

Corporate manslaughter: Proper legislation needs for effective redress

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IKE many other disasters, corporate manslaughter has now become a common phenomenon in Bangladesh. Since inception of its financial advancement through industrial and semiindustrial entrepreneurship by using cheap labour force, Bangladesh has been paying its value at the cost of hundreds and thousands of lives employed in those sectors, specially, of workers. Loss of lives in factories and industrial areas are not new in this country, but brutalities happened in the tragedies in Rana Plaza, Tazrin Garments and Spectrum have turned down the humanity into its lowest degree. It has been now

proved that lives of the workers are cheaper even than their cheap labour. Forceful entering of the workers in garment factories of a vulnerable building Rana Plaza and locking of the gates of Tazrin Garments after its embezzlement have made it clear that a garment workers has lost their 'right to life', the number one fundamental human right, in exchange of their job.

The recent Savar tragedy has significantly touched the heart of the people of each and every corner of the world and strong demands have already been raised for punishing the culprits behind such a heinous crime. The members of law enforcing agencies unlike many other similar incidents have already shown their success by arresting owners of the Rana Plaza, i.e. Sohel Rana and his father. They have also arrested the owners of the garments factories. Several legal proceedings have also been initiated against them. The higher judiciary, by using its constitutional jurisdiction has taken several initiatives for rendering justice in that connection. But are those initia-

tives will ultimately be able to redress the victims as well as the nation properly or adequately? It is highly unlikely. The reasons behind this thinking and way of coming out from such darkness by adopting proper legislation will be addressed here.

Legal system of Bangladesh suffers from lacuna of proper legislation regarding corporate manslaughter. Though the Penal Code, 1860 and some other special piece of legislations have been enacted for protecting individual right to life and liberty from attack of other individual(s), but there is absence of proper legislation for addressing killing of people for acts of a corporate body. The owners of the corporations or business conglomerates have been keeping themselves away form any exemplary punishment even after killing hundreds of people for their single decision. Even the word "corporate manslaughter" is not well known in our country though we are one of the worst victims of such crime. Corporate manslaughter is a crime which enables a

corporation to be punished and censured for culpable though has failed to enact any unilateral legislation as conduct that leads to a person's death and it extends beyond compensation that might be awarded in civil litigation or any criminal prosecution of an individual for his individual act. The criminal liability of the owners of corporation is direct in such a way that he is the ultimate beneficiary of the corporation; and the ultimate decision makers of a corporation are some individuals and not the corporate personality.

Some of the developed countries have already experienced with necessary legislations regarding corporate manslaughter. In the United Kingdom, Corporate Manslaughter and Corporate Homicide Act, 2007 came into effect from 6 April 2008 and Crown



Prosecution Service has also been established for proper implementation of that legislation. Besides, a significant number of cases have also been initiated and disposed of in the United Kingdom in that connection. It is mentionable that a powerful quarter has seriously criticised that legislation referring the common law practices for addressing such crime, but increasing of cases and satisfaction of common people have already established its justification. Now the law is passing its journey for ensuring justice for the corporate victims. In Canada, Bill C-45 of 2004 has been enacted for addressing the crime of corporate manslaughter. Australia has also passed Australian Capital Territory's Crimes (Industrial Manslaughter) Amendment Act to address such crimes properly. Besides, the Scandinavian states namely Norway, Finland and Denmark have already incorporated criminal punishment against the culpable corporations under their new or amended penal codes. The United States

yet; but several individual states have their own mechanism for addressing such a crime. Moreover, the laws relating to labourers and workers always keep the owner under obliged circumstances for ensuring the better environment of the work place. But the country, like ours, have given almost impunity to the owners of industries even to implement the labour related laws, let alone the appropriate criminal liability for corporate manslaughter.

If we go through our criminal justice system which focuses on the Penal Code- 1860, the Code of Criminal Procedure-1898 and the Evidence Act, 1872; we can find that ensuring an exemplary punish-

> ment for a person liable for corporate manslaughter is almost next to the impossible. Because, the offences defined in the Penal Code do not describe the corporate manslaughter and provisions relating to homicide, hurt and negligence are mainly based on direct physical overt act of an individual(s) against another individual(s). Here if a person kills another by his direct physical action, he may be hanged; but if he kills one hundred people through his culpable actions where he has no direct physical overt act, he may be acquitted of or may face a minimum punishment. The procedural laws are also designed on the same principle. In such a situation, demands of exemplary punishment for criminals behind Rana Plaza, Tazrin Garments and Spectrum are bound to become a far cry.

It is true that corporate killings are comparatively new phenomena in our country. But within very short span of time we have paid enough for such crime; and now

public opinion and support is totally in favour of ensuring the highest punishment for criminals behind corporate killings.

There is a popular saying by Martin Luther King that, 'Injustice anywhere is a threat to justice everywhere'. If the culprits of corporate killings like Rana Plaza, Tazrin Garments, Spectrum and so on incidents do not get exemplary punishment for their heinous acts only for the lacuna of a proper legislation, public confidence shall certainly be broken up and the victims and their family members shall have no way but to fall tears for divine justice. Can it be bothered in a country like ours which has obtained its freedom through sacrifice of millions of lives for establishing, amongst others, fundamental human rights?

COURT.



Revisiting Sultana's dream in the light of the refugee law

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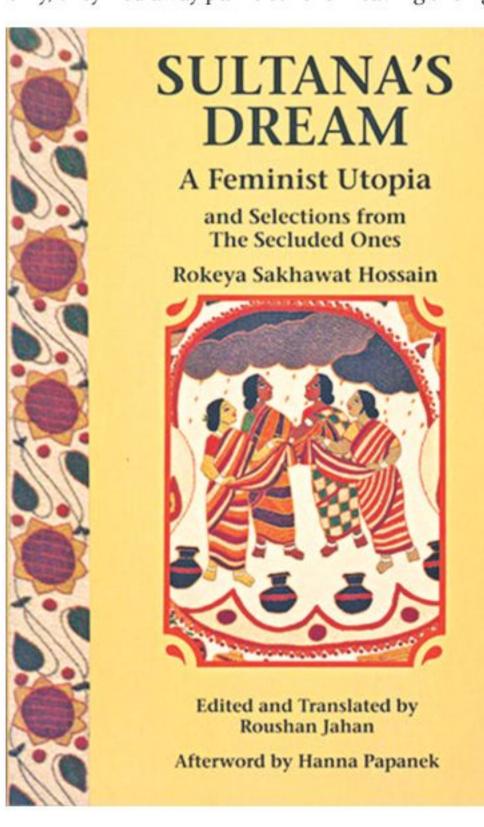
ULTANA'S Dream is a short story by Rokeya Sakhawat Hossain which is regarded as a feminist critique. I have noticed that apart from feminism, it talks about the rights of refugees. Probably Rokeya is the first Bengali woman who speaks about the rights of refugees. To what extent she is for the refugees is clearly understood by reading her fiction Sultana's Dream. In the fiction, the Queen of Ladyland bravely engages in a war with the King of its neighbouring country in order to protect the rights of the refugees.

In the story, we see that a group of persons came from a neighbouring country and sought asylum in Ladyland. These asylum seekers were in trouble in their country of origin having committed some political offence. They got the refugee status in Ladyland. The king of the neighbouring country who cared more for power than for good governance, asked the kindhearted Queen of Ladyland to hand the refugees over to his officials. The Queen refused to do so, as it was against her principle to turn out refugees. Hence the King declared war against Ladyland. Then the story goes on to describe how Ladyland won the war and finally protected the rights of the refugees by using the scientific discovery of its women warriors. My observation is that Rokeya shows that refugee rights are better protected in a country that is ruled by women. If the Head of Government of Ladyland was not a Queen and if women of the country had no participation in the decision making process, then the table may have been

turned in a different direction. Now let me describe some parts of the story. It begins with Sultana lounging in an easy-chair in her bedroom, not sure whether she had dozed off. All at a sudden Sister Sara appeared and took her for a walk. Sultana found that she had entered a new country called Ladyland that was ruled by women. The country was neat and clean and beautiful like a grand garden. While walking on the street, Sultana met many women but not a single man. When she asked curiously about the whereabouts of the men, Sister Sara informed her that all the men were in the Mardana (confinement) just as the women in British Bengal were being shut indoors in the Zenana. Sultana was very surprised and wanted to know why and how this had happened. In reply, Sister Sara referred to the refugee situation and the war. The enemy was very strong thus the military of the country had no options but to step back. Then the Queen held a meeting with the wise ladies of the country. After consultation, it was decided that a lady principal of a university who

invented a device to collect the concentrated heat from

the sun-light, would fight with the male warriors with now part of the International Refugee Law, i.e., 'Conher two thousands female students. However, the lady principal requested the Queen that before hearing her plan all the men of Ladyland should be entered into the Mardana. The men agreed to do so since they had no hope to win the war. But finally the ladies gained a decisive victory without shedding a single drop of blood. In the battle field, when they directed all the rays of the concentrated sunlight and heat towards the enemy, they fled away panic-stricken leaving their guns



and ammunitions behind. This is how the ladies won the war and the men were confined. Then the story goes to inform Sultana about the progress of the country in the fields of education and scientific research, administration, judiciary, trade and commerce and so on under the women's leadership. Sultana also met the great Queen and visited different establishments of Ladyland. While returning, somehow Sultana slipped from the air-car and the fall startled her out of her dream. She woke up and found herself still lounging in the easy-chair in her bedroom.

If one revisits Sultana's Dream in the light of the modern International Refugee Law, one can observe that the story contains some essential ideas which are

vention grounds' and the 'Principle of nonrefoulement'. As per the International Refugee Law, 'Convention grounds' are the reasons established in the 1951 Refugee Convention as one of the elements of refugee definition. It requires that a person's fear of persecution be linked to one or more of the following five grounds: race, religion, nationality, membership of a particular social group, or political opinion. These five grounds are known as the 'Convention grounds.' And, 'Principle of non-refoulement' is the core principle of the International Refugee Law that prohibits the forcible return of refugees in any manner whatsoever to countries or territories where their lives or freedom would be at risk for reasons of conventional grounds (race, religion, and nationality, membership of a particular social group or political opinion). The 'Principle of non-refoulement' is also part of customary international laws and is therefore binding on all countries, whether or not they have signed on to the 1951 Refugee Convention or its 1967 Protocol. The 'Principle of non-refoulement' is also part of the International Human Rights Law and the International Humanitarian Law.

By providing a safe refuge to the asylum seekers and by taking a strong position of not forcefully returning them to their country of origin where their lives at risk, the Queen of Ladyland actually sets an example of managing refugee issues in a very good manner which, I see that in line with the modern International Refugee Law. This further reiterates the sagaciousness and far-sightedness of Rokeya who could think of the essences of the refugee law well in advance before the birth of the formal law. Sultana's Dream was originally published in The Indian Ladies Magazine, Madras, 1905 in English, when the refugee issue was not a great deal in the world politics. Refugee issue has become a concern of international politics after the first world-war held in 1914. The Refugee Convention was adopted many years later, in 1951, in the aftermath of the second world-war.

Day by day, Sultana's dream is realising in Bangladesh. Women education reached at village level. Women are being empowered and participating in the decision making process. Currently, the Speaker of the parliament and, the heads of the position and opposition parties in the parliament are women. Some core ministers in the cabinet are also women including the Prime Minister. Can't we expect that in the coming days the rights of the refugees will be better protected in Bangladesh?

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Appropriate enactment can prevent illegal trade of kidney

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LARMINGLY illegal trades of kidneys are taking place in our country. The reason behind this is increase rate of private hospitals, nursing A homes or clinics in big cities and in the town area, who are involved in illegal organ trade, especially kidney transplantation. In Bangladesh the availability of medical transplants is lower than the requirement. The first kidney transplantation was taken place in Bangladesh in 1982. The vast need of kidney and less number of supply flourishes the illegal trade. There is some wrong intention works among the administration, police, private nursing home owners and a section of doctors. The person behind this trade sometimes appoints agents, who pursue the poor, uneducated people in villages or towns and manipulate them by showing the benefits of selling organs. These poor people are made to believe that as there are two kidneys in a human body and if they bestow away one, they still can survive well.

Transplantation of Human Organs Act-1999 (TOHO Act) deals with

human organs transplantation in Bangladesh. Section 9 prohibits Offering, advertising or any other commercial dealings of human organ. Section 10(1) imposes punishment for violation of its provision rigorous imprisonment not less than 3 years and not more than 7 years or with fine of 3 lakh taka or with both. And if the offender is medical practitioner with the above said punishment his registration shall also be cancelled, There is a reputation exists regarding some laws of Bangladesh being quixotic

enough, this very Act is one of them. There are many lacunas in this Act frustrating the main purpose of enacting the same. Legal loopholes rather lead to illegal trade of human organs. These are- firstly, the present law regulates transplantation of only human organs. It needs to include tissues also. Secondly, the definition of 'near relative' is proposed to be expanded in order to include the grandparents and grandchildren as 'near relative'. There was no provision for grandparents and grandchildren.

Thirdly, the very preamble of the Act speaks about collection and conservation of human organs, but the provisions of the Act remains totally struck dumb about



these important terms, namely how to collect, who will collect, where to reserve and is there any national conservation center. These questions remain permanently unanswered. Section 7 only speaks about formation of medical board but what procedure to be followed in doing the same and what is the exact function of those government appointed physician are not clearly mentioned here.

Fourthly, no provision of registration of medical centre, or university or collage for the purpose of transplantation work is there. This is very crucial points which need to be implemented without any delay. Besides registration methods for the donors and the recipients needs to put along with the provision of the registration of college or university or medical centre as well.

Fifthly, who will take cognisance of this offence is not mentioned in this Act. It only says that the criminal procedure code 1898 (V of 1898) shall be applicable regarding any offence under this Act.

Sixthly, section 11 of TOHO Act-1999 empowers the government to prescribe rules, but yet no rules have been framed, which is very much indispensable for actual enforcement of this Act. Seventhly, it needs to prescribe an appropriate authority that will grant permission of transplantation and examine the donor and recipient and take cognizance of offence. Lack of all these important issues makes the TOHO Act-1999 crippled.

From both legal and ethical aspect commercial dealings of human organ is appalling. The victim of this bio -violence is poor and illiterate section of the society, they remain always deprived. When they trapped by a lucrative offer, they agree to donate (in real) to sell their organ. Later, when they are not paid, they cannot seek the assistant of law enforcers, as the total transaction was illegal. The consideration was illegal, no contract was there. This is how this system prolonging the life of 'haves' over the life of 'have nots'. They are misled, misunderstood, disconcerted. Poverty doffed away the clothes of general prudence from them leading them to a deadly transaction. One of the main culprits leading this unlucky section of the society to such a dolorous life is TOHO Act-1999 itself. Before regulating transplantation of human organs, this law itself needs some legal-transplantation of important provisions first. Hopefully then we may stop this bio-violence.



Pre training to become a Barrister

London College of Legal Studies (South), with the brilliant initial idea from two barristers, Mr. M Istiaq Hasan and Mr. Rezwanul Haque Mazumdar, has pioneered a professional training course - Pre-Training Programme (PTP) for Bar Professional Training Course (BPTC), the professional course that leads to the qualification of a Barrister.

PTP is a comprehensive training programme conducted to ensure better understanding of the BPTC. PTP for BPTC would be conducted at the London College of Legal Studies (South) in its own Campus situated in Kalabagan. The course conducted for the first time last year in connection with top BPTC providers of the UK had been a tremendous success and highly appreciated by the participants and BPTC providers themselves. The course, this year, has received support and endorsement from as many as five UK Universities, namely, University of West of England (Bristol), Cardiff University, University of Northumbria, BPP Law School and University of Law. Besides the PTP has achieved outstanding admirations from the teachers of different UK universities.

The programme will be run over two weeks. The structure adopted in this course is very akin to any bar provider in the UK comprising of large group lectures and small group practice sessions. Barrister Kevin Crawley, Programme Lead of the BPTC (Full Time) of Northumbria University School of Law UK,, who is set to attend the Course, said last time, "The PTP will be an invaluable opportunity for the students. It is the most testing educational experience the students so far."

Head of Laws of the LCLS Barrister Khaled Hamid Chowdhury said that the PTP would help build a foundation for the prospective BPTC candidates and develop their perception. The objective is to elevate the quality of future barris-

Delyth James, Associate Head of Bristol Institute of Legal Practice of University of the West of England (Bristol) said, "The Bar Professional Training Course ('BPTC') is very challenging. Therefore, this innovative course will be a great benefit to those of you who intend to undertake your 'BPTC' in England or Wales as it will give you an insight of the expectations/demands involved with undertaking the BPTC."

The course this time will also include a dinner in the Inns of Courts style to be hosted in the Marble Room of Ruposhi Bangla Hotel on the 21st of June 2013. Distinguished legal personalities and representatives from the different UK Universities will also grace the occasion. This unique course started from 15th of June 2013 and will end on the 29th of June 2013.