

INTERNATIONAL WORKERS' DAY

Why is a worker's life only worth Tk 2 lakh in our labour law?



TAQBIR HUDA

JUSTICE IN PRACTICE
ON Labour Day, I am reminded of 22-year-old Jewel Hossain, who in January this year, was conducting his evening shift at a polythene factory when the machine malfunctioned and the blade ripped through him and gouged one of his eyeballs out. A co-worker rushed to pull him out from the machine's grip and got injured in the process too. Jewel was rushed to a nearby hospital by his co-workers but was pronounced dead on arrival. Preliminary inquiries revealed that the factory was operating illegally "without the attention of the administration" (News Bangla 24).

In an ideal world, a 22-year-old would have been in university. But in an unequal world like ours, this 22-year-old was compelled to work in an illegally established polythene factory, teeming with dangerous machinery without being granted any basic safety equipment. Jewel's death did not make headline news—or any news for that matter. His death was only reported in one D-grade news website, based in his locality. Boys like Jewel are not worth our concern, and news of his gruesome yet wholly preventable death is not worth a pixel on our screen. His cheap and disposable life served its purpose in oiling the rear-engines of divine economic growth. I am sure Jewel's boss was able to replace him with another 22-year-old sooner than the soil above Jewel's body was able to set in. Even if Jewel's family sought justice under our labour law, the value prescribed to his life would only be Tk 2 lakh.

In 2006, Bangladesh Labour Act (BLA), our central labour legislation, was introduced to "consolidate" laws relating to workers in certain "industrial establishments". It repealed 25 older laws, all but two of which were passed before 1971. The main objective of introducing

the BLA was to guarantee certain minimum rights for industrial workers, including the right to seek compensation for occupational injuries i.e. the amount of money an employer is liable to pay when a worker dies or is injured in the course of their work. The BLA initially fixed this amount to Tk 1,00,000 for death and Tk 1,25,000 for permanent total disablement. So rather than introducing a minimum amount of compensation that has to be paid to worker or their dependents in case of an occupational injury or death, the BLA set paltry sums as the maximum amounts. Did this introduction favour the workers the BLA set out to protect or the industrial employers it sets out to hold accountable?

Workers' rights activists have long demanded that compensation provisions should ensure that workers or their dependents are paid a fair amount of compensation that accurately takes into account the full extent of their financial and non-financial losses. After the Tazreen Fashion Fire in 2012, and the Rana Plaza Collapse in 2013, the compensation provisions in BLA came under widespread scrutiny. Yet in 2018, when the BLA was amended, our lawmakers simply doubled the amount payable for a worker's death under BLA from one Tk 1 lakh to Tk 2 lakh, without removing such an unjust limit in the first place. The sheer inadequacy and injustice of the existing Tk 2 lakh limit under the BLA will become even clearer through a simple arithmetic calculation. Take for instance the case of Jewel. If we assume he had a monthly income of Tk 10,000, his annual income would therefore be Tk 1,20,000. After his untimely death, due to the failure of his employer to repair a faulty machinery, the total loss of income faced by his dependents (such as parents and younger siblings) would equal to Tk 1,20,000 (his annual income) multiplied by 38 (which is the number of working years he had left until the age of retirement, which is 60 under BLA). Therefore, the total loss of income alone would amount to Tk 45.6 lakh (without



Workers pull a long rope at a ship-breaking yard in Chittagong, Bangladesh July 17, 2013.

PHOTO: REUTERS

even adjusting his income for possible increase). Yet under the BLA, he would only be entitled to Tk 2.5 lakh, which is only around five percent of his total loss of income.

Yet even after having such a limited extent of liability, from my analysis of Bangladesh Legal Aid and Services Trust's records on Labour Court cases from the past 12 years I discovered that industrial employers still refuse to pay even this minimum amount of compensation. Take for example the case of Md Rubel, a 15-year-old worker who was employed in the Three Star Fan Factory situated in Mirhajirbagh, Jatabari, Dhaka. A 15-year-old child who should have been in school was instead compelled to work in a factory, making fans. On April 25, 2007, a sudden fire originated from an electric short circuit where the victim along with other workers got seriously injured. He was then taken to Dhaka Medical College Hospital but ultimately died on April 29, 2007. A news report regarding the accident

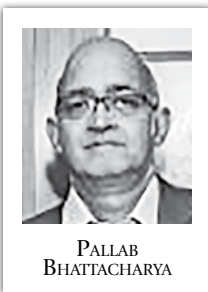
was published in *TheDaily Star* on May 1, 2007. Through that news report, the incident came to the attention of Occupational Safety, Health and Environment Foundation (OSHE), which conducted an investigation and found grounds for seeking compensation. It then sent letters to the employer company twice, first on July 22, 2008 and then on August 27, 2008, reminding them of their legal obligation to pay Tk 1 lakh compensation (as it then was) to Rubel's mother. The employer refused to respond. After failing to get a response out of the employer, OSHE referred the case to BLAST and a case was filed against the employer seeking compensation in a Dhaka Labour Court (BLA Compensation Case No. 231/2008, Second Labour Court Dhaka). During the trial, the employer did not even bother to submit a written statement to contest the case, while Rubel's mother told the court that all the employer company had paid was Tk 10,000 as compensation to her. After two long years,

the Second Labour Court Dhaka pronounced judgment on January 12, 2011 and ruled that the remaining compensation of Tk 90,000 ought to be paid to Rubel's mother within 30 days. A legal notice was forwarded to the employer company on January 25, 2011 for the payment of the compensation, however, the employer company, like all proceedings so far, simply ignored the notice. Thereafter, BLAST initiated a criminal case invoking criminal responsibility of the employer company for non-compliance with a court order under section 293 of BLA. In the meantime, with the passing of each day, Rubel's parents lost hope in ever being able to recover compensation from a court system which the employer can so easily flout. Nevertheless, the criminal case forced the employer to pay attention to the legal action, and they tactfully made an offer to Rubel's parents to settle out of court for Tk 60,000—they could accept this now or the company could continue prolonging the legal battle and keep them penniless. Rubel's parents perhaps realised it is better to receive this smaller sum of money with certainty, rather than continuing with a seemingly endless court battle with no certain outcome. Therefore, they accepted the offer, despite the reassurances and advice of their lawyer, and withdrew the legal action against the employer.

Rubel's case highlights the unjust reality of the justice system under our labour law. What was meant to be a milestone in upholding workers' rights has in practice amounted to an inefficient system that is subject to the whims of the industrial employer who can refuse to pay even the small sum of money the law obligates them to pay for a worker's death. The question is, why should our labour law attach so little value to a worker's life in the first place and why can industrial employers escape even this limited liability with such great ease?

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India caught off guard by Covid's second surge



PALLAB BHATTACHARYA

IN a televised address to the nation on April 25, Prime Minister Narendra Modi termed the gigantic second wave of the coronavirus in India as a "toofan." Five days later, in his monthly radio broadcast "Mann ki Baat," he said the second wave has "shaken" the country. Modi was stating the obvious. It was just four months ago that his government had declared that the first wave of the virus had been controlled. Time is of little relevance for a deadly and dicey virus which keeps mutating every now and then.

It is indeed a national health emergency for India now. India added over three lakh fresh Covid cases everyday between April 24-29 with each day setting a new world record of fresh infections and death count. The number of active Covid cases went past the three million mark for the first time, the second highest after 6.8 million active cases in the US. What has remained unchanged from the first wave is that Maharashtra, Delhi and Kerala are in the front in the second wave too. Some states which had gone by largely unscathed in the first wave are among the 12 high-burden states in the second—Uttar Pradesh, Madhya Pradesh, Tamil Nadu, Karnataka, Kerala, Rajasthan and Gujarat. Kerala, a tiny state once touted as a model of fighting the pandemic, is today in a pitiable situation, staring at the prospect of re-imposition of lockdown. In 24 hours between April 28-29, Kerala reported 38,607 fresh infections, an extremely worrying sign for a small state where the cumulative death count stands at 5,259. Kerala did manage to contain the situation till October last year before Onam, the state's biggest religious festival, saw people there throwing Covid protocols to the wind. The state has never recovered from that. Added to it was the extensive electioneering for Kerala assembly elections in April this year.

What has changed from the first wave is that the pandemic was at that time confined to Indian cities. But in the second wave, as Modi said, it has spread to Tier 2 and 3 cities. Such is the unprecedented severity of the latest round of infections. As if this is not enough, mathematical projection of the progress of the virus in the country paints a more terrible picture—that India may log four to five lakh cases daily by first week of May.

What triggered such a mammoth second wave that threatens to bring India's public health system to its knees? Where did India go wrong? Did India show foresight and prepare enough for the second wave. Did Indian scientists in the government alert about the coming catastrophe to be triggered by changing mutants of the virus which are much more deadly and faster-spreading? Did none in the federal and the state government see the second wave coming when it began raising its head in the middle of February and became more

pronounced in the middle of March? Has the Indian government faltered with its vaccine policy which saw the country exporting million doses of Covishield and Covaxin in the belief that no one is safe until everyone is safe? From chest-thumping of India being the "pharmacy of the world" supplying 66 million doses of vaccines to 80 countries, India is now struggling to meet its domestic needs following a substantial expansion of the ambit of the vaccination campaign. There is apprehension that the huge surge in cases in the second wave could slow down vaccination by discouraging people from going to hospitals to get the jabs.

Agreeing that even the best of public health infrastructure in the world has been mauled by Covid due to the unpredictability of the virus, there are reasons to veer round to the inescapable conclusion that India failed to foresee the second coming of the pandemic in such

in September-November period.

The second wave has caught India on the wrong foot and off guard and laid bare the huge gaps in its public health system which has remained neglected over decades. Hospitals in major cities like Delhi, Mumbai, Bengaluru, Jalandhar and Indore sending repeated SOS for oxygen supply replenishment in the face of hugely rising patients in the second wave. Some leading private hospitals in Delhi even knocked the doors of the High Court to get oxygen on urgent basis when in normal course they should have coordinated with the federal or the state government. The strictures from the High Courts of Calcutta, Bombay, Allahabad, Gujarat and Delhi left both the federal and state governments red faced about the shortcomings in public health system.

Under the Indian constitution, health is an issue that comes under the jurisdiction of state governments. Indian government

60 percent of swab samples tested found the presence of the Indian variant of SARS Cov-2 known as B.1617.

India slid into complacency after the first wave was brought under control. An example of this is, as per a report in *The Indian Express* on April 20, the Indian-origin double mutant strain of the coronavirus, B.1167 that many experts say could be behind the rapid spread of the second wave was first detected on October 5 last year through genome sequencing of a virus sample. However, "the genome sequencing exercise slowed down between November and January due to lack of funds, absence of clear directives, and, possibly, also disinterest because of the steadily falling Covid curve." A question on this went unanswered by Health Ministry officials who maintained this was not the time to revisit the past.

Compounding the woes was the long queues for Covid tests and long delay in getting test reports leading many asymptomatic people to move around freely and spreading the infection. Also, marking and monitoring of containment zones in high caseload areas in major cities has been sloth in the second wave.

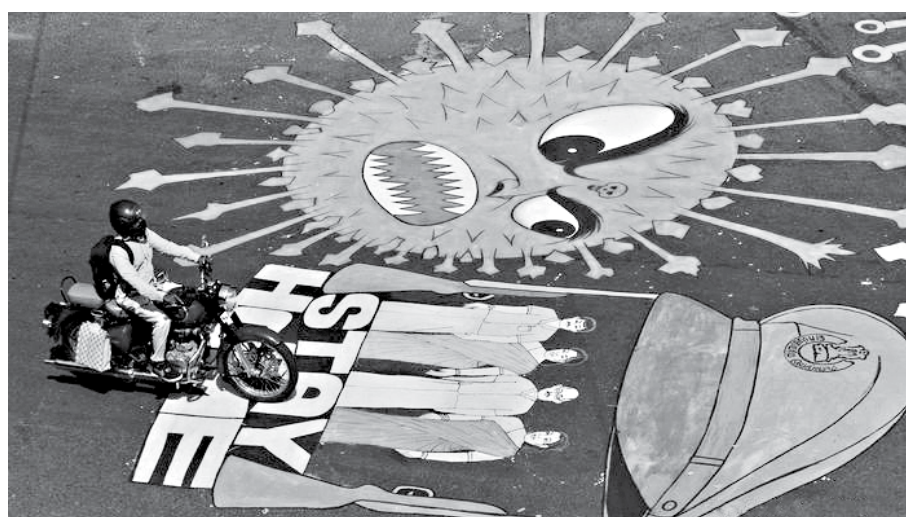
As late as April 20, Indian Health Minister Harsh Vardhan pointed to the detailed measures taken to scale up the health infrastructure to fight the virus. "In the shortest possible time, we ramped up testing from one lab to 2,467 labs today with a capacity of more than 15 lakh tests per day, set up hospital infrastructure including Covid care Centres, Covid hospitals with oxygen beds and ventilator bed. More than 12,000 quarantine centres were established. We also overcame the need for PPE kits and N95 masks. This helped to tide over the pandemic last year." It is one thing to talk about achievements after one wave and then get buffeted by a much stronger second which threw up totally different needs on multiple logistical fronts including medical oxygen and hospital beds.

What is more disconcerting is that the second wave has also had the effect of further hardening political divides and mutual recrimination in the Indian society. If the opposition has been toxic while pointing out where the Modi government went wrong, the ruling party too reacted harshly to former PM Manmohan Singh's suggestions to improve India's vaccine and oxygen policies.

How does India go about tackling the second wave? The Indian government has been galvanised into action ramping up domestic production of oxygen and diverting the same from industrial use and liberalising import of oxygen generators and foreign-made vaccines.

This is a moment of reckoning for the Indian political classes which must put mud-slinging and recriminations on the backburner. It is easy to be wiser by hindsight but it should not be difficult to have foresight. What is of utmost importance is that all put their heads together to tackle the crisis at hand.

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A motorist rides past a graffiti painted on a road to raise awareness about COVID-19 in India.

PHOTO: AFP

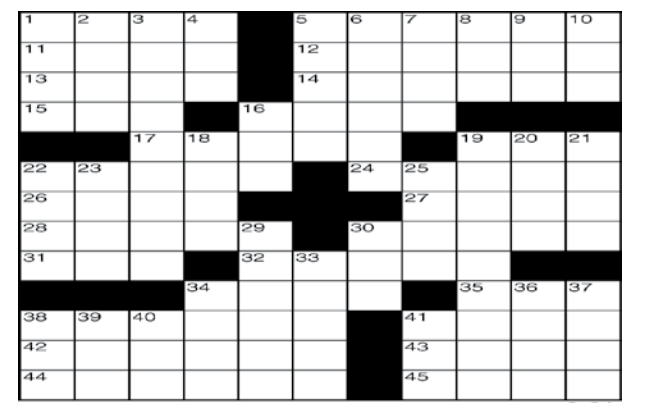
a ferocious manner and push forward with efforts to further tone up the health infrastructure. At the same time, one may not entirely disagree with what K Vijayaraghavan, Principal Scientific Adviser to the Indian government, told *The Indian Express*: "there were major efforts by central and state governments in ramping up the hospital and health infrastructure during the first wave... But as that wave declined, so perhaps did the sense of urgency to get this completed." At the same time, one may not entirely disagree with Vijayaraghavan's remark that in one year, "it would not have been possible to upgrade the (health) infrastructure to a level adequate enough to meet the unprecedented requirements of the second wave."

India, federal and state governments included, could have prepared better for the second wave especially by ensuring adequate and timely delivery of oxygen which turned out to be so critical an element in treating the much higher number of serious patients. Official statistics show that in the second wave, 54.5 percent cases needed oxygen during treatment, marking a 13.4 percent increase from the previous wave which had peaked

CROSSWORD BY THOMAS JOSEPH

- ACROSS**
 1 Refrain bit
 5 Damp
 11 Trojan War hero
 12 Broad street
 13 Bud holder
 14 Green
 songwriting partner
 15 Museum focus
 16 Pass over
 17 Defense secretary Austin
 19 Saloon
 22 Sink feature
 24 Outpouring
 26 Debt notes
 27 Physics topic
 28 Gambling mecca
 30 Posh
 31 Fire remnant
 32 Feather pen
 34 Supply with cash
 35 North pole
- DOWN**
 16 Heir, often
 18 Maggie and Bart's sister
 19 "Charge!" or "Geronimo!"
 20 Full range
 21 "Ratatouille" rat
 22 Singing star
 23 Some Eurasian deer
 25 Bucket
 29 Knight's attendant
 30 Relieve (of)
 33 Beneath
 34 Worry
 36 Comfy home
 37 ON the house
 38 Deli meat
 39 Bordeaux buddy
 40 Rte.-sug-gesting system
 41 Catch sight of

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YESTERDAY'S ANSWERS



QUOTABLE Quote



HENRY DAVID THOREAU
 (1817-1862)
 American naturalist and philosopher

You must live in the present, launch yourself on every wave, find your eternity in each moment.