

Current Status and Evolution of Industrial Relations System in Bangladesh

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Preface

The objective of the study is to critically investigate the current status and evolution of industrial relations in Bangladesh. The study seeks to analyze role of the main actors in industrial relation system. It highlights evolution of trade unionism, role of collective bargaining and practices of social dialogue in Bangladesh. The study focuses on collective bargaining as a wage fixing mechanism and, assesses its relevance as part of the whole system of wage-fixing.

We would like to thank ILO for giving us the opportunity to prepare this study. We are grateful to Marleen Rueda for her constant and generous support and guidance. We would also like to express our gratitude and thanks to the staff of the both Delhi and Dhaka ILO office for their cooperation and giving necessary information regarding functioning of the Industrial Relations, which ensured timely completion of the study. In particular, I wish to thank A.F.M. Jamil Uddin, programme officer of the ILO office, Dhaka for his help in various stages of the completion of the study.

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List of Abbreviations

ADR- Alternative Dispute Resolution
AFL-CIO- American Federation of Labour and Congress of Industrial Organization
BBS- Bangladesh Bureau of Statistics
BEPZA- Bangladesh Export Processing Zone Authority
BEPZIA – Bangladesh Export Processing Zone Investors Association
BGMEA-Bangladesh Garments Manufacturers and Exporters Association
BILS-Bangladesh Institute of Labour Studies
BLJ- Bangladesh Labour Journal
CB- Collective Bargaining
CBA- Collective Bargaining Agent
CEACR- Committee of Experts on the Application of Convention and Recommendation
DoL- Department of Labour
EPZs- Export Processing Zones
GDP- Gross Domestic Product
GoB- Government of Bangladesh
GSP- Generalized System of Preferences
ICFTU - International Confederation of Free Trade Unions
ILO- International Labour Organisation
ILS- International Labour Standards
IRD- The Industrial Relations Department
IRO- Industrial Relations Ordinance
LAT- Labour Appellate Tribunal
LC- Labour Court
LFS- Labour Force Survey
MWB- Minimum Wage Board
NCSDT- National Council for Skill Development and Training
NGO- Non-Governmental Organisations
NPC- National Pay Commission
NWB - National Wages Board
NWC- National Wage Commission
NWWPC -National Workers' Wages and Productivity Commission
PRSP-Poverty Reduction Strategy Paper
RMG- Ready made Garments Industry
SKOP- Sromik Kormochari Oikko Parishad
SOE- State Owned Enterprises
TCC- Tripartite Consultative Council
TPC- Tripartite Productivity Committee
TU- Trade Union
UDHR-Universal Declaration of Human Rights
USTR- United States Trade Representatives

Chapter One

Context of Industrial Relations in Bangladesh

1.1 Historical context

The People's Republic of Bangladesh, located in South Asia and bordering India and Myanmar, was part of British India until 1947. It became a separate province of Pakistan on 14 August 1947, when the sub-continent was partitioned into two independent sovereign dominions, India and Pakistan. Bangladesh broke away from Pakistan and became an independent sovereign state after a bloody liberation war in 1971.

The history of industrial relations system of this country can be traced back to the Trade Union Act, 1926 introduced by British rulers. The main purpose of the Act was to provide for the registration of trade unions and in certain respects, define the law relating to registered trade unions. But the Act did not contain any provision regarding strikes. In 1929 the Trade Disputes Act put restrictions on strikes in public utility services. The Act provided for the establishment of tribunals to adjudicate upon the labour disputes. In 1947 the Industrial Disputes Act placed the conciliation and adjudication machinery for the settlement of industrial disputes on a permanent footing.

In decade following partition of India, the then Pakistan government mostly adopted the colonial legacy with regard to labour laws. However, a major development took place in the legal framework of industrial relations in 1965 when the East Pakistan Trade Unions Act, 1965 was enacted repealing the Trade Unions Act, 1926. But the Act could not facilitate healthy growth of trade unions as it was more restrictive on the freedom of association and right to organize.¹ The period between 1947 and 1969 was thus marked by a host of repressive laws and witnessed labour agitation and widespread industrial unrest. Subsequently, the Labour Disputes Act, 1965 and Trade Unions Act, 1965 were integrated into one law, namely Industrial Relations Ordinance, 1969, which made provisions for recognition of collective bargaining agents for establishment or group of establishments. Thus, the Ordinance was a landmark development in the evolution of collective bargaining in Bangladesh. After the emergence of Bangladesh, development of industrial relations was strained by imposition of martial laws, proclamation of state of emergency at different times, and promulgation of host of other laws and policy which inhibited the growth of sound industrial relations in Bangladesh.

Since independence of Bangladesh, no major development took place in the history of labour legislation till the enactment of the Bangladesh Labour Act, 2006. The Bangladesh Labour Act, 2006 is a major and comprehensive enactment regarding industrial relation system--partly as a response to demand of stakeholders for improving regulatory framework on trade union and partly by demand for codification of existing labour laws in order to avoid overlapping and inconsistencies. It brought some significant changes in industrial relation system. However, the Act has not been able to bring the desired changed due to its in-built weaknesses, suspension of many labour rights under state of emergency and lack of institutional capacity to implement the laws.

1.2 Methodology of the study

The study is based on both secondary and primary sources. The secondary sources which have been reviewed are: books, journals, reports, and data from various official and unofficial

¹, B.U. Khan1997. "The Development of Right to Freedom of Association in Pre-independence Bangladesh (1919-1971): An Analysis of Legislation and Policy", in *Bangladesh Journal of Law*, Vol.1, No. 2, pp. 182-220.

sources. For primary sources, data from official sources have been collected, labour legislation and ILO Conventions have been consulted and interviews conducted with trade union leaders, government officials, employers, and members of civil society. Data from Bangladesh Bureau of Statistics (BBS), Labour Force Survey (LFS), Bangladesh Institute of Labour Studies (BILS), Department of Labour, Bangladesh Garments Manufacturing and Exporters Association (BGMEA) have been extensively used for the purpose of this study. A list of people interviewed is provided in the annexure. Both formal and informal interview methods were adopted to collect qualitative information concerning various aspects of industrial relation in Bangladesh. We have also used internet sources to collect information on industrial relations. A workshop was organized in Dhaka on 18 March 2009 under the auspices of ILO Office, Delhi to get opinion and recommendations on industrial relations in Bangladesh.

As a methodology, both qualitative and quantitative approaches have been adopted. Besides presenting data, the study analyses the historical evolution of industrial relations system and the legal instruments used therein. Collection of data and statistics, particularly in the case of collective bargaining, was somewhat impeded by the unavailability of official statistics.

1. 3 Major economic indicators and economic reforms in Bangladesh

Since its independence, Bangladesh has been experiencing transformation in its main economic base. Traditionally Bangladesh has been an agriculture-based economy. However, in the last couple of decades steps have been taken to modernize the economy and liberalize trade, giving a fillip to export-oriented industry. Despite various constraints, the economy has experienced a steady growth mainly due to private sector development and a strategy supporting the export-oriented industry..

The contribution of the manufacturing and services sector is towards the country's GDP has increased. The share of service sector in GDP has been over 52 per cent since 2005-06. On the other hand, contribution of agriculture has been declining. In 1980, agriculture accounted for 56 per cent of the GDP, manufacturing 13 per cent and services 31 per cent. By 2008, agriculture had declined, falling to 16.23 per cent of GDP, while industry and services had risen to a little over 17.77 per cent and 52 per cent, respectively.²

Bangladesh has also witnessed a steady growth in export. Real GDP increased by 52 per cent between 1991 and 2000, averaging a sustained growth rate of about 5 per cent per year. GDP per capita doubled between 1990 and 2003, fuelled in part by increase in traded goods. The share of exports as a per cent of imports has increased from 46 per cent in 1990 to 78 per cent in 2003. Increase in remittance and exports have contributed to an overall positive balance of payment in the last decades. The continuing rise of remittances by the expatriate Bangladeshis is making important contribution towards economic growth, in particular, in construction and services sectors.

² Source: BBS, LFS.

Table 1.1 Key Economic Indicators

INDICATORS	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006
Population						
Population (million)	129.9	131.6	133.4	135.2	137	138.8
Density per sq. mile	2280	2310	2341	2373	2407	2439
GDP (million US \$)	46988	47571	51914	56498	60382	62021
Growth (%)	5.3	4.4	5.3	6.3	6	6.7
Per Capita GDP (US\$)	362	361	389	418	441	447
Agriculture						
Share to GDP (%)	25	24	23.5	23.1	22.3	21.8
Growth Rate (%)	3.1	0	3.1	4.1	2.2	4.5
Industry						
Share to GDP (%)	26.2	26.7	27.2	27.7	28.3	29
Growth Rate (%)	7.4	6.5	7.3	7.6	8.3	9.6
Balance of Payments						
Export (million US \$)	6467	5986	6548	7603	8655	10526
Export Growth (%)	12.4	-7.4	9.4	16.1	13.8	21.63
Import (million US \$)	9335	8540	9658	10903	13147	14746
Import Growth (%)	11.5	-8.5	13.1	12.9	20.6	12.2
Trade Balance (million US \$)	-2011	-1768	-2215	-2319	-3297	-2879
Remittances						
(million US \$)	1882	2501	3062	3372	3848	4802

Source:

Bangladesh Bureau of Statistics
Ministry of Finance
Planning Commission
Export Promotion Bureau
Bangladesh Bank
The World Bank

Bangladesh has made significant economic progress since her independence in 1971. Consistent with the trends of free market economy, Uruguay Round Accord and Agreement with

World Trade Organisation (WTO), Bangladesh has been pursuing a liberal economic and trade policy since 1990s. Extensive reform programmes have been implemented in trade during the last two decades. Major economic reforms in Bangladesh came in the form of implementation of a package of structural adjustment policies under the auspices of the World Bank and the IMF in 1980s and early 1990s.

Bangladesh is one of the first 35 countries, which adopted Breton Woods institution sponsored Structural Adjustment Program (SAP). In pursuit of SAP, Bangladesh initiated major reforms in different sectors. In agricultural sector, it reduced subsidies on agriculture; in trade and industrial sector, it rationalized and simplified the tariff structure and eliminated quantitative restrictions on imports. Bangladesh also took initiatives in privatization of public enterprises and improved operational performance of public utilities. In the financial sector, the country implemented reforms aiming at promotion of free market economy, privatized a number of national commercial banks and strengthened commercial bank loan recovery programs.³

1.4 Data on Employment

On the basis of the latest LFS conducted in financial year 2005-06, the total labour force or the economically active population is about 49.5 million, of which 36.01 million (77.75 per cent) are male and the rest 10.3 million (22.5 per cent) are female.⁴ Between 1991 and 2000, the labour force grew by around 2 per cent per year. Labour force in the rural areas grew at an annual rate of 1.6 per cent, while in the urban areas the rate was recorded at around 3 per cent. During the last 15 years a significant labour migration has taken place from rural to urban areas for employment, encouraged largely by the expansion of export-oriented garments industries.

Trade and economy of Bangladesh has undergone major structural transformation due to globalization. Following the demand of trade, accelerated by the process of economic globalization, there has been a shift in the country's economic activity from agriculture to export-oriented industries, and import-oriented services.

There has also been a significant increase of engagement of workers in unregistered enterprises. Such informal workers are self employed in small or unregistered enterprises, or are wage employees without contracts, worker benefits, or social protection. Informal workers are thus vulnerable and insecure.

Table 1.2 Economically active population/labour force (in millions) (age 15+)

	1999-2000	2002-2003	2005-2006
Total	40.7	46.3	49.5
Male	32.2	36.0	37.4
Female	8.6	10.3	12.1
Urban			
Total	9.2	11.3	11.7
Male	7.1	8.6	8.9
Female	2.2	2.7	2.8
Rural			
Total	31.5	35.0	37.8
Male	25.1	27.4	28.5
Female	6.4	7.6	9.3

Source- Labour Force Survey

³ D. Bhattacharya, R.A.M. Titumir (eds). 2001. *Reforms and Consequence*, Sharaban Prakashani, Bangladesh, Bhattacharya D. (1995);

"Bangladesh Experience with the Structural adjustment and Enhanced Structural Adjustment Facilities", in Roy H, Grieve and Muzammel Huq (ed): *Bangladesh Strategies for Development*, Dhaka University Press Limited, 1995;

Dowlah, CAF. 1997, "Privatization Experience within Bangladesh: 1991-96", World Bank, Dhaka Office.

⁴ Bangladesh Economic Survey Report of 2008, available at: <http://www.mof.gov.bd>

Table 1.3 Employed population (in millions)

	1999-2000	2002-2003	2005-2006
Total	39.0	44.3	47.4
Male	31.1	34.5	36.1
Female	7.9	9.8	11.3
Urban			
Total	8.7	10.7	11.3
Male	6.7	8.2	8.6
Female	2.0	2.5	2.7
Rural			
Total	30.3	33.6	36.1
Male	24.4	26.3	27.5
Female	5.9	7.3	8.6

Source- Labour Force Survey

Table 1.4 Employment status

	1999-2000	2002-2003	2005-2006
Total	39.0	44.3	47.4
Self-employed	18.2	19.8	19.9
Employer	0.1	0.2	0.1
Employee	6.5	6.1	6.6
Unpaid family helper	4.7	8.1	10.3
Day labourers	9.5	8.9	8.6
Others	-	1.2	1.9

Labour Force Survey

1.5 Share of the formal and informal economy

In Bangladesh, like other developing countries, the informal sector dominates the employment scenario. It includes those workers not covered by labour laws, self employed workers and workers employed in non-registered enterprises. They constitute about 80 per cent of the total workforce. Informal workers do not enjoy social protection and benefits. According to LFS, 41.98 per cent of the labour force was self employed in 2005-06 compared to 44.70 per cent during 2002-03. Agriculture continues to remain the main activity absorbing the vast majority of the labour force in informal sector. Employment in agriculture is typically dominated by self-employment. There is also a significant proportion of self-employed workers in the non-agricultural workforce without secure contracts, workers benefits or social protection.

Many informal sectors like RMG, ship breaking industries, shrimp industry which were previously outside the scope of labour laws, have gradually been included in the formal sector.

However labour laws do not apply to those employed in agriculture, rickshaw pullers, day labourers, construction workers and domestic workers. These workers in the informal sector are not organized in any form and have remained outside of the purview of any legal framework that guarantees them freedom of association and collective bargaining.

The share of the formal sector in total labour force is only 20 per cent, i.e., some 6 million workers. Of these 20 per cent are employed in the public sector. They include government employees, semi-autonomous bodies, public corporations, and state-controlled factories and mills. The share of the public sector undertakings accounts for about 4.5 per cent of the aggregate labour force. The other 80 per cent of formal workers are employed in the private sector including around 19 thousand registered factories and mills.⁵ Thus, the government as an employer controls only a very small segment of the economy in terms of employment generation.

Due to sustained de-regulation policy of the government and large scale privatization of the economy the share of the public sector in employment has been continuously reduced.⁶ However, with the availability of extensive surplus labour, there has been increase in sub-contract, temporary and casual work. Such a feature also contributes to vulnerability and insecurity among the workforce. For instance, about 70 per cent of workers in shrimp sector are engaged on contract basis and as such, deprived of basic labour rights.

Table 1.5 Sector-wise employment (in millions)

	1999-2000	2002-2003	2005-2006
Formal Sector			
Total	9.6	9.2	10.2
Male	8.4	7.3	8.6
Female	1.2	2.0	1.6
Informal Sector			
Total	29.3	35.1	37.2
Male	22.7	27.2	27.5

Source- Labour Force Survey

1.6 Sectoral and gender composition of labour force in Bangladesh The maximum workforce in Bangladesh is employed in the agriculture sector. In 2003, although its contribution to the GDP was a mere 21 per cent, agriculture accounted for 52 per cent of the labour force, up from 49 per cent in 1996. Service sector accounts for 35 per cent, industry for 10 per cent, while construction accounts for 3 per cent of employed labour force.⁷ The service sector has remained the main source of job creation since the early 1990s.

⁵ Labour Force Survey (BBS), 2003, 2004 and 2005

⁶ N.I. Khan: *Current Employment Situation and Considerations for Better Labour-Management Relationship*, Paper presented at the Forum on Labour Management Cooperation: Challenges to Increase Employment, organized by Asian Productivity Organisation, Ulaanbaatar, Mongolia, 9-12 September, 2003, pp. 9-10.

⁷ Bangladesh Labour Force Survey Report -2003.

Table 1.6 Industry-wise percentage of employed persons: 1996-2006

Major industry	1996	2000	2003	2006
Agri. forestry and fisheries	48.85	50.77	51.69	48.10
Manufacturing	10.6	9.49	9.71	10.97
Electricity, gas and water	0.29	0.26	0.23	0.21
Construction	2.87	2.82	3.39	3.16
Trade, hotel and restaurant	17.24	15.64	15.34	16.45
Transport, storage and Communication	6.32	6.41	6.77	8.44
Finance and business services	0.57	1.03	0.68	1.48
Product and personal services				
Health, Education, Public	13.79	13.08	5.64	5.49
Administration and Defence	----	-----	6.32	5.49

Source: BBS, LFS (various years)

So far as the gender composition is concerned, the number of women in the labour force grew significantly in last decade in both rural and urban areas. While total number of women in the labour force was 5.4 million in 1996, it was 8.5 million in 2000. The number of women in the labour force almost doubled in size between 1996-03 to 10 million, while number of men in the labour force increased by just 17 per cent. A large majority of women are employed in labour-intensive industries like Ready Made Garments Industry (RMG) at wages lower than men would accept. Besides, number of women in the labour force remains less than one-third of the male labour force.⁸

1.7 Labour Force in EPZ

Bangladesh Export Processing Zones Authority (BEPZA) came into existence through the Bangladesh Export Processing Zones Authority Act, 1980. EPZs do not fall under the mandate of the Ministry of Labour or the Ministry of Industry. EPZs are directly under the Office of the Prime Minister. EPZs have their own labour relations officials and the labour inspectors only intervene under the request of the Board. Under the Act, the Government set up EPZs in Bangladesh to attract foreign investment, create employment and to boost export. The Private EPZ Act was passed in 1996 to enable foreign and local investors to set up Private EPZs in Bangladesh. EPZs are playing significant role in export growth in Bangladesh through foreign and local investment.

The share of export of EPZs in the total national export is around 18 per cent. There are eight export processing zones which are currently operational. The employment in EPZs has increased significantly over the last two decades. While number of workers was only 26,336 during 1983-1994, total workforce was 1 28, 452 during 1994-2005.⁹

EPZs at a glance (Up to June 2008)

- No of EPZs - 8.
- New EPZs under Implementation - 2.
- Operational Enterprises - 281
- Enterprises under implementation - 175

⁸ Ibid.

⁹ Md. Zakir Hossain, Export Diversification and Role of Export Processing Zones (EPZ) in Bangladesh, available at: <http://siteresources.worldbank.org/intranettrade/resources/internal-training>

• Employment	-	2,15,055
• Total Investment	-	US\$1414.07 m
• Total Countries of Investment	-	33
• Total Investors	-	456

(Data collected from official sources)

1.8 Labour Force in the RMG sector

The RMG has emerged as a leading employment sector both directly and indirectly through its garments and associated industries and service sector. The RMG employs directly 2.5 million workers of whom 80 per cent are female. Indirect employment is around 10 million. Indirect employment is generated through backward linkage industries from knitwear sector and other industries and service providers wholly or substantially dependent upon garment industries, e.g., spinning mills, textile and packaging industries, accessories manufacturers, specialized transport services, freight forwarders etc. The RMG industry in Bangladesh accounts for more than 75 per cent of total exports. Bangladesh enjoys comparative advantage in the textiles and garments sector because of low-cost labour and advantageous global market access. The RMG sector witnessed a phenomenal growth in the last decade. With about 2,600 factories and a workforce of 1.4 million, RMG jointly with knitwear accounted for more than 70 per cent of total investments in the manufacturing sector during the first half of the 1990s. At present, number of RMG factories exceed 3,000, employing over 50 per cent of the industrial workforce and account for 75 per cent of the total earning through exports.¹⁰

¹⁰ Ibid.

Chapter Two

Legal Framework for the Industrial Relation System

2.1 Introduction

Immediately after its independence in 1971, Bangladesh adopted labour laws and policies that prevailed during colonial era and the Pakistani period. However, the new government of Bangladesh declared a labour policy in 1972, which recommended reduction of trade union activities in welfare organizations.¹¹ The right to strike and collective bargaining in the nationalized industries was prohibited for six months by Presidential order no. 55 in May 1972. In 1973, the right to strike and lockout, as granted by IRO, 1969 was withdrawn. Meanwhile the “Emergency Power Ordinance, 1974” was promulgated and the rules formulated under the Ordinance completely suspended the democratic rights of workers by prohibiting trade union activities such as strikes, lock-outs, collective bargaining.¹²

The military regime of 1975 imposed restrictions on the rights of collective bargaining and striking through Industrial Relations (Regulation) Ordinance (IR(R)O), 1975. The Industrial Relations (Amendment) Ordinance (IR(A)O), 1977 liberalized the Rights of Freedom of Association to some extent. Another improvement took place through adoption of the Labour Policy of 1980, which restored the right to freedom of association to a considerable extent. The situation worsened again with the imposition of martial law in 1982 when the military regime proclaimed the Industrial Relations (Regulation) Ordinance 1982 by which the government suspended trade union activities, strikes, and right of freedom of association. The scenario improved in 1990 with the fall of the military regime and full trade union activities were restored by the democratic government in 1991.

The period between 2001 and 2006 saw great achievements, with a huge consultation process on labour law reform to enact an updated, consolidated and unified version of labour laws. These began to be implemented in October 2006. After proclamation of Emergency on 11 January 2007, political and trade union activities, including rallies and demonstrations were again banned. During the Emergency that lasted 23 months, trade unions and collective bargaining were prohibited and the determination of collective bargaining agent could not be made. Thus, frequent interference by government and military regimes on different occasions has curtailed the development of a healthy and congenial atmosphere of industrial relations system in Bangladesh.

2.2 Labour and employment legislation in Bangladesh – Main points

The Labour Law of Bangladesh is a complex and curious mix of different legislations, regulations and ordinances. Before the adoption of Labour Act of 2006, there were about 46 laws in force in Bangladesh encompassing labour and industrial sectors. After the enactment of the Labour Act, twenty five of the prevailing enactments stood repealed¹³ and were amalgamated

¹¹ Labour Policy 1972. Ministry of Law and Social Welfare, Government of Bangladesh..

¹² Md. Abu Taher, ‘Legal Environment for Industrial Relations in Bangladesh: A Critical Evaluation’, the Chittagong University Journal of Law, Vol. 2, 1997, pp. 124-133.

¹³ The Workmen’s Compensation Act, 1923 (VIII of 1923); The Children (Pledging of Labour) Act, 1933; The Workmen’s Protection Act, 1934 (IV of 1935); The Doc Labourers Act, 1934 (XIX of 1934); The Payment of Wages Act, 1036 (IV of 1936); The Employer’s Liability Act, 1938 (XXXVI of 1938); The Employment of Children Act, 1038 (XXVI of 1938); The Maternity Benefit Act, 1941(XIX of 1941); The Motor Vehicles(Drivers)Ordinance, 1942 (V of 1942); the Maternity Benefit (Tea Estate) Act, 1950 (XX of 1950); the Employment (Records of Service) Act, 1951; the Bangladesh Plantation Employees Provident Fund Ordinance, 1959 (XXXI of 1959); the Coal Mines (Fixation of Rates of Wages) Ordinance, 1960 (XXXIX of 1960); the Road Transport Workers Ordinance, 1961 (XXVII of 1961); the Minimum Wages Ordinance 1961 (XXXIV of 1961); The Plantation Labour Ordinance, 1962 (XXIX of 1962); The Apprenticeship Ordinance, 1962 (LVI of 1962); the Factories Act, 1965 (IV of 1956); the Shops and Establishment Act, 1965 (VII of 1965); the Employment of Labour (Standing Orders) Act, 1965 (VIII of 1965); the Companies Profits (Workers Participation) Act, 1968 (XII of 1968); the Industrial Relations Ordinance, 1969 (XXII of

with the new Code. At present there are 21 labour and industrial laws in operation which establish the framework for industrial relations. They are as follows:

1. The Boilers Act, 1923
2. The Mines Act, 1923
3. The Cotton Industry (Statistics) Act, 1926
4. The Dock Workers' Act, 1934
5. The Industrial Statistics Act, 1942
6. The Chittagong Hill-Tracts (Labour Laws) Regulation, 1954
7. The Trade Organisations Ordinance, 1961
8. The Tea Plantation Labour Ordinance, 1962
9. The Control of Employment Ordinance, 1965
10. The Exercise and Duty on Minerals (Labour Welfare) Act, 1967
11. The Bangladesh Industrial Development Corporation Order, 1972
12. The Bangladesh Handloom Board Ordinance, 1977
13. The Foreign Private Investment(Promotion & Protection) Act, 1980
14. The Bangladesh Export Processing Zone Authority Act, 1980
15. The Agriculture Labour (Minimum Wages) Ordinance, 1984
16. The Bangladesh Cha Shramik Kallyan Fund Ordinance, 1986
17. The Inland Water Transport(Regulation of Employment) act, 1992
18. The State-owned Manufacturing Industries Workers (Terms and Conditions of Service) ordinance, 1993
19. The Bangladesh Private Export Processing Zone Act, 1994
20. The EPZ Workers Association and Industrial Relations Act, 2004
21. The Bangladesh Labour Act, 2006

2.2.1 Constitution of Bangladesh

The preamble of the Constitution of Bangladesh, 1972, provides that the fundamental aim of the State shall be to realize, through the democratic process a socialist society, free from exploitation – a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens¹⁴. The Fundamental Rights and the Directive Principles of State Policy enshrined in our Constitution need to be specifically mentioned in view of their supreme importance in directing and influencing the Labour Legislation in the country.¹⁵ The Fundamental Rights cover, *inter alia*, equality before the law; prohibition of discrimination on grounds of religion, race, caste, sex or place of birth; equality of opportunity in matters of public employment, protection of rights

1969); The Newspaper Employees (Conditions of Service) Act, 1974 (XXX of 1974); and the Dock Workers (Regulation of Employment) Act, 1980 (XVII of 1980).

¹⁴ Para 3 of the Preamble to the Constitution of the Peoples Republic of Bangladesh

¹⁵ A. Halim, *Text Book on Labour and Industrial Law in Bangladesh*, pp. 31

regarding freedom of assembly and freedom to form associations; freedom to practice any profession; protection of life and personal liberty; and right against exploitation. The Constitution specifically provides as one of the fundamental right that all forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.¹⁶ It also recognizes freedom of association as a fundamental right.¹⁷

2.2.2 The Bangladesh Labour Act, 2006¹⁸

In an attempt to modernize labour laws and to remove all uncertainty and vagueness in the existing laws, National Labour Law Commission was constituted in 1992 consisting of 38 members lead by Justice Abdul Kuddus Chowdhury¹⁹. The Commission framed a questionnaire and sent to the different stake holders i.e. the employers, workers, CBA leaders, NGOs to get their views and recommendations for amending the than labour laws. The commission submitted a report after two years of its constitution. The Commission held consultations with the workers' representatives, CBA leaders and employers' representatives to effectively involve them in the process of renovation of labour laws in Bangladesh²⁰. Subsequently Bangladesh Labour Act 2006 came into force on October 11 2006.

Scope of application

The Bangladesh Labour Act, 2006 applies to the whole of Bangladesh²¹. The Act is an exhaustive law that has within its scope all establishments, such as commercial and industrial establishments, factories, shops, docks, tea plantations etc. However, a number of categories of workers are excluded from the scope of application of the Labour Act, including its provisions on freedom of association and the right to organize²². These are offices of or under the Government (except workers in the Railway Department, Posts, Telegraph and Telephone Departments, Roads and Highways Department, Public Works Department and Public Health Engineering Department and the Bangladesh Government Press); the security printing press; establishments for the treatment or care of the sick, infirm, aged, destitute, mentally disabled, orphans, abandoned children, widows or deserted women, which are not run for profit or gains; shops or stalls in public exhibitions which deal in retail trade; shops in any public fair for religious or charitable purposes; educational, training and research institutions; agricultural farms with less than ten workers; domestic servants; and establishments run by the owner with the aid of members of the family. Managerial and administrative employees are excluded from the right to establish workers' organizations.

2.3 Major industrial relations reforms under the Bangladesh Labour Act, 2006

Before the enactment of the Bangladesh Labour Act, 2006 there was a plethora of laws in pertaining to labour. These laws were enacted during the British and Pakistan regime and were found by many to be inadequate in view of the prevailing socio-economic conditions of Bangladesh. The Act initiated a number of reforms including improving health and safety issues, issuing of ID cards and appointment letter, improved access to justice, uniformity in definition

¹⁶ Article 34, the Constitution of the Peoples Republic of Bangladesh

¹⁷ Article 38, Ibid

¹⁸ The Bangladesh Labour Act 2006 has been enacted as Act XLII of 2006 and came into force on October 11, 2006. It contains 21 Chapters and 354 Section.

¹⁹ Md. Abdus Salam, Bangladesh Srama Ain -2006 *O Rohito Ainer Parthokko*, Published in Souvenir 2007, Published by Ministry of Labour and Employment, Government of the Peoples Republic of Bangladesh.

²⁰ Personal interviews with *Mr. Syed Sultan Uddin Ahmed* and *Mr. Tapan Datta* (See list of interviewers quoted, Annex-)

²¹ Section 1(3), The Bangladesh Labour Act 2006

²² Section 1(4), Ibid

of workers, child labour, payment of compensation, enhancing social security of workers, and overtime allowance.

In the field of industrial relations, the new Act grants protection to the president, general secretary, organizing secretary and the treasurer of a Trade Union, who cannot be transferred from one district to another without his/her consent²³. The law also recognizes the right of the workers in Civil Aviation and seamen to form separate trade unions.²⁴ The process to form a collective bargaining agent (CBA) has been simplified and provided that the registration of a trade union shall be cancelled on failure to get 10 per cent of the total votes in the election²⁵. The trade union federation can work as a collective bargaining agent for a member trade union when the member trade union authorizes the federation to do so in its meeting of executive committee²⁶. The Act has also strengthened the role of the Participation Committee to minimize conflict, and to achieve harmonious relations.²⁷ The Act has emphasized on implementation of recommendations of the Participation Committee.²⁸ The industrial dispute settlement mechanism has been elaborately described by mentioning time limitation at every stage²⁹. Specific provisions in industrial relations will be analyzed in more detail in subsequent chapters.

2.4 Bangladesh Labour Act, 2006: A critical appraisal

Initially, a number of stakeholders were given the chance to participate in the drafting of the new legislation through a wide consultation process. But no consultations took place after the Draft Bill was submitted before the Parliament in 2003. As a result, a number of suggestions put by the different stakeholders could not be considered by the Parliament.³⁰ Though the law has made many improvements in legal framework on industrial relations, it has some weaknesses, which may frustrate the objectives of the law. In particular, the Act does not bring any significant change regarding trade unionism, collective bargaining and strikes.

The Bangladesh Labour Act 2006 has been made non-applicable in certain cases such as domestic workers. There is also no provision for holding conciliation after serving notice for strike or lockout which was available in the previous Industrial Relations Ordinance 1969.

In recent years, the ILO Committee of Experts on Conventions and Recommendations have identified a number of weaknesses in the Bangladesh Labour Act 2006 with regard to the application of the ILO Convention on Freedom of Association and Protection of the Right to Organise, 1947 (No. 87). In its 2009 report, the Committee “noted with deep regret” that the Act does not contain any improvements in relation to the previous legislation and in certain regards contains even further restrictions which run against the provisions of Convention 87. The Committee has noted:

- The need to repeal provisions on the exclusion of managerial and administrative employees from the right to establish workers' organizations (section 2 XLIX and LXV of the Act);
- To remove new restrictions on the right to organize of fire-fighting staff, telex operators and cipher assistants (section 175 of the Act);

²³ Section 187, Ibid

²⁴ Section 184 and 185.

²⁵ Section 202, Ibid

²⁶ Section 203, Ibid

²⁷ See Section 205, Ibid

²⁸ Section 208, Ibid

²⁹ Section 210, Ibid

³⁰ Personal interviews with *Mr. Syed Sultan Uddin Ahmed* (See list of interviewees, Annex-1)

- To amend section 1(4) of the Act so as to ensure that the workers which have been excluded from the scope of the application of the Act including its provision on freedom of association, have the right to organize;
- To repeal provisions which restrict membership in trade unions and participation in trade union elections to those workers who are currently employed in an establishment or group of establishments, including seamen currently engaged in merchant shipping (Sec. 2 (LXV) and 175, 185(2) of the Act);
- To lower the minimum membership requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments for initial and continued union registration, as well as the possibility of de-registration if the membership falls below this number (sections 179(2) and 190(f) of the Act); the need to repeal provisions which provide that no more than three trade unions shall be registered in any establishment or group of establishments (section 179(5) of the Act) and that only one trade union of seafarers shall be registered (section 185(3) of the Act); finally, the need to repeal provisions prohibiting workers from joining more than one trade union and the consequent penalty of imprisonment in case of violation of this prohibition (sections 193 and 300, of the Act);
- To repeal or amend new provisions which define as an unfair labour on the part of a worker or trade union, an act aimed at 'intimidating' or 'inducing' any person to become, continue or cease to be a trade union member or officer and the consequent penalty of imprisonment for such acts (sections 196(2)(a) and (b) and 291, of the Act). According to the Committee, the terms 'intimidating' or 'inducing' are too general and do not sufficiently safeguard against interference in internal trade union affairs;
- To repeal provisions which provide that no more than three trade unions shall be registered in any establishment or group of establishments and that only trade union of seamen shall be registered (sec. 185(3) of the Act);
- The need to repeal provisions denying the right of unregistered unions to collect funds (section 192 of the Act) upon penalty of imprisonment (sec. 299 of the Act);
- To repeal provisions prohibiting workers from joining more than one trade union;
- To lift several restrictions on the right to strike: requirement for three-quarters of the members of a workers' organization to consent to a strike (sec. 211(1) and 227(c) of the Act); prohibition of strikes for a period of three years from the date of commencement of production in a new establishment, or an establishment owned by foreigners (sec. 211(8) and 227 (c) of the Act); possibility of prohibiting strikes at any time if a strike is considered prejudicial to the national interest (sec. 211(3) or involves a public utility service including the generation, production or supply of gas and oil to the public, as well as railways, airways, road and river transport, ports and banking (sec. 211(4) and 227(c) of the Act).
- To amend provisions which impose a penalty of imprisonment for failure to appear before the conciliator in the framework of settlement of industrial disputes (sec. 301 of the Act).³¹

³¹ CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Bangladesh, published: 2008.

2.5 The EPZ Workers Association and Industrial Relations Act, 2004

Bangladesh Export Processing Zones started operation in 1983 through Bangladesh Export Processing Zone Authority (BEPZA) Act 1980 (ACT No. XXXVI of 1980) passed by the Parliament. The Export Processing Zones Act, 1980 as amended in 1984 provides for power to exempt such zones from operation of certain laws³². In 1986 the government of Bangladesh suspended the then two labour laws viz. Employment of Labour (Standing Order) Act 1965, Industrial Ordinance 1969 and subsequently in 1989 the Factories Act 1965. As a result, it was not legal to organize a labour union in establishments in Export Processing Zones (EPZs).³³ Another important piece of legislation is the Bangladesh Private Export Processing Zone Act, 1994. The establishments in EPZs enjoy certain facilities which are not available to similar establishments outside the EPZs such as, tax holiday for 10 years, exemption from income tax on interest on borrowed capital, freedom from national import policy restrictions etc.³⁴

As a result of protest by the civil society and demand by the United States government for introduction of trade unions, and fear of losing preferential access to the US market granted under the Generalized System of Preferences (GSP), the Government of Bangladesh took the initiative to introduce workers association in EPZs through enactment of a new law.

In order to prepare the draft law with respect to industrial relation and workers' association, Bangladesh government initiated a consultation process with the investors in EPZ where on behalf of the investors, an association of investors in EPZs in Bangladesh³⁵, worked closely with the Government. The government also issued a Gazette Notification in 2001 stating that the prohibition on freedom of association would end at the start of 2004. Accordingly in 2004, the EPZ Workers Association and Industrial Relations Act 2004 was passed by the Parliament of Bangladesh.

The objective of the Act was to recognize the right of the workers to form association, regulation of relations and settlement of differences or dispute arising between employers and workers to the Export Processing Zones and for matters connected therewith and ancillary thereto³⁶.

The Act applies to the workers³⁷ and employers³⁸ in the Export Processing Zones established under the Bangladesh Export Processing Zones Authority Act, 1980.³⁹, but excludes (i) worker employed as a member of the watch and ward or security staff or as a confidential assistant, cipher assistant or as casual workers or workers employed by kitchen or food preparation contractors⁴⁰; (ii) workers employed in managerial or administrative capacity⁴¹ and those employed in supervisory capacity.⁴²

³² Section 11A, The Export Processing Zones Act, 1980 as amended in 1984

³³ supra note 3, p. 129

³⁴ M. Muqtada et al *Bangladesh, Economic and Social Changes of Globalization*, pp.153

³⁵ BEPZIA, an association of investors in EPZs in Bangladesh

³⁶ Preamble to the EPZ Workers Association and Industrial Relations Act, 2004

³⁷ Section 2(29) of the EPZ Workers Association and Industrial Relations Act, 2004 – 'worker' means any person (including an apprentice) not falling within the definition of employer, who is employed in an industry in a Zone for wages or reward either directly or through a contractor to do any skilled, unskilled, manual, technical or clerical work, whether the terms of employment be expressed or implied and for the purpose of any proceeding under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of the dispute, or whose dismissal, discharge, retrenchment, lay-off or removal has led to that dispute.

³⁸ Section 2(10) of the EPZ Workers Association and Industrial Relations Act, 2004 – 'employer' in relation to an industrial unit, means any person or body of persons, whether incorporated or not, who or which employs workers in an industrial unit under a contract of employment, and a registered company employing workers in any industrial unit or units in a Zone shall be deemed to be an employee.

³⁹ Section 1(3), the EPZ Workers Association and Industrial Relations Act, 2004

⁴⁰ Section 2(29)(i), Ibid

⁴¹ Section 2(29)(ii), Ibid

⁴² Section 2(29)(iii), Ibid

2.5.1 Weaknesses of EPZ Workers Association and Industrial Relations Act

The EPZ Workers Association and Industrial Relations Act is undoubtedly a progressive initiative of the Government in ensuring freedom of association in factories located in Export Processing Zones in Bangladesh. But this law has some weaknesses and may not serve the objectives concerning industrial relations. The law is silent about the appropriate forum for filing disputes that arise in EPZ as there is no provision of Tribunal in EPZ. The Government has not prescribed any specific rule for EPZs.

The ILO Committee of Experts stated in its 2009 report that the EPZ Workers Associations and Industrial Relations Act 2004 contained numerous and significant restrictions and delays with regard to the right to organize in EPZs and, in particular:

- Prohibited the formation of workers' associations in industrial units established after the commencement of the Act and, until a period of three months after the commencement of commercial production in the concerned unit (section 24);
- Does not allow more than one workers' association per industrial unit (section 25(1));
- Establishes excessive and complicated minimum membership and referendum requirements for the establishment of workers' associations (a workers' association may be formed only when a minimum of 30 per cent of the eligible workers of an industrial unit seek its formation, and this has been verified by the Executive Chairperson of BEPZA, who shall then conduct a referendum on the basis of which the workers shall acquire the legitimate right to form an association under the Act, only if more than 50 per cent of the eligible workers cast their vote, and more than 50 per cent of the votes cast are in favour of the formation of the workers' association (sections 14, 15, 17 and 20);
- Confers excessive powers of approval of the constitution drafting committee to the Executive Chairperson of the BEPZA (section 17(2));
- Prevents steps for the establishment of a workers' association in the workplace for a period of one year after the first attempt fails to gather sufficient support in a referendum (section 16);
- Permits the de-registration of a workers' association at the request of 30 per cent of the workers even if they are not members of the association and prevents the establishment of another trade union for one year after the previous trade union is de-registered (section 35);
- Provides for the cancellation of the registration of a workers' association on grounds which do not appear to justify the severity of this sanction (such as contravention of any of the provisions of the association's constitution) (sections 36(1)(c), (e)-(h) and 42(1)(a));
- Establishes a total prohibition of industrial action in EPZs until 31 October 2008 (section 88(1) and (2)); provides for severe restrictions on strikes, once recognized (possibility to prohibit a strike if it continues for more than 15 days or even before this deadline, if the strike is considered as causing serious harm to productivity in the EPZ (section 54(3) and (4));
- Prevents workers' associations from obtaining or receiving any fund from any outside source without the prior approval of the Executive Chairperson of the BEPZA (section 18(2));

- Demands an excessively high minimum number of trade unions to establish a higher level organization (more than 50 per cent of the workers' associations in an EPZ (section 32(1));
- Prohibits a federation from affiliating in any manner with federations in other EPZs and beyond EPZs (section 32(3)); and
- It does not seem to afford guarantees against interference with the right of workers to elect their representatives in full freedom (e.g. the procedure of election shall be determined by the BEPZA, etc. (sections 5(6) and (7), 28(1), 29 and 32(4)).

The Committee requested the Government to take the necessary measures to amend the EPZ Workers Associations and Industrial Relations Act so as to bring it into conformity with the Convention and to provide detailed information in its next report in this respect.

The Committee of Experts also noted that according to comments made by the International Trade Union Confederation (ITUC), the Bangladesh Export Processing Zones Authority (BEPZA) continued to raise obstacles to the establishment of workers' associations in EPZs after the deadline of 31 October 2006 set in section 13(1) of the Industrial Relations Act 2004; although after this deadline, workers had the right to apply to form workers' associations, the BEPZA allegedly failed to devise and provide the prescribed form needed by the workers to this effect, thus preventing in practice the establishment of such associations. The ITUC adds in its latest communication that following the filing of the American Federation of Labour and Congress of Industrial Organization (AFL-CIO) petition on the revocation of GSP privileges, workers were provided the opportunity to register their intent to form workers' associations and participate in elections to formally establish them; in the final months of 2007, many workers' associations went through the election process, frequently with over 90 per cent of the workers in favour. Nevertheless, employers continued to refuse to substantively accept their role or to enter into negotiations with them. In its 2009 report, the Committee requested the Government to communicate its observations in this regard and to provide statistical information on the number of workers' associations established in the EPZs after November 1, 2006.

As per the application of labour law provisions in EPZs, the BEPZA authority created a separate Industrial Relations (IR) department in the zone to look after labour management relations. The IR departments of the zones are also handling grievances of the workers. The department has been established as a substitute organization of the department of Labour and Chief Inspector of Factories.

Chapter Three

Main Actors in the Industrial Relation System in Bangladesh

3.1 Legal framework of trade union

The Constitution of Bangladesh provides the basic legal foundation for formation of organizations by workers and employers. The main statutory framework for such organizations is the Bangladesh Labour Act 2006. The Act recognizes both right of workers to join trade unions and the right of employers to join associations. Section 176 of the Bangladesh Labour Act 2006 provides that every worker has the right to constitute a trade union and to join an association of their choosing. However, the Act does not cover homeworkers, EPZs, and agricultural workers. Besides legal restrictions, administrative manipulations, especially in private industries and informal sectors, prevent the workers from enjoying the right to be organized.

In order to be registered, a trade union must have a minimum membership of 30 per cent of the total number of workers employed in any establishment⁴³ or group of establishments in which it is formed. As we saw in the previous chapter, the Committee of Experts under the ILO Convention 98 has asked the Government to lower this percentage since it may impede the development of free and voluntary trade unions.⁴⁴ Moreover, the Act does not provide for protection against acts of interference with trade unions.

The Committee notes that while section 195 of the Bangladesh Labour Act 2006, which replaced the IRO, introduced certain improvements compared to the previous legislation, it does not explicitly authorize an employer to require that a person appointed to managerial posts cease to be a member or officer of a trade union and does not allow transfer of the president, general secretary, organizing secretary of any registered trade union without their consent. However, this provision does not prohibit acts of interference designed to promote the establishment of workers' organizations by financial or other means, with the object of placing them under the control of employers or their organizations.⁴⁵

According to section 183 of the Act, a group of establishments shall be deemed to be one establishment for the purpose of formation of trade union.⁴⁶ As a requirement of formation of trade union, the Act prescribes election of officers by the general body of trade union and provides that the term of officer shall not exceed two years upon his election or re-election.

The Act also allows trade union in civil aviation sector but in terms of percentage of workers for formation of trade union, it requires that half of the total number of workers should apply for trade union.⁴⁷

Section 176(c) of the Act provides that trade unions shall have the right to establish and join federations and any such union or federation shall have the right to affiliate with international organizations and confederations of workers' organization.

⁴³ Establishment means shop, a commercial establishment or an industrial establishment or premises or yard where workers are employed for industrial work. See, section 2 (31) of the Act.

⁴⁴ CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Bangladesh (ratification: 1972) Published: 2007, accessed at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=9022&chapter=6&query=Bangladesh%40ref&highlight=&querytype=bool&context=0>, Published: 2007

⁴⁵ CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Bangladesh (ratification: 1972) Published: 2008.

⁴⁶ A group of establishments shall mean all those establishments in a specified area who are engaged in specified industry of the same category and whereon not more than twenty workers are engaged. See, Section 183(2) of the Act.

⁴⁷ Section 184 of the Act.

3.2 Procedure of registration and cancellation of registration of trade union

The Bangladesh Labour Act 2006 provides for registration of trade unions with a view to rendering lawful organization of labour to enable collective bargaining. Through its registration, the trade union acquires certain benefits including legal existence as an entity separate from its members. Workers' trade unions are registered with the Registrar of Trade Unions, after fulfilling a number of requirements, listed in the Act.⁴⁸ However, certificate of registration is issued by the Director of Labour.⁴⁹ Registration of trade union confers a legal existence as an entity separate from its members. According to section 194(1), a registered trade union is a statutory body with legal entity and consequently it can own property, enter into contract, sue and be sued by the name in which it is registered. Section 192 provides that no trade union, which is unregistered or whose registration has been cancelled shall function as a trade union.

Section 190 of the Act gives powers to the Director of Labour to cancel the certificate of registration under well defined circumstances. Where the Director of Labour is satisfied after investigation that the registration of the trade union should be cancelled, he shall submit an application to the Labour Court praying for permission to cancel such registration. The Director of Labour shall cancel the registration of a trade union within thirty days from the date of receipt of permission from the Labour Court. Section 191 of the Act stipulates that any person aggrieved by the order of cancellation of registration may within thirty days from the date of the order, appeal to the Labour Appellate Tribunal and the decision of the Tribunal on this shall be final.

3.3 Structure of trade unions

Trade unions in Bangladesh may be divided into three categories: first, basic trade union - a primary organization of workers at the working place. Usually, the trade unions at plant level are termed basic unions. Trade union federation are the body of unions from the same industrial sector. Section 200(1) of the Act provides that any two or more registered trade unions formed in establishment which are engaged in or carrying on the same industry may constitute federation by executing an instrument of federation and the apply for the registration of the federation.

Again, federation of trade unions can be two types: industrial federation and national federation. Industrial federation can be composed of a number of basic trade unions related to the same type of industry, such as jute workers federation, textile workers federation, and garments workers federations. Usually an industrial federation formulates the charter of demands, submits workers' demand to the management in charge of an industry, negotiates with the authorities over the problems stated in the charter of demands, and takes necessary steps following the success or failure of such negotiations. Apart from these activities, it also sets up working policies for the enterprise unions of its own, issues guidelines, and helps plan leaders in organizing and controlling union activities.

National Federation is a federation of basic unions irrespective of job categories. A national federation may be constituted of two or more basic trade unions irrespectively of the trade.⁵⁰

⁴⁸ See, section 177, 178 and 179 of the Act. In particular, section 179 requires the following for registration- the name and address of the trade union; the objects for which the trade union has been formed; the manner in which a worker may become a member of the trade union; the sources of the fund of the trade union and the purposes of which such fund shall be applicable;- the manner in which the constitution shall be amended, varied or rescinded; the safe custody of the funds of trade union, its annual audit, the manner of audit and adequate facilities for inspection of the account books by the officers and members of trade union; the manner in which the trade union may be dissolved.

⁴⁹ Section 182 of the Act.

⁵⁰ M. Ahmed : "Trade Union", in: Mohiuddin Ahmad (ed.), *Bangladesh in the new Millennium*, CDL, Dhaka, p. 351.

The main aims and objectives, forms of management and other organizational aspects of all the federations are almost similar to their respective industrial federations. A national federation generally extends organizing and advisory services to its affiliated enterprise unions federations. Political nexus is an important feature of all national federations.⁵¹

National level trade union federations had formed a grand alliance under the auspices of the SKOP (*Sromik Kormochari Oikka Parishad*), which represents the total workers of the country except the trade unions in the RMG sector. However, it is not registered as a federation and as such it does not have any legal status.

3.4 Trade Unions in the public sector

The Bangladesh Labour Act, 2006 is not applicable to offices of or under the Government.⁵² Therefore, the concept of collective bargaining shall not be applicable to officials of public sector. However, trade unions are allowed under the framework of the Act for workers of publicly owned corporations, railways, telephone and postal services, public works, public health engineering and government printing press etc. In Bangladesh, only state owned oil and gas companies, water supply, banking, transport sector are reasonably organized. As we have seen, the Committee of Experts⁵³ expressed concerns that a vast number of workers in the public sector and state enterprises with the exception of railway, postal and telecommunication services cannot exercise the right to collective bargaining through trade unions.⁵⁴

In public sector enterprises the prospect of trade union activism in realizing just and reasonable wages and improvement of service conditions is statutorily restricted. For instance, the Essential Service Act, 1982 prohibits strikes in essential services. Section 3 of the State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance 1985 states...

the Government may...determine the wages, bonus...which shall be payable or admissible to any worker, employed in any state-owned manufacturing industry, and no such worker shall receive or enjoy, and no person shall allow such worker any wages, bonus...in excess of what is so determined.

Thus the terms and conditions of employment of the public sector workers are determined by the government on the recommendation of the National Wages Commission established from time to time. In reality, no trade unionism is practiced in the public industrial enterprises in Bangladesh.

The issue of trade unionism in the banking sector should be considered separately. Banking sector, as a public sector is exception to the general practice that collective bargaining has limited application in public sector enterprises. Section 57 of Banking Companies Act 1991 provides that no person shall obstruct any person from lawfully entering and leaving any office or place of business, or hold within the office any demonstration, which is violent or prevents the transaction of normal business. The evidence shows that there are more than three trade unions in many nationalized bank whereas Bangladesh Labour Act 2006 provides for not more than three trade unions in a single establishment. It is common knowledge that most of the CBA leaders are wealthy and powerful enough to interfere in the normal affairs of banks and exercise their influence in matters related to recruitment, postings, transfers, promotion of officers even

⁵¹ Dr. Md. Fashiul Alam, 'The Episode of Trade Unionism in Bangladesh', a copy of article is with authors.

⁵² Section 2 of Bangladesh Labour Act 2006

⁵³ Ratified by Bangladesh on 22/06/1972

⁵⁴ CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) Bangladesh (ratification: 1972) Published: 2007, accessed at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=9022&chapter=6&query=Bangladesh%40ref&highlight=&querytype=bool&context=0>, published on November 14, 2007

award of construction contracts. Trade union activists, and the Collective Bargaining Agents (CBAs), are known to pressurize authorities into sanctioning loans to people known to them.

3.5 Trade union membership and international affiliation

Compared to the total labour force in the country, the number of trade union members is very small. From 1,160 trade unions with a membership of 450,606 in 1971 trade unions had risen to 6,835 with a membership of 1,904,567 in 2004. The average membership of trade unions has declined significantly. Trade union density is 1.12 per cent of the total labour force.⁵⁵

The presence of trade unions in the private export-oriented sectors such as RMG, EPZs, shrimp exporting firms, finished leather and leather goods is very weak. For instance, although there are more than 40 unions representing garments workers, the level of unionization among workers is very poor.⁵⁶ Most trade unions in the RMG sector operate outside the factories and therefore lack active participation of the general workers. A combination of factors such as lack of enforcement of labour laws, inhibiting legal provisions, and system of contract labour are responsible for reduced trade union membership in these sectors.⁵⁷

The workers belonging to government sectors, educational institutions, health sector, private security services, confidential staffs, workers in security printing press, ordinance factory, are still deprived from the right to organize and do not have the freedom of collective bargaining. Trade unionism in sectors such as nursing or rural electrification is banned. Government and private owners also discourage trade unions in cement factories, re-rolling mills etc. Furthermore, trade union leaders and members are frequently intimidated and harassed by employers and security forces.⁵⁸

Trade unions working at plants as well as at the industry level in most cases suffer from poor organizational strength caused by lack of finances, workers' apathy towards union activities and failure to discharge their obligations, ideological division, intra-union rivalries, punitive management actions for union activities, frequent change of unions both by leaders and workers and lack of coordination among the leaders at different levels.

However, one innovative provision has been incorporated in the Bangladesh Labour Act, 2006 for the protection of workers against any anti-union action of employer, for joining a trade union. Section 186 provides that conditions of service will remain unchanged while application for registration is pending and no employer shall terminate the employment of any worker who is a member of such trade union, while an application for registration for trade union is pending.

⁵⁵ Bangladesh Bureau of Statistics: *Report on Measuring Decent Work Indicators Pilot Survey-2005*, Planning Division, Ministry of Planning, October, 2006, p. 77; see also data of Bangladesh Institute of Labour Studies of 2005.

⁵⁶ Data gathered from workshop held on Mar18, 2009 in Dhaka.

⁵⁷ Abdul Hye Mondal: 'Globalisation, Industrial Relations and Labour Policies: The Need for a Renewed Agenda', in: Muhammed Muqtada, Andrea M. Singh and Mohammed Ali Rashid (ed.), *Bangladesh: Economic and Social Challenges of Globalisation*, UPL, Dhaka, 2002, p. 125.

⁵⁸ Supra note 14.

Table 1 Total number of registered trade union in Bangladesh up to June, 2007

	Total Number of Unions/Federations	No. of Unions included	Total No. of Members
Categories			
1. National Federation	32	1 264	1 263 665
2. Industrial Federation	108	721	640 221
3. Garments Federation	15	80	50 149
4. Basic Union	5 242	-	20 69 614

Table 2 Geographical distribution of trade unions

Dhaka Division	Total Number of Unions/Federations	No. of Unions included	Total No. of Members
1. Basic Union	2 119	-	754 084
2. Garments Federation	11	56	11 116
3. Basic Union in Garment sector	123	-	15 801
Chittagong Division			
1. Basic Union	1 496	-	556 770
2. Garments Federation	02	08	18 411
3. Basic Union in Garment sector	21	-	6 137
Khulna Division			
Basic Union	960	-	243 637
Rajshahi Division			
Basic Union	1 562	-	246 687

Source: Department of Labour and BILS.

According to existing data, the number of organized trade union members not affiliated to national federations is 715,114 and number of trade unions not affiliated with National Federations is 3,968.

Under the Bangladesh Labour Act 2006, trade unions in the country are free to be affiliated with national and international bodies in order to draw strength at times of crises. Besides ILO, many international bodies including ITUC also take care of their affiliated unions and federations of unions against infringement of their rights. Many national federations of trade unions are affiliated with international unions. For example, *Bangladesh Ganotantrik Sramik Federation* (Bangladesh Democratic Workers Federation) and the *Bangladesh Jatiyo Sarmik Jote*,

Bangladesh Jatio Sramik League, Bangladesh Jatiyatabadi Sramik Dal, Bangladesh Labour Federation, Bangladesh Sanjukta Sramik Federation are affiliated with ITUC.

3.6 New role for trade union organizations

The role of trade union is changing to meet the demands of a changing society and labour well-being. Apart from their traditional role of intervention through collective bargaining, the trade unions of Bangladesh are also being organized to introduce social dialogue and framework agreement system; address social issues in the workforce such as gender inequality, HIV/AIDS, child labour and environmental and occupational hazards in the community. ⁵⁹ In the context of economic globalization, the trade unions should be given greater leverage to ensure well being of workers and to prevent their exploitation.

3.7 Trade union in EPZs

As mentioned earlier, trade unions were not allowed in EPZs until 2004 on the ground that introducing trade unions in such areas would undermine the working environment there. However, a limited right of trade unionism was allowed through the enactment of the EPZ Workers Association & Industrial Relations Act, 2004, which provided that the workers in industrial units within the territorial limits of a Zone shall have the right to form association to engage in industrial relations from Nov 1, 2006. According to this Act, only one trade union is allowed in a Zone. It is required that 30 per cent of the workers had to express a desire to form a workers' association and that, in the ensuing referendum, there should be a participation of at least 50 per cent and over 50 per cent of the voters should be in favour of establishing the association.

But the provision of the Act was implemented only in March 2008 when 69 industrial units in Dhaka and Chittagong EPZs introduced workers' associations on the basis of referendums by workers.

There are 124 more "eligible" industrial units in these two EPZs which will have to hold their referendums by 2010 as per the decision of Bangladesh Export Processing Zones Authority (BEPZA) on the basis of the 2004 Act on allowing trade union activities. This is a positive development in the prevailing scenario of trade unions in Bangladesh. ⁶⁰

⁵⁹ Bangladesh Labour Research Institute: *New Concept of Trade Union*, Research paper,, Dhaka, p. 31.

⁶⁰ <http://www.bangladeshnews.com.bd/2008/03/23/trade-union-debuts-at-69-epz-units/>

Table 3 Formation of workers association (as on 15.07.2008)

Name of EPZ	Total Enterprises in operation	Eligible for WA	WA Referendum held	WA Election held	Remarks
CEPZ	140	132	100	61	WA Yes-77 WA No-23
DEPZ	96	86	46	32	WA Yes-43 WA NO-03
COM EPZ	17	15	8	4	WA Yes-05 WA No-03
AEPZ	5	3	-	-	Under process of referendum
MEPZ	12	4	4	1	WA Yes -03 WA No-01
UEPZ	5	2	-	-	Under process of referendum
IEPZ	3	-	-	-	Yet to eligible
KEPZ	4	-	-	-	-Do-
Meghna EPZ	-	-	-	-	-Do-
Feni EPZ	-	-	-	-	-Do-
	282	242	158	98	65.29%

Note: 177 WRWCs were formed as per act up to 31.10.2006

The ILO Committee of Experts on Freedom of Association had urged the Government of Bangladesh, in consultation with social partners, to take the necessary measures to ensure that workers in EPZs have the full benefit of the rights laid down in the Convention. The Committee has requested the Government to take all necessary measures to eliminate the obstacles to the exercise of trade union rights in law and in practice in EPZs. There is also demand from social partners that restrictions on freedom of association in export processing zones be eliminated through withdrawal of required percentages.

3.8 Trade union in RMG sector

Recognition of trade union in RMG sector is the outcome of a long struggle of the workers to organize themselves to realize their demands. The RMG workers' movement to organize trade unions was suppressed through administrative and political intervention and vehement opposition by the owners. In 1994, the workers called a strike for establishing minimum wages and implementing labour laws in the RMG sector. As a result, a tripartite committee, headed by the Labour Minister, was formed. It consisted of three workers' representatives and three representatives from employers and governments. The functions of the Committee were to review the demands of garments workers, and monitor violation of labour laws. In 1997, a bipartite committee, consisting of representatives from Grand Alliances of Workers and BGMEA, was formed to resolve individual (at factory level) disputes over wages and other matters between unions and industry managements. Its proposal to resolve disputes through arbitration was put into practice subsequently and was found to be successful.

Until 1997 there were only three trade unions in the RMG sector. Now there are as many as 27 unions for the whole RMG sector in Bangladesh except those in the EPZs. In 1997,

seven trade unions came together to form a grand alliance under the auspices of Bangladesh Garments Workers Unity Council. At present, this grand alliance claims membership of 21 trade unions out of the 27 unions of garment workers. Some of these trade unions have affiliations with other national trade union federations. Out of 4,500 garments industry only 120 are affiliated to the unions, less than 5 per cent of the garments workers. Knitwear garment workers are outside of the operations of the trade unions. Two national garments federation are registered with the Department of Labour. From 1994 to 2006 RMG workers' union signed seven agreement/MOUs with the BGMEA on matters of declaring and implementing minimum wages for garments workers, recognizing trade union activities, providing appointment letters and identity cards to the workers, fixing working hours and ensuring maternity leave and other holidays. The national tripartite agreement was concluded between the government, BGMEA and the organizations representing garments workers in 2006. Popularly known as the national tripartite memorandum of understanding, it is seen as a landmark achievement towards resolving the abovementioned issues.⁶¹ Most of the demands were subsequently incorporated in the Bangladesh Labour Act 2006.

3.9 Problems of trade unions in Bangladesh

Currently trade unions are beset with problems. The following are some of the reasons --

- Politicization or political affiliation of trade unions prevents them from becoming strong partners in collective bargaining. Politicization of a trade union also causes the loss of its distinct identity;
- Lack of solidarity among trade unions, provincialism, patronage of vested interest groups and internal conflict are some of the reasons that have led to the fragmentation of trade unions. The trade unions must be free from influences from political groups, government influence and owners;
- Workers at the grass root level are not aware of their rights.

At the national level, trade unions are divided into many federations with diverse ideological and political philosophy. Such division at the national level is commonly reflected in industrial relations at the plant level causing intra and inter-union rivalries due to ideological and political overtones. In the public sector, it is found that trade unions are often unable to pursue their objectives through the normal collective bargaining process as (a) management in public sector is highly centralized (b) government participates directly in wage setting procedures in the public sector, and (c) collective bargaining in major issues is formally restricted in the public sector.⁶² In order to strengthen the trade union movement in Bangladesh, the following issues of good governance should be considered:

- Legitimacy of trade unions, which hinges upon whether the trade union leaders have the consent of the common workers and that they can be removed through peaceful labour processes
- Accountability of the trade union leaders, which requires a network of checks and balances between labour institutions, and defined performance standards for both common workers and trade union leaders

⁶¹ A copy of the MOU is with the authors.

⁶² M. Ismail Hossain, Sayed A Hye and M Ali Amin, *Structural Adjustment Policies and Labour Market in Bangladesh*, Published by CIRDAP, July 1998.

- Competence of the trade union leaders, which involves the capacity to formulate appropriate charters of demand, take timely decisions, and implement them effectively.⁶³

3.10 Role of employers' organizations

Section 176(b) of the Labour Act 2006 provides that employers shall have the right to establish and subject only to the rules of the organization concerned, to join associations of their own choosing primarily for the purpose of regulating the relations between employers and workers or employers and employers.

The Labour Act 2006 makes no distinction between procedures of registration of trade union of workers and trade union of employers. Therefore, the provisions on procedure for registration and cancellation of trade unions are equally applicable to employers' organizations.

The primary interest of the employers and their associations is in the promotion of their business and commercial interests. They also provide various services to the members. Although employers and their organizations are not directly involved, they inevitably participate in the debates over the changing trends in economic development of the country and in addressing vital policy issues in order to improve business. Bangladesh Employers Federation (BEF) is the main federation of employers' association. The main members of BEF are:

- Bangladesh Garments Manufacturing and Exporters Association (BGMEA)
- Bangladesh Textile Mills Association (BTMA)
- Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA)
- Bangladesh Jute Mills Association (BJMA)
- Bangladesh Finished Leather, Leather goods and
- Footwear Exporters Association

BEF is also a major employers' federation. After its founding in 1998, the BEF took over the activities of the Bangladesh Employers' Association (BEA) which was registered earlier in 1951. The BEF with a wider membership representation covers approximately 90 per cent of industrial associations in the country as well as prominent individual enterprises. Its membership now includes all Public Sector Corporations, and all major national level associations. The Federation is a member of the International Organisation of Employers (IOE) and participates in ILO activities, representing the employers of Bangladesh.

The objectives of the Federation are to promote, encourage and protect the interest of the employers in industrial relations, and through such efforts, to establish good relations amongst employers and workers. It also represents them both at national and international levels. Being the apex body of the employers, it has been involved in the task of promoting and protecting the interests of employers.

Although BEF was established to deal with labour relations, its activities have gradually diversified. It now has a stake in socio-economic policies of the Government, labour legislation and labour relations with kindred national and international bodies. Broadly, its functions include:

- Interpretation and clarification of labour laws

⁶³ Abdul Hye Mondal, Globalisation, Industrial Relations and Labour Policies: The Need for a Renewed Agenda, in: Muhammed Muqtada, Andrea M. Singh and Mohammed Ali Rashid (ed.), *Bangladesh: Economic and Social Challenges of Globalisation*, UPL, Dhaka, 2002, p. 136.

- Services on wage negotiations by the Wages Consultative Sub-committees in different regions
- Legal services to employers in labour courts
- Services for improvement in productivity
- Training programmes (seminars and workshops)
- Assistance and advice on national policy issues.

BGMEA, the pioneer Trade Association of 4,524 garment factory owners in Bangladesh is mainly concerned with promotion of export of garments product and providing services to its members, ensuring application of labour laws and promotion of labour welfare. Over the years, BGMEA has greatly contributed to the enhancement of welfare of workers through promoting social dialogue in both formal and informal manner.

3.11 Data on membership of employers' organization

According to data available up to June 2007 from Directorate of Labour, there are 57 registered employers' associations in various sectors with a total membership of 6,827.

Table 4 Data on membership of employer's organizations

Employers organizations	No.	No. of members
National Federation	31	1 254 500
Industrial Federation	105	681 870
Basic Union (all over Bangladesh)	210	522 281
Total	1 649	2 980 932
% of large enterprises	99%	-
% of employees of large enterprises		96%

Source: Administrative records of the Ministry of Labour; % are calculated from economic census, 2001 & 2003.

3.12 Role of the State in maintaining industrial relations

Industrial relations system in Bangladesh is characterized by the predominant role played in it by the government. Being the single major employer and manager, the industrial relation policies which it pursues with regard to public sector enterprises, have a decisive effect on the state of industrial relations throughout the country. The government is responsible for ensuring a sound labour administration and; as an employer in the public sector it has to play a role in creating an enabling environment for collective bargaining and protecting freedom of association.

The maintenance of a climate of good industrial relations in society depends largely upon the role played by the state as an 'actor' in the industrial relations system because it is the duty of the state to formulate labour laws and policies, to administer them and also to uphold justice so that neither the workers nor the employers suffer. Thus the state acts both as a planner and an administrator in the industrial relations system.

The state has to ensure that there is no interference in the bargaining process from any political party, government or the employer. It is evident that any kind of state intervention in industrial disputes may strain the relationship between the workers and employers. But the government intervention in trade union remains a persistent feature of industrial relation system in Bangladesh.

The Government also plays a predominant role in various tripartite bodies. The success or failure of tripartite consultation or negotiations largely depends on the responsiveness of Government to the demands and aspirations of both employers and workers.

3.13 Structure and system of labour administration in Bangladesh

There are various authorities and agencies responsible for labour administration in Bangladesh. The Ministry of Labour and Manpower is responsible for policy formulation and overall supervision of the departments and offices under it. As per Schedule 1 of the Rules of Business, 1975[Rules-3], the Ministry performs the following functions:

- Welfare of labour including labour under non-agricultural agreement
- Regulating trade unions, industrial and labour disputes, labour courts, wage boards and industrial worker's wages commission
- Collection labour statistics
- Administration of labour laws
- Conducting research including compilation of labour statistics
- Concluding agreements with international organizations in the field of labour and manpower
- Constitution of wage boards for individual industries
- Regulation of working conditions of industrial workers
- Evaluation of the implementation of labour and industrial welfare laws and policies
- Coordination of activities of other Ministries and organizations in connected with labour and industrial welfare
- Providing vocational and technical training, apprenticeship and in-plant training, all vocational training institutes, skill training policy including standardization, testing and certification, administer National Council for Skill Development and Training (NCSDT);

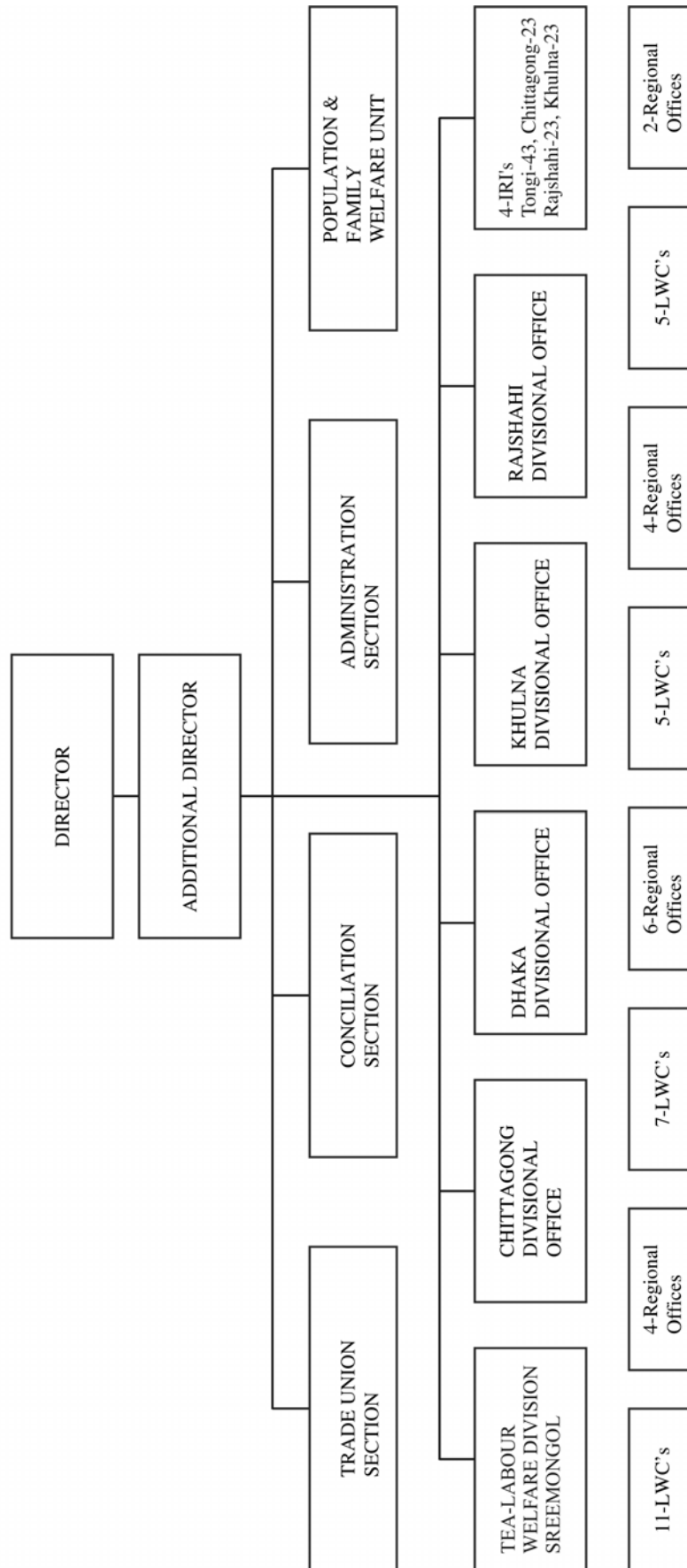
The Ministry of Labour and Manpower has under it the following implementing agencies:

- Department of Labour,
- Department of Inspection for Factories and Establishments;
- Bureau of Manpower, Employment and Training (BMET);
- Minimum Wages Board;
- Labour Appellate Tribunal and seven labour courts;

Department of Labour (DOL)

This Department was established in 1983. The department has a Director as its head, an additional director, a joint director and an assistant director of Labour. There are four Divisional offices under the Department of Labour under which there are 16 regional offices in different industrial areas, one welfare division at Sreemongal for tea garden workers of Sylhet and 28 Labour Welfare Centres at different industrial belts. The organization chart of the Department of Labour may be seen as follows:

Department of Labour
Ministry of labour and employment Organogram



The functions allocated to the Department are:⁶⁴

- To act as a conciliation machinery under Labour Act 2006 and to deal with labour disputes including strikes and lock-outs to ensure industrial peace in the interest of increased productivity and for that matter to investigate into causes of labour disputes and to hold statutory and non-statutory tripartite conciliation meetings of the managements and workers both in public and private sectors
- To be responsible for overall administration and implementation of Government policies and programmes on labour welfare and labour management relations
- To register trade unions and federations of trade unions under Labour Act 2006
- To conduct secret ballot for determination of collective bargaining agents under Labour Act 2006 in industrial and commercial establishments, prepare list of qualified workers, hear their objections, prepare and check voters' lists, inspect and select polling booths
- To conduct cases on behalf of the Government in civil courts, labour courts and appellate tribunal filed by the trade unions and employers against Government
- To enquire and process complaints pertaining to unfair labour practices of workers, trade unions and employers
- To organize and implement workers' education programmes and labour administration training.

Department of Inspection for Factories and Establishments

The department of Inspection for Factories and Establishments works under three wings- engineering wing, medical wing and general wing. Chief Inspector is the head of the Department. Deputy Chief Inspector, Assistant Chief Inspector and Inspector work under him. It has zonal and regional offices for inspection of factories, shops, commercial establishments, tea plantations, ports, docks, railways, inland water transport and road transport for enforcement of labour laws relating to safety, health, hygiene, factory layout and design, hours of work and rest, payment of wages and compensation etc. There are only about 30 inspectors for all the establishments in Bangladesh. Specific functions allocated to this department are:⁶⁵

- Inspection of factories, shops, commercial establishments, tea plantations, ports/docks, railways, inland water transport and road transports under labour laws relating to safety, health, hygiene, labour welfare, payment of wages, regulation, hours of work, conditions and terms of employment, social security etc. of workers
- Prosecution against the violations of labour laws in different courts
- Approval of construction and extension of factories
- Approval of lay-out plans of factories
- Issue of registration and licenses of factories and realization of fees for the purpose
- Maintenance of liaison with different government departments, employer's organizations and trade unions on enforcement of labour laws

⁶⁴T.I.M. Nurunnabi, Labour Administration: Profile on Bangladesh, second (revised) edition, International Labour Organization, 1996.

⁶⁵ Ibid

- Grant of exemption to the managements from operation of different provisions of labour laws
- Collection and compilation of data for preparation of annual and other periodical reports under labour laws
- Assistance to the government in formulation of policies about enforcement of labour laws and framing labour laws including amendments
- Preparation of replies to the ILO questionnaires relating to adoption of ILO conventions and recommendations
- Examination and checking of certificates issued by the competent authority relating to safe operations of gears, derrick, winches and other accessories of ports and ships ensuring safety.

Department of Industrial Relations for EPZ

The Industrial Relations (IR) department operates as a substitute organization of the departments of Labour and Chief Inspector of Factories. The main functions of this department are the following:

- Implement BEPZA Instruction I and 2 of 1989 and EPZ Workers Association and Industrial Relations Act, 2004 in all the enterprises of the zone
- Taking action on complaints of workers and settle any kind of labour dispute as per BEPZA rules and regulations
- Recommend the issue of work permit & visa of foreign nationals working in zone enterprises
- Ensure distribution of work permit to the respective enterprises
- Forward proposals for foreign trainings of employees of zone enterprises for approval of the authority and communicate the same to the respective enterprises after obtaining approval;
- Periodic inspection of enterprises in the zone and check whether BEPZA rules and guidelines are followed
- Issuance of ID cards of the employees and employers of zone enterprises
- Maintain liaison with the different enterprises in the zone regarding maintenance and development of labour force
- Attend to the investors who come to discuss the Industrial Relations matters;
- Assist the management of enterprises in the recruitment of their employees;

To assist the IR department, 60 Councillors have been appointed and posted in different Industries under a Technical Assistance (TA) project financed by World Bank. They are working on the immediate implementation of “The EPZ Workers Association & Industrial Relations Act, 2004 (Act No. 23 of 2004)”. Councillors are assigned to ensure the proper implementation of the EPZ labour law & BEPZA Instruction no. 1 & 2. The project ended on 30 June 2008 and was extended for another year.

Limitations of the Labour Administration and Inspection Office

Absence of provisions for inspecting factory construction works: According to Labour Act 2006 prior written permission from the Chief Inspector is imperative before setting up a factory or its expansion. . The Chief Inspector is empowered to consider a factory plan in terms of constructing a factory or its extension or approve it. However, the Act lacks rules regarding inspection of these works vis-a-vis safety and other aspects of importance to the workers. In the interest of the safety of the factory workers the law must require submitting a certificate of the concerned authorities following the approval of the building plan.

Inspection Office lacks manpower: The Inspection Office has to look after and execute the provisions relating to 40,000 factories, 30,00000 shops, 170 tea gardens, 60 ship-breaking industries, two dockyards etc. It is virtually impossible to complete such huge volume of works with the existing manpower. Under the prevailing conditions, it would be unfair to blame the Inspection Office for its failure.

Lack of provisions for receiving complaints and their disposals at the Inspection Office

The Chief Inspector and other inspectors are not held accountable for their work. The Inspection Office does not have any particular policy to investigate into complaints regarding its decisions. Investigation into any complaint and action against it completely depends upon the will of the Chief Inspector or the concerned inspector. Definite and transparent rules including the fixation of time for disposal of the complaints by workers concerning safety of the factory should be introduced.

According to the Committee of Experts on the Application of Convention and Recommendation, the ineffectiveness of the Inspection Offices in Bangladesh can largely be attributed to insufficient budgetary allocation, lack of adequate inspectors in charge of enforcement, lack of logistic support, inadequate punishment for negligence in performing duty and lack of training of inspectors.⁶⁶ The committee notes that in terms of human and material resources for the inspection of occupational safety and health, there has been no change in the last 20 years, whereas the number of registered premises has increased by 67 per cent and the number of workers in the same period by 140 per cent.⁶⁷

⁶⁶ CEACR: 2007 Individual Observation concerning the Application of the Labour Inspection Convention, 1947 (No.81) accessed at <http://www.ilo.org/ilolex/cgi-bin/ilolex/pl?host=status01&textbase=iloeng&document=9022&chapter=6&query=Bangladesh%40ref&highlight=&querytype=bool&context=0>, on November 14 2007.

⁶⁷ Ibid.

Chapter Four

Collective Bargaining

4.1 Introduction

Detailed and reliable data is not available as no public record is maintained of collective bargaining at various levels in the country. Usually collective bargaining agreements are not documented or not sent to the Department of Labour. As a result, no reliable or yearly data can be found on the trends of collective bargaining agreements in Bangladesh. It is the statutory responsibility of the employers/management personnel to supply reports of successful collective bargaining initiatives. But due to their protectionist and conservative approach, the managements do not report on collective bargaining..

4.2 Legal framework of CB

Collective Bargaining was first introduced in Bangladesh under the framework of Industrial Relations Ordinance, 1969 (passed on 13 November 1969). This Ordinance emphasized sound industrial relation, through the protection of the workers right to trade unionism and collective bargaining. The legal framework on collective bargaining is governed by the provisions of the Labour Act 2006. According to section 209 and 210 of the Act collective bargaining is the first step in the industrial dispute settlement mechanism.

Collective bargaining cannot be carried out effectively unless a registered trade union is available in any trade or establishment/ industry. Under the Act, there is a legal obligation to register collective agreements. But under Emergency, no agreements were signed for a period of almost two years starting in January 2007.

According to legal provisions contained in the Act, if there is only one trade union in an enterprise with at least 30 per cent of workers employed therein as its members, it is declared as the Collective Bargaining Agent (CBA) for that enterprise.¹ If there is more than one registered trade union in any enterprise one of the trade unions is elected as CBA by all the workers employed in that enterprise through a secret ballot.² The tenure of the office of the CBA is two years.³ As we saw in Chapter 2, the ILO Committee of Experts has requested the Government to reduce the percentage required for registration of a trade union and for the recognition of a collective bargaining agent. While with this measure the Government has tried to avoid multiplicity of trade unions, and the measure seemed to have the consensus of the partners, the Committee pointed out that these requirements may impair and make difficult the development of free and voluntary collective bargaining. It has recommended that where there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to the existing unions, at least on behalf of their own members.

With regard to the public sector, the practice of determining wage rates and other conditions of employment has been by means of government-appointed tripartite wages commissions. This has also been the focus of the Committee of Experts' observations. It has stated that the collective bargaining agent at the enterprise or sector level has the right to bargain with their employer for the effective implementation of matters settled by the wages commission, and that free and voluntary collective bargaining should be conducted between directly interested

¹ Section 22.(I) of the Industrial Relations Ordinance 1969

² s.22(2) *ibid*

³ s 22(10) *ibid*

workers' organizations and employers or their organizations, which should be able to appoint freely their negotiating representatives.

The collective bargaining process

A CBA is legally entitled to raise labour disputes on behalf of the workers and to bargain collectively with the employers on the issues of disputes. When any industrial dispute arises or is apprehended, the CBA or the employer/employers of the establishment is required to communicate their respective views in writing to the other.⁴ After communicating their respective views, both the CBA and the employer/employers sit across the table and negotiate for arriving at a settlement. Collective Bargaining negotiations have to be completed within 21 days after the official demand. If a settlement is arrived through collective bargaining, a memorandum of settlement is recorded in writing and signed by both the parties and a copy thereof is forwarded to the appropriate government authority.⁵

If the parties fail to arrive at memorandum of settlement through collective bargaining, any of the parties, either the CBA or the employer, can refer the dispute to the conciliator in writing with a request to conciliate⁶. Upon such request it becomes obligatory on the part of the conciliator to start the process of conciliation.

A plant level trade union, which is elected as CBA, can raise a dispute in writing and place it before the management for collective bargaining. Similarly the employers can also raise a dispute and place it before the CBA for negotiation. Collective bargaining (bipartite negotiation) starts within 15 days of submitting a written demand from either party.

As per the Labour Act 2006 sectoral bargaining is not allowed; only bargaining by group of enterprises is allowed. Therefore, collective bargaining agreement reached at the sectoral level has no binding force. Factory or plant level trade unions have access to bargaining with employers. One of the innovative provisions of the Labour Act 2006 is that sector-based federations will be able to participate in collective bargaining on behalf of their union if it is mentioned expressly in the constituting document of the trade union.⁷ This is particularly important for RMG sector as traditionally the federation has carried out collective bargaining.

The determination of CBA union is compulsory at the plant level for bargaining with management, but there is no arrangement or compulsion for determining CBA at the industry level in order to bargain with management/government. As a result, every industrial federation comes forward and submits a charter of demands with a view to gaining the support of workers. The bargaining with un-registered and non-CBA federations (affiliated to the ruling party) has been a tradition in Bangladesh especially at the industry and national levels, which is a clear violation of countries labour laws.⁸

4.3 Practices of Collective Bargaining in Bangladesh

Collective bargaining is generally carried out at three levels, viz i) plant level ii) industry or corporation level iii) national level.

⁴ §43.IRO, 1969

⁵ s.. But this requirement is not followed by the employers. They usually do not forward a copy of the CBs to the Labour offices set up throughout the country. At the time of data collection, the present researchers visited all relevant government offices including Department of Labour in Dhaka no complete database of CB agreements at the enterprise and industry levels was available.

⁶ s, 26(2) IRO 1969

⁷ Section 203.

⁸ s. 209 of the Labour Act lays down that no industrial disputes shall be deemed to exist unless it has been raised in the prescribed manner by a CBA.

In the public sector, the issues which cannot be settled at the plant level become the subject matter of bargaining at the corporation/or national level. In the private sector, on the other hand, collective bargaining is generally held at the plant level between the representative of workers (CBA) and representatives of employers. There are some good examples of collective bargaining in multinational corporations and big national companies. Multinational Corporations like Unilever, Bata, British American Tobacco, as well as companies in the pharmaceutical sector there is evidence of sound practice of collective bargaining.

The Bangladesh Employers' Association (BEA) which represents more than 90 per cent of the industries in the private sector and a good majority of the factories in the public sector (which are represented in it through various sector corporations), does not directly take part in collective bargaining. It only renders advisory services to its member organizations. In EPZs, there is no practice of collective bargaining. As far as public enterprises are concerned, plant level management is primarily responsible for settling all disputes with the local CBA union. At the industry level, corporations and other relevant authorities take active part in collective bargaining with the representatives of different industrial federations. At the national level, the government through relevant ministries performs the task of collective bargaining with the representatives of the national federations of trade unions.⁹

Dual practices are also observed concerning fixation of wages and other benefits in the public and private sector. In the public sector, matters relating to wages, including other financial benefits are determined by the Wages Commission and the Pay Commission respectively. These are set up by the government from time to time, reducing the scope of collective bargaining in this sector. The scope of collective bargaining on terms and conditions of employment in the public sector is also very limited since these are arbitrarily decided by the government. However, there is a practice of 'informal collective bargaining' through professional associations.

In the private sector, on the other hand, the scope of collective bargaining is wider since the wages of workers, terms and conditions of the employment etc., to a large extent, constitute the core issues of collective bargaining. It is a common complaint that private employers do not show urgency in negotiating on terms and conditions of employment or matters related to workers' wages.

Collective bargaining has been very rarely resorted to in the last decade due to the unwillingness of the employers and to some extent of the CBA leaders. The workers represented by collective bargaining are usually employed by state-owned enterprises and large private sector employers. The collective bargaining agreements cover resolving disputes relating to wage, leave and other benefits of workers. Interviews with stakeholders also reveal that collective bargaining agreements were fairly enforced.

There are many reasons for weak the bargaining position of industrial workers in Bangladesh. Existing information reveals that the frequent attempts by the employer/ruling parties to buy-off or victimize CBA leaders have turned the tool of collective bargaining highly ineffective. The unfavourable and authoritarian attitude of management, especially in the private sector to recognize the CBA leaders as equal partners in the negotiation process also continues to be the main obstacle to the successful operation of the collective bargaining instrument in the country. A weak industrial base and the absence of real democratic practices in Bangladesh make room for easy persecution of the workers and their leaders by the management. Moreover, politicization of trade unions, inter and intra union rivalries, opportunism of the trade union

⁹ Dr. M.A. Taher..State and Industrial Relations-Bangladesh as a Case In the Post-Colonial Third World Context, Unpublished Ph.D. Thesis, University of Chittagong, pp 190-196

leaders, absence of experienced trade union leaders at plant level, long absence of outsiders at plant level unions, unfavourable laws and policies relating to trade unionism and collective bargaining, political ramification of industrial disputes etc¹⁰.

It is to be noted that the workers' right to strike might be exercised, only after securing through secret ballot, the support of three-fourths of the members of the CBA.¹¹ This makes strikes difficult to organize as it provides employers enough time and scope to manipulate the situations against workers' interest and also make the bargaining position of CBA leaders vis-à-vis their workers very weak. Taking the consent of three-fourths of the total number of members by the CBA, in favour of a decision to strike is a legal disadvantage on the part of the workers because it "gives the employers the chance to create divisions in the ranks of leadership and thereby reduces chances of their success, either in striking or in collective bargaining".¹²

The unwillingness of the employers in the private sector to recognize the CBA leaders as equal partners in the negotiation process also continues to be the greatest obstacle to the successful operation of the collective bargaining instrument in the country. Thus the trade union leaders often complain about an unfavourable collective bargaining environment mainly due to the faults and arrogance of the government, employers and the ruling party.¹³ Strikes are the most vital weapons in the hands of workers/employees to redress the imbalance of powers in their relations with the employers.¹⁴ A denial of this right by the state and employers simply throws the workers at the mercy of management for the so-called 'fair treatment'.¹⁵

¹⁰ supra note, 4.

¹¹ The Labour Policy, 1980, Ministry of Labour and Social Affairs, GOB.

¹² Personal interview of CBA leaders of Amin Textile Mills Ltd.

¹³ Owners and managers consider it below their dignity to negotiate with trade union leaders. They are prone to behave like masters and consider the workers as slaves. They would rather try to bribe the trade union leaders than bargain with them at one table. Vide –Dr. Taher p.118

¹⁴ V.L. Allen, *Militant Trade Unionism—A Re-analysis of Industrial Action in an Inflationary Situation* (London: Merlin, 1972), p. 23.

¹⁵ Abdul Awal Khan, 'Strikes and Military Rule in Bangladesh,' *Chittagong University Studies(Commerce)*, Vol. 5, 1989, p. 41.

Chapter Five

Wages

5.1 Introduction

The main objective of fixing wage structure is to pay the labourers a minimum amount with which they can meet their needs¹⁶ In Bangladesh there is no uniform minimum wages for workers across all sectors. Any homogeneity between minimum wages fixed for different sectors and industries is also absent. Different wage structures prevail in different industries that are relevant to the job pattern of the workers. Several wage boards have been set up at different times with the aim to fix minimum wages for workers employed in various enterprises- public and private. This chapter will encompass the existing minimum wage structure in major industries and sectors in Bangladesh and will also cover existing legal mechanisms, the socio-economic conditions of Bangladesh and other relevant issues.

5.2 Legal Framework for ‘wage’ and ‘minimum wage’

It is pertinent to note the legal position in Bangladesh with regard to ‘wage’ and ‘minimum wage’. Payment and protection of wages and other related matters were previously regulated by the Payment of Wages Act, 1936. This Act had a wide coverage. Workers employed in factories, shops, industrial and commercial establishments like road transport services, railways, dock, jetty, inland steam vessel, mine, oil field, plantation or any other workshop have been brought within the purview of this legislation. This Act has now been merged with the newly introduced Labour Act 2006 with some modifications. According to S.2(45) of the Act, ‘wages’ refer all remuneration capable of being expressed in terms of money. It is payable to a worker if the terms of the contract of employment are fulfilled. The term ‘wages’ includes any other additional remuneration of the nature aforesaid which would be so payable but does not include the following:

- a) the value of any house accommodation, supply of light, water, medical attendance or other amenity or of any service excluded by general or special order of the Government;
- b) any contribution paid by the employment to any pension fund or provident fund ;
- c) any travelling allowance or the value of any travelling concession;
- d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment.

However, according to section 120, the phrase ‘wages’ shall include the following, namely:

- a) any bonus or other additional remuneration payable as per the terms of employment;
- b) any remuneration payable for holiday, stoppage or overtime work;
- c) any remuneration payable for any order of the court or for any award or resolution between the parties;

¹⁶ Advocate Fawzia Karim Firoze, ‘National Minimum wages: A Reality or a Myth’, Labour, vol. 10 July-Sept. 2000.

- d) any money payable under any contract or the Labour Act for any removal from service- be it under retrenchment, discharge, removal, resignation, retirement, dismissal;
- e) money payable for lay-off or temporary dismissal.

As mentioned in ILO Convention 131, the right to minimum wages must be ensured by law and it cannot be left to anybody's discretion. Actions have to be taken against those who fail to implement the law.¹⁷ It lays down procedure to determine minimum wages for the workers. Under the Bangladesh Labour Act 2006, the minimum rate of wages fixed by the Government is final and cannot be questioned by any person in any manner in any court or authority. The rates declared by the Government on the recommendations of the Board are minimum rates of wages and no employer can pay wages lower than those notified by the Government. However, the law does not preclude employers from paying more than what has been recommended¹⁸.

5.2.1 Payment of Wages

- Wages and overtime allowance have to be paid within seven days of wage-period¹⁹.
- Wage period shall be 30 days²⁰.
- All wages have to be paid on working days²¹;
- Wages have to be paid in the existing currency in cash taka or cheque²².

5.2.2 Some important aspects of wages²³

- Grades of wages have to be fixed on the basis of experience and efficiency.
- Wage slips have to be given after registering grade-wise wages.
- 'Contract workers' engaged by contractors will also be regarded as 'workers' and the contractors as 'employers'. Under the Labour Act 2006 if a contractor does not pay wages, the employer will be responsible for the payment of wages. The employer will adjust this with the contractor later on.
- If wage paid already is in excess of the minimum wages declared, it cannot be lowered.

¹⁷ If any employer fails to ensure minimum wages for its workers there is ample opportunity to bring him/them to justice. If a worker remains unpaid of his/her due wages he/she can go to the labour court for proper remedy (vide, s. 132 of the Act of 2006). In addition to this, if an employer fails to implement the award of the labour court to pay the wages of any worker that employer may be punished with imprisonment or fine or with both under several sections of the Labour Act (vide, ss. 289,307, 308, 309, 310). The irony is that if any worker(s) indulge in unfair labour practice, the punishment is very quick, but no employer is seen yet to face any punishment for not implementing minimum wages for its workers. This fact has to be considered from socio-politico-economic point of view. Employers always indulge in the plea of low-productivity in support of their failure to pay minimum wages. In most cases, employers use their political influence to escape government monitoring. BGMEA and the present interim government has declared drastic action programme against the defaulting employers failing to ensure minimum wages to the workers. But this remains a mere paper-tiger for no action is seen to be taken against any employer. This can be termed as a basic weakness of the Governments since earlier regimes towards establishing sound industrial relations in Bangladesh.

(Comments made by the respondents in a consultative meeting held for the purpose of the present research dated April 18, 2008)

¹⁸ Sections 148, 149 of the Labour Act, 2006

¹⁹ S.123 (1) of the Labour Act, 2006

²⁰ s.122 of the Labour Act, 2006

²¹ S.123 (3) of the Labour Act, 2006

²² S.124 of the Labour Act, 2006

²³ Vide, S.R.O. no-301-Ain/2006/SROKOM/Sha-6/NiMoBoard-1/2006

- Employers may pay the workers wages and other allowances at rates exceeding the minimum wages.
- In case of workers paid piece-wise rates, wages should be fixed such that it may not be less than the minimum wages declared. Under the existing labour law Minimum Wages Board can fix minimum wages for private sector industry workers on basis of time or rates per piece or both. For a legal analysis see discussion in section 4.2.8
- Besides minimum wages declared, all other benefits that would accrue to a worker under the Labour Act 2006 will form part of his/her wages.

5.2.3 Remedy²⁴ for non-payment or undue deduction from wages

- If minimum wages are not paid, the unpaid worker has to serve a written demand notice to the employer claiming his/her wages. If it does not work the worker may go to the labour court within six months of refusal to pay wages.
- In case of undue deduction from wages or less payment of wages or delay in payment of wages violating the provisions of the Labour Act 2006, the worker can go to the labour court seeking remedy by filing a complaint case. Before filing the case the worker has to claim wages from the employer through a written letter. The complaint has to be lodged within 12 months of the claim.
- An employer who pays wages to a worker which is below the minimum rate of wages shall be punishable with imprisonment up to one year or a fine of up to taka five thousand or both.

The workers should preserve a copy of the written demand for payment of wages or stoppage of undue deduction or timely payment of wages. In this regard, a worker may apply to the Inspector for the respective industry. If no remedy is given by the Inspector, then the worker can go to the labour court within the stipulated period. A worker may also seek help from the respective trade union/federation.

5.2.4 Determination of Minimum Wages

Generally wages are specified in three ways: first, through negotiation between employers and the employees, second, by laws laid down by the government and third, through agreement between the trade unions and the employers²⁵. In Bangladesh, wages are determined by three separate bodies²⁶. Wages for government employees are fixed up by National Pay Commission (NPC) that announces new pay scales every five or six years. Wages and related fringe benefits for workers in the public sector enterprises are determined from time to time through recommendation of the National Workers' Wages and Productivity Commission (Popularly known as Wages and Productivity Commission, WPC) established under the State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance, 1985. These commissions are normally set up by the government on *ad-hoc* basis from time to time in order to rationalize the pay and wage structure with cost of living, indices and other related factors.

²⁴ Both civil and criminal actions can be taken against the employer who fails to pay minimum wages and due wages to a worker. Vide, 132, 289, 307, 308, 309, 310 the Labour Act, 2006

²⁵ Dr.A.K. Enamul Hoque, 'Minimum Wage System: An Evaluation' *Labour*, Vol-10, July-Sep 2000, Bangladesh Institute of Labour Studies; (pp 13-20)

²⁶ 'Determination of National Minimum Wages', Altaf Parvez, Kormojibi Nari, Dhaka, web: www.karmojibinari.org

Usually, Wages Commission recommends a new pay structure by following the pay scale declared by the Pay Commission²⁷. On the other hand, wages of private sector workers are determined by the Minimum Wages Board formed under the legal framework.²⁸ So far, the Board has fixed minimum wages for 38 private sectors.²⁹ Rates of minimum wages for private sector workers are fixed by the Government on the recommendation of the Minimum Wages Board. The Board undertakes the task after every five years either by direct requisition of the Government or if the workers or employer or both of a particular industry so demands from the Government

However, even the lawfully guaranteed minimum wage cannot ensure the bare minimum necessities of a worker in Bangladesh. For instance, a minimum wage exclusively for the RMG sector was determined in 1994 as Tk 930 per month (overtime excluded). Minimum wages in other sectors such as jute, leather, agriculture etc. were all the same. Until 2006, this remained the minimum standard of wages for workers concerned.

5.2.5 Composition of Minimum Wages Board

Since the Minimum Wages Ordinance 1961, *inter alia*, has been consolidated with the Labour Act, the erstwhile Minimum Wages Board is now operative under the Act. Role and functions of the Board are determined by the Government. The Board consists³⁰ of following members:

- a) Chairman
- b) one independent member
- c) one member to represent the employers
- d) one member to represent the workers

When the Government decides to fix new rates of minimum wages for workers of one or more specific sectors, then the following two members shall also be included in the Board:

- e) one member to represent the employer related to the industry concerned
- f) one member to represent the workers engaged in such industry

The Chairman and other members of the Board are appointed by the Government. They are appointed from among persons with adequate knowledge of industrial, labour and economic conditions of the country and who are not connected with any industry or associated with any employers' or workers' organization. The members of the Board representing the employers and workers respectively are the nominees of their respective representative organizations (i.e. trade unions).

On the application submitted by employer or workers or both of any particular industry the Government may consider the fixing of minimum rates of wages for workers employed in such industry. The Board has to submit its recommendation to the Government *within six months or within the time extended* by the Government. In its recommendation the Board shall indicate, whether the minimum rates of wages should be adopted uniformly throughout the

²⁷ There is an exception to this practice that took place following declaration of latest pay scale in 2005 by NPC. Wages Commission did not announce any wages structure until a new Commission was set up and submitted its report in 2006.

²⁸ Legal provision regarding formation and fixation of minimum wages in private sectors can be found in the Labour Act, 2006 (sections 138-149). Erstwhile law on this point is The Minimum Wages Ordinance, 1961.

²⁹ However, some more private industrial sectors have been identified in addition to the existing sectors. Personal interview with Syed Sultan Ahmed, Assistant Executive Director, Bangladesh Institute of Labour Studies, dated November 21, 2007

³⁰ S.138 of the Bangladesh Labour Act, 2006.

country or with such local variations for such locations as are specified therein. The Board may recommend minimum rates of wages for all classes of workers in any grade. In such recommendation it may specify-

- a) minimum rates of wages, piece-wise or time-wise;
- b) minimum time-wise rates of wages for workers employed on piece-work

The time-wise rates recommended by the Board may be on hourly, daily, weekly or monthly basis. In its recommendation the Board shall indicate, whether the minimum rates of wages should be adopted uniformly throughout the country or with such local variations for such locations as are specified therein.

5.2.6 Fixing minimum rates of wages

On the recommendation of the Board, the Government fixes the minimum rates of wages for workers of the enterprise(s) concerned.³¹ In case the Government considers that the recommendation is not, in any respect, equitable to the employers or the workers, it may refer it back to the Board for reconsideration. The Board is required to reconsider the recommendation after taking into account comments made and information given by the Government. On receiving the revised recommendation of the Board, the Government declares, through a Gazette notification, the minimum rates of wages for the workers concerned. Even then, if the rates so fixed seem to be inequitable to the employers or workers, the Government may again refer it back to the Board for reconsideration according to the procedure mentioned above. The minimum rate of wages declared by the Government is final and cannot be challenged by any person before any court.

If any of the factors mentioned above, require necessary changes in the rates of wages, the Board reviews³² its recommendation. It then recommends the Government any amendment, modification or revision of the minimum rates of wages declared earlier.

5.3 Determination of minimum wages in public sectors

In Bangladesh, the public sector plays a dominant role in employment generation for a large segment of population. Government's intervention in wage regulation is, therefore, predominant. The first Wage Commission was set up in 1973³³ and according to its recommendations eight grades of wages were formulated for different categories of workers. In 1977 another commission was set up to revise the wage structure. This time the numbers of grades were increased to sixteen for different categories of workers. The Fourth Minimum Wage & Productivity Commission was formed in 1998. The wages structure declared by the government on the recommendation of the Fourth Wages & Productivity Commission is as follows:

³¹ S.140, the Bangladesh Labour Act, 2006

³² Section 142, the Bangladesh Labour Act, 2006

³³ A.Z.M. Tabarukullah, 'Minimum Wages: Proposal for Scale on Minimum Wages fixed by the Minimum Wages Board in 1994 for Ready Made Garments Industries.', p-12, Report prepared under the auspices of Bangladesh Garments Manufacturers and Exporters Association, 2003.

Table 5.1 Wage structure

Grade	Wage Scale in 1991	wage scale in 1998
1	Tk. 950-30-1490	Tk 1550-50-2450
2	Tk 1000-35-1630	Tk 1600-55-2590
3	Tk 1050-40-1770	Tk 1675-65-2845
4	Tk 1050-45-1910	Tk 1750-70-3010
5	Tk 1175-50-2075	Tk 1875-75-3225
6	Tk 1225-55-2215	Tk 1950-85-3480
7	Tk 1275-60-2355	Tk 2025-90-3445
8	Tk 1325-65-2495	Tk 2100-100-3900
9	Tk 1375-70-2635	Tk 2150-105-4040
10	Tk 1425-75-2775	Tk 2225-115-4295
11	Tk 1500-80-2940	Tk 2325-125-4575
12	Tk 1550-85-3080	Tk 2400-130-4740
13	Tk 1600-90-3220	Tk 2475-135-4905
14	Tk 1650-95-3360	Tk 2550-145-5160
15	Tk 1700-100-3500	Tk 2625-150-5325
16	Tk 1800-105-3690	Tk 2775-160-5655

Source: *Labour*, Vol-10, July-Sep 2000, Bangladesh Institute of Labour Studies; (pp.9-12)

The Fifth National Wages and Productivity Commission for workers of public sector enterprises (state owned industries) was formed in 2005³⁴. It recommended taka 2,850 as minimum wages and taka 4,250 as the highest wage to be paid in 16 scales. The government, with necessary modifications of the recommendations given by the Wages Commission, declared new pay scales with effect from January 1, 2006.³⁵ Government has fixed minimum monthly wage at 2,450 taka and the highest monthly wages at 3,980 taka. The highest possible wages, taking into account 16 scale increments, will be taka 9,000. Some 58,000 workers are benefited by this decision.³⁶

³⁴ A 13 member National Minimum Wages Commission was formed on April 06, 2005. Primarily the tenure of the Commission was fixed for three months, but later on the term was extended. Jurisdiction of the Commission was to submit recommendations regarding basic wages and other benefits for workers of state owned industries considering expenses of livelihood. On that basis the Commission submitted its recommendations. Earlier Commission was formed in 1997 and implementation of the Commission's suggestions started from 2001. Source: *Daily New Age*, April 29, 2006.

³⁵ *The daily Samakal*, 25 April, 2006 (At present public sector workers are paid at this wages structure)

³⁶ Ibid

5.4 Fixation of minimum wages for private sector industries

So far, no proper attention has been paid to the private sectors for wage fixing. Specification of minimum national wage for private sector industries was mentioned when government signed an agreement with Sramik Kormochari Oikko Parishad (SKOP).³⁷ General Ershad was in power when SKOP signed the agreement with the government. But no government including the Ershad regime was successful in settling the issue of minimum national wage in private sectors until the recent move by the last caretaker government.³⁸ The minimum wages board prepared a draft wage-scale for 38 private sectors in 2001. It kept agricultural and domestic workers outside the scheme of minimum wages.³⁹ Minimum wages was fixed in that declaration as taka 1,200.⁴⁰ However the associations of employers filed a writ petition against it before the High Court Division of the Supreme Court. The court declared the impugned government gazette fixing minimum wage rates as illegal and void but did not refrain the government from fixing new wages structure. Subsequently, another wage board was formed in January 2004 and it submitted its recommendation for minimum wages in private sector workers in March 2004.⁴¹ But agriculture and domestic workers' have been left out of the recommendations. Thus only 8 million workers have been brought under this scheme although about a 50 million of toiling workers are living without any legal protection regarding their wages.

5.4.1 Minimum wages for RMG workers

On the initiative of Bangladesh Institute of Labour Studies (BILS), representatives of all trade unions and federations met in the capital in April 2006 and prepared a ten-point charter of demands. Demand for monthly minimum wages worth taka 3,000 was one of them. With the continuing labour movement, a tripartite agreement was signed in May 2006 between government, BGMEA (Bangladesh Garments Manufacturers and Exporters Association) and RMG (Ready Made Garments) sector workers and a Minimum Wages Board was set up. After prolonged deliberation a 7-grade minimum wage structure was declared for RMG sector workers in which minimum wage or wages at the lowest grade (grade-7) was determined as 1,662.50 taka per month. The declaration was made on November 19, 2006 to be put into effect from October 22, 2006⁴². Allowance for all apprentices or trainee workers was fixed at 1,200 taka per month. Apprenticeship was to be for a period of three months following which they would join as assistant sewing machine operator (helper) at grade-7.

³⁷ Sramik Kormochari Oikko Parishad is a grand alliance of trade unions in private sector industries in Bangladesh. Following demands of trade union leaders regarding implementation of minimum wage in privately owned organizations, Ershad government had signed an agreement with SKOP leaders. But the agreement is yet to be implemented. Eventually labourers of private industries have been deprived of getting very poor amount as minimum wages fixed in 1985 & 1991. (*Vide, supra note-2*)

³⁸ In a gazette published on the April 15, 2007 the Government declared minimum wages for unskilled and juvenile workers employed in all private industrial sectors in Bangladesh as taka 1500. This rate is applicable irrespective of any previous declaration as to minimum wages. *Vide, the Bangladesh Gazette (Extra Ordinary Issue) S.R.O. No 52-Ain/2006/SROKOM/Sha-6/NIMONI-28/2001.*

³⁹ In Bangladesh, total workforce is about 5 crore. Agricultural and domestic workers form 80% of total workforce. That is four-fifth of the total working class in Bangladesh has been kept out of the wages structure which is shame to our nation. See, BBS Labour Force Survey 1999-2000.

⁴⁰ *Vide, S.R.O. no 184-Ain/2001/SROKOM-10/NI.MO.NI.-28/2001*

⁴¹ Gazette notification reference no-Ni.Mo.Bo/Ni.Mo.Ni./99/2004/67

⁴² See, Gazette notification ref:-S.R.O. no 301-Ain/2006/SROKOM/Sha-6/Ni.Mo.Board-1/2006. Also see, News flier of Bangladesh Institute of Labour Studies, *web: www.bils-bd.org* Earlier wages board for RMG sector workers was formed in 1994 which recommended minimum wages for workers as taka 930 per month.

Table 5.2 Wage structure declared for RMG sector workers (monthly basis/ in taka)

Grades of workers	Grades and classification of workers	Basic Wages	House Rent (30% of basic pay)	Medical allowance	Total wages
1	Pattern master, chief quality controller	3 800.00	1 140.00	200.00	5 140.00
2	Mechanic/electrician, cutting master	2 800.00	840.00	200.00	3 840.00
3	Sample machinist, mechanic, senior sewing machine operator and others	1 730.00	519.00	200.00	2 449.00
4	sewing machine operator, quality inspector, cutter and others	1 577.00	473.00	200.00	2 250.00
5	Junior sewing machine operator, junior cutter, folder(finishing section) and others	1 420.00	426.00	200.00	2 046.00
6	General sewing machine/button machine operator and others	1 270.00	381.00	200.00	1 851.00
7	Asstt sewing machine operator, asstt. dry washing man/woman, line iron men/woman and others.	1 125.00	337.00	200.00	1 662.50

Source: S.R.O. no 301-Ain/2006/SROKOM/Sh-6/Ni.Mo.Board-1/2006

5.4.2 Minimum wages for unskilled and juvenile workers in all private sector industries

On April 15, 2007, the government announced minimum wages for *unskilled and juvenile workers employed in all private sector industries* in Bangladesh.⁴³ Here again, agricultural workers and workers in household affairs have been excluded. The government considered the recommendations of Minimum Wages Board and fixed minimum wages as taka 1500 inclusive of basic, house rent and medical allowance. In addition to minimum wages, workers will be entitled to all other benefits allowed by the employer. It applies to all private industries. If the government declares separate minimum wages for workers of any private industrial enterprises this minimum wages shall not apply to them. But no minimum wages structure should be below the amount fixed above.

5.5 Factors to be considered in wage fixing/ Problems in wage fixing

In both public and private sectors wages are determined under rules set forth by the Government. Article 3 of the ILO Convention 131 (regarding Minimum Wages) states that the minimum wage fixing authorities should consider the living standard of labourers and their family, their needs, social and other facilities and also the standard of living of their society. Factors such as required calorie intake, transport fare, education cost - were to be considered before fixing the wages for a labourer. Apart from these, wage was also directly associated with

⁴³ The Government published a gazette notification in this regard in pursuance of section 140(1) of the Labour Act 2006. See Ref- supra note (Vide, the Bangladesh Gazette (*Extra Ordinary Issue*) S.R.O. No 52-Ain/2006/SROKOM/Sh-6/NIMONI-28/2001.)

productivity and the employer was to consider the workers' producing capability before fixing wages.

However, there are two-fold problems in considering productivity as a yardstick to fix wages. Firstly, there is no ideal standard to evaluate the productivity of labourers. Second, productivity does not depend on the physical and mental labour of workers alone, it is also affected by the kind of management in an organization, raw materials, energy (electricity, gas) and machineries are related to it. So, it is unwise to consider productivity as factor for fixing wages⁴⁴.

According to section 141 of the Labour Act, 2006 while fixing minimum wages the Board will consider the following:

1. cost of living
2. standard of living
3. production cost
4. production capacity
5. price of produced goods
6. inflation
7. nature of work
8. risk and standard
9. business capacity and
10. socio-economic conditions of the country and the respective area
11. and any other related matter

While fixing the minimum national wage it is also necessary to consider the present and also the future price of essential goods. Wages should be raised in proportion with the increase in commodity prices (present price hike is 9.60 per cent) and inflation. This criterion was necessary so the real wages of the workers does not decline.⁴⁵ Timely raise in workers' wages will prevent agitations and consequent loss of productivity.

5.6 Wage discrimination in Bangladesh in different sectors

Secondary sources like research paper, diagnostic reports, surveys undertaken by various research and right-based organizations have been used in the present paper to analyze the real conditions of wages in Bangladesh.

5.6.1 Average wages in different sectors

Over 51.7 million people account for the labour force in Bangladesh⁴⁶. Of these there are over 32.3 million male and over 19 million female workers. The number of employees in government or autonomous bodies is over 2.3 million. Over 7.4 million workers are engaged in the formal private sector

⁴⁴ Views expressed in the keynote paper titled 'National Minimum Wages Suitable for Livelihood of Workers', presented in a National Seminar on minimum wages for workers employed in private sectors held at CIRDP Auditorium on 18 February, 2005, organized by Kormojibi Nari.

⁴⁵ According to a report published on Nov 13 2007, in Jai Jai Din, a Bangladesh daily the then caretaker government decided to reconsider the existing pay scales of the government employees and persons working in autonomous, semi-government bodies. It was reported that dearness allowance at the rate of 10 to -20 per cent of the basic pay will be added to their salary from January 2008 which would be merged with the pay-scale when a new National Pay Commission resumes work.

⁴⁶ Labour Force Survey of 1999-2000, Bangladesh Bureau of Statistics. Cited from Prodip Roy, 'Wages Issues: Bangladesh Perspective', Paper presented in an International Seminar on Minimum Wages organized by Kormojibi Nari in Dhaka on May 17 & 18, 2006.

while 41.8 million work in the informal private sector. Nearly one lakh 38 thousand people are employed in the private (non-profitable) sector.

The average wage in different sectors in Bangladesh is given in the following table.

Table 5.3 Sector-wise amount of daily wages (taka) Daily wages of labour force aged 15 or more

Sector	Average wages	Women	Men
Agriculture, cattle rearing, forestation and related industries	56.71	32.94	60.17
Fisheries	78.50	...	78.50
Mine and mineral resources extraction	48.18	30.22	80.56
Production of goods	73.54	38.69	82.99
Electricity, gas and water supply	143.86	...	143.86
Construction industries	81.96	43.85	85.57
Retail and wholesale business	70.86	36.56	78.65
Hotel and Restaurant	70.03	39.00	74.46
Transport, stock and communication service	81.26	35.75	83.77
Bank, Insurance and financial institution	120.11	...	120.11
Housing, rent and business activities	84.00	...	84.00
Government administration	80.09	...	80.09
Education	80.04	65.25	87.93
Health and social service	64.56	...	64.56
Commercial, social, business and other services	70.02	59.37	82.98
Rural areas	58.73	34.79	62.87
Urban areas	80.34	58.53	85.08
Bangladesh	61.29	38.07	65.43

Source: Labour force survey, 1999-2000, Bangladesh Bureau of Statistics.

5.6.2 Sector wise wages data in formal private enterprises (2002)

Kormojibi Nari undertook a survey in 2002 among workers in 14 formal sector industries located in Dhaka, Narayangonj, Savar, Tongi and Chittagong EPZ areas.

The survey shows that overall monthly average of a worker is Tk 1,950.60. According BBS data (per day average wage Tk 61.29) this figure is 1,838.70. According to the survey, a worker earns a minimum of Tk 500 and a maximum of Tk 8000.

Table 5.4 Sector-wise monthly average wages of workers

Sl.No	Sector/Industry	Average wages (tk)	Lowest wages (tk)	Highest wages (tk)
1	Garments	1 744.91	500.00	3 225.00
2	Textile	1 935.65	800.00	5 000.00
3	Leather Industries	4 094.74	1 600.00	8 000.00
4	Pharmaceuticals industries	1 777.37	900.00	8 000.00
5	Beverage and Dairy Industries	2 432.00	1 700.00	4 200.00
6	Battery	2 502.33	1 500.00	5 200.00
7	Coil	1 666.67	1 500.00	1 600.00
8	Glass Industries	1 783.33	1 200.00	2 150.00
9	Ceramics	2 287.14	1 150.00	4 800.00
10	Electronics	1 866.67	1 800.00	2 000.00
11	Jute Mills	1 633.33	1 300.00	2 100.00
12	Match Factories	1 400.00	800.00	2 000.00
13	Dying Industries/Paints	2 105.33	1 800.00	4 100.00
14	Printing	1 978.57	1 500.00	3 400.00

Source⁴⁷: Survey conducted by Kormojibi Nari-a rights' organization in 2002

The survey also revealed that female workers were paid comparatively lesser wages than their male counterparts. Among the daily labourers in rural areas male workers on an average earned 80 per cent more than the female workers. In urban areas the difference was 45 per cent. Among the self-employed workers, 66 per cent women compared to only 7 per cent earned a monthly income of Tk 1,000 or less. On the other hand, 15 per cent of female and 59 per cent of male workers earned Tk 2,500 or more per month.

Women were found to be discriminated against in the case of wages as well as salaries. Sixty one per cent of the salaried women compared to 16 per cent of salaried men earned Tk 1000 or less per month. Again 18 per cent of salaried women and 53 per cent salaried men earned Tk 2,500 or more per month. The average monthly income of men was about double than that of women (3340 taka and 1581 taka respectively). The table below shows a wage picture of males and women workers in different sectors.

⁴⁷ Prodip Roy, 'Wages Issues: Bangladesh Perspective', Paper presented in an International Seminar on Minimum Wages, held in Dhaka, Date: May 17 & 18, 2006, Organized by: Kormojibi Nari

Table 5.5 Gender-wise classification of wages (in taka)

Sl.No	Sector/Industry	Average Income (female worker)	Average Income (male worker)
1	Garments	1 586.61	2 079.56
2	Textile	1 553.33	2 176.66
3	Pharmaceuticals industries	1 581.48	2 180.00
4	Beverage and Dairy Industries	1 900.00	2 645.00
5	Ceramics/ Glass Industries	1 914.00	2 432.78
6	Coil, Plastic, Paints, Battery and Match Factories	1 654.00	2 910.00
7	Electronics	1 800.00	2 000.00
8	Jute Industries	1 475.00	2 050.00
9	Leather Industries	3 666.00	4 292.31
10	Printing and Packaging	1 500.00	3 175.00
	<i>Formal Sector</i>	1 746.56	2 257.18

Note: Data taken from research paper on Minimum Wages prepared by Kormojibi Nari, Dhaka, 2002.

5.6.3 Sector wise wages data in informal private sector survey of 2003

In order to determine the condition of workers in the informal private sector, Kormojibi Nari undertook a survey in 2003. The survey was undertaken among 150 respondent workers employed in informal private enterprises in Dhaka, Chittagong, Cox's Bazar, Khulna, Bagerhat, Jessore, Kustia, Sirajgonj, Mymensingh, Rangpur and Dinajpur districts. Workers were classified as self-employed and wage-based. Separate data was collected on female workers women to determine any form of discrimination. Male and female workers' ratio was 85:15. Some 15 different types of professions were chosen for the survey. These are: agriculture, embroidery, block printing, construction, brick breaking, brick baking, small industries, housemaid, shrimp, silk, hawker, roadside shopkeeper, tailoring, bag picker (waste materials collector).

According to the data on formal and informal sector average monthly wages of formal sector workers was 1,950.60 taka and in the informal sector the average monthly wages of self-employed worker was 2,575 taka and that of wage based workers is 1,302.78 taka.

Table 5.6 Average income of self-employed and wage-based workers in informal sectors

Nature of Profession	Gender	Numbers	Lowest wagers	Highest wages	Average wages	Standard Deviation
Self-employed worker	Female	19	300.00	10 000.00	2 005.26	
	Male	5	1 200.00	10 000.00	4 740.00	
	Sector wise	24	300.00	10 000.00	2 575.00	2 886.24
	Family income	24	350.00	10 000.00	3 800.00	3 096.52
Wage-based worker	Female	107	150.00	9 000.00	1 172.43	
	Male	19	400.00	3 500.00	2 036.84	
	Sector wise	126	150.00	9 000.00	1 302.78	989.33
	Family income	126	200.00	12 500.00	2 737.78	1 520.33

Note: Data taken from research paper on Minimum Wages prepared by Kormojibi Nari, Dhaka.

Table 5.7 Profession wise average income of workers in informal sectors

Sector	Nature of Profession	Gender	Numbers	Lowest wagers	Highest wages	Average wages
Agriculture	Self-employed worker	Female	5	600.00	7 000.00	2 680.00
		Family income	5	2 100.00	10 000.00	4 320.00
	Wage based worker	Female	14	400.00	1 450.00	860.71
		Male	2	400.00	900.00	650.00
		Sector wise	16	400.00	1 450.00	834.38
		Family income	16	1 300.00	3 700.00	2 540.63
Embroidery / Block Printing	Wage based worker	Female	5	1 000.00	9 000.00	2 480.00
		Male	1	--	1 600.00	1 600.00
		Sector wise	6	1 000.00	9 000.00	2 583.00
		Family income	6	1 600.00	12 500.00	5 533.33
Construction	Wage based worker	Female	9	960.00	3 200.00	1 560.00
		Male	1	--	3 500.00	3 500.00
		Sector wise	10	960.00	3 500.00	1 754.00
		Family income	10	1 480.00	4 000.00	2 884.00
Brick breaking	Wage based worker	Female	5	300.00	600.00	430.00
		Male	1	---	500.00	500.00
		Sector wise	6	300.00	600.00	441.67
		Family income	6	300.00	4 500.00	2 325.00
Brick Backing	Wage based worker	Female	6	200.00	1 500.00	705.00
		Male	6	1 200.00	3 100.00	2 466.67
		Sector wise	12	200.00	3100.00	1 585.83
		Family income	12	600.00	4 200.00	2 957.50
Small Industries	Self-employed worker	Female	2	8 500.00	10 000.00	6 000.00
		Male	2	7 000.00	10 000.00	8 500.00
		Sector wise	4	2 000.00	10 000.00	7 250.00
		Family income	4	7 000.00	10 000.00	8 875.00
	Wage based worker	Female	1	--	2 400.00	2 400.00
		Male	1	--	4 300.00	4 300.00
		Sector wise	2	1 200.00	1 800.00	1 500.00
		Family income	2	2 400.00	4 300.00	3 350.00

Sector	Nature of Profession	Gender	Numbers	Lowest wagers	Highest wages	Average wages
House made	Wage based worker	Female	9	150.00	1 200.00	568.89
		Family income	9	200.00	2 770.00	1 225.45
		Male	3	1 500.00	3 200.00	2 300.00
		Sector wise	37	500.00	3 200.00	1 470.27
		Family income	37	1 200.00	6 300.00	2 772.97
Silk	Wage based worker	Female	15	600.00	2 700.00	940.00
		Male	2	1 800.00	3 800.00	1 600.00
		Sector wise	17	600.00	3 000.00	1 111.76
		Family income	17	700.00	4 200.00	2 229.41
Hawker	Self-employed worker	Female	4	300.00	600.00	462.50
		Male	1	--	2 500.00	2 500.00
		Sector wise	5	300.00	2 500.00	870.00
		Family income	5	350.00	3 900.00	1 830.00
Roadside shopkeeper	Self-employed worker	Female	4	700.00	1 500.00	912.00
		Male	1	--	1 200.00	1 200.00
		Sector wise	5	700.00	1 500.00	970.00
		Family income	5	700.00	3 100.00	1 690.00
	Wage based worker	Female	1	--	2000.00	2 000.00
		Male	1	--	900.00	900.00
		Sector wise	2	900.00	2 000.00	1 450.00
		Family income	2	1 900.00	2 450.00	2 175.00
Tailoring	Wage based worker	Female	8	4 000.00	3 000.00	1 282.50
		Male	1	--	1 500.00	1 500.00
		Sector wise	9	400.00	3 000.00	1 306.67
		Family income	9	700.00	5 800.00	3 362.22
Waste materials collector (Bag picker)		Female	4	1 200.00	2 500.00	1 800.00
		Male	1	--	3 000.00	3 000.00
		Sector wise	5	1 200.00	3 000.00	2 040.00
		Family Income	5	1 700.00	5 000.00	3 300.00

5.7 Role of trade union and employers' organizations in wage fixing mechanisms

Periodic review is necessary in the case of minimum wages for it to remain in tune with the changing socio-economic situation. The government can do this through consultations with representatives of employer's and worker's organizations in the country.

Since wages and related fringe benefits of workers employed in public sector are determined by the Government through recommendations of the Wages and Productivity

Commission, collective bargaining for wages is not generally permissible on issues which are covered by the commission's recommendations. However, while the wages commission examines and formulates the wage structure it takes into consideration the views of the workers and employers representatives, the economic viability of the industries, interest of the customers, overall socio-economic conditions of the country, consumer price index and other such relevant factors. However, trade unions in private enterprises play an important role in determining minimum wages by means of collective bargaining.

At the national level, SKOP played a major role in realizing just wages for workers especially in 1980s and 1990s. On the face of persistent pressure of demands put by SKOP the then governments were compelled to deliberate on the matters of wages. Local trade unions or CBA (Collective Bargaining Agent) can take the initiative for collective bargaining through participation committee under the existing labour laws⁴⁸. Trade union representatives who are part of negotiations with the wage commission and wage board also play a key role in wage fixing and usually take care of the workers' interest. For example, trade union representatives to the Fourth Wages and Productivity Commission gave their proposal 16-scale wage, the minimum scale being at taka 3000-150x5-5250.⁴⁹ Trade unions played a remarkable role in fixing the minimum wages in the garments sector workers in 2006. Following demand from the trade unions, the caretaker government in 2007 declared minimum wages for all private sector industries in Bangladesh.

5.8 Role Collective Bargaining in wage determination

As a majority of workers who belong to the informal and unorganized sector often do not find a common voice to make collective bargaining an effective tool. Neither are many enterprises aware of the benefits of collective bargaining. There are many weaknesses in the existing mechanism which prevent the successful arrangement of collective bargaining in the unit which in the long run affect the fixing of just and reasonable wages for the workers. For instance, Labour Act 2006 does not allow sectoral and other forms of bargaining. Collective bargaining is limited to the enterprise/ establishment level. On the other hand, collective bargaining is used regularly in the MNCs and some national companies. But the outcome of these negotiations is generally not satisfactory. Although not permitted by law, in practice, sectoral collective bargaining is gaining popularity among the stakeholders to solve their disputes over different issues. Sectoral bargaining plays effective role in determining minimum wages for workers. Mention may be made to the fixation of minimum wages for RMG sectors. Tea, leather, tannery and pharmaceutical sectors have also many times relied on sectoral bargaining.

5.9 Discrimination of wages between formal and informal sector workers

The reality of wage structure for workers in public and private sectors is quite different from the legal framework discussed earlier. Informal sector workers⁵⁰, who form the largest section of the total workforce in Bangladesh, have not been brought within the legal framework of minimum wages. In some sectors, workers are still being paid under the decades old wages structure. For example, wages for agricultural workers were last determined in 1984 and since then wage structure has not been reviewed and no new scale has been fixed. According to the latest wage scale, minimum wages of a government employee including basic pay and other benefits has been fixed as taka 4500 per month. This too does not commensurate with rising

⁴⁸ See sections 203, 205, 210 of the Labour Act 2006

⁴⁹ Supra Note-29.

⁵⁰ Say, domestic workers, agricultural workers etc.

prices and increasing cost of living. Unfortunately, in the private sector the workers do not get even this amount while the condition of those working in the informal sector live in even more deplorable conditions.

The average minimum wages in 38 private sector enterprises was fixed at Tk 1,200 by the minimum wage board in 2004 -an incredibly small amount. Until April 15, 2007, minimum wages for garments sector was Tk 930 per month, ie. Tk 31 per day. Rice mill workers are paid a minimum of Tk 450 per month. The highest amount of minimum wages is Tk 1,500 which was fixed for launch workers. These amounts fixed as minimum wages were in no way compatible with the rising inflation.⁵¹

⁵¹ Inflation in 2005 is 8% and in 2007 is 9.5%. See, Daily Jai Jai Din, November 13, 2007. Also see, supra note ('Determination of National Minimum Wages', Altaf Parvez, Kormojibi Nari, Dhaka, web: www.karmojibinari.org)

Chapter Six

Dispute Settlement

6.1 Individual and industrial disputes, definition

The Labour Act 2006 foresees that a worker can raise a dispute before the Labour Court on the ground of violation of any right conferred by the Bangladesh Labour Act 2006⁵². There is no alternative mechanism for settlement of individual disputes other than by the intervention of the Court.

Individual disputes cannot be taken to court by the CBA⁵³ as industrial disputes. Although this issue has been raised several times before the Supreme Court of Bangladesh the Court has made it clear that individual disputes cannot be entertained by the Labour Court as an industrial dispute.⁵⁴

According to the Labour Act, no industrial dispute shall be deemed to exist unless it has been raised by an employer or a collective bargaining agent in accordance with the provisions of chapter 14 of the Act⁵⁵. No differentiation is made between rights' dispute and interest dispute; both are considered as dispute under law. Both rights dispute and interest dispute can be taken to the Labour Court under this legislation.

6.2 Dispute Settlement Machinery of the State

The idea underlying the provisions of the Bangladesh Labour Act, 2006 is to settle industrial dispute and to promote industrial peace and establish a harmonious and cordial relationship between labour and capital by means of conciliation, mediation and adjudication⁵⁶. With this end in view different authorities under this Act have been set up to resolve an industrial dispute. The Act has been streamlined for some non-adjudicatory as well as adjudicatory authorities. Non-adjudicatory includes participation committee, conciliator and arbitrator, while adjudicatory (judicial) authorities include Labour Court, Labour Appellate Tribunal etc. The state provides machinery for the settlement of disputes which starts with conciliation and ends up with provision for the adjudication by court.

Bipartite negotiation and conciliation are two important methods of settlement of industrial disputes because they provide grounds for amicable settlement in a free and unfettered environment. As a third party the conciliators try to help the conflicting parties resolve their disputes amicably and restore good relationship between the disputants. In essence, bipartite negotiation and conciliation are complementary to each other and can, if successfully used, provide a solid foundation to industrial relations⁵⁷. In Bangladesh the relevant law provides dispute settlement machinery which is discussed below at length:

6.2.1 Bipartite Negotiation

Bipartite negotiation as a means to prevent and solve disputes helps develop harmonious relationship between the management and workers. The scope of bipartite negotiation has been expanding with the growth of industrialization in general and trade unionism in particular.

⁵² See Section 33 and 213 of the Bangladesh Labour Act 2006

⁵³ See Section 209, Ibid

⁵⁴ See 27 DLR Page 99.

⁵⁵ Section 209, Bangladesh Labour Act, 2006.

⁵⁶ Md. Abdul Halim, "The Text Book on Labour and Industrial Law Of Bangladesh", Dhaka 2007, p.161

⁵⁷ Md. Abu Taher, "State and Industrial Relations: Bangladesh as a Case in the Post-Colonial Third World Context", Unpublished Ph.D. Thesis, University of Chittagong, 1994, p. 112.

Bipartite negotiation takes place between the employers and their employees over job-related affairs. The employees are usually represented by their elected representatives who form the CBAs, while the employers are allowed to participate in collective bargaining themselves or through their representative.

The legal provisions relating to the process of bipartite negotiation need a brief discussion here. A trade union, which is elected as CBA, can raise a dispute in writing and place it before the management for settlement through negotiation. Similarly the employers can also raise a dispute and place it before the CBA for negotiation⁵⁸. Bipartite negotiation starts within 15 days of submitting a written demand from either party⁵⁹. It has to be completed within 30 days after first meeting⁶⁰. If bargaining is successful, a memorandum of settlement is recorded in writing and signed by both the parties and a copy thereof is forwarded to the Government, Director of Labour and conciliator⁶¹.

It has been reported⁶² that though the law provides a favourable environment for bipartite negotiation, the scenario is different in practice. Bipartite negotiation is not so successful as is desired by the legislature in incorporating such mechanism for settlement of dispute. Unfavourable and authoritarian attitude of management towards trade unionism, bribing trade union leaders, lack of experience and leadership skill in trade union officers, interference of the government and the ruling party in the settlement of industrial dispute, multiplicity of trade unions having political rivalries, low level of class consciousness among workers as well as trade union leaders, inefficiency in applying bargaining techniques etc. are the main reason for making bipartite negotiation as useless tools in the settlement of industrial dispute in Bangladesh.

6.2.2 Conciliation-Tripartite Negotiation

The conciliation machinery⁶³ is, undoubtedly, an important element of our industrial relations system. Conciliation in industrial dispute becomes necessary mainly when the settlement of disputes fail at the bipartite negotiation level. In fact conciliation can be taken as an extension of the function of collective bargaining or simply as “assisted collective bargaining”⁶⁴ in which the conflicting parties can have a fair chance of settlement of industrial disputes through the services of expert negotiators.

If bipartite negotiation fails, any of the parties concerned may request the conciliator⁶⁵ in writing, to conciliate the dispute within 15 days from the date of the failure of collective bargaining⁶⁶. The practice of conciliation is compulsory in Bangladesh before resorting to industrial action. The role of the conciliator is to suggest solutions that can help find a compromise between workers and the management, but can not impose a solution. The success of conciliation depends on the willingness of the two sides to resolve their differences.

⁵⁸ Section 210(1) of the Bangladesh Labour Act, 2006.

⁵⁹ Section 210(2), Ibid.

⁶⁰ Section 210(4)(b), Ibid.

⁶¹ Section 210(3), Ibid.

⁶² Personal interview with *Mr. Tapan Datta* (See, list of interviewees quoted, Annex-1)

⁶³ The conciliation machinery of the Government has its offices in all divisional headquarters of the country, with its head office in Dhaka. The labour department under Ministry of Labour and Manpower, Government of the People's Republic of Bangladesh through gazette notifies the names of conciliator with their respective jurisdiction. The conciliators are authorised to conciliate in industrial disputes related with matters of interests.

⁶⁴ ILO, “Conciliation in Industrial Dispute: A Practical Guide”, Geneva, 1973, pp. 3-4.

⁶⁵ Section 210(5) of the Bangladesh Labour Act, 2006 empowers the Government by notification in the official Gazette to appoint such number of persons as it consider necessary to be Conciliators for the purposes of the Act and shall specify in the notification the area within which, or class of establishments or industries in relation to which, each of them shall perform his function.

⁶⁶ Section 210(4)(b) of the Bangladesh Labour Act, 2006.

If a settlement of the dispute is arrived at in the course of conciliation, the conciliator shall send a report thereof to the Government together with a memorandum of settlement signed by the parties to the dispute⁶⁷. If the conciliation fails, the conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator for settlement⁶⁸. If the parties do not agree to refer the dispute to an Arbitrator for settlement, the Conciliator shall, within three days of the failure of the conciliation proceedings, give a certificate thereof to the parties⁶⁹. The conciliation proceedings may continue for more than 30 days if the parties agree⁷⁰. The Director of Labour may, at any time, carry on with conciliation proceedings, withdraw the same from a conciliator or transfer the same to any other conciliator, and the other provisions of this section shall apply thereto⁷¹.

Statistics⁷² show that in the period from 1990 to 2004 an average of 310 disputes was taken up for conciliation annually, of which 22.48 per cent were successful and 48.06 per cent failed. In fact, conciliation has become a weak machinery in settlement of disputes. Trade union leaders and officials in the Department of Labour indicated the following shortcomings in the process⁷³ which prevent the parties from reaching at an agreement:

- i. Employers do not honour the compromise formula suggested by the conciliator because the law does not compel them to do so.
- ii. Direct linkage of the employers with the vested quarters as well as the government and the ruling party.
- iii. Partiality of the conciliator either in favour of the employers or influenced by the labour front backed by the ruling party.
- iv. Incompetence of the conciliator to persuade the disputants to reach an agreement.
- v. Tendency to bribe trade union leaders during conciliation.
- vi. Absence of mutual respect and patience between the parties involved.
- vii. Tendency among employers to take chance in the Labour Court.
- viii. Poor accountability of conciliation officers.
- ix. Financial inability of employer to meet workers' demands.
- x. Showing of muscle power by trade union leaders during conciliation.
- xi. Irrational character of demands by CBA.

6.2.3 Arbitration

Arbitration is a voluntary process for the settlement of industrial dispute. When conciliation fails, arbitration may prove to be a satisfactory and most enlightened method of resolving industrial dispute⁷⁴. The legal provisions relating to the process of collective bargaining need a brief discussion here.

⁶⁷ Section 210(8), Ibid.

⁶⁸ Section 210(10), Ibid.

⁶⁹ Section 210(11), Ibid.

⁷⁰ Section 210(9), Ibid.

⁷¹ Section 210(18), Ibid.

⁷² Vide Appendix Table 6.2 of this Chapter

⁷³ Personal interview with *Mr. Tapan Datta*, *Mr. M. A. Khaleque* and *Mr. Nahidul Islam* (See, list of interviewees quoted, Annex 1)

⁷⁴ Md. Abdul Halim, op. cit. p. 186.

If the conciliation fails, the conciliator tries to persuade the parties to refer their dispute to an arbitrator⁷⁵. If the parties agree to refer the dispute to an arbitrator for settlement, they make a joint request in writing to the arbitrator agreed upon by them. The arbitrator shall give his award within a period of thirty days from the date on which the dispute is referred to him or such further period as may be agreed upon by the parties to the dispute. After he has made an award, the arbitrator shall forward a copy thereof to the parties and to the Government. The award of the arbitrator is final and no appeal shall lie against it. An award shall be valid for a period not exceeding two years, as may be fixed by the arbitrator.

In practice no dispute is referred to the Arbitrator due to the fact that either the dispute is settled at the time of conciliation or in failure the parties feel interested to go to the Labour Court rather going for arbitration⁷⁶.

6.3 Right to strike or lock-out

In case of failure of conciliation, the party which has raised an industrial dispute may, within fifteen days from the date of the receipt of a certificate of failure under section 210(11), serve on a notice of strike or lock-out to the other party. However, the CBA, before serving any such notice, has to obtain the consent of three-fourths (i. e. 75 per cent) of its members through a secret ballot specifically held for the purpose of obtaining their consent over the strike action. The secret ballot has to be conducted by ballot committee formed by the CBA. Examination/verification of the records relating to secret ballot is done by the conciliator.

The Bangladesh Labour Act 2006 not only recognized the right to strike and lock but also put some limitations, namely,

- a) No party can serve a notice of strike or lockout while conciliation is taking place or during the proceeding before the Labour Court or Labour Appellate Tribunal.
- b) The Labour Court and the Labour Appellate Tribunal has the right to prohibit any strike or lockout during pendency of any proceeding before it.
- c) If a strike or lock-out lasts for more than 30 days, the Government may, by order in writing, prohibit the strike or lock-out. But the Government may prohibit a strike or lock-out at any time before the expiry of thirty days if it causing serious hardship to the community or is prejudicial to the national interest.
- d) In the case of any of the public utility services the Government may, by order in writing, prohibit a strike or lock-out at any time either before or after the commencement of a strike or lock-out.

If the strike does not follow the above procedures, it can be considered an illegal strike or lock-out and in that case the liable worker or employer shall be punished with imprisonment for a term which may be extended to one year or with fine which may extend to five thousand taka.

Data⁷⁷ reveals that an annual average of four strikes or lock-outs were declared during the period of 1990-2004 due to failure of conciliation, involving on average 14,048 workers and production loss of Tk 30,173,300/-.

⁷⁵ An arbitrator to whom a dispute is referred under section 210(10) of the Bangladesh Labour Act, 2006 may be a person borne on a panel to be maintained by the Government or any other person agreed upon by parties.

⁷⁶ Personal interview with *M. A. Khaleque* and *Mr. Nabilul Islam* (See, list of interviewees quoted in the Annex)

⁷⁷ Vide Appendix Table 6.3 of this Chapter

6.4 The Adjudication system

After the stages of bipartite negotiation and conciliation are exhausted, the disputant parties may resort to settling their dispute by referring it to the arbitrator or by a strike action or lock-out as discussed above or through the Labour Court.

An industrial dispute may be referred to the labour court in any of the following ways:

- i. If no settlement is arrived by way of conciliation and the parties agree not to refer the dispute to an arbitrator, the work man may go on strike or the employer may declare lock-out. However, the parties at dispute may, either before or after the commencement of a strike or lock-out, may give an application to the Labour Court for the adjudication of the matter.
- ii. If a strike or lock-out lasts more than 30 days the Government may prohibit such strike or lock-out and in that case the government must refer the dispute to the Labour Court. Any collective bargaining agent or any employer or workman may apply to the Labour Court for the enforcement of any right guaranteed or secured to it or him by or under any law or any award or settlement.
- iii. Any individual worker including a person who has been dismissed, retrenched, laid-off or otherwise removed from employment⁷⁸ can make a complaint to the Labour Court on failure of the employer to perform his obligation in that behalf⁷⁹.
- iv. The worker himself or his legal heir in case he dies or any legal representative may apply to the Labour Court for a payment on the ground that an amount from such payment has been deducted from the wages in contravention of the provision of the law or that any payment of wages has not been made or delayed or that under any rule the payment of any gratuity or provident fund is delayed.
- v. On rejection of the application for registration of Trade Union by the Director of Labour or after settlement of objection disposal such application is delayed by the Labour Director beyond the period of sixty days, the applicant Trade Union within thirty days from the date of such rejection or from the date of the expiry of the said time limit may appeal to the Labour Court.
- vi. If the Director of Labour is satisfied after investigation that the registration of a trade union should be cancelled, he shall submit an application to the Labour Court praying for permission to cancel such registration.

The Labour Court is constituted with a Chairman and two Members to advise him, however, in the case of trial of an offence or adjudication of any matter under Chapters Ten and Twelve it shall consist of the Chairman alone. The Members of the Labour Court are appointed by the Government in prescribed manner and to be the Chairman of the Labour Court a person is to be the sitting District Judge or Additional District Judge. While trying an offence the Labour Court shall administer its proceedings without its members.

The Labour Court has the power to dismiss the case or to decide the same *ex-parte*. The award, decision or judgment of the Labour Court shall be delivered, unless the parties to the dispute give their consent in writing to extend the time-limit, within sixty days following the date

⁷⁸ Section 33(1) of the Bangladesh Labour Act: 2006 - Any individual worker including a person who has been dismissed, retrenched, laid-off or otherwise removed from employment who has a grievance in respect of any matter covered under this chapter and intends to seek redress thereof under this section, shall submit his grievance to his employer, in writing, by registered post within thirty days of the occurrence of the cause of such grievance: Provided that, if the employer receives the grievance directly with acknowledgement in writing, there will be no need to send the grievance by registered post.

⁷⁹ Section 33(2) Ibid – The employer shall within fifteen days of receipt of such grievance, enquire into the matter, give the worker concerned an opportunity of being heard and communicate his decision, in writing to the said worker.

of filing of the case, provided that the delay of its delivery shall not invalidate the award, decision or judgment. An award, decision or judgment of Labour Court shall be given in writing and delivered in open Court and a copy thereof shall be forwarded to each of the parties. Any party aggrieved by an award, decision or judgment of the Labour Court may prefer an appeal to the Labour Appellate Tribunal within sixty days of the delivery thereof and the decision of the Tribunal in such appeal shall be final.

Data⁸⁰ reveals that an annual average of 5,668 cases were filed during the period of 1990-2006 of which 35.37 per cent cases were disposed of during the year and 64.63 per cent cases remained pending at the end of the year.

Research also shows⁸¹ that the Labour Court of Chittagong utterly failed to dispose the cases within the statutory time limit (i.e. 60 days). About 50 per cent of the cases took a time period ranging between 12 months and 36 months. The time required for 25 per cent of the cases ranged between three years and five years. About 8 per cent of the cases took more than five years. The average time taken to decide the cases by the First Labour Court and the Second Labour Court of Dhaka was more than 17.5 months and 31 months respectively.

The reasons behind the backlog of cases in the Labour Courts are as follows:

- Inadequacy of Courts for dealing with labour disputes⁸²
- There are huge cases under different laws specially under section 114 of the Code Criminal Procedure and Immigration Ordinance which create unnecessary backlog of cases⁸³
- The Judges of the Labour Court usually do not have any prior experience in dealing with labour issues⁸⁴
- The absence of members cause unnecessary delay in disposing of the case⁸⁵
- The practicing lawyers of the Labour Court are habituated in filing frequent time petitions which create unreasonable delay in disposing of the case⁸⁶
- Lack of logistic support of the Labour Court.

The Labour Court is the pioneer adjudication body in settling labour disputes, but Chairman of the Labour Court is appointed from the District Judge or Additional District Judge, and does not have specific training on labour laws. Similarly, Judges of the Labour Courts do not have any experience in dealing with labour issues⁸⁷, but are often appointed under political pressure of the ruling party and not based on qualifications or standardized recruitment procedures.⁸⁸ Remuneration of the members is very poor leading to disinterest in attending the Court.⁸⁹ The practicing lawyers of the Labour Court submit frequent time petitions which create unreasonable delay in disposing of the case.⁹⁰

⁸⁰ Vide Appendix Table 6.4 of this Chapter

⁸¹ Md. Abu Taher, "State and Industrial Relations: Bangladesh as a Case in the Post-Colonial Third World Context", Unpublished Ph.D. Thesis, University of Chittagong, 1994 p 128

⁸² Personal interviews with *Mr. Kamal Hossain* (See list of interviewers quoted, Annex- 1)

⁸³ Personal interviews with *Mr. Rajib Dey* (See list of interviewers quoted, Annex-)

⁸⁴ Personal interviews with *Mr. Raunakul Islam* (See list of interviewers quoted, Annex- 1)

⁸⁵ Supra Note 76

⁸⁶ Personal interviews with *Mr. Kamal Hossain and Mr. Tapan Datta* (See list of interviewers quoted, Annex-)

⁸⁷ Personal interviews with *Mr. Raunakul Islam* (See list of interviewees, Annex- 1)

⁸⁸ Personal interviews with *Mr. Tapan Datta* (See list of interviewees, Annex- 1)

⁸⁹ Ibid

⁹⁰ Personal interviews with *Mr. Kamal Hossain and Mr. Tapan Datta* (See list of interviewers quoted, Annex 1)

6.4.1 Adjudication by Labour Appellate Tribunal

The Labour Appellate Tribunal has the power to hear or dispose appeals from the Labour Court. It consists of a Chairman or if the Government deems fit, of Chairman and such number of Members as determined by the Government. The Chairman shall be a former Judge or Additional Judge of the Supreme Court and any Member thereof shall have been a Judge or an Additional Judge of the Supreme Court or is or has been a District Judge for at least three years. The Labour Appellate Tribunal on appeal may set aside, vary or modify any award decision in judgment or sentence given by the Labour Court or send the case back to the Court for re-hearing; and shall exercise all the powers conferred by the Code on the Labour Court. The judgment of the Tribunal shall be delivered within a period of not more than 60 days following the filing of the appeal.

From the data⁹¹ it is revealed that an annual average of 278 appeals were filed for disposal during the period 1990-2006 of which 33.45 per cent appeals were disposed of during the year and 66.55 per cent appeals were pending at the end of the year.

The main reasons behind the backlog of cases in the Labour Appellate are that there is insufficiency of Benches of Appellate Tribunal⁹². At present only two Benches exist which are not sufficient to deal with the huge volume of appeals from around the country. But according to law the Government is empowered to appoint as many as members as required for the Labour Appellate Tribunal with whom several Benches can be created for smooth functioning of the activities of the Labour Appellate Tribunal. Apart from this limitation the Labour Appellate Tribunal also suffers from lack of sufficient logistics support i.e. building, court room, manpower etc.

6.4.2 High Court Division of the Supreme Court of Bangladesh

Even though the Labour Court has been entrusted with the exclusive jurisdiction in respect of deciding labour issues, the aggrieved person can invoke the jurisdiction of the High Court Division on the ground that the matter in question leads to the violation of fundamental rights and that there is no other efficacious remedy in the matter⁹³. It will not be out of place to mention here that before enactment of the Bangladesh Labour Act, 2006, there was no scope of appeal against the decision of the Labour Court to Labour Appellate Tribunal and the right to appeal could be exercised only in the case of award of a Labour Court. So, it was only way to invoke the writ jurisdiction of the High Court Division of the Supreme Court for challenging a decision passed by the Labour Court. But now by the Bangladesh Labour Act, 2006 every decision passed by the Labour Court is appealable before the Labour Appellate Tribunal⁹⁴. In spite of this the jurisdiction of the High Court Division can only be invoked on the grounds of violation of fundamental rights or any procedural error committed by the Labour Court.

6.5 Role of labour administration in dispute settlement

Under the Bangladesh Labour Act, 2006 the Labour Administration has been entrusted to play a key role in industrial dispute in the manner specified below:

⁹¹ Vide Appendix Table 6.5 of this Chapter

⁹² Personal interviews with *Mr. Kamal Hossain* (See list of interviewers quoted, Annex-1)

⁹³ Article 102 of the Constitution of the Peoples' Republic of Bangladesh

⁹⁴ Section 217 of the Bangladesh Labour Act, 2006

- i. The Director of Labour or any person under his authority may play the role of conciliator⁹⁵.
- ii. The Director of Labour shall have the power to file complaint before the Labour Court for any unfair offence or unfair labour practice or for contravention of any provisions of Chapter Thirteen in respect of Trade Union and Industrial Relations⁹⁶.
- iii. The Director of Labour in the interest of the settlement of dispute may himself proceed with conciliation proceedings withdrawing the same from a Conciliator or transfer the same to any other Conciliation⁹⁷.
- iv. The Bangladesh Labour Act, 2006 empowered the Government to appoint as many persons as it considers necessary to be conciliation for the purpose of settlement of industrial dispute and may classify them in reference to type of establishment, territorial area etc.⁹⁸
- v. The Labour Court and the Labour Appellate Tribunal being adjudicatory bodies of the Labour Administration play a key role in dispute settlement. In this regard the Labour Court has been entrusted with the exclusive jurisdiction on the following matters⁹⁹:
 - a) To adjudicate and determine an industrial dispute which has been referred to or brought before it under this Code;
 - b) To enquire into and adjudicate any matter relating to the implementation or violation of a settlement which is referred to it by the Government;
 - c) To try offences under the Bangladesh Labour Act, 2006;
- vi. A Labour Court is vested with the powers the Court of a Magistrate of the First Class under the Code of Criminal Procedure. But for the purpose of inflicting punishment, it shall have the same powers as are vested in Court of Sessions¹⁰⁰.
- vii. For the purpose of adjudicating and determining any matter, question or dispute except any offence the Labour Court shall be deemed to be a Civil Court¹⁰¹ and shall have the same powers as are vested in such Court under the Code of Civil Procedure including the powers of-
 - a) enforcing the attendance of any person and examining him on oath;
 - b) compelling the production of documents and material objects;
 - c) issuing commissions for the examination of witnesses or documents;
 - d) delivering ex parte decision in the event of failure of any party to appear before the court;
 - e) setting aside ex parte decision;
 - f) setting aside the order of dismissal of a suit given in the event of failure of any party to appear before the Court;

⁹⁵ Section 317(4)(e) Ibid

⁹⁶ Section 317(4)(b) Ibid

⁹⁷ Section 210(18) Ibid

⁹⁸ Section 210(5) Ibid

⁹⁹ Section 214(10) Ibid

¹⁰⁰ Section 215(2) &(3) Ibid

¹⁰¹ Section 216(1) Ibid

- g) so that the purpose of the case is not frustrated, the court may issue injunction against any party in the case.
- viii. The Labour Court is empowered to prohibit the continuance of any strike or lock-out in pursuance of any industrial dispute in respect of which such dispute is pending before the Labour Court for adjudication¹⁰².
- ix. The Labour Appellate Tribunal may, on appeal, confirm, set aside, vary or modify any award, decision, judgment or sentence given by the Labour Court or send the case back to the Court for rehearing; and shall exercise all the powers conferred by this Code on the Labour Court¹⁰³.
- x. The Tribunal shall have authority to punish for contempt of its authority, or that of any Labour Court, as if it were a High Court Division of the Supreme Court¹⁰⁴.
- xi. The Tribunal has the power to transfer a case from one Labour Court to another either on its own motion or on the application of any party¹⁰⁵.
- xii. The Tribunal shall have the power of control and supervision over all Labour Courts¹⁰⁶.
- xiii. The Tribunal has the power to pass an order prohibiting the continuance of any strike or lockout in pursuance of any industrial dispute in respect of which any appeal is preferred to the Tribunal¹⁰⁷.

6.6 Preventive measure for avoiding industrial dispute

The Bangladesh Labour Act, 2006 provides an important tool for minimizing industrial disputes at the very initial stage by the intervention of the Participation Committee. The Participation Committee is a bipartite mechanism comprising of equal number of representation of workers and employers¹⁰⁸. In an establishment where fifty or more workers are employed the employer is bound to constitute a Participation Committee to his establishment¹⁰⁹. The representatives of the workers in the Committee shall not be less than the number of the representatives of the employer¹¹⁰. The representative of the workers in the Participation Committee shall be appointed on the basis of nomination by trade union or from the workers engaged in the establishment in the absence of trade union¹¹¹.

The principle function of the Participation Committee is to inculcate and develop a sense of belonging and workers' commitment and in particular¹¹² -

- a) To endeavour to promote mutual trust, understanding and cooperation between the employer and the workers;
- b) To ensure application of labour laws;

¹⁰² Section 226(1) Ibid

¹⁰³ Section 218(10) Ibid

¹⁰⁴ Section 218(12) Ibid

¹⁰⁵ Section 218(14) Ibid

¹⁰⁶ Section 218(15) Ibid

¹⁰⁷ Section 226(2) Ibid

¹⁰⁸ Section 205(2) Ibid

¹⁰⁹ Section 205(1) Ibid

¹¹⁰ Section 205(3) Ibid

¹¹¹ Section 205(4) and (6) Ibid

¹¹² Section 206 Ibid

- c) To foster a sense of discipline and to impose and maintain safety, occupational health and working condition;
- d) To encourage vocational training, workers' education and family welfare training;
- e) To adopt measures for improvement of welfare services for the workers and their families.
- f) To fulfil production target, reduce production cost and wastes and raise quality of products.

The employer and the trade union of the establishment shall take necessary measures to implement the specific recommendations made by the Participation Committee within the time prescribed by it¹¹³. If by any reason the employer or trade union faces any problem in implementing the recommendations of the committee within prescribed time, the Participation Committee shall be informed of it and all possible endeavours shall have to be taken to implement the recommendations¹¹⁴.

However, the role of Participation Committee is very limited as such committee exists only in a very few industries and establishments. Only five per cent of the existing establishments have Participation Committees. Some of them do not even operate regularly. There is hardly any participation committee in RMG, EPZs and shrimps sectors. According to one author:

*"It is true that the formulation of the law in respect of Participation Committee is far from effective. It is difficult to carry the commitment of the workers to fulfil production target when they are not discussed when the target is fixed. It is also too much to expect that the workers' representatives will sit in the meeting of the committee every two months only to discuss, exchange views and recommend measures on paramount issues of their interest which the employer may just ignore and reject without, even mentioning any reason."*¹¹⁵

6.7 Dispute settlement in export processing zone

The BEPZA set up an Industrial Relations Department to take over the powers of the Ministry of Labour's Directorate of Labour in the EPZs. A manager entrusted with the task of grievance handling, dispute settlement, and labour inspection heads the Industrial Relation Department in each zone. The Industrial Relations Department uses a checklist to monitor compliance with the provisions provided in BEPZA's guidelines for benefits and privileges to be accorded to the workers. BEPZA management believes that 100 per cent of the large firms comply with the law, but many smaller enterprises have been cited for late or non-payment of wages¹¹⁶.

According to the EPZ Workers' Association and Industrial Relations Act 2004, when a difference between an employer and worker is found they will sit for negotiation to settle the issue. When negotiation fails any of the parties can request to the conciliator to conciliate them in the dispute. If the conciliation fails though the parties to the dispute are entitled to go for strike or lock-out but this right has been suspended till October 31, 2010. There is another provision to go to the EPZ Tribunal for settlement of dispute, but it is still in the process and till now no EPZ Tribunal has been setup. Arbitration is also available.

¹¹³ Section 208(1) Ibid

¹¹⁴ Section 208(2) Ibid

¹¹⁵ Nazrul Islam Khan, 'Trade Unions, Productivity and Industrial Relations', Labour, 2nd issue, April- June 1999, BILS, p. 4.

¹¹⁶ Personal interview with Mr. Atikul Alam and Mr. Abul Hasan (See, list of interviewees quoted, Annex- 1)

In practice it is revealed¹¹⁷ that there are two conciliators, sixty counsellors and one arbitrator in the EPZs in Bangladesh. The workers submit grievances to the counsellors in written form. They are then inquired and the matter is decided upon by the counsellors accordingly. The matters which are not settled by the counsellors are referred to the conciliator and then conciliator initiates his proceedings. In 2007 the Office of Conciliator of Chittagong Export Processing Zone settled a number of 40 disputes in which Tk 10,03,066 were awarded to the workers as compensation¹¹⁸. It seems that the BEPZA authority is giving one stop service to the workers in settling their disputes.

¹¹⁷ Personal interview with *Mr. Atikul Alam* and *Mr. Abul Hasan* (See, list of interviewees quoted, Annex-1)

¹¹⁸ Data collected from the Office of Conciliator of CEPZ.

Figure 6.1
Dispute Settlement Process in Bangladesh 2007

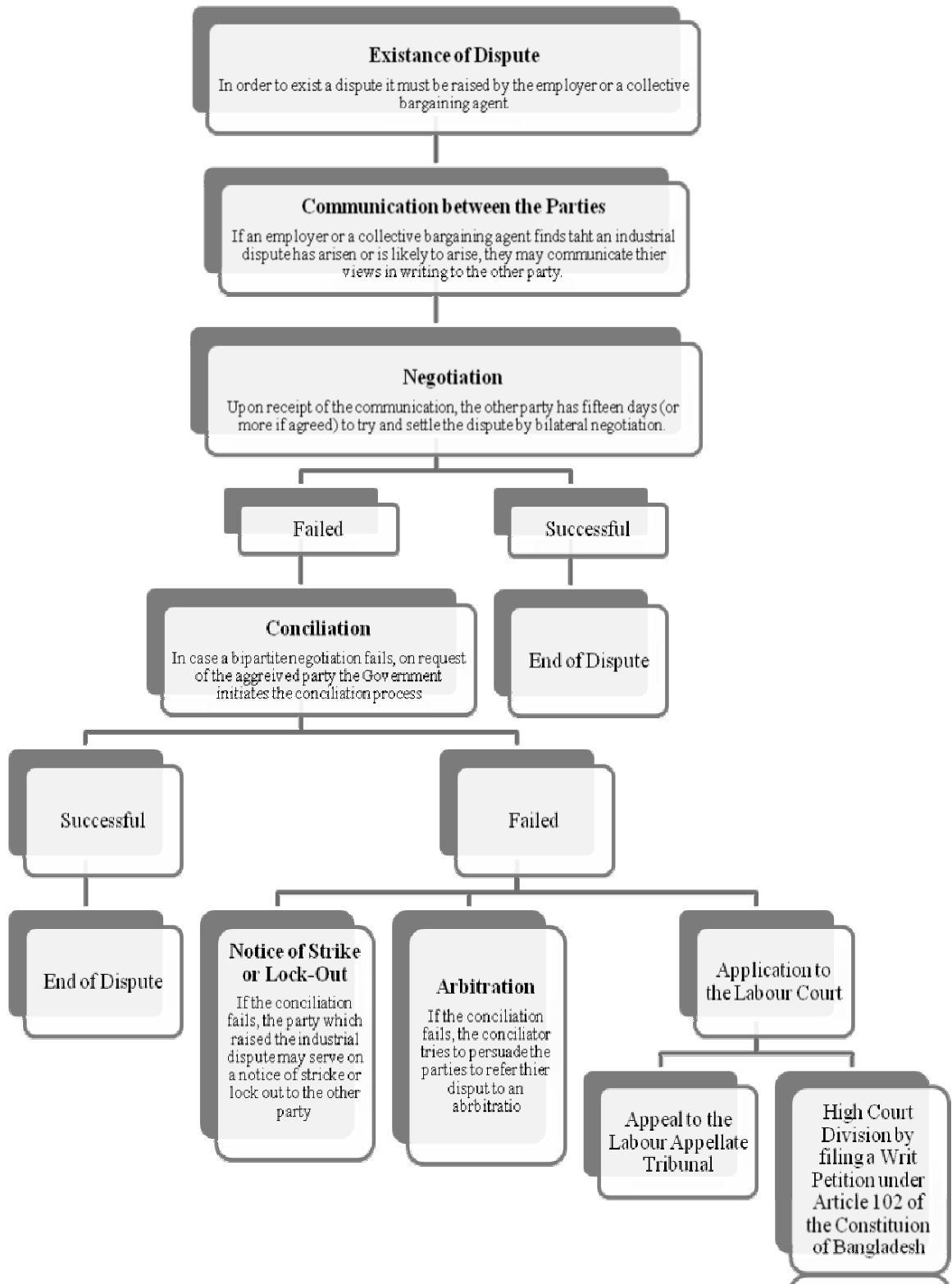


Table 6.1 Trend of Industrial Disputes for Disposal : 1990- 2005

Year	Total No. of disputes not involving strike or lock-out	Total No. of disputes involving strike or lock-out	Total No. of disputes referred to Labour Courts	Total No. of disputes referred to Labour Appellate Tribunal
1990	564	05	5499	24
1991	1293	03	5264	31
1992	1204	11	4374	50
1993	272	11	4622	38
1994	218	02	4482	63
1995	135	05	5365	192
1996	205	01	5972	116
1997	175	-	7434	99
1998	122	01	7853	178
1999	148	04	7789	423
2000	99	04	6879	562
2001	68	03	4769	482
2002	59	05	4328	552
2003	43	04	4263	573
2004	55	06	5106	585
2005	63	04	5923	420

Source: (a) Computed with data from *Bangladesh Labour Journal* (several issues), Published by Department of Labour, Government of Bangladesh, Dhaka-1000, Bangladesh. Supplemented by unpublished data of the Department of Labour, GOB, Dhaka.

Table 6.2 Working of Conciliation Machinery in Bangladesh: 1990 -2004

Year	Total No. of disputes taken for conciliation during the year	No. of disputes settled during the year	No. of disputes partially settled during the year	No. of disputes not proceeded with closed	No. of disputes failed at conciliation level	No. of disputes pending at the end of the year
1990	564	83	05	116	347	13
1991	1293	67	-	85	636	505
1992	1204	92	02	120	986	04
1993	272	173	-	54	31	14
1994	218	138	-	31	40	09
1995	135	69	-	32	17	17
1996	205	128	03	35	30	09
1997	175	94	02	52	23	04
1998	122	33	21	34	29	05
1999	148	46	41	32	21	08
2000	99	26	21	28	21	03
2001	68	28	06	14	16	04
2002	59	26	07	10	14	02
2003	43	18	02	06	13	04
2004	55	22	03	08	15	07
Average (1990-2006)	310	70 (22.48%)	07 (2.15%)	44 (14.19%)	149 (48.06%)	41 (13.12%)

Source: (a) Computed with data from *Bangladesh Labour Journal* (several issues), Published by Department of Labour, Government of Bangladesh, Dhaka-1000, Bangladesh. Supplemented by unpublished data of the Department of Labour, GOB, Dhaka.

Table 6.3 Settlement of Industrial Disputes by Conciliation after notice of strike or lock-out: 1990 -04

Year	No. of disputes received for disposal	No. of cases disposed of	No. of the workers involved	Mandays lost	Production Losses (Tk.)
1990	5	5	14554	28479	21000000
1991	3	3	454	29811	13000000
1992	11	11	6190	29741	-
1993	11	11	6101	16029	-
1994	2	2	541	2821	-
1995	5	5	24656	7503	122660000
1996	1	1	353	7766	17600000
1997	-	-	-	-	-
1998	1	1	6490	6490	-
1999	4	4	22957	19780	9840000
2000	4	4	16977	33954	20372000
2001	3	3	16611	16611	14956000
2002	5	5	27897	29772	23515000
2003	4	4	21883	19649	21837000
2004	06	06	31057	44708	36953000
Average (1990-2004)	04	04	14048	20937	30,173,300

Source: Computed with data from *Bangladesh Labour Journal*, Op.Cit. (several issues).

Supplemented by unpublished data of the Department of Labour, GOB, Dhaka.

Table 6.4 Industrial Disputes handled by Labour Courts: 1990-2006

Year	No. of pending cases at the beginning of the year	No. of cases filed for disposal during the year	Total No. of cases for disposal during the year	No. of cases disposed of during the year	No. of cases pending at the end of the year	% of cases disposed of during the year	% of cases pending at the end of the year
1990	3350	2149	5499	1758	3741	31.96	68.04
1991	3741	1523	5264	2364	2900	44.90	51.10
1992	2900	1474	4374	1751	2623	40.03	59.97
1993	2623	1999	4622	1729	2893	37.40	62.60
1994	2893	1589	4482	1282	3200	29.80	72.39
1995	3200	2765	5965	1778	4187	33.14	70.20
1996	4187	1785	5972	1153	4819	19.30	80.70
1997	4819	2615	7434	1388	6046	18.67	81.33
1998	6046	1807	7853	2242	5611	28.54	71.46
1999	5611	2178	7789	3007	4782	28.60	71.40
2000	4782	2097	6879	3729	3150	54.20	45.80
2001	3158	1611	4769	2038	2731	42.73	57.27
2002	2731	1597	4328	1883	2445	43.50	56.50
2003	2445	1818	4263	1720	2543	40.15	59.85
2004	2543	2563	5106	1960	3146	38.38	61.62
2005	3146	2777	5923	2462	3461	50.01	49.99
2006	3461	2385	5846	1846	4000	31.57	68.43
Average (1990-2006)	3625	2043	5668	2005	3663	35.37	64.63

Source: (a) Computed with data from *Bangladesh Labour Journal*, Op.Cit. (several issues).

Supplemented by unpublished data of the Department of Labour, GOB, Dhaka

Table 6.5 Industrial Disputes handled by Labour Appellate Tribunal: 1990- 2006

Year	No. of pending appeals at the beginning of the year	No. of appeals filed for disposal during the year	Total No. of appeals for disposal during the year	No. of appeals disposed of during the year	No. of appeals pending at the end of the year	% of appeals disposed of during the year	% of appeals pending at the end of the year
1990	09	15	24	16	08	66.66	33.34
1991	08	23	31	17	14	54.83	45.17
1992	14	36	50	36	14	72.00	28
1993	14	24	38	30	08	78.94	21.06
1994	08	55	63	17	46	26.98	73.02
1995	46	146	192	105	87	54.68	45.32
1996	87	29	116	86	30	74.13	25.87
1997	30	69	99	14	85	14.14	85.86
1998	85	93	178	83	95	46.62	53.38
1999	95	328	423	60	363	14.18	85.82
2000	363	199	562	177	385	31.49	68.51
2001	385	97	482	150	332	31.12	68.88
2002	332	190	552	135	417	24.95	75.05
2003	417	156	573	93	480	16.23	83.77
2004	480	105	585	281	304	48.03	51.97
2005	304	116	420	164	256	39.04	60.96
2006	265	88	344	126	218	36.62	63.38
Average (1990-2006)	174	104	278	93	185	33.45	66.55

Source: (a) Computed with data from *Bangladesh Labour Journal*, Op.Cit. (several issues).

Supplemented by unpublished data of the Department of Labour, GOB, Dhaka

(b) Supplemented by unpublished data of the office of Labour Appellate Tribunal, GOB, Dhaka.

Chapter Seven

Tripartism and Social Dialogue: Mechanisms and Processes in Bangladesh

7.1 Introduction

Social dialogue is defined by the ILO as all types of negotiation, consultation or simply exchange of information between representatives of governments, employers and workers, on issues of common interests relating to economic and social policy. In Bangladesh, social dialogue has been institutionalized through the ratification of the ILO Convention concerning Tripartite Consultations to Promote the Implementation of International Labour Standards, 1976 (No. 144) in 1979. According to the Convention, employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken in ILO-related matters. However, social dialogue is yet to be fully explored to promote the consensus on various aspects of the industrial relation system in Bangladesh.

The objective of promoting social dialogue in industrial relations is to minimize conflict situations and establish harmony between employers and trade unions. Social dialogue is one of the foremost ways to achieve workers' right to decent work. The role of social dialogue is also highlighted in formulating laws and policies on labour-management issues in order to reflect the interest and priorities of social partners in proposed laws and policies. Importance of social dialogue should be particularly highlighted in view of the fact that the government implementation machinery is often weak and ineffective to ensure fulfilment of the genuine and lawful demands of the workers.

7.2 Existing bipartite and tripartite institutions in Bangladesh

The legal framework for bipartite cooperation and social dialogue in Bangladesh comprises of various ILO Conventions which Bangladesh ratified or acceded to as well as existing labour law. In general, tripartism refers to labour relations in which the State, employers and workers are autonomous yet interdependent partners with common interests.¹¹⁹ Bipartite mechanism encompasses dialogue only between labour and management (or trade unions and employers' organizations), with or without indirect government involvement. Bipartism has been described as "a process of determination of a network of rules and regulations concerning terms and conditions of employment, etc, through consultation, negotiation, bargaining or other consensual processes."¹²⁰

In Bangladesh, there are five main regular tripartite institutions at the national level: the Labour Court, the Tripartite Consultative Council (TCC); the Minimum Wage Board (MWB); the Tripartite Productivity Committee (TPC); and the National Council for Skill Development and Training (NCSDT). Furthermore, there are some *ad hoc* tripartite institutions convened at irregular intervals: the National Pay Commission (NPC), and the National Wage Commission (NWC), and National Steering Committee.¹²¹

Apart from these, there are some sector based tripartite bodies for engaging in social compliance and monitoring of compliance. The most prominent among them is- Social Compliance Forum in RMG sector established in 2005 comprising of government representatives, industry associations, buyers, development partners, civil society and partners. The main objective of the Social Compliance Forum is to review existing policies especially occupational safety and labour welfare aspects and to provide guidelines for necessary policy

¹¹⁹ R. Thamarajakshi, "Overview", in: A. Sivananthiran & C.S. Venkata Ratnam, (eds.), Best Practices in Social Dialogue, ILO Sub-regional Office, New Delhi, (2003), p. 1.

¹²⁰ Ibid.

¹²¹ See Government of Bangladesh: Report of the National Labour Law Commission, (1992) and Bangladesh Gazette (Labour), (1998a).

reforms. The Forum has undertaken some steps for building awareness about labour laws and developing data base on the information of factories.

7.3 Mechanisms and processes of social dialogue

Social dialogue may take many forms, e.g., simple sharing of information, consultation and negotiation. Social dialogue may take various forms of different degrees:

- information sharing about the business condition, the general prospects of the enterprise and changes in the methods of production;
- problem sharing i.e., discussion of any problem that may arise in enterprise;
- joint consultation which may be both formal and informal
- workers' participation in management which refers to the participation in the decision-making process.¹²²

Social dialogue is now increasingly accepted in industrial relations in Bangladesh, and in recent years several processes of social dialogue have taken place. Every two years, a memorandum of agreement is signed by workers and employers. But findings show that most of the demands of this agreement remain unfulfilled. While progress has been made, social dialogue has still limited value to the workers so far in terms of achieving decent work and decent living for them.

Labour management committees have also been formed at the enterprise level to deal with working conditions and occupational safety and health issues. Alliances between trade unions, women's organizations and solidarity networks are being forged as well to improve the working conditions of workers in EPZs.

7.4 Composition and mandate of tripartite bodies at different levels

Tripartite Consultative Council (TCC)

After independence of Bangladesh, the Provincial Tripartite Advisory Board was reconstituted as the National Labour Advisory Board, consisting of 10 members from the Government and 5 each from organizations of workers and employers. The Minister-in-Charge of the Ministry of Labour and Manpower was designated as its Chairman. It was further reconstituted in 1976, 1978, 1980, 1986, 1989 and 1991. It is now called Tripartite Consultative Council and consists of 45 members (15 each representing the Government, employers and workers group).

The TCC, in its meetings, discuss various issues of national importance such as formulation of labour policy, amendment of the existing labour laws, adoption of ILO Conventions and Recommendations by the Government, and improve of industrial relations etc. So far, TCC has discussed the feasibility of amendment of several laws many of which are accepted by the Government, e.g., the Industrial Relations Ordinance, 1969; Payment of Wages Act, 1936 etc. TCC examined the texts of ILO Conventions and Recommendations vis-a vis existing laws and practices prevailing in Bangladesh and recommended to the Government the ratification of some Conventions. Based on its recommendation, the Government ratified ILO Conventions Nos. 144 and 149 (relating to tripartite consultation and nursing personnel).

Besides tripartite conferences in matters of labour, tripartite consultations were held in formulating the development policies of the Government through the formulation of advisory panels with participation *inter alia* by organizations of employers and workers.

¹²² Kabir Ahmed Chowdhury, 'Innovative Approaches to Institutionalize Social Dialogue, which can benefit Workers and Employers', A paper presented at Workshop on Tripartism and Social Dialogue, Organised by ILO Area Office, Dhaka, 16-17 August, 2004.

Industrial Workers' Wages Commission (IWWC)

After independence, a large number of industrial and commercial undertakings were brought under the scope of the public sector. The Government felt the necessity of providing a formalized wage structure in the public sector covering about 75 per cent of the workers in the country, and set up two commissions in 1973: (i) the Industrial Workers' Wages Commission (IWWC) to bring about uniformity in the rates of wages/fringe benefits etc. of the workers and employees engaged in manufacturing industries, owned, nationalized or taken over by the Government; and (ii) the National Pay Commission (NPC) to rationalize the pay structure of the state-owned industrial workers and employees.

National Wages and Productivity Commission (NWPC)

In 1984, the Government constituted a tripartite National Wages and Productivity Commission to make recommendations on the wage structure, remuneration and other benefits of various categories of workers in various industries, co-relating them with the productivity of such industries. The Commission in making recommendations should take into account the cost of living of workers; the productivity; resources and economic viability of industries; the desirability of fairness and efficiency with reference to the nature of the work, for determination of wages, remuneration and other benefits for workers in different industries; and the need for removal of disparities in wages, if any, between workers of the same category in different units of the same industry.¹²³ The NWPC submitted its reports from time to time on wage structure.

The NWPC comprised of a Chairman (retired Judge of the Supreme Court, Appellate Division), a Member-Secretary (Joint –Secretary of the Ministry of Establishments) and members (drawn from the Minimum Wages Board, Bangladesh Institute of Development Studies, Ministry of Industries, Ministry of Jute and Textiles, and a Chartered- Accountant) and a representative each of employers and workers.

7.5 The practice of social dialogue in Bangladesh

The main issues in the agenda of the social dialogue in Bangladesh include labour law reform, protecting workers' rights in EPZs, elimination of child labour, hours of work, payment for overtime, wages, occupational safety and health, leave, provision for transport, social security and special needs of women workers.

In Bangladesh, social dialogue establishing minimum wages in private sector especially in RMG sector, remains the most important agenda for social partners. Ensuring decent work, which implies productive work in which rights are protected and sufficient wage income, is generated with adequate social protection of the workers. One particular issue needs to be mentioned regarding policy on wages. While the workers are arguing for a basic needs approach to determining minimum wages and making general wage adjustments in accordance with skill and experience, employers insist on linking wages to productivity.

Privatization of SOEs in Bangladesh is also a burning issue negatively affecting well being and rights of the workers. So the role of social dialogue is explicitly recognized for protection of retrenched workers of SOEs.

A landmark effort on social dialogue initiated by stakeholders in recent years had resulted signing of Memorandum of Understanding (MoU) on June 2006 among the government, the BGMEA and the leaders of the workers at the Labour and Employment Ministry of Bangladesh. The 10-point tripartite MoU was aimed at putting an end to labour unrest in the RMG sector that erupted over long-suppressed grievances of the workers.¹²⁴ The main agendas of MoU are:

¹²³ Ibid.

¹²⁴ See for details, Social Compliance & Decent work, The Bangladesh Perspective, A collection of Papers and Proceedings of the National Tripartite Meeting on Social Compliance in the RMG Sector, Dhaka, 18 July, 2007, p. 69.

issuing appointment letters and identity cards to the workers, providing bargaining powers to the workers with owners, one-day weekly holiday for workers, fair trade unionism in RMG, overtime allowances, maternity leave with pay as per the labour law and formation a Wage Board to fix wages. The formulation of Labour Act, 2006 was greatly influenced by demands of stakeholders and many points of MoU had been incorporated in the Act.

In recent years, BGMEA, a leading employers' organization in Bangladesh has been engaged in social dialogue on impact and challenges of post MFA phase out that took place in January, 2005. During the year of 2005 and 2006, there were many discussions with the BGMEA and trade union leaders to discuss post MFA impacts and challenges.

Social dialogue can be channelled into both formal and informal process. The practice of informal talks among the workers and employers involving government agencies, civil society organizations etc. should be established. Some recent exemplary incidents may be mentioned here to substantiate the idea. On May 06, 2008 workers of some garments industries in Chittagong industrial belt became very violent in the city occasioning damages to public property in order to realize their demands for increased wages. Investigative reports revealed that workers of these garments factories have been very poorly paid, much below the minimum wages. This happened again in 2009. Their demands for payment of due wages met with physical and mental harassment by the industry management. The Department of Labour in Chittagong took the matter very seriously and intended to solve the problem on the spot.¹²⁵ Mr. Abdul Khaleque, Joint Director of Labour, Chittagong, opened a dialogue between the workers and representatives of employers outside the factory premises at the presence of BGMEA officials and high officials of law enforcing agencies. This was a successful mediation and employers agreed in writing to pay enhanced wages to the workers. On May 08, 2008 another successful dialogue took place in a different incident on the initiative of the same government officer. This informal type of tripartite talk can be effective tool to establish sound industrial relations system in Bangladesh bypassing the existing dysfunctional statutory dispute settlement mechanisms. So, it can be inferred very confidently that the prospect of introducing social dialogue is very bright in Bangladesh if it is effectively utilized.

7.6 Influence and outcome of tripartite bodies

According to available evidence, the tripartite institutions are not working effectively in improving industrial relations at the national, sectoral or plant levels. A variety of factors explain this: firstly, there is the multiplicity of tripartite institutions, which are assigned different functions, but few of which address the most fundamental issues of globalization, including the industrial relations. Moreover, the competence of many tripartite bodies is limited only to wage determination, which constitutes only one part of the entire gamut of labour process. Most importantly, all the tripartite bodies suffer from inadequate staff and other support facilities. Second, the predominant role of Government in all the tripartite bodies seriously limits closer labour-management co-operation.¹²⁶

The enabling conditions for successful social dialogue are (i) strong, independent workers' and employers' organizations which are broad-based and representative and have the technical capacity and access to the relevant information to participate in social dialogue, (ii) political will and commitment to engage in social dialogue on the part of all the parties, (iii) respect for the fundamental rights of freedom of association and collective bargaining and (iv) appropriate institutional support.¹²⁷ But these enabling conditions are largely absent in

¹²⁵ Personal interview with Mr. Abdul Khaleque, Joint Director of Labour, Chittagong, dated May 20, 2008.

¹²⁶ Abdul Hye Mondal, 'Globalisation, Industrial Relations and Labour Policies: The Need for a Renewed Agenda', in: Muhammed Muqtada, Andrea M. Singh and Mohammed Ali Rashid (ed.), *Bangladesh: Economic and Social Challenges of Globalisation*, UPL, Dhaka, 2002, p. 127.

¹²⁷ Supra note 5, pp. 2-3.

Bangladesh. Similarly, where the social partners are weak and fragmented, tripartite institutions play only a marginal role. In countries with a large unorganized/informal sector, tripartite discussions cannot reflect the wishes of the large majority of the working population.¹²⁸ These views equally hold true for Bangladesh.

Social dialogue to be successful, all the social partners to it- the government, the employers, the trade unions and above all, the general workers- must work together and be willing together to implement the negotiated agreements. For instance, it has been gleaned from various sources that implementation of the 2006 Memorandum of Understanding is still very low due to lack of monitoring mechanism and lack of willingness of owners to implement it. Thus, effective tripartism can take place only if the results of the negotiations are respected, that is, if all parties involved are both willing and able to implement the decision taken. But social dialogue could not bring desired outcome in Bangladesh as vast majority of labour force remain outside the scope of trade union and freedom of association and right to organize is curtailed in many instances.

7.7 Conclusion

Tripartism and social dialogue are integral components of decent work and essential channels for achieving it. Workers participation in social dialogue on equal footing enhances their sense of self-worth, gives them an opportunity to understand their problems and raise their voice for meeting their needs and gives them motivation to excel in job performance. Despite its proven worth, social dialogue is far from being fully utilized in Bangladesh. In Bangladesh, limited success of social dialogue can be found in the elimination of child labour, minimum wage determination, occupational safety, labour law reform and formulation of industrial policy. However, recent unrest in RMG sector indicates that minimum wage set by MoU is hardly complied by employers.

Export processing Zones (EPZs) have become one of the major features of labour markets in Bangladesh. But there is a lack of adequate industrial relations institutions and the use of social dialogue in resolving differences between management and labour in EPZs. In the absence of adequate mechanisms and processes for information-sharing, consultation, negotiation and dispute settlement, it is difficult for conflicts to be adequately addressed and channelled.

Similarly, absence of tripartite mechanism in RMG sector prevents social dialogue in this export-oriented sector. The garments factories have recently introduced bipartite mechanisms such as various committees in the workplace namely production committees, environmental committees, factory forum, quality committee with a view to discussing social protection and welfare issues. But these are hardly successful in terms of resolving the prevailing crisis in this sector.

For proper working of social dialogue, the following conditions should be fulfilled:

- a strong Government with sufficient popular support to be able to implement tripartite agreements through legislation and with sufficient economic leeway to enable it to induce the co-operation of the social partners;
- strong and united social partners possessing the means and membership backing to give them weight in deliberations with each other and with the Government, and to enable them to make compromise and reach agreements that will be supported by their members;
- appropriate and established institutional and legal frameworks to allow linkages, negotiations, and settlement among the three parties and;
- control of the government in the tripartite process should be reduced.¹²⁹

¹²⁸ Supra note 5, p.2.

¹²⁹ Supra note 9, p. 128.

Chapter Eight

Conclusion and Recommendations

The industrial relation system is pre-dominantly confrontational in nature rather than cooperative in Bangladesh. It is characterized by the pre-dominant position of informal economy, fragmented unions, weak labour institutions, lack of enforcement of labour laws and conflict-ridden employer-employee relations.

Although in recent times the rate of unionization has increased in the RMG sector, trade union affiliation is low in Bangladesh compared to many other developing countries. The main reasons for this are the fall in employment in previously highly organized sectors, rise of the service sector and increasing flexible types of employment relationships. Data available indicates fragmentation and contradiction in membership of employers and workers organizations. Moreover, data on membership does not reflect the role these organizations play in political and socio-economic processes and institutions.

The promotion of independent trade unions and collective bargaining can contribute to political and social stability and consequently create more favourable climate for foreign investment. Several studies of the World Bank and ILO support the view that freedom of association and collective bargaining contribute to improving economic and trade performance and have found no negative correlation. Rather, highly coordinated bargaining accompanied by higher rates of unionization can contribute to positive economic trends.

Trade unions have an important role to play in settling disputes between workers and management over wages by way of collective bargaining. However, empirical data show that the experience is far from satisfactory. In the case of public sector enterprises collective bargaining is very limited as the government often determines the wage levels for workers in a number of sectors, a practice that has been criticized by the ILO control organs on the grounds that it limits the capacity of the social partners to participate in the settlement of their working conditions. The fixation of wages for the workers in the RMG sector, as mentioned earlier, can be an ideal example of social dialogue in its most advanced expression, collective bargaining. Some NGOs are working to popularize the concept of social dialogue among the workers, civil society and the government. It is hoped that in the days to come trade union activism will be more active and frequent through collective bargaining and social dialogue.

The main aim of employers' organizations is to deliver members a variety of services, including in the human resources field, to address issues related to collective bargaining. But the employers' organizations are fragmented and lack understanding of labour laws and the enforcement mechanisms. Employers' organizations are facing many challenges posed by globalization. Increasing diversity of companies and the growing presence of multinational firms which are often outside of the membership are posing formidable challenges. Therefore, it is vital that capacity building of employers' organizations should be increased to face the challenges of globalization and deliver the various services.

The promotion of an atmosphere of trust between the social partners and the government is needed to encourage social dialogue. Promotion of social dialogue also requires improving negotiation techniques and knowledge base of trade union leaders and employers in Bangladesh. Therefore, it is particularly important that the necessary socio-economic information should be available and training programme should be imparted for analysing and using that information. Presence of effective and strong labour institutions e.g., trade unions and employers association is central to social dialogue by offering forums for consultations and negotiations. But

in Bangladesh, the ability of unions to represent and defend the interest of workers is constrained by many factors including restrictive regulations, and political division amongst them.

A number of policy initiatives could strengthen the industrial relations system, namely:

- The promotion of industrial federations and the provision of equal footing in the system; recent turmoil in the RMG sector indicates that the garment workers need to be organized for systematic collective bargaining. The deliberate discouragement by the government and owners to forms trade union and collective bargaining is responsible for present unrest in RMG sector.
- To strengthen the institutional capacity of basic unions and industrial federations to deliver effective membership services; more transparent and responsible action by the union leadership is also needed.
- Immediate gazette notification of the Rules for the Labour Act, 2006 is highly recommended.
- Government and all concerned entities should take strong initiative to popularize the concept and benefits of social dialogue among the workers and employers.
- Improve implementation of minimum wages fixed by the government in RMG.
- Formation of participation committees in all RMG factories should be ensured.
- The capacity of the labour institutions should be enhanced for the promotion of collective bargaining.
- Data base of existing government agencies on labour relations should be improved.
- Labour laws should be amended to bring it consistent with ILO ratified conventions regarding freedom of association and the right to collective bargaining.
- Procedures for the recruitment of the members of the labour courts should ensure appropriate qualifications and experience in the labour field; remunerations should match the requested qualifications and relevance of the assignments; the Labour Court should have adequate logistic support in order to strengthen its capacity to dispose of the case as early as possible. In order to ensure smooth functioning of the Labour Court the authority of the same is to be transferred from the Ministry of Labour & Employment to Ministry of Law, Justice & Parliamentary Affairs¹³⁰; there should be adequate members of the judiciary to avoid pending cases in courts.

¹³⁰ Personal interviews with *Mr. Kamal Hossain* (See list of interviewees, Annex-1)

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Annex- 1

List of Interviewers

1. **M. A. Khaleque**, Joint Director Labour, Department of Labour, Ministry of Labour and Employment, Divisional Labour Office, Jamburi Matt. Agrabad, Chittagong.
2. **Mr. Raunakul Islam**, Chairman, 1st Labour Court, Chittagong
3. **Mr. N. M. Huda**, General Manger, Pacific Jeans, Chittagong EPZ, South Haliashahar, Chittagong.
4. **Mohd. Abul Hasan (Shahabuddin)**, Conciliator, CEPZ, BEPZA, Zone Services Complex, Chittagong EPZ, South Haliashahar, Chittagong.
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6. **Mr. Kamal Hossain**, Regittrar, Labour Court, Khulna.
7. **Mr. Tapan Datta**, Vice President, Central Committee, Bangladesh Trade Union Centre (TUC) & Member, 1st Labour Court, Chittagong, 9. Darul Fazal Market (1st Floor), Jubilee Road, Chittagong.
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10. **Mr. Manzurul Haider**, Executive Assistant (President Office), Youngone Group, Plot # 7-20, Sector # 3, Chittagong Export Processing Zone, Chittagong, Bangladesh
11. **Mr. Atikul Alam**, Counselor, BEPZA, Zone Services Complex, Chittagong EPZ, South Haliashahar, Chittagong.
12. **Mr. Mohammad Alefuddin**, Operator, Shurma Garments Washing and Finishing Ltd & Convener, WRWC, Youngone Group, Plot # 7-20, Sector # 3, Chittagong Export Processing Zone, Chittagong, Bangladesh
13. **Mr. Foyez Ahmed**, Trade Union leader and Member, 1st labour Court Chittagong.
14. **A.Z.M. Tabaruk Ullah**, Industrial Relations Advisor, Bangladesh Garments Manufactueres and Exporters Association, Chittagong.
15. **Mr. Sufee Mizanur Rahman**, Chairman, PHP Group of Industries, Chittagong.

Annex II: List of ILO Conventions Ratified by Bangladesh¹³¹

Convention No.	Title of the Convention	Date of Ratification
01	Hours of Work (Industry) Convention, 1919	22.06.1972
04	Night Work (Women) Convention ,1919	22.06.1972
06	Night Work by Young Persons (Industry) Convention ,1919	22.06.1972
11	Right of Association (Agriculture) Convention ,1921	22.06.1972
14	Weekly Rest (Industry) Convention ,1921	22.06.1972
15	Minimum Age (Trimmer and Stokers) Convention , 1921	22.06.1972
16	Medical Examination of Young Persons (Sea) Convention , 1921	22.06.1972
18	Workmen's Compensation (Occupational Diseases) Convention , 1925	22.06.1972
19	Equality of Treatment(Accident Compensation) Convention, 1925	22.06.1972
21	Inspection of Emigrants Convention, 1926	22.06.1972
32	Protection Against Accidents(Dockers) Convention, 1932	22.06.1972
45	Underground Work(Women) Convention ,1935	22.06.1972
59	Minimum Age (Industry) Convention ,1937	22.06.1972
80	Final Articles Revision Convention, 1946	22.06.1972
81	Labour Inspection Convention ,1947	22.06.1972
87	Freedom of Association and Protection of the right to Organise Convention ,1948	22.06.1972
89	Night Work(Women) Convention(Revised) ,1948	22.06.1972
90	Night Work of Young Persons(Industry) Convention(Revised) ,1948	22.06.1972
96	Fee Charging Employment Agencies Convention(Revised) , 1949	22.06.1972
98	Right to Organise and Collective Bargaining Convention , 1949	22.06.1972
100	Equal Remuneration Convention , 1951	28.01.1998
105	Abolition of Forced Labour Convention, 1957	22.06.1972
106	Weekly Rest(Commerce & Offices) Convention, 1957	22.06.1972
107	Indigenous and Tribal Populations Convention, 1957	22.06.1972
111	Discrimination (Employment & occupation) Convention ,1958	22.06.1972
116	Final Articles Revision Convention, 1961	22.06.1972
118	Equality of Treatment (Social Security) Convention, 1962	22.06.1972
144	Tripartite Consultation (International Labour Standards) Convention ,1976	17.04.1979
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¹³¹ International Labour Office, "Lists of Ratifications by Convention and by Country", Geneva, 2002