RIGHTS WATCH

Amendment to the Labour Rules 2015

Safer Workplace for Women

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The Ministry of Labour and Employment has introduced some important amendments to the Labour Rules 2015 with effect from 1 September 2022. There are as many as 101 amendments, including inserting some new rules, are made to the 2015 Rules; of these there are only six amendments the women can benefit from. This write-up explores these amendments in details.

The most significant one is the insertion of a new, i.e. Rule 361A (Conduct towards Women) which complements section 332 of the Bangladesh Labour Act 2006 and defines sexual harassment. Sub-rule 1 states where any woman is employed in any work of any establishment, no person of that establishment shall harass her sexually and behave with her which is uncivil, impolite and repugnant to the modesty or honour of that woman or which may seem to be sexually indecent or unmannerly. An explanation appended to sub-rule 1 expounds the term sexual harassment and it says for the purpose of this sub-rule, twelve types of conduct would constitute the indecent and unmannerly behaviour and sexual harassment. For instance, showing pornography or preventing the participation in sports, cultural, organisational and/or academic activities on the ground of sex would, among others, tantamount to sexual harassment.

It appears that this definition is adopted from the reported judgment in Writ Petition No. 5916 of 2009, where His Lordship Justice Syed Mahmud Hossain gave directives in the form of guidelines on how to prevent and deal with sexual harassment in workplaces and educational institutions in both public and private sectors. Sub-rule 2 imposes a duty to constitute a Complaint Committee to prevent sexual harassment in every workplace. The Complaint Committee will have minimum five members and majority of the members will be women; the head of the Committee will also be a woman. Sub-rule 3 implies that a guideline to prevent sexual harassment will be formulated and distributed/circulated to all employees by the respective employer; and also, there will be a complaint box at every workplace and the received complaints to be redressed/addressed after lodging it on a register. The whole new rule is a summary of the guideline suggested by His Lordship in the aforementioned judgement. One of the purposes of the directives offered in the judgement was to filling up the legislative vacuum.

There are three amendments that are related to maternity benefits. Firstly, a new proviso has been added at the end of rule 38 that clarifies that if a woman gives birth after the scheduled time of eight weeks preceding the expected day of her delivery, the days that pass after the scheduled time of eight weeks will be adjusted under the Rules. Secondly, a new rule 38A (Leave for Miscarriage) entitles a woman to leave in case of a miscarriage. If a woman suffers a miscarriage before the scheduled date of going on maternity leave, she will be entitled to four weeks leave due to her health reasons; and no deductions from wages will be made for such leave. At the same time, such leave cannot be adjusted with any leave which is due to her. Finally, a new rule 39A (Calculation of Maternity Benefit) prescribes the method of calculation for maternity benefit and allows deductions to be made for her subscriptions to provident fund as per law.

Amendment to rule 78(1)(D)(viii) allocates a responsibility on the employer to have arrangement in the Health Centre to provide consultation to women employees regarding the use of sanitary napkin/towel/pad. A new proviso at the end of rule 103(1) indicates that the employer has to ensure the necessary transport with security in case a woman is to work between 10PM and 6AM.

Some might argue that the measures are so negligible in comparison with what needs to be done, however, the amendments are to be considered as 'better late than never' and we certainly believe these amendments will bring a more congenial and ensure safer workplace for women in our country.

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LAW IN FOCUS

Impact of the EPZ Labour Act 2019 on the US FDI

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According to a 2016 European Commission Report, EPZs (Export Processing Zones) in Bangladesh employ roughly 400,000 workers who produce manufactured goods including garments and footwear. The newly enacted EPZ Labour Act 2019 (Act No. II of 2019) has made Trade Unions illegal, which violates ILO Convention No. 87 (Freedom of Association and Right to Organize) and ILO Convention No. 98 (Right to Organize and Collective Bargaining) both of which had been ratified by Bangladesh. The US Department of State's 2022 Investment Climate Statements Report on Bangladesh has emphasised the needs to reform the EPZ Labour law as one of many demands to allow Trade Unions in compliance with international labour standards to retain Bangladesh's access to the US GSP.

Even though the EPZ Labour Act 2019 has been enacted in compliance with the Bangladesh Labour (Amendment) Act (BLA) 2018, it still deviates from the BLA in two major aspects, namely the freedom of association including the right to form trade unions and the right to organise and collective bargaining. The newly adopted law is just a reflection of the Bangladesh EPZ Labour Bill 2016 which was similar to the EPZ Workers Welfare Association and Industrial Relations Act of 2010.

The Committee of Expert on the Application of Conventions and Recommendations (CEACR) of the International Labour Organization (ILO) had been critical about some of the provisions of the EPZ Act of 2010 for they being fell short of the ILO standards.

Similar to the draft Bill of 2016, sections 96-114 of the EPZ Labour Act 2019 allows "excessive interventions" by the authority in the formation of the Workers' Welfare Association (WWA) which has failed to act as a Collective Bargaining Agent (CBA). In fact, the Bill of 2016 had been drafted without consulting workers or labour rights advocates. Under the EPZ Labour Act 2019, the registration and formation process (section 97) of the WWA have been left mostly to the satisfaction of the Executive Chairman. The Executive Chairman may cancel the registration of the WWA anytime on certain grounds mentioned under section 109 of the 2019 Act. In 2016, the Solidarity Center analysed 70 cases from 2013 to 2016 in which authorities rejected registration applications for mundane reasons. Thus, the Executive Chairman can exercise his powers arbitrarily and in absence of trade unions, the WWA will fail to act as a CBA.

The Constitution of Bangladesh guarantees the right to form associations and unions. Bangladesh has also ratified ILO Convention No. 87 and 98. Therefore, it is an obligation for Bangladesh to make the national laws compatible with the ILO Conventions. The US State Department's 2022 Integrated Country Strategy (ICS) Report on Bangladesh has placed the improvement of labour standards as their second priority among the four priorities of the Dhaka Mission Chief. Thus, necessary amendments should be made to ensure freedom of association through legalising formation of trade unions inside and outside EPZs in order to improve the business climate and attract the US Foreign Direct Investment (FDI) in Bangladesh. This will also enable Bangladesh to enjoy the continued duty-free access of its exports to the European Markets under EU's Generalised System of Preference (GSP).

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LAW WATCH

Price Hike and Consumer Rights Protection: Revisiting the Legal Regime

The strictest of them is the Special Powers Act 1974. The Act makes hoarding or dealing in black market a punishable offence within section 25 for which there could be punishment like death penalty or life imprisonment or rigorous imprisonment extending till 14 years as well as fine.

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The right to food or the daily basic necessities is incorporated as one of the judicially unjustifiable Fundamental Principles of State Policies in our Constitution. But that does not necessarily close all the avenues to redress the flat omission on the part of those concerned. Within the penumbra of right to life, the entitlement of an effective access to daily necessities could be dovetailed. Nonetheless, various laws of our country expressly provide some quite strict measures against price hike as well as for the protection of consumer rights. The strictest of them is the Special Powers Act 1974. The Act makes hoarding or dealing in black market a punishable offence within section 25 for which there could be punishment like death penalty or life imprisonment or rigorous imprisonment extending till 14 years as well as fine. Now, within the meaning of "dealing in black-market" it includes "selling or buying anything for purposes of trade at a price higher than the maximum price

fixed by or under any law, or, otherwise than in accordance with law". Further, within the definition of section 2(f)(vi) prejudicing the maintenance of supplies and services essential to the community is considered to be a "prejudicial act" for which there could be detention orders. So, the malicious practice of stocking goods with intent to disrupt the supply chain or with intent to sell at a higher price is punishable offence.

Apart from the above legal mandates, the Consumer Rights Protection Act 2009 provides for some protective approaches in terms of ensuring that consumers are not faced with any malicious price rising practices in the hands of traders. Before this Act, the area was dealt by several laws focusing upon specific subjects. This Act mandates a holistic approach indeed by including mandates as to adulteration, inconsistent pricing, deceptive advertising, false representation of goods and services and improper weighing or measuring. Under sections 38 and 39 of the Act, the non-showing of price list for products and services is a punishable offence. Under section 40, whereas the selling at higher price than that fixed is punishable with up to one-year imprisonment or fifty thousand taka fine or both. So, the Act prescribes punishment against improper price rising with malicious motive. Within the ambit of "consumers" all those who buy goods or services aiming at consumption are included. And all those practices that deprive a consumer from his/her rights of consumption are "anti-consumer rights practices". So, when someone does hoard or increase the price to deprive consumers from a smooth flow of goods or services, those are essentially anti-consumer rights practices.

Some initiatives of providing fair business and trade practices have been taken by the 2012 Competition Act. The law aims at preventing monopolisation that hampers the free and fair flow of trading. The Competition Commission establishes via section 5 is vested with the duty of ensuring "Trade Freedom" along with eradicating market prices that goes against fair practice. So, this law could be an effective way of restricting the syndicates or cartels market grasping along with allowing a competitive marketplace where traders can make profit and does not hamper consumer rights at the same time.

In terms of protecting consumer rights, the Mobile Courts have proved to be very successful though the functioning of the Court has faced backlashes due to its non-judicial formation and awarding penalty unilaterally. Nonetheless, we cannot totally deny the beneficial contribution of this mechanism in safeguarding consumer rights at present. Price hike is indeed a social vice that hampers the social equity and to ensure that the underprivileged segment of people is not injuriously impacted by it, the abovementioned legal mandates should see proper implementation.

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