankruptcy of the politicians. The tragedy reminds us sheer ignorance of the profit mongers of compliance with laws from violation of building construction law to environmental law to labour laws.

On the other hand it also demonstrates that providing impunity of perpetrators of previous such disasters can create the problem of free riders. It must be remembered that our laws are not deficient in respect of ensuring welfare and protection of labours. But there is a serious deficiency in terms of implementation of labour laws by the owners and government. Lack of compliance only promotes free riders to violate laws. The Savar tragedy reveals that despite constitutional prohibition of forced labour, it still persists in many garments factory, which is the main source of earning of foreign exchange. Article 34 of the Constitution prohibits all forms of forced labour in Bangladesh. The Constitution of Bangladesh is also committed to social justice as article 20 proclaims everyone shall be paid for his work on the basis of the principle “from each according to his abilities to each according to his work” and human labour in every form shall become a fuller expression of the human personality. Perhaps no other constitution in the world so eloquently proclaims dignity of the workers. Yet ground

reality is that workers, especially in garments industries, are subjected to degrading working conditions and low wages that only diminish the constitutional value of social justice.

The government machinery for the implementation of labour laws is very weak as they are ill equipped to deal with more than four thousand garments industries. The office of chief inspection of labour has no adequate manpower to inspect the large number of garment industries. The workers organizations such as trade unions



and workers federations are also weak in terms of collective bargaining to realize their legitimate demands. So many restrictions are imposed on formation and registration of trade unions in garments and other sectors in Bangladesh. As a result, in Bangladesh, only four percent workers of total labour force are unionized. Trade Unions are considered as main vehicle to protect workers' rights, to air their collective grievances, settle industrial disputes and avoid confrontation in the streets. Lack of presence of trade unions effectively inhibits workers to realize their rights about their safety, security and wages. There is no viable alternative to credible and representative trade union to promote the rights of the workers.

The existing labour law also makes provision for participation committee in industries in order

to inculcate and develop a sense of belonging and workers' commitment and in particular - to endeavour to promote mutual trust, understanding and cooperation between the employer and the workers; and to ensure application of labour laws. But the participation committees are largely absent in industrial establishments only to undermine harmonious industrial relationship. Another important mechanism for the protection of workers' rights is the practice of dialogue of what is commonly called social dialogue.

Social dialogue is a dialogue between government, employers and workers to minimize conflict situations and establish harmony between employers and workers, sound industrial relations and improve productivity. But social dialogue is hardly practiced at the industry level in Bangladesh.

All the stakeholders – government, employers, buyers, workers and trade unions must work together to ensure the protection of the rights of the workers and decent condition of work where human dignity can be upheld and decent working environment can be created. The Savar tragedy just tells us that it is the cumulative failure of the state agencies involved in various levels to put the things in right track. Time is now ripe to ensure full compliance with regulatory provisions for the safety, security and welfare of the workers, who deserve to live a life with human dignity. A permanent compensation fund should be created to provide compensation and rehabilitate the victims of potential disasters or accidents of catastrophic scale such as the collapse of Rana Plaza. Multi-stakeholders initiative becomes imperative for creating such fund where government, employers and buyers should contribute. A strong body comprising of representatives from government, employers, workers and buyers can be created to administer such fund in transparent and effective manner.

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Juxtaposing free press and free trial: Legal challenges

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B ANGLADESH is a democratic state where the freedom of expression is a core fundamental right in her constitution. Unlike India, our constitution has also specifically mentioned about the freedom of press considering it high value. The media is legally committed to people's right to know as to what is happening in the society. However, reasonable restrictions can be imposed on media freedom (Article 39 of the Constitution). On the other side, an accused is constitutionally endowed with the right to fair trial which can in no way be fettered (Article 35). Consequently, there appears a heated tension between these two set of rights, especially, when the media reports on pending cases before the court of law.

The term 'media trial' is indicative of perception of guilt or innocence of an accused by the

On the other hand, the journalists are quite often seen pronouncing the innocence or guilt of the accused according to their perception and knowledge of the fact and law. Such role of the media may be subject to critique from the legal point of view. When the trial has already set in motion, the media has no right to interfere with the administration of justice. Under the constitutional scheme determination of the guilt or innocence of a person is the function of the courts, which should not be readily usurped by the media before the trial.

The last couple of decades have witnessed a boom of capital centric print media, the sudden rise of private television channels in Bangladesh. However, due to lack of transparency in television channel licensing, with the persistent politicisation of television ownership and increasing commercialisation of television news- the democratising role of television is now being questioned'. Viewers

body to see how far the Code is observed. A due process should be always maintained in resolving any issues affecting the freedom of press. It is suggested that each case should be decided on its own facts and circumstances. Further, the media freedom should always prevail over every right save the privacy right, national independence, security and religious and societal harmony. Media and the judiciary do not have to be at loggerhead for the common good instead they should complement each other. It is mentionable that there are numerous instances in developed countries where trial has collapsed due to wild coverage of the pending cases. In such a situation denial of justice is not only the personal tragedy of the victim and informant, it also jeopardises the popular faith over judiciary.

Bangladesh judiciary performs the delicate task of ensuring rule of law. It is a fundamental notion of law that justice requires to be seen to be done. Accordingly, the constitution (Article 35) along with the existing Code of Criminal Procedure, 1898 (Section 352) provides that court proceedings are basically open and subject to fair coverage by the media. As such, the media as 'eye and ear of the society' has every right to make reporting or comment on pending issues before the court. It is widely accepted in common law regime that unlike jury (who are chosen from common men) an experienced and trained judge is not swayed even by the unfair media stories. In Bangladesh, time has come to reassess the canon that judges could be not influenced consciously or subconsciously by propaganda or adverse publicity.

Presumption of innocence of an accused is a legal presumption and that should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. It also causes irreparable loss to the reputation of the accused by prematurely terming him or her guilty. In that event, it will infringe the constitutional protection of an accused. While unfair media interference on investigation and pending trial may at least obliquely obstruct the 'fair trial right' of accused, media activism by exposing the circumstances of the denial of justice may act as a catalyst to speedy trial which is also a constitutional mandate. Therefore, every attempt should be made by the print and electronic media to check that the distinction between trial- by-media and informative media is always maintained. As such, the journalists should not conduct parallel trial.

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Perception of CSR through the prism of law

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I N 1973 Votaw stated “CSR is a brilliant term that means something to everybody but it does not mean the same to all”. Interestingly the dynamics of Corporate Social Responsibility (CSR) have been evolving even faster these days. CSR, once comprehended as an affair of voluntary good practice or simply a matter of public relation, has now become a concern of law. Many countries are incorporating provisions to accommodate CSR issues in their laws. For example, British Companies Act 2006 or Danish Financial Statements Act (amendment 2008) imposes statutory requirements on compulsory CSR reporting on businesses. We can observe similar efforts mostly in the banking sector of Bangladesh. However, CSR reporting is not yet a mandatory requirement in Bangladesh. Bangladesh has observed a significant growth in CSR activities over the last few years and it demands academic research from the law view point to improve the legal framework to facilitate the CSR activism.

The concept of CSR renders a special arrangement of regulation whereby the businesses integrate social and environmental concerns in their operations on a voluntary initiative. CSR entails that business has obligations to stakeholder and when such responsibilities are based on duties of fairness and morality, CSR collides with the shareholder primacy norm of business law. This norm renders that corporation is the property of the shareholders. In Dodge v. Ford Motor Company (1919) the court uphold this norm. In 1916 Henry Ford, announced that no more special dividends would be paid and the earnings would be put back to the company. In the press release he expressed his intention “...to employ more men to spread the benefits of the industrial system to the greatest possible number. By doing so the company will be benefited in the

from the government to the corporations.

Most of the CSR violations are rooted in the developing countries and the large corporations are in many cases economically and de facto politically more powerful than the host states. Whether the state is incapable or reluctant (perhaps for attracting FDI) to improve labour rights, environmental compliance etc. voluntary CSR instruments might compensate the vacuum. On the other hand developed home states might increase extraterritorial jurisdiction application to regulate the behaviour of the corporations and their subsidiaries in developing states. Alien Tort Claims Act allows overseas plaintiffs to challenge the delinquent behaviours mostly US-based big corporations in federal court of USA. Liability can be imposed on corporations for their activities which are inconsistent with corporate public commitments. Canadian Corruption of Foreign Public Officials Act 1998 is an example of recent legislative development to fight corruptions.

In response to an allegation of unfair labour practice by Nike supply chain in Asia Nike made public communication claiming they had taken effective measures to stop such abuse. However, In 1997 an audit report revealed that abuses in Nike supply chain had been continuing. CSR activist Marc Kasky, brought a legal proceeding against Nike on the ground of misleading advertisement under California's stringent false advertising and unfair business practice laws. The court cited in favour of kasky. However, increasing extra territorial jurisdiction is not an option that can be preferable in all cases. Such actions might sanitize the international relations between nations. Moreover, regulation from a distant jurisdiction might cause miscarriage of justice due to cultural relativity and other socio-economic factors.

It is claimed that since EMAS has a legal status within the member states it can



long run.” Ford's decision was challenged in the court by the minority shareholders and the court decision went against Mr. Ford. Michigan Supreme Court expressed that the corporate directors' responsibility was to maximize the profit for the benefit of the shareholders and had no right to devote such profit to other purposes. However, there are many case laws where the court interpreted shareholder primacy norm in a wider sense. Hutton v. West Cork Railway Co. (1883) is a leading English company law case regarding the limit of directors to spend company fund for the benefit of non-stockholder stakeholders. The court stated “the law does not say that there are to be no cakes and ale, but there are to be no cakes and ale except such as are required for the benefit of the company.” So, spending fund for the non-shareholder stakeholders' benefit can suffice the shareholders primacy norm when such act brings good for the company in the long run. Although, case laws have widened the interpretation of shareholder primacy norm court never took a positive role to uphold the companies' contribution into the society even on the ground that such decisions would be beneficial for the shareholders in the long run. We can see this spirit in most of the recent CSR laws. Many countries have imposed statutory requirements on businesses to publish CSR reports. However in most cases businesses are free to choose whether or not they wish to work on CSR. Again, Friedman suggests that only natural person can have social responsibility so, corporation being a legal structure can not be socially responsible. Therefore, CSR activists and professionals should keep in mind to relate to the corporation's human agents.

Friedman questions if we could justifiably expect to shift the regulatory burden on businesses. Corporations are deemed as extended hands of the public authority. Hence, we can claim operating towards the fulfilment of the public goal is the legal obligation of corporations. Thus, we might legitimately shift some regulatory burden

take a more prescriptive approach to environmental management issues than that of ISO 14000. If this statement is true than it somewhere contradict with the view of those who believe that CSR issues in the present global world can be better dealt by voluntary initiatives and magnifies their worries who fear that privatization of regulation and deregulation will result into non-regulation. Business entities are inherently designed to respond to change rather than proactively seeking for it. Incentive is a prime drive for business to act effectively. We cannot meaningfully expect firms to undertake any social duty while not doing so has no reasonable consequences.

Multi-stakeholders mechanisms make platforms for different constituencies where non-state actors can pursue the creation, development and maintenance of a private regulatory regime. In present global order the metrics of the relation of Corporations and the Society is significantly sophisticated and it is rather infeasible for public regulatory bodies to regulate every aspects of businesses exclusively. Sometimes it might seem that the rapid development of corporate codes of conduct and other forms of nongovernmental CSR mechanisms as a dangerous trend towards a privatization of social rights. Again, Voluntary and business case driven CSR projects are inherently constricted to a win-win relationship between CSR and corporate profits. Hence, the most well intended and executed, CSR initiatives seem inherently ineffective to deal with much unsustainability in the economic system. EU green paper 2005 on CSR rightly pointed out that while CSR cannot be used as a substitute for international and domestic legislation, social dialogue and collective bargaining, the legislation now should take a greater commitment to support and facilitate the voluntary initiatives.

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media even before the conclusion of the trial. There is a basic distinction between media activism or investigative journalism and trial- by-media. In many cases the media activism obviously plays a commendable role in revealing the issues leading to judicial intervention. The backlogs of cases, inordinate delay in proceedings, timeless adjournments, lethargic role of the prosecution or the police, absence of protection of witnesses, endemic unfair practices among the court assistants, slow pace of investigation and trial are issues to be essentially scrutinised through the lens of the journalists. The media, by publicising these facts, acts as an accelerator which is contributing to the rule of law. Media activism of such nature is admirable.

may complain that at times objectivity is the causality in course of media reporting on crime, investigation, trial of the cases.

The Bangladesh Press Council is responsible for overseeing how the media personnel observe the journalistic code of conduct. It is noted that Press Council Code and Broadcasting Code in vogue in Bangladesh do not have explicit guidelines on reporting court proceeding. Ineffective legal norms governing the media conduct should be substituted by an exhaustive Code that offers greater freedom and responsibility for the journalists. At the same time it should be also borne in mind that reviewing the Code should in no way gag the press. As regards Broadcasting Code, till now there is no official