

LAW WATCH

E-Business in Bangladesh: The Need for a Legal Framework

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In Bangladesh, e-commerce or online-based marketplace has started its journey without any statutory framework. In a pandemic situation like the ongoing Covid-19, people from different countries including Bangladesh rely on online purchase, however a significant proportion of consumers are dissatisfied with the services. Numerous instances of breach of contract for the sale of goods have been reported regarding online business. Both buyers and sellers are having issues of these contract infractions which results in a number of payment anomalies in the country. Therefore, Government is going to introduce digital payment infrastructure. The issue of digital payment gateway demands a separate

discussion is therefore beyond the scope of this writeup.

People can start their online business with personal user profile and using different features of various social media platforms such as Facebook, WhatsApp, Instagram etc. For instance, on Facebook, individual traders utilise Facebook groups and pages to display their goods with the intent of selling to group members or followers. Moreover, in comparison to individual profiles or any other online business platform, Facebook Pages are gaining much popularity due to advanced features that assist both the buyers and the sellers to find one another.

This increased popularity can occasionally be damaging to consumers' interests. Facebook, when it comes to creating a page, does not require owners to provide that

much information as would suffice to find out their genuine identities. Ambiguity in identity heightens the risk of frauds, misrepresentation, and infringement of consumers' rights. Sellers who merely intend to borrow money from banks are only interested in obtaining a trading license. Majority of online traders remains uninterested in applying for electronic business identification number (e-BIN) or renewing commercial licenses, hence, remain outside the watch of revenue authorities. On the other side, those wishing to run legitimate online business faced with difficulties as a result of fake orders and manipulated or eye attacking reviews from unidentified users. In the case of cash on delivery, deliverymen usually have trouble locating consumers. At times, buyers cannot be reached due to given false information or for a not-in-use phone number. The seller incurs additional costs for return and of unsuccessful delivery. Therefore, governing the entire e-commerce system establishing a legal structure for the protection of interests of both parties is a crying need.

The elements of an offline contract [an offer, acceptance, and consideration] are identical to those of a contract of online marketing. But the existing legal framework in Bangladesh does not recognise such online transactions as contract for sale of goods. For example, the Sale of Goods Act, 1930 (SGA, 1930) is in force in the country which regulates the legal arena of sale contracts. The law by its nature is back dated, mostly superseded by other special laws, no amendment so far has been taken to make it fit for modern era. Paradoxically, the law is completely silent on online offers or descriptions

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or samples of a product or its similar acceptance.

Another statutory law titled 'The Consumer Rights Protection Act, 2009' (CRPA, 2009) enacted specially for the protection of the rights of the consumers. But like the SGA, 1930, this Act is also silent on e-business having no specific provisions addressing online services. The CRPA, 2009 entrusted the Director General, to receive and dispose of consumers' complaints. The authority does receive a huge number of complaints. But when it comes to dealing with consumer's complaint arising out of online transactions, the complainant hardly has any chance for remedy. It is observed that if section 45 of the CRPA 2009 is amended so as to incorporate the phrase "online service," it will be easier for concerned authorities to provide remedy of complaints arising out of online business.

From the above discussion, one thing is to be noted that although online enterprises are sprouting up in digital Bangladesh, comprehensive legal framework is yet to be put into place. In this connection, it can be added here that India has, for the protection of the consumers' interests, enacted a new Act titled Consumer Protection Act, 2019. The term "online" has been included in new legislation. Explanation (b) of Section 2(7) of the Act, denotes that, "The expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing."

In fine, the government should, after consultations with the stakeholders concerned, put a comprehensive legal framework for regulating of e-business and protection of the rights of e-contracting parties.

That legal scheme must ensure all sorts of online business enterprises be verified with personal national IDs of their admins and owners as well as consumers. The concerned government regulatory authorities such as the BTRC should collaborate with online e-commerce platforms to preserve the information of online business entities. Moreover, the online customers should be made aware of that purchase from untrustworthy online merchants for deception and misrepresentation of goods. Therefore, the government should mull over bringing about time demanded amendment to the afore-mentioned Acts and insert the word "Online" in the relevant laws which can assist to alleviate people's suffering in this virtual commercial world.

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LAW VISION

Employment Injury Protection Scheme: A new horizon to workers' social protection

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A study by ILO reveals that over 11,000 workers suffer fatal accidents and a further 24,500 die from work-related diseases across all sectors each year in Bangladesh. The study also estimated that a further 8 million workers suffer injuries at work – many of which result in permanent disability. Despite this, none of the employers has faced severe legal consequences or has adequately compensated the injured workers or the dependents of the deceased workers. However, ever since the Rana Plaza tragedy occurred in 2013, rights organizations have given considerable effort to improve the compensation mechanism in Bangladesh through amendments in the BLA and initiation to establish an Employment Injury Protection Scheme.

It is globally recognised that the majority of these tragedies occur due to the negligence or non-compliance with law or ineffectiveness of stakeholders and could be avoided if the employers complied with the minimum safety requirements mentioned in the Bangladesh Labour Act, 2006 (BLA) and Bangladesh Labour Rules 2015 (BLR).

As per the Bangladesh Labour Act 2006, as amended up to 2018, a worker with a permanent disability is entitled to a compensation package of one lac twenty-five thousand taka while anyone incurring a temporary disability is entitled to compensation assessed for the period of their disability or one year whichever is less. The amount of compensation payable for the first two months will be the entire monthly wage, the amount of compensation for the next two months will be two-thirds of the monthly wages and for the remaining months, it will be half of the monthly wages.

This is apparent that the current compensation payable under the BLA is not adequate and calls for a scheme that ensures that injured workers and dependents of the deceased are effectively compensated, both financially and in respect of medical and other relevant care. Since 2015, ILO has been trying to establish a fund to ensure long-term protection for the workers against workplace accidents and occupational diseases in Bangladesh. In pursuit of this, the ILO proposed to establish a national Employment Injury Protection Scheme (EIPS) based on the principles of ILO Convention 121 on Employment Injury Benefits but the Government is yet to put the mechanism in place.

ILO Convention 121 recognises the importance of an integrated approach for improving working conditions, limiting the consequences of work-related injuries and facilitating the reintegration of individuals with disabilities in the labour market; for such purposes, this Convention requires the State to take measures to prevent employment injuries, provide rehabilitation services and ensure that displaced workers find appropriate re-employment. As per the ILO C 121, workers are entitled to compensation by in-kind benefits for medical treatment and rehabilitation services, and in-cash benefits for income loss caused by workplace injuries and diseases, regardless of the negligence of their employers. The Convention specifies, in case of incapacity for work or invalidity, periodical payment should be at least 60% of the former earnings of a worker; in case

of death of the breadwinner, the compensation should be at least 50% of former earnings of wage of an unskilled worker.

Under the Convention, State shall accept general responsibility for collection of contributions, payment of benefits, and proper administration of the concerned institutions. To fulfill the mandate, Bangladesh Government can form a tripartite committee consisting of constituents from government, workers and employers, with the required support of international partners. In terms of fund collection, the implementing agencies can adopt an approach where the total costs would be shared amongst all relevant stakeholders, both at the national and international levels. The employer can contribute a fixed percentage of the wages of individual workers, for instance, the scheme can require the employers to contribute 0.50% of the monthly wages of a worker. Meaning, if a worker earns 10,000 BDT a month, the employer would contribute 50 BDT a month to the fund for an individual worker. This amount should be exclusively paid by the employer, not to be deducted from the workers' wages. Also, there should be scope for the international buyers, brands or donor organisations to voluntarily contribute to the scheme.



Compensation payable by the EIPS fund under Convention 121 should be in addition to the compensation payable by the central fund or the group insurance under the BLA. However, there should be a provision that requires the workers to give up compensation-related litigations under other legislations in order to receive financial grants from the scheme.

Apart from financial grants, the scheme should initiate a vocational rehabilitation program to reintegrate workers who acquired a disability due to workplace injuries. Currently, BLA and BLR have no explicit provisions regarding rehabilitation and to date, no considerable steps have been taken by the Government agencies to rehabilitate the injured workers. The EIPS can provide a decent opportunity to the injured workers to facilitate their return to work. On the other hand, implementation of the scheme would protect the employers against financial consequences of workplace accidents and diseases through collective risk-sharing, that is, the employers will collectively contribute to the scheme for compensation and rehabilitation alleviating the burden on individual employers.

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REVIEWING THE VIEWS

Hashem Foods fire Determining the liability of regulators

M S SIDDIQUI

A virtual dialogue on Industrial Safety of the RMG Sector during the Post-Accord-Alliance Period on 11 July 2021 was organised by the Centre for Policy Dialogue (CPD) and Friedrich-Ebert-Stiftung (FES) Bangladesh. It mentioned that between May 2018 and April 2021, 46 accidents took place in the garment sector. The number of incidences increased by 100% in FY2020, compared to that in FY2019 and then the figure declined by 20% in FY2021 (up to April 2021). Fire and electrical (short-circuit) problems were the main reasons (35% of total incidences) behind such accidents.

After the Chawk Bazar fire incident on February 20, 2021 that killed at least 70 people, the government formed a five-member committee to find out the causes of fire. The Department of Inspection for Factories and Establishments (DIFE) take less interest in inspecting factories and establishments outside the Ready-Made Garment sector in the country, according to the government report, most of the resources and efforts were dedicated to improving the workplace safety in the garment sector, while other sectors remained neglected. DIFE mostly focuses on the garment factories to see if the workers get salaries and other entitled benefits and if they employ child labour.

The situation in other sectors is in a dismal status as well. There is none to push the government and businesses to create work place safety. Prof Rehman Sobhan, chairman of the Centre for Policy Dialogue (CPD), questioned why the DIFE could not show substantial performance even after eight years of the Rana Plaza building collapse. He was referring to the fire incidence of Hashem Food Industries Ltd.

The DIFE has formulated four thematic Standard Operating Procedures (SOPs) to improve its labour inspection services. The new SOPs are formulated with the technical assistance of the International Labour Organisation (ILO) and financial assistance from Canada, Netherlands, and United Kingdom in November 2020. Those are on registration and licensing of organisations, approval of factory layout plan, labour complaints, and investigation of occupational accidents.

DIFE and Bangladesh Fire Service and Civil Defence Department (BFSCD) developed their information systems i.e. Labour Inspection Management Application (LIMA) and e-Fire Licensing



system respectively in 2017. It has been reportedly used regularly from 2019 particularly in RMG sector. There is strong ownership of LIMA from the DIFE as they have secured budget for its further development and maintenance.

ILO was concerned about the state of safety standard and implementation of the laws and rule while issuing licence for factory. There is no improvement of the situation despite huge investments of donors and efforts of ILO to draw attention of different departments of the government. According to Factory Inspection Checklist, DIFE did not inspect accounting and the inspection may be a good evidence revealing the misrepresentation of facts in the report. The report format has clauses for details of labour such as number of workers, their age and sex etc., and for the names of the approving officers for the building, lay-out, design, soil test report and even the name of the contractors. But despite all the irregularities, how industries get fitness certificate from DIFE on yearly basis is a question. Hashem Food started their business in 1982 and DIFE has been certifying it on yearly basis since then.

The inspector general of the DIFE, blamed the shortage of workforce in the government agency to properly oversee the safety issues in sectors other than the garment industry. He revealed that two inspectors of the DIFE inspected the Hashem Foods building on July 7 and submitted a report. The six-storey building was actually a warehouse, but it was used as a factory and contained combustible substances. The staircase was only five feet wide, despite the fact that it was supposed to be at least seven feet wide and also emergency exits.

Children made up more than half of the total workforce employed at the Hashem Food factory. According to both the fire service and civil defence department and the Electronic Safety and Security Association of Bangladesh, the building had two staircases against the minimum requirement for four based on the building floor area. The building did not seem to have any fire extinguishers.

An industry requires safety compliance of its establishment for getting loans from banks. Fire insurance and fire licence are mandatory too to get loans. Moreover, banks make an inspection over safety compliance issues every year. Multiple banks and insurance companies are involved with Hashem Group and all of them have been found to have disregarded its non-compliance with safety guidelines. The banks will now go to Artha Rin Adalat for recovery of bad loan but none will question the negligence of the Bankers.

Maintaining safe and healthy working conditions are required by government regulations and also make sense for business for economic reasons. There are plenty of good reasons on why any business would want to maintain a safe workplace. Other than the basic human desire to avoid pain and sufferings, workplace accidents can also destroy our business.

Mr Shahidullah, a member of the National Industrial Health and Safety Council said the system failure occurred at the implementation level. He further said that in addition to the owners, those who have given trade licenses or have shown laxity in the implementation of the law should also be punished.

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