

Asma Akhter, a 25-year-old Rana Plaza survivor, still struggles to drag her heavy prosthetic legs. Sometimes her husband carries her around, and, when he is not home, Asma has to crawl around the house. On April 24, 2013, Asma was working in one of the five garment factories housed in Rana Plaza. When the building suddenly collapsed, a heavy concrete beam fell on her legs and crushed them completely. She remained trapped for two days in a dark, dusty cove in the rubble without any food and water, suffering unbearably. All of Asma's dreams to live an independent, solvent life were buried under the eight story concrete rubble of Rana Plaza.

Asma was among the lucky 2000+ workers who were rescued alive from the ruins which claimed more than 1129 lives. Afterwards, she received financial and medical support from different national organisations and the Rana Plaza Arrangement, which was financed by contributions from buyers and other private donors. However, it would be misleading to conflate this voluntary, legally non-binding financial assistance with 'compensation' under the state's legal framework.

What Bangladesh's legal framework offers them is not only inadequate but also a blatant injustice. For a deceased worker, Bangladesh Labour (Amendment) Act, 2013 sanctions only Tk 100,000 and for a permanently disabled worker, the law approves Tk 125,000 regardless of the worker's basic wage. For a temporarily disabled worker, the law sanctions one-year compensation package in the form of full monthly salary for only the first two months, two-thirds of the salary for the next two months and half the salary for the rest of the months of the year. In case of prolonged occupational illness, the compensation package is half of the monthly salary for not more than two years. For injured workers, these provisions apply regardless of their basic wage.

According to this law, if a senior executive and a regular worker die in an industrial accident both of them will receive Tk 100,000 regardless of their economic condition and the number of family members dependent on them. The law also requires that the compensation is disbursed and distributed by the court – a cumbersome process that takes at least six months. Furthermore, this law is only applicable to formal sector labourers who constitute only 15 percent of the country's entire labour force, according to a study conducted by the researchers of RAND Corporation, Bangladesh Institute of Development Studies (BIDS), BRAC Institute of Governance and Development (BIGD) and BRAC University, published in March 2017.

In fact, when asked about these loopholes in the Bangladesh Labour (Amendment) Act, 2013, Mikail Shipar, Secretary, Ministry of Labour and Employment, stated that the amount has been fixed in accordance with the capacity of all categories of businessmen. "We cannot fix a compensation amount that will discourage potential entrepreneurs and damage the industry.



PHOTO: KAZI TAHSIN AGAZ APURBO

HOW MUCH IS A WORKER'S LIFE WORTH?

MD SHAHNAWAZ KHAN CHANDAN



PHOTO: KAZI TAHSIN AGAZ APURBO

However, the affected workers and their family members can also appeal for compensation under other legal provisions such as The Fatal Accidents Act, 1855," says Mikail.

However, law practitioners and experts reveal a different picture. According to AKM Nasim, Senior Legal Counsellor, Solidarity Centre, Bangladesh, "Cases under The Fatal Accidents Act, 1855 take a long time to be resolved and the court fee is also very high which is unaffordable for a Bangladeshi labourer. In fact, a case was filed demanding compensation by the wife of a road accident victim named Mozammel Hossain under this Act and it took 20 years to get the final verdict."

Experts have suggested devising a national standard to determine the compensation. The standard will not command any fixed amount for compensation; rather it will delineate a set of criteria so that by considering these standard criteria, a proper compensation can be calculated for the victims. Advocate Md Borkat Ali, a lawyer of the

Supreme Court and Deputy Director of Bangladesh Legal Aid and Services Trust (BLAST), says, "The criteria should be based on what a deceased or permanently disabled or an injured worker and his/her family members lose due to the accident. For example, for a deceased labourer, the criteria to fix the compensation can be: the salary s/he would have got during the rest of his/her service life, the gratuity s/he would have got after retirement, the educational expenses of his/her children, living expenses of other dependent family members and also employment of his/her children as they would have enjoyed an advantage if their deceased parent was alive at that time."

Borkar adds, "Whereas if a certain amount is fixed as the compensation, no matter how much it is at present, it can be inadequate after several years due to inflation or due to any other unpredictable economic condition."

In this regard, a compensation committee appointed by the High Court to determine the compensation for the

victims of Rana Plaza tragedy has set an excellent precedent. Professor Dr MM Akash, a member of the committee and a faculty of the Department of Economics, University of Dhaka, says, "The committee considered a wide range of issues while deciding the amount such as average age of the deceased workers, their probable salary during the lost service life, gratuity, festival bonuses, number of family members, their living expenses, education of the children, etc. Finally, we fixed the amount at Tk 1.5 million for the family members of the deceased and missing workers, and permanently disabled workers, and submitted the report to the High Court. The case is still pending in court and the recommended compensation has not been paid to the victims."

Although the committee was formed on an ad hoc basis only to compensate the Rana Plaza victims, as the High Court treated the tragedy as a manmade crime and not just an industrial accident, experts think that the recommendations of the committee can be a guiding example for formulating the national compensation standard.

However, the harsh reality is that the Rana Plaza victims have still not received a single penny from the owners due to legal complexities. They have received only donations and financial help from various quarters but their right to compensation is being denied even after four years.

Limitations of the current law and procrastination to solve the pending Rana Plaza compensation case (which, if resolved, could complement the law) have threatened the workers' right to get compensated in case of accidents, whereas the rate of accidents is not at all decreasing in Bangladesh. A survey of Bangladesh Institute of Labour Studies (BILS) shows that from 2008 to 2015, 5,339 labourers died in industrial accidents and 10,830 workers became permanently disabled. In 2016, at least 168 workers died and more than 200 were injured in different industrial accidents all over the country. If labourers employed in the informal sectors, such as day labourers, construction workers and domestic helps, were included in the survey, the number would increase manifold.

The government and businessmen should recognise the positive, proportional relationship between workers' rights and the scale of industrial production. If workers are ensured better salaries and adequate compensation, more skilled workers will enter the industry, industrial environment will improve and ultimately chances of accidents will go down. And to move forward, it is now necessary to change the law and to formulate the national standard of compensation that includes the labour force of both the formal and informal sector.

With the current weak compensation package mandated by the existing law, chances are little that a worker who becomes a victim of an industrial accident will ever get justice and compensation in Bangladesh.

The writer can be contacted at shahnawaz.khan@thedailystar.net

It is difficult to decide whether the murder case filed against 41 people for the Rana Plaza disaster can be measured as progress or not.

The murder case was filed charging the owner of the doomed building, Sohel Rana, his parents, the owners of four factories, the mayor of Savar municipality Refayat Ullah, the ward councillor Mohammad Ali Khan, the former chief executive officer of Savar Municipality Uttam Kumar Roy, and other government employees including engineers, site inspectors and one urban planner. The highest penalty they are facing is execution.

To begin with, the case is still pending. The case was only accepted by the court last year – three years after the incident actually happened – following a big concerted effort by activists and lawyers. Why did it take so long? *The Daily Star* previously asked the lead investigating officer Bijoy Krishna Kar, who is the assistant superintendent of Criminal Investigation

ZYMA ISLAM

Department (CID). His answer was that the police needed to take the government's permission to charge civil servants - and the government sat on it for several months.

This shows that we have miles to go before we sleep. At the same time, this is one of the very few times that a manslaughter case has actually been filed in relation to worker deaths.

Manslaughter. The form of remedy that recognises undue, unjust deaths for what they are. It is a recognition that paying off a negligible amount of money to the family of the deceased victims is not the acceptable way of dealing with most cases of worker deaths. It makes a statement that this isn't just about compensation – it's about criminal justice. A form of justice that is denied to the majority of the workers in the country.

The security guard of the Malibagh-Moghbarz flyover who died last month when a girder fell on him definitely is not getting that from what it seems.

Yet the circumstances of his death all point to gross negligence on part of the authorities. A 36-metre-long girder weighing about 70 tonnes was being lifted when it fell, burying Mohammad Swapan under it. *The Daily Star* published several reports time and again on how the flyover is being constructed without consistently cordoning off space underneath it. When journalists visited the spot just a couple of days after Swapan's death, they saw business as usual. Under such circumstances, where there is a clear lack of will in implementing safety measures -- in ensuring the coast is clear when lifting girders -- should Swapan's death be considered an accident, or is it manslaughter caused by negligence?

The authorities are denying all responsibility, passing Swapan's death off as a 'mishap'. Sushanto Kumar Biswas, project director of Moghbarz-Malibagh Flyover, told *The Daily Star* on March 14, "An accident is an accident ... what else can I say?"

Bangladesh Legal Aid Services Trust (BLAST) is in the process of pursuing a compensation amounting to Tk 1 lakh for Swapan.

"What can we do - the compensation amount sanctioned by the law is absolutely negligible," says Mahbuba Akhter Jui, staff lawyer with the organisation who is filing the case.

Dr Sheikh Solaiman is an expert from University of Wollongong expert with a trail of publications in legal journals about possible remedies for worker deaths.

He was asked this question -- is the penalty afforded

by the Bangladesh Labour Act 2006 of an equal magnitude to that of manslaughter?

"Certainly not," he says, "Although a different view exists, there is little reason to dispute the proposition that higher punishment creates greater deterrence."

He goes on to say, "The punishment prescribed under the labour law and penal law of Bangladesh is unlikely to create any effective deterrence. Moreover, Bangladesh does have a serious lack of enforcement, which is even more frustrating for the community and encouraging for potential offenders."

The other thing that our laws do not specify is who to press charges against. The law for murder only provides a scope to indict people who knowingly created a dangerous situation that can potentially cause incidences of death.

But the chain of accountability often goes higher. For example, the Rana Plaza disaster was not just the site engineers' fault – what about the Bangladesh Garments

by a lack of precaution taken by the workers, then it is their responsibility.

What makes this problematic, however, is that surrounding this one circular is an abundance of documented complaints about abusive conditions – long work weeks with no days off and no overtime pay, low-grade hazardous equipment and inadequate workforce – all of which together makes the perfect setting for mistakes.

When exhausted, overworked workers die, is it their own responsibility, or that of the organisation? If it is the organisation's responsibility, should the victims (or their families) just receive compensation – or should it be considered corporate negligent manslaughter?

Without public acknowledgement of "duty of care," fighting for the justice is a long, hard battle.

One example is the case of Tazreen garments fire, according to Solaiman.



IMAGE: KAZI TAHSIN AGAZ APURBO

Manufacturers and Exporters Association, who created an environment of unsafe working spaces in the first place? Or the factory auditors sent by brands whose products were being manufactured in Rana Plaza?

That's where Solaiman brings in a legal term called "duty of care". The main premise of corporate negligent manslaughter is that the death happened as a result of someone failing to perform what Solaiman terms "duty of care". To explain, it means that authorities hold the ultimate responsibility in making sure the death is not caused by an oversight.

When the "duty of care" of the authorities is not acknowledged, it is hard to establish that there has been negligent conduct, he says. This makes it hard to prove corporate negligent manslaughter.

An example might help explain.

A circular was sent out by Brigadier General Moin Uddin, the chairman of the Palli Bidyutayon Board on February 6, 2013. It reads, "We have been noticing incidents of deaths and injuries as a result of linemen/working crew operating on electric lines without grounding and shutting them down according to work safety regulations. All casualties resulting from working on electric lines that have not been shut-down or grounded will be the responsibility of the lineman/work-crew himself."

Essentially, PBB is saying that if the death was caused

A case of 'criminal negligence culpable homicide' had been filed against the owner of Tazreen garments factory and its managing director. But as Solaiman's 2014 article in the legal journal *The Company Lawyer* states, "At Tazreen, the MD did not do any positive act that could be directly attributed to the fire except for the establishment of warehouse in the ground floor, all his conduct was simply an omission or failure to act [...]." Current legal frameworks do not take failure to act into account, says the article.

"Based on the above discussion, it can be concluded that, unlike their position in common law, neither Tazreen as a company, nor its MD, is likely to be held liable for culpable homicide, let alone for murder under the general criminal law currently in place in Bangladesh," adds Solaiman in his piece.

According to a statistic compiled by BLAST, at least 3,036 worker deaths were reported in the media between 2009 and 2013. While it may be such that the Rana Plaza disaster skewed that number, an estimation for an annual death rate can be gotten from their calculation of 2014 - between the months of January and October, 260 workers died due to accidents. The figures were calculated using media reports, and the media rarely covers cases of workplace injuries - meaning that the figures are deflated. When hundreds of lives are being lost each year, isn't it about the stopped just being numbers. ■