



RIGHTS WATCH

VEGETABLE FARMERS' RIGHTS IN BANGLADESH during COVID-19 lockdown

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There may be an unending debate on which profession serves Bangladesh the most but the unflinching contribution of farmers can never be underestimated. Generally, farmers serve the society through toilsome labour all over the year, cherishing a fair share of profit for their investments in cultivation of crops and vegetables. But, amid the country-wide lockdown in several phases for the last two years, due to the advent of the Covid-19 pandemic, the hopes and aspirations of farmers, especially the vegetable farmers have turned into despair.

According to a report published in The Daily Star (August 7), there are eight million vegetable farmers across the country, struggling to get fair price for their products because of disruption in the supply chain during the lockdown. The farmers are bearing the brunt of selling their products at enormously low prices—less than 50 percent of the pre-lockdown prices; however, the traders in urban kitchen markets continue to gain fat profits.

On the other hand, the wholesale traders have to count three-fold transportation costs in bringing vegetables to Dhaka and its outskirts, resulting in abnormal retail prices, though they buy vegetables from farmers at dirt-cheap costs. The lower middle and poorer classes of buyers are also the sufferers of unusual price hike in urban kitchen markets. The severe income loss caused by the Covid-19 inflicted lockdown has triggered hesitancy, anger, and frustration among the vegetable farmers to grow products in the upcoming winter season. Many of them are now trapped in debt, amid fear of losing their original capital.

In 2016, the UN Food and Agriculture Organisation (FAO) listed Bangladesh as the third largest vegetables producer, next to China and India. The country produces 60 varieties of vegetables out of some 500 global kinds and also exports 50 types of vegetables

to around 118 countries. Another data shows, nearly 50 percent of the total population is employed in the agriculture sector and more than 70 percent people depend on this sector for maintenance of their livelihoods.

In Bangladesh, more than 70 percent land area is devoted to growing crops and some 87 percent of rural households depend on the agriculture sector for a shared part of their earnings. Agriculture sector contributes around 15 percent to the Gross Domestic Product (GDP). Rural women are also engaged in cultivating vegetables in homesteads or adjacent land, but they do not claim rights usually.

The contribution of farmers in the liberation war is well acclaimed. Nevertheless, the vulnerable farmers remain silent during lockdown as there is little representation to voice their demands to the government. The mainstream print and electronic media expose very little of their sufferings. Are the poor not in the priority list of the government during the pandemic oriented lockdown? The government initiatives on farmers, garment workers, and returnee migrants paint a different picture. However, in a modern society, every profession is inevitable to shaping up an integrated unit and people in all strata of life are interdependent in shaping the society as diverse and inclusive, reducing segregation and discrimination.

The Bangladesh Constitution, in its preamble pledges exploitation-free socialist society amid rule of law, basic human rights, freedom, equality and justice for all citizens. Though, there is no direct mention of the word farmer, the phrase toiling masses can cover up the farmers' community in attaining their core human rights in true sense.

In fact, farmers are dedicated for the proliferation of agriculture, cherishing the welfare of the country and its people. A series of lockdowns during the Covid-19 pandemic have increased the numbers of poverty stricken people at an alarming rate. The

vegetable farmers are the worst victims of such lockdowns to sell their products by getting worthy price to selling the same to vendors. If the vegetables farmers remain underpaid and incur losses, this will not only harm them but also the entire rural and urban population of the country, paving the way for nutrients deficiency syndrome. Urban people are like pet cats of rural farmers who feed them for little benefits.

However, the Plant Variety Protection Act (PVPA), 2019 delineates certain legal provisions to vanguard the rights of farmers, including traditional farming. But the law is akin to the Indian law titled the Protection of Plant Varieties and Farmers Rights Act, 2001 in respecting and safeguarding the rights of farmers. Also, the National Agricultural Extension Policy, 2020 aims at ensuring the production of safe, nutritious and profitable crops for farmers and entrepreneurs.

Our government is in dilemma in imposing and lifting lockdown during the first, second and third waves of novel coronavirus. The WHO recommended lifting of restrictions when infections rate is fewer than 5 percent but Bangladesh's infections rate is now hovering around 20 to 25 percent.

Amid all these, farmers' rights are overlooked. As human beings, they are entitled to live with dignity as part of commitment of Bangladesh Constitution along with national and international instruments pertaining to human rights. So, the government should adopt a focused plan, along with adequate measures including due compensation for the victim farmers for now and in future before imposing any lengthy lockdown. Apart from the government, the civil society organisations (CSOs) including micro-credit ones can ameliorate their economic wounds through easy credit facility and grants.

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LAW VISION

Virtual court system in Bangladesh

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On May 9, 2020, the President of Bangladesh, while the Parliament was not in session, by exercising jurisdiction under Article 93(1) of the Constitution of Bangladesh promulgated *Adalat Kartrik Totho-Projukti Bebohar Ordinance, 2020* (Use of Information communication technology by court Ordinance, 2020). During the enactment of the Ordinance, it was perceived that Bangladesh has no procedural law that empowers the courts to conduct virtual hearing by using technologies. After being empowered with the provisions of the Ordinance, the Supreme Court of Bangladesh issued practice directions for the Appellate Division, High Court Division, and the subordinate courts and tribunals for hearing cases virtually amid the Covid-19 pandemic vide Notification No. 213 dated May 10, 2020. Later on, the Parliament decided to adopt the provisions of the said Ordinance and accordingly, without any significant change of the provisions under the Ordinance, enacted the *Adalat Kartrik Totho-Projukti Bebohar Ain, 2020* Use of Information communication technology by court Ordinance, 2020 as Act No. 11 of 2020.

The said Act of 2020 is a procedural law and is applicable all over the country in the dispensation of judicial functions. The courts and tribunals in Bangladesh run under the provisions of the various statutes but by promulgating this Act, the legislature has given the courts additional powers to adjudicate cases using information-technology. During the pandemic situation, as a response to the guidelines and the directions of the Supreme Court as issued from time to time, the courts and tribunals of the country are/were operating judicial functions virtually, *albeit* mostly of important applications/petitions, subject to some procedural limitations that do not allow the courts to dispense with few matters virtually; for instance, taking witnesses in the civil and criminal courts, attending surrender application of the accused persons, filing of criminal complaint cases in the criminal courts and tribunals requires physical presence.

A litigant who wishes to file an application or a petition before a virtual court or tribunal may file it through the concerned section of the court with the help of his/her appointed lawyer. The court's assistant providing a case number publishes the same in the register book that maintains filing information or in the daily cause list (for information, the Supreme Court's website publishes the cause lists of High Court and Appellate Divisions' cases). In exercising some jurisdiction in the lower judiciary, the tribunal or court informs the lawyer about the detailed information of the case and the date and time of hearing together with a video conference link (usually it is a Zoom link/meeting ID/passcode) by sending an email. A true copy of the application/petition and the supporting documents are handed over to the concerned judge. The judges of the virtual courts also require that the scanned copy of the said application and the documents must be served to them via email. In case of necessity, that is to ensure the filing appropriately, the concerned

lawyer makes contacts with the bench officer or *sheretadaar/peshkar* of the concerned court, as their numbers are made publicly available. The court then, in applicable cases, sends a notice or issues summons to the concerned party(s) together with the copy of the application/petition informing about the virtual hearing. In dispensing all these formalities, the court clerks of the lawyers, however, need to visit the courts physically for obtaining the filing information, submitting hardcopies of the necessary documents, collecting hearing date and timing, paying court fees, obtaining video conferencing links etc.

The courts use online video conferencing platforms, such as web-apps like Zoom, imo, Google Meet or WhatsApp. Presently, Zoom has become the most popular among the said platforms. It may be stated here that these are third party Apps and the courts of the country cannot rely on these apps for all time. The virtual court system has to provide adequate cyber security measures, which will ensure fairness, privacy, and data protection, by building its own platform. A central software/app needs to be built to control and regulate the whole virtual judiciary from a single platform.



Courts in many countries are issuing detailed virtual court procedures and guidelines. Courts are even holding the virtual trials, taking evidences and the witnesses through video conferencing, which the virtual courts of Bangladesh could not do due to the existing procedural laws, as stated above. In the last remark of the Virtual Bench Trial: Protocols and Procedures as issued by District Administrative Judge of 10th Judicial District-Nassau County, New York stated that "Overall a Virtual Bench Trial is no different in sum or substance than an In-Person Courtroom Bench Trial. The challenges, as indicated above, relate to the presentation of witness testimony, documentary, and physical evidence. With careful attention, consideration, and discussion, these challenges can be effectively overcome." The procedural laws and the laws relating to the evidence need amendments and updating to adopt the virtual courts in the regular judicial system of the country.

The promulgation of the Act of 2020 and the advent of virtual court under the said Act mark a turning point in the country's legal history. It is a new chapter in the country's judiciary and requires support from all concerns, including the judges, the lawyers and the litigants as the virtual courts can continue alongside the regular physical courts even after the pandemic.

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LAW WATCH

Understanding the concept of ecocide

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Recent proposed definition of ecocide by Stop Ecocide Foundation to be included in Rome Statue as a fifth core crime along with the crime of genocide, war crimes, crimes against humanity, and the crime of aggression has aroused both academic and policy debates all over the world. While the very concept of "ecocide" has become popular lately, the term was first coined in 1970 by Arthur Galston, an American biologist, at the Conference on War and National Responsibility. Galston used the term 'ecocide' to raise concerns on the excessive use of the defoliant Agent Orange which was used to inflict harms upon environment during the Vietnam War.

The word ecocide originates from the Greek word *oikos* which means home, and the Latin word *caedere* means an act of killing or demolishing. Hence, the term 'ecocide' simply stands for "killing our home". Independent Expert Panel's recent definition of ecocide stands as "unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts" in the proposed Article 8 *ter*. Here the word "wanton" has been explained as "reckless disregard" in order to consider an act to be ecocide. Such reckless act that would eventually cause "serious adverse changes, disruption or harm to any element of the environment" and such harm would have



to "extend beyond a limited geographic area, cross state boundaries, or [be] suffered by an entire ecosystem or species or a large number of human beings". The proposed article also states that damage caused from the crime of ecocide needs to be "irreversible or unable to be fixed within a reasonable period of time". And for the purpose of the application of the Article 8 *ter*, the word "environment" has been defined as an inclusive of "the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space".

Unlike genocide, the panel definition of ecocide has been provided without

having the requirement of *mens rea* or specific intent and thereby divulging itself as a strict liability offence. The rationale behind the proposal of ecocide as a strict liability offence is that environmental harm usually happens to be an indirect result of productivity, and hence establishing direct intention is hardly possible when it comes to environmental harm. Here, it can be said that the term ecocide has been used to depict the seriousness of environmental harm and its devastating impact on our mother earth by establishing that environmental harm on a massive scale should no longer be subject to proving

some elements. However, it should be noted that the crime of ecocide mainly focuses on massive destruction of environment and does not necessarily include the small ones.

Albeit the proposed definition of ecocide for criminalising the act of ecological massive destruction seems a viable solution to protect our ecosystem, also recognising the implementation of such proposal might face some difficulties and challenges. For instance, some argue that the requirement of knowledge (in wanton acts) in determining whether one's act will cause excessive damage to the environment in relation to the anticipated socio-economic developments is almost impossible to prove and will create evidentiary hurdles. Another challenge would be the ICC's burden with large number of cases unless there is a specific forum to deal with ecocide cases only. Also, the cases on the crime of ecocide would have to be brought against individuals representing the corporations or against the states where the activities of the corporation are based since the corporations would not be held liable directly under the Rome statute. And that will undoubtedly bring strong opposition to the inclusion of ecocide as an international crime given the strong economic interests involved within these corporations.

Apart from that, aligning ecocide with International Environmental law (IEL) would be a stumbling block since criminal law focuses on the requirement of precision and foreseeability while environmental

law requires "balancing and trade-offs with few hard and clear prohibitions". Last but not least, some commentators identify that since the proposed definition takes an attempt to balance the socio-economic interests with environmental harm, the term 'ecocide' itself is not eco-centric and therefore "not ecocide" at all. However, some may find it surprising, the IEL itself is not purely eco-centric rather is an approach that motivates humans to adopt environmental protections by enabling environmental law progression.

Needless to say that, in spite of having some challenges, the proposed crime of ecocide suggests a plausible solution to protect our planet by making polluters criminally liable in case of massive destruction to the ecosystem. It brings seriousness to our understanding of nature, reminds us that the earth is our home, and we need to adopt viable measures to protect it. The crime of ecocide also conveys the gravity of environmental harm, the urgency to reduce massive destruction caused to the environment, and therefore urges that such an act of massive destruction to environment should no longer be considered as "second class crime". Finally, it once again reiterates that protecting our environment means protecting ourselves. Hence, it warrants serious commitment from the international community as a whole.

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