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Definition of Workers and Application of the Bangladesh Labour Act 2006: An Appraisal

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Abstract

There are approximately 63 million labourers in Bangladesh. The Bangladesh Labour Act 2006 (“Labour Act” or “Act”) provides the statutory framework ensuring workers rights and responsibilities. Definition and application of the Act is the central issue of its enforcement. Unfortunately, the Act fails to include a large number of workers, including domestic workers; agriculture workers; and staff working at schools. This research reveals that there are numerous ambiguities and complexities in existing labour law, and in this regard there are many gaps in the existing law that require substantial amendment to increase its effectiveness. This paper suggests that the definition of a ‘worker’ for the purposes of the Act creates complexities which needed to be addressed. This paper critically examines the definitions of a worker and the application of the act under the existing Labour Act before drawing a conclusion on how the law ought to be reformed.

1. Introduction

The Bangladesh Labour Act 2006 is the main law regulating the rights and responsibilities of workers and employees in Bangladesh. This relatively recent legislation was preceded by the Trade Union Act 1926, which was the first industrial related law adopted by the British Raj in the undivided India-Pakistan and Bangladesh. The law reform led to the introduction of other legislation including the Trade Disputes Act 1929 and the Industrial Disputes Act 1947. During the Pakistan government, the major industrial

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law was Industrial Relations Ordinance, which was adopted in 1969. Between 1947 to 1971 Bangladesh was part of Pakistan, thereafter in December 1971 Bangladesh became independent State. Despite Bangladesh gaining independence from Pakistan, no major labour law reform had taken place until 2006.² Until that time, there were around 46 separate pieces of laws (legislations, regulations and ordinances) in force in Bangladesh encompassing labour and industrial sectors,³ making labour law disputes costly and time consuming to resolve.⁴ The effect of enacting the Bangladesh Labour Act in 2006 was that it repealed twenty-five of the preceding enactments that were then amalgamated with the new Act.⁵ The law has made many improvements in legal framework on industrial relations but it still has some weaknesses.⁶ These weaknesses have not gone unnoticed with the Bangladesh Government who have formed a committee to investigate and address these weaknesses. In 2013, the National Parliament passed an amending legislation to the Labor Act as a response to the committee's investigations, however these amendments were inadequate.⁷ A subsequently decision by the Government in 2015 caused the Bangladesh Labour Rules to be published as a national policy.⁸ The Labour Force Survey of Bangladesh (2015-16) from the Bangladesh Bureau of Statistics provides that the number of laborers in the country is 62.5 million.⁹ The Labour Act ensures the rights of these workers. The main issue involve not the rights themselves, but the definitions within the Act which limits its scope. As a consequence, the Act fails to include a large number of workers including domestic workers; agriculture workers; and workers working at schools. This gap renders the act highly ineffective, especially since those who (unfairly) fall outside of its scope cover a large number of registered workers.¹⁰ Furthermore, this research reveals that there are numerous ambiguities and complexities in existing

² Abdullah Al Faruque, Current Status and Evolution of Industrial Relations System in Bangladesh, International Labour Organization (2009), 1.

³ Ibid. 9.

⁴ Ibid.

⁵ Ibid 9 -10. Also, in Section 353 of the Bangladesh Labour Act, 2006.

⁶ Ibid 12.

⁷ Hasan Tarique Chowdhury, Amendment to labour law inadequate, *The Daily Star* (July 25, 2013) <<http://www.thedailystar.net/news/amendment-to-labour-law-inadequate>>.

⁸ Bangladesh Labour Rules 2015, S.R.O.- 291/2015, published 15 September 2015.

⁹ Report on Quarterly Labour Force Survey (QLFS) 2015-16, Published by Bangladesh Bureau of Statistics with technical support from the World Bank in March 2017.

¹⁰ Jakir Hossain, Mostafiz Ahmed, Afroza Akter, *Bangladesh Labour Law: Reform Directions*, p 14.

Labour Laws, especially the definition of a ‘worker’ under section 2(65), which is substantially limited. In addition, the Act provides two types of the definition of workers (sections 175 and 150 (8) read with Schedule Four of the Act)). Further, The EPZ law provides a different definition. In addition, decisions of courts on definition of a worker also to be considered as precedent. In addition, the provisions of its application create complexities and ambiguities. There is limited academic commentary that evaluates the definition of ‘worker’ under the Labor Act. This paper seeks to do this by critically examining these definitions and the way they apply under the existing legal framework.

2. The Objective of the 2006 Bangladesh Labour Act

The Labour Act originally passed as ‘Bangladesh Sram Ain, 2006.’¹¹ Gazette Notification was published on 11th October 2006. The Bangladesh Labour Act 2006 repealed most of the existing Labour Laws of Bangladesh to ensure a more efficient and up to date labour law for the regime. The Bangladesh Labour Act 2006 was amended in 2008, 2010 and 2013 to make the law as efficient as possible and more friendly for the workers. On 21 September 2015, the English version of the Act was published as ‘The Bangladesh Labour Act, 2006.’

According to the Preamble of the Labour Act, its aim is to consolidate and amend the laws relating to employment of workers, relations between workers and employers, determination of minimum wages, payment of wages and compensation for injuries to workers, formation of trade unions, raising and settlement of industrial disputes, health, safety, welfare and working conditions of workers, apprenticeship and all other matters that are connected with labour and industrial relations.

3. Salient Features of Labour Law of Bangladesh

The Bangladesh Labour Act repealed the scattered 25 acts and ordinances and inserted a modern, single and updated code.¹² The salient features of the act are as follows:

¹¹ The Bangladesh Labour Act, 2006, Act No. XLII OF 2006, [11 October, 2006].

¹² According to the section 353 of the Bangladesh Labour Act, 2006 the act repealed the following 25 labour and industrial laws: (a) The Workmen’s Compensation Act, 1923 (III of 1923); (b) The Children (Pledging of Labour) Act 1833 (II of 1933); (c) The Dock Labourers Act, 1934 (XIX of 194); (d) The Workmen’s Protection Act, 1934 (IV of 1934); (e) The Payment of Wages Act, 1936 (IV of 1936); (f) The Employer’s Liability

- There are 354 sections in 21 different chapters and the Schedules (one to five) in the Act.
- The scope and applicability of the law have been extended (s.1 (3)) and definitions of different terms have been clarified (s. 2).
- According to Labour Act, any person below the age of 14 shall be treated as a child (s.2 (63)).¹³
- There 6 types of workers under the Labour Act (s.4).
- Registration of Contracting Organization is mandatory (s. 3A).
- Mandatory provision of the issue of Letter of Appointment and Identity Card (s.5).
- Death benefits have been provided for normal deaths or in cases of any deaths due to causes other than accidents during the continuance of the service (s.19).
- The usual retirement age has been scheduled at 60 years of his age (s.28).
- Restrictions on child employment (s.34).
- Maternity benefits have been ensured (Chapter IV).
- Special importance is given to occupational health and safety (Chapter V, VI and VII).
- Introduction of Group Insurances (s.99).
- Time limits for payment of wages have been determined (s.123).
- Provisions to realize the unpaid wages through the Court (s.132).
- The Right of Trade Union (Chapter XIII).
- The purview of unfair labor practices on the part of the workers, employers or the trade unions has been extended (s.195 & s. 196).
- Provision of Collective Bargaining Agent (s. 202).

Act, 1938 (XXIV of 1938); (g) The Employment of Children Act, 1938 (XXVI of 1938); (h) The Maternity Benefit Act, 1939 (IV of 1939); (i) The Mines Maternity Benefit act, 1941 (XIX of 1941); (j) The Motor Vehicles (Drivers) Ordinance, 1942 (V of 1942); (k) The Maternity Benefit (Tea Estate) Act, 1950 (XX of 1950); (l) The Employment (Records of Service) Act, 1951 (XIX of 1951); (m) The Bangladesh (Plantation Employees) Provident Fund Ordinance, 1959 (XXXI of 1959); (n) The Coal Mines (Fixation of Rates of wage) Ordinance, 1960 (XXXIX of 1960); (o) The Road Transport Workers Ordinance, 1961 (XXVIII of 1961); (p) The Minimum Wages Ordinance, 1961 (XXXIV of 1961); (q) The Plantation Labour Ordinance, 1962 (XXXIX of 1962); (r) The Employees Social Insurance Ordinance, 1962 (XXII of 1962); (s) The Apprenticeship Ordinance, 1962 (LVI of 1962); (t) The Factories Act, 1965 (IV of 1965); (u) The Shops and Establishments Act, 1965 (VII of 1965); (v) The Employment of Labour (Standing orders) Act, 1965 (VIII of 1965); (w) The Companies Profits (Worker's Participation) Act, 1968 (XII of 1968); (x) The Industrial Relations Ordinance, 1969 (XXIII of 1969); (y) The Dock workers (Regulation of Employment) Act, 1980 (XVII of 1980).

¹³ Section 2(63) of the Bangladesh Labour Act, 2006 provides that "child" means a person who has not completed the 14th (fourteenth) years of age.

- Labor courts shall be the only courts to adjudicate all issues under labor law and all appeals shall lie to the Labor Appellate Tribunal (s.213 – s.218).
- Provisions for worker’s participation in company’s profit was introduced (Chapter XV).
- The punishments for the breach of the provisions of the labor law have been revised appropriately. Imprisonment has also been provided for along with fines (Chapter XIX).
- Provision has been made for the strict implementation of the “Equal Pay for Equal Amount of Work” policy of ILO convention (s.345).
- Restriction of employment of women in certain work (s. 87).
- Sick Leave: 14 days sick leave with full average wages have been provided, in the new Labor Law. In previous laws, sick leaves were paid for half average wages (s.116).
- Annual leave with wages: For adults one day for every 18 (eighteen) days of work performed by him/her during the previous period of twelve months (s.117).
And for adolescents one day for every 15 days of work performed by him/her during the previous period of 12 months (s.117(2)).
- Festival Leave: Every worker shall be entitled to eleven days festival leaves in a calendar year. The Employer shall fix the days and dates of such leaves (s.118).
- Children Room: A children room for every 40 female workers having their children below the age of 6 years have been provided by the law (s.94).
- Termination of employment by the worker: A permanent worker may terminate the employment serving a 30 days’ notice to the employer and a temporary worker may terminate it serving a notice of 30 and 14 days case wise. In lieu of the notice, the worker can even terminate the employment returning the wages for that period (s.27).
- Grievance Procedure: Limitation for the application of grievance has been extended to a period of 30 days, though previously it was 15 days only (s.33).
- Provision of allowance during the period of training (s.4(2)).
- Wider Liability: Section 307 provides ‘Penalty for other offences.’ It states - whoever contravenes, or fails to comply with, any of the provisions of this act or the rules, regulations or schemes shall, if no other penalty is provided by this act or by such rules, regulation or schemes for such contravention or failure, be punishable with imprisoned for a term which may extend to three months, or with fine which may extend to twenty-five thousand taka, or with both.

- Power to make rules by the Government (s.351).

It is also noted that the Labour Act is applicable with equal force to all the industrial and commercial establishment as previous Shops and Establishment Act-1965 and other labour laws have been abrogated by the promulgation of this new labour code (s. 2(4) and 2(21)).¹⁴

4. Application of the Bangladesh Labour Act, 2006

Section 1 (3) of the Labour Act provides the details of the application of the Act, for instance, that it shall apply to the whole of Bangladesh. It covers all industrial, labour and retail establishments including factories, shops, docks and tea plantations to just name a few. Bangladesh Labour Act also applicable to other areas as well. The Act has been constructed by the courts to apply either directly or indirectly to the following areas:

- i) all establishments which come under the definition of an establishment as defined in section 2 (31) of the Act.¹⁵ That included - shop, a commercial establishment or an industrial establishment or premises or yard where workers are employed for industrial work.
- ii) The Act usually applies to all establishments which come under the definition of a factory as defined in section 2 (7) of the Act.¹⁶
- iii) tea plantation which comes under the definition of tea plantation as defined in section 2 (10A) of the Act.¹⁷
- iv) all establishments which come under the definition of a garden as defined in section 2 (40) of the Act.¹⁸

¹⁴ Salient Features of The Bangladesh Labour Law 2006 Related To The RMG Sector, Working Paper No – 2, March 2007, by SEBA Limited, in cooperation with Ministry of Labour and Employment, Bangladesh, under German Development Cooperation. <http://www.psesbd.org/index.php/publications/working-papers/item/download/8_4d82a602ac515e2eca5e7a3b3918498c>.

¹⁵ Section 2(31) of the Bangladesh Labour Law 2006 provides, “establishment” means any shop, commercial establishment, [transport,] industrial establishment or premises or precincts where workers are employed for the purpose of carrying on any industry.

¹⁶ Section 2(7) of the Bangladesh Labour Law 2006 provides “factory” means any precincts or premises where five or more workers ordinarily work on any day of the year and in any part of which a manufacturing process is carried on, but does not include a mine.

¹⁷ Section 2(10A) of the Bangladesh Labour Law 2006 provides “tea plantation” means any land used or intended to be used for growing tea, and also includes a tea factory.

¹⁸ Section 2(40) of the Bangladesh Labour Law 2006 provides “plantation” means any area where the rubber, coffee or tea is grown and/or preserved, and includes every

v) all establishments which come under the definition of a commercial establishment as defined in section 2 (41) of the Act that included- a clerical department of a factory or any industrial or commercial undertaking; a unit of a joint-stock company, an insurance company, a banking company or a bank,

- a broker's office,
- stock exchange,
- a club, a hotel or a restaurant or an eating house,
- a cinema theatre, or
- Such other establishments or classes thereof as the official Gazette, declare to be a commercial establishment for the purpose of this Act.

vi) The Act applies to all establishments which come under the definition of a vehicle as defined in section 2 (51) of the Act i.e. any mechanically propelled vehicle used or capable of being used for the purpose of transport in road, air and water and includes a trolley vehicle and a trailer.

vii) The Act applies to all establishments which come under the definition of an industrial establishment as defined in section 2 (61) of the Act.¹⁹

agriculture farm, other than experimental or research farm, employing 3[5 (five)] or more workers.

¹⁹ Section 2(61) of the Bangladesh Labour Law 2006 provides "industrial establishment" means any workshop, manufacturing process or any other establishment where any article is produced, adapted, processed or manufactured, or where the work of making, altering, repairing, ornamenting, finishing or fining or packing or otherwise treating any article or substance for the purpose of its use, transport, sale, delivery or disposal, is carried on or such other establishments as the Government may, by notification in the official Gazette, declare to be an industrial establishment for the purpose of this Act, and includes the following establishments, namely:

- (a) road transport, or railway transport service; (b) river transport service; (c) air transport; (d) dock, quay or jetty;
- (e) mine, quarry, gas field or oil field; (f) plantation, (g) factory; (h) newspaper establishment; (i) establishment of a contractor or sub-contractor established for the purpose of construction, reconstruction, repair, alteration or demolition of any building, road, tunnel, drain, canal or bridge, ship-building, ship-breaking or loading or unloading of cargo into vessel or carrying thereof; (j) ship building; (k) Ship recycling; (l) welding; (m) any outsourcing company or any establishment of contractor or sub-contractor for supplying security personnel; (n) port; port shall mean all sea ports, river ports and land ports; (o) mobile separator company, mobile network service provider company and land phone operator company; (p) private radio, tv channel and cable operator; (q) real estate company, courier service and insurance company; (r) fertilizer and cement manufacturing company; (s) clinic or hospital run for profit or gain; (t) rice mill or *Chatal*; (u) saw mill; (v) fishing trawler; (w) fish processing industry;

viii) The Act usually applies to all establishments which come under the definition of newspaper establishment as defined in section 2 (71) of the Act i.e.. an establishment for the printing, production or publication of any newspaper or for conducting any news agency or news or feature syndicate;

In addition, Chapter 15 of the Labour Act states that Participation of Workers in the Profit of the Companies shall apply to all companies engaged in industrial undertakings which satisfy any one of the following conditions:

- The number of workers employed by the company in any shift at any time during a year is 100 or more.
- The paid-up capital of the company as on the last day of its accounting year is at least TK. Ten million.
- The value of the fixed assets of the company as on the last day of the accounting year is at least TK. Twenty million.

Further, according to Chapter 18, the Act (Apprenticeship) is applicable to such establishments which are in operation for more than two years and where at least fifty workers work generally and at least fifty workers work as apprentices.

5. Non-Applicability of the Labour Act, 2006

Section 1 (3) of the Bangladesh Labour Act 2006 states that its application extends to the whole of Bangladesh subject to specified expectation in this Act. A detailed list of non-application of the Act is mentioned in section 1 (4) of the Act. In a summary, the Act is not applicable to: Government offices; Security Printing Press; Arms Factory; not-for-profit organisations which are run for the treatment or care of the sick, infirm, destitute or mentally unfit, old, disabled, deserted women or children; shops or stalls in any public exhibition or in retail trade; shops or stalls in any public fair or bazaar held for religious or charitable purpose; educational, training or research institution; hostels and messes not maintained for profit or gain; any worker whose recruitment and terms and conditions of service are governed by the Acts or rules made under Article 62, 79, 113 or 133 of the Constitution; university teacher; seamen; ocean going vessels (in the cases other than the case of the application of Chapter XVI); any agricultural farm where less than five workers work; in the case of

(x) seagoing vessel.

domestic servants; and any establishment run by its owner with the aid of members of his family and where no worker is employed for wages. However, section 1(4)(j) of the Act provides that the non-applicability provisions of the Labour Act (namely those mentioned above) do not apply to Chapter XII (Compensation for Injury Caused By Accident), Chapter XIII (Trade Unions And Industrial Relations) and Chapter XIV (Settlement of Dispute, Labour Court, Labour Appellate Tribunal, Legal Proceedings) of the Act. Therefore, in the cases of Compensation for Injury Caused by Accident, Trade Unions and Settlement of Dispute of Labour Court where the workers are employed in railway department; post, telegraph and telephone department; roads and highways department; public works department; public health engineering department; and Bangladesh Government printing press- the Act remains applicable.

6. Classification of Workers

Section 4 (1) lays out seven types of workers.²⁰ According to the nature and condition of work, the workers are classified as apprentice, substitute, casual, temporary, probationer, permanent and seasonal.

- a) **Apprentice Worker:** A worker shall be called an apprentice if he is employed in an establishment as a learner, and is paid an allowance during the period of his training: section 4(2). An apprentice worker will only get allowance during the period of his training, and will not be entitled to other monetary benefits such as bonuses. In practice, an apprentice worker may be appointed for 6 to 12 months, however no time period or duration is specified in the Act. Section 4(2) states nothing about the length of duration of an apprentice worker. Generally, a worker who has no previous work experience can be appointed as an apprentice worker.
- b) **Substitute Worker:** A worker shall be called a substitute (Badli) if he is employed in an establishment in the post of a permanent worker or of a probationer worker during the period who is temporarily absent: section 4(3). A Badli worker must work for a specified period of time – not for an indefinite period – in order to be legally classified as this kind of worker.
- c) **Casual Worker:** A worker may be called a casual worker if he is employed on an ad-hoc basis in an establishment for work of a “casual nature” (section 4(4)). To be legally classified under this kind of worker,

²⁰ Amended by the Bangladesh Labour (Amendment) Act, 2013. Previously, there were six types of workers. By the amendment of 2013, introduced ‘seasonal’ worker as new type of worker.

the “casual nature” of the work is an essential aspect, meaning that the worker cannot work on a full-time basis.

d) Temporary Worker: A worker shall be called a temporary worker if he is employed in an establishment for work which is essentially of a temporary nature, and is likely to be finished within a limited period (section 4(5)). A temporary worker is appointed for a temporary type of work and generally for a fixed period, and not for an indefinite one. The Employer may extend the period of the temporary worker if it is necessary. The Salary structure of temporary worker may be different from permanent workers, depending on the company rules.

The mere description of coining of a position as ‘temporary’ does not necessarily render it to be of temporary nature. Other criteria must be met.²¹ Appointment of employees on a temporary basis cannot be also be probationers, since temporary workers cannot be given posts of a permanent nature. However in *Rupali Bank Ltd v. Chairman*, the Court held that temporary workers may be offered or absorbed into permanent posts on a preferential basis, and that companies may have regulations that allow this to happen. according to company regulations. In that case, although the number of temporary posts varied depending on the Bank's requirements, the service of temporary employees could be assessed for consideration of permanent positions.²² Law provides that a "temporary worker" is a worker who has been engaged in work which is essentially temporary in nature and is likely to be finished within a limited period. On the other hand, that Act defines a "permanent worker" as a worker who has been engaged on a permanent basis or who has satisfactorily completed the period of his probation in the commercial or ' industrial establishment. The labour law empowers the employer to terminate the employment of a temporary worker due to completion or cessation of the work. As a consequence, the employer is under no obligation to give the employee any notice of termination of his job.²³

e) Probationer Worker: A worker shall be called a probationer if he is provisionally employed in an establishment to fill a permanent vacancy in a post and has not completed the period of his probation in the establishment (section 4(6)). In practice, a worker is not directly appointed as a permanent worker. First, a worker is appointed as probationer

²¹ *Managing Director Rupali Bank vs First Labour Court*, 46 Dhaka Law Reports 143.

²² *Rupali Bank Ltd v. The Chairman, Second Labour Court, Dhaka*, 22 Bangladesh Legal Decision (HCD) 143.

²³ *Md. Ibrahim Shaikh Vs. Chairman, Labour Court, Khulna Division, Khulna and others*, 15 Bangladesh Legal Decision (HCD) 647.

worker, or conditional worker, by the employer for certain period as per company policy. During that time, the worker is given training, and their performance is assessed. If the employer is satisfied with the probationer worker's performance, then the worker will be appointed for a permanent position.

f) Permanent Worker: A worker shall be called a permanent worker if he is employed in an establishment on a permanent basis or if he has satisfactorily completed the period of his probation in the establishment (section 4(7)). Permanent workers, as the position title suggests, are appointed for permanent types of work. If a probation worker successfully completes his training period, then he will be considered as a permanent worker. In addition to wages, Permanent workers enjoy all types of monetary benefits, including bonuses, paid leave, yearly increment of wages, provident fund and gratuity. As a result, expense of the employer is increased. Labour law provides that a probationer worker who has completed his probation period without complaint or adverse report, will be classified as a permanent worker.²⁴ If there was no adverse report against a worker during the probationary period, he becomes permanent after the probationary period, effective immediately.²⁵

g) Seasonal worker: A worker shall be called a seasonal worker if he is employed in an establishment to do seasonal work and works throughout that season: section 4(11). For example, ABC Company is a manufacturing company, produces mango juice. During the season of mango, the company appoints workers for three months for each year for the purpose of harvesting particular types of mango from the different region of the country. These workers will be treated as seasonal workers. In the employment of workers at sugar mill, rice mill, and seasonal establishments, priority shall be given to workers employed in the previous season (section 4(12)).

7. Who is a Worker under the Bangladesh Labour Act?

i. Section 2(65) of the Labour Act 2006

Section 2(65) of the Labour Act defines the term 'worker' to mean any person including an apprentice employed in any establishment or industry, either directly or through a contractor, by whatever name he is called, to do any skilled, unskilled, manual, technical, trade, promotional or clerical

²⁴ *Managing Director Rupali Bank vs First Labour Court*, 46 Dhaka Law Reports 143.

²⁵ *Bangladesh Film Development Corporation vs. Chairman, 1st Labour Court. Dhaka and others*, 49 Dhaka Law Reports (1997) 399.

work for hire or reward, whether the terms of employment are expressed or implied, but does not include a person employed mainly in a managerial, administrative or supervisory capacity.

Put simply, a worker is any person employed in any establishment to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward. However, under the labour law, a person is not be considered as a worker who is mainly employed in a managerial or administrative capacity. Moreover, a supervisory officer is not a 'worker' for the purposes of the Act.²⁶

ii. Case Laws

A person does not cease to be a worker merely because they are employed in a supervisory capacity. More specifically, a worker ceases in their capacity as 'worker' if he exercises managerial or administrative functions. One important consideration in distinguishing 'worker' from a 'manager/administrator' is to assess the nature of the job done by him, and not so much the position title. The issue as to whether a person is a worker or not has to be resolved in each case with reference to the evidence or record.²⁷

In *Sonali Bank and another vs. Chandon Kumar Nandi*, the High Court held that "...the person employed in any shop and commercial establishment, who is not employed in any managerial or administrative capacity is a worker. the plaintiff being an Assistant Cashier was not doing a managerial or administrative job, but he was doing a clerical work. Therefore, the plaintiff can undoubtedly be said to be a worker."²⁸

The High court has considered whether an employee who occasionally performs managerial or administrative duties should be considered a worker, in *Indo Pakistan Corporation Ltd. Vs. First Labour Court of East Pakistan*. In that case, the court was of the view that a worker, who in isolated occasions, performed a function of a manager or an administrative officer, does not lead to the cessation of their working status for the purpose of the Act. Only if a person who is mainly employed in a managerial or administrative capacity exercises functions

²⁶ *Karnaphuli Paper Mills Workers Union vs Karnaphuli Paper Mills Ltd and Others*, 22 Bangladesh Legal Decision (AD) 33.

²⁷ *Mujibur Rahman Sarkar vs. Chairman, Labour Court, Khulna*, 31 (1979) Dhaka Law Reports 301.

²⁸ *Sonali Bank and another vs. Chandon Kumar Nandi*, 48 (1996) Dhaka Law Reports 330.

mainly of managerial or administrative nature, then a worker shall be taken out of the purview of the definition of worker.²⁹

In *Managing Director, Rupali Bank Ltd vs Nazrul Islam*, the Appellate court opined that the term 'worker' contemplates not only a person to be employed in the work for productive purposes in any commercial or industrial establishment but also embraces a person who on being employed does any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the term of employment be express or implied.³⁰

In *General Manager, Shield Ltd. Vs. First Labour Court, Dhaka* the court concluded that the respondent was working as Chief Inspector of a Company and his nature of work was to collect demands from different organizations and establishments and supply the guards. It was held that the respondent was a worker considering his nature of work.³¹

More importantly, the Appellate Court held that mere designation of the employee is not sufficient to indicate whether a person is a 'worker' or not for the purposes of the Act. Rather, it is the nature of work showing the extent of his authority which determines this.³²

The High Court in another case held that if there is no evidence of the employee's managerial or administrative functions, that mere designation cannot be used to imply the existence of these functions. In other words, designation is not considered to demonstrate the nature of employment.³³

The High Court of Bangladesh also ruled that Pesh Imam, Muazzins, teachers of School and College and staff members of Medical Centre and hospital that were run by the factory management could not be equivalent with the works done by the workers or workmen in the factory. According to their job responsibilities, they were excluded from the definition of a worker.³⁴ In the same line, a school teacher of the

²⁹ *Indo Pakistan Corporation Ltd. Vs. First Labour Court of East Pakistan* 21 Dhaka Law Reports 285.

³⁰ *Managing Director, Rupali Bank Ltd vs Nazrul Islam Patwary and Others*, 48 Dhaka Law Reports (AD) 62.

³¹ *General Manager, Shield Ltd. vs. First Labour Court, Dhaka*, 2 (1997) Bangladesh Law Chronicles 366.

³² *Dosta Textile Mills vs. SB Nath* 40 Dhaka Law Reports (AD) 45.

³³ *Managing Director, Contiforms Forms Limited and Peasant Trading Cold Storage (Pvt) Limited vs. Member, Labour Appellate Tribunal Dhaka and Others*, 50 Dhaka Law Reports 476.

³⁴ *Amir Hossain Bhuiya (Md) vs. Harisul Haq Bhuiya and others*, 52 Dhaka Law Reports 267.

secondary school that was set up by a Mill authority was not classified as 'worker' under the labour law.³⁵

In another decision, the Foreman of a shoe industry was not categorized as 'worker.' It was held that a Foreman, who supervised and controlled the work of his staff was not 'labour' for the purposes of the Act. Because the Foreman enjoyed some discretionary powers in the job responsibilities. As a Foreman monitored, controlled and made report on the jobs performances of other employee.³⁶

On the other hand, a Security Guard of a bank was defined as a worker.³⁷ A Store Keeper (Godown keeper) of a bank was also defined as 'worker' by the Court.³⁸

iii. Special Definition of Worker for Compensation of Injury if Caused by Accident (s.150(8))

Chapter XII of the Labour Act contains provisions regarding liability of employers to pay compensation to workers. Section 150(1) of the Act states that if a worker sustains physical injuries by an accident arising out of the course of his employment, his employer shall be liable to pay him compensation in accordance with the provisions of the Chapter.

Section 150(2) also provides a criteria - when an employer is not liable to pay compensation, including being under the influence of drugs, disobedience of safety rules and order.³⁹

Most interestingly, section 150(8) provides a new definition of a worker for the purposes of Chapter XII (Compensation for Injury Caused By Accident). It states, 'worker' means any person employed by the employer directly or through contractors, who is defined- (a) as a railway servant according section 3 of the Railways Act, 1890 (Act No. IX of 1890), who

³⁵ *Md. Abdur Rahman vs. Secretary, Ministry of Industries & others* 1 Bangladesh Law Chronicles (AD) (1996) 159.

³⁶ *The Workmen of Bata Shoe Co. vs. Bata Shoe Co. Ltd*, 23 Dhaka Law Reports (SC) 60.

³⁷ *Managing Director, Rupali Bank Ltd. vs. Nazrul Islam Patwary and others* 1 Bangladesh Law Chronicles (AD) (1996) 159.

³⁸ *Managing Director, Sonali Bank and Others vs Md. Jabangir Kabir Molla*, 15 Bangladesh Legal Decision (HC) 575.

³⁹ Section of 150 (2) states: An employer shall not be liable to pay such compensation, if (a) a worker does not lose the ability to work, in whole or in part, for a period exceeding three days due to injury; (b) the cause of injury to a worker, not resulting in death, by the accident directly attributed to (i) the worker having been at that time under the influence of drink or drugs; (ii) the wilful disobedience by the worker of a clear order or to rules made for the purpose of securing the safety of workers; , (iii) the wilful removal or disregard by the worker of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workers.

is not employed in any permanent post of any administrative, district or *upazilla* office of the railway, or (b) who is employed in any post specified in the Fourth Schedule of the Bangladesh Labour Act.

According to section 3 (7) of the Railways Act, 1890 - “the railway servant” means any person employed by railway administration in connection with the service of the railway. In plain words, it creates ambiguities between the provision of the Labour Act and the Railways Act. According to the Railways Act, a railway servant means a person who is employed by the railway administration in connection with the service of the railway. But according to the Labour Act, a railway servant should not be employed in any permanent post of any administrative, district or *upazilla* office of the railway.

Furthermore, Schedule 4 of section 150(8) of the Bangladesh Labour Act provides a broader definition of worker that includes 31 categories of people in the case of compensation for injuries.

Under schedule 4, section 150(8) of the Act, the definition of a worker includes:

- any person who is employed in any premises wherein or within the precincts whereof five or more persons are employed in a manufacturing process (s.150(8)(2));
- employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sell any article or part of an article in any premises wherein or within the precincts whereof at least five persons are employed (s.150(8) (3));
- employed as master, seaman or otherwise on any ship or vessel which is propelled wholly or in part by steam or other mechanical power or by electricity, or which is towed by a ship or vessel so propelled (s.150(8) (6));
- employed in any construction or excavation work in which more than 25 persons are employed or explosives are used(s.150(8) (18));
- employed as a driver (s.150(8) (27));
- employed in warehousing, or working within the precincts of any warehouse or other place in which at least ten persons are employed, or employed in the handling or transport of goods in any market or precincts thereof in which at least 100 (one hundred) persons are employed(s.150(8) (28)).

in. Section 175 Provides a Special Definition of Worker

Section 175 of the Bangladesh Labour Act 2006 provides a special definition of a worker for the purposes of Trade Unions and Industrial Relations. It provides the following:

In this Chapter, unless there is anything repugnant in the subject or context, ‘worker’ means a worker as defined in section 2 (65), and includes, for the purpose of any proceedings under this Chapter in relation to an industrial dispute, a worker who has been laid off, retrenched, discharged, dismissed or otherwise removed from employment in connection with or as a consequence of such dispute or whose lay-off, retrenchment, discharge, dismissal, or removal has led to that dispute; but does not include a member of the watch and ward or security staff, fire-fighting staff and confidential assistant of any establishment.

V. Definition of Worker Under Bepza

According to the ‘Service Matters Concerning Workers & Officers Employed in The Companies Operating Within the Export Processing Zones of Bangladesh,’ which was issued by the Bangladesh Export Processing Zones Authority provides a different definition of worker.

According to section 2 (h) “Worker” means any person including an apprentice employed in the office or factory of a company to do any unskilled, technical, trade promotional or clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, but does not include a person who is employed mainly in a managerial, executive, or administrative capacity.

Whilst their definition of worker includes ‘supervisory work,’ it has already been pointed out by the Bangladesh Labour Act and case law that ‘supervisory capacity’ has been excluded from the definition of a worker, or in the very least, is not a material consideration in itself on whether a person is a ‘worker’ for the purposes of the Bangladesh Labour Act.

8. Recent Amendments to the Labour Act

In 2018, Government of Bangladesh made certain changes in exiting Bangladesh Labour Act 2006 by the ‘Bangladesh Labour (Amendment) Act 2018’.⁴⁰ The aim of the amendment is to ensure more rights and benefits to labours in Bangladesh. There are fifty sections in the Labour Act (Amendment) 2018. However, this part of the paper only focuses on the most important provisions of the amendment.

⁴⁰ Bangladesh Labour (Amendment) Act 2018, Act No 58 of 2018. Gazette Publication on 14 November 2018. (The labour Amendment Act 2018). The Labour Amendment Act of 2018 was originally published in Bangla language; till today there is no official English version. This write bears all the responsibilities regarding the English translation.

According to the Bangladesh Labour Act (Amendment) 2018, workers of sea-going vessels are included in the definition of the worker which is a positive sign.⁴¹ In earlier, the workers of sea-going vessel were excluded from the definition of worker and thus could not claim the benefit of the Labour Act of Bangladesh.⁴² Gratuity payment to a labour is lawfully ensured by the amendment,⁴³ which is a financial support to a Labour. As a result, from now onwards, a worker will receive the wages of at least 30 (thirty) days, at the rate of the wages a worker received last, for every completed year of his/her service or for a period of his/her service exceeding 06(six) months or, in the case of his/her service of more than 10 (ten) years, the wages of 45 (forty five) days at the rate of the wages he/she received last, which is payable to such worker on the termination of his/her employment.⁴⁴ Festival bonus also ensured to all workers, which would be calculated according to service rules of industry or establishment where he/she is working.⁴⁵ In earlier, there was no clear provision of festival bonus to workers in the Labour Act of Bangladesh 2006, only mentioned about festival holidays.⁴⁶ Prior, handicapped worker could be appointed by employer, but 'no handicapped worker shall be employed in the work of a dangerous machine or hazardous work'.⁴⁷ However, at present, by the amendment of 2018, restriction has been imposed; now handicapped worker would not be appointed by employer.⁴⁸

Special consideration is given to tea plantation (tea factory) worker in the 2018 amendment. According to the Bangladesh Labour (Amendment) Act 2018, if a tea factory employee retires, he/she will receive the same benefits with other sectors of employees.⁴⁹ In past, tea factory workers only received Provident fund,⁵⁰ but now their financial benefit has been extended. Moreover, particular attention is also provided in maternity benefit. In the amendment, if a woman before giving any notice to the employer about her pregnancy gives birth to a child, in that case, within three days of the notice to employer, the woman should receive all the

⁴¹ Section 2, Bangladesh Labour (Amendment) Act 2018.

⁴² Section 1(4)(m), Bangladesh Labour Act 2006.

⁴³ Section 3(b), Bangladesh Labour (Amendment) Act 2018.

⁴⁴ Section 2(10), Bangladesh Labour Act 2006.

⁴⁵ Section 3(a), Bangladesh Labour (Amendment) Act 2018.

⁴⁶ Section 118, Bangladesh Labour Act 2006.

⁴⁷ Section 44(3), Bangladesh Labour Act 2006.

⁴⁸ Section 7, Bangladesh Labour (Amendment) Act 2018.

⁴⁹ Section 5, Bangladesh Labour (Amendment) Act 2018.

⁵⁰ Section 265, Bangladesh Labour Act 2006.

benefit of maternity period including maternity leave of eight weeks.⁵¹ In addition, the 2018 amendment also emphasised on good working environment. It repeals the previous section,⁵² and replaced a new section which states that in every establishment if there are more than 25 employees, there should be a suitable lunch room and rest room where the employees can take rest and eat their food; moreover, the rest room must be neat and clean with sufficient light and air circulation.⁵³ If an employee is death or missing then his/her undistributed wages will be given to his/her nominated person or legal successor.⁵⁴ In earlier, there is no provision of unpaid wages to legal successor.⁵⁵ According to the amendment, penalty for unfair labour practice also reduced from two year to one year and fine is also reduced from 10,000 BDT to 5,000 BDT by the 2018 Act.⁵⁶ Now, if any person contravenes any provision of section 195 (unfair labour practices on the part of the employers) of the Bangladesh Labour Act 2006 or section 196 (unfair labour practices on the part of workers), he/she shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to 5,000 (ten five) BDT, or with both.⁵⁷

9. Conclusion

The Bangladesh Labour Act 2006 is the principal labour law in Bangladesh that ensures the rights of millions of workers. After many years of campaigning, discussion and demands, it was finally enacted in 2006. It was expected that the legislation will meet the demands and needs of labours throughout the whole country. However, after a critical review of the Act, this paper has revealed that the law has many deficiencies and inadequacies; particularly the application and definition of ‘worker’ which is complex and ambiguous, and as a result, it is not a practically orientated law. Although the main definition of a worker is provided in s 2(65), but in different chapters of the Act, separate/special definitions of a worker have been mentioned that create difficulties and confusion in its

⁵¹ Section 8(b), Bangladesh Labour (Amendment) Act 2018.

⁵² Section 93, Bangladesh Labour Act 2006. In this section, for a specific rest room, the number of employee of an establishment was minimum 50.

⁵³ Section 10, Bangladesh Labour (Amendment) Act 2018.

⁵⁴ Section 18, Bangladesh Labour (Amendment) Act 2018.

⁵⁵ Section 131, Bangladesh Labour Act 2006.

⁵⁶ Section 39(a), Bangladesh Labour (Amendment) Act 2018. See, also previous section 291 (Penalty for unfair labour practice) of Bangladesh Labour Act 2006.

⁵⁷ Ibid.

application. Furthermore, section 3 of the Labour Act states that the act is applicable to the whole of Bangladesh subject to exceptions. However, these exceptions are not mentioned clearly; the provisions of its exceptions are scattered in different sections of the Act. Moreover, after reviewing the whole Act, this paper suggests that its application is limited to specific groups of people. For example, in the case of the agricultural worker, if the numbers of worker are less than five, the Act will not be applicable (s.4(n)). Moreover, whatever the number is, in the case of domestic worker - the Act is inapplicable (s.4.(o)). A more problematic issue is that these groups of people are excluded from the list of workers' compensation that are mentioned in the Fourth Schedule of the Act as per s.150(8).

Recently, the labour act of Bangladesh was amended in 2018 by the Bangladesh Labour (Amendment) Act 2018. The objective of the amendment is to remove the deficiencies and to make a more suitable law for the labour. By the amendment, the definition of worker is extended, now sea-going vessel's workers will also receive protection under the Bangladesh Labour Act. Moreover, women will enjoy more maternity benefit than the past, financial benefit to tea-factory employee has been extended, and emphasized is given on good working environment. In addition, handicapped workers no longer be appointed by an employer - all these are indicating positive signs for workers. However, in many cases, a country like Bangladesh, handicapped worker supports to his/her family while there is no social benefit. Thus, by providing restriction of employment to the handicapped worker, one side, government is ensuring their human rights; on the other side, if the handicapped worker do not financially support their families, in that situation, they would face more financial challenges. Thus, alternative benefit or social support is needed to be considered for handicapped workers.

Therefore, this paper suggests that more review and consideration is needed for an effective labour law of Bangladesh that will more constructively ensure the rights of workers, whatever the designation he or she has.

ADAPT is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the Centre for International and Comparative Studies on Law, Economics, Environment and Work, (DEAL) the Marco Biagi Department of Economics, University of Modena and Reggio Emilia, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at www.adapt.it.

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