

Bangladesh: Essential Services Bill 2023: A step back for labour rights

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The Essential Services Bill 2023, which is an update to the original Essential Services (Maintenance) Act 1952, is currently awaiting presidential approval. As of April 2023, the bill was tabled for discussion in Parliament, and the standing committee was allowed 30 days to produce a report on it. This law, if passed, will allow the government to declare certain services to be deemed “essential” in public interest. For now, a long list of services (including the passenger or goods transport services by land, rail, water or air; hospitals, clinics, health centres; any services relating to establishments or organisations engaged in the production, transportation, supply or distribution of coal, gas, electricity, steel, and fertilisers) have already been described as “essential services” in the bill.

Once the revised Essential Services (Maintenance) Act (ESMA) is enforced, the rights of anyone who is considered a worker under the law can be affected, because this will give the government the extraordinary political power to declare any service as “essential” in the name of public interest. “Public interest” is an umbrella term that legislatures like to use to circumvent the general process for the welfare of the public, but the inherent ambiguity and expansiveness of this phrase can also be weaponised to justify a political agenda. Without a concrete definition of the circumstances under which the government can declare a service as essential, ESMA can be misused incredibly easily. The Bangladesh government’s affinity towards businesses and its hostility towards any form of protests (including workers’ legitimate strikes) paint a bleak picture as to how the new law might be used.

When do workers really protest or go on strike? To answer that, I would first describe exactly who a “worker” is under the labour laws of Bangladesh. As per Section 2 of the Labour Act 2006, people who work at industries or establishments to perform skilled, unskilled, manual, technical, clerical work but generally do not have administrative, supervisory, or decision-making power are considered to be workers in Bangladesh. Hence, any employee in a managerial or supervisory position is a non-worker. That is, their rights are dictated by their employment contracts, while employees at the most baseline tier (such as garment workers) are at the behest of government-made labour laws. Labour Act 2006 and Labour Rules 2015 only lay down the minimum rights of workers. Since cheap labour brings more profits, business owners usually do not spend a penny more towards workers’ wages or safety than what they are legally required to spend. So, while you and I may be able to go to our bosses to negotiate a better salary, the workers must go to the government with their claims – which generally takes the form of a protest or strike, because unless the wheel of development stops turning, the state does not pay attention to the workers’ needs.

In Bangladesh, the current labour laws already make it difficult for workers to unionise. For instance, as per section 179(2) of the Labour Act 2006, a trade union of workers is not entitled to be registered unless it has a minimum membership of 20 percent of the total number of employed workers in that establishment. The right to strike is further encumbered by the requirement of 51 percent union members voting in favour of the strike. By virtue of the Labour Act 2006, the

government also retains the right to stop a strike if it is satisfied that the strike may cause “serious hardship to the community” or is “prejudicial to national interest.” True to the pattern of creating worker-adverse laws, these terms have not been defined in the Labour Act 2006, either.

A vast majority of the labour force in Bangladesh consists of workers whose minimum employment rights are decided by labour laws. ESMA will very discreetly overpower every worker’s critical right to strike, under the thinly veiled perception of “public interest.” Considering that ESMA will prevail over the Labour Act 2006 and the Labour Rules 2015, workers’ right to strike in Bangladesh may cease to exist. All strikes and protests are potentially dangerous to the status quo and do threaten power; the chance to control this ubiquitous threat in an economy where workers are the main driving force will be an extremely convenient tool to possess for the government.

The undefined term of “public interest” makes each and every industry vulnerable to be deemed as providing an “essential service”, whether or not it is genuinely essential for them to function at a given point in time. For instance, the list of “essential services” provided in the bill currently includes “hospitals, clinics, health centres or similar facilities and dispensaries and any related services” expressly. However, considering that approximately 83.5 percent of Bangladesh’s exports are attributable to the readymade garments sector, if there were to be an extensive strike by the RMG workers demanding better wages, by virtue of ESMA, the government would be able to demonstrate the significance of keeping the garment factories running and declare the manufacturing, productions, exportation of RMG and all incidental services as “essential” for 6 to 12 months. Upon this declaration, the workers will be prevented from legally going on strike even if they have a grievance. The minimum wage in the RMG industry was last reviewed in 2018, with Tk 8,000 being set for an entry-level factory worker. In comparison, RMG exports from the country have increased by 14.31 percent to \$27.418 billion during the period of July 2022 to January 2023.

While the economy is plagued by alarming inflation, only the desperation of unaffordability and poverty would compel RMG workers to come down with a strike against the current wage structure. But a discreetly notorious law like ESMA will then allow the government to criminalise such a crucial labour strike.

The original ESMA 1952, enacted in the then India, is still being used to criminalise workers’ strikes in our neighbouring country. In 2012, 20,000 nurses at hospitals run by Delhi and central governments went on strike for issues regarding salary and allowances during a rising outbreak of dengue and chikungunya. While we must acknowledge that a nurses’ strike during a healthcare crisis brings intolerable hardship to the masses, criminalising such labour strikes cannot be justified in a system which is so blatantly in favour of institutions rather than its labour force.

In an ecosystem where there is no tradition of collective bargaining, strikes will be the prevalent measure workers will resort to for protecting their rights. To carry on an economy that stands on the shoulders of its workers, instead of repackaging a stringent law from the 1950s, we need to find more constructive and fairer alternatives that ensure the delivery of essential services in times of need. Workers’ rights and the continuation of essential services could coexist in a healthy way, such as by establishing a minimum service requirement, mediation process, enhancing roles of labour unions, etc – if the government had the political will to prioritise workers over businesses.

In effect, ESMA seems to be nothing short of a joint exploitation tactic by the government and businesses to further oppress workers. If a worker’s right to strike is not absolute, then at least it has to be negotiable with the authorities. If the intention genuinely is to continue essential services, the state must demonstrate this by setting a reasonable benchmark of fairness for the workers, rather than covert oppressive laws. Workers would not wish to occupy the streets if their needs were being met, and it’s impossible to have their needs met when, during the extreme inflation of 2023, a

worker's minimum wage is still set at the infinitesimal rate of Tk 8,000.

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