

COLLAPSE OF SPECTRUM SWEATER INDUSTRIES: RIGHTS OF GARMENT WORKERS, LEGAL CHALLENGES AND POSSIBLE REMEDIES

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In the wake of the collapse of the building that housed Spectrum Sweater Industries in Savar that has claimed the lives of hundreds of garment workers and left many seriously injured, a lot of thought has gone into reviewing the existing workplace safety laws, rules and regulations as well as to critically look into the special compensation laws. Recurrence of fatal accidents and mishaps in the garment factories of Bangladesh that result in the death and injury of workers indicate the impunity with which the employers tend to evade workplace safety laws and maximize gains while the toiling workers continue to be deprived of their basic human rights.

Paltry and shamefully inadequate amount of compensation which has been offered to the families of the dead and injured workers under the Workmen's Compensation Act, 1923 following the Spectrum Sweater Industries disaster exemplifies the disregard and disrespect for garment workers without whose contribution the garment factory owners could not have earned millions of foreign currency. The situation demands that the State as well as other stakeholders who make sizeable profits from the garments industry address the rights of garment workers with seriousness failing which they should all be held accountable for accidents, which are a direct consequence of gross negligence and breaches of workplace safety laws. Accordingly, civil as well as criminal liabilities should be imposed upon faulty factory owners for not exercising due diligence in ensuring workplace safety.

The Workmen's Compensation Act, 1923 that was legislated during the British rule should be amended and compensation should not be calculated on the basis of loss of earnings capacity alone. It should include amongst others, proper evaluation of the loss of reproductive capacity that is also a vital human function, disruption in family as well as social life, short-term and long-term medical treatment expenses, punitive damages for pain and suffering, post-disability rehabilitation follow-up, alternative employment opportunities for at least one family member of the deceased or permanently disabled worker and assurance of placement for all affected workers. Also, the period for which the worker is remaining injured and is precluded from joining work and ability of the injured workman to go back into the same occupation needs to be looked into while working out compensation. The law should be framed in such a manner so that garment factory owners would be compelled to adopt preventive mechanism and implement workplace safety laws failing which they would be liable to pay exemplary damages in the event that death and injury ensues as a result of negligence on their part.

It may be noted that under the Workmen's Compensation (Amendment) Act, 2000 the compensation payable in the event of death has been enhanced to Rs 4, 57,000 and Rs 5,48,496 for permanent total disablement in India. It is suggested that similar amendments be effected in Bangladesh. However, bearing in mind that such enhancement will again become inadequate and turn into a sham with the rise in price, it is suggested that the law should provide for a minimum amount of compensation payable and leave the maximum limit open-ended. Compensation should be determined after taking into consideration the facts and circumstances in each case.

A stringent policy for ensuring that garment factory owners comply with workplace safety measures should be devised to prevent recurrence of such incidents. The State should establish a monitoring unit with representatives from the human rights organizations, workers, BGMEA and

concerned government officials with a view to check and verify whether the existing garments factories are in compliance with workplace safety laws and immediate corrective measures should be introduced to prevent loss of life and injury to workers. The Factories Act, 1965 and the Factories Rules, 1979 should be amended in such a manner so as to create an incentive for factory owners to comply with workplace safety laws by significantly increasing the penalty for non-compliance. Also, necessary steps should be taken by the Labor Directorate for effective implementation of the existing provisions of the workplace safety laws, rules and regulations.

The State and human rights groups should work in tandem to ensure that appointment letters are issued to garment workers and employees list is updated and made available to the Chief Inspector of Factories as a pre-condition to issuing license for setting up an industrial establishment or factory. Appointment letters would facilitate the employees to establish their claims for compensation as bonafide workers in the event of accidents and prevent the employers from escaping liability.

Given that the cost of living and wages of workmen have increased over the years, it is suggested that there should be no ceiling on the monthly wages of the workmen for calculating the amount of compensation. It should be based on the prevailing minimum wage or the wages earned by the workman per month whichever is higher. Alternatively, the ceiling should be periodically revised keeping in view the changes in price index.

In the event of delay in paying out compensation by the employer, an interest rate on the amount of compensation due for payment under the existing bank rate should accrue and the law should incorporate such provision.

Regular publicity campaigns about remedies available under the Workmen's Compensation Act should be launched by the government media with a view to raising awareness of workers on legal redresses available under the law.

Last but not the least, there is merit in imposing corporate criminal responsibility on faulty factories and industries those are registered as companies and whose corporate policy should be equated with human intention. Criminal liability should be imposed on the company for its failure to take appropriate measures to prevent manslaughter by violating workplace safety laws and acting in a sloppy manner causing serious accidents in workplace. The burden of proving due diligence should rest on the company's shoulders since it is best informed as to the preventive measures adopted by it.

The advantages of this proposed model is that it would enable companies that have taken compliance systems seriously to evade liability by exercising the defense of due diligence and to impose criminal sanctions on negligent companies for failure to take their responsibilities seriously. Given the legislative ambivalence with regard to crimes committed by companies that operate under the 'protective umbrellas' of the law, it may be argued that organizational blameworthiness is justified, for corporations have moral obligations and public interests responsibilities to the community.