LAW VISION

Workers' insurance law can ensure equitable compensation

MORSHED MANNAN

IN the months following on from the Tazreen Factory fire and the collapse of the Rana Plaza, international scrutiny of Bangladesh's RMG industry has intensified. Working conditions have been criticised, accords have been signed by global retailers, trading privileges with the USA on certain products have been suspended, factories have been inspected and legislation has been reviewed. As a result of such scrutiny, generous cheques have been given by the Government, the BGMEA and foreign buyers to a few of the workers affected by the accidents. Yet, till date, there still remain several hundred injured workers and relatives of those who remain missing, who have yet to receive any form of compensation.

In many countries, victims of such workplace accidents would have been able to take advantage of insurance schemes. In Bangladesh, laws pertaining to group insurance have long remained in the books, but they have yet to become a reality for the country's RMG workers. The recently passed Labour (Amendment) Act, 2013, has done little to ameliorate the situation.

Workers' Insurance Scenario in Bangladesh

Pursuant to the amended Section 99 of the Labour Act, 2006, it is compulsory for there to be group insurance for establishments where there are more than 100 permanent workers. Previously, this figure was 200. Group insurance allows workers to claim up to Tk. 1,00,000 and Tk. 1,25,000 for death and permanent total disablement respectively. According to Badrul Ahsan (Financial Express-BD, 23 December, 2012), depending on the number of workers and working conditions, each owner would only have to pay between Tk. 12,500 to Tk, 1,00,000 per annum for such insurance. In spite of there being a legal requirement to obtain group insurance and its relative affordability, more than 1200 export-oriented RMG factories, including the Rana Plaza factories, have not obtained group insurance as of November, 2012.

The BGMEA also provides group insurance for their member factories, whereby employees get Tk. 1 lakh in compensation if there is an accident. However, according to Sajjadur Rahman (The Daily Star, 29 April, 2013) this insurance only covers 20 workers per factory. This is clearly insufficient as the vast majority of export-oriented RMG factories, like those in the Rana Plaza, have far more than 200 workers, even according to the BGMEA's own records.

This is also the reason why the provision of the recent Amendment, reducing the numerical requirement for group insurance to a 100, is hardly of any great consequence for RMG exporting factories, since most of them employ more than 200 workers. For this law to be properly enforced what will be necessary is further elucidation of how the size of factory workforces will be determined, who will be responsible for ensuring that insurance is being obtained by companies and the sanctions that will be imposed if they are not. Given the chronic shortage of qualified building inspectors and the lack of a comprehensive database of all RMG factories, monitoring such obligations will be an uphill task.

In lieu of insurance, workers or their families who do not receive charitable compensation have to take recourse to legal proceedings in labour or civil courts, a hardly desirable option given the stress and delays incumbent in such a process. Therefore, to ensure swift and equitable compensation, the insurance scheme available for workers needs to be re-evaluated.

Workers' Insurance: A comparative view

Our legislators could perhaps draw inspiration from other social-democratic countries like Australia, where the State of Victoria has put in place an insurance system where most employers have to pay a percentage of the total remuneration they give their employees to an independent authority, which covers the costs of benefits if their workers become injured as a direct result of their work. These benefits include weekly benefit payments, medical treatment, and in the event of a serious injury, lump sum compensation. If the employee suffers a work-related death, then their dependents receive funeral expenses, family counseling services, lump sum payments, weekly pensions for a fixed number of years and damages. As the premiums employers have to pay are calculated on the basis of the 'risk' each industry entails and the number of persons employed, the distribution of the financial burden is not too onerous. Such a scheme incentivises lowering industry risk and makes the purchase of insurance compulsory; whereby severe penalties are imposed on employers if they do not join the scheme and their employees get injured in the line of work.

Similarly, if premiums are not paid or if premiums are not paid promptly or if employers provide incorrect/malfeasant self-assessments so as to underpay their premiums, strict sanctions are enforced. This has a considerable impact in ensuring equitable relations among employers and employees, making non-compliance unprofitable and compensating the insurance scheme of the funds it has been deprived of.

Alternatively, recently in Brazil, Occupational Accident Insurance (Seguro de Acidente do Trabalho) was implemented, whereby those employers that cause accidents or do little to prevent accidents are charged a higher rate of taxes than those who invest in accident prevention. Along with providing compensation, this has ensured a shift from 'damage control' to prevention and rehabilitation of workplace accidents.

If it is felt that the requirement to pay for insurance should not be imposed solely on employers, a self-financing model, similar to that extant in India could be considered. The Employee State Insurance Act 1948 provides a wide variety of benefits to all workers in establishments and who earn less than 6,500 per month. The financial resources for this scheme are not raised from the taxpayer or solely from the employer, but through mandatory contributions from employees and employers as a fixed percentage of wages per month: 1.75% and 4.75% respectively. Among other benefits, these 'premiums' go towards compensation following workplace accidents in the form of sickness, disablement and dependent benefits and if the worker happens to die, the dependents can receive a family pension, all in cash. While the sums paid out might not be considerable, it is at least a form of assistance that is not contingent on noblesse oblige, where an honourable master takes care of his injured servant, or public charity, but is instead an organic feature of the industry.

After perusing such examples, it becomes apparent that the existing labour legislation in Bangladesh, even as amended, does not provide for an adequately comprehensive insurance coverage, as it not only glosses over how the group insurance scheme will be enforced, but does not address the broader questions as to whether the lump sum payments derived from insurance claims are commensurate to the loss incurred, how social and professional rehabilitation of injured workers can be ensured and future workplace accidents prevented. As a country that aspires in its Constitution to attain "a just and egalitarian society, free from the exploitation of man by man", it would be becoming of our legislature to pass a workers' insurance law that upholds such principles and is equitable for those who are the backbone of our economy.

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HUMAN RIGHTS RIGHTS

MINORITY RIGHTS ADVOCACY

Culture of inborn degradation

KISHOR DUTTA

THE history of world is the history of heroic struggle to cow down the devilish religious persecution, brutal sectarian barbarism and to extricate the human mind from the shackles of vicious fundamentalism. The flag bearers of the dominant religions galvanised by zealotry have resorted to heinous persecution to decimate the adherents of other religions. Overcoming this demonic fanaticism, Hinduism has recognised the variety of opinions, diversity of views and idiosyncrasies of creeds. The Supreme Court has rightly observed, "The Hindu religious system is encyclopedic in its character. It is not one form of faith but a commonwealth of faiths … beginning from the idolatry and ending with the highest form of philosophical monism"[*Paresh Chandra* v. *Shashan Kalimata* Idol 61 DLR 679]. Traumatically in spite of such soothing magnanimity, Hinduism is frittering away due to its caste system which negates human liberty, demolishes human spirit and pulverises the unifying sense of its adherents.

Hinduism has divided its adherents into four water-tight compartments called caste namely Brahmins, Kshatriya, Vaisyasand Sudras. Justice D.A.Desai has discovered four essential features of the caste system namely 1.Hierarchy 2. Commensality 3. Endogamy 4. Hereditary Occupation. Nehru in his book 'Discovery of India'observed, "Caste is the symbol and embodiment of the exclusiveness among the Hindus". The Indian SC has defined it, "A caste is an association of families which practice the custom of endogamy. The caste of a person is governed by birth and certain ideas of ceremonial purity is peculiar to each caste"[*Indra Sawhney Etc.* v. *Union of India AIR* 1993].

The genesis of casteism can be traced back to the absorption of myriad tribes by the victorious Aryans in the frame of Barnasram and relegation of them to the lower rung of the hierarchy. There is longstanding dispute about the culmination of caste system in Bengal. Richard Eaton observes that the caste system far from being the ancient and unchanging essence of Indian civilization emerged into its present form only in the period of 1200-1500AD. But Khithimohan Sen claims in his book 'Hindu Dharma' that even before the arrival of Aryans in India, there was prevalence of caste system in India. The prevalent caste system runs counter to the altruistic dogmas of Hinduism. The sacred Gita says that the Barnasram shall be based upon merit and occupation. In Mahabharata Yudhistir says a person cannot be Brahmin or Sudra merely because he is born out of Brahmin or Sudra. Vabishya Purana ordains all persons are issues of one God and therefore there is only one caste.

The caste system therefore having no connection with spiritual elevation is highly manipulative and wholly opposed to the democratic ideal. The polluting character of this system is such that a child even before coming out of the womb of his mother is branded, stigmatised according to the caste of its parents from which there is no deliverance except by death. Though the concept of inequality is unknown in the kingdom of God, the created of the creator has created this artificial inequality in the name of casteism with selfish motive.

A logical question comes how this apparently invincible caste system survived myriad social and national ups and downs revolutionising the Hindu society? Imminent writer Ranjit Sen in his book 'Caste Class and Raj' has observed, "Whenever there was a revolt against caste, men were drawn into new brotherhood on the basis of individual merits instead of birth. Such groups slowly became converted first into a sect and eventually into a caste…" Therefore instead of weakening the prejudices of caste, such revolt only succeeded into adding one more to the castes already existing. Inconvertibly this caste system is a sacrament carefully nurtured by Hindu society and adroitly crept into the minds of Hindus from which none can escape.

The Hindu society is yet to be unshackled from the clutches of this monstrous caste system though emaciated with the passage of time. Till now caste plays as a catalyst in the arrangement of Hindu marriages. The orthodox Hindu law approves the Anoluma marriage (marriage between the higher caste men and lower caste women) but prohibits the Protiluma marriage (marriage between the higher caste women and lower caste men). In 1946 the government passed the HinduMarriage Disabilities Removal Act which validates the marriage between the diverse sub-divisions of the same caste. But it does not deal with the validity of inter-caste marriage. In 1949 the central legislature of India enacted the Hindu Marriage Validity Act which validates with retrospective effect the inter-castes marriages. But in Pakistan now Bangladesh no such law being passed, the validity of such inter-caste marriage mainly Protiluma marriage is called in question.

The constitution envisions exploitation-free society and promises equal protection by non-arbitrary laws. Agonisingly the interpreters of the constitution have mandated the non-application of equality provision to the personal laws and thereby contributed to perpetuate the vicious manipulation of frail section of the citizens. The prevalent personal laws underscoring the patriarchal hegemony can hardly conform to the luminous ethos of equality. Though constitution of Bangladesh does not oblige the state to formulate a Uniform Civil Code, state should formulate Uniform Civil Code to consolidate the national integration. In this cause the Court should be the flag bearer demolishing the dilapidated edifice of drooping personal laws. The Indian SC observes, "The role of reformer has to be assumed by Court" [*Md. Ahmed khan* v. *Shah BanoAIR* 1985]. Quite interestingly the HCD of Bangladesh recommended the formulation of uniform civil code in a verdict on 30th October 2000. However this noble recommendation of the HCD was expunged by Appellate Division terming it irrelevant to the cause. [*Islamic Law Research Centre* v. *Eva Sunanda* 54 DLR (AD) 168].

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LAW WATCH

Liability regime for protecting environment

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ENVIRONMENTAL protection becomes a matter of urgency rather than a matter of acceptability. Therefore, in a mature environmental regulatory system, legislations develop a liability regime for those who by their activities cause environmental harm. Bangladesh adopted environmental law, the Environment Conservation Act (ECA) 1995 which aims at providing for conservation of the environment, improvement of the environmental standards and the control and mitigation of environmental pollution. To fulfill these objectives, the Act establishes a liability regime for environmental damage. A liability clause, by making the potential polluters pay for restoration or compensation of the damage they caused, plays a deterring role in matter of the activities that affect environment.

Types of liability addressed by this Act

The ECA covers different situations, each one governed by a different liability scheme. The Act applies strict liability where, due to an accident or other unforeseen incident, the discharge of any environmental pollutant occurs or likely to occur in excess of the limit prescribed by the rules (s.9). The Act hits fault-based liability for direct or indirect injury to the environment (s.7). These are the two phases of civil liability. Section 16 provides for the fault-based criminal liability of a company vicariously on its owner, director, manager, secretary or agent of the company. It describes another case of vicarious criminal liability for the owner of a vehicle emitting smoke or gas injurious to health or environment (s.6). Besides, section 15 specifies certain situations, the violation or non-compliance of which hits criminal liability imposing punishment for these offences which may include imprisonment or fine or both.

Enforcement mechanism

For carrying out the purposes of the ECA 1995, there is a Department of Environment (DoE) under the authority of the Director General who is vested with the power of oversee the implementation of the Act. The Environment Court Act, 2010 provides for the establishment of Environment Court and a Special Magistrate's Court in each district to dispose of environment related cases. Both types of courts are competent to impose penalty for offences under any environmental law, to confiscate an equipment or a transport used in the commission of such offence or an article or other thing involved with the offence, and to pass order or decree for compensation in appropriate cases.

Issues of concern

In Bangladesh, despite having laws emphasising on making the polluters accountable and liable for the ecological damage they cause, the ultimate truth is that it is very difficult to implement the liability provisions against them. In addition to some practical problems inherently associated with implementing liability provisions, there are some other factors prevalent exclusively in Bangladesh impeding the enforcement of these provisions.

We have separate environmental courts, but they cannot receive environmental cases except through the DoE unless a general person succeeds in satisfying the Court that the DoE has not duly acted upon his complaint within 60 days from lodging it. Where widespread corruption prevails everywhere in Bangladesh, the consequences of giving sole authority to the DoE for filing cases before the court are easily inferable. Besides, the responsibles of DoE are exempted from any civil or criminal liability for an act done in 'good faith'. This allows the DoE or its officials to make delay in filing suit or to take any action depriving common people of any remedy under the guise of 'good faith' as the term is not defined in the Act. So, these factors surely can vitiate the environmental courts' main purpose to enforce liability provisions against the polluter.

Lack of intersectoral coordination among the different bodies (DoE, Environment and Forests Ministry, line Ministries) assigned for implementing the environmental laws, absence of regular monitoring of the inspection activities, polluter-politicians nexus, culture of impunity, lack of public awareness etc. are also some of the prime reasons for not holding the perpetrators accountable. But that should not be the condition. Bangladesh Constitution recently incorporated right to environment by adding art.18A which obligated the state to work for the protection and improvement of the environment. So, the government should think about the issue with utmost importance.

Considering the cause-factors of its failure, the government should reassess the current environment pollution management policy with redefining the objectives and mechanisms (legal, institutional). A comprehensive and integrated strategy to be designed for coordinated action at the policy and program level which includes strong monitoring system, public education on environmental rights, self regulation and coordination of the bodies responsible for implementing the laws, etc. Moreover, access to courts on environmental issues must be easy and flexible as mere having law is not enough to protect our environment until and unless a setting supportive to reach the court for the purpose of seeking remedy against the offence is ensured to the common people.

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