

HUMAN RIGHTS

RIGHTS ADVOCACY



Unconstitutional restriction on trade unions

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TRAGIC incidents in garment factories saw an alarming rise last year and the most devastating one took place when the Rana Plaza in Savar collapsed in April this year. The collapse exposed to the world the fragility of our labour legislations and administration to protect our workers' rights. Consequently, both national and international communities mounted pressure on the government to lift up the existing mechanisms. In this backdrop, the legislature made a hasty attempt to play down these concerns by amending the Bangladesh Labour Act 2006 (BLA) in mid-July this year.

But the amended Act still falls short to protect the rights and interests of the workers in many aspects including their right to form trade unions, to bargain collectively and to participate in safety related workplace decisions. Certain provisions of the BLA also appear to lag behind in meeting the constitutional obligations in relation to the right of workers to form trade unions.

Article 37 of our Constitution entitles every citizen to the right to assemble and participate in public meetings and processions peacefully and without arms. The Article then curbs out the generality of the right by asserting that 'reasonable restriction' may be imposed by law, provided that such restriction serves the interests of 'morality' or 'public order'.

The BLA, claiming to be operating within the 'reasonable restriction' clause of Article 37, imposes restriction on free trade unionism. It asks trade unions to meet a minimum membership requirement of 30% of the total number of workers employed in the establishment in order to be registered, and surprisingly keeps the percentage requirement same even for a group of establishments (Sections 179(2) and 183(6)). A group of establishment refers to all establishments of an area specified by the government which employ no more than twenty workers and carry on the same or identical industry.

Furthermore, the Act provides for cancellation of the registration of the unions that fall below this level (Section 187(f)). The critical question here is whether this 30% membership requirement imposed by the law goes beyond the exception clause of Article 37.

Though our judiciary is yet to explain the nature and characteristics of 'reasonable restriction', the Indian judiciary, in *Himmattal v. Police Commis-sioner* (1973), clarified that reasonable restriction must have

a rational connection with morality and public order, and must not be vague or in excess of the requirement. The US Court considers a restriction in excess of the requirement if it is disproportionate to the mischief it seeks to remedy (*Louisiana ex rel. Gremillon v. NAACP* (1961)). The court added that regulations must be highly selective and as narrow as possible when they affect freedom of association.

The decisions of both the Indian and the US Courts make it clear that any restriction on free trade unionism must not be in excess of the requirement. Compared to our flat 30% requirement, the threshold of minimum membership requirement is 10% in India. While institution of a minimum membership requirement for filtration purpose is quite plausible, the 30% membership requirement in our law implies that, regardless of the number of the workers employed in an establishment, there can be no more than three trade unions.

This practically means that in an establishment where there are 500 workers, only 150 workers may form a trade union, but in another establishment where there are 50,000 workers, it will take 15000 workers to form a trade union. By imposing the same percentage requirement for a group of establishments, the law made it almost impossible to form trade unions in a group of establishments.

As the 'morality' test is not relevant in trade union issue, only 'public order' test remains relevant. Just as 'reasonable restriction', our judiciary has not yet explained 'public order'. But the Indian Court, in *Madhu Limaye v. S.D.M. Monghyr* (1971), claimed that 'public order' includes absence of all acts which are danger to the security of the State and absence of insurrection, riot, turbulence or crimes of violence, but not acts which merely disturb the serenity of others. At the one extreme, there are those who feel that multiple trade unions would spur turbulence and disorder in an economically critical sector like the garment industry.

But the other extreme would argue that turbulence and disorder also happen in factories that have a few or no trade unions. Moreover, the Indian judiciary, in *Ghosh v. Joseph* (1963), stated that a restriction must directly relate to public order; its remote and far-fetched connection with public order won't be enough.

In addition to Article 37, Article 25 of our Constitution also makes the case for free trade union-

ism. The Article promises to be respectful to the international law, and Bangladesh has ratified most of the core ILO labor standards, including Convention No. 87 on freedom of association and Convention No. 98 on the right to organise and bargain collectively.

Besides, all three instruments of the International Bill of Human Rights include the right to free trade unions - ICCPR in Article 22(1), ICESCR in Article 8(1)(a), and UDHR in Article 23(4). These instruments impose an obligation on the legislature to make provisions for free trade unionism.

In fact, our legislature is beating around the bush by imposing high membership requirement on trade unions, instead of imposing it distinctly on collective bargaining agents. Trade unions do a lot of other things to protect the rights of workers apart from just collective bargaining. While it is understandable that there should be high percentage requirement for collective bargaining agents as smaller collective bargaining agents can exert little influence in the workplace decisions, trade unions need not have such high percentage of workers to perform the other functions.

In fact, trade unions with lesser percentage of workers should work more efficiently to improve communication between employers and workers, to increase productivity by supplying information to management about how working practices can be improved and by reducing the turnover of employees.

Our \$11,000 million garments industry comprises of an estimated 5,600 factories, accounts for roughly 80% of total exports, and houses 4 million workers. Unfortunately, the workers who engineer such huge revenue for the country face grave human rights violations at their workplaces day in and day out.

It is no wonder that the rights groups with their limited resources often fail to raise all the needs and demands of these millions of workers, and the government regulatory bodies marred by bad governance are hardly effective in inspecting this huge number of factories. Institutionalisation of free and efficient trade unions can effectively fill up this vacuum by helping workers to raise their own needs and demands, instead of waiting for some rights groups or regulatory bodies to show up. In the long run, this might help us avoid another Tazreen fire incident, another Rana Plaza collapse.

LAW ANALYSIS

ICT Act violates fundamental rights

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THE government has made an amendment of the Information and Communication Technology (ICT) Act of 2006 which may cause a big threat to the freedom of expression as well as the fundamental rights of the citizens. The Act empowers law enforcers to arrest any person without warrant, and to increase the highest punishment to 14 years from minimum 7 years. The ICT Act, 2006 was termed by many as a repressive law though the offences were bailable, but in the amended Act the offences are non-bailable and there is much scope for harassment.

In this context it may become a draconian law and the government is going to get nothing out of it. The fundamental rights of the citizens will be violated and they will be the worst sufferers of this Act.

Article 39 of our constitution guaranteed a fundamental right named freedom of thought, conscience and of speech. Under the new ICT Act the Freedom of thought and conscience may not be exercised freely. Before writing anything in the social media like facebook, twitter, blog, skype etc. any person always remain in fear whether it will 'tend to deprave' or 'corrupt persons' or not as enacted in the new ICT Act. And he is in fear of at least 7 years punishment and highest may be 14 years. Thus it will hamper the free thinking and expression of thought. So, it may be liable to be contradictory to the constitution.

Among the various types and methods of communication, internet is a glorious example of the modern communication. Most people take the positives from it but there may be some equipped to use this dynamic means of communication for ulterior purposes. Consequently, some people may suffer and there may be noise and chaos in the society. To address this, there should be pragmatic policies that the state can enforce to control and regulate such disorder.

The question here is: what should be the way of controlling the negative aspects? Can the state frame any arbitrary law which may be a tool to suppress the

voices of opposing views or ideologies, as the case may be? To be more precise, can the state make laws which denies the rights of the citizens in violation of the constitution?

The ICT (amendment) Act, 2013 provides for penal action in section 57 which reads that If any



person deliberately publishes or transmits or causes to be published or transmitted in the website or in electronic form any material which is fake and obscene or its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, or causes to deteriorate

or creates possibility to deteriorate law and order, prejudice the image of the State or person or causes to hurt or may hurt religious belief or instigate against any person or organization, then this activity of his will be regarded as an offence.

The punishment for the aforesaid offence shall be imprisonment for a term which may not be less than seven years and more than fourteen years and with fine which may extend to Taka one crore. It also suggests that offences under sections 54, 56, 57, 61 are cognizable and non-bailable.

One may see that the wordings in the section 57(1) are totally vague, and may create scopes of misuse by the various quarters including the state machinery. What type of information will 'tend to deprave' or 'corrupt persons' has not been clearly spelt out in the Act. The law enforcing authority has been given unlimited power to arrest any person, alleged to be involved in the 'offence'. Unless proved innocent, the accused will not be released on bail.

The Right to Information Act, 2009 has recognised the freedom of expression as an important fundamental right of the citizens and it has made easy dissemination of information from any governmental and non-governmental institutions. But in the ICT Act, there is no clarity as regards 'publication of information' and the type of information that may deprave and corrupt others. So, being afraid of punishment, people will stay away from posting their views on the internet.

In conclusion it can be said that there is a considerable possibility that the law may be misused in the name of preventing cyber crimes. It may create confusion, which can cause problems to anyone, any time. It also eases the way of sending anyone to jail without any sufficient cause.

The Act is riddled with legal irregularities and it poses a serious threat to exercising the right to freedom of expression in the country. The government should consider the above matter seriously in order that the law does not conflict with the fundamental rights of citizens in a democracy.

RIGHTS WATCH

Press freedom and airing new TV channels

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AT the very eleventh hour, government has provided permission for a total of 13 licenses. As the news appeared in The Daily Star (November 26, 2013); the number of private television channels reaches to 27 and the Awami League-led grand alliance government alone has approved 12 during its tenure from 2009. Many readers abroad might think that there is a spontaneous press flow all over the country; the reality is slightly different though.

It has been stated in Article 39(1) of the constitution, "Freedom of thought and conscience is guaranteed". However, there are apparently reasonable restrictions applied for freedom of expression and press. As we go further, it has been stated in the Article 39(2), "Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence- (a) the right of every citizen to freedom of speech and expression; and (b) freedom of the press, are guaranteed". Articles 36, 37 and 38 have also guaranteed the fundamental rights having links with press freedom. Would the inclusion of new private television channels and FM radio help realising those rights?

In recent times, many journalists got injured as they intended to collect news of turbulent situation. As reported in many newspapers, a group of miscreants involved with different political parties deliberately targeted journalist and threw crude bombs in different locations across the country. Cameramen and journalists are at increased risk as parties in power and opposition alliance are now locked in horns. While performing professional duties, journalists on some occasions were beaten by police as well.

Moreover, it has been several months since editors of prominent newspapers made an appeal (May 19, 2013) to the government. Editors in a joint statement demanded reopening of the press of daily Amar Desh, freeing its acting editor Mahmudur Rahman and allowing the broadcast of Diganta and Islamic TVs. Editors also noted that the arrest of an editor, stopping the publication of a newspaper and the broadcast of two TV channels are sending a negative message to the world about Bangladesh's democratic values, culture, and tolerance. In one hand, government is allowing a bulk of TV channels to be on air. On the other hand, call made by eminent editors appeared to fall on deaf ears.



Will those channels add value? It appears that there are acute shortages of trained people in media. It would obviously take some time, if authorities of new appearance want to train up recruits. If they depend on existing human resource, current broadcaster might suffer to continue airing quality programme for the viewers. Though it is also possible to get advantage from competitive atmosphere, it requires adequate preparation and homework. It is interesting to note that politicians and businesspeople affiliated with the current regime mostly got permission to air channels. Have they completed their homework?

To conclude, there is hardly any diversity in developing programme for specific group of audience among local television channels in the country. Mostly, they focus on news and entertainments though some of the channels have simply emerged as news channels. There are scopes for full-time education TV or a channel on environmental issues. Prospect of dedicated channels for children needs to be explored in order to help reduce dependency on foreign channels as well. Diversity in electronic media would help the cause of press freedom.

THE WRITER IS A HUMAN RIGHTS WORKER.

LAW NEWS

Towards 'zero discrimination'

WHILE welcoming the solid progress being made in the fight against HIV/AIDS, United Nations officials marked World AIDS Day with urgent appeals for the international community to work even harder to end stigma, discrimination and complacency, to stop new HIV infections among children and to ensure access to care and treatment for all those that need it. "On this World AIDS Day, I am more optimistic than ever."

Much of the world is accelerating progress in responding to HIV," said Secretary-General Ban Ki-moon, with major drops in new infections and deaths and progress in realising the target of ensuring 15 million people have access to antiretroviral treatment by 2015. "This is crucial to halting and reversing the AIDS epidemic for good," he added.

But, the UN chief continued, as revealed in the UNAIDS 2013 World AIDS Day Report, there are still worrying signals that some regions and countries are falling behind. While

advances are being made in reaching vulnerable populations through efforts to eliminate stigma and discrimination, there is still much to do to end this problem.

"To create conditions for an AIDS-free generation, we must also step up efforts to stop new HIV infections among children and ensure access to treatment for all mothers living with HIV," said the Secretary-General, particularly urging action to end the discrimination and violence against women which cause terrible harm and increase risk of HIV infection and death from AIDS.

Meanwhile, at a World AIDS Day event earlier in Melbourne, Australia Mr. Sidibé and UNAIDS Global Advocate for Zero Discrimination, Daw Aung San Suu Kyi, previewed the zero discrimination campaign, calling for a global transformation. The initiative will launch the new Zero Discrimination Day on 1 March 2014, adopting the butterfly as the transformative symbol for zero discrimination.

