

REVIEWING THE VIEWS

# Parliamentary Reform: MAKING SENSE OF OUR SUCCESSES AND FAILURES

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**T**HE Parliament of Bangladesh has been subject to a lot of historical, institutional and doctrinal analysis over the years. Authors invariably ended up suggesting varieties of reforms in the form of a to-do checklist on an immediate, short-term and long-term basis. Actual reforms undertaken so far also remain piecemeal, short-sighted, popularity tilted, theoretically flawed and procedurally misguided. This write up proposes that meaningful reform in future would require a sound doctrinal approach suitable to a Westminster style parliament. In this regard, therational choice and historical institutional approaches might prove better than our traditional evolutionary and revolutionary understanding of parliamentary reform. By taking a historical institutional approach, we travel beyond changes by mere chance and accident. We rather investigate why, when and how reforms are proposed, rejected or made.

Evolutionary account of political reform focuses on culturally influenced changes emerging gradually over a long stretch of time. While evolutionary and historical accounts may serve as a descriptive narration of events in a chronological fashion, it does not serve the explanatory and justificatory aspects of reform. Evolutionary theories thereby fail to explain why institutions are created

as quickly as possible. Unless bound by exceptional amount of will force, the revolutionary regimes are more interested in achieving the stability at the quickest. Changes brought are mostly crispy, populist, minimal and facial. Secondly, revolutionary attempts have not always resulted in liberal democratic reforms. Emergence of even more repressive regimes is not quite uncommon.

Given the inadequacy of evolutionary and revolutionary approaches, Professor Roger D. Congleton's Constitutional Bargain Model might offer an incentive driven intermediate form of reforms. Incentive driven explanation of reform reflects a sort of rational choice institutionalism that attempts a trade-off between proposed reform and the price that needs be paid for that. Is the proposed reform profitable for both the reformers (who gain something) and incumbent power holders (who lose something)? Congleton argues that reforms will be bargained over and (occasionally) adopted only when the existing beneficiaries see that their immediate interest remains guarded, though the institution changes.

Historical institutional approach would acknowledge the role of the political context affecting the proposed reform and explain why and how institutional norms and values impact on reform in the way they do. Institutions have structures and procedures side by side with well-defined values, norms, interests, identities and beliefs. Like the constitutional bargain model, the institutional accounts of reforms recognise path dependence of reform initiatives. Acknowledging 'path dependency' of reform would help us understand why some attempts fail and others succeed. Reforms would be successful when the path is ready to be altered, under a surmountable amount of political pressure for change.

Therefore, a reform advocate would need to ask and answer three questions - Why reform? Why now? And why some of the reform proposals fail while others succeed? In that sense, reforms will be possible only when the following three conditions are fulfilled: First, there must be a window of opportunity for the reform to occur e.g., beginning of parliament or fortuitous circumstances brewing the climate for reform. Second, there must be coherent reform agenda to provide a package behind which the members of parliament may unite. Third, there must be leadership (political will) behind to take the reform package through the parliament.

Within a Westminster parliamentary set up for example, parliamentary process is being drained into executive dominance. Ministerial responsibility convention is utilised to undermine the accountability and scrutiny of government instead. Partisanship operates to whip and discipline individual MPs. In presence of these institutional norms and values to the advantage of the government and party elites, it appears difficult that there will be enough "political will" to change the status quo. Question therefore is - how could we be hopeful of change in terms of enhancement of parliamentary authority in Bangladesh?

A cursory look over the history of reform initiatives in Bangladesh would reveal that in case of original revolutionary authority of 1972, conditions of favourable climate, coherent package and concrete political will were satisfied and hence the reform was swift and decisive. As indicated in Big Bang theories above, the 'revolutionary' changes attempted by military regimes of 70s and 80s ended in enhancing the executive's authority instead. Climate of change might have been there, but not the coherent agenda or political good will towards the right direction. In case of the revolutionary impulse of early 1990s, climate of change and coherent agenda were there but not the sincerest of political wills to materialise the dream for a meaningful parliamentary system. Since then there have been several donor-led studies into the parliamentary process of Bangladesh. The most robust one was the Strengthening Parliamentary Democracy Project (SPD) funded by UNDP, World Bank etc. Starting in 1997, the project aimed at encouraging changes in the Rules of Procedure and capacity building for the committees and individual members. The project unfortunately ended in such a disarray that UNDP had to discontinue the funding in 2007. In this case we didn't see the climate, agenda or political will necessary for meaningful reform.

As for the present, our long struggle with successive parliaments suggests that we already know what type of reforms we need. With the installation of a new parliament recently, the window of opportunity is also there. Only thing the advocacy and citizens' groups now need to do is inducing some willingness in the political force in power. Now the only question boiled to be answered is - Who is to bell the cat?

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RIGHTS ADVOCACY

# Protecting the workers of informal sector

SAKHAWAT SAJJAT SEJAN

International Labor Organization has demonstrated in its recent report that there are 2 billion workers across the world working in the informal economy. This constitutes 61 percent of the world's employed population. These workers mostly work in developing countries and do not have any social protection, decent working condition and different rights at work. Men (63%) and women (58.5%) almost equally contribute to the informal economy. ILO has passed a recommendation named "Transition from the Informal Economy to Formal Economy Recommendation 2015 (No. 204)" to tackle the informal economy and transition it to formal economy. ILO Director General Guy Ryder urged the different party states to enact laws and regulations protecting the informal laborers. Bangladesh is a party state to the Recommendation-2015. According to Bangladesh Labor Force Survey, it has about 90 percent

informal sector, the rest constitutes of cleaners, waiters, rickshaw pullers etc. in Bangladesh. None of them get pension-cum-insurance, sick leave or bonus. They work under 'no work, no pay' policy.

Article 34(1) of the Constitution of Bangladesh prohibits 'forced labor' irrespective of formal and informal sectors. Also, Article 14 enumerates that, the state shall have the fundamental responsibility to protect the peasants, toiling masses and workers from any exploitation in the work places. And article 15 further propagates the fundamental responsibility of providing the



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Informal Workers that include farmer, unpaid domestic workers, hired labourers, self-employed persons and piece-rate workers etc. Bangladesh Labour Welfare Foundation says, the estimated ratio of formal and informal workers is 20:80. Also, the informal workers contribute approximately 45 percent of country's GDP. Yet unfortunately, the 'informal workers' are not recognised under 'The Labour Act-2006'. As a result, these workers remain unregulated, and unprotected. Labor and Employment Ministry introduced a small scheme of savings for such workers, but it was not implemented due to lack of policy.

Most informal workers usually work under contractors or sub-contractors without any appointment letter and on a daily wage basis. The working conditions do not comply with the occupational safety and health standards. If any of the workers die during the job, their families do not receive proper compensation. They have to work for 54 hours at average in a week, an ILO survey report says. The farmers constitute 47% of the

workers with basic necessities of life, right to guaranteed employment, quality working conditions with rest/recreation and reasonable wage irrespective of any sector. Article 20 directs the State to fulfill the demand of equitable wage according to the workers' abilities and skills. In spite of these Constitutional provisions, Bangladesh has failed to define, recognise and protect the workers of the informal sector. Since they occupy such a crucial portion of the country's workforce, they deserve recognition and protection under the Labor Act-2006.

Hence, the incumbent government may address the situation by making necessary amendments in the existing Labour Act-2006. Alongside the Labour Act, the saving scheme of Labour and Employment Ministry must also be enforced and properly regulated. The 'Sixth Five Year Plan (SFYP)-(2011-2015)' may be re-transplanted into SFYP-(2019-2024) with a view to transforming informal jobs to higher productivity jobs. Under this plan, the informal workers may be registered with a specific identity number regulated by Labour and Employment Ministry. A feasible wage structure may be settled by the government like other formal sectors. Pension-cum-insurance for old age and sickness may be integrated in the saving scheme. A union of informal workers may also be formed to communicate them more easily for facilitating planned economic growth while ensuring income and job securities.

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in the first place, why those are maintained and why changes are resisted or even adopted nominally or significantly by the individuals and groups.

Big Bang or Revolutionary approaches on the other hand see institutions emerging suddenly, either by armed revolution or by specially called constitutional conventions or assemblies or by mix of the two. Speaking from a Westminster perspective, revolutionary approaches to reform appear defective for two reasons. Firstly, the revolutionary body or leadership reflects the "general will" of the people at the time of crisis who seeks to stabilise the situation

LAW ANALYSIS

# Legal framework for workplace safety

TAHSEEN LUBABA

**W**ORKPLACE health and safety conditions in Bangladesh has seen steady improvements since the disastrous Rana Plaza incident which claimed 1,136 lives six years ago. According to the 2018 report of Bangladesh Occupational Safety, Health, and Environment Foundation (OSHE), the number of work-related deaths and injuries were 898 and 341 respectively. While this is still a substantial number, it is definitely lower than that of the preceding two years. Experts have consistently pointed to the lack of implementation of labour laws as the reason behind the persisting cases of work-related deaths and injuries.

The Bangladesh Labour Act (BLA) was

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promulgated in 2006, consolidating over 25 pre-existing laws on various labour-related issues. BLA contains multiple chapters dedicated to the issue of occupational safety, health and hygiene.

Chapter V of the Act has laid out the hygiene measures to be undertaken in establishments with painstaking details, ranging from the manner in which the interiors must be cleaned to the water that should be used in case of artificial humidification. Many health concerns including inhalation of harmful particles, ventilation, temperature, adequate toilet facilities and proper lighting are addressed within this Chapter. On the other hand, Chapter VI of the Act addresses safety



concerns such as fire, machineries and other hazardous work conditions.

Section 61 gives the Inspector discretion to determine whether the fire safety and precautions of an establishment is satisfactory and act accordingly, through a written order to the employer to either take necessary measures or to halt the use of such establishment. As per the Labour Rules 2015, inspection must be made before the granting or renewal of license.

BLA places a great amount of reliance on the Inspector's judgment in determining most of the safety concerns in the workplace. For such reliance to be effective, significant professional and technical expertise of inspectors must be ensured and sufficient number of such persons must be employed. Furthermore, the rules should be clearer on when and how inspections are to be conducted, since all the necessary responsibilities cannot be ensured by simply inspecting an establishment at the time of granting or renewing a license.

However, one impressive aspect of the Act is that it allows workers to communicate their safety concerns to the employer under Section 86. The employer shall be liable to compensation if they fail to address such concerns and a worker is injured as a result.

Unfortunately, this creates a punitive rather than a preventive approach and thus, curbs its effectiveness.

Furthermore, it could be construed that BLA 2006 addresses the concerns regarding sexual harassment in Section 332. But the wording of the Section istoo vague and the provision does not mention any consequence for its violation. Another inadequacy of the Act is its provisions regarding compensation for work-related death or injury. According to the Act, the maximum amount that can be paid in cases of death and permanent disability are 1 lac and 1.25 lac respectively. Alternative remedies exist in the Fatal Accidents Act 1855, but the process under the BLA is speedier and therefore, preferable

Therefore, it is apparent from a reading of the Labour Act 2006 that while many of its safety provisions are very ambitious, there are many clear deficiencies. Lack of implementation, dearth of skilled inspectors and delays in Labour Courts altogether mean that occupational health and safety remains as one of the significant concerns for the workforce in Bangladesh. The Government must address them in order to sustain the economic growth it prides itself on.

THE WRITER WORKS WITH LAW DESK, THE DAILY STAR.



LAW NEWS

# Book launching ceremony held at BILIA

**B**ANGLADESH Institute of Law and International Affairs (BILIA) organised the launching of "Case Management in Reducing Case Backlog: Towards Transplant of Australian Practice to Bangladesh Courts" written by Ms. Ummey Sharaban Tahura, Joint District & Session Judge. Ms. Tahura is a PhD candidate at Macquarie University, Australia. The ceremony took place on Saturday, April 20, 2019 at BILIA Auditorium in Dhanmondi.

The ceremony was chaired by Mr. M.K. Rahman, Senior Advocate, Supreme Court of Bangladesh. Dr. S. M. Masum Billah, Associate Professor, Department of Law, Jagannath University and Dr. AKM Emdadul Haque, Chief Judicial Magistrate, Dhaka were the designated discussants at the event.

Dr. Shahdeen Malik, Advocate of the Supreme Court of Bangladesh and Honorary Director of BILIA in his commencing speech stated that case backlog is a long standing problem which almost every country of this globe has been through and/or still struggling with. In the United States of America, only 11, 00, 000 asylum cases are pending; Dr. Malik added. He further expressed that the case backlog problem of Bangladesh is decreasing and can be resolved fully with adoption of strategies which were helpful in resolving

the same in other countries. In her book, Ms. Tahura compared the court system of Bangladesh with that of New South Wales (NSW) Australia concerning the courts' structure, procedures to appoint judges, jurisdiction of the specific court, the separation of the judiciary from the executive, and other institutions relating to the court system in her book. The book aims to show how case management can reduce case backlogs from the civil trial courts of Bangladesh by finding the practical causes through empirical research following grounded theory.

The distinguished guests shared their experiences and observations on the case backlog problem as well as on the book at the event. The notable guests included Dr. Zafrullah Chowdhury, a Bangladeshi public health activist, and Judge Mofizur Rahman Bhuiyan of Sylhet Metropolitan Sessions Judge's Court. Dr. Chowdhury spoke from the point of view of a victim of this legal system where case backlog is a serious matter of concern. Judge Mofizur Rahman Bhuiyan said that the number of judges should be increased, and everyone should change our mindset and put their best effort to resolve this problem.

THE EVENT WAS COVERED BY RESEARCH TEAM (LAW), BILIA.