"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 ● dslawdesk@yahoo.co.uk

PARLIAMENT SCAN

11TH PARLIAMENT

Rays of hope for the committee system

M JASHIM ALI CHOWDHURY

THOMAS Brackett Reed, once the minority leader of the U.S. House of Representatives branded the parliamentary committees as "the eye, the hand and the brain" of the legislature. These committees are placed in a highly strategic position to ensure horizontal accountability of the executive and other branches of the government. Horizontal accountability system works within the structures of institutions that checks abuses from within. The House of parliament being a predominantly deliberative and political body, its committees constitute the administrative tentacles of the legislative oversight system.

Parliamentary committees in Bangladesh are formed under the Constitution and the Rules of Procedure (RoP). Standing committees are constituted permanently for the whole tenure of a parliament, while special and select committees are constituted on temporary and ad hoc basis. Standing Committees on particular Ministries (SMCs) are special types of committees that constitute a shadow government by parliament. Number of SMCs to be established in each parliament is determined by respective leadership (Rule 225, RoP).

Theoretically the SMCs have been vastly powerful. Apart from the power to examine draft bills and other legislative proposals - public or private - in relation to the ministry concerned, committees also have the authority to review and recommend necessary measure for due enforcement of laws passed by parliament. Committees have plenary power of subpoena, investigation and inquiry into the activities or administration of relevant ministry. They can enforce attendance of witnesses, examination on oath, production of documents (Article 76 (2) and (3), Constitution of Bangladesh).

Though the parliamentary committee system in Bangladesh has been consolidated to some extent since the 7th parliament, it grew asymmetrically vis-à-vis the executive and bureaucratic branch. Speaking in its broader terms, weaknesses of our committee system are threefold – structural, political and behavioural (Nizam Ahmed (2001), 'Parliamentary committees and parliamentary government in Bangladesh', *Contemporary South Asia*, 10:1, 11-36).

Committees have been structurally weakened by factors like ministers' presence in the committee as ex officio members, nominal logistic support for the committees, negative attitude of the bureaucracy and government's tendency to effectively by-pass the committee stage in legislative process. On a political level, party influence over committee agenda and hard lined party stances of the members on key issues hampers autonomous functioning of the committees. On a behavioural analysis, political clog over psychic independence of party members and inexperience of the members contributed substantially towards below-the-bench performance of the committees. Most importantly, until recently there was an apparent lack of political will in changing the status quo and allowing the committee system to stand on its foot. Three particular developments in the current parliament however give us some hope.

First, prior to the 7th parliament (1996), parliamentary committees took years to be constituted in the first place. The 7th parliament amended the RoP to make sure that committees are constituted within the first session of each parliament. The current 11th parliament has created a record of fastest possible formation of all the standing committees only within the first 10 sittings of its very first session.

Second, a revision of RoP in June 1997 also made sure that ministers do not chair the parliamentary committee on his/her ministry. This was an extremely welcome development in terms of effectiveness of the committee system. Ministers now remain in the committee concerned as *ex officio* members. It has been argued that even this presence of a minister is bound to have an impact on the way the SCMs set their agenda,

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deliberate and decide. Ministers being the influential front bench leaders of the ruling party, chairmen of the SCMs were unlikely to be too assertive to embarrass the minister present. Therefore, it has long been argued that ministers go to committee only when they are called therein.

Seen in that light, the newly constituted committees in the 11th parliament (2019) constitute a milestone development no doubt. This time, almost all of the former ministers who are the front bench leaders of the ruling party and obviously more influential than the ministers concerned are allocated chair in various committees. The committees would definitely be benefitted by their expertise over the ministry as well as from the political superiority of the Chair over the minister. It has yet another crucial thing to offer and that is big. It would be a very wise practice to be followed by later parliaments and thereby establish a parliamentary convention of assigning senior leaders with expertise to the committee chairs. Such a convention if so established would go miles in institutionalising our parliamentary committee system.

Third, membership and chair in the committees are usually distributed among parliamentary parties in proportion to their representation in the floor. Until recently, the ruling parties exclusively claimed chairmanship of the different committees. The 9th parliament (2009) allocated some committee chairmanship to the opposition party. Though there were repeated calls for appointing the Chair of Public Accounts, Public Undertaking and Estimate Committee from the opposition parties, it has not been paid heed to until the current parliament (2019). A lawmaker from the main opposition Jatiya Party, Mr Rustam Ali Farazi is made Chair of the Public Accounts Committee (PAC), for the first time in the country's history.

With these three structural developments in the committee system, fundamental challenge for the current system would be in opening up more towards the citizens' access to committee proceedings. Transparent and open door committees are more likely to overcome the two other political and behavioural constraints clogging the system. The process will no doubt be slow yet these three developments provide the scope we were looking for so long.

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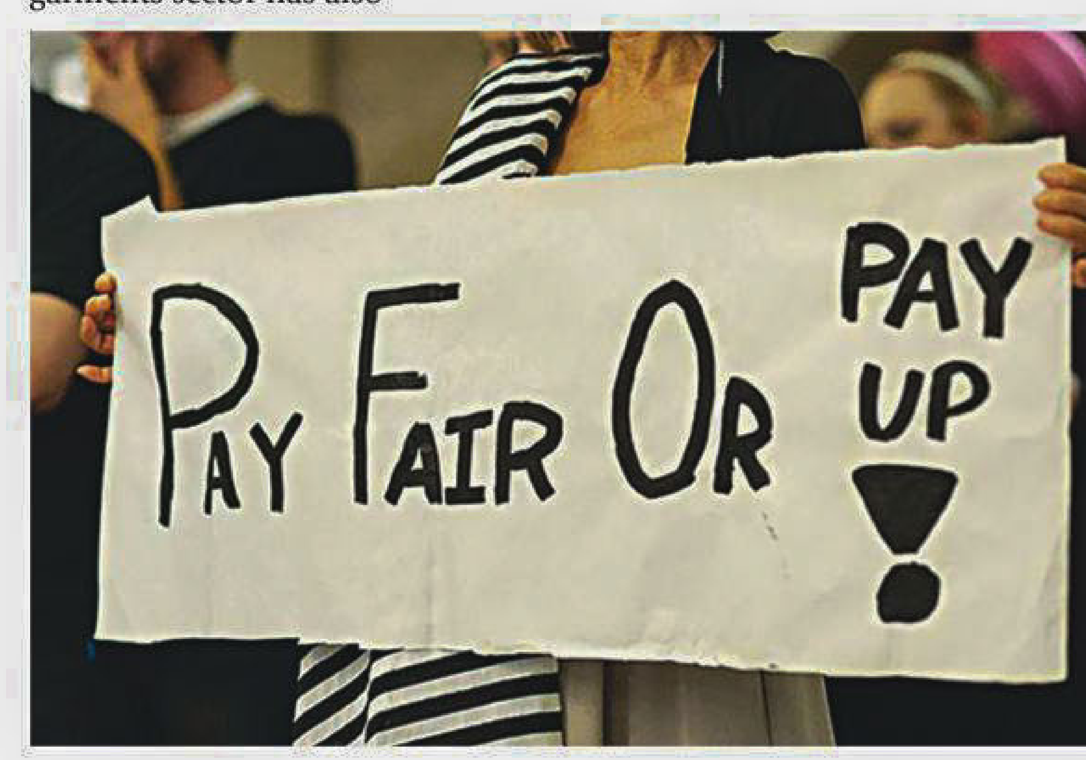
RIGHTS CORNER

Low wages affect basic amenities of workers

THE economy of Bangladesh is booming due to massive profits the RMG industry is making in Bangladesh. According to the latest figures from the Export Promotion Bureau (EPB), the RMG sector contributed USD 30.61 billion, or 83.49 percent, to Bangladesh's total exports of USD 36.66 billion, during the last fiscal year of 2017-18. And during July-November of the current fiscal year 2018-19, the growth stood at 20 percent (*The Daily Star*, 31 December 2018). The ready-made garments sector has also



contributed to fix the unemployment problem. According to a survey titled "Ongoing Upgradation in RMG Enterprise: Preliminary Results from a Survey" conducted by the Centre for Policy Dialogue (CPD), there are 3,596 active RMG factories in Bangladesh with 3.5 million workers, of which 60.8% are female and 39.2% are male (*Dhaka Tribune*, 3 March 2018). Despite this positive development, it is frustrating to note that the booming economy is based on entrenched exploitation and the widespread payment of poor wages.

Oxfam, together with the Bangladesh Institute for Labour Studies and the Institute for Workers and Trade Unions in Vietnam, has interviewed more than 470 workers across Bangladesh and Vietnam for this study. All of them were part of Australian clothing supply chains at the time of interview, employed in garment factories that supply at least one iconic Australian clothing brand. This report has recently come out with the title 'Made in Poverty: The true price of fashion'.

The investigation also included more than 130 interviews with factory owners, managers, union leaders and focus groups to present a clear picture of the way the fashion industry works in Australian garment supply chains. The result is the first full picture of the lives of the people who work to bring fashion to Australian shelves, from Bangladesh and Vietnam.

From amongst the interviewed workers, the report found some frustrating evidence. They are paid well below a living wage and they also struggle to feed themselves and their families. In consequence they cannot afford their healthcare needs or education of their children. Workers told stories of having to leave school early or getting their children out of school in order to send them to work in the garment sector to bring in more money. This investigation reveals that the problems created by poverty wages in the garment industry are not isolated incidents. They cannot be fixed by action in just one factory or by addressing the hardships of just one worker. Only a strong system-wide commitment from Australian brands with the power to change their practices will turn this around.

Among the many disturbing results, the research has revealed that nine out of ten workers interviewed in Bangladesh cannot afford enough food for themselves and their families, forcing them to regularly skip meals and eat inadequately, or go into debt. 72% of workers interviewed in Bangladesh factories supplying to major brands in Australia cannot afford medical treatment when they get sick or injured. 76% of workers interviewed in Bangladesh factories supplying to major brands in Australia have no running water inside their home. In Bangladesh, one in three workers interviewed are separated from their children, with nearly 80% of those cases due to a lack of adequate income.

For the first time, this report looks comprehensively at the lives of the women and men who make clothes bound for the Australian market in Bangladesh.

COMPILED BY LAW DESK.

LAW VISION

Shifting the paradigm of loan defaulter's liability

At present, there are many instances of involving forgery on documents of banks and using this forgery, those so-called big borrowers take large amount of money from bank.

SHAIKH MD MUJAHID UL ISLAM

THIS is a crucial time in Bangladesh to find out the ways to reduce the default loan in the banking system, in a scenario where the amount of default loan is above 99 thousand crore taka only in 2018. All the stakeholders including the new Government of Bangladesh are searching ways to reduce this default loan. In this writing, I am trying to find out the way of reducing default loans through shifting the paradigm of liability of the defaulter from civil to criminal liability.

Legally and ideologically, the loan defaulter of bank carries civil liability and when he defaults to repay the loan amount, it is his civil liability to pay the money. Even if the defaulter fails to pay the loan amount, the Court may sanction civil imprisonment of 6 months. The Money Loan Court Act 2003 is designed in such a way that the liability of any kind of loan defaulter is civil liability. For example, if any one defaults to pay loan of one lac taka, he carries the civil liability and the recovery process carries two stages. Firstly the Court will try to recover the default amount by selling the mortgaged property or attached property through the said process of auction under section 33 of Money Loan Court Act, 2003 and after the process, if the default loan is not recovered, the Money Loan Court may sentence the defaulter of 6 month civil imprisonment. On the other hand, the liability of the million-dollar defaulter is also civil liability and the recovery process is same as the defaulter of one lac take.

For example, when one borrower defaults to pay loan, in accordance with Money Loan Court Act, 2003, the Court will first try to sell the mortgaged property or attached property to adjust the loan following the process as mentioned in section 33 of the Act. After that, if the loan is not recovered, the Court may sentence him 6-month

civil imprisonment, even though the amount of the default loan is million dollars. From the axis of this legal point, certain phenomenon should be focused. Firstly, both the liability of one lac and the liability of one million dollar is civil liability. Secondly, the recovery process of these two cases is same under Money Loan Court Act, 2003. Thirdly, in both the case of default, the Court may sanction 6-month civil imprisonment. So, from this paradigm, no one can repudiate this disproportionate scenario of both defaulters, whatever may be the default amount. Under this Act, innocent defaulter of minimum amount and willful defaulter of million dollar will have to go through the same threshold test and recovery process, which ultimately inspires those money ransackers to steal money from the bank.

To my thinking, it would be rational to fix up the liability based on the proportionality and classify the borrowers (based on default loan amount, their intention and activities). Moreover, to date, the present instances of forgery over bank, also instigates me to argue for shifting the paradigm of liability. At present, there are many instances of involving forgery on documents of banks and using this forgery, those so-called big borrowers take large amount of money from bank. For example, in hallmark case, through collaboration with bank officials, forging the documents, Hallmark in the name of L/C transaction between two fictitious company robbed above thousand crore taka. Now, there are many cases filed before the Money Loan Court for recovery of that amount.

Moreover, there are also many instances at present, where some so called willful defaulters forge those L/C acceptances and present in another bank and accordingly disburse huge amount of money in the name of business transaction. To date, in Bangladesh some scams like Crescent scam over Janata Bank, Bismillah Group scam open our eyes towards their criminal liability. It is true that for such criminal activities, some criminal cases are filed before the criminal courts in Bangladesh. But when for the recovery of the default loan, Bank files suit in Money Loan Court, the liability becomes totally civil liability and the recovery process is as I mentioned earlier, whose highest punitive action is 6-month civil imprisonment under section 34 of Money Loan Court Act, 2003.

The newly formed government in Bangladesh shows its commitment to recover almost 99 lac crore default amount. Now if we allow the liability of these money robbers as civil liability in Money Loan Court, the recovery of money becomes really difficult for the bank. But, if we repudiate criminal liability of those big fishes, recover of willful defaulters will never be smooth and ultimately this disproportionate legal treatment can not change the scenario of default culture. So, if we really want to address their liability, the paradigm of liability of willful defaulter from civil to criminal liability should be changed so that those million dollar willful defaulter can be addressed under legal diagram of Money Loan Court.

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