Research Monograph

On

"A Critical Review on Labour Law of Bangladesh"

A thesis submitted to the Department of law,Sonargaon University in partial fulfillment of the requirement for the award of the degree of Master's of Law (2 years)

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Table of Contents

Sl No	Description	Page
1.	Declaration	i
2.	Certification	ii
3.	Acknowledgement	iii
4.	Table of abbreviation	iv
5.	Abstract	v
6.	Objective of the study	vi
7.	Research Methodology	vi
8.	Limitation of the Research	vi

Chapter One

Introduction (History)

SL No.	Description	Page
1.1	Introduction	01
1.2	British Colonial period:	02
1.3	Overview of Bangladesh Labour Law:	02-04

Chapter Two

Salient Features of the BLL

SL No.	Description	Page
2.1	Employment standards	05-07
2.2	Occupational safety and Health	08
2.3	Welfare and Social protection	08
2.4	Labour relation and social dialogue	09-10
2.5	Reality in the field	11-12

Chapter three

Conclusion and recommendation

SL No	Description	Page
3.1	Employment Standard	13-14
3.2	Occupational safety and Health	14
3.3	Welfare and Social protection	14-15
3.4	Recommendation	16-18

STUDENT DECLARATION

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I hereby assure that the work that has been presented here does not breach any existing copyright law.

I further undertake to indemnify the University against any loss or damage arising from breach of the forgoing obligations.

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CERTIFICATION

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I do here by certify that the project work has been carried out under my direct supervision and guidance.

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Table of Abbreviations

B
BLL : Bangladesh Labour Law
BLA : Bangladesh Law Association
C
CEO : Chief Executive Officer
I
ILO : International labour organization
ID : Identity Document
ILC : International Labour Convention
O
OT : Over Time

A Critical Review on Labour Law of Bangladesh

Abstract:

Role of labour and industrial laws are of paramount importance. We know that the total economy of a country greatly depends upon the industrial sector. In addition, the growth of the industrial sector involves with some major aspect. These major aspects are the local investment policy, foreign direct investment policy, labour management etc. Besides the necessary infrastructure for investment natural resources are also important and it is very clear that if all these essential elements are not available then growth of industrial sector is unfeasible. Besides all these things labour issues are also very important. Proper management of labour is an essential matter for growth of industrial sector. Timely disposal of labour disputes are also important. We see that in most of the cases the labour law disputes do not solve with in short time. So the remedy which is essential from the case becomes delayed. The labour law is very much important in Bangladesh perspective. It is highly important for the industrial development of Bangladesh. We know that labour is a most important part of an industry. So, we cannot think an industry without labour. Labour right is most essential in Bangladesh. But the labours are in ignorance about their right. They don't know properly about labour laws and education. It is a great problem. For this reason, they retrenched by the employee. Very often, they retrenched without any legal process. So no one should support the retrenchment of the labour by any illegal process. The retrenchment of labour should be legal and humanly treated. In this report we discussed about Labour Court and Labour Appellate Tribunal in Bangladesh including application to the Labour court, Jurisdiction of the labour court, Power and status of the labour court in trying offences, Power and functions of the labour court and the tribunal. Lastly we tried to discuss about conclusion on the report like Findings, Recommendations. Keyword: Labour Laws, Local Organizations, Labour Union

Aim of the study:

To deal with various spheres of Rights. Scope of the Study: The project will be covering the meaning of rights, the peculiarities of rights, elements of legal rights, classification of rights, kinds of legal rights, relationship between legal liberty and legal right and so on.

Research Methodology:

For this project the research is doctrinal. The information and data for the project will be from various books, articles and other online resources. The research will include publication research, and other relevant sources, and will include both present and historical information related to topic. The case study of various past cases related to the topic will be referred in this project. Articles and laws related to the topic and also if there is an amendment in the previous law will also be taken into consideration.

Limitations:

The important limitation of this study is the reliance on secondary data. As the study is not empirical so the information and research is confined to books, online resources, articles in the newspapers and magazines.

1.1: Introduction:

Labour Law means those rules & customs of state by which the relation of employer and labour is structured in order to secure harmony in the Industrial arena. The modern Labour Law is compiled by the state. In the eye of Labour law, the capital & the labour both are equally important. In modern time, the basic purpose of labour law is to create exclusive relation between capital & labour. There were many labour laws in previous but now it has only one complied labour laws in Bangladesh. The name is "Bangladesh labour Law 2006" [Act no. XLII of 2006]. The Bangladesh Labour Law, 2006 is one of the very recent laws with major overhauling changes in the field of labour legislation which is amended in time to time in order to cope with the changes and overcoming the drawbacks. Yet the initiatives have taken by the state in respect of labour law but the real practices are not reflected in the industries as expected. Many organizations are performing well in terms of labour law Practices within the organizations but most of the firms especially the Local and Government organizations have failed successively in case of labour law practices.

Barriers to timely resolution of labour disputes involve two types of issues; one is the legal barrier and the other is the practical one. To deal with the first one, we begin by outlining the origin of Labour Courts, its constitution, composition, powers and procedures, including the Labour Appellate Tribunal, as the machinery for disposal of various types of labour cause. This outline is then followed by a short account for the territorial and other jurisdictional aspects of Labour Court. The next, third, section offers a detailed expose of the barriers, along with suggestion for facilitating timely disposal of labour cases, ending with a concluding section. This thesis includes numerical representations of the state of labour case under various relevant laws.

1.2:British Colonial period:

The history of labour legislation in Bangladesh essentially begins from the days of the British Raj followed by the postcolonial United Pakistani period through to the Bangladesh era. The factory act was amended in 1922 in British India.[1] This history indicates that the enactment of various labour laws was done as and when warranted by circumstances or under other pressures.[2] Consequently, it is very difficult to trace a consistent and planned labour policy. However paradoxical it might sound most of the laws containing provisions related to labour standard had originated during British Colonial rule (1757 – 1947). Few of the laws had been initiated during Pakistan period (1947 – 1971). Some of the laws have been originated and few of the old standards have been amended after the Liberation of Bangladesh (1971 to till date). At the time of partition of British India in 1947 Pakistan adopted the entire labour legislation as it existed at the time of partition under the Pakistan (Continuation of existing laws) Order, 1947. Though the government announced a series of labour policies in 1955 and 1959, recurring Martial Law regulations pre-empted implementation of those policies. However, between 1961 and 1969 a number of important labour laws was enacted of which the laws mentioned

1.3: Overview of Bangladesh Labour Law:

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.[3] Although the number of labour loss passed at various times starting from 1881 is numerous, the number of applicable labour laws in our country was 50.[4] 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

[1] *Gazi Shamsur Rahaman, "Labour and Industries Law" (Ali Publication, 1997, P. 163)*
[2] *Gazi Shamsur Rahaman, "Labour and Industries Law" (Ali Publication, 1997, P. 163)*
[3] *Gazi Shamsur Rahaman, "Labour and Industries Law" (Ali Publication, 1997, P. 52)*

[4] Nirmolendu Dhar, Americal free labour Institute (AAFLD), 1998. P.7

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 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:

- **2.1: 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 or every year of service if the worker is employed on continuous service for not less than one year.
- **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.
- 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 pm 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.

2.2: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.

2.3: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.

2.4: 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 cannot 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).

2.5: Reality in the Fields:

Bangladesh Labour Act, 2006 made things clear for labour's welfare. But in reality, not everything is followed. Even sometimes fixed wages are not given to those labour. Labours in Bangladesh deprived many of their rights.[5] Some of them are ignored by the employee. Below is summery of some of them:

1. **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. In the construction industry, none of the workers receiving any appointment letter.
2. **Oral contract:** 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.
3. **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.
4. **Overtime 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 overtime.
5. **Missing workers' participation in company's benefit**: Garments workers are not

   aware about any provision regarding workers' participation in company's benefit.
6. **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

[5] Bangladesh Labour law 2006

cent respondents reported that this right is limited in practice.

7. **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.
8. **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.
9. **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.
10. **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.

Conclusion and Recommendation:

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.

3.1: Employment Standard:

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

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.

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 cannot 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. 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.

3.2: Occupational Safety and Health:

The law has no clear provisions on the following:

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

3.3: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.[6]

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.

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.

[6] *ILO, (2005). Hours of Work: From fixed to flexible? Available at* http://www.ilo.org/wcmsp5/groups/public/---dgreports/---

3.4: Recommended Reform:

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".

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. 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.
- ✓ The right to negotiate and conclude collective bargaining should be expressly recognized in the law. Some doable could be:
    - 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.

Strengthen enforcement and administration of labour justice. There are major concerns that should be addressed under this theme such as -

- ✓ Removal of termination simplicitor 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 labou ministry or at the labour court.

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