

BANGLADESH LABOUR LAW: Reform DIRECTIONS [♦]

**Jakir Hossain
Mostafiz Ahmed
Afroza Akter**

in association with
BILS Research and Advisory Team

、
November 2010

***Summary of the team’s research report entitled “Decent Work and Bangladesh Labour Law: Provisions, Status, and Future Directions”, April 2010.**

Introduction

This study builds on the current campaign for labour law reform being waged by the trade unions in Bangladesh. In brief, the study seeks to flesh out the objective and substantive basis for the reform movement and the needed reform measures to build a just labour relations system in Bangladesh in the context of the ILO's Decent Work Agenda (DWA) and the country's commitments to the UN's Millennium Development Goals (MDGs). As defined by the ILO, decent work is work obtained in conditions of freedom, equality, security and dignity; on the other hand, the MDGs seek to reduce poverty by half by 2015.

The overall objective of this study then is to propose reform in the labour law for the promotion of decent work, reducing poverty and ensuring workers' protection.

Decent work and mass poverty

Bangladesh has integrated the promotion of decent work as part of the "strategic blocks" under its "Poverty Reduction Strategy Papers" (PRSP). Updated periodically, the PRSP outlines the broad socio-economic development programs being pursued by the country to meet its MDG commitments.

As it is, mass poverty has remained the single most critical development-retarding problem in Bangladesh. The country has reduced poverty by only one percentage point per year during the 1990s. This has allowed a vast and growing number of people to remain unemployed and underemployed. There are presently over 63 million people below the poverty line, one-third of whom are trapped in extreme poverty.

The slow pace of MDG fulfilment by Bangladesh is due partly to the pursuit of a narrow *growth only* economic strategy, which has, over the years, produced an unequal and even job-less growth pattern. It has also resulted in a mismatch between sectoral growth and overall labour absorption in the country (Titumir and Hossain 2005).

For instance, while the contribution of the industrial sector in the GDP has jumped from 29.73 per cent in 2008-09 to 17.31 per cent in 1980-81, nearly ***80 per cent of the country's employed are still in the huge informal economy*** where labour standards are hardly observed¹. Additionally, the situation in the formal manufacturing sector is far from sanguine. Reports of worker and human rights violations within and around the different factories are widespread. The repression of these rights has in fact led to numerous factory protests and blockades in recent years. Most of the workers in the private manufacturing sector also do not get the various non-

¹ However, there is an increasing participation of women in the labour market, growing at a rate of 5.45 per cent annually versus 1.23 per cent for men for the period 2003-06 (although the women workers account only for one-fourth [12.1 million] of the total labour force of 49.5 million).

wage benefits enjoyed by their counterparts in the public sector such as accommodation and transportation facilities, subsidized meals, maternity protection, medical allowances, bonuses, pension, provident fund and insurance benefit.

There are other decent work deficits. On wages, the average worker's compensation is not sufficient to maintain a minimum standard of living given the inflation rate in the country. There are also delayed wage payments, long working hour, work discrimination, unsafe working conditions and poor work environment. Workers are mostly unorganized and face many barriers in union formation. Consequently, the institution of collective bargaining has, by and large, not been effective in the country.

Clearly, so much has to be done –by way of economic and labour reforms -- to meet the DWA and MDG goals in Bangladesh.

In the area of labour reforms, the revised Bangladesh Labour Law of 2006 (BLL), an amalgamation of the previous 25 labour laws, has weaknesses. Not all workers enjoy the basic rights spelled out in the law. There are also rampant violations and non-implementation or non-enforcement of the BLL. Trade unions have long been vocal about the legal shortcomings and the weak implementation of the laws guaranteeing workers' rights.

Thus, a critical review of the BLL's implementation and its shortcomings in terms of coverage and enforcement is long overdue.

Decent work indicators

This study has adopted the decent work framework in the review of the labour law system of Bangladesh. As a background, decent work has four constituent pillars: access to productive employment and income opportunities; rights at work, particularly with respect to the core labour standards; systems of social protection; and a voice at work through social dialogue. These are interdependent and mutually reinforcing (Bell and Kristen 2010).

In this context, the observance of labour rights can be measured in terms of broad and specific legal provisions or indicators supportive of the key or core areas of labour laws (see Table 1). The core areas are – (1) employment standards, (2) occupational safety and health, (3) welfare and social protection, (4) labour relations and social dialogue, and (5) enforcement.

Conduct of the study

This study was undertaken in close consultation and cooperation with the Research and Advisory Team of the Bangladesh Institute of Labour Studies (BILS). Established in 1995, BILS has been supporting the work of the 13 cooperating National Trade Union Federations in the areas of training, research and information sharing. BILS espouses just and worker-friendly policies in Bangladesh.

The study adopted a composite of research methods, which include case studies, interviews with key informants, focused group discussions (FGDs), brainstorming sessions with the BILS' advisory team and in-depth reading of the labour laws. A baseline survey of the workers' appreciation of their rights under the Bangladesh labour system was also conducted among a sample of workers in the ready-made garments industry (for the formal sector) and construction industry (for the informal sector). Garments employs 2.4 million workers, 85 per cent of whom are women; construction has 1.53 million workers, 93 per cent of whom are men. Respondents for the two industries were selected from the industrial areas of Dhaka and Chittagong.

Table 1. Workers' Rights Indicators

<i>Key Areas</i>	<i>Broad Indicators</i>	<i>Specific Legal Provisions (select indicators)</i>
Employment Standards	Employment and Contract	Appointment letter, employment status, retrenchment, dismissal, retirement
	Working Hour and Work Time	Working hours, overtime (OT), night work
	Wage and Benefits	Procedures of wage fixing, regularity and timeliness of wage and benefit payments, deduction, OT rate, bonuses
	Leave and Rest	Weekly rest day, casual leave, festival leave, sick leave, vacation leave, maternity leave
	Elimination of Child Labour	Minimum age
	Protection against Forced Labour	
	Protection against Discrimination	
Occupational Safety and Health	Occupational Accidents, Hazards & Diseases	Accident prevention regulations, prevention from workplace hazards, safeguards against work-related diseases
	Safety Equipments/ Tools and Facilities	Fire extinguisher & emergency fire exit, protective kits, helmets, shoes etc.), safety measures
	Workplace Environment	Cleanliness, noise, temperature, ventilation, lighting, fumes, working space, drinking water, segregated toilet/washroom
Welfare and Social Protection	General Welfare Provisions	First-aid appliances, health care & information, canteen, restrooms, accommodation, maternity benefits, etc.
	Social Security Provisions	Pension, provident fund, gratuity, welfare fund, insurance (accident, life, etc.), compensation (injuries, disabilities), etc.
Labour Relations and Social Dialogue	Freedom of Association	Right to form & join unions, union formation rules, freedom to elect union representatives, protection vs. anti-union acts
	Collective Bargaining and Industrial Relations	Rights & scope of bargaining, procedures in bargaining, rights to strike, conciliation, arbitration, protection vs. interference, grievance procedures, protection vs. lock-outs & lay-offs during strikes, etc.
	Tripartite Consultation	Tripartite process (formation, composition and scope), participation in dialogue & consultation in policy formulation
Enforcement	Administrative Capacity	Personnel and budget for inspection, inspection process
	Inspection and Punishment	Scope of inspections, penalties for violations of laws (payment of wage, failure to give notice of the accidents, unfair labour practice, illegal strike or lock-out)
	Access to Judiciary	

Overview of Bangladesh labour laws

The labour law system is more than a century old in Bangladesh. The first labour law was enacted in the Indian sub-continent during the British period, in 1881. Subsequently, the British Government introduced several laws concerning different labour issues, e.g., working hour, employment of children, maternity benefit, trade union activities, wage, etc. The Factories Act (1881), Workmen's Compensation Act (1923), Trade Unions Act (1926), Trade Disputes Act (1929), Payment of Wages Act (1936), Maternity Benefit Act (1939), and the Employment of Children Act (1938) were remarkable labour laws enacted during the British period.

After the separation of the Indian sub-continent in 1947, almost all the laws during the pre-partition period were kept in force with some modifications and amendments, in the form of administrative rules, by the Pakistan Government. After the independence in 1971, the Bangladesh government retained the previous laws through the Bangladesh Laws Order (President's Order No. 48). It also enacted additional laws in response to the changing circumstances and needs of the working class and the country. In 2006, the country adopted the revised Bangladesh Labour Law of 2006 or BLL.

The BLL is fairly comprehensive and progressive. The law is a consolidation and updating of the 25 separate acts. The comprehensive nature of the law can immediately be gleaned from its coverage -- conditions of service and employment, youth employment, maternity benefit, health and hygiene, safety, welfare, working hours and leave, wages and payment, workers' compensation for injury, trade unions and industrial relations, disputes, labour court, workers' participation in companies profits, regulation of employment and safety of dock workers, provident funds, apprenticeship, penalty and procedure, administration, inspection, etc.

The BLL is also considered an advance because it removes certain ambiguities in the old and diverse labour acts and aligns the labour law system with the ILO core conventions. On the removal of ambiguities, the definition of a "worker" is now very specific. Another example: the exclusion under the term "wages" of the following items -- expense for housing facilities like lighting and water supply, employers' contribution to the provident fund, traveling allowances and other sums paid to worker that are needed to cover work-related expenses.

The BLL is also an advance because of its wider coverage, for example, workers and staff of hospitals, nursing homes and even non-governmental organizations are now covered by the law. Also, certain welfare and social benefits have been improved or instituted, e.g., death benefit (financial support to family of deceased worker), application of provident fund benefit to all workers in the private sector, expansion of maternity benefit from 12 to 16 weeks, adoption of group insurance for establishments with 200 or more workers, and increased employee compensation for work-related injury, disability and death.

On the ILO core conventions, Bangladesh has ratified the following International Labour Conventions (ILCs):

- ✓ ILC 29 (Forced Labour),
- ✓ ILC 87 (Freedom of Association and Protection of the Right to Organize),
- ✓ ILC 98 (Right to Organize and Collective Bargaining),
- ✓ ILC 100 (Equal Remuneration),
- ✓ ILC 105 (Abolition of Forced Labour),
- ✓ ILC 111 (Discrimination in Employment and Occupation), and
- ✓ ILC 182 (Elimination of the Worst Forms of Child Labour).

The only core convention not ratified by Bangladesh is ILC 138 (Minimum Age Convention). However, the BLA provides that the minimum age to work is 14 (although a special clause states that children between the ages of 12 and 14 may be employed to do “light work” that does not endanger their health, development and education).

Salient features of the BLL

The BLL features the following key provisions:

Employment standards

- An employee or “labour” is defined as any person, including a trainee/probationer, whether the terms and conditions of his/her employment are expressly written or not, who is employed directly or through a contractor/agency, for any skilled, unskilled, physical, technical, business development or clerical job in any establishment or industry.
- Workers are classified into six categories:
 - Apprentice: A worker who is employed in an establishment as a trainee and during the period of training he is paid an allowance is called an apprentice.
 - *Badli*: A worker who is employed in an establishment for the period of temporary absence of a permanent or probationer worker.
 - Casual: A worker employed on a casual basis.
 - Temporary: A temporary worker in an establishment for work that is basically temporary in nature and is likely to be finished within a limited period.
 - Probationer: A worker provisionally employed in any establishment to fill up a post of permanent vacancy and his probationer period has not to be completed.
 - Permanent: A worker employed with a view to fill up a permanent post or if he completes satisfactorily his probation period in the establishment.
- Appointment letters, ID cards and service books are made mandatory. The law specifies what information should be included in the appointment letter and in the service book, and requires the latter to be signed by both the employer and the worker.

- The law defines who is responsible for payment of wages: employer/owner; chief executive officer (CEO); manager/person assigned responsible by the company; and the contractor, in case of worker appointed by the contractor. In case of the failure of the contractor to pay the wages to the worker, the principal owner shall pay the same and subsequently it can be adjusted with the accounts of the contractor.
- On job terminations, the employer is required in the case of
 - Retrenchment: to give one month's notice and the equivalent 30-day wages or gratuity for every year of service if the worker is employed on continuous service for not less than one year; and
 - Discharge: to give financial benefit equivalent to 30-day wages for every completed year of service by an employee found to have physical or mental incapacity.

However, the employer is allowed

- Termination simplicitor: to terminate services of worker without explaining any reason by giving a written notice of 120 days for permanent workers employed in a monthly basis and 60 days to other workers.
 - Misconduct: to dismiss workers without serving prior notice due to worker's conviction for any criminal offence, or if the worker is proved guilty of misconduct, which may be any of the following: willful insubordination (alone or in combination with others) to any lawful or reasonable order, theft or fraud or dishonesty, taking or giving bribes, habitual absence without leave for more than 10 days, habitual late attendance, habitual breach of any rule or law applicable to the establishment, riotous or disorderly behavior, habitual negligence or neglect of work, frequent repetition of work on which fine can be imposed, resorting to illegal strike or to go slow or instigating others to do so, and falsifying, tampering the official document of the employer.
- Retirement age for workers employed in any establishment is 57 .
 - Work hours are set at eight hours a day, 48 hours a week, with a weekly rest day.
 - Overtime (OT) work is maximum of two hours a day. OT pay is twice the hourly remuneration.
 - Workers are entitled to rest and meal in a day as follows: (i) one hour interval for over six hours work a day; (ii) half an hour interval for more than five hour work; and (iii) one hour interval once or half an hour interval twice for more than eight hours work a day.
 - Workers are entitled to holidays, casual leave, festival leave, annual leave and sick leave.
 - Every worker has the right to participate in company's profits/benefits.

- No young worker is permitted to work in any establishment between the hours of 7 p.m. and 7 am.
- No children (under 14 years of age) are allowed to work in any occupation or establishment. However, a child who has completed 12 years of age is permitted to do light work not harmful to his health, development and education.
- A 'Minimum Wage Board' is established to determine the minimum rates of wages in different private sectors, taking into consideration varied criteria: cost of living, standard of living, cost of production, productivity, price of products, business capability, and economic and social conditions of the country.
- Employers are mandated to observe equal wages for male and female workers for work of equal nature or value.
- Forced labour is prohibited.

Occupational safety and health

- Establishments are required to put up for every 150 workers one first aid box and one trained person per first aid box, and an equipped dispensary with a patient-room, doctor and nursing staff.
- Employers are required to take appropriate measures to protect workers from danger and damage due to fire.
- Every establishment is required to be kept clean and free from effluvia arising out of any drain, privy or other nuisance.
- The work room should not be overcrowded and injurious to the health of the workers.
- Every establishment should provide pure drinking water, sufficient light and air, and separate toilets for its male and female workers.

Welfare and social protection

- Gratuity is defined under the law as separation payment, at least 30 days, for workers discharged from work and yet have worked not less than 6 months.
- Factories are required to have an in-house canteen for every 100 workers.

- Every establishment/employer is required to form a Provident Fund if three-fourths of its workers demand it by written application, and a Workers' Participation Fund and a Workers' Welfare Fund for its workers.
- Establishments with 200 or more workers should institute a group insurance.
- Every employer should provide compensation to its workers for work-related injury, disability and death.
- Various women's issues are also covered: maternity leave of 16 weeks (8 weeks before and 8 weeks after child birth), no gender-segregated wage structure, prohibition of any form of discrimination against women, prohibition of women working between 10:00 p.m. and 6:00 a.m. without consent, prohibition for women handling running or dangerous machines (unless they are sufficiently trained to operate such machinery), prohibition for women working under water or underground

Labour relations and social dialogue

- Every worker employed in any establishment has the right to form and join a trade union of their own choice. Trade unions have the right to draw up their own constitution and rules and to elect their representatives. Also, trade unions have the right to form and join in a federation and such unions and federations have the right to affiliate with any international organization and confederation of trade unions.
- The trade union is allowed to serve as a collective bargaining agent in any establishment.
- In case of industrial disputes, the two sides can seek resolution through negotiation, followed by conciliation and eventually arbitration if negotiation fails.
- The collective bargaining agent is entitled to file a notice of strike (or lockout in the case of the employer) with a 15-day cooling-off period.
- Employers can not recruit new workers during the period of a strike.
- Employers are also prohibited in terminating workers in the course of trade union organizing in the work place.

Enforcement

- Government shall appoint the Director of Labour and "such number" of Additional Director of Labour, Joint Directors of Labour, Deputy Directors of Labour and Assistant Directors of Labour as necessary for monitoring workplace activities.

- The Government shall appoint a Chief Inspectors and requisite number of Deputy Chief Inspectors, Assistant Chief Inspectors or Inspectors. These officers have the power to enter, inspect and examine any workplace premises and ascertain the observance of labour laws.
- The Government has the power to establish as many Labour Courts as it considers necessary. A Labour Court shall consist of a chairman and two members (one representing employers and the other, the workers).

Findings from the Field

As mentioned, this study sought to examine the weaknesses of the labour law system. To find out what is obtaining on the ground, the research team administered a baseline survey² in the urbanized and industrialized districts of Dhaka, Chittagong, Narayanganj and Gzipur. The sample survey targeted worker-respondents in the ready-made garments industry (for the formal sector) and construction industry (for the informal sector). The survey results were supplemented by 11 worker FGDs in the different districts, case studies and interviews with key informants in order to come up with a rounded and objective picture of the state of labour law compliance from the perspective of the ordinary workers.

From the baseline survey, it appears that more than half of the workers have been working for not more than three years, with over 40 per cent of the workers in the garments industry registering a work experience of less than a year. This shows the preference of employers for the short-term hiring of young workers, particularly in the garments industry. In the construction industry, most of the workers have longer work years of 3-10 years. However, the prevalence of three types of employment status -- day labourer, contractual labourer and monthly-based labourer – indicates a high level of employment informality or flexibility in this industry. In fact, the overwhelming majority of the construction workers are hired through contractors or sub-contractors without the benefit of any employment contracts. Thus, both the garments and the construction industries employ flexible (meaning easily replaceable) workers.

In general, the research findings show that workers in both the garment and construction industries are deprived of many of their rights such as the non-issuance of appointment letters and identity cards, the non-observance of OSH standards and social security provisions, the limited space for unionism and collective bargaining, and the weak protection provided by the labour law enforcement and judicial system. Below is a summary of key research findings:

² A baseline survey questionnaire developed by LO/FTF and ITUC/AP for its affiliates in the Asia-Pacific region was adopted by the research team, translated into Bangla language and modified to suit Bangladesh situation after some pre-testing runs.

- ***Appointment letter: A dream to most workers.*** Though the law has made it mandatory for employers to provide appointment letter to the workers, a large number of garments workers are still deprived of appointment letter (45.3%). Although garments employers often prepare appointment letters (usually two copies: one for employer and another for global garments buyers), they do not give copies to the workers. In the construction industry, none of the workers reported receiving any appointment letter.
- ***Oral contract: pervasive Practice.*** In the absence of written contracts, what prevails in general is oral contract. Also, a good number (30.2%) of workers do not get identity cards from their employers.
- ***Dismissal of workers without notice.*** Over one-fourth (26.4%) of the respondents in the garments industry affirmed that employers always dismiss workers without any prior notice. The situation is more or less the same in the construction industry.
- ***8-hour work, OT rules hardly followed.*** All the garments workers said that they work more than eight hours daily. Sometimes they work 13-14 hours a day. There are workers who even work extra five hours of daily OT. About one-third (33.5%) of the garments workers do not know the OT rate, with 13 per cent of the respondent garments workers getting less than Tk.10 for every hour of OT work against the minimum Tk.10.80 per hour OT work. For the construction workers, work hours range at 8-12 hours.
- ***Low wage awareness.*** More than half (52.4%) of the respondents do not know whether they are receiving wages according to their grades. A large number (about 40 %) of respondents in the garments industry also do not know whether the minimum wage is implemented at their workplaces. More than half (54.7%) of the garments workers and almost all (98.1%) of the construction workers do not receive pay slip or any other document concerning the payment of wages and benefits.
- ***Missing workers' participation in company's benefit.*** Garments workers are not aware about any provision regarding workers' participation in company's benefit.
- ***Weekly rest day and leaves not observed.*** Many garments workers do not have the chance to enjoy weekly rest day. Most workers get festival leave but employers often impose conditions to enjoy the leave. Legal provisions on casual leave, sick leave and annual leave are widely violated. Sometimes some employers make wage/salary deductions for the workers to enjoy weekly rest day, casual leave, sick leave and festival leave. In the construction industry, most workers do not have the chance to enjoy these leaves as the compensation policy is simply 'no work, no pay'.
- ***Rest periods: irregular.*** Only 13.2 per cent of the garments workers have admitted that they enjoy regular rest periods, meaning the majority enjoy this right in a highly irregular manner. In the construction sector, 49.5 per cent respondents reported that this right is limited in practice.

- ***Child labour: still a reality.*** Both the garments and construction industries still employ child workers (below 14 years of age), per observation by 9.9 per cent of worker respondents in the garments industry and 13.1 per cent in construction. Three respondents happen to be below 14. The employment of child workers in both the garments and construction industries is governed by oral contract. The nature of work given to these child workers are the same as those given to adult workers.
- ***Women discriminated in job placement, increment and promotion.*** Female garments workers are not discriminated with regard to wages. But they face discrimination in job placement, increment and promotion. In the construction industry, females are discriminated in wages, benefits and other areas.
- ***High occupational risks, low risk information, limited risk prevention.*** Workers in both industries face numerous occupational risks and accidents. The most common risks in garments are the “pricking of finger by needle” followed by “cuts” in hand. In construction, the most common risk is “falling down from high place.” And yet, employers usually do not provide information on these occupational risks, as explained by 43 per cent of worker respondents in the garments industry and 65 per cent in construction. Majority (61.8 % in garments and 72.1 % in construction) of respondents said that authorities have not taken any measure to prevent further accidents at their workplaces. In garments, while some measures are taken, these are not sufficient and often done before the global buyers’ presence.
- ***Safety facilities: inadequate in garments and absent in construction.*** In garments factories, fire extinguishers and emergency stairs are present but are generally inadequate compared to the number of workers. Some factories do not even have these facilities, with emergency stairs even kept under lock and key by some employers. Safety equipments and tools are also not always provided to the workers. A large number (46%) of respondent do not know whether they are provided safety tools. Many workers also do not get any risk reduction training. Only 2.8 per cent of the construction workers get safety tools from the employer.
- ***Unfriendly work place environment.*** While majority of the respondents said that the conditions of ventilation, lighting, temperature and humidity are good in their work place, about one-fourth said that this is not so. In the construction sector, most of the respondents claimed that the facilities to contain dirt, heat, ventilation, dust, noise, smoke, humidity and so on are bad or non-existent. Further, in most cases, there is no safe drinking water.
- ***Occupational illness,*** The proportions of workers who said that they have suffered occupational illness are 18.4 per cent in garments and 29 per cent in construction.
- ***Harassments at the workplace.*** About 40 per cent of the garments workers and 30 per cent of the construction workers said that they endure mental harassment (due to verbal abuse and the likes). More worrisome, more than one-fifth (21.7 %) in the garments

industry and a few (8.4 percent) in the construction mentioned that they have experienced or faced physical harassment and torture. A few respondents (1.9 % in garments and 0.9 % in construction sectors) also admitted that they were harassed sexually at their workplaces. All these answers were affirmed by the FDG participants.

- ***Welfare facilities: available in law only.*** The BLL enumerates various welfare facilities like first aid kit, canteen, restroom, day care/children's room, medical care, separate place/room for lunch at the workplaces of the workers. However, a large number of the respondents said that they are not provided with many of these facilities. In the construction sector, very few (9 %) said that they have first-aid kits; most said that the other facilities are generally absent.
- ***Violations of maternity and social welfare programs.*** No factory provides maternity leave for four months and most factories give maternity leave only without pay. Participants also report that female workers many times do not want to bear child because of fear of losing the job. Very few garments factories have introduced provident fund and gratuity for the workers. Group insurance is also not effective in most of the garments factories. In construction sector, workers are completely deprived of all these programs.
- ***Garment and construction: generally unorganized.*** Most of the workers in the garments and construction industries are not organized. Almost all of the respondents mentioned that there is no workers' association in their factory or at the workplace. A few reported on the existence of workers' association that are not trade union in nature.
- ***Barriers to TU formation: fear of losing Job, long hours of work.*** Garments and construction workers do not join trade unions, as they do not want to lose their jobs. Workers in both sectors disclosed that their employers would dismiss them from job if they are found engaged in any sort of activities related to workers' association. There are cases where employers send workers suspected of union organizing to police custody. Also, since workers of these two industries log long hours of work every day, they hardly have time for trade union activities.
- ***Collective bargaining: limited and informal in nature.*** Predictably, only 2.8 per cent of worker respondents in the garments industry and 0.9 per cent in the construction admitted that they have knowledge or been involved in collective bargaining with their employers. Moreover, bargaining is of the limited informal type, with garments workers bargaining with the employers through informal mediators and construction workers with individual contractors.
- ***Right to strike: widely unrecognized.*** Only 7.5 per cent of the garments workers and 4.7 per cent workers in the construction said that strikes were conducted at their workplaces. Workers in both industries perceive that the right to strike is never recognized at their workplaces, with some employers even punishing workers who go on or participate in strikes. A significant number of workers even do not know whether they have this right.

- **Limited freedom to express grievances, limited role of TUs and tripartite process.** The opportunity for the workers to express their grievances at the workplace is severely limited. Disputes raised at the shop floor are solved mainly through informal discussion in both industries, presumably with the HR departments of the factories. The role of workers associations and tripartite body were mentioned by only a few garments workers.
- **Inspection: “fire brigade” approach.** Most workers said that they never met any government officials coming and inspecting their workplaces. Those who have visited their work places talked only to the employers. Also, inspections take place only after some accidents have occurred, like the fire brigade taking action after the fire.
- **Access to judiciary: low awareness.** Very few workers get the opportunity to take legal measures concerning conflicts with employers. They usually inform the police about such issue and a few take action through the workers association. A large numbers of workers (68.4 % in garments and 64.5 % in construction) do not know whether they can take legal measures against their employers.

GAPS and WEAKNESSES in the BLL

From the foregoing research findings, it is clear that there are widespread violations of labour rights and labour laws in Bangladesh. Can these violations be cured by stricter enforcement? The answer is yes. But this is not enough because the BLL itself has some weaknesses. Below is a discussion of major gaps and weaknesses in the BLL identified by research team.

Employment standards

The BLL fails to include a large number of workers -- domestic workers, agriculture workers, and workers working at schools.

The law has classified workers into several categories. This has given some employers flexibility to resort to the hiring of non-regular workers (i.e., apprentice, casual, *badli*, probationer, temporary) to escape payment of various workers benefits and avoid unionism.

Worker dismissal is terribly easy under the provision on termination *simplicitor*, where the employer is not required to give any reason to terminate a worker and the worker is not given any chance for self-defense. Also, the notice period for the temporary workers in this regard is quite short.

Getting financial benefit due to termination are quite lengthy too. For retrenchment and discharge, a worker must show proof of a minimum one-year service.

Workers who resign from their jobs are entitled to certain separation benefits. However, getting these benefits is bureaucratic. The concerned worker is also asked to give the employer advance

notice 60 days, 30 days and 14 days (corresponding to employment status of permanent, temporary [monthly]).

In cases of serious misconduct, the law allows summary termination without prior notice. This deprives the worker not only compensation but also and more importantly, the right to due process or the right to be heard.

The BLL prohibits employers to employ women workers for the period between 10 p.m. to 6 a.m., and yet, relaxes this rule by allowing the same women workers to work if the latter give their consent.

In the determination of minimum wage, the family size criterion has not been considered. Nor is the need to balance efficiency and equity. Further, the mandatory wage review of every five years is too long given the rapid changes in the economy and rising workers' needs.

The law still lacks clarity as to what items can be deducted from the basic wage, what can not be deducted and what are the sources (and basis) of any wage deductions.

The calculation of OT pay is not spelled out for piece-rated workers. In the first place, the law does not provide specific guidelines on the fixing of basic wages for the piece-rated workers.

The BLL recognizes various types of leaves, e.g. weekly holiday, casual leave, festival leave, medical leave, annual leave, and maternity leave. However, the law is discriminatory in the sense that the level of leave entitlement is not same for all categories of workers, for example, some workers like tea-state workers do not enjoy casual leave.

Although the current law extended the maternity leave, this is not enjoyed by the many who are under short-term hiring arrangements, especially since the law states that a six-month employment is needed to get maternity leave.

Forced labour is prohibited and yet there are no penal sanctions against this.

On child labour, the prohibition is contradicted by the provision which allows the employment of children who are 12 years old in works that are supposedly not detrimental to their health and education.

The law lacks specific provisions on discrimination related to work place facilities, treatment of non-wage issues (e.g., promotion and placement), and other grounds of discrimination such as race, religion, ethnic group, etc..

Occupational Safety and Health

The law has no clear provisions on the following:

- (i) specific weight limit (for load carried by workers in any factory) according to age, condition and sex;
- (ii) ratio of alternative stair as precaution in case of fire and other apparatus against the number of workers; and
- (iii) workers-toilet ratio.

Welfare and Social Protection

The establishment of provident fund is not mandatory. It is dependent on the demand of a pre-requisite number of workers. Group insurance is also dependent on the number of the workers and the prerequisite number is quite high.

The amount of compensation given to workers due to work-related injury, disability and death is not adequate for the worker and his/her family. The provision of compensation is also discriminatory in terms of age of the workers, with an adult worker getting Tk. 1,25,000 for complete permanent impairment whereas a child/adolescent/young worker gets Tk.10,000 only.

Other aspects of social protection have remained untouched in the labour law of Bangladesh such as provisions on pension and medical and life insurance for the workers.

Labour Relations and Social Dialogue

A new provision in the law has banned TU offices within the 200 yards of an industry. This limits, physically, the scope for trade union activities.

The law allows the functioning of three registered trade unions in an establishment or a group of establishments, and yet an amendment states that workers of Chittagong and Mongla Sea Port are allowed to form only one trade union at their respective workplaces. Thus, the law is discriminatory as well as self-contradictory.

The law sets a very stiff requirement in trade union formation -- support of 30 per cent of the workers in an establishment. For new unions, this is virtually a trade union ban.

The law has also imposed a ban on strikes in some industries, in particular a 3-year ban on strikes in newly-established industries and industries established for or supported by foreigners. This collides head-on with ILCs 78 and 98 and Freedom of Association and Collective Bargaining.

The requirements for a lawful strike are stiff, particularly the requirement of proof of support of at least 3/4 members of the CBA unit. In situations where the life of the union is at stake (e.g., leaders being dismissed from work), such a requirement is a virtual subversion of unionism.

On the other hand, there is no specific provision with respect to protection of workers in lockout situations, especially if the intention of the employer is to temporarily close down the factory to destroy the union.

There is a 30-day limitation to file appeal before the Labour Court when the Director of Labour rejects any application to register a trade union. This is relatively short for unions with limited resources and whose members work long hours daily. There is also time limit in appealing before the Labour Appellate Tribunal. According to the law, an aggrieved person can appeal the verdict of the labour court on lay-off, retrenchment, discharge and dismissal within 30 days

The law is not clear on the right of labour leaders and the workers themselves to represent union members and themselves in the labour courts. The rules of the court are also technical and tend to favour the financially capable employers.

There are no clear rules on how grievances can be raised at the plant level.

As to disputes elevated outside the plant, the process of dispute settlement is complex, time-consuming and expensive for the workers and the unions. There are many stages in the process and each takes a long time.

The BLL has no express provisions on the principle of “due process”, which should be observed by employers in disciplinary, suspension and termination cases. Due process means workers should be given ample opportunity to be informed or notified about the basis of the specific cases against them, and to defend themselves through a procedure that is fair and objective.

The system of tripartism, tripartite consultations and formation of tripartite bodies requires clearer rules. For example, the BLL is silent on the tenure of the tripartite members of the Wage Board and the manner and criteria guiding the selection of the worker’ and employers’ representatives in the Wage Board.

Enforcement

Punishment for labour law violations is not spelled out under the BLL. In some cases, the law is simply silent like in the case of forced labour prohibition. In other cases, the penalty is insufficient or meager, for example Tk. 5000 as fine for violation of provisions on maternity leave, employment of child and adolescent workers, and minimum wage. Still in other cases, the application of penalty defies logic, for example, imprisonment up to one year for the violation of minimum wage provision but not in the violation of the laws on maternity and employment of child and adolescent workers.

In addition, there is a recent amendment weakening the penalties for erring employers – payment of only Tk. 5000 as fine for the previous punishment of ‘imprisonment up to three months, or fine up to Tk. 1000, or both’.

As discussed in the research findings, there are also numerous problems related to the system of labour inspection.

As to access to the judiciary, the labour law has a general provision guaranteeing workers' access to the judiciary for redress of grievances but is not clear on how such access can be realized, step by step, at minimum or affordable cost to the workers and their unions.

LABOUR REFORMS for DECENT WORK and INDUSTRIAL DEMOCRACY

The Constitution of Bangladesh, in Article 14, states:

“It should be a fundamental responsibility of the State to emancipate the toiling masses – the peasants and workers - and backward section of the people from all forms of exploitation”.

The reality is that so much have to be done to make the above constitutional vision of worker emancipation from all forms of exploitation a reality. Economic reforms are obviously needed to put Bangladesh on the path of balanced, job-full and inclusive growth process. Political reforms are also needed to insure that growth is sustained in the framework of a stable democracy.

However, in the area of labour laws and labour relations, the foregoing research findings and analysis of the Bangladesh labour law system show that urgent labour law reforms are needed. These reforms should be pursued in the context of the DWA, MDG and the Constitutional mandate for workers protection against all forms of exploitation. In this connection, the research team is proposing the

- ✓ updating of legal provisions in employment standards, health and safety and social welfare and social protection,
- ✓ strengthening of legal provisions on trade unionism and collective bargaining, and enforcement of labour rights.

In particular, the following key reforms are needed:

- ✓ ***Align the BLL with international norms, particularly ILC 87 and ILC 98.*** As a signatory to many of international conventions and covenants related to worker rights, Bangladesh should align the BLL with internationally recognized workers' rights, particularly those relating to the core ILO conventions. More specifically,
 - The BLL should cover all workers without exception. These include the domestic workers, agricultural workers, school workers and informal workers.
 - The right to form unions, especially in the garments industry, should be given widest space in terms of legal provisions. Some doables:
 - Removal of the 30 per cent requirement for trade union registration
 - Amendment of the ¾ requirement for a strike to be declared to a simply majority
 - Removal of any strike ban in any industry

- Removal of any rules on where to locate trade union offices and all artificial barriers to union formation.
 - Workers should be given the full freedom to choose their representatives and form unions without fear of dismissal or harassment.
 - Enactment of laws against unfair labour practices committed by employers, e.g., dismissal of trade union officers and members, intervention in internal trade union affairs and so on.
 - The right to negotiate and conclude collective bargaining should be expressly recognized in the law. Some doables:
 - Mandatory provision on good-faith bargaining by both sides once a union is duly registered and recognized as the most representative
 - Provisions on how both sides can bargain in the spirit of mutual respect within certain time lines
- ✓ ***Promote coherence in the BLL in the context of DWA, MDG and Constitutional mandate on protection for all workers against all forms of exploitation.*** Among others, this entails –
- Strict regulations on the use of short-term workers, e.g., apprentices (should be for real learning purposes and not for employment at below minimum wages), casuals, *badly*, temporary, probationers and so on.
 - Purging the BLL of contradictory provisions, e.g., on enjoyment by workers of weekly rest day, employment of child labour, and the number of trade unions to be recognized at the workplace as discussed earlier.
 - Elimination of discrimination at the work place by covering non-wage and other issues such as race, religion, ethnic group, age group etc.
 - Removal of obstacles to workers' entitlements to certain benefits, e.g., in filing claims for separation benefits on resignation, compensation for work-related injury or accidents, etc.
 - Timelines for the processing of workers' claims should be subject to the test of fairness and equity.
 - Application of the principle of universality in the development and application of various social welfare and social protection schemes such as provident fund, group insurance and so on.
- ✓ ***Strengthen enforcement and administration of labour justice.*** There are major concerns that should be addressed under this theme such as --
- Removal of termination *simpliciter* and its replacement with the proviso that serious misconduct can be a ground for worker dismissal only after the worker is given due process or the right to be informed, the right to be heard and the right to sort out the truth through an objective and fair process.
 - The due process principle should be enshrined and should apply to all cases of suspension and termination.

- A schedule of progressive (from light to heavy) penalties for erring employers for various labour standard or labour right violations should be enacted and enforced strictly.
- The system of labour inspection should be upgraded and should involve the unions in the development of inspection standards and norms.
- The BLL should be purged of provisions weakening workers' exercise of their rights such as work during festivals or doing excessive overtime if they have the so-called "workers' consent", or allowing 12-year olds to work if they have consent and so on.
- Unclear provisions such as estimation of OT rate for piece-rated workers should be spelled out under the law.
- The maternity law should be reviewed and should not be used as an excuse for hiring only single or unmarried women on short-term basis.
- The Wage Board and other tripartite bodies should be reconstituted on the basis of clear criteria in the selection of tripartite representatives, clear mandate on their powers and functions and their tenure.
- Workers and union representatives should be recognized in the labour courts, which should conduct their proceedings or hearings in a non-technical manner.
- The Ministry of Labour should spell out how organized and unorganized workers can seek redress for various grievances in various forums – in the workplace, at the labour ministry or at the labour court.

REFERENCES

- Absar, Syeda Sharmin. (2001). "Problems Surrounding Wages: The Ready Made Garments Sector in Bangladesh, Labour and Management in Development Journal, Vol.2, No.7.
- BBS (2009), *Gender Statistics of Bangladesh 2008*, Bangladesh Bureau of Statistics, Planning Division.
- BBS (2009), *Gender Statistics of Bangladesh 2008*, Government of Bangladesh.
- BBS, Labour Force Survey 2005-06, Government of Bangladesh.
- Begum, Nazma. (2002). Women Workers' Status in Bangladesh: A Case of Garment Workers, in Salauddin, Khaleda; Raushan Jahan and Latifa Akanda (eds) *State of Human Rights in Bangladesh*, Dhaka: Women for Women.
- BILS. (2007). Construction Sector and its Workers: A Review (Sromokhat Parjalochona: Prosanga Nirman Shilpo), Dhaka: Bangladesh Institute of Labour Studies.
- BILS. (2007). Workers Human Rights in the Construction Sector of Bangladesh, Dhaka: Bangladesh Institute of Labour Studies.
- CPD, (2008). Gender and Trade Liberalisation in Bangladesh. Dhaka: Centre for Policy Dialogue
- GoB (2009), *Bangladesh Economic Review 2009*, Finance Division, Ministry of Finance, Government of the People's Republic of Bangladesh
- Hossain Jakir and Islam Rabiul. (2008). Minimum Wage for Garments Workers: Implementation Status and Changes of Workers' Economic Security), Dhaka: Nari Uddog Kendra and Unnayan Onneshan.
- ILO (1999), *Report of the Director-General: Decent Work*, International Labour Conference, 87th Session, Geneva.
- ILO, (2005). Hours of Work: From fixed to flexible? Available at <p://www.ilo.org/wcmsp5/groups/public/-dgreports/dcomm/documents/meetingdocument/kd00123.pdf>.
- Majumder, Protima Paul and Begum Anwara. (2000). "The Gender Imbalances in the Export Oriented Garment Industry in Bangladesh," Gender and Development, Working Paper Series no 12.

Mohiuddin, Md. Helal (2004). *Globalization led Changes in Livelihood Strategies, Social Organisation and Rural-Urban Linkage of Women garment Workers in Bangladesh*, University of Manitoba.

Morshed M. Monjur (2007). *A Study on Labour Rights Implementation in Readymade Garment (RMG) Industry in Bangladesh: Bridging the Gap between Theory and Practice*.

Murayama, Mayumi. (2006). *Globalization and Female Employment in Bangladesh: Readymade Garments Workers in Post- MFA Era*, Retrieved from <http://www.idejetro.jp/English/Publish/Download/jrp/pdf>

Okene, V.C. Ovunda. "Curbing State Interference in Workers' Freedom of Association in Nigeria", *The International Journal of Not-for-Profit Law*, Volume8, Issue4, August 2006, Retrieved From http://www.icnl.org/KnoWleDge/ijnl/vol8iss4/art_2.htm, on 15 February, 2010. on 18.October 2009.

Quasem, A.S.M. (2006). *Gender Equality Competitiveness and Export Performance in the Garments Sector in Bangladesh*.

Rahman, M, Bhattacharya D and Moazzem K G. (2008) *Bangladeh Apparel Sector in Post MFA Era; A study on the Ongoing Restructuring Process*, Dhaka: Centre for Policy Dialogue

Titumir R.A.M and J. Hossain, (2005). *Lost in the Queue: Employment and Poverty in Bangladesh*, Dhaka: Unnayan Onneshan