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Labour Governance in Bangladesh: Democratic Practices and Deficits

Khan, Md. Syam Ali

University of Rajshahi

LABOUR GOVERNANCE IN BANGLADESH:
DEMOCRATIC PRACTICES AND DEFICITS

A DISSERTATION SUBMITTED TO THE
INSTITUTE OF BANGLADESH STUDIES, UNIVERSITY OF RAJSHAHI
FOR THE PARTIAL FULFILLMENT OF THE DEGREE OF
DOCTOR OF PHILOSOPHY

MD. SYAM ALI KHAN
PhD Fellow
Session 2010-11

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Researcher: **Md. Syam Ali Khan**
PhD Fellow
Session: 2010-11
Institute of Bangladesh Studies
University of Rajshahi, Rajshahi

Supervisor: **Dr. Jakir Hossain**
PhD (Trento), MSc (LSE)
MSc (South Bank), PGD (Carleton)
Former Visiting Fellow (Cornell)
Associate Professor
Institute of Bangladesh Studies
University of Rajshahi

INSTITUTE OF BANGLADESH STUDIES
UNIVERSITY OF RAJSHAHI
July 2013

Dedicated to:

My Parents—

Md. Amanot Ali Khan and Most. Jobeda Khatun

My Children—

Md. Abrar Hameem Khan [Sreush] and Mst. Afiah Zahin Khan [Safa]

And—

The working poor struggling to establish their democratic rights

DECLARATION

I do hereby declare that the dissertation entitled "*Labour Governance In Bangladesh: Democratic Practices and Deficits*" submitted to the Institute of Bangladesh Studies, University of Rajshahi in partial fulfillment of the requirement for the degree of Doctor of Philosophy in Political Science is exclusively my own and original work. No part of it, in any form, has been submitted to any other University or Institute for any degree, diploma, or for other similar purposes. All the evidences derived from the published and unpublished works of other authors have been acknowledged, and references have been cited.

Md. Syam Ali Khan
PhD Fellow
Session: 2010-11
Institute of Bangladesh Studies
University of Rajshahi, Rajshahi

Rajshahi
July 31, 2013

CERTIFICATE

I am pleased to certify that the dissertation entitled *"Labour Governance in Bangladesh: Democratic Practices and Deficits"* is an original work of Md. Syam Ali Khan. The research has been conducted under my academic guidance and supervision. The researcher has himself prepared the dissertation, and this is not a conjoint work. He has made distinct contribution to the field of Political Science through this original work. This dissertation or any part of it, as I am aware, has not been submitted to any other university for any degree.

I have gone through the draft and final version of the dissertation and found it satisfactory for submission to the Institute of Bangladesh Studies, University of Rajshahi in partial fulfillment of the requirement for the degree of Doctor of Philosophy in Political Science.

Dr. Jakir Hossain
Associate Professor
Institute of Bangladesh Studies
University of Rajshahi

Rajshahi
July 31, 2013

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Md. Syam Ali Khan

Rajshahi
July 31, 2013

ABSTRACT

The current state of labour governance in Bangladesh is characterized by weak enforcement and non-compliance of labour law provisions, violation of workers' rights, dysfunctional bipartite and tripartite institutional mechanisms, absence of workers' participation, and misrepresentation. The question I address in this dissertation is whether the existing labour governance ensures rule of law, fundamental rights and freedom, and provides scope for workers' participation and representation; and whether the workers' are able to exercise their fundamental rights democratically. I explore that the regulatory framework incorporates the principles of rule of law, includes workers' fundamental rights and freedom, and devises a number of institutional mechanisms for workers' participation and representation. Still, the labour laws lack some important principles and obligations towards social protection and wellbeing of the workers, exclude some categories of workers from—and impose restrictions on—the exercise of democratic rights, and hardly provide any scope for workers the right to opinion and expression in matters that govern their daily working lives. This paradox of the regulatory framework rather inhibits than promotes democratic practices. The study finds that the democratic provisions of the labour laws are hardly enforced by the system of labour administration and labour inspection. I argue that this non-execution of democratic provisions not only deprives the workers of their rights they are entitled to but also refrains them from the institutional mechanisms they are supposed to participate and represent. The dissertation shows that the current unstable state of labour governance is partly due to the insufficient democratic provisions in the regulatory framework and partly due to the non-execution and violation of labour law provisions by the state and non-state actors. Unless the practice of democracy is promoted through proper enforcement of labour laws or otherwise the deficits are not removed, all initiatives will fail to democratize labour governance and to achieve better labour and industrial relations.

ACRONYMS

AG	Advocacy Group
AMRC	Asia Monitor Resource Center
BBC	British Broadcasting Corporation
BEA	Bangladesh Economic Association
BEPZA	Bangladesh Export Processing Zones Authority
BFFEA	Bangladesh Frozen Food Exporters Association
BGMEA	Bangladesh Garments Manufacturers and Exporters Association
BILS	Bangladesh Institute of Labour Studies
BJMA	Bangladesh Jute Mills Association
BJMC	Bangladesh Jute Mills Corporation
BJSA	Bangladesh Jute Spinners Association
BKMEA	Bangladesh Knitwear Manufactures & Exporters Association
BLA	Bangladesh Labour Act
CB	Collective Bargaining
CBA	Collective Bargaining Agent
CEACR	Committee of Expert on the Application of Conventions and Recommendations
CEDAW	Convention on Elimination of all Forms of Discrimination Against Women
CG	Campaigning Groups
CIF&E	Chief Inspector of Factories and Establishment
CLS	Core Labour Standards
CMC	Canteen Management Committee
CRC	Convention on the Rights of the Child
CSO	Civil Society Organizations
DoL	Directorate of Labour

EC	European Council
EPZ	Export Processing Zone
EU	European Union
EWWSIRA	EPZ Workers Welfare Society and Industrial Relations Act
FDI	Foreign Direct Investment
FGD	Focus Group Discussion
FoA	Freedom of Association
FY	Fiscal Year
GCC	Quality Circles Group
GDP	Gross Domestic Product
GP	Governance Pro
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International covenant on Economic, Social, and Cultural Rights
IDA	International Development Agency
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
IR	Industrial Relations
ITUC	International Trade Union Confederation
JCC	Joint Consultative Committee
KII	Key Informant Interview
KSIWWA	Khulna Shrimp Industry Workers' Welfare Association's
LMC	Labour Management Committees
MDG	Millennium Development Goal
MoLE	Ministry of Labour and Employment
MoU	Memorandum of Understanding
MP	Member of Parliament
MWB	Minimum Wages Board
NGO	Non-government Organization

NLRA	National Labor Relations Act
NTC	Transnational Corporations
OSH	Occupational Safety and Health
RMG	Ready Made Garment
RoL	Rule of Law
SAFE	Social Activities For Environment
SFYP	Sixth Five Year Plan
SKOP	Sramik Karmachari Oikya Parishad
SOE	State Owned Enterprises
TCC	Tripartite Consultative Council
TQM	Total Quality Management
UDHR	United Nations Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
UNHR	United Nations Human Rights
USA	United States of America
USD	United States Dollar
USSR	Union of Soviet Socialist Republic
WB	World Bank
WFTU	World Federation of Trade Unions
WJP	World Justice Project
WPC	Workers Participation Committee
WWS	Workers Welfare Society

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CHAPTER I
INTRODUCTION

People's aspirations towards democratic governance for prosperity, security, welfare and peace have become a theme of increasing importance. There are normative claims that governance through 'liberal democratic institutions are essential for development in every society' (Norris 2012). Scholars around the world agree that democratic institutions and procedures help achieving development goals as they strengthen choice, voice and accountability; providing opportunities for all members of the community to express their demands, aspirations and grievances. 'The twentieth century has established democratic and participatory governance as the preeminent model of political organization. Concepts of Human rights and political liberty are now very much a part of the prevailing rhetoric' (Sen, 2000: xi).This is true for national governance in general and Community governance in particular. A stable and well-functioning labour sector is conducive to build a liberal progressive democratic state, helpful to economic development and favourable to social stability.

Labour sector in Bangladesh is a key policy area as it plays important role in the country's political and economic directions. But this promising sector is increasingly being challenged both from inside and outside to take note of the changes. A recent study states that:

> Bangladesh's industrial sectors have been affected over the years by worker unrest and industrial instability. The failure of Bangladesh to achieve a well-functioning labour sector and its inability to secure labour rights of its citizens has important ramifications, not only for the intrinsic development objective of protecting workers' rights and wellbeing, but also for achieving Bangladesh's overall development objectives more general (Kolben & Penh, 2008).

Beyond doubt, labour sector in Bangladesh is characterized by non-compliance of rights issues, poor enforcement of labour laws, weak mechanisms of industrial and labour relations, and lack participation and representation. These unfair labour governance processes create and increase only discontent among workers and that cause labour unrest which in turn leads to lower productivity in industry and lower economic growth. So, this sector needs to be well managed and governed by democratic regulatory framework for ensuring rule of law, fundamental rights, and participation and representation. Bangladesh, since its inception, adopted a democratic constitution and started initiatives to democratize governance at all levels of public sphere but practices of democratic norms in labour governance still lag behind. More interactions rather than conflict and mistrust among the state and non-state governing actors e.g., state, employers, and workers, are being emphasized to stop unfair labour practices for the betterment of the sector. In a study on Bangladesh labour sector it has been remarked that:

> Failure to address labor sector issues and correct asymmetrical access to resources may increase a country's vulnerability to social and political dislocations that can adversely affect democracy, stability, and/or economic growth.…As people believe that their rights are respected, their voices are heard, and their access to education and livelihoods is improved their commitment to their communities and nations is strengthened (Salinger & Saussier 2010: 2).

Though Bangladesh adopted a labour Policy in 1972, a comprehensive and complete labour law came into being in 2006. Labour movements have always been there to establish democratic rights and institutions, the ruling elites have ignored them throughout the history as Bangladesh is a labour surplus country and industrial elites here can hire and fire workers with more ease. The advancement of labor in Bangladesh has been historically affected by competing interests among elites who, on the one hand, benefit from the support of labor but, on the other hand, seek to

preserve the economic interests of industrial elites (Kolben and Penh 2008). It is also seen that the political fascination and affiliation of workers and mainstream trade unions is not so successful to safeguard and enhance labour interests.

However, with the rise and growth of export oriented ready-made garments and some other industries in last couple of decades the workers have grown in numbers and the labour sector has been more consolidated. With this consolidation and solidarity of the workers, a number of internal and external drivers for change e.g., trade unions, federations, civil society organizations, workers' rights activists, non-government organizations (NGOs), buyers, consumers, donors, international organizations have been added to foster democratic governance in labour and industrial sector. All these factors have created a substantial pressure for democratizing the processes and procedures of labour governance from plant level to national level. This may contribute to the development of industrial sector in general and diverse stakeholders in particular.

WHY DEMOCRACY MATTERS IN LABOUR GOVERNANCE?

The application of democratic norms in the governing processes attaches some instruments and incentives that transform governance to good governance. The basic ingredients of democracy are rule of law, fundamental civil and political freedom, and participation. Application of these principles to the governing processes safeguards peoples' fundamental rights and makes governance pro-people, responsible, responsive, lawful and equitable. Consequences of such governance are economic growth and overall development. 'Democracy and good governance thus form two legs of the triad that propels a society forward. The third leg of that triad is economic development. And this follows from the context of good and democratic governance' (Diamond, 2004: 2).

Democracy is important in labour governance for workers, employers, and over all industrial and economic development. It ensures rule of law which provides workers with fundamental rights, protection against unfair labour practices, and justice against exploitation and discrimination. It empowers workers with rights that ensure voice to express grievances and interests, makes room to organize and bargain collectively, and aids to participate and represent in formal associations. The implications of workers participation are discussed below:

BETTER EMPLOYMENT RELATIONS

Employment Relations is in essence 'employer-employee relationship' (Kaufman 2007: 7). It includes every incident and aspect—behaviours, outcomes, practices, and institutions—that emanate and grows out of employment relationship. Actually, it is broader than the term 'industrial relations' and it is the whole study of union and non-union, private and public, formal and informal relationship. That is why; better industrial relation is an outcome of a better employment relation which comes out of formal and informal discussions and interactions among employers and employees.

In every industrial society there are a number of bipartite and tripartite formal and informal institutions and organizations in plant/enterprise level, industrial sector level and national level. The state of functioning of these mechanisms, determine the state of employment relations. Plant level bipartite formal organizations are Participation Committee, and Collective Bargaining Agents (CBAs). Proper participation in and functioning of these organizations can contribute to proper operation of an enterprise through better solution of shop floor problems like performance of tasks, hours of work, conditions of work, daily work assignments etc.

BALANCING EFFICIENCY, EQUITY AND VOICE

Business requires efficiency to face the challenges of competition. A sole focus on efficiency reduces the employment relationship to a purely an economic transaction that workers endure solely to earn money. But work, as Budd argues, is a fully human activity—in addition to being an economic activity with material rewards undertaken by selfish agents, work is also a social activity with psychological rewards undertaken by human beings in democratic societies—so employees are entitled to fair treatment (equity) and opportunities to have input into decisions that affect their daily lives (voice). In other words, the objectives of the employment relationship are efficiency, equity, and voice (2004: 2).

Practice of democracy in labour governance enhances workers dignity by balancing efficiency, equity and voice. Employers view employment as an opportunity and they demand economic prosperity through efficiency without voice. In democratic society economic performance cannot be the only determinant of employment relationship. Democratic ideals of equality and right to expression demand that employment relation must balance efficiency with voice over what is decided. Budd argues that:

> Work is not simply an economic transaction; respect for the importance of human life and dignity requires that the fair treatment of workers also be a fundamental standard of the employment relationship-as are the democratic ideals of freedom and equality…. the importance of self-determination for both human dignity and democracy mandate employee input and participation in work-related decisions that affect workers' lives…. a democratic society should seek to balance efficiency, equity, and voice (2004:1).

PRODUCTIVITY AND PROFITABILITY INCREASE

Workers' participation in decision making is justified on two grounds viz. social obligation which is followed in most of the members of European Union, and productivity and profitability that is widely followed in the USA. Yavasi (n.d., P.5) argues that 'when employees treated as members of the company, they come to think of themselves as belonging to and having a stake in the company. They develop loyalty to the company and concern for its welfare. When they are granted the right to participate in management, they are more ready to promote its productivity and profitability'. In a similar tone Levitan and Werneke (1984: 28) agree that management sets goals in broad terms, but at the lower levels there is considerable room for variation both in interpretation and effort. To achieve greater productivity, management needs to share authority with workers by giving the employees a greater voice in determining production processes. From the above discussion it can be claimed that inclusive decision making fosters productivity and profitability.

INDUSTRIAL GROWTH AND ECONOMIC DEVELOPMENT

The outcomes of democratic labour governance such as better employment relations, productivity and profitability increase, and balance of efficiency and voice contribute to industrial growth which in turn leads to economic development. Generally, when productivity goes up, production cost comes down and profitability rises. A portion of the increased profit is retained in the business for re-investment which generates new employment. In this way, industrial growth occurs. This industrial growth fosters economic development in many ways such as GDP growth, export earnings growth, surplus Balance of Payment.

DEMOCRATIC CONSOLIDATION

Democratic governance in labour sector contributes to the consolidation of broader political democracy in two ways. Firstly, workplace acts as a ground for participation, deliberative decision-making, and control. All these practices and experiences develop individual values and attitudes, psychological qualities, and citizenship skills like understanding of rights and duties among the workers, which in turn encourage public participation in the wider democratic process (Foley & Polanyi 2006: 176). Secondly, economic development makes democracy stable through 'causal chains of industrialization, urbanization, education, communication, mobilization, and political incorporation' (Shi, 2004: 1). Lipset also agrees that 'democracy is related to the state of economic development. Concretely, this means that the more well-to-do a nation, the greater the chances that it will sustain democracy' (1959: 75).

WHY DEMOCRACY MATTERS IN BANGLADESH LABOUR GOVERNANCE?

Labour governance in Bangladesh is characterized by the weak enforcement of labour laws, non-compliance of employment and working conditions, violation of workers' rights, lack of freedom of association, ineffective grievance handling mechanisms, poor rate of unionization, lack of workers' participation and representation etc. It seems that none of the actors of labour governance practices democracy or comply with the democratic norms. Employers do not comply with the laws, workers cannot exercise their legal and fundamental freedom and rights, and labour administrations fail to ensure rule of law. All these anomalies and undemocratic governance result in labour unrest that hampers industrial growth and economic development. So, democracy in Bangladesh labour governance is needed for the following benefits:

LABOUR UNREST DECLINE

Labour unrest declines with the betterment of employment relations. When conditions of employment and work are complied with, payment of wages is fair, workers' rights are respected, and grievances are handled with care, workers' discontent diminishes and with it alienation, 'non-productive practices such as absenteeism, turn-over, and poor-quality work' decline (Levitan & Werneke 1984:28). When the workers enjoy their rights and freedom; participate and represent in formal organizations to express their aspirations, visions, and grievances; get easy access to justice, they become satisfied with their jobs and give the violent actions up. Thus democratic governance contributes to decline labour unrest.

DEVELOPMENT GOALS ACHIEVEMENT

Bangladesh, now, is seriously in business to achieve some predefined goals e.g., Millennium Development Goals (MDGs), Vision 2021, Sixth Five Year Plan (SFYP) 2011-2015, and Decent Work for All. Democratic governance of labour sector can better contribute to achieve these targets and goals.

To eradicate extreme poverty and hunger (MDG1), and develop a global partnership for development (MDG2) require productivity growth and employment generation that is possible through the industrial growth and development. Vision 2021 delineates eight goals of which goal one 'to become a participatory democracy', goal two ' to have an efficient, accountable, transparent and decentralized system of governance', goal three 'to become a poverty-free middle-income country', goal five 'to develop a skilled and creative human resource', goal six 'to become a globally integrated regional economic and commercial hub', and goal eight 'to be more inclusive and equitable society' are directly or indirectly related to labour and industrial development issues.

In the context of MDGs and Vision 2021, the present government has set some core targets in the Sixth five year plan (SFYP) 2011-2015. Core target one 'Income and Poverty' comprises five specific targets the third of which is 'Creating good jobs for the large pool of under-employed and new labor force entrants by increasing the share of employment in the industrial sector from 17 percent to 25 percent'[1] . Besides, the SFYP in its Strategy for higher growth and creating good jobs sets targets to attain GDP growth of 7.3%, and raise industrial sector's GDP share from 30% (FY10) to 40% by 2021, raise the share of manufacturing sector in GDP from 17.2% (FY10) to over 20%, and increase the employment share of manufacturing sector to 15% by 2015[2]. With these goals, visions, and targets 'Decent Work' has been added as a new concept in development issue. The concept is modelled by the ILO in 1999, and has been accepted and endorsed by the world community as an international labour standard. Decent work denotes the opportunities of decent and productive work for men and women, with the conditions of freedom, equity, security and dignity. To achieve all these goals and targets industrial peace, stability and productivity growth is necessary, which can be ensured through democratic labour governance.

STATEMENT OF THE PROBLEM

The current state of labour sector in Bangladesh seems to be misgoverned. Despite having a regulatory framework and an administrative setup the sector is strife-torn for quite a long time. As the sector is tied with the production of goods and services, it should be kept well-functioning and tidy through proper governance for the sake of economic growth and stable political democracy. But for the last couple of years, the governance state of the sector seems to be dismal and disarray. The workers in this

[1] Sixth Five Year Plan, FY2011-FY2015, Part I. P.20.
[2] Sixth Five Year Plan, FY2011-FY2015, Part I. P.44.

sector are aggrieved over issues like labour rights violation, poor minimum wage, lack of employment and job security, irregular and delayed payment of salaries, deprivation and exploitation through extra time and over time payment, insufficient measures of occupational safety and health (OSH), hard and even inhuman working conditions etc. The results of these malpractices of labour laws by the state and non-state actors are as follows:

LABOUR RIGHTS VIOLATION

Labour rights, incorporated in the Bangladesh Labour Act (BLA) 2006, originate from various sources. These sources include—(i) Rights Legislation (Constitution of Bangladesh, Bangladesh Labour Act (BLA) 2006, EPZ Workers Welfare Society and Industrial Relations Act (EWWSIRA) 2010), (ii) Rights Conditionality [Conventions adopted by the International Labour Organization (ILO) since 1919, the United Nations Declaration of Human Rights (UDHR) 1948, United Nations' International covenant on Economic, Social, and Cultural Rights (ICESCR)1966, and International Covenant on Civil and Political Rights (ICCPR)1966] and (iii) Voluntary Codes [The Convention on the Rights of the Child (CRC) 1989, and Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) 1979, and various Corporate Codes of Conduct).

In Bangladesh the rights of the workers are defined and governed mainly following the Constitution, National Labour Policy, different labour laws, and the 33 ILO Conventions that have been ratified till to date. A recent study claims that:

> Bangladesh Labour Act (BLA) 2006 is the main instrument to protect the rights of the workers and ensures decent work for them. It is the latest, and as well as the comprehensive law of the country that has amalgamated the provisions of previous 25 labour laws into a single one. Despite having this comprehensive law, not all workers of the country still are getting chances to enjoy all of their rights, and violation of the provisions of law is widely evident. (Hossain, Ahmed and Akhter, 2010: 7-8)

The labour force in Bangladesh is engaged in two sectors. The informal and agricultural sector employs nearly 78% of total workforce and the rest 32% is engaged in formal and industrial sector of which the larger portion is engaged in Ready Made Garment (RMG) sector. The rights situation and working conditions of workers in this sector, as Mahmud & Kabeer (2003: 25) point out:

> Although export garment sector is, strictly speaking, in the formal economy and hence subject to national labour legislation, it is characterized by informal economic characteristics: easy entry and exit, an absence of written contracts, irregularity of payment, violation of health and safety regulations, long hours of overtime, low levels of unionization and high rates of turnover in the workforce.

In the BLA 2006, workers' rights are clustered into five Core Areas[1]—(i) employment relations, (ii) occupational safety and health, (iii) labour welfare and social protection, (iv) labour relations and social dialogue, and (v) enforcement—where the rights and obligations are explained and properly protected. In practice those rights are being violated on a regular basis by the employers.

The law impels the employers to maintain some rights of employment like issuing appointment letter, identity card, attendance card, and service book to the workers, and keeping an up to date employee register. But most of the employers issue appointment letters to less than half of the workers and for others they issue only identity cards and attendance that are 'with less legal value and provide limited protection against fraudulent employer practices' (War on Want 2009:2). Besides, they care less for service book and employee register. Thus the workers always suffer from the risk of job security.

[1] Hossain, Ahmed and Akther (2010) divide Workers' Rights indicators in five Core Areas. They have explained these rights with 18 Broad Indicatorsunder which there are so many specific indicators.

Though the law fixes eight hour working time per day and 48 hours per week, the employers force the workers to work for 11-30 extra hours per month to meet the unrealistic production target and these extra hours are not considered overtime and therefore unpaid. Often, the workers are to work for 60-140 hours more as payable overtime. Sometimes, the workers are to work for night-shift following a long day shift. This is evidently inconsistent with the provisions of law (Hillary, 2011).

As per law, the workers are entitled to enjoy 21 days paid casual leave per year, 14 days paid sick leave, and 16 week paid maternity leave and one day off a week. But in practice the paid sick leave is not allowed and maternity leave is rarely provided. In most cases asking for maternity leave ends the job.

The BLA 2006 states that the employer must ensure the basic standards of health and safety in the workplace. But the violations of health and safety provisions are rampant in most workplaces. Insufficient and even inactive fire-fighting equipment, lack of functioning fire escape, safe drinking water, limited access to toilet facilities, blistering temperature, ineffective ventilation system, absence of medical facility during work time specially at night shift when most accidents happen.

The law prohibits all types of discrimination and equal rate of pay for men and women. But there is gender discrimination in the factories both in employment status wage rate. Usually the female workers are employed in lower type of jobs and earn far less than their male counterpart even for doing the same job. Besides, the female workers are more vulnerable as they are more likely to face both verbal and physical abuse, maltreatment and punishment. A number studies (Hillary 2011; War on Want 2009) confirm that the abuse of women very often takes the form of obscene language and humiliation, beating, slap and/or hit in the face, molestation, sexual advances,

touched inappropriately, job threat, threat to send to jail, forced undress, work privileges in return for sex and so on. Surprisingly in case of protest and refusal to do so they are sacked from the job.

The law permits freedom of association and every worker is free to form or join any association. But any effort of the workers to form trade unions is suppressed by the employers. If any worker tries to unionize other workers is very often punished and retrenched. 'At times hooligans in the pay of the owners threaten the workers to kick out of factory for talking about trade unions' (War on Want, 2009).

From the above discussion it becomes clear that the workers cannot enjoy their democratic rights as has been protected in the law. The workers' struggle to ensure rights in the workplace and to demand the proper enforcement of the legal provisions is followed by vigorous repression.

LABOUR REPRESSION

It has been stated that '[t]he inhuman repression of workers that is characteristic of a majority of the Bangladesh's workers often has led to round of protests and blockades in and around different factories in recent years. The private manufacturing sectors have for years thrived on the exploitation of its workers' (Hossain, Ahmed, & Akter, 2010:7). Protest, low in intensity and small in scale, had always been there but it was strengthened since 2006 to onward. According to a report of Asia Monitor Resource Center (amrc) the protest against this exploitation became more widespread, more radical and more decisive during January – June, 2010. In these protest demonstrations the workers demanded basic minimum wage at TK 5000, an inflation-adjustment wage mechanism, shutting down the factories lacking basic safety measures, punishment of non-compliant factory owners, Tk-1,000,000 compensation for the family of each worker who dies in accident inside the factory, amendment of Bangladesh Labour Act 2006 in line with ILO conventions, etc. (amrc, 2011-06-28:1/3).

Though the demands were democratic and morally or/and legally justified, the employers and the government did not try to solve and consider the issues through deliberative process of democracy. They jointly ignored those demands and suppressed the agitated workers violently by deploying a huge number of law enforcing agencies like police and Rapid Action Battalion, filing criminal cases against several thousands of unidentified workers and trade union leaders, arresting hundreds of workers and torturing them severely. According to an estimate of amrc (June 2011:3/3) during the period of 2008-10 more than 4000 workers were arrested including trade union leaders. In fact, the repressive measures[1] taken by the government failed to address the democratic, legitimate and genuine demands of the workers and consequently disorganized them.

DEFORMATION OF WORKERS' ORGANIZATION

Due to lack of workers' rights exercise and violent repression the workers cannot form their organizations like trade unions which are 'considered to be the organized voice of the workers' (Mahmud & Kabeer, 2003: 25). It has been argued more than a century ago that 'a trade union is essentially an organization for securing certain concrete and definite advantages for all its members' (Web & Web, 1902:138). Unfortunately Bangladesh's workers do not have enough opportunity to form effective trade unions though there are legal provisions. Munck (1988:106) claims that 'trade union remains the basic form of organization for working people….The role of a trade union is essentially defensive, pursuing collectively as an organization

[1] This repression drew attention of some foreign labour rights promotion organization like Clean Clothes Campaign, Institute for Global Labour & Human Rights, International Labour Rights Forum, Sweat-free Communities and so on. Tessel Pauli, a workers' rights activist of Clean Clothes Campaign, wrote in a column on 5 August 2010, that 'the Bangladesh government should immediately stop their witch hunt against garment workers and their organization, and instead address the root causes destabilizing the garment industry'.

of workers, the defence of their living standards and the improvement of working conditions'. It provides voices for the workers to balance between efficiency and equity in building democratic industrial and labour relations. Trade unions also ensure democratic leadership practices of the working class through the election of their representatives. These elected representatives participate in the formal bipartite and tripartite discussion meeting.

Many scholars (Braveman 1974; Durkheim 1964, cited in Foley & Polani 2006:177) 'believe that employees have a moral right to humane, non-alienating work environment, which therefore means that employees must have a say in what is going on at work'. But the workers of Bangladesh fail to raise their voice against the mismanagement and exploitation that is going on for so many years in the enterprise level or in the industrial arena. This creates a representation gap in the democratic setups as proposed in the BLA 2006 *viz.*Workers Participation Committee (WPC) (Sec.205), Collective Bargaining Agents (CBAs) (Sec.202), Minimum Wage Board (MWB) (Sec.138), Labour Courts (Sec.214), and National Council for Industrial Health and Safety (Sec.323), Tripartite Consultative Council (TCC) where the workers' representatives cannot effectively and democratically participate and play their role as a strong collective bargaining partner to settle individual and industrial disputes.

INEFFECTIVE ENFORCEMENT AND DISPUTE SETTLEMENT MECHANISMS

Disputes in industrial relations are of two types — individual and industrial.

a) Individual dispute (Sec.33 & 213) is related to the 'rights' of an individual worker regarding the conditions of employment.

b) Industrial dispute (Sec.209) is related to 'interest' of all workers and the employer.

To resolve these disputes, the BLA 2006 provides two authorities—(a)Non–adjudicatory and administrative bipartite and tripartite authorities; (b)Adjudicatory authority.

Non–adjudicatory and administrative bipartite and tripartite authorities

The BLA 2006 provides for the formation of some bipartite and tripartite dispute settlement mechanisms to settle disputed issues prior to the court. The mechanisms are discussed below:

Participation Committee (Sec.205)

It is a bipartite democratic mechanism to promote mutual trust, understanding and cooperation between the employer and the workers. But in reality the committee is managed by the employer and never speaks out against the factory abuse.

Collective Bargaining Agent

Collective bargaining is primarily a bipartite system of dispute settlement in the plant level. According to BLA 2006 (Sec. 202), it is obligatory for every establishment to form a CBA to bargain with employer over matters of employment, the conditions of work, and to conduct cases on behalf of any individual worker or group of workers etc.

But existing literature proves the process of collective bargaining ineffective. Because the employers are reluctant to negotiate on terms and conditions of employment and on matters relating to workers wage. Al Faruque (2009: 34) argues that 'the employers or ruling parties very often buy-off or victimize CBA leaders, and the management does not recognize the CBA leaders as equal partners in the negotiation'. So the collective bargaining process fails to settle the disputes at the initial level and the issues go to the longer process of industrial dispute settlement mechanisms.

Conciliator [Sec.210 (5)]

It is a Tripartite democratic mechanism to conciliate industrial disputes related to matters of interests. Evidences show that the rate of successful conciliation is very low. Al Faruque (2009: 53) remarks that 'in fact, conciliation has become a weak machinery in settlement of dispute'.

Arbitrator [Sec.210 (12)]

Despite legal arrangement as an effective tripartite mechanism, the arbitration process of dispute settlement is voluntary in nature. So neither of the disputants go in search for a neutral arbitrator instead they prefer to refer the dispute to be settled in the labour court. So the body is proved to be inactive.

Minimum Wages Board (Sec.138)

Itis a four member body with a chairman, one independent member, one member from employers and one member from workers. The board is supposed to recommend minimum wages for workers considering cost of living, standard of living, cost of production, productivity, price of products, business capability, and economic and social conditions of the country. Hossain (2010: 5) states that:

> Undoubtedly, the wage setting is a techno-mathematical fix, but more so, it is a tripartite negotiation within the frame of just industrial and labour relations that determines what share of value added goes to workers in the form of wages and what share goes to employers in the form of profit.

Unfortunately the Minimum Wage Board 2010 fails to balance between profit and wage as it fixes Tk. 3000 as minimum wage ignoring workers' demand of Tk. 5000. This is too short to realize the aspirations of the workers and thus the wage board fails to pacify the workers' anger and grievances that lead to further worsening of relations between the employers and the workers.

Tripartite Consultative Council

It is a tripartite forum for Social Dialogue. It is formed in accordance with the ILO convention of 1976 (No.144) ratified by Bangladesh in 1979. It is a body of 45 members (15 each representing the government, employers, and workers group). Its functions are to formulate labour policy, amend existing labour laws, and adopt ILO Conventions to minimize conflict situations, to harmonize relations between employers and trade unions, to achieve workers' right to decent work etc. However, social dialogue in Bangladesh is yet to flourish and the body proves to be ineffective to handle the grievances of the workers as unrest continues for a long time in industrial arena.

Chief Inspectorate of Factories and Establishments

It is formed in accordance with Sec.318 of the BLA 2006. It is headed by a Chief Inspector and he is assisted by a number deputy inspectors and assistant inspectors to inspect working conditions, workers' rights situation, and application of labour laws in the factories all over the country. In practice, the inspection activities seem to be very rare. A recent study found that:

> Most workers of garment sector and all of construction sector have never found any government official to come and inspect their workplaces. There is allegation that the officers often go back without talking to workers, they take information from the employers only. However, more importantly inspections do take place only after some accidents/occurrences like the fire brigade taking actions after fire. No accident/ incidence prevention inspection was reported (Hossain, Ahmed, & Akter, 2010:100).

Adjudicatory Authority

The BLA 2006 provides adjudicatory authorities to perform judicial functions regarding industrial disputes. Virtually it is the highest authority to safeguard workers' rights. These authorities are discussed below:

Labour Court (Sec.214)

It is a formal judicial body to provide justice to the workers. There are seven Labour Courts in Bangladesh. Among them three in Dhaka, two in Chittagong, one in Khulna and one in Rajshahi. It is formed with a District Judge or Additional District Judge as Chairman and two members of which one is the representative of the employers and the other is the representative of the workers.

The labour Court is considered to be the last resort to deliver justice to the disputants, to protect workers' rights that they democratically and legally deserve. But the performance of the courts in delivering justice through verdict, award or decision within 60 days from the entry of the dispute proves to be poor. In the year 2010, a total of 13,739 cases were filed to the labour courts across the country for disposal of which 9,902 cases remained pending at the end of the year and only 3,837 cases were mitigated within the year (DoL, 2010: 84).

Labour Appellate Tribunal (Sec.218)

This is the highest labour adjudicative body. It is formed with a Chairman in the rank of a Judge or an Additional Judge of the Supreme Court. Any disputant aggrieved by the decision, award or judgment delivered by the labour court may prefer an appeal to the Labour Appellate Tribunal within sixty days of the delivery. The tribunal is also bound to rule over the decision or sustain the decision within 60 days and the decision of the Tribunal in such appeal shall be final.

The performance of the tribunal is very slow. Al Faruque (2009:58) finds that during the period of 1990-2006, an annual average of 278 appeals were filed for disposal of which 33.45 percent appeals were disposed of during the year and 66.55 percent appeals were pending at the end of the year.

From the above discussion it may be conclude that the grievance handling mechanisms and dispute settlement machineries either do not or cannot pacify the workers' grievances and consequently the labour unrest happens.

LABOUR UNREST

Labour unrest in Bangladesh has been a common phenomenon for quite a long time. Any discontent among the workers over any issue in any enterprise or industry turns the labours to mob and they go street for violent actions. It seems that they have no democratic space or forum/channel to express their voice and grievances and to realize their aspirations and demands.

Labour unrest in massive scale and violent activities that ensued in the Ready Made Garment (RMG) industry in Bangladesh on May 23, 2006 caused damage to at least 300 garment units and consequently a loss of around four billion taka (nearly USD70 million) (Morshed, 2007:117). This continued for the following years. Accounts given by amrc (June 2011:1/3) show that in 2010, there happened 72 incidents of labor unrest from January - June that left at least 988 workers injured in police actions while 45 workers were arrested and more than 10,000 were sued and 78 workers were sacked. The unrest grew again violent in December 2010. There were fatal clashes between police and workers on 12 December and four workers were shot dead by police during demonstrations demanding a liveable minimum wage of BDT 5,000 (USD 72) as well as workplace safety, an inflation-adjustment wage mechanism and punishment of non-compliant factory owners in the port city of Chittagong.

Why the workers turn to mob and go violent without taking democratic ways to solve or settle down the individual and industrial disputes through deliberation or through operative and active institutional mechanism is a controversial question.

Employers, Employers' Associations and Employers' Federation (BGMEA, BKMEA, BEF) leaders, Trade Union Leaders, Researchers, Academics, and Workers' Rights Activists differ in finding the factors and/or root causes behind this massive and violent labour unrest. An extensive review of existing literature presents a number of different causes behind the labour unrest. Broadly the views may be divided into two categories believers in conspiracy and believers in exploitation and non-compliance of labour law.

In the first category fall the RMG factory owners, their association leaders, and Ministers of present government. They always ignore the reality and believe the labour unrest to be a conspiracy either foreign/external or domestic/internal. When the unrest went pick in 2006, some ministers of the then government and the business community leaders pointed fingers to some foreign funded NGOs inciting the workers, and termed the unrest as a 'blue print' of a 'neighbouring country' to destroy the country's booming sector. Bangladesh Garment Manufacturers and Exporters Association (BGMEA) alluded to an Indian role, alleging that the violence was the result of "conspiracy from across the border". A number of Ministers also voiced the same. The then Finance Minister M Saifur Rahman said, 'the attack on the readymade garment sector was influenced from outside to hamper growth of the industry. I don't believe that it can be carried out by workers'. The then Commerce Minister M Hafiz Uddin Ahmed, in a meeting with the Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA), also called the happening "sabotage". In the same tone the then State Minister for Home Lutfozzaman Babar termed the outburst in the garment sector as a subversive act and thought that it was a part of a conspiracy against the country (Kumar, 2006:3/5).

Again in 2010 the labour unrest went violent exceeding the prior ones in scale and intensity for a demand of minimum wage at Tk.5000. The European Union expressed concern over growing labor unrest in the readymade garment sector over wages. A three-member team led by the head of the EU Delegation to Bangladesh, Stefan Frowein, met Khandker Mosharraf Hossain, Labour and Employment Minister, to know about the alleged 'labor exploitation' in the export-oriented apparel industry. They wanted to know what move the government has initiated to increase the minimum wages for garment workers. The ambassadors also wanted to know whether the garment workers were being exploited. The minister told the delegates including ambassadors of the Netherlands and France in Dhaka , 'isolated incidents of violence might take place in such a large industry as the growing garment sector in which around 4 million workers were employed. Unrest at one or two readymade garment factories out of 3,500 is nothing unusual. It is nothing serious if 400-500 workers out of four million stage demonstrations in any situation' (Alam, 2010:3/9).

Another business community leader expresses the conspiracy case in a different way, saying that a leader of communist party is behind such notoriety in the RMG sector. The ruling government in Bangladesh set Dilip Barua, a leader of leftist party, in charge industries ministry. The very appointment of this leftist leader was immediately questioned by most of the entrepreneurs in the country. He urges that the government now needs to assess, if a leftist leader should be allowed to continue in the industries ministry (Choudhury, 2010:2).

In the second category fall most of the people including researchers, academics, Trade Union activists who reject the labour unrest as 'conspiracies' and recognize it as a result of longstanding deprivation and owners' inactivity to improve

the RMG sector (Morshed, 2007:118). Quazi Kholiquzzaman Ahmed, President of Bangladesh Economic Association (BEA), criticized both the government and employer for their sheer negligence to overcome the present anarchic situation in the country's ready-made garment industry. He termed it as an explosion of anger that remains unresolved for long (Kumar, 2006:3/5).

S. Khan (2011) finds out a number of causes behind the labour unrest that includes absence of appropriate formal channel to air grievances and seek redress, non-compliance of labour law and ILO conventions, lack of knowledge of the workers about their rights, poor minimum wage, lack of trade union movement, shut down of factories without prior notice and payments, and loss of jobs for trying to join or form trade unions. Along with these, he does not ignore both internal and external conspiracy that causes unrest.

Khan, M. A. I. (2011) identifies long-standing grievance of the worker concerning employment rights, absence of right to legitimate protest against ruthless exploitation, non-access to the decision making process, less pay than the minimum wage, rumor, the coercive role of the law-enforcing agencies, and domestic and external conspiracy are the root causes of labour unrest.

Apu (2010) indicates low wage, higher wages discrimination, lack of compliance, no weekly day off, no festival bonus, compulsory over-time but fraction payment or no payment, no responsible organization to listen to the workers needs and demands, distorted minded boys/males creating havoc of unrest to press their illegal demands as the causes of labour unrest.

Alam (2010) claims that the rising food and essentials prices, non-existence of union and organization to protest torture, violation of all Memorandum of Understanding (MoU) by the BGMEA and Government, Fuzzy and dubious role of the Department of Labour (DoL), and non-functional Workers' Participation Committees are the causes of labour unrest.

Rashid (2006) argues that there is low level of social compliance in garment factories. He urges that if labour standards are not quickly complied with, violence will threaten the very existence of garment industry in Bangladesh. This may jeopardize the production, export and sustainability of garment industry in the long-run.

The review of above literature gives the idea that the views are diversified. Scholars, researchers, academics, labour rights promotion workers, and trade union leaders are not in one view that exactly why labour unrest happens. So, the issue is diversified and not settled. It is also worth noting that the views are different both in ideology and in rhetoric. Those who believe in conspiracy seem to be rhetorical and far from reality. They do not want to change the existing condition and try to escape the real demands of the workers by ignoring the existing situation. On the other hand those who believe in exploitation and non-compliance of labour law seem to be ideological because the want to see a change in the existing condition. But the problems and issues they identify to be the causes of labour unrest are scattered and structurally not cohesive.

Conspiracy both domestic and foreign may act behind labour unrest is logically weak and rationally unacceptable. If there is conspiracy, there is conspirator also. It is the duty of the government to capture and try the conspirator. If it is a foreign conspiracy, the government must take diplomatic steps to defend the industry. But we

see no such initiative. Besides, the Indian role in conspiracy, if it is true at all, will not serve its purpose because India is no better place than Bangladesh for investment in the industry like RMG. So, conspiracy cannot be the real cause behind labour unrest.

Above discussion makes it clear that labour unrest in Bangladesh is a consequence of a series of malpractice. Bangladesh has both regulatory framework and administrative mechanisms for labour governance. There are constitutionally guaranteed and statutory protected rights of the workers and dispute settlement mechanisms. There are provisions of workers participation and representation in some bipartite and tripartite mechanisms. Yet, there is labour unrest and we hardly know why. May be that there is either democratic deficits in the regulatory framework or there is lack of democratic practices. Thus, the answers to the questions need to be explored are:

1. to what extent does the regulatory framework ensure rule of law and whether that promote democratic practices or deficits?

2. to what extent are the rights of the workers exercised in democratic manner?

3. how do the workers participate and represent in formal democratic mechanisms and whether their participation contributes to the democratization of labour governance?

OBJECTIVES OF THE STUDY

The general objective of the study is to assess whether and to what extent Bangladesh's labour governance promotes democratic practices or deficits, and why. The specific objectives are to

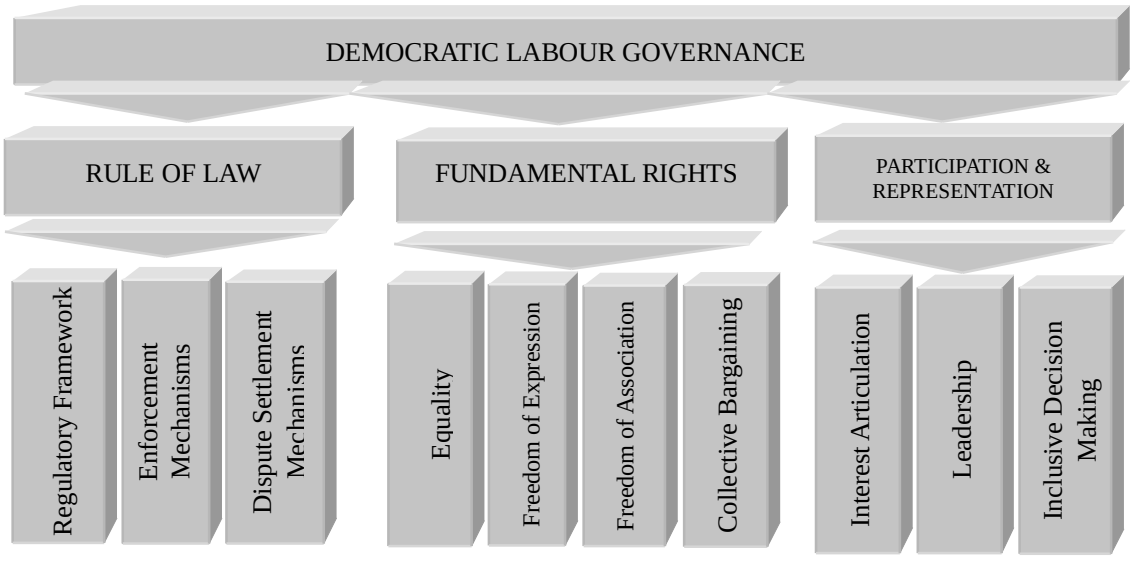
1. analyze whether the labour regulatory framework ensures rule of law and the extent to which this contributes to democratic governance.

2. examine whether the existence and exercise of workers fundamental rights promote or inhibit democratic practices in labour governance.

3. explore whether the workers' participation and representation mechanisms contribute to the democratization in labour governance.

CONCEPTUAL FRAMEWORK

This research is based on the concept of democracy. To explain the aspects of labour governance in Bangladesh, a particular frame of democracy has been built. Democracy is a broad concept and it has so many components. This study adopts those basic components which are applicable to labour governance.



RESEARCH METHODOLOGY

Research and development issues, due to their interrelated variables and values, are better understood through a multidisciplinary lens and perspective. Research, particularly done under socio-political context, requires a coherent analysis of data obtained through literature review (secondary data) and collected from the field study (primary data). These data may be either quantitative or qualitative. So, a research

may be founded on quantitative or qualitative approach, or may be a combination of both. This study has combined both qualitative and quantitative approaches. Data, used in the study to address its objectives, have been collected from both primary and secondary sources and in both qualitative and quantitative forms.

RESEARCH ISSUES

As the objective of the study is to find out democratic practices and deficits in Bangladesh's labour governance processes, the research issues of the study has encompassed three core/broad issues of democracy—Rule of Law, Fundamental Rights, and Participation and Representation.

There are some specific issues under those broad issues. The specific issues under the Rule of law are—Regulatory Framework, Enforcement Mechanisms, and Dispute Settlement Mechanisms. Under Fundamental Rights the specific issues are— Rights to Equality, Freedom of Opinion and Expression, Freedom of Association, and Collective Bargaining. The Participation and Representation includes—Interest Articulation, Leadership, and Inclusive Decision Making as specific issues of the research.

RESEARCH TOOLS

To collect data from the respondents tools like Key Informants Interviews (KIIs) and Focus Group Discussions (FGDs) have been carried out. The researcher himself has interviewed the Key Informants, and conducted and moderated the FGD sessions. Duration for each FGD session was not lee than one and a half hour. Before conducting FGDs, a theme list was prepared for elaborate discussion. The researcher himself has interviewed the Key Informants with a checklist and has spent required time to gather necessary information and data.

SELECTION OF STUDY AREA AND SAMPLE

The selection of study areas and determination of sample seems to be complex for this research. The labour sector in Bangladesh is broadly categorized into two sectors—formal industrial labour sectors, and agriculture sector. The formal sector in Bangladesh is dominated by the industrial labour. There are many industrial sub-sectors but workers are clustered mainly in several industries like export oriented ready-made garments, jute mills, tea gardens, frozen foods plants, and leather and footwear industries.

The export income of Bangladesh comes mostly from a few goods and industries like ready-made garments, jute goods, frozen fishes (shrimp), leather, and raw jute. Following both the criteria—labour intensity, and contribution to annual national export income— three industries in which most of the industrial workers are engaged, and whose contribution to annual national export income is more than two percent are taken as sample. These three industries are—Ready Made Garments (RMG), Jute Industries both publicly and privately owned, and Shrimp Processing Plants.

It is notable that industries in Bangladesh are mostly area/region specific. In selecting areas for these industries, emphasis has been given on the number of industries located in a particular area or region. In Bangladesh, there are some regions where a particular industry is many in numbers. For the selected industries, seven such regions of Bangladesh have been chosen. Dhaka, and Gazipur are chosen for RMG industries; Khulna for Shrimp processing plants, and jute mills; Narayanganj for RMG and jute mills; Chittagong for RMG; Cox's Bazar for shrimp; and Rajshahi for jute mill.

The respondents of the research cover a wide range of population comprising workers, employers, workers' representatives, employers' representatives, workers' rights activists, labour experts, labour administration personnel, labour courts judges, leaders of industrial federations, leaders of national federations, labour contractors and sub-contractors, members of civil society organizations, and community members. A reasonable portion of this population has been chosen as sample to collect data through FGDs and KIIs.

To collect data and information, emphasis has been given to practicality, reliability, and validity. The workers and employers are chosen particularly for practicality and reliability as they are involved in the day to day affairs of labour governance. The other respondents are chosen particularly for validity of the data and information as some of them are directly concerned and some of them are indirectly involved in the process of labour governance. All of them are with relevant experience as well as with a retrospective views and opinions. The distribution of areas and respondents of the industrial sub-sectors are given in the following tables:

Table 1: FGD Areas and Number of Participants

Sectors	Areas	FGDs	Number of Participants
RMG	Dhaka	2	10-12
	Gazipur	1	10-12
	Chittagong	3	10-12
Jute	Khulna	3	10-12
	Rajshahi	2	10-12
Shrimp	Khulna	2	10-12
	Cox's Bazar	2	10-12
Total		**15**	**150-180**

Table 2: KIIs Sources

Key Informants	RMG	Jute	Shrimp	Total
Workers' Representatives	3	4	2	**9**
Sectoral Worker' Federation	6	4	2	**12**
National Workers' Federation				**4**
Employers	2	4	3	**8**
National and Sectorl Employers' Representatives	2	2	2	**6**
Employers' Representatives				**1**
Workers' Rights Activists				**7**
Labour Experts				**6**
Government Officials				
Labour Administration (MoLE & DoL)				**2**
Inspectorate				**2**
Labour Courts				**1**
Labour Contractors				**4**
TOTAL				**62**

DATA ANALYSIS AND INTERPRETATION

Following the qualitative data analysis process—Codification, Categorization, Conceptualization, and Theorization—the collected data have been analyzed and used there on according to the objectives of the study.

RESEARCH OUTLINE

This dissertation is divided into six chapters. The first chapter introduces the research problem and methodology of the study. The second chapter presents a theoretical framework of the study to conceptualize democratic governance in the context of Bangladesh. The third chapter focuses on the Rule of Law (RoL) in Bangladesh's labour governance which includes—the regulatory framework of labour governance, enforcement mechanisms, and dispute settlement mechanisms. The fourth chapter

illustrates the existence and exercise of workers' fundamental rights—rights to equality, rights to opinion and expression, freedom of association (FoA), and right to collective bargaining (CB). The fifth chapter highlights workers' participation and representation mechanisms in the labour laws of Bangladesh and their practices. The final chapter of the dissertation draws conclusion focusing on the central questions of the study, summarizing the key findings, illustrating the implications of the findings and referring to the scope for further research.

CHAPTER II
UNDERSTANDING DEMOCRACY AND LABOUR GOVERNANCE

This chapter attempts to construct a framework of analysis towards understanding labour governance by conceptualizing democracy. A conceptual framework offers the researcher the way to look into the problems systematically. Usually a framework explains the interwoven relations among the ideas that constitute a background theory. A theory in turn provides the researcher with guidelines to conduct the research in such a way that finally the objectives are reached. With this end, I intend to build a theory of democracy applicable to the context of labour governance. Through the review of secondary literature, I have explored and extracted the ideas, principles, components and conditions to construct a framework of democracy. I claim that this framework can be used to analyse democratic practices and deficits in the context of Bangladesh's labour governance.

The following sections describe the components and principles that constitute a democratic regulatory framework including enforcement mechanisms, and dispute settlement mechanisms.

THE CONCEPT OF DEMOCRACY

Democracy is a varied term that comprises the theory of government, state, and society. But primarily it denotes a theory of government/governance of which the definitions are varied. 'Democracy is a structure for the governance of people....It is the structure wherein those who govern are selected by, and govern as the representative of, the governed' (Ellerman 1990: 44). Very often it is considered to be the government of the people and by the people and expressed through some short and

epigrammatic expressions e.g., ‘Government by consent’, ‘Rule by the majority’, ‘Government with equal rights for all’, ‘Sovereignty of the people’ etc. Such expressions fall short to express the comprehensiveness of democracy as a social and political theory. Cohen (1971:3) argues that ‘such epigrammatic definitions are usually not mistaken, but they cannot reach the heart of the matter. When we examine any such expression critically its inadequacy becomes apparent’. Often it is considered to be ‘a kind of community government’ and short expression like ‘self-government’ or ‘self-rule’ is used to mean democratic government. It is not foolish but figurative because people cannot govern themselves.

It has been explained (Cohen 1971: 5) that as a theory of government, democracy bears two senses as the verb ‘to govern’ has a double meaning. One is administrative sense of government that is ‘to govern’ means the power to overrule, to compel, or to administer. The other is directive sense of government that is ‘to govern’ means to establish goals or policy, to give direction to the body governed. When government is understood in directive form, it involves the determination of policy and the objectives which guide communal life, it may be a few or it may be the many who govern. He argues that ‘in principle it is possible for all the members of a community to participate in the establishment of the ends sought in common. If all, or most, do participate in this task, we may fairly describe that community as self-governed’.

From the aforesaid directive sense, democracy has been defined as ‘that system of community government in which, by and large, the members of a community participate, or may participate, directly or indirectly, in the making of decisions which affect them all’ (Cohen 1971:7).

As a system of government, democracy confirms the application of some principles in the governing process, which are often understood and explained through the observance of a set of conditions. The oft-quoted three such conditions (Dahl, cited in Sorensen 2010) are:

1. Meaningful and extensive competition among individuals and organized groups (especially political parties) for all effective positions of government power, at regular intervals and excluding the use of force.
2. A highly inclusive level of political participation in the selection of leaders and policies, at least through regular and fair elections, such that no major (adult) social group is excluded.
3. A level of civil and political liberties—freedom of expression, freedom of the press, freedom to form and join organizations—sufficient to ensure the integrity of political competition and participation.

Often some factors and elements—fundamental freedom and rights, elections, rule of law, participation, efficiency, efficacy, equality, justice, dialogue and negotiations, tolerance, independent judiciary, and democratic education—are thought to be the prime , essential and inevitable elements to constitute theoretical democracy (Becker & Raveloson, 2008). Similarly, a recent study indicates six conditions as imperatives of good, democratic governance *viz*. Capacity of the state, Commitment to public good, Transparency and accountability, Rule of law, Participation and dialogue, Social capital (Diamond, 2004).

To some scholars, democracy is ‘a stable institutional structure’ which needs some instruments for correct functioning. Morlino (2002: 4), to ensure quality of good democratic government, highlights the following five instruments:

1. Rule of law
2. Accountability
3. Responsiveness to the desires of the citizens and civil society in general
4. Full respect for human rights
5. Progressive implementation of greater political, social, and economic equality.

From the above discussion—on the ideas, elements, conditions, and principles of democracy and democratic governance—I attempt to conceptualize democracy as a theory that is applicable particularly to labour governance to explore democratic practices and deficits.

CONCEPTUALIZING DEMOCRACY FOR LABOUR GOVERNANCE

Conceptualizing democracy for labour governance seems to be difficult. Democracy as a governing system lacks any unique or universal/global model that is suitable for all societies/sectors. Keeping the essences or central ideas unchanged, every study constructs a model of democracy of its own. Academic scholars, governments, regional & international development assistance agencies very often confront such challenges by defining and analyzing the terms within their interests and scope of work (Abdellatif, 2003: 3).

Democratic labour governance implies that the community of labour should be governed through a regulatory framework that is democratically enacted and upholds sufficiently the democratic norms and principles. In addition, those norms—rule of law, fundamental rights and freedom, participation and representation—should be executed and enforced by an efficient and impartial administrative authority along with a judicial system to settle disputes and to impose penalty for the violation of regulatory provisions.

Labour is a professional community with varied orientations and interests. The governance of such a community requires separate laws and regulations, distinct administrative system, and atypical procedure and mechanisms for dispute resolution. The general components and principles of democracy are not applicable here. To constitute an operational democracy for labour governance, three basic components— (i) Rule of Law, (ii) Fundamental Rights, (iii) Participation and Representation—have been taken into consideration. These components are elaborated in the successive sections.

THE RULE OF LAW

The Phrase ‘the rule of law’, initially as a political theory, originated from the Aristotelian notion to hunt for a better ‘government of/under laws (“reason”) as opposed to the Platonic concept of ‘government of/under men’ (“passion”). This classical distinction has been exercised and extended to a number of forms and fields as well throughout the history of development of political thought. The political concept of the rule of law, primarily a set of principles, denotes quality governance. The single most influential principle of the rule of law is that the government exercises its authority legitimately following the established procedure of publicly adopted laws. It is opposed to the arbitrary and capricious rule of men.

The history of construction and development of the academic idea of ‘the rule of law’ seems to be a battlefield. Political theorists of different schools, legal scholars, economists, and rights advocates conceptualize the phrase ‘the rule of law’ according to their own perspectives. A recent study claims that ‘it is used to define a number of concepts, it is tied to a variety of aims and it operates at different levels’ (HiiL 2007). Even, regarding the merit of the rule of law there is no universally accepted definition. Moller and Skaaning (2010) rightly comment that ‘different people mean very different things when employing the term’. That is why, to some scholars ‘the phrase

"the rule of law" has become meaningless thanks to ideological abuse and general over-use' (Tamanaha, 2004: 4). For having a reasonable idea of the rule of law, for this study, some of the most important definitions of varied sources are analyzed to extract some particular adaptable characteristics and principles.

Ideas contained in 'the rule of law' are centered to two basic questions—(i) question of 'what' (theoretical construction) and (ii) question of 'how' (rule of law promotion). Scholars of different disciplines—political science, economics, sociology and law—across the world are concerned with 'what' and their efforts are to theorize the rule of law. On the other hand, some international and regional organizations—the United Nations (UN), the World Bank (WB), United Nations Development Program (UNDP), International Development Agency (IDA), World Justice Project (WJP), Governance Pro (GP), and The Council of Europe (EC)—have developed a framework of the rule of law since the mid-1980's concerning the question of 'how'. This new effort of 'rule of law promotion' identifies a number indicator to measure rule of law in practical governance. This bifurcation of the rule of law leads many ideas to grow both in theoretical 'rule of law' and in 'rule of law promotion'.

In the theoretical constructiondiverse aspects are emphasized. Contemporary economists emphasize 'property rights'; legal scholars emphasize 'formal legality' that is the laws are general, public, prospective, and certain; others add equality before law and individual rights- or even human rights in general; and scholars within political theory argue for liberty and 'law and order' to refer to the rule of law (Moller and Skaaning (2010: 3). For this, the idea of 'rule of law' has got a number of versions—narrow and wider (Lane 2010), thinner and thicker version (Tamanaha 2004, Saunders and Le Roy 2003), formal and substantive version (Waldron 2011) etc.—in the global literature.

Waldron defines ‘the rule of law’ as political morality’ and points out some formal and substantive elements. The formal elements, emphasized by the legal philosophers, are rule by general norms rather than particular decrees; rule by laws laid down in advance rather than by retrospective enactments; rule under a system of norms that has sufficient stability; rule by norms that are made public; rule by clear, and determinate legal norms whose meaning is not obscure. But he renders more emphasis on the substantive elements of rule of law which ensures a strong positive connotation of ‘liberty’ ‘equality’ ‘justice’ and ‘fairness’ (2011: 3-4).

Rule of law as mechanisms that restrain behavior in politics has two conceptions of rule of law—narrow conception (Rule of Law I) and wider conception (Rule of Law II). Rule of Law I refers to the ‘principle of legality’ which means government is in accordance with rule of law when it is conducted by means of law, enforced by independent courts. Here, law does not require containing all the institutional paraphernalia of the democratic regime like separation of powers and a bill of rights. On the other hand, Rule of Law II refers to constitutional democracy where the principle of legality and judicial independence is not enough to secure rule of law in the broad sense of the term. This wider conception of rule of law involves much more factors than government under the laws. It requires separation of powers, elections, representation, and decentralization (Lane 2010). Flores also justifies rule of law as ‘the law or rule of principles or reason, constitutionalism of human rights and separation of powers’ (2013:78).

The rule of embodies some values like maintenance of order, the limitation of public power, equality and fairness on which the efficacy of law, and constitutionalism rests (Saunders & Le Roy, 2003:5). Considering the efficacy and coverage of law,

judicial body, and constitution, they divide the rule of law into two versions—the thin version and the thick version. The thin version of the rule of law does not do enough to comply with the constitution, to protect democratic rights and human rights standards which are better complied through the thicker version.

They point out the following three core principles of the rule of law:

1. The polity must be governed by general rules that are laid down in advance.
2. These rules must be applied and enforced.
3. Disputes about the rule must be resolved effectively and fairly.

The efforts to rule of law promotion, emphasize some values—human rights observance, economic development, the fight against terrorism, the creation of open societies, certainty and predictability in relations among citizens and between citizens and government—to be served in practice. Due to growing concern for achieving comprehensive development like Millennium Development Goals (MDGs), most nations of the world and the world organizations are giving emphasis on the substantive version than the formal version of the rule of law. It has been a belief that development is better achieved through democratic or good governance.

The policymakers, policy administrators, civil society organizations, aid donors, and scholars across the world agree that good governance matters for development. But governance itself does not promote development if it is not followed by the rule of law. It is argued that ‘governance can only be good and effective when it is restrained by the law and when there are professional independent authorities to enforce the law in a neutral, predictable fashion’ (Diamond 2004).

Nowadays, ‘rule of law’, ‘governance’, and ‘development’ have been inextricably linked to one another. Governance is being more and more emphasized in the development discourses than before as it has become a crucial strategy to achieve development goals. ‘It has become a truism to say that good governance is essential for successful development’ (Abdellatif, 2003: 4). The trend shows that the principles and strategies of rule of law promotion are now development oriented. Golub (2003: 7, cited in Barron, 2005: 3) rightly remarks that a ‘set of ideas, activities, and strategies geared toward bringing about the rule of law, often as a means toward ends such as economic growth, good governance, and poverty alleviation’.

The United Nations (UN) in a report defines the rule of law as ‘a principle of governance in which all persons, institutions and entities, public and private, including the state itself are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international rights norms and standards’ (2004: 4). The UN also points out—supremacy of law, equality before law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, procedural and legal transparency—as principles to be applied and enforced to promote the rule of law.

Governance Pro (GP) identifies rule of law as the first of eight[1] elements of good governance. Rule of law, to this organization, refers to ‘fair legal framework that are enforced by an impartial regulatory body, for the full protection of stakeholders’ (2012). International Development Association (IDA) also defines the rule of law as a fair, predictable and stable legal framework which will be applied consistently and conflicts be resolved by an independent judicial system (IFAD 1999).

[1] Governance Pro indicates eight elements of good governance. They are rule of law, Transparency, Responsiveness, Consensus Oriented, Equity and Inclusiveness, Effectiveness and Efficiency, Accountability, Participation

World Justice Project (2013) describes that ‘the rule of law is a system in which the following four universal principles are upheld:

1. The government and its officials and agents are accountable under the law.
2. The laws are clear, publicized, stable and fair, and protect fundamental rights, including the security of persons and property.
3. The process by which the laws are enacted, administered, and enforced are accessible, efficient, and fair.
4. Justice is delivered by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the community they serve.

The World Bank (2005) justifies the rule of law as ‘a goal of development policy’ and claims that ‘economic development, political modernization, the protection of human rights, and other worthy objectives are all believed to hinge, at least in part, on “the rule of law”. Emphasizing on the formal characteristics, substantive outcomes, or functional considerations of the legal system, the Bank implies the following three distinct forms to foster the rule of law:

1. Formal Version which includes independent and impartial judiciary, laws that are public, the absence of laws that apply only to particular individuals or classes, and provisions for judicial review of government action.
2. Substantive version which looks to some outcomes such as ‘justice’ or ‘fairness’.
3. Functional version that focuses on how well the law and legal system perform some functions—usually the constraint of government discretion and the making of legal decisions predictable.

From the above discussion of ‘theoretical rule of law’ and ‘rule of law promotion efforts’ I adopt the following three core principles of the rule of law:

1. Democratic regulatory framework for labour governance.
2. Effective and efficient enforcement mechanisms of the regulatory provisions.
3. Dispute Settlement Mechanisms including both formal and informal institutions and procedures.

The following sections elaborately explain the three components—democratic regulatory framework, enforcement mechanisms, and dispute settlement mechanisms—of the rule of law.

REGULATORY FRAMEWORK

Regulatory framework, in general, refers to a set of regulations usually established or adopted by a government to regulate specific activities. In terms of governance, regulatory framework can be defined as the existence and application of necessary principles, institutional mechanisms, infrastructures, and codes of conduct which provide guidelines to control, direct or implement a proposed or adopted course of action, rule, principle or law towards governance. In labour governance perspective, the regulatory framework refers to the totality of labour related policies, laws, regulations, norms, contracts, conducts, conventions, and recommendation. The regulatory framework of labour governance are divided into two categories—national regulations and international regulations.

The national regulatory framework includes national constitution, national labour policies, labour laws, rules, regulations, norms, and contracts. Among these elements, the constitution and the policies are considered to be the base and guiding

principles of other elements. Labour law occupies the central place because all other regulatory instruments are considered to be just when they are in accordance with the law. So, in every country labour law is taken as a 'mandatory regulation' the breach of which is subject to judicial remedies.

International regulatory framework comprises all Conventions and Recommendations adopted by the International Labour Organization (ILO), United Nations' Universal Declaration of Human Rights (1948), Corporate Codes of Conduct, and other trade linked Standards, and Charters. The ILO has adopted, since 1919 to the present, 189 Conventions and a good number of recommendations. Unlike the conventions, the recommendations are not subject to ratification and have no binding force. Yet, they act as support for member states to formulate labour laws and policies. The conventions are subject to ratification and have, to some extent, binding force. Broadly, these conventions fall under three distinct categories—fundamental conventions, governance conventions, and others conventions. The ILO's Governing Body identified eight conventions as 'fundamental' covering subjects that are considered as fundamental principles and in 1998 they came under the 'ILO Declaration on Fundamental Principles and Rights at Work'. These conventions are:

1. Forced Labour Convention, 1930 (No.29)
2. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
3. Right to Organise and Collective Bargaining Convention, 1949 (No.98)
4. Equal Remuneration Convention, 1951 (No. 100)
5. Abolition of Forced Labour Convention, 1957 (No.105)
6. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
7. Minimum Age Convention, 1973 (No. 138)
8. Worst Forms of Child Labour Convention, 1999 (No. 182)

The Governing Body of the ILO designated four conventions as ‘priority’ instrument because of their importance for functioning of the international labour standards system. These conventions are referred to as ‘Governance Conventions’ from the viewpoint of governance and since 1988 they have been included in the ‘ILO Declaration on Social Justice and Fair Globalization’. These conventions are:

1. Labour Inspection Convention, 1947 (No. 81)
2. Employment Policy Convention, 1964 (No.122)
3. Labour Inspection (Agriculture) Convention, 1969 (No. 129)
4. Tripartite Consultation (International Labour Standards) Convention, 1976 (No.144)

Among all these instruments of regulatory framework, labour law plays the vital role in day to day labour governance operation. So, the enactment of labour law is the most challenging and complex task for every government. There is much controversy and debate over the issues like philosophy, foundations, functions, and goals of labour law. Even there is difference of opinion regarding the institutions that make labour law. Moreover, the idea, ideology, and characteristics of an ideal labour law are still evolving. Due to the changing nature of work, employment, globalization, competitiveness, market system, production system, technology, corporatism and so on, the traditional notion of functions, boundaries, security and welfare issues are also changing. Considering all these issues, the enactment of a balanced, fair, equitable, just and democratic labour law is really tough. The concepts and considerations of labour law, capable to meet contemporary challenges and fit to cover the aspirations of the parties concerned, are discussed below.

Labour Law: Origin, Development and Transformation

Labour law is rather understood in some perspectives than defined. There is hardly any unique definition of labour law. Very often it is perceived and regarded as a distinctive branch of the law. It is a 'social phenomena with distinctive legal characteristics' (Bennett 1994). Often it is expressed through some ideas[1] and is seen as 'a technical branch of regulation' (Hyde 2005). It is still evolving and its scope is getting wide to wider. Following its wider scope, the academic legal community and legal practitioners have started to consider it as 'a separate branch of legal practice and have come to define it from sociological, political, economic, and legal perspectives.

Initially, labour law was adopted to protect the manual workers engaged in industrial plants and was applied to the matters related to employment, conditions of work, remuneration, right to form association, and industrial and labour relations. Such labour law usually dealt with the individual contractual relationships of traditional employment status and its elements were less homogeneous and controversial. Gradually, labour law came to be a broader body of legal principles with extended scope to include workers of all sorts—industrial, non-industrial and public employees.

In legal perspective, labour law means some statutory requirements to mediate between organized economic interests and the state, and the various rights and obligations related to social services. On the other hand, in economic perspective, 'labour and employment law are the collection of regulatory techniques and values that are properly applied to any market that, if left unregulated, will reach socially suboptimum outcomes because economic actors are individuated and cannot overcome collective action problems'(Hyde 2005).

[1] Hyde (2011) explores 22 ideas of labour law.

From the above discussion, labour law, often called employment law, can be defined as ‘a collection of regulations, enforced by government agencies, that covers all aspects of employer and employee relationships, negotiation process through collective bargaining to protect the rights of employees, their organizations, including trade unions and employee unions’.

Labour law, as it is seen today, originated in the medieval or prior to medieval ages. The traces of rules closer to modern labour standards took place in the Laws of Hammurabi. In India, some rules for labour-management relations are found in the Laws of Manu. But labour law in the modern sense of the term, emerged after the industrial revolution in 18th century. By the end of 20th century the labour law flourished to the more industrialized countries of Western Europe. In its initial phase, it was rather individual than general and covered particular aspects of labour issues.

According to the historical account, the first modern labour law was adopted in England on the aspect of ‘Health and Morals of Apprentices in 1802. Latter on legislation for the protection of young took place in 1815. Legal limitation was imposed for the first time on the working hours in the Swiss canton of Glarus in 1848. In Germany, sickness insurance and workmen’s compensation were introduced in by 1884. By 1890s, the compulsory arbitration of industrial disputes was introduced in New Zealand.

But these regulations lacked the democratic strength regarding the employment status, dismissal of employees, collective bargaining, freedom to form union or association. The British ‘Master and Servant Act -1867’ treated the workers as wage earners devoid of all human dignity. This was replaced by the ‘Employer and Workman Act- 1875’ to enhance the dignity of the workers to some extent. In this phase of development, individual contract of employment started to move towards general legal

principles of collective agreements. By 1900, comprehensive labour legislation took place, that covered wage and remuneration; conditions of work; health, safety and welfare; social security; trade union, industrial relations and industrial actions.

By the first quarter of the 20th century, some general principles of social policy regarding economic rights got constitutional status in Mexico in1917 and in the Weimer Constitution of Germany in 1919. Afterwards, almost all industrial countries adopted comprehensive labour laws with constitutionally guaranteed rights to form association. In America, the National Labour Relations Act-1935 recognized trade unionism and collective bargaining.

However, throughout the history of development, labour law has incorporated many drivers of change and has been transformed towards comprehensiveness. Often, emphasis has been puts on the role of broad social and economic developments in shaping labour law. Virtually, as Hepple (2011) argues, labour law has been an outcome of struggles between different social groups and competing ideologies. He therefore prefers a descriptive analysis, which seeks to explain changes over time and variations between different legal systems by linking them to particular historical circumstances. Among the factors, shaping the making and transformation of labour law are considered to be the level of economic development; the changing nature of the state; the character of the employers and labour movements; and the growing influence of civil society; and ideology.

The major subject matters—ideas about workers' rights, economic efficiency for firms or for the market as a whole, or social justice for workers—were introduced but they did not play a major role (Davies 2004). The laws enacted, enforcement mechanisms established, and judicial processes and procedures applied at this stage,

were not effective enough to ensure fair or democratic labour governance. Due to differing political contexts, the power, functions, and effectiveness of these labour law enforcing ministries or departments differed greatly across countries. Since 1950s, few important changes were made in the perspectives of labour laws—the collective laissez-faire, promoting workers' rights, reducing number of strikes, and individualism and deregulation— and were applied in labour governance.

The collective laissez-faire, as labeled by Kahn-Freund in the 1950s, was a kind of industrial relations theory where the statutory intervention to promote collective bargaining between trade unions and employers was minimal and, instead, matter was left to the concerned parties to regulate and settle down. It was a policy of non-interference. Kahn-Freund regarded this policy as an ideal and supported it for three main reasons. First, he thought collective bargaining effective enough to protect workers and regarded legal intervention unnecessary. Second, he claimed that workers' rights were more secure if acquired through collective bargaining rather than through constitutional or legislative guarantees. Third, he thought that collective laissez-faire was more flexible than legislation. During 1960s and 1970s, the collective laissez-faire perished away, as Davies argues, due to increasing intervention of the government to protect workers' right and to manage the economy more actively. Besides, the government wanted to reduce the level of strike action partly for economic reason and partly for because strikes came to be a problem (2004:5).

Another reason for the move from the laissez-faire is that the unions only protected the rights and interests of their own members and they ignored the women's claim for equal pay. Due to these flaws, people considered some rights to be so fundamental that they should be protected for all employees. The advocates of the non-interference theory sought to modify their theory by incorporating unfair

dismissal and anti-discrimination legislation. To some extent, it approved the state intervention to create a 'floor of rights' on which the collective bargaining to be built. To Davies, this period marks the emergence of workers' rights as a central concern of modern labour law (2004:6). At this stage, workers' rights and some other factors came be the foundations of labour law.

Foundations of Labour Law

Modernization of labour law requires a serious consideration of the new challenges posed by globalization, technological advancement, changing patterns of work, changing nature of employment, new forms of work organization, efficiency and competitiveness and so on in the area of industrial and labour relations. In such a situation, labour law should '…seek to transform, or at leastto nudge, existing institutions and power relationships in a more democratic, participatory, and egalitarian direction' (Klare 2000). To ensure democratic governance and social justice, labour law should be founded on some normative issues.

It is argued that the foundations of labour law must be defined on the basis of the fundamental values to which labour law aims to contribute, and in which labour law finds its foundations or from which it defines its purposes (Hendrickx 2012). Scholars suggest different values as the foundations of labour law. However, to ensure rule of law, an ideal labour law should be founded on the following values:

Human Dignity

Human dignity, as foundation of labour law, refers to the realization of respect to an employee as a human being. It involves integrity, autonomy, self-control, personal development, participation to social life, and freedom. It is opposed to the master-servant relationship. It also implies that the labour of a human being is not a commodity or article of commerce, rather it is 'an activity with a productive character' (Hendrickx 2012). Human dignity can better be served and preserved through the constitutional

obligation and statutory protection of the worker's rights—rights to work, rights at work and rights through work. The existence and exercise of these rights not only ensures human dignity but also contribute to the freedom to self- development.

A similar emphasis was put forward by Sinzheimer (regarded as the founding father of German labour law) to the quest for a core idea of labour law which can be generalized. She emphasized the constitutional function of labour law, in the sense of its role in establishing a social and economic order while taking the humanity of the worker as a 'first reference point'. Latter this idea has been shared by Dukes (2008) who also relies on the framework of human dignity to highlight the strains currently put on labour law. Following Amartya Sen's idea of 'development as freedom, Davidov and Langille (2011: 4) indicate the basic goal of labour law which is 'real, substantive, human freedom – the real capacity to lead a life we have reason to value'. Labour law, thus, needs to be structured towards the creation and deployment of human capital to secure human dignity.

Democratic Principles of Equality and Equity

The justification of democracy to be the foundation of labour law is that it fosters the attempt to eradicate 'employee's vulnerability, specifically, democratic deficits and dependency' (Davidov 2013). Scholars and jurists believed that labour law has a vocation 'to address and seek to relieve a fundamental social and economic problem in modern society: the subordination of labour to capital, or employee to employer' (Collins 1989, cited in Klare, 2000). The subordination of labour to capital mainly stems from the inequality of bargaining power.

Bennett (1994) argues that the employers have enhanced their power through the conflict between labour law institutions—courts, tribunals, political parties, and law framing bodies. She goes on arguing that a combination of economic and political power to the hand of the capitalists turns the workers into a weaker party in collective bargaining and in the governing process as well. Problems arising out of this inequality can effectively be solved through the embodiment and inducement of democratic principles—equity, equality (opportunity and autonomy), pluralism, right to form association and bargain collectively, emancipation, social inclusion, and representation—in the labour law.

Social Policy and Social Justice

Social policy denotes the improvement of equitable well-being of all people in a society. The purpose of economic organizations and activities are also the same. As a distinct social class, engaged in the economic organizations and activities, the workers are also entitled to have development, well-being, welfare and a minimum standard of living. All these goals can only be achieved through the inclusion of social policy as a foundation of labour law. Social policy as a means of labour welfare includes, in the minimal sense of the term, the conditions on which job satisfaction, minimum sustenance amenities, and stimulus to keep body and soul together exists. In a broad sense, it means the adoption of measures to promote the physical, social, psychological and general well-being of the working people.

The general principle of social policy is that ‘all policies shall be primarily directed to the well-being and development of the population and to the promotion of its desire for social progress’ (ILO 1962). Ideologically and ultimately, the role of labour law is to control and regulate working people towards emancipation and to

relieve them from the disturbance of the market where only competition and efficiency matters. Therefore, from a socio-political view point, labour law must encompass some measures that ultimately bring them to welfare and well-being.

An ideal labour law aims 'to abolish all discrimination among workers on grounds of race, colour, sex, belief, tribal association or trade union affiliation; to afford equitable economic treatment; to improve conditions of engagement and promotion; to provide opportunities for vocational training; to ensure health, safety and welfare measures; to facilitate participation in the negotiation of collective agreements and fixing wage rates; and to realize the principle of equal pay for work of equal value' (ILO 1962).

Social justice, in its narrower version, refers to the notion of 'social equality' or 'equal distribution of social values'. As a foundation of labour law, the idea of social justice has recently been promoted by the ILO in its 'declaration on social justice for fair globalization-2008'. In this declaration stress has been put 'to achieving an improved and fair outcome for all' in order 'to meet the universal aspiration for social justice' (2008:11). 'Fair outcome for all' and 'universal aspiration of social justice' can only be achieved only through the broader version of the social justice which takes the society as whole and pay attention to the redistribution of all social values. In this sense, 'social justice puts emphasis not only on the distribution of wealth but also on distributing power' (Davies 2004).

Such distribution of power and wealth within the organization by giving workers, either individually or collectively, legal rights to control or influence the decisions of management to protect workers against unfair treatment, discrimination, or unsafe working conditions (Collins 2012). This distributive justice also provide the

opportunity to achieving industrial democracy and fairness in the workplace which in turn improves the competitiveness of business by improving efficiency, product quality, flexibility and cooperation, with reduce costs.

Social justice must incorporate, as fundamental elements,' both social equality as well as distributive and commutative justice' (Hendrckx 2012). No individual be benefitted, except for moral ground, at the cost of others. The proposition, in labour law, thus means that both the employees and employers are entitled to get their proper share of earnings on moral grounds. In other words, the social justice implies that 'employees do not only need sufficiently high wage to be able to live a decent life, but also need wages that stand in relation to the earnings of other employees, or even in relation to their additional value to the enterprise (Fried 1984, cited in Hendrckx 2012).

Paternalism

There is hardly any doubt that paternalism acts as an important motivation in labor law. Paternalism can ground labor legislation designed to protect workers from irrational choices that threaten them, particularly in times of harsh economic conditions when worker turnover and 'hiring and firing' become rampant. Paternalism refers to the guardianship role of the state or government in the affairs of employer-employee conflict or dispute. As it is opposed to the notion of 'laissez-faire', there is a debate over the inclusion of paternalism as a foundation of the labour law. Paternalism is often regarded as inimical to individual autonomy and free choice. Still some kinds of government interference with individual or collective choices are taken for the individuals good without detriment to individual liberty.

Paternalism allows the government to intervene, to some extent, in the regulation of industrial relations and in the protection of workers' rights. Since the state is the creator of rights, its duty is to protect them also. Issues like unfair labour practice and unfair or arbitrary dismissal cannot be left solely to the 'laissez-fair'. In contemporary economic jargon, such interventions are addressed to avoid collective action problems (Spector 2006). It has been suggested that paternalistic interventions can be defended on the basis of systematic limitations of our cognitive and emotional capacities (Dworkin 1996).Thus, labor contracts or laws that compromise laborers' health and safety, welfare, working conditions, wages and benefits can be subject to paternalistic regulation. On this view, paternalistic labor legislation does not oppose autonomous choices as desires by the neo liberal economists.

Industrial Policy and Decent Work

Getting out of the traditional idea of law centered to 'a fair and reasonable remuneration, workers' rights, or security measures' focusing the issues related to 'the cost of living as a civilized being', scholars in the 21st century, tend to add new to newer concepts as the foundation of labour law for a broader and comprehensive perspective of development. In the pursuit of such economic development, it has been strongly argued that the path to development and poverty alleviation must be based on trade liberalization strategies and labour market deregulation (Howe, 2011: 9).

The developing nations are adopting free trade and laissez-faire industrial policy, and introduce greater flexibility into employment regulation, to lower the cost of hiring and firing of workers in order to achieve economic growth (Berg & Cazes 2008, cited in Howe 2011). This strategy of development is characterized by 'low road' as opposed to 'high road' which development is pursued by stimulating

economic growth through the creation of quality jobs in sustainable industry (Mattera 2009). Due to these bisect way of economic growth and development, Howe (2011), suggests that 'active industrial policies were key to the economic development and high living standards of industrialized countries'. Therefore, he advocates industrial policy, labour market regulation, and decent work as the foundation of labour law. He claims that 'industrial policy, which can be equated with economic development strategy, will have significant implications for the achievement of decent work for all, and social and economic equality (2011:11).

Focus of Labour Law

Labour law as a body of regulations, should focus on some important principles to ensure democratic governance and to contribute to the democratization of industrial and labour relations. The principles are as follows:

1. Regulation of work— as a freedom, as an occupational citizenship, and as an identity.
2. Regulation of employment relations—public vs private, formal vs informal, permanent vs contractual, home workers, part-time, temporary, seasonal.
3. Conditions of health, safety and security—workplace environment; work-leisure balance; maternity benefits; compensation; employment security, fair dismissal, income security, psycho-physical and emotional security.
4. Democratic principles—human dignity and fundamental rights (right to form association, and collective bargaining), equality and equity, pluralism (both binary and multi-party framework), and justice.
5. Social security and welfare—wage and remuneration; corporate social responsibility; welfare measures against vulnerability, disability and old age; right to education and skill formation for efficiency and self-development; distribution of surplus/profit.

6. Effective enforcement—conditions of work and workplace, and employment; rights and coverage, crime and punishment, unfair labour practice and dismissal, fairness and decent work.
7. Dispute settlement and grievance handling procedures.
8. Paternalistic role of the government.

ENFORCEMENT OF LABOUR REGULATORY FRAMEWORK

The enforcement of labour laws comes next to the regulatory framework as it plays important role in the realization of fair and equitable outcome for both the employers and employees. Therefore, good democratic governance relies not only on democratic laws but also on the proper execution of those laws. Most of the developing countries, across the world, enact or adopt extensive labour regulations, but in maximum cases they are not fully enforced or weakly enforced. Some internal factors—devotion of efforts, initiatives, and resources on the part of the government; ideology of the political party in power; organizational strengths of employers and employees; pressures form interest groups and civil society organizations (CSOs)—and some external factors—globalization, trade openness, foreign direct investment (FDI), international organizations, donors, buyers—exert significant influence on the enforcement of labour laws.

In a recent study (Ronconi 2010:3) it has been claimed that ‘parties on the left of the political spectrum are more likely to introduce pro-labour legislation when in power in order to keep labour supporters despite external pressures towards deregulation’. He also comments that ‘enforcement tends to increase as countries become more democratic, richer, less urbanized, and when organized labour is stronger’, and ‘trade openness has a negative effect on government enforcement resources and activities’, and ‘FDI has a positive impact on inspections’ (2010:15).

Thus, the role of the government, to mediate the relationship between economic globalization, trade openness and working conditions, is challenging to enforce labour regulations through institutional mechanisms.

Enforcement Mechanisms

The enforcement mechanisms are divided into two categories—law enforcing agencies and dispute settlement bodies. Law enforcing agencies comprise a number of public and private institutional mechanisms and organizations. The public institutions are labour offices of different sorts—'labour administration' or 'system of labour administration' and labour inspection. Labour administration and labour inspection emerged in the 1830s but as a part of public administration it got recognition in the first quarter of 20th century (Jatoba 2002). After the formation of the ILO in 1919, the 'system of labour administration' and 'labour inspection' got almost a uniform character in its member states. The ILO adopted Labour Inspection Convention (C81) in 1947 and Labour Administration Convention (C150) and Labour Administration Recommendation (R158) in 1978.

Labour Administration

Labour administration denotes all public administration activities undertaken in the field of national labour policy, and 'system of labour administration' means, all public bodies responsible for and/or engaged in labour administration whether they are ministerial departments or public agencies, including parastatal and regional or local agencies, or any other form of decentralized administration- and any institutional framework for the coordination of the activities of such bodies, and for consultation with and participation by employers and workers and their organizations' (Art. 1, C150, 1978).

The system of labour administration is composed of two main groups of actors—the state actors, and non-state/ private actors (employers, and workers' organizations)—who differ according to the role that they play and interest that they defend. To cope with the increasing demands and changes in the labour market, the labour administration needs to cooperate and build a partnership with private actors for several benefits—improved delivery and access to high quality expertise, application of new technology, effective monitoring, and introduction of modern management methods (ILC.100/V 2011).

Labour Inspection

Labour inspection, as a part of labour administration, plays the fundamental role in labour law enforcement and effective compliance. At the beginning, inspection was limited to the safety and health conditions. Due to political, social, technological, and economic development of nations, the inspection activities have been subject to modernization. Its area and diversity of functions have grown significantly. New conditions including specialized knowledge of medicine, engineering, electricity, and chemistry are being added to the qualification of the inspectors and governments are being compelled to appoint more resources for the purpose of general, special and technical inspections of factories and workshops.

The ILO considers the labour administration and labour inspection as the two key pillars of good governance and emphases on the creation of effective institutions to strengthen inspection systems. But the national governments across the world are facing two opposite results—social welfare maximization when compliance is higher but destruction of some informal jobs—of quality inspection (Ronconi 2010:4). This paradox is also seen in the aspiration of workers and government's strategy. Workers

prefer laws-in-action not laws-in-book on the other hand government is to meet the two ends—higher compliance but lower unemployment. For this, government often seems to be reluctant to allocate more resources to the inspection activities and reduce labour standards 'by turning a blind eye to the non-compliance' (Ronconi 2010:10).

Despite the paradox, mentioned above, the member states of the ILO are working closely with the Committee of Expert on the Application of Conventions and Recommendations (CEACR) to ensure quality inspection. By increasing coverage and number of inspections—regular, special, and follow-up inspections—the labour inspectorate try to implement the compliance issues. Now-a-days, more emphasis is being given to advocacy and awareness building by involving workers, employers, trade unions, employers' associations, and other authorities like police, social security service agencies in the process of inspection and monitoring than to the traditional inspection of imposing and collecting fines.

DISPUTE SETTLEMENT MECHANISMS

Labour disputes or conflicts are inherent in the workplaces and establishments. Every industrial relations system has some mechanisms and procedures to handle such disputes and grievances. Absence of a fair system for the prevention of labour disputes or lack of an effective labour dispute settlement mechanism often leads the situation to industrial actions, such as strikes and lockouts. Therefore, a fair system of dispute settlement is regarded as the cornerstone of sound labour relations policy. It helps to preserve and promote a climate of industrial peace by containing conflicts within a socially and economically acceptable level. In turn, this contributes to the development of economic efficiency and productivity.

Labour disputes and its settlement procedures are a historical development. Classification of disputes and measures to settle them vary to a great extent across organizations and countries. The two most generally classified disputes are—individual and collective disputes. These disputes are based on either rights or interests. Primarily, disputes come out of violation of rights provisions relating to terms and conditions of employment by the employer(s). Employees' increased awareness of their rights at work and due process in the workplace have been receiving considerable attention. Organizations are increasingly grappling with difficult employee rights issues (Blancero and Dyre 1995:3). Besides, day-to-day workplace problems, dissatisfaction, and returns relating to economic interests also create labour disputes. Whatever be the nature of disputes, faced with the threat of litigation and pressure to govern fairly, employers are adopting both formal and informal grievance procedures to signal to the courts and employees that employees receive fair treatment (Polster, 2011: 638).

The issue of fair governance and fair treatment leads the employees, employers and government to specify due procedures and mechanisms to settle disputes. It has been stated that the design and operation of workplace dispute resolution systems are longstanding issues in human resources and industrial relations. They identify three categories—traditional unionized grievance procedures, emerging non-union dispute resolution systems, and the court-based system of the procedures—for resolving employment law disputes(Budd &Colvin, 2007:1). Debates are seen among the scholars regarding the due process, efficiency, speed, and outcomes of the mechanisms as ‘each mechanism has unique strengths and weaknesses’ (Fortado, 2010:10).

Broadly, the disputes settlement mechanisms are two types—non-adjudicatory mechanisms and adjudicatory mechanisms. Application of non-adjudicatory mechanisms—conciliation/mediation and arbitration—varies depending on the unionized grievance procedures and non-unionized dispute resolution systems. Where workers are unionized, it is the duty of the union or worker representative to deal with the grievances through collective bargaining process. If the disputes are not solved through bipartite collective bargaining, it goes to the neutral third party called arbitrator for resolution. In non-unionized complaint system, there is hardly any such 'outside arbitrators as the final decision maker' (Blancero and Dyre 1995:11). On the other hand, the adjudicatory (court based) mechanisms also vary according to the legal and judicial systems of the country.

The unionized dispute resolution system is long experienced and is considered to be more formal than the non-unionized system. There is strong debate over the outcomes and fairness of the systems but no one system is most fair, or the best. Outcomes are measured mostly through 'efficiency' and 'equity' dimension and often voice is also emphasized. Grievance arbitration, as Budd (2007) argues, over a dispute in unionized system is considered to be efficient in the sense that it is less costly and enhances productive efficiency by preventing work stoppages and by identifying areas of conflict. It is also equitable as binding decisions by neutral arbitrators provide effective mechanisms for remedying unfair treatment in the workplace, and there is consistency in the decisions of the arbitrator. Besides, as grievance arbitration systems are negotiated rather than imposed, labor and management have a high degree of voice in establishing the process. Moreover, both sides participate equally in all steps of unionized grievance procedures. The non-union system also offers efficiency outcomes—reduced absenteeism and turnover, reduced litigation, enhanced productivity—and equity outcomes—increased employee satisfaction and commitment—if it is designed fairly (Blancero and Dyre 1995).

FUNDAMENTAL RIGHTS AND FREEDOM

As a constituting component of democratic governance, the question of fundamental freedom and rights comes next to the rule of law. Without the existence and free exercise of these rights to the fullest extent, democratic governance cannot attain perfection. Rights and freedom not only imply the elimination of inequalities and inequities but also denote the preservation of justice through the prevention of exploitation and marginalization of certain groups by other groups. So, rights are much more than a mere component of democracy. They represent *sine qua non* requirements for the well performing of a democratic system' (Becker & Raveloson, 2008: 4-6).

Rights are conceived of two categories—universal human rights and fundamental human rights. Universal human rights are considered to be 'a bundle of conditions' consist of political, social, economic, religious and cultural obligations. Regardless of natural, moral, and/or legal grounds, these conditions are universal and essential to every human being for personality development. They refer to those rights that are naturally endowed with a man/woman when he/she is born. 'Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible' (UNHR2013). Such rights cover all the opportunities and conditions that are regarded essential for proper growth and development of a human being. These rights have been documented and enforced in the United Nations Declaration of Human Rights (UDHR), 1948.

But fundamental human rights refer to those few chosen rights that are enshrined in the constitution of democratic countries. The rights of this kind vary in

numbers, scope, and coverage across countries. Fundamental rights mean those rights which form the essential conditions of good life and which constitute the essentials of human progress. In the absence of these rights the growth and development of human personality is not possible (Agarwal 1993).

A recent study, includes— Personality Rights (right to life, right to free personality development, right to be protected against attacks and manifestation of violence, right to preserve integrity and human dignity), Political and Civil Rights (right to be protected against all forms of exploitation, non-discrimination, right to expression, freedom of association, and right to hold meetings without any restriction), Social and Economic Rights (right to minimum living wage, and right to education and training), and Third Generation Rights (right to development and right to environment)—as fundamental human rights (Becker & Raveloson2008).

However, the fundamental political, social, economic, cultural and human right may be broadly divided into four categories. They are:

1. Right to Equality.
2. Right to Freedom of Opinion and Expression.
3. Freedom of Association.
4. Right to Occupation without discrimination and compulsion.

WORKERS' FUNDAMENTAL RIGHTS AND FREEDOM

Determination and governance of workers' rights has been a central issue in industrial relations systems for all centuries. Historically, workers' rights were defined and determined by the employment contracts either individually or collectively. In this arena the prime actors were the workers and employers. In twentieth century, industrial relations, labour, and workers' rights issues have been handled through

collective bargaining and industrial agreements between firms and unions, with varying degrees of government intervention across different countries (Egels-Zanden 2008). At this stage of governance, workers' rights were defined by national labour codes or laws along with employment contracts.

After the emergence of the most influential international labour institution—the ILO—as a tripartite institution, several conventions and recommendations came to ally the national legislation on workers' rights. Hence, industrial relations systems acted in the context of both national and international arrangements. In recent years, the process of globalization and communications technology evolution has caused shift in economic structures, institutional arrangements, and the organization of work. These changes have fostered increasing competitive pressures and global outsourcing. Transnational Corporations (NTCs) have transferred low-skill industries, such as the garment, footwear, and toy industries in the developing countries in Asia. Besides, the NTCs have taken low-cost strategies and adopted a 'corporate codes of conduct' which has also been an important source of workers' rights. Due to this development, workers' rights are being governed transnationally along with nationally set codes.

Historical Development of Workers' Rights

Rights are not independent of society, but inherent in it. With the change of political, economic, and social values; workers' rights have also undergone changes. Following the hardship of the working class, and the wealth acquisition tendency rather than functions of service of industrial organizations and the owners of the capital in English society, Laski (1934:102-114), proposed a number of *particular rights* for the workers. From the normative point of view these rights were social as well as economic in nature. His particular rights comprise:

1. Right to work which implies that men are born into a world where everybody can live only by the sweat of his/her brow. Society owes him/her the occasion to perform his/her function.

2. Right to an adequate wage for his labour which means by the work that he performs must be able to secure a return capable of purchasing the standard of living without which creative citizenship is impossible.

3. Right to reasonable hours of labour which implies that there is a physiological limit to the energy a man can afford to expend. So, there must have a civic limit to the amount the state can permit him to expend. Those who devote most of their energies to the machine become disqualified for the nobler tasks of life unless they have ample leisure. Certainly, in a world so complex as this, the eight-hour day has become the maximum a man dare work at manual labour and still hope to understand the life about him.

4. Right to education which will fit him for the tasks of citizenship. He must be provided with the instruments which makes possible the understanding of life, articulate his expression to the wants he has, and the meaning of the experience he has encountered.

In the United States of America (USA), a number of workers' rights got statutory protection under the National Labor Relations Act (the Wagner Act), 1935. The Act embodied both social and human rights of workers and ensured democratic procedures to exercise those rights. The most influential rights were—right to participate in the determination of wages, hours, and working conditions; right to bargain collectively; right to freedom of association; right to designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment and other mutual aid; and self-organization (Gross 2003).

In the Union of Soviet Socialist Republic (USSR), workers' rights, both social and economic, were enshrined in the constitution of 1936 and they were greatly enlarged in the constitution of 1977 (Agarwal, 1993: 181-184). The citizens (working class) of the USSR were given the following rights:

- Right to equality before law.
- Equal rights in all fields of economic, social, political and cultural life.
- Right to work or gainful employment.
- Right to pay according to the quality and quantity of work
- Right to rest and leisure
- Right to health protection and social security
- Right to maintenance in old age, sickness, and in the event of complete or
- partial disability or loss of bread-winner.
- Right to housing and education
- Right to enjoy cultural freedom
- Right to freedom of speech, of the press and assembly, meetings, street processions and demonstrations to the limit of communism.

To denote the rights of the working men, often emphasis is given to the employment status. Winning (1999) identifies two categories of employment—employment at-will and employment through psychological contract. Employment at-will means employment without any 'service letter laws', and so question of rights does not arise here. In such cases 'employment is at-will, and may be terminated at the will of either party'. Where employment is based on the 'psychological contract' there is a balance between employers and employees regarding rights and obligations. In his own words, 'so long as you perform satisfactorily, the employer will continue to employ you and pay a 'decent' wage; so long as the employer pays a decent wage, you will continue

to work satisfactorily' (1999:3/4). He indicates the following seven basic rights that take place in employment through psychological contract:

1. Right to be treated fairly and equitably.
2. Right to have a safe environment in which to work.
3. Right to be free from discrimination.
4. Right to be free from harassment.
5. Right to be compensated equitably, i.e., same pay for same work done.
6. Right to be free from retaliation for filing complaint against a company.
7. Right to be free from an invasion of privacy.

The ILO (1998) has also focused on workers' rights and declared four 'fundamental principles and rights at work'. They are:

1. Freedom of Association (FoA) and the effective recognition of the right to collective bargaining.
2. The abolition of all forms of forced or compulsory labour.
3. The elimination of discrimination in respect of employment and occupation.
4. The effective abolition of child labour.

However, throughout the history of development, the rights of the workers have been broadened in contents and coverage by workers' movements which have often been influenced by academic scholars, labour layers, and different right-based organizations. That is why, the rights of the people at work seem to be scattered and differ across countries.

Debates over Workers' Fundamental Rights

In recent years, trends are seen to view labour rights as human rights. There are heated debates in the literature over the question 'whether labour rights are human rights'. 'In human rights law and labour law scholarship, some endorse the character of labour rights as human rights without hesitation, while others view it with skepticism and suspicion' (Mantouvalou 2012:1). Among the proponents, who endorse labour rights as human rights, Compa (2003, 2008, 2009), and Gross (2003) are most prominent. Gross (2003) finds many issues of labour rights common in NLRA-1935, UDHR-1948, and ILO-1998; and regards workers' rights as human rights. Following Gross, Compa also asserts the 'human rights-workers' rights' connection and comments that:

> So long as worker organizing, collective bargaining, and the right to strike are seen only as economic disputes involving the exercise of power in pursuit of higher wages for employees or higher profits for employers, change in U.S. labor law and practice is unlikely. Reformulating these activities as human rights that must be respected under international law can begin a process of change (2003:52).

McIntyre complains that both Gross and Compa provide 'human rights-workers' rights' connection everywhere in their writing but nowhere they explain or put forward the 'theoretical background as to why "workers' rights" should be considered human rights (2006: 9).

Another exponent argues that '… for a number of reasons, movements for workers' rights and human rights have followed parallel tracks. In particular, there is disagreement as to whether social and labour rights are human rights at all; NGOs have tended to focus on human rights while trade unions have concentrated on economic issues; and there is scepticism about the value of human rights which individualize interests that ultimately depend on collective solidarity. Since human rights cannot exist without social justice, it is argued that they should be formulated in a way that fits into a general framework of social justice' (Hepple, 2003: v).

Following the declining role of unions across countries of Europe and the USA, Compa (2008) argues that a human rights reframing will "bring authoritativeness to labor discourse that trade unionists can never achieve. In response to such comment, Youngdahl claims that the framing of labour rights as human rights is injurious for community spirit of labour struggles (2009:31). He puts forward a number of logics to explain why workers' rights are not the same as human rights. *Firstly,* human rights discourse individualizes the struggle at work. The union movement was built on and nourished by solidarity and community. The powerless can only progress their work life in concert with each other, not alone. *Secondly,* the replacement of solidarity as the anchor for labor justice with individual human rights will mean the end of the union. A complete turn toward the individual rights approach by the labor movement will signal the surrender of fight for workplace solidarity and struggle for justice. *Thirdly,* elevating human rights to the dominant position within labor ideology will eviscerate support for the common concerns of all workers that is the keystone of labor solidarity. The issue of individual rights versus solidarity will penetrate the consciousness and actions of workers everywhere. 'An injury to one is an injury to all' will perish away and 'me-firstism' will prevail.

In reply to such arguments, Compa (2009) clarifies that traditionalists still argue the distinction, but contemporary human rights analysis has moved past the sharp dichotomy between individual rights and collective rights. He contemplates that the textual foundation of the modern human rights movement, embraces freedom of association and the right to form unions alongside rights to a living wage, decent working conditions and even paid vacations. He rejects the objection that human rights advocacy leads to 'atomization' by saying that:

> …the stronger argument now is that individuals live in an intricate web of relationships—personal, economic, cultural, juridical, institutional, and more—where the exercise of individual rights takes place. Individual rights can only be fulfilled in this social framework.

He points out a number of reasons to explain why human rights must be allied with labour rights. *Firstly,* respecting individual union members' rights should not weaken solidarity. Rather individual rights and solidarity are mutually reinforcing. *Secondly,* making rights subordinate to solidarity starts a slippery slope that can end in rights falling off a cliff. *Thirdly,* 'workers' rights are human rights' can join 'solidarity forever' as leitmotifs for the labour movement.

Amidst this argument, Kolben finds basic difference between the concept of human rights and workers' rights. He states that 'there are salient differences between labor rights and human rights, not only in how these rights operate conceptually, but also in how their respective movements actualize these rights. To him, while human rights are primarily oriented toward limiting the power of the state, labor rights are primarily oriented toward limiting the power of private actors in the market. Besides, while human rights concern individuals and, achieve outcomes such as better working conditions, labor rights are more collectively orientated, and worker mobilization and negotiations processes takes precedence (2010: 451-452)

There is another view that seems to be balancing between the two opposite poles of labour law's status. There is apprehension that the general recognition of labour rights as human rights will destroy the field of labour law and rights of the workers' to be found only in the human rights documents. To this end, Mamtouvalou (2012) analyses critically the two opposite views with three distinct approaches—positivistic approach, instrumental approach, and normative approach. The positivistic

approach justifies that some of the workers' rights are human rights as they are incorporated in some human rights documents such as right to work in a job freely chosen, a right to fair working conditions, just wage, protection of privacy, right to be protected from arbitrary and unjustified dismissal, right to belong to and be represented by a trade union, right to strike, etc.

The instrumental approach judges the rights on the basis of juridical strength. The rights which can be put to and protected by the court are labour rights, and the rights which are not to be considered by the court are social rights. In this view, right to freedom of expression, right to individual autonomy, right to strike, right to be protected from compulsory or forced labour etc. are regarded as workers' rights.

Normative approach recognizes some of the labour rights as human rights. The recognition of such rights as human rights will not exhaust labour law as a field of study. But some rights are compelling, stringent, and timeless entitlements. These normative entitlements (labour rights) should be reflected in law.

From the above discussion it can be stated that labour rights are both human rights and social rights. But some of the social rights are political and economic in nature. So, the workers' rights may be seen as a combination of social, political, economic and human rights.

APPROPRIATION OF FUNDAMENTAL RIGHTS FOR WORKERS

Following the four fundamental human rights set by the ILO (1998), and particular rights for workers emphasized in various documents across countries; I appropriate the rights of the working people in four distinct but sequentially interrelated forms—Rights to Equality, Rights to Freedom of Opinion and Expression, Rights to Association, and Right to Collective Bargaining.

Rights to Equality

Rights to equality comprise primarily three specific issues—(i) equal application of the provisions of law without discrimination (ii) equal opportunity for all, and (iii) equal protection for all under law. The existence and exercise of the rights to equality can be found in the conditions/provisions of law related to—(a) employment and Contract (b) protection against all forms of discrimination and oppression (c) annual and maternity leave with wage (d) unfair labour practices from the part of employers (f) wage and wage related benefits and (f) promotion. These are areas where laws are not applied equally for all; distribution of equal opportunity differs; discriminations occur; and workers are mostly deprived of the right to equal protection under law. Rights at Work

Rights to Opinion and Expression

Rights to opinion and expression are associated with workers' fundamental right to information and consultation (Directive 2009/38/EC) which implies that the matters related to organization of work, workplace environment, and safety issues should be settled and implemented through the exchange of views and/or social dialogue between worker(s) and employer(s) at enterprise level. The implication of rights to opinion and expression in the context of workplace and labour governance is that workers want work not only to survive, but also to achieve personal and social fulfillment through the moral judgment that labour is not a commodity or article of commerce, they are dignified and honoured as an equal partner in social dialogue (Hepple 2005). It is justified on the ground that it replaces employment at-will with job security and empowers the workers to attribute their ills and problems outwardly in lieu of self-censorship and docility in the workplace (Morvan 2009). Rights to opinion and expression focuses on—(i) scope of consultation and opinion (ii) workers' organizations (iii) employers' organizations (iv) dialogue and (v) Tolerance.

Right to Freedom of Association

The right to freedom of association comes next to the right to equality and right to freedom of opinion and expression. Associations, as platform of workers' participation, empower and enable workers with collective voice for collective bargaining. Without free exercise of the right to association, the workers cannot organize themselves to constitute a party to play their roles and to raise their voices in the democratic institutional mechanisms—bi-partite and tripartite—devised in the law. To bargain effectively and on an equal footing over issues of industrial and labour relations, the workers need democratic, effective and organized associations and democratically elected representatives.

Right to Collective Bargaining

The right to Collective Bargaining (CB) empowers the workers to elect their representatives to the institutional mechanism of Collective Bargaining Agents (CBAs) for the purpose of social dialogue towards labour and industrial relations. Hyman (1997) argued that structures representing the interests of workers through collective bargaining provide legitimacy and efficacy to the decision making process. Freeman and Medoff (1984) have also noted that the efficacy of voice depends upon the way in which labor and management interact. In Bangladesh, union-management interaction is hardly seen.

PARTICIPATION AND REPRESENTATION

Participation and representation of the community members in the governing system and process of a particular community is the first and foremost essential of democracy. Members' participation and representation at all levels of political, social, economic and cultural or ethnic organizations of the governed community is important to expose their

power, express their will and choice, articulate their interests, press their demands, conciliate their grievances, and realize their aspirations regarding those organizations. Michels (2004: 3) remarks that 'participation is more than voting in election. It covers every aspect of participation in political decision making. Democracy is peoples' business; citizens are central agents, not the political leaders'. Therefore, 'participation should not be limited to the political arena. It should also encompass areas like working place' (Pateman 1970, cited in Michels, 2004).

'Any company, argues Ellerman, with people working in it is an institution of governance—so the question of democracy arises' (1990: 44). In this sense, the whole of the industrial sector with all of its sub-sectors and units/enterprise is a governance structure as there is 'management' to govern and 'workers' to be governed. Here the governing actors are the employers, the workers, and the state. So, there must have some institutions in which all the actors can interact and get involved through democratic participation or representative participation to make and implement decisions. Workers as a professional social community legally possess the right to participate and represent through some formal and informal organizations/institutions both inside and outside the firm to be voiced, informed, consulted, and governed democratically.

THEORETICAL ASPECTS OF PARTICIPATION AND REPRESENTATION

Participation in democratic governance is a right in itself and a means of protecting and enhancing other rights. Hossain (2012: 76-77) points-out three grounds— risk, need, rights— for worker participation and representation. He argues that the need based analysis justifies workers' representation as a means by which democracy is extended to the sphere of industry. His argument runs as follows 'just like citizens of a country which elect their representatives in the government to manage the country, the workers in the industry have the similar need of their representatives in the management'.

Workers' participation is justified on many grounds. In 1920 Mahatma Gandhi suggested that workers contribute labour and brain, while shareholders contribute money to enterprise, and that both should, therefore share in its prosperity (Bishwajeet, 2012: 1). Participation in decision making in industry results in satisfaction of employees, increase in productivity and profit, and empowers the employer to achieve the organizational goal (Bhuiyan, 2010). It encompasses redistribution of wealth through increasing the share of income accruing to workers, wage growth by capturing a portion of the gains from rising productivity, success in reducing job and employment security, instituting protection from unfair dismissal, promoting security benefits that protect workers from the exigencies of life, providing scope for personal development, achieving respectful human dignity, and scheduling of work to permit work-life integration (Heery 2010).

Besides, an acceptable, effective and democratic participation and representation system offers better management-worker communication, better industrial and labour relation, and promises economic development and employment generation that lead to making a prosperous and democratic polity.

Workers' Participation: Origin and Development

The concept of "workers' participation" is an off-shoot of the broader idea of industrial democracy. The Webbs (Sidney and Beatrice Webb) for the first time spread the idea in their book "Industrial Democracy" in 1902. They considered trade unions to be the prime agents of industrial democracy and argued that unions can achieve it by three distinct instruments—the Method of Mutual Insurance, the Method of Collective Bargaining, and the Method of Legal Enactment.' Of these three methods, collective bargaining and legal enactment were to become the prime instruments for

advancing industrial democracy. The Webbs added (1902: 823) that 'trade unionism is not merely an incident of the present phase of capitalist industry, but has a permanent function to fulfil in the democratic state.' Moreover, they went on to claim that 'political democracy will inevitably result in industrial democracy … [though] democracy is still the Great Unknown' (1902: 842- 850).

The idea moved the workmen in Europe and by 1910 a Syndicalist Doctrine emerged in France with two schools of thought. One school focused on issues of control in organizations and the other on participation within organizations. The 'controlists' were known as revolutionary and viewed that 'industries and organizations were to be controlled, partly or wholly, by associations of workers or their trade unions, rather than by a managerial elite. In reaction to the capitalist system of production, they held that worker' emancipation could be achieved only by revolutionary industrial action, through the general strike' (Farnham et al. 1997). On the other hand the 'participationists' known as Guild Socialists rejected the concept of the general strike as a means of achieving worker' control. They preferred peaceful 'encroaching' control through the collective contract. This was a plan under which unions would enter into collective contract through participation with employers to produce a required output—an agreed price. It was envisaged that the unions would include all classes of workers, by hand or by brain, to protect the interests through participation.

In Britain "The Whitley Committee" on relations between employers and employed was set up in October 1916, under the chairmanship of the Deputy Speaker of the House of Commons, in the light of labour militancy and some vociferous

demands for workers' control during the first world war. Its terms of reference were to make suggestions for securing a permanent improvement in the relations between employers and workmen' and to recommend means for 'improving conditions in the future. It issued five reports between 1917 and 1918. Its' most important contribution to the structure of industrial relations was its advocacy of systems of national joint councils consisting of employer and union representatives, which were to be reflected in linked machinery at district and local levels. The central purpose of the interim report was to advance 'joint co-operation' in industry between employers and organized labour (Farnham et al. 1997).

By 1930 workers' control movements demised and the participatory approach to advancing workers' rights became the dominant approach in western democracies. Since then the trade unions are considered to be the main instrument of workers' participation in decision making 'as a safeguard against organizational self-interests and arbitrary managerial action' (Farnham et al. 1997) . The main objective of this approach is to make wider involvement of workers in decision making to bring two sides of industry together.

In the1 970s the management in Europe felt it necessary to gain the commitment of their staff, raise productivity and quality of work and overcome resistance to change in an increasingly uncertain and volatile market environment. Since then they started introducing Employers-sponsored System of Participation Mechanisms. Latter on workers' participation has taken so many forms and has been a matter of attention in worker management techniques.

WORKERS PARTICIPATION: MAPPING THE EXISTING FORMS

In the field of employment and industrial relations employee participation to influence decisions concerning work and workplace governance is an important area of study. Regarding the level, degree, extent and scope of communication, information, consultation, responsibility sharing, risk taking, transferring of authority, allowing the right to control and rights on return the extent of influence and nature of participation varies.

There have been a considerable number of researches on the issues of employee involvement, participation and representation to measure and assess the impact on employee performance, empowerment, motivation and productivity growth. An extensive literature review shows that 'employee participation has the capacity to enhance the quality of decision making by broadening inputs, promotes commitment to the outcomes of the decision making process, improves motivation, cooperation and communication in the workplace'(Parasuraman, Rahman & Rathakrishnan, 2011: 55). Quoting Markey and Monat (1997), they remark that 'employee participation may reduce workloads of supervisors, encourage skill development in workforce, and can contribute to improved employment relations in general'. It is also seen that the outcomes vary according to the nature and scope of participation. So there have been a number of different forms of participation. They are discussed below-

Farnham (1997, Cited in LTSN: 2012) states that '… an employee has the right to question and influence organization decision making' and '… this may involve representative workplace democracy.' He describes the four policy choices of employee participation for managing the employment relationship. Those are—

(i) Employee Commitment via Employee Involvement

Employee involvement is a range of processes designed to engage the support, understanding, and optimum contribution of all employees in an organization and their commitment to its objectives.

(ii) Employee Participation via Direct Contact with Employers

It is a process of employee involvement designed to provide employees with the opportunity to influence and where appropriate take part in decision making on matters which affect them.

(iii) Union Incorporation via Collective Bargaining

This process incorporates unions to nominate, select or elect members to participate in all spheres of decision making. These members enjoy substantial power to influence decisions and share responsibility.

(iv) Worker Subordination via Managerial Prerogative

In this process employees are given information and they are consulted if necessary but the decisions are made through managerial prerogative. Employees are not allowed to input and influence decisions.

From the above discussion it is clear that employee participation is wider than mere involvement because participation exercises some control over the decision making process where involvement only harnesses employees commitment to organizational objectives.

Gunnigle (1999: 1-6) states that ‘employee participation and involvement may be broadly interpreted as incorporating any mechanisms designed to increase employee input into managerial decision making. It is often seen as the political

democratization of the workplace in so far as it facilitates the redistribution of decision making power away from management and towards employees'. He divides participation into two forms—

(i) Direct Participation

It encompasses any initiatives which provide for greater direct employee involvement in decisions affecting their jobs and immediate work environment. It may take a variety of forms such as briefing groups, quality circles, consultative meetings, and team work. These forms of employee participation are normally introduced at management's behest, often as part of a change initiative whereby management transfers responsibility to employees for a limited range of job related decisions, such as working methods or task allocation. Salamon (1998, cited in Gunnigle: 1999) claims that 'this approach is intended to motivate the individual employee directly, to increase job satisfaction and to enhance the employees sense of identification with the aims, objectives and decisions of the organizations (all of which have been determined by management'.

(ii) Indirect Participation

This is a form of employee participation whereby employee views and input are articulated through the use of some form of employee representation. These representatives are generally elected or nominated by the broader worker body like trade union and thus carry a mandate to represent the interests and views of the workers they represent. Such participation is largely concerned with re-distributing decision making power in favour employees. It thus seeks to reduce the extent of management prerogative and effect greater employee influence on areas of decision making which have traditionally been the remits of senior management.

Heery (2010: 543-544) observes that the role of unions has declined all over the world and non-union institutions of worker representation have spread or assumed greater relative significance creating a more complex, multiform system of voice. He identifies three broad classes of institution that sit alongside trade unions and provide representation to people at work. These are—

(i) Statutory Systems of participation

These systems entitle workers to elect representatives to company boards, works councils, and other information and consultation bodies.

(ii) Employer-sponsored Systems of participation

These systems offer some institutions or forums established by employers, where some representatives are elected by workers or appointed by the employers such as Shop stewards, quality circles, communication and consultation committees, financial participation committees etc.

(ii) Participation through Outsiders

He notices that there are some social groups, outside industry, viz. Civil Society Organizations (CSOs), advocacy groups, campaigning organizations, community and single-issue groups, which are increasingly active in promoting the interests of sections of the workforce. This class frequently provides advocacy and campaign actively to secure changes in employment law and may become involved in civil regulation, issuing standards and codes of practice to be followed by employers and employees.

Grimsrud and Kvinge (2010) point out four characteristics of involvement—(i) Rights to control (ii) Rights on return (iii) Sharing of responsibility and (iv) Risk taking. They think that these issues are fully or partly reflected in the way the

employees are allowed to participate. Due to joint and conflicting nature of interests between employers and employees, both the parties prefer a particular form of participation and representation. The management is concerned about how to achieve improved labour productivity and higher value added without paying higher salaries. On the other hand employees want to share higher income, which is due to improved productivity. For this conflicting nature of interests, the following three major forms of workers' participation take place—

(i) Management-led employee involvement in daily work practice

This form of involvement gives employees the opportunity to bring their experiences with the working process to bear through information sharing and consultations and to express their opinion before changes are carried out. This form does not allow control or return rights.

(ii) Financial Participation

This is mainly the form of employee ownership or profit sharing schemes. Such arrangements are associated primarily with return rights. However, in the case of ownership they include control rights as well.

(iii) Representative Participation

This is an arrangement of employee participation through representation whereby the views of employees are expressed in a coordinated manner and where institutional arrangement influences the control rights of management. In this form no single party can alter or determine solely the issues related to work and workplace governance. Representative participation may be organized internally or embedded in external institutional framework. Examples of this form are—work councils, joint

work/management committees, local unions, non-union workers' representatives, and workers' representatives on company boards of directors.

Parasuraman, Rahman & Rathakrishnan (2011) categorize workers' participation mechanisms into two forms—

(i) Direct Participation

This form allows the involvement of employee themselves in the decision making process. Examples of this form are Quality Circles Group (GCC), Total Quality Management (TQM), Group Briefings, ISO, and 5s.

(ii) Indirect Participation

This takes place through an intermediary of employee representative bodies. Examples of this form are Joint Consultative Committee (JCC), Union, Work Councils, Partnership, In-house Union, and Labour Management Committees (LMC).

WORKERS' PARTICIPATION: INTEGRATED FORMS

From the above discussion it is clear that there are so many forms of workers' participation. Those are different according to the nature of their formation. Functionally the representative bodies or organizations may resemble each other but they do not necessarily stem from same origin. Members constituting those bodies are chosen either by the employers or by the unions. So, the basic question arises concerning whether the trade union enjoys the monopoly of nominating or selecting or electing the members representing the workers in the participation forums or not. In this lens the participation mechanisms can be divided in to two broad categories—single-channel approach and dual-channel approach. If the members of the workers are chosen through the workers' union, it may be termed as single-channel approach. If the members are chosen by both employers and unions, it may be termed as dual-channel approach. Both the approaches are discussed below—

1. Single-channel Approach

According to this type of employee participation recognized Trade Union is the only authorized organization to nominate or elect or select all the members to the bodies or organizations to act for workers' welfare, represent and articulate workers' interests, bargain for workers benefit, negotiate, consult and make decisions, implement the policy; law and code of conduct at plant level, industry level and national level. Very often this system of workers' participation and representation is legitimized by national law that compels the employers to recognize trade unions at plant level simply to balance power as well as efficiency and voice between trade union organizations and employers. Single channel workers' representation by trade union organizations is practiced mainly in Sweden, Estonia, Latvia, the United Kingdom, Iceland and Turkey.

2. Dual-channel Approach

Workers' participation and representation to articulate interests can also be taken into account by a dual or multiple channel approach. In such participation and representation system workers may be nominated to form different organizations/bodies by the employers without prior information or consultation with the operating trade unions or may be elected by all the workers working in a particular firm/factory/company. This form includes Works Council, Direct Representation, Information and Consultation Committee, Betriebsrat, ondernemingsraad, samarbejdsutvalg, Quality Circles Group, Total Quality Management (TQM), Group Briefings, etc. Participation from Civil Society Organizations (CSOs), Advocacy Group (AG), Campaigning Groups (CG), Community and Single-issue groups, Workers' Rights Activists, and Labour Experts also fall in this category as they are independent of trade unions. The representatives on this type of body are generally

elected by all the workers on the site, although in certain cases this works council may represent all the unions present in the company. The works council may exist alongside the trade union representations and have its own functions and powers. The trade union organizations have a major influence in the election of council members. The works council may simply represent all the different trade union organizations present in the company. Each has a certain number of seats on the council which may also or may solely be a body for information and cooperation. In the latter case the existence of a works council does not release the employer from his obligation to negotiate with the union organizations. This form is mainly practiced in Finland, Norway, Denmark, Italy, Belgium, Luxembourg, and Rumania.

THE QUEST FOR EFFECTIVE FORM(S) OF WORKERS' PARTICIPATION

The emergence of multiform system of workers' participation and representation across countries has elicited different responses from Industrial Relations (IR) scholars. They have been trying to assess the causes of coming so many forms into being and effectiveness of the forms being practiced. The principal issues of assessment are- union decline and the opportunity of non-union and direct participation, efficacy of multiple forms to foster employer-employee relation, capacity of the forms to handle grievance issues, power of non-union organizations to displace unions, and effects of non-union institutions to aggregate, articulate and finally represent workers' interests. In some cases non-union institutions have been assessed in terms of their representative effectiveness; do they work effectively on behalf of workers, resulting in significant improvements to terms and conditions of employment, to work quality and to the effective regulation of the employment relationship' (Heery, 2010)?

In this debate most of the scholars are on the view that the single-channel approach to workers' participation is more effective than dual or multi-channel forms of participation and representation. Bryson and Freeman (2007, cited in Heery, 2010) report that 'trade unionism is an "experience good" – assessments are sharply divergent among those who have and have not consumed it and tend to change following consumption. But if this is so, then preferences cannot be taken simply as given and are at best a flawed criterion for evaluating institutions of worker representation'.

Heery (2010) also asserts that trade unions are effective institutions of redistribution that workers from lower and intermediate social classes who have most need of collective action are more likely to join unions than are professional or managerial employees and those workers with experience of trade unionism are particularly appreciative of its wage bargaining function. From the evidence it is plausible to claim that the majority of workers currently have an interest in effective trade union representation.

It is usually seen that workers have multiple and indeed conflicting interests and some of those are shared with employers. It is contended that workers need institutions of representation that are transformative and oriented towards challenging the existing economic order, but that this challenge can be accommodated within the bounds of a reformed capitalist economy. It is also recognized that workers are divided among themselves, and proposes that desirable institutions of representation will be receptive to diversity and seek to accommodate the distinctive interests of women and minority workers (Heery, 2010).

It is often argued that regarding common interests there is a scope of cooperation among employees and employers within the existing employment relationship. Equally, there is a perpetual conflict among workers and management concerning opposed interests and in such cases employment relationship becomes unavoidably adversarial. Kochan et al., (2009, cited in Heery, 2010)state that given this dual nature of the employment relationship, it is important that institutions of worker representation do not privilege cooperation and neglect interests that are opposed to those of employers. Trade unions have that capacity to balance between the interests of the business and workers' as well.

Moreover, unions, independent of the employer, are able to impose effective sanctions in order to overcome employer resistance, to press for improved leave and working time arrangements to the benefit of greater work–life balance, to make space for growth of gender democracy and other forms of identity-based systems of participation to advance the interests of women and minorities in collective bargaining (Heery and Conley, 2007). Union activity relating to these criteria has encompassed both internal and external representation of diverse interests.

From the above discussion it is clear that as an effective framework of employee participation, single-channel approach is the best. Heery (2010) argues that 'the framework itself rests on a conception of worker interests and the claim that these embrace redistribution, work quality, diversity, multi-level representation, conflict and the accumulation of power resources. Application of this framework suggests that unions are the most effective institution for representing the interests of working people'. Besides, participation through trade union is more democratic in nature than other forms of participation and representation.

It is also noteworthy that employer-sponsored participation or direct participation is becoming popular day by day with the increasing involvement of Civil Society Organizations (CSOs)—advocacy, identity, and issue-based organizations. Like employer-sponsored forms they are highly differentiated, often promoting the interests of particular groups within the workforce and using a wide variety of methods of representation. Arguably, their beneficial effects as institutions of worker voice seem to lie in four areas (Heery, 2010).

Firstly, many pursue an aggressively redistributive policy seeking to improve rewards or increase the economic security of vulnerable groups within the labour market, as seen for example in the campaign for a living wage or attempts to combat the exploitation of migrant workers by labour-supply agencies.

Secondly, they advance a quality of work agenda, with a particularly strong emphasis on attempts to improve work–life balance.

Thirdly, issues of equality and diversity are central to the activities of organizations of this kind, many of which focus on the interests of women, the disabled, ethnic minorities, older workers and lesbian and gay people.

Fourthly, although they often lack the organizational power of trade unions at the place of work, CSOs can mobilize other resources in support of working people. They frequently enjoy high legitimacy, and are regarded as expert in particular issues with which they deal and are effective campaigning organizations, especially within the political process. Despite these strengths, CSOs also suffer from weaknesses. Their workplace presence is often negligible, making it difficult for them to monitor employer behaviour and ensure compliance with employment law or with the voluntary civil regulation.

From the above discussion it can be drawn as conclusion that the employer-sponsored participation systems lack the organizational strength, control over general workforce, and cannot be fully independent of employers. So, they cannot resist employers' pressure and often fail to meet the both ends. The involvement of CSOs in presenting and promoting the interests of people at work is great but they usually remain outside the industrial arena and so cannot represent and report what actually happen in the workplaces. Considering all these, it seems best to say that workers' participation and representation through unions/single-channel approach is more desirable and most effective but other ways/dual or multiple approach of workers' participation may work alongside unions for the greater benefit of better industrial relations.

In this research workers' participation and representation encompasses the democratic norms and practices—interests articulation, leadership, inclusive decision making—to assess whether these norms and practices contribute to the democratization of workplace and ensure democratic labour governance in Bangladesh. These three issues with their nexus are discussed and elaborated below-

Interest Articulation

Interest articulation is the process of defining and aggregation of interests, and then placing them to the proper authority with a view to getting them passed and implemented. Interests are usually defined as demands, intentions, aspirations, and inclinations related to work, profession, and life of individual and community as a whole. In a political system interests come from the environment/community people, articulated by pressure groups or political parties or peoples representatives, aggregated by the state machinery (Public administration/ bureaucracy) and passed by the government (parliament/political executives).

Industrial sector as governing structure is similar to the political system. Here the actors are divided into two groups— state and non-state actors. The non-state actors are workers and employers. Interests may stem from both the workers and employers. Usually workers place their interests through their legitimate organizations (trade union, sector-wide federation, national federation) to the employers who aggregate them and having consultation with the workers' leaders and if necessary with the help and mediation of the government accept or reject them.

Workers' Interests

Workers as a particular social group have interests of their own regarding their work, workplace, income, security, life, and industrial development. Hyman (1994, cited in Hossain, 2012: 84) suggests four characteristics of workers' interests— (1) work related (2) external to employment (3) collective (4) individual. Hossain (2012) groups workers' interests into five forms—(1) individual (2) Collective (3) manifest (4) latent (5) special.

Individual interests consist of those related to individual worker's benefit, welfare, and development. Examples of such interests are promotion, salary increase with the increase of efficiency level, and training, reduce or escape punishment, shown absent or forced absent, threat, overtime-cut, salary-cut etc. Collective interests consist of terms and conditions of work, wage structure, workplace environment, hours of work, safety and health issues, welfare schemes, system of social protection, leaves and holidays, and profit sharing. Manifested interests are those raised frequently by the workers across the country. Interests of this category include delayed payment, low/under payment, dismissal, unfair labour practice, lock-out without payment or prior notice, job threat etc. Latent interests include maternity

leave, work-leisure balance, etc. Besides, there are special kind of interests like transport facility, housing facility etc. However all these interests lie among the working people and they always try to form groups depending on the existing legal and social practices.

Workers' Interest Group

Successful articulation of interests depends on the nature and formation of interest groups. The term "group" is usually used to mean any collectivity of people with identical interests and making claims on the state or particular authority for allocation of resources (material, immaterial, monetary, and legislative) for its members. 'There is no group without its interest. An interest is equivalent to group. The "interest group" or "group interest" may be interchangeably used for the sake of clearness of expression' (Maleque, 2007: 9). But it is an important question whether interest is responsible for the existence of group or group is responsible for the existence of interest.

Hossain (2012: 85) argues that 'the formation of interest group is, indeed, a puzzle since not all interests are expressed and not all people are formed into groups'. Why people with interest come to form groups and how they deal with their interest is a question of varied answers. Very often people with interest form groups for economic and psychological causes. They feel that forming groups will facilitate their articulation of interest, maximize their economic gain, and empower their social and political identity and existence as well by acting collectively. With this attitude people with common interest form groups either formally or informally.

Formal groups are always organized and associated with organizations such as trade union of a particular enterprise, federation of sector-wide or industry based workers, national federation of cross industrial workers, employers' associations,

employers' federations etc. On the other hand informal groups are not always organized and not always associated with particular association. Such groups are often termed as non-associational groups (ethnicity, religion) that do not include all of its members and so their existence and influence is not stable and permanent in nature. Another example of informal type is anomic group. This group is formed suddenly and spontaneously in response to some unhappy events. The protesting power and manner of such group is very often militant, unpredictable and uncontrollable. However, the forms of interest groups determine the process of interest articulation.

Process of Interest Articulation

The process of interest articulation depends on the nature and formation of interest groups, nature of responses of the authority, functional ability of interest aggregation institutions, industrial and labour relations systems, and process specified in the regulatory framework. It is always necessary for interest groups to be able to reach the key policymakers and influence them sufficiently and substantially to get their demands passed, problems solved, grievances handled, and aspirations fulfilled.

Usually the tactics used to gain access to policymakers depends on opportunities offered by the structure of policymaking, as well as their own values and preferences gained through experiences. There are two types of processes or channels to influence the policy makers— legitimate and constitutional channels, and illegitimate and coercive channels.

Legitimate and constitutional access channels: These are the channels devised in the constitution, specified in the laws and regulations, and accepted by the social norms. These include personal contacts with the policy makers or by involving/hiring the influential/skillful public relations specialists; use of mass media like television,

radio, newspapers, magazines; use of political parties; legislature; bureaucracy, particular local, regional, and national administrative bodies, peoples representatives; non-violence demonstrations, lawful protest meetings, deployment of lobby etc.

All these channels seek to achieve the predefined goals through the process of bargaining, negotiation, advocacy, persuasion, promises or support. Usually these channels are functional in the democratic societies where liberal democratic norms and principles of deliberations rather than suppression, accumulation rather than intimidation, peaceful coexistence for all, freedom of opinion and expression, and equal opportunity for all are preserved, exercised and practiced.

Illegitimate and coercive access channels: these are the channels beyond the course of law and constitution, and social norms. These channels are direct action, militancy, violence, civil disobedience, street blockade, work-off, hartal, gherao, strike etc.

These channels are active and widely practiced where the groups believe that the normal legitimate and constitutional channels are not effective and the institutional mechanisms are dysfunctional. When a particular group does not have any legitimate channel to cause change, or experiences the constitutional channels to be ineffective, it justifies violence and undertakes illegitimate course of action to protest unjust, injustice, deprivation and exploitation. Usually frustration and anger leads people to go violent to achieve success. Paradoxically, illegitimate channel of interest articulation seldom succeeds and is followed by authoritarian repressive response—police actions, litigations, torture, oppression, illegal killing—that consequently leads to further violent actions. By this chain, a deprived group becomes unpopular and its violence activities forfeit sympathy of the society and finally become an alien group.

However, in industrial and labour relations system, the process of interest articulation is related to the existing system of interest representation and leadership choice pattern. The nexus is elaborated below.

Leadership

In any society the choice and use of interest articulation process/channel is determined by the existing system of interest representation. Interest representation is important but who represent or who are made to represent the interest is more important. Every organized group must be organized, controlled and led by the leadership who is the legitimate spokesman of the group, initiator of the group proposals, and the negotiator on behalf of the group. Mills (2005: 10) states that 'few things are more important to human activity than leadership. … It makes business organization successful. …The absence of leadership is equally dramatic in effects. Without leadership, organizations move too slowly, stagnate, and lose their way'.

Importance of Leadership in Democratic Labour Governance

Leadership is important for many reasons. It is very often said that a good leader can make a success of a weak plan but a poor leader can ruin even the best plan. The role of leadership in the governance of work and workplace where people of diverse interest work seems to be great. A critical review of literature related to the role of leadership of the people at work reveals that leadership is the main instrument of grievance handling procedures. It prioritizes the interests of the workers, determines the articulation process/channel, sits with the opponents or makes the opponents to sit with the workers, conducts discussion, reaches negotiations, makes decisions, and finally implements those agreements. The major aspects of importance of workers leadership are discussed below-

Legitimacy of Interest Representation

Legitimacy of group actions and interest representation determines the process and outcomes of interest articulation. It also guides and leads the whole course of interest advocacy. If the choice of leadership is not fair and democratic, any industrial relations system is sure to face the adverse effect of anomic group effects. Hossain (2012) argues that:

> The process of channeling interests to influence decision-making process determines outcomes of the interest representation system. Indeed, often representation system tends to be imperfect in promoting equitable outcomes for its members. Two reasons can be put forward. First, it is the legitimacy gap of the representatives. To be representative, the person has to share the main characteristics of broader populations. … Second, it is some groups that are likely to exert greater than proportional influence. … Outcome of interest representation, thus, depends upon how interest groups influence the policy making process.

Where there is strong leadership, there is associational strength, legitimacy of actions, fairness in vision and mission, proper motivation, and democratic strategy and path way to achieve the predefined goals. Where there is no leadership there is legitimacy gap, anomic rather than organized actions, and intimidation rather than advocacy of interests.

Participatory Decision Making and Implementation

Leadership makes it possible to adopt participatory decision-making process through democratic deliberations rather than authoritarian declaration both inside union/ organization and outside the organization, and ensures proper implementation of the decisions taken. The most important elements of decision making are communication and information. It is the leadership that acts as a bridge between the employees and employers. Besides, the leaders are well informed about the needs and demands of the workers. They integrate the needs of the workers and then place it to the authority in a

formal way. They can also motivate and control the behaviours of the workers and help the employers to implement the decisions. Mills (2005:10) states that:

> Much of the literature about organizations stresses decision-making and implies that if decision making is timely, complete, and correct, then things will go well. Yet a decision by itself changes nothing. After a decision is made, an organization faces the problem of implementation—how to get things done in a timely and effective way. Problems of implementation are really issues about how leaders influence behavior, change the course of events, and overcome resistance.

Input to Policy Process

Policy is conceived as a series of decisions. Every decision is made to face the reality and to solve the existing problems. As has been stated above, leaders are well informed about the needs, demands, aspirations, and inclinations of the workers, they can help making realistic decisions and in this way contribute to policy making by giving input to it. When decisions are made having consultation with the leaders, there is less suspicion of illegal and immoral decisions. So, the workers voice is reflected substantively and there comes a balance between efficiency and voice, issues of employee empowerment, consensus building and win-win situation for both the employees and employers.

However, all these benefits depend on the nature and pattern of leadership—whether they are committed to the workers' interests, independent of the employers' influence, and elected democratically—either directly or indirectly.

Choice of Leadership

Leaders must be chosen democratically either by voting of the mass workers or by the workers representatives/ delegates to ensure democratic labour governance. Usually the leaders at plant level must be elected by the workers directly or by the trade unions. But in sector level (Federation) and national level (National Federation) the

leaders may be elected by the workers or may be chosen by the trade union leaders within a federation and the federation leaders within a national federation respectively.

However, leadership/representation becomes democratic, and so accountable, when they are chosen through election from the organization(s) and voted by organization/ community members. Election is considered the only legitimate way of representation. Becker & Raveloson (2008:6-8) point out that a democratic election should be:

1. free that means a member is free to choose the candidate, to use or abstain from using the voting right;
2. equitable which means a member can use the voting right at his/her disposal and without any conviction on grounds of race, sex, language, incomes, religion, education, training etc.;
3. secret that means putting vote through secret ballot and booth;
4. transparent which means every candidate has the right to attend the counting of votes;
5. regular which means election to be held in a certain and fixed interval so that members can know the date of coming election;
6. final meaning that electorates' votes are supreme and the result should be enforced effectively and immediately.

If the leaders are made following the above processes and procedures, they will be better able to contribute to the inclusive decision making leading to democratic labour governance.

Inclusive Decision Making

Inclusive decision making is a component of inclusive democracy, establishment of a political democracy involving the creation of appropriate institutions which secure an equal distribution of political power among all citizens, in which all the important decisions are made through deliberations among the community people either directly or through their representative. It is also known as decisions through deliberations.

Inclusive decision-making can be defined as the process of exercising influence on decision making—either directly or through representation—by all those who are supposed to be affected by its outcome. It is the key to ensure that the decision-making processes are dominated and agreed by all parties rather than arbitration or dominance by one power. Inclusive decision-making is a way to access diverse points of view, build commitment and stimulate creativity to final decisions. It is an effort to create dialogue to prevent conflict. It is a key element in a strategy in building consensus, balancing and reconciling competing interests and prioritizing of various segments of society. This is particularly important in conflict-prone settings like public and private sector where a consensus, following a multi-stakeholder dialogue is needed.

There may be a number of decision-making processes— autonomous decision making, paired decision making, team/group decision making, inclusive decision making—with diverse outcomes. In industrial arena when the workers and stakeholders are included in and have influence on the decision making either by a representational or direct form is called inclusive decision-making.

Kaner (2007: 6) defines the inclusive decision-making as a combination of both “divergent thinking” (generating a list of ideas, free-flow open discussion, seeking diverse points of view, suspending judgment) and “convergent thinking” (sorting ideas into categories, summarizing key points, coming to agreements, exercising judgment).

Renn and Schweizer (2009: 182) state that ‘deliberations highlight the style and nature of problem solving through communication and collective consideration of relevant issues. It combines different forms of argumentation and communication, such as exchanging observations and viewpoints, weighing and balancing arguments, offering reflections and associations and putting facts into contextual perspective. The term deliberation implies equality among the participants, the need to justify and argue for all types of (truth) claim and an orientation towards mutual understanding and learning’.

TIA (2012) points out a number of attributes necessary for effective inclusive decision-making. They are:

- Empowering affected individuals and groups: For inclusive decision making stakeholders need to be brought into the decision making process in a way that allows them to contribute. They should be brought in at an early stage and allowed to influence the scope of the debate and the issues to be considered, within the bounds of certain constraints (e.g. legal, ethical and equity considerations). All participants need to be in a position to fairly and equally contribute to the debate. For example, have sufficient understandable information and feel confident to act on it; training or facilitation may be required. Expertise should be readily accessible but should not be permitted to ‘capture’ the process.

- Conditions reciprocity: The role of stakeholders in the decision making process should be laid out clearly, including any limitations; the scope should be consistent with the issues identified by the stakeholders. For example, the scope of discussion should not be predetermined by or limited to the narrow field of a specialist regulator.

- Practical decisions and strategies, flexible and open to revision: The process produces decisions or strategies that are practical to implement. Solutions tend to be flexible and adaptable and should be open to revision over time; criteria for review should be agreed.

- Recognition as legitimate and fair: Interested parties should recognize the decision making process as transparent, fair and legitimate. Those involved can see how their contributions were taken account of. A robust decision should result - which even those who oppose it can recognize for as legitimate.

- Feedback on contributions: The process should provide a clear audit trail to explain who made the ultimate decision, how the contributions of stakeholders and scientific knowledge were used and on what basis or criteria the decision was made.

- Production of a shared risk governance culture: Beyond the obvious goal of reaching a decision, the process should promote mutual understanding and confidence between involved stakeholders and develop their competence in participative governance. This would include a better understanding of the strengths and weaknesses of 'scientific' risk assessment in the governance of hazardous activities.

- Operating in an atmosphere of mutual respect and trust: The process starts by listening to the stakeholders exposing how they frame the issue within the scope of decision context. The actual role of the stakeholders in the process is made explicit. The scope/remit of the decision-maker is consistent with the concerns of the involved stakeholders. The issues and concerns of all the affected parties are properly identified. The different constraints and vested power interests are exposed.

Outcomes of Workers' Participation in Decision Making

The main purposes of inclusive decision-making are peace building and conflict prevention; to generate conditions for lasting peace to permit sustainable development; create communities that are safe, peaceful and healthy places for its members; to offer a solid foundation for a prosperous life with equal opportunities for all; promoting economic growth, and social development. The outcomes of inclusive decision making are many. Kaner (2007: 29) identifies the following:

1. Improved leadership and better communication skills
2. Stronger powers of reasoning and clear procedures for handling group dynamics
3. More confidence and commitment
4. Greater ability to assume broader and more difficult responsibilities
5. Access to information and greater opportunity to utilize multiple talents
6. Development of respectful, supportive atmosphere
7. Increased capacity for tackling difficult problems
8. Higher quality solutions that integrate everyone's goals—Employers' profit versus employees' income security.

Mutizwa-Mangiza (1991:36) agrees that workers' participation in decision making has the 'ability to bring about better worker-management communication, increased productivity, effective handling of grievances, industrial peace and industrial democracy'.

Kersley and Martin (1997: 485) claim that participation of workers in decision making increases the communication level between workers and farms and there is a causal relationship between communication and productivity growth.

Newstrom and Davis (2004, cited in Bhuiyan, 2010) suggest that employee participation in decision making typically brings higher output and a better quality of output. It tends to improve motivation because employees feel more accepted and involved in the situation.

Looise, Torka and Wigboldus (2011: 88) admit that 'worker participation can channel conflicts of interest between employees and employers and stimulate desired employee attitudes and behaviour, consequently enhancing organizational performance'.

Parasuraman, Rahman and Rathakrishnan, (2011: 55) argued that ‘employee participation has the capacity to enhance the quality of decision making by broadening inputs, promotes commitment to the outcomes of the decision making process, improves motivation, cooperation and communication in the workplace’.

The benefits and outcomes of inclusive decision-making are related to the level and scope of participation and representation. If the participation is organized under democratic leadership and formal legal mandatory processes, the benefits are sure to be greater. Conversely, if the participation is arranged under non-binding directive policies and weak leadership, the outcomes of inclusive decision-making are certainly narrower.

Levels of Inclusive Decision-Making

The levels of inclusive decision-making are related to the nature and structure of industrial sectors and the scope is determined by the regulatory framework and limited by the nature of ownership. If the industrial sectors are diversified in their systems of production, usage of technology, degree of risk involvement, types of labour—physical and/or mental, size of the farms, the levels of inclusive decision-making will significantly vary. Koch and Fox (1977: 572) state that ‘forces in industrial relations setting and within organizations which influence the form and content of worker participation are examined. Values, socio-political climate, economic conditions, and bargaining structures are identified as especially salient contextual forces, in addition to organizational dimensions of size, centralization, and technology’.

They divide inclusive decision-making into three interrelated levels on the basis of down to top relationships. These levels are discussed below-

1. Technical or job-level

   This level entails workforce involvement in immediate job related problem solving. Individual worker gets involved in this through indirect form of participation and exercises influence over the decisions related to working conditions, job enrichment, and planning activities in a particular task.

2. Managerial or mid-level

   This level tends to encompass work and administrative control system for an entire department, workshop or factory. Content for shared decision making at this level includes the determination of layout, equipment specifications, work scheduling, employee selection, and raw material acquisition. In this level of decision making trade unions provide illustrations of indirect or representational participation.

3. Institutional or high-level

   This level decides and enacts organizational policy, operational laws and rules. Besides, major changes in the existing regulatory framework and inclusion of new mechanisms relating to the development of industrial relations systems are also decided in this level. Workers are represented in this level indirectly through trade unions.

However, in most of the countries the institutional mechanisms are arranged in three levels—plant/enterprise level, industry/sector level, and national level—for inclusive decision making. The scope of functionality of these levels depends on the nature of ownership and regulatory framework of the country. Mutizwa-Mangiza (1991: 35) argues that the scope of inclusive decision making in private sector industry is poorer than in public sector industry. He states ‘private ownership of the organization, among other things, is a major obstacle to worker participation in decision making. Private capital tends to be authoritarian and intransigent in its relation with workers’.

Issues and Scope of Inclusive Decision Making

A review of literature shows that scholars on industrial relations identify many issues for inclusive decision making in plant level, sector level and national level. National level of inclusive decision making involves policy issues like framing of policy, enactment of law, making of rules, setting of minimum wages, working hours, safety issues, and standard of protective measures, judicial processes and all other general guide lines for work and workplace governance. On the other hand plant level and sector level issues for decision making arise from the workplace in regard to the differences of regulatory framework and practice. There is no demarcation between plant and sector level issues. Any problem unsettled in plant level goes to the sector level for solution and then to the national level if necessary.

CONCLUSION

In fine it can be said that the term democracy has varied meaning. To some scholars it is a political theory, to some it is a social theory and there are some who claim democracy to be an economic theory also. Amidst this diversity, I conceptualize democracy as a combination of all theories—political, social and economic. The reason behind such conceptualization is that, labour is a community that is not detached from the political, social and economic contexts of a given country. The components of democratic labour governance are—rule of law, fundamental rights, and scope for workers participation and representation. These components are not independent of and separate from the fundamental characters of national governance. Rather they are determined and even manipulated by the ideology of the political parties and governments.

The rule of law comprises regulatory framework, enforcement mechanisms, and dispute settlement mechanisms. The democratic characters of regulatory framework are determined by the extent they reflect workers' rights, protective measures, and penalty structure for the breach of law. The regulatory framework also requires enforcement mechanisms—a system of labour administration, inspection and dispute settlement mechanisms. The contribution of these mechanisms towards democratization of industrial and labour relations depends on their formation and the process and democratic norms they follow to discharge their functions.

The second component of democratic labour governance is the allocation of workers' fundamental rights—rights to equality, rights to opinion and expression, rights to association and rights to collective bargaining. These rights stem mainly from the obligations of national constitution which acts as the base and guiding principle of national labour policy and labour laws. The enforcement and exercise of workers' rights and the procedures of handling grievances through the institutional mechanisms—system of labour administration and inspection, workers' and employers' associations, state and non-state dispute settlement—depend on the the extent to which they follow the practice of democracy.

The third component of democratic labour governance is the scope and institutions of workers' participation and representation. The democratic characters of workers' participation and representation is determined by the availability of institutions to participate, the mechanisms to represent, and the democratic means of participation and representation. The effectiveness of participation and representation is assessed through the process of interest articulation, inclusive decision making, and outcomes.

I claim that this theoretical framework of democratic labour governance can effectively be applied in the context of Bangladesh to find out the practices and deficits of democratic norms in the existing labour governance procedures.

CHAPTER III
RULE OF LAW IN LABOUR GOVERNANCE

The current state of labour governance in Bangladesh presents a dismal picture. There are longstanding allegations that it is characterized by job insecurity due to lack of appointment letter; various forms of verbal, sexual, and physical torture and harassment; irregular payment of wages and overtime pay; compulsory and forced labour; violation of workers' rights to association and collective bargaining; weak enforcement and non-compliance of labour laws; frequent shutdown of factories without serving any prior notice and without paying workers' dues; insufficient and inefficient judicial systems; and weak industrial relations machinery. Accordingly, industrial sectors of Bangladesh are affected over the years by worker unrest and industrial instability (Kolben &Penh, 2008: v). It seems that the employers' whim, governments' inattention and workers' vandalism rather than democratic principle of rule of law reign over the labour sector. Due to this lack of the rule of law, Bangladesh fails to mould a 'well-functioning' labour sector that could result in productive work, fair income, workplace security, social protection, freedom of association and expression, and equal opportunity for all (Salinger & Saussier, 2010: 9).

The rule of law makes democracy work. Democratic governance without the existence and application of the principles of rule of law is impossible. Bangladesh is a democratic polity. It has a constitutional obligation to ensure rule of law in all spheres of governance. It has been expressed in the preamble of the Constitution of Bangladesh that '…it shall be a fundamental aim of the State to realise through the democratic process to socialist society, free from exploitation-a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens'. Rule of law refers to governance

that is followed by democratic laws, efficient administration to execute the laws with fairness, and a judicial system to provide justice impartially. In labour governance the rule of law requires—a regulatory framework including policies and laws enacted particularly for the people at work; a system of labour administration including bipartite and tripartite institutions to enforce the regulatory framework; and a system of labour judiciary including formally and informally set bodies to deliver justice to workers and employers. We do not know the extent to which the principles of rule of law are reflected in the regulatory framework of labour governance and how far those principles are being executed by the enforcement mechanisms.

In this chapter I search for the elements of rule of law in the labour governance regulatory framework—the Constitution of the People's Republic of Bangladesh, the National Labour Policy, the BLA 2006 and EWWAIRA 2010—and the compliance of the elements in practice by the law enforcement mechanisms i.e., MoLE, DoL, and CIF&E and dispute settlement mechanisms i.e., Conciliation, Arbitration, and Labour Court. The objective of this chapter is to explore the existence and application of the norms of rule of law and to disclose their overall contribution to democratic labour governance. I argue in this chapter that either the principles of rule of law are not translated properly in the regulatory framework of labour governance or the principles are available but the enforcement mechanisms fail to transform them in to reality and therefore the current labour governance lacks the democratic character of rule of law.

This chapter consists of four sections. The next section discusses the regulatory framework to find out the principles of rule of law; the third section focuses on the enforcement mechanisms of the regulatory framework, and fourth section is on the dispute settlement mechanisms. The final section summarizes the findings.

REGULATORY FRAMEWORK OF LABOUR GOVERNANCE

The regulatory framework of labour governance in Bangladesh consists of two categories of regulations—domestic or national regulations and international regulations. The national/domestic regulations are two types—(i) guiding principles of governance which include the Constitution and the National Labour Policies of Bangladesh, and (ii) the mandatory regulations which include the BLA 2006 and the EWWSIRA 2010. The BLA 2006 is applicable to the formal industrial workplaces outside the EPZs and the EWWSIRA 2010 is applicable to the factories and establishments inside the EPZs. However, the BLA 2006 occupies the central place in labour governance in Bangladesh because it controls almost the whole of formal industrial sectors.

The Constitution of Bangladesh is considered the principal source and guiding principle of all laws including the labour laws in Bangladesh. It has been proclaimed in the Constitution that 'this Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution and other law shall, to the extent of the inconsistency, be void' [Art.7(2)][1]. Besides, the Constitutions contains some fundamental principles and obligations—to emancipate peasants and workers from all forms of exploitation (Article 14); to ensure the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work, and reasonable rest, recreation and leisure (Article 15); recognises work as a right and requires that everyone shall be paid for work on the basis of the principle from each according to his abilities, to each according to his work [Article 20(1)]; prohibits all forms of

[1] Article 7: Supremacy of the Constitution.
(1) All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution. (2) This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution and other law shall, to the extent of the inconsistency, be void.

forced labour and makes it a punishable offence (Article 34); and guarantees the right to freedom of association and to form trade unions (Article 38)—relating to working people. 'The Fundamental Rights and the Directive Principles of State Policy enshrined in our Constitution need to be specifically mentioned in view of their supreme importance in directing and influencing the Labour Legislation in the country' (Al Faruque, 2009: 10).

The National Labour Policies are also regarded as the guiding principles of labour governance regulatory framework. In Bangladesh the first national labour policy was framed in 1972 and after nearly a decade the second national labour policy was declared in 1980. After a long interval of 32 years, the latest national labour policy has been adopted by the government in 2012. The newly framed labour policy is a comprehensive framework towards the realization of rule of law and democratization of labour governance through massive participation of the working people (Sec.1.04). It aims to enhance the dignity of labour (Sec.5.00); to ensure employment security (Sec.5.01), to preserve the conditions of decent work (Sec.6.00), to guarantee just wage (Sec. 7.00), to increase productivity through workers' participation in company's profit (Sec.8.00), to bring labour welfare through increased initiatives towards social security (Sec.11.00) and occupational safety and health ((Sec.12.00). In addition, the policy promises to modernize the system of labour administration (Sec.4.02), to discourage unfair labour practice and to speed up the conflict resolution through conciliation and arbitration processes (Sec.15.00).

The inclusion of labour law in the labour regulatory framework through parliamentary enactment in Bangladesh is a recent development. After independence in 1971, Bangladesh adopted as many as 46 labour laws (Al Faruque 2009: 9).

Another estimate shows that before 2006, there were 51 labour laws of them 23 date back to the British period, 25 were formed when Bangladesh was part of Pakistan and 13 have been passed after independence (Morshed, 2007: 120). Due to this large volume of labour laws in operation, it was very difficult to apply them properly as the laws were scattered, out-dated, obsolete and often inconsistent. Besides, the rights provisions of the laws were almost suspended from 1972 to 1977 due to changes in national politics. Demands were always there to revive workers' rights and to enact a comprehensive labour law for governing labour and industrial relations.

Following the pressures from the organizations of working people, the government of Bangladesh formed a National Labour Law Commission in 1992 consisting of 38 members lead by Justice Abdul Kuddus Chowdhury. This commission consulted with the employers, workers, CBA leaders, NGOs and other relevant stake holders to have comments to modernize the existing labour laws. By 1994, the commission examined the existing labour laws and recommended to repeal as many as 27 laws by drafting an updated, consolidated and unified labour law. It took 12 years to transform the draft into a complete labour law. The Draft Bill was submitted before the Parliament in 2003 and on September 25, 2006, the bill was passed by the parliament. Subsequently, on October 11, 2006 the Bangladesh Labour Act (BLA) 2006 came into force and it declared 25 laws repealed (Sec. 353).

Al Faruque comments that 'the Labour Law of Bangladesh is a complex and curious mix of different legislations, regulations and ordinances. … After the enactment of the Labour Act, twenty five of the prevailing enactments stood repealed and were amalgamated with the new Code' (2009: 9-10). The newly enacted labour law created a mixed reaction among the stake holders. Legal experts, labour leaders, academics, researchers and members of Civil Society raised questions about the

formation and quality of the newly adopted labour code. The labour leaders alleged that the law is against the interests of the workers and serves only the interests of the owners. They termed it as the 'law by the owner and for the owner' (Morshed, 2007: 121). He also notes that:

> During the labour bill passing session main opposition party walked out the parliament, and termed the law a "black law" as they said in preparing the law the government violate the ILO Conventions and the law largely ignored the labourers' interests. Opposition parties claim the way the bill and report placed also violate the rules and procedures of the parliament. The ruling party passed the law within a moment without any discussion. The labour leaders rejected the labour law and termed it as "unacceptable" and most "unfriendly to the workers and it goes against workers' rights movements (2007: 121).

Allegations are there that due to hastiness a number of suggestions put by the different stakeholders could not be considered by the Parliament. A member of the then parliament who was the member of parliamentary standing committee on labour and employment brought 56 amendments during the session of passing the law but the parliament accepted none of them (Morshed, 2007:124). However, the law has contributed to a great extent to the improvement in legal framework of democratic labour governance. As the Act is a comprehensive one it covers within its scope all establishments—commercial and industrial establishments, factories, shops, docks, tea plantations etc.—under its purview. Al Faruque finds that the Act initiated a number of reforms including improving health and safety issues, issuing of ID cards and appointment letter, improved access to justice, uniformity in definition of workers, child labour, payment of compensation, enhancing social security of workers, and overtime allowance, and protection to the president, general secretary, organizing secretary and the treasurer of a Trade Union, who cannot be transferred from one district to another without his/her consent (2009: 12). Yet, it bears some inbuilt weaknesses as the Act does not bring any significant change to and imposes restrictions on the right to free trade unionism, right to collective bargaining and right to strikes.

The international regulatory framework comprises the Conventions and Recommendations adopted by the International Labour Organization (ILO), United Nations' Universal Declaration of Human Rights (1948), various Corporate Codes of Conduct, several trade linked Labour Standards and Charters. The ILO has adopted, since 1919 to the present, 189 Conventions and a good number of recommendations. Unlike the conventions, the recommendations are not subject to ratification and have no binding force. Yet, they act as support for member states to formulate labour laws and policies. The conventions are subject to ratification and have, to some extent, binding force. Broadly, these conventions fall under three distinct categories—(i) governance conventions (ii) fundamental conventions and (iii) miscellaneous conventions.

In 1988, the Governing Body of the ILO designated four conventions as 'priority' instrument because of their importance for functioning of the international labour standards system. These conventions are referred to as 'Governance Conventions' which have been included in the 'ILO Declaration on Social Justice and Fair Globalization'. These conventions are—

1. Labour Inspection Convention, 1947 (No. 81)
2. Employment Policy Convention, 1964 (No.122)
3. Labour Inspection (Agriculture) Convention, 1969 (No. 129)
4. Tripartite Consultation (International Labour Standards) Convention, 1976 (No.144)

In 1998, the Governing Body of the ILO declared eight conventions as 'Fundamental Principles and Rights at Work'. These conventions are also known as Core Labour Standards (CLS). The Conventions are as follows—

1. Forced Labour Convention, 1930 (No.29)
2. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
3. Right to Organise and Collective Bargaining Convention, 1949 (No.98)
4. Equal Remuneration Convention, 1951 (No. 100)
5. Abolition of Forced Labour Convention, 1957 (No.105)
6. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
7. Minimum Age Convention, 1973 (No. 138)
8. Worst Forms of Child Labour Convention, 1999 (No. 182)

Bangladesh has ratified 33 conventions including four governance conventions, seven of eight fundamental conventions except Minimum Age Convention, 1973 (No. 138) and 22 other conventions out of 189 conventions till to date.

Among these domestic and international regulatory framework, labour laws are the principal instruments of labour governance in Bangladesh and every labour law is supposed to incorporate the guiding principles of the Constitution, labour policy and ILO conventions. The changing nature of work, employment, globalization, competitiveness, market system, production system, and technology have turned it difficult to enact a balanced, fair, equitable, just and democratic labour law to ensure the rule of law and to meet the aspirations of both the workers and employers.

In this section I attempt to find out the existence and observance of the principles/elements of rule of law—regulation of work and employment, workers' rights and coverage, protective measures, and offences and punishments—in the regulatory framework of labour governance in Bangladesh.

REGULATION OF WORK AND EMPLOYMENT

The regulation of work and employment towards job and income security is the first principle of rule of law for the people at work. Work is a freedom, an occupational citizenship, an identity, and a service (Budd, 2011:14)[1]. Deregulation of work means deregulation of employment that brings identity loss to the working people in the broader social context. The Constitution of Bangladesh aims to secure working peoples' emancipation through the recognition of work as a right (Art. 20a)[2] and through the declaration of State responsibility to ensure the right to work, that is the right to guaranteed employment (Art. 15b)[3]. The National Labour Policy, 2012 also promises to maintain the security of employment and declares that the government will not play such role that may hamper employment security or create joblessness (Sec. 5.01).

Nowadays, due to globalization, deregulation, and technological changes, employment has got a variety of forms—full-time, part-time, temporary, casual, contractual, employment through manpower supplying agencies, and disguise employment. Most of these employments are described as non-standard or atypical employment in the traditional sense of the term.

The employees employed through such non-standard employment are vulnerable to exploitation because they are unskilled, inexperienced and work in sectors with little or no trade union organization or little or no coverage by collective

[1] John W. Budd identifies 10 concepts—work as a curse, a freedom, a commodity, an occupational citizenship, a disutility, a personal fulfillment, a social relation, caring for others, an identity and a service—in his book

[2] Article 20: Work as a right and duty: (1) Work is a right, a duty and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle "from each according to his abilities to each according to his work".

[3] Article 15: Provision of basic necessities: It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens-(b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;

bargaining and they have less or no security of employment (Benjamin, 2000: 75-76). These employees are solely dependent on the labour law for their job, employment and income security. To this end, the BLA 2006 has classified the workers in six categories (Sec.4)[1]—(a) apprentice, (b) badli, (c) casual, (d) temporary, (e) probationer, and (f) permanent—and provides provisions to ensure employment security of each category by declaring that 'No employer shall employ any worker without giving such worker a letter of appointment'(Sec.5)[2].

Along with the aforementioned workers, the law provides provisions for the security of workers employed by the contractors and declares that '…when the wages of a worker employed by the contractor is not paid by the contractor, the wages shall be paid by the employer of the establishment and the same shall be adjusted from the contractor (Sec. 121).

In practice the provision is largely ignored because the law does not provide any provision to monitor the application by any authority. Neither the Director of Labour nor the Chief Inspector of Factories and Establishment is empowered to monitor the issuance of appointment letter to the workers. A key informant says that:

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[1] Section 4: Classification of workers and period probation: (1) Workers employed in any establishment shall be classified in any of the following classes according to the nature and condition of work; namely—(a) apprentice, (b) badli, (c) casual, (d) temporary, (e) probationer, and (f) permanent. (2) 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. (3) A worker shall be called a badli if he is employed in an establishment in the post of a permanent worker or of a probationer during the period who is temporarily absent. (4) A worker shall be called a casual worker if his employment in an establishment is of casual nature. (5) A worker shall be called a temporary worker if he is employed in an establishment for work which is essentially of temporary nature, and is likely to be finished within a limited period. (6) 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. (7) 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.

[2] Section 5: Letter of Appointment and Identity Card: No employer shall employ any worker without giving such worker a letter of appointment and every such employed worker shall be provided with an identity card with photograph.

> The law empowers the inspectors to inspect over all documents of a factory including workers' register and service books but it does not provide any specific provision to monitor whether any employer issues appointment letters to the workers or not. Besides, workers do not put any such allegations to the inspector that they are not provided with the appointment letters. It is a matter to be settled by the employers and employees' (KII GR 3).

In a recent study is has been argued that employment security is a protection against unfair or arbitrary dismissal and sudden loss of earning (Hossain, 2012: 177). He explores two aspects of employment security—the first relates to employment contractual arrangements as tools of protection against unfair and arbitrary dismissal, and the second relates to provisions of protection against sudden loss of earnings e.g., pension, provident fund, leave with pay, maternity leave with pay.

An appointment letter is a legal document that enables workers to prove their status as employees and provides workers with opportunities to access all kinds of rights they are entitled to. A study finds that 53% of the workers engaged in the RMG industries have no appointment letter, and thus has no legal standing vis-à-vis their employer. Instead, the workers are given ID cards or attendance cards as a piece of identification which has far less legal value in relation to appointment letters. These documents offer limited protection against fraudulent employer practices' (War on Want, 2009: 2).

Above discussion proves that the labour regulatory framework of Bangladesh falls short to regulate properly the work and employment partially due to lack of sufficient provisions and partially for the negligence of the employers to obey the existing provisions of laws.

WORKERS' RIGHTS AND COVERAGE

The BLA 2006 allows workers to have a good number of rights related to work, workplace, and social dialogue. These rights are mainly three categories—rights to work, rights at work and rights through work. Rights to work consist of right to have employment letter and identity cards, service books, right to have job termination benefit and certificate of service, and right to have a permissible work environment. Rights at work imply that workers are entitled to just wages and wage related benefits; protection against forced and compulsory labour; non-discrimination in wage, attitude and work facilities; rights to leave, rest, and work-leisure balance; right to workplace safety and health protection measures.

Rights through work are the rights related to workers' participation and representation through formation of association, right to bargain collectively, and right to declare strike. All these rights are extended to wider scope of application 'to the whole of Bangladesh' [Sec. 1(3)]. As the Act is an exhaustive one it has within its scope all establishments—commercial and industrial establishments, factories, shops, docks, tea plantations, hospitals and nursing homes operating on profit making motives, and workers of NGOs are also supposed to get protection under this law. But the law falls short in terms of coverage as it excludes certain categories of workers from the scope of application of the Act particularly provisions on freedom of association and the right to organize.

The excluded categories are—offices of or under the Government (except Railway Department, Posts, Telegraph and Telephone Departments, Department of Roads and Highways, Department of Public Works Department, Public Health Engineering Department, and Bangladesh Government Press), security printing press; establishments for the treatment or care of the sick, infirm, aged, destitute, mentally

disabled, orphan, abandoned child or widow or deserted woman, which are not run for profit or gains; shops or stalls in any public exhibition or show which deal in retail trade and which is subsidiary or to the purpose of such exhibition or show; shops or stalls in any public fair or bazar for religious or charitable purpose; educational, training or research institutions; hostels and messes not maintained for profit or gains; any shop or commercial or industrial establishment owned and directly managed by the Government where the workers are governed by Conduct Rules applicable to government servants; agricultural farms where less than ten workers are normally employed; domestic servants ; and establishments run by the owner with the aid of members of his family and without employing any hired labour [Sec. 1(4)].

Managerial and administrative employees are excluded from the right to establish workers' organizations [Sec. 2(65)]. Along with this exclusion of a large portion of workers form the right to form or join association and collective bargaining, the Act also imposes some restrictions on the right to strikes.

Restrictions on the Right to Strike and Lock out

Strike is a fundamental instrument of collective bargaining process and is primarily intended to use as a threat to the employers to bow down to the lawful demand of the workers. The CBAs as the representative of the workers are entitled to declare strikes if necessary. A review of the provisions of the BLA 2006 related to the conditions of strike proves that it has been made next to impossible for the CBAs to declare and observe strikes democratically. According to the provisions of law, a strike cannot be declared or shall not be permissible in an establishment for a period of three years from the date of commencement of production, if such establishment is a new one or is owned by foreigners or is established in collaboration with foreigners [Sec. 211(8)]. The CBA of an establishment are empowered to declare a strike within fifteen days

after getting a certificate of failure from the Conciliator under condition that three-fourths of its members have given their consent to it through a secret ballot specially held for the purpose, under the supervision of the Conciliator [Sec. 211(1)]. It is also stated in the law that if a strike or lock-out lasts for more than thirty days, the government may, by order in writing, prohibit the strike or lock-out at any time before the expiry of thirty days if it is satisfied that the continuance of such strike or lock-out is causing serious hardship to the community or is prejudicial to the national interest ([Sec. 211(3)]. In case of any of the public utility services, the Government may, by order in writing, prohibit a strike or lock-out at any time before or after the commencement of the strike or lock-out [Sec. 211(5)]. It is important to note that, a CBA cannot be formed without the existence of trade unions.

In the same way the EWWSIRA 2010 also declares that 'No strike or lockout shall be permissible in any industrial unit in a Zone till October 31, 2013 and arbitration shall be mandatory for the parties during the period beginning with commencement of this Act and ending with October 31, 2013' (Sec. 81)[1].

Restrictions to Trade Unions or Workers' Association

Basic or plant level trade union is the first/ground floor of the workers democratic participation. Without the existence of such platforms workers fail to be constituted as a party to input/raise their voices over the concerns and issues related to their work and workplace in the bipartite and tripartite institutional mechanisms as devised in the BLA 2006. Though the Act has approved the rights to association for both the workers and employers, it is regarded as opposed to the free trade union rights. The conditions

[1] Section 8: Transitional and temporary provisions: (1) Notwithstanding anything contained in this Act, the transitional and temporary provisions contained in this section shall be effective,(2) No strike or lockout shall be permissible in any industrial unit in a Zone till October 31, 2013. (3) Notwithstanding anything contained in section 45, arbitration shall be mandatory for the parties during the period beginning with commencement of this Act and ending with October 31, 2013.

that are imposed on the rights to association are rather restrictions to make the right difficult to exercise for workers. On the May Day 2013, workers groups urged the government to make the law more democratic and workers friendly by dropping its undemocratic provisions. Wajedul Islam Khan, the coordinator of the Sramik Karmachari Oikya Parishad (SKOP), pledges that 'We urge the government to amend the law in keeping with the International Labour Organisation provisions to provide free trade union rights to the workers'[1].

Bangladesh has ratified the ILO Convention No. 87(1948) and 98 (1949) which imply that the government must incorporate the provisions and spirit of the conventions. In fact, the existing provisions of the BLA 2006 on the right to association and collective bargaining are not in line with the spirit of the ILO Conventions. The ILO Convention 87 proclaims that workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof [Art. 3(1 & 2)]. The spirit of the provision refers that any person can be elected as the executive member or officer of any trade union if he/she is chosen by the members of the trade union. The matter is subject to 'the constitution' of the respective trade union(s). The provisions provided in the BLA 2006 are contradictory to the spirit of the provisions of the ILO Convention. According to the existing labour law, whatever the constitution of a trade union contains, a person cannot be elected as a member or an officer of a trade union if he is convicted of an offence involving moral turpitude or if he is not employed or engaged in that

[1] The NEWAGE, Online Edition, May 03, 2013.

establishment in which the trade union is formed [Sec. 180(1)][1]. Due to this restriction, the workers of basic trade unions cannot draw up constitutions that allow any outsider to become an executive member who could bargain for the workers on equal footing, effectively and efficiently with the employers.

Following the deficits, the CEACR of the ILO has identified a number of weaknesses in the Bangladesh Labour Act 2006 with regard to the application of the ILO Convention on Freedom of Association and Protection of the Right to Organise, 1947 (No. 87). In its report (2009, cited in Al Faruque, 2009: 12-13), the Committee 'noted with deep regret' that the Act does not contain any improvements in relation to the previous legislation and in certain regards contains even further restrictions which run against the provisions of Convention 87. The major notes of the Committee are as follows:

- The need to repeal provisions on the exclusion of managerial and administrative employees from the right to establish workers' organizations.
- To repeal provisions which restrict membership in trade unions and participation in trade union elections to those workers who are currently employed in an establishment or group of establishments, including seamen currently engaged in merchant shipping [Sec. 2 (lxv) and 175, 185(2)];
- To lower the minimum membership requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments for initial and continued union registration, as well as the possibility of de-registration if the membership falls below this number [Sec. 179(2) and 190(f)];

[1] Section 180: Disqualification for being an officer or a member of a trade union: (1)Notwithstanding anything contained in the constitution of a trade union, a person shall not be entitled to be, or to be elected as a member or an officer of a trade union if−(a) he has been convicted of an offence involving moral turpitude or an offence under section 196(2) (d) or section 298 and unless two years have elapsed from the date of his release; (b) he is not employed or engaged in that establishment in which the trade union is formed.

- To repeal provisions which provide that no more than three trade unions shall be registered in any establishment or group of establishments [Sec. 179(5)]; and
- To repeal provision prohibiting workers from joining more than one trade union, which imposes restriction that ‘no worker shall be enrolled as its member unless he or she applies in the form set out in the constitution declaring that he or she is not a member of any other trade union [Sec. 179(c)].

PROTECTIVE MEASURES

Rule of law as an essential principle of democracy ensures certain protections for citizens at large. It is no exception to labour governance. The regulatory framework of labour governance in Bangladesh provideswith the workers a number of protections. The protective measures include—protection against forced and compulsory labour, protection of adolescent and elimination of child labour, welfare facilities, and social security measures. These measures with their legal provisions and practices are discussed below:

Protection against Forced and Compulsory Labour

Forced and compulsory labour is considered as a heinous crime and a punishable offence in the modern era across the world. Bangladesh as a moderate and civilized state has strictly prohibited forced labor in its constitution saying that ‘all forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law [Art. 34(1)]. The ILO has adopted convention No.29, 1930 on ‘Elimination of all forms of forced or compulsory labour’. The convention urges each member of the organization which ratifies this convention to undertake measures to suppress the use of forced of compulsory labour in all its forms within the shortest possible period (Art.1). Forced labour is defined in the convention as ‘all work or service exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’ [Art. 2(1)].

Regarding the protection against forced and compulsory labour, the Bangladesh labour law lacks specific provision. A recent study states that 'there is no specific provision on prohibition and punishment of forced labour in the Act' (Hossain, Ahmed and Akter 2010: 48). Another study shows that '…constitutional guideline is still ignored in the BLA 2006 as the Law didn't define the word forced labor in it and didn't provide for the punishment and procedure thereof' (PROGRESS, 2009:10). Due to lack of clarity, it is hard to determine forced and compulsory labour prevailing in the industries of different sectors in Bangladesh. Yet any attempt on the part of the employer to force a worker to work under the menace of any penalty either physical or mental is illegal according to the spirit of the provision of Bangladesh constitution.

Due to the ambiguity of labour laws in matters of forced and compulsory labour, the workers working in different industries define forced labour in their own way. In the apparel sector, the workers are supposed to work for eight hours as regular duty and additional two hours as 'overtime' but they are to work more three hours (total 13 hours). Some of the workers consider these three hours as forced and compulsory labour (FGD: Gazipur 1, Dhaka 1, 2 and Chittagong 1). Some of the workers say that forced or compulsory labour is not always bad if it is condcted in good working environment and the payment is as per law' (FGD: Chittagong 1). A key informant also agrees that the piece-rate workers engaged in knitwear industries are more likely to work for longer period of time than specified in the law (KII GR 3).

In the jute sector, some BJMC run mills do not have chance to work for more than eight hours as the mills continues production in three shifts. Often, on Friday, the factory continues production to cover losses due to work stoppage, mechanical problem, or power shortage. Such working day is counted as overtime and there is pay

for it. The workers consider it to be forced labour or compulsory labour (FGD: Rajshahi 1, Khulna 2). A key informant says that many of the jute mills under BJSA and BJMA run 12 hours shift because the wage fixed for eight hours work is not sufficient for workers to lead a decent life. They work for 12 hours and receive one and half time of the normal salary (KII ER 9).

A strong debate is seen among the workers regarding forced and compulsory labour in the shrimp processing plants as there is no uniformity of working hours. Workers say that difference is there in the plants regarding 'shift'. Some plants maintain eight hours working day, some count 10 hours working day and there are also some factories that maintain 12 hours working day. The extra time (beyond 8 hours) is not considered as overtime. A portion of the permanent workers call it compulsory labour not forced labour (FGD: Cox's Bazar 2) but another portion call it both forced and compulsory labour (FGD: Cox's bazar 2 and Khulna 4). It is noteworthy that the salary structure is higher where the shift is longer. A permanent worker says that:

> In my previous workplace I worked eight hours per day in the panning section and got Tk-3,000 per month as a gross salary. Last year I joined another factory where I work 10 hours per day in the same section and receive Tk-3,450 per month. I have no overtime and no more pay (FGD: Khulna 4).

Some workers under contractor say that they work for eight hours as time rate and additional hours as piece rate. During peak season they continue to work even for 16 hours because the salary they receive for time rate is too scanty to manage a decent life (FGD: Cox's Bazar 1 & Khulna 5).

Protection of Adolescent and Elimination of Child Labour

Provisions relating to the protection and employment of adolescent and elimination of child labour and are proclaimed in chapter III of the BLA 2006. No child and adolescent are permitted to work in any occupation or establishment, unless—(a) a certificate of fitness in the prescribed form and granted to him by a registered medical practitioner is in the custody of the employer ; and (b) he carries, while at work, a token giving a reference to such certificate (Sec.34). According to the law child means a person who has not completed fourteen years of age. A person below this age limit may be employed 'in any occupation or establishment either as an apprentice or for the purpose or receiving vocational training therein' [Sec.34 (3)].

No person—parent or guardian of a child—shall make any agreement with any person or establishment to allow the service of the child (Sec.35). According to Sec.44 of the BLA 2006, a child who has completed twelve years of age may be employed in such light work as not to endanger his health and development or interfere with his education. In such employment, no adolescent shall be allowed in any establishment to clean, lubricate of adjust any part of machinery while that part is in motion or to work between moving parts or between fixed and moving parts, of any machinery which is in motion (Sec.39), and no adolescent shall work at any machine unless− he/she has received sufficient training in work at the machine, or is under adequate supervision by a person who has thorough knowledge and experience of the machine (Sec.40).

The law also makes provision that 'No adolescent shall be required or allowed to work in any factory or mine, for more than five hours in any day and thirty hours in any week', 'No adolescent shall be allowed to work in any other establishment, for more than seven hours in a day and forty-two hours in a week', and 'No adolescent shall be allowed to work in any establishment between the hours of 7.00 p.m. and 7.00 am' (Sec.41).

The ILO also adopted Minimum Age Convention, No.138 (1973) with a view to achieving total abolition of child labour. The convention urges its members to undertake a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons (Art.1). The minimum age specified by the convention is not less than 15 years of age (Art.2). Notwithstanding, a country whose economy and educational facilities are insufficiently developed may initially specify a minimum age of 14 years. Though Bangladesh has not ratified the convention, it has enacted a law that defines child who has not completed fourteen years of age.

Despite the promises and obligations of the regulatory framework, sufficient measures to protect the adolescents in the workplace and effective actions to eliminate child labour in the industrial sectors in Bangladesh are widely visible. Regarding the employment of children in the apparel sector, the employers and their representatives claim that no such person is engaged at work in RMG and knitwear factories (KII ER 6 & 7). The workers discussed in focus group also claim that there is hardly any child labour. Few of the workers say that in some factories there are children working as helper in sewing section (FGD: Gazipur 1 and Chittagong 1).

In the jute industries also no such child is reported to be engaged at work. The workers say that jute industry is featured with heavy machineries and those are moving ones so no children dare to work on those machines (FGD: Khulna 1, Rajshahi 1). A key informant comments that heated working environment and hardworking jobs in the jute industries prevents teenagers from seeking jobs here (KII ER 5).

In the shrimp processing plants children and adolescents are found working in pilling, beheading, de-veining of shrimp, loading packed cartons of product in the freezer trucks, unloading raw shrimp from oncoming trucks, and cleaning the factory (FGD: Khulna 4 & 5 and Cox's Bazar 1 & 2). The researcher finds in focus group discussion one female worker who is working for a year and claims her age to be 14. She informs that there are some other workers at her age in some factories in the area (FGD: Khulna 4). Though there are some hanging notices in the entrance of some factories containing the message that children and adolescents are not employed there but the reality is contrary to the massage. Management officials remark that employment follows the birth certificate and if there is any fault they have nothing to do (KII ER 3 & 4).

Social Security Measures

Social Security measures refer to a social environment which promises the workers to ensure the opportunity to develop their capacities in the community through economic security to face future uncertainties and challenges, poverty reduction and a fair opportunity to skill development. Therefore, protection for social security encompasses some financial measures along with wage and wage-related benefits, insurance policies, compensation policies, gratuity, pension schemes, and skill development opportunities. Hossain (2012:185) argues that 'social security provisions such as leave with pay, maternity leave, pension, gratuity and provident fund provide employment security to the workers'. The labour governance regulatory framework of Bangladesh particularly the BLA 2006 has provided a number of provisions towards workers' social security and protection. The major social security measures are discussed below with their strengths, weaknesses and implications.

Provident Fund

Provident fund is one of the most important measures intended to provide social security to the workers. According to the provisions of law ‘an establishment in the private sector may constitute for the benefits of its workers a Provident Fund [Sec. 264(1)] or ‘the Government may make rules for constitution of Provident Funds for workers employed in establishments in private sector, and where such rules are made, each establishment to which the rules apply, shall comply with the requirements of such rules [Sec. 264(3)]. It is also stated that ‘an establishment in the private sector shall constitute a Provident Fund for the benefit of its workers, if three-fourths of the total number of workers employed in it so demand to the employer by an application in writing [Sec. 264(10)] and the employer of that establishment is obliged to constitute it for the benefits of its workers within a period of six months [Sec. 264(11)].

Such Provident Fund shall be held and administered by a Board of Trustees consists of an equal number of representatives of the employer and workers employed in the establishment, and a person nominated by the Government shall be its Chairman. The representatives of the employer shall be nominated by the employer, and the representatives of the workers shall be nominated by the collective bargaining agent. Where there is no collective bargaining agent in an establishment, the representatives of the worker shall be elected by the workers under the supervision of the Director of Labour. All the representatives shall hold office for a period of two years and shall continue to hold office until their successors enter upon office [Sec. 264(4-8)].

In practice the existence of provident fund for the workers are hardly available in the industrial sectors other than SOEs. In the garment sector very few factories have introduced provident fund for the workers. The workers and their representatives identify the legal provision as the main obstacle to constitute the provident fund

because it requires the consent and signature of three-fourths of the workers that is hardly manageable. Most of the FGD participants of RMG workers of Dhaka, Chittagong and Gazipur inform that they do not have provident fund in their factories. One of the workers' representatives says that:

> The workers suffer from job security due to lack of appointment card. They only work but do not enjoy the status of permanent worker. Moreover, they always try to change jobs for higher salary and better working condition. It is really hard for such workers to be united and to take initiative to constitute provident fund (KII WR 7).

One of the employers' representatives also asserts that most of the factories have no provident fund. He adds that it the workers who are to propose and initiate to constitute the fund following the provisions of law or it is the responsibility of the government to provide compulsory rules to constitute the provident fund. To him, the lack of consciousness and solidarity among the workers is the principal cause behind it (KII ER 6).

Participation Fund and Welfare Fund

To ensure the workers' participation in Company's profits the BLA 2006 has provided some provisions and conditions [Sec. 232(1)][1]. According to the provisions of law 'Every company should constitute a Workers' Participation Fund and a Workers' Welfare fund for its workers and should pay to such fund within nine months from the end of that year, five percent of its net profit during such year in proportion of 80:20 to the participation fund and the welfare fund (Sec. 234). A Board of Trustees, consisting of two persons nominated by the collective bargaining agent and if there be no collective bargaining agent in the company, two persons elected by the workers of the company from amongst themselves; and two persons nominated by the management of the company of whom at least one shall be a person from the accounts branch of the company will be responsible for the management of the Fund.

[1] Section 232 (1): (a) the number of workers employed by the company in any shift at any time during a year is one hundred or more; (b) the paid-up capital of the company as on the last day of its accounting year is one crore taka or more; (c) the value of the fixed assets of the company at cost as on the last day of the accounting year is not less than two crore taka or more.

The members shall elect for one year a person to be the Chairman of the Board alternately from amongst the members representing workers and employers. The Board shall, in the exercise of its powers and performance of its functions, be subject to such directions by the Government from time to time. The Government, if it is of opinion that the Board or a member of the Board has been persistently failing in the performance of his or its functions or has generally been acting in a manner inconsistent with the objects and interests of the Funds may, by order—remove such member from his office or direct that the Board shall stand superseded for such period as may be specified in the order and may reconstitution of the Board with the powers and functions of the members (Sec. 235). The Act also provides that the government may, by order impose penalty to the companies which fail to comply with those provisions within specified timeframe (Sec. 236).

In reality, the provisions are prone to violation in view of the numerical bindings on number of workers, and paid-up capital and value of permanent assets of employers. The labor law provision clearly obliges employers to create participation fund and welfare fund for workers to share company's profits. The employers regard the provision as an improper one. On May 25, 2013, in a discussion meeting with the BBC[1], Mr. Shafiul Islam Mohiuddin, Ex-president of the BGMEA, comments that:

> The law itself is a very faulty law. Due to global slogan for cheap product by the buyers, the profit margin of the suppliers has come down. He adds that the law to share profit was introduced in 1968 by martial law administrator Ayub Khan and later on it was incorporated in the BLA 2006. It is time to change the law. To manage disaster and to bring welfare to the workers, an accumulated fund is needed. He suggests that the fund may be raised jointly by the government and entrepreneurs and by a little contribution from the workers.

In the same discussion meeting, the Executive Director of the CPD (Center for Policy Dialogue) Dr. Mustafizur Rahman disagrees with the statement and argues that in 2006 concerns were expressed that the new wage structure with Tk-3000 as

[1]www.bbc.co.ukbengalinews2013...130425_mh_garmentcheaplabour....Savar Tragedy

minimum wage will hamper the growth of the sector and it will not be sustainable. In fact, it has sustained and the sector has become stronger than before. 'Still, he emphasizes, there is space to share profit with the workers'. However, the workers participated in the FGDs inform that they have never heard of any such funds have been created in the RMG, Jute and shrimp processing industries.

Insurance Facilities

The BLA 2006 declares the introduction of 'Compulsory Group Insurance' in Sec.99 which reads that 'Government may, in the manner provided by rules, introduce group insurance, in the establishments wherein minimum 200 permanent workers are employed'. The spirit of the provision is supposed to include—Group, Health/medical, Accident, and Life—insurance for the workers to face future uncertainty.

The introduction of group insurance is an addition in the social security measures that is intended to ensure rule of law and to make labour governance more democratic. Nonetheless, the insurance facility excludes—health or medical insurance and life insurance for death from accident. The law specifies only the group insurance that is dependent on the number of workers and can be formed where at least 200 permanent workers are employed. Due to these numerical bindings, the workers of establishments smaller in size are excluded. A recent study finds that health and group insurance is completely absent in garments sector (Hossain, Ahmed and Akter, 2010: 80). One of the key informants also agrees that 'the provision of "compulsory group insurance" is not actually compulsory in practice. Almost all privately owned factories do not follow the provisions of group insurance' (KII CS 2). The workers of RMG industries, shrimp processing plants, and privately owned jute mills discussed in group meetings inform that they have hardly any idea about group insurance. One permanent worker of shrimp processing plant describes that:

> Previously we had little knowledge on labour laws. Nowadays, some NGOs are arranging some workshops on workers' rights and the workers are being informed of their facilities but the workplaces are still not in accordance with the provisions of law. We do not have any social security measure like group, health, or life insurance in the company (FGD: Khulna 4).

Compensation Facilities

Previsions on Workers' compensation for injury, disability and death by work place accidents have been incorporated in Chapter: XII of the BLA 2006. In this chapter it has been declared that 'If any injury is caused to a worker by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation—if worker employed in any employment attacked with any disease specified therein as an occupational disease peculiar to that of employment; or a worker, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in contracts any disease specified therein as an occupational disease peculiar to that employment; the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section; and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment [Sec.151(3)].

The employer shall not be liable, in certain cases, to pay compensation—in respect of any injury which does not result in the total or partial disablement of the worker for a period exceeding three days; in respect of any injury, not resulting in death, caused by an accident which is directly attributable to (i) the worker having been at the time thereof under the influence of drink or drugs, or (ii) the wilful disobedience of the worker to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of worker, or (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 or worker [Sec.150(2)].

Besides, no compensation shall be payable to a worker in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment [Sec. 150(5); nothing to be considered any right to compensation on a worker in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a worker in any court of law in respect of any injury—(a) if he has instituted a claim to compensation in respect of the injury before a Labour Court; or (b) if an agreement has been come to between the worker and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions [Sec. 150(6 & 7)].

The BLA 2006 has also made provisions on the amount of compensation in case if injury, disability, and death by occupational accidents. The amount to be paid is declared in Section 151 and referred to the Fifth Schedule. According to the existing compensation rate a worker or his/her nominee will be paid as follows—

a) where death of an adult worker results from the injury the amount of compensation will be taka one lakh irrespective of monthly basic salary.
b) where permanent total disablement results from the injury−taka 1 lakh and 25 thousand will be paid as compensation irrespective of monthly basic saary.
c) in case partial disablement compensation will be paid for the period of disablement or for a period of one year whichever is lesser, full salary for two months, two-thirds of the salary for next two months, and half of the monthly salary for the rest of the time.
d) in case of long term occupational diseases compensation will be given at the rate of half of the monthly salary up to two years.
e) in the case of a minor injury a gross amount of Taka ten thousand will be paid as compensation.

Compensation for occupational diseases and accidents leading to injury, partial or total disablement or death is regarded as a survival right of the workers. It is the rule of law that demands social justice and requires fair compensation policies including—rights to a living wage, accident compensation, and to limited hours of work. The compensation facilities provided in the BLA 2006 seem to be insufficient as the amount of compensation is very low and there is a time binding. To get death benefit, a continuous service of not less than three years is required (Sec. 19). In certain cases the employers are exempted from compensation and often the workers cannot claim the due compensation due to legal complexity and lack of employment letters.

Provisions of Gratuity

In the BLA 2006, gratuity is defined as 'wages payable on termination of employment of a worker which shall be equivalent to not less than thirty days' wages for every completed year of service or for any part thereof in excess of six months; it shall be in addition to any payment of compensation or payment in lieu of notice due to termination of services of a worker on different grounds [Sec. 2(x)]. The law has defined 'Gratuity' but provides no specific provision on it.

However, the BLA 2006 has provided provisions on some aspects of social protection and there are certain aspects untouched in the law. The law has no provision on pension and medical and life insurance of workers. 'Bangladesh's labor law has matching provisions in the areas of insurance, compensation, and maternity benefits, but no specific provisions on pension' (Hossian 2012). Along with limited provisions on social security and protection, the inherent weaknesses of these provisions and lack of mandatory guidelines on many of these provisions make these protection measures ineffective.

OFFENCES AND PUNISHMENTS

The inclusion of a balanced system of offences and punishments, fair system of investigation, fair procedures of trial and neutral imposition of the punishments are the corner stone of establishing rule of law that ultimately leads to democratic labour governance. The Bangladesh Labour Act 2006 has made a good many provisions in Chapter: xix (Penalty and Procedure) on offences and punishments for both workers and employers. The law has specified the grounds of offences and punishments, devised the procedures of investigation and indicated the ways to impose those punishments. It is notable that the grounds of offences of the workers/ trade unions and that of the employers, the procedures of investigation, and the imposition of punishments are identified separately in the law.

Grounds of Offences for the Workers

The BLA 2006 has mentioned a number of grounds of offences for worker(s). According to the provisions of law the workers are supposed to be punished on grounds of—(a) conviction and misconduct (Sec.23)[1], (b) unfair labour practices under section 196[2] (Sec. 291)—illegal strike (Sec.294), instigating illegal strike

[1] Section 23: Punishment for conviction and misconduct: (1) a worker may be dismissed without prior notice or pay in lieu thereof if he is convicted for any criminal offence;
(4) (a) willful insubordination or disobedience, whether alone or in combination with others to any lawful or reasonable order of a superior; (b) theft, fraud or dishonesty in connection with the employer's business or property; (c) taking or giving bribe in connection with his or any other worker's employment under the employer; (d) habitual absence without leave or absence without leave for more than ten days; (e) habitual late attendance; (f) habitual breach of any law or rule or regulation applicable to the establishment; (g) riotous or disorderly behavior in the establishment, or any act subversive of discipline; (h) habitual negligence work; (i) habitual breach of any rule of employment, including conduct or discipline, approved by the Chief Inspector; (j) falsifying, tampering with, damaging or causing loss of employers official records.

[2] Section196: Unfair labour practices on the part of workers: (1) No worker shall engage himself in any trade union activities during his office hours without the permission of his employer. (2) No worker or trade union of workers and no person acting on behalf of such trade union shall—(a) intimidate any person to become, or refrain from becoming, or to continue to be, or to cease to be a member or officer of a trade union ; or (b) induce any person to refrain from becoming, or cease to be a member or officer of a trade union, by conferring or offering to confer any advantage on, or by procuring or offering to

(Sec.295), for taking part in or instigating go-slow (Sec.296)—(c) for activities of unregistered trade unions (Sec.299), (d) for dual membership of trade unions (Sec. 300), and (e) for general offences by workers—any worker contravenes any provision of this Act or any rules, regulations or schemes, or any orders (Sec. 305). A worker convicted on any of the above mentioned grounds can be tried and punished following some terms and conditions including investigation.

Procedures and Punishments

To impose any punishment on worker(s), certain procedures should be followed including—(a) the allegations should be lodged in writing; (b) a copy of the charge sheet should be provided to the convicted worker and at least seven days' time to be allowed to explain; (c) the convicted should be given an opportunity of being heard; (d) to declare the worker(s) guilty, the conviction have to be proved through enquiry; and (e) the order of suspension should be approved by the employer or the manager of concerned factory [Sec. 24(1)] and the order must be in written form and it will take effect immediately on delivery to the worker [Sec. 24(3)]. Where inquiry is needed to prove the conviction of misconduct, the accused worker may be helped by any person nominated by him who is employed in the establishment [Sec. 24(4)]. If, on enquiry, a

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procure any advantage for, such person or any other person ; or (c) compel or attempt to compel any worker to pay, or refrain from paying, any subscription towards the fund or any trade union by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of telephone, water or power facilities or such other methods ; or (d) compel or attempt to compel the employer to sign a memorandum of settlement or to accept or agree to any demand by using intimidation, coercion, pressure, threat, confinement to or ouster from a place, dispossession, assault, physical injury, disconnection of telephone, water or power facilities or such other methods ; or (e) commence, continue an illegal strike or a go-slow; or instigate or incite others to take part in an illegal strike or a go-slow; or (f) resort to gherao, obstruction to transport or communications system or destruction of any property in furtherance of any demand or object of a trade union. (3) It shall be an unfair practice for a trade union to interfere with a ballot held under section 202 (election of a trade to act as CBA) by the exercise of undue influence, intimidation, impersonation or bribery through its executive or through any other person acting on its behalf.

worker is found guilty on ground of misconduct, (s)he may be punished by any of the following lighter punishment other than dismissal from the job [Sec. 23(2)]:

- Termination;
- Demotion to lower grade;
- Held up promotion for at least one year;
- Held up increment for an year;
- Fine;
- Temporary suspension without wages;
- Rebuking and warning.

In case of any of the punishment, a copy of the order inflicting such punishment shall be supplied to the worker concerned [Sec. 23(8)]. Besides these lighter forms of punishments, the worker(s) may be given major punishments if the charges on grounds of criminal offences are proved. The major punishments include—imprisonment for a term which may extend to one year, or with fine which may extend to five thousand Taka, or with both for unfair labour practices, for illegal strike, for instigating illegal strike, for taking part in or instigating go-slow, and imprisonment for a term which may extend to six months, or with fine which may extend to two thousand Taka, or with both for activities of unregistered trade unions and dual membership of trade unions.

Grounds of Offences for Employers and Punishments

The BLA 2006 has indicated some grounds of offences for the employers/owners. According to the provisions of law, employer(s) can be convicted, tried, and punished following due processes and procedures. The major areas of offences for the employers include—

Employment of Child and Adolescent

It is stated in the law that 'whoever employs any child or adolescent or permits any child or adolescent to work in contravention of any provision of this Act; shall be punishable with fine which may extend to five thousand Taka' (Sec. 284).

Non-compliance of Provisions relating to Maternity Benefits

If an employer contravenes any of the provisions relating to maternity benefits illustrated in Chapter IV—knowingly employs a woman worker before ten weeks of delivery and during eight weeks immediately following the day of her delivery (Sec. 45), refuse to pay a woman who has worked continuously for six months, the maternity benefit in respect of the period of eight weeks preceding the expected day of her delivery and eight weeks immediately following the day of her delivery (Sec. 46), denies to permit the woman to absent herself from work after giving notice either orally or in writing to her employer about her pregnancy and expected delivery date (Sec. 47), if the amount of maternity benefit is not duly paid (Sec.48), if the employer does not pay the due maternity benefit in case of death of a woman worker at the time of delivery or within eight months of delivery (Sec. 49), and if the employer terminates a woman worker knowingly within a period of six months before and eight weeks after her delivery (Sec.50)—he shall be punishable with fine which may extend to five thousand Taka (Sec. 286).

Payment of Wages below the Minimum Rate of Wages

Any employer who pays any worker wages at a rate lower than the rate declared by the government through Minimum Wages Board (MWB), shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand Taka, or with both (Sec. 289).

Failure to Give Notice of Accidents

If any employer fails to give notice of any accidental occurrence under section 81 of the BLA, he shall, if the occurrence results in serious bodily injury, be punishable with fine which may extend to one thousand Taka, or if the occurrence results in loss of life, be punishable with imprisonment which may extend to six months, or with fine which may extend to three thousand Taka, or with both (Sec.290).

Contravention of Law with Dangerous Results

Section 309 of the BLA provides that whoever contravenes any provision of this Act or any rules, regulations or schemes, shall be punishable- (a) if such contravention results in loss of life, with imprisonment which may extend to four years, or with fine which may extend to one Lakh Taka, or with both; or (b) if such contravention results in serious bodily injury, with imprisonment which may extend to two years, or with fine which may extend to ten thousand Taka, or with both ; or (c) if such contravention otherwise causes injury or danger to workers or other persons in an establishment, with imprisonment which may extend to six months, or with fine which may extend to two thousand Taka, or with both.

Unfair Labour Practices

If any employer is convicted for unfair labour practices[1] mentioned in section 195 of the BLA, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand Taka, or with both [Sec. 291(1)].

[1] Section 195: Unfair labour practices on the part of employers: No employer or trade union of employers and no person acting on their behalf shall−(a) impose any condition in a contract of employment seeking to restrain the right of a person who is a party to such contract to join a trade union or continue his membership of a trade union ; or (b) refuse to employ or refuse to continue toemploy any person on the ground that such person is, or is not, a member or officer of a trade union ; or (c) discriminate against any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is, or is not, a member or officer of a trade union ; or (d) dismiss, discharge, remove from employment or threaten to dismiss, discharge or

Penalty for General Offences

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 'up to twenty five thousand taka fine' (Sec. 307).

The principal features that follow from the above discussion on the grounds of offences for both the workers and employers/owners and procedures of imposing punishments prove that the BLA 2006 has made progress to a considerable extent towards democratic practices to ensure rule of law. Firstly, the Act has provided the workers with opportunity to be heard, scope to explain, to take help from co-workers/workers' representatives, and chance to cross examine the witness in case of oral evidence [Sec.24(5)]. Secondly, the Act has introduced a wide-range of criminal provisions; the sentences that can be imposed following conviction are also much harsher than those contained in the old labour legislations. In the old legislations no sentences of imprisonment were available for any health, safety and welfare breaches and the maximum fine was only 1000 taka (Basak, 2008:1). Thirdly, the new law has

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remove from employment a worker or injure or threaten to injure him in respect of his employment by reason that the worker is or proposes to become, or seeks to persuade any other person to become a member or officer of a trade union, or participates in the promotion, formation or activities of a trade union ; (e) induce any person to refrain from becoming, or to cease to be a member or officer of a trade union, byconferring or offering to confer any advantage on, or by procuring or offering to procure any advantage for such person or any other person ; (f) compel or attempt to compel any officer of the collective bargaining agent to sing a memorandum of settlement or arrive at a settlement, by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of water, power and telephone facilities and such other methods ; (g) interfere with, or in any way influence the election provided for in section 202 ; (h) recruit any new worker during the period of strike under section 211 or during the currency or a strike which is not illegal, except where the Conciliator has, being satisfied that complete cessation of work is likely to cause serious damage to the machinery or installation, permitted temporary employment or a limited number of workers, in the section where the damage is likely to occur ; (i) deliberately fails to take measures recommended by the Participation Committee ; (j) fails to give reply to any communications made by the collective bargaining agent in respect of any industrial dispute ; (k) transfer the President, General Secretary, Organising Secretary or Treasurer of any registered trade union in contravention of section187; (l) commence, continue, instigate or incite others to take part in an illegal lock-out.

encompassed five specific offences relating to health, safety and welfare—(i) the selling of unguarded machinery, (ii) failure to give notice of an accident, (iii) breach of any provision causing death, (iv) breach of any provision causing grievous bodily harm and (v) breach of any provision causing any harm (Sec. 309). Fourthly, the Act provides provision on a 'catch-all' offence that allows any prosecution under its purview against ‘whoever contravenes or fails to comply with any provisions of the Act, or any rules made under it’. This provision includes offences for any breach of the obligations involving appointment and employment conditions, health, hygiene, safety and welfare that are not particularly covered by the law.

Along with those developments, the law also has some weaknesses. The law has provided provisions on penalties for the violation of labour law provisions but those are criticized on grounds that they are not sufficient and severe enough. Morshed (2007: 123) points out two of such provisions—attitudes towards women workers that are indecent or obscene or which is contrary to decency or modesty, and non-compliance of provisions relating to maternity leave with benefit to women workers—the punishment for which is Tk-1000 or three months imprisonment or both; and Tk-5000 fine respectively. He regards such trivial punishments to be ridiculous as women workers suggest it to be several times higher. On the other hand, the punishment for not providing maternity benefit is the worst of all as it, indeed, is profitable for owners to pay the fine rather than pay for several months’ leave and benefits.

In a recent study, it has been concluded that ‘it is necessary to establish balance between savings accrued by violating labour law provisions and cost of compliance. … a system of significantly strengthened and updated penalties to ensure compliance and deterrence should be initiated’ (Hossain, Ahmed and Akter,

2010:107). They also add that an effort to change the provision of law punishment for the employers has been reduced as they have been waived from jail (imprisonment) provision. This has produced much controversy regarding the intention and weakened the effectiveness of enforcement system. Strict and severe penalties for labour law violation must be introduced.

Regarding the existing provisions on punishment, the workers, workers' representatives, employers, employers' representative and concerned government officials are of different views. Most of the workers of RMG factories, privately owned jute mills, and shrimp processing plants discussed in the group meetings across different regions of the country believe that the provisions of offences and punishments are executed for the workers only; they are seldom in application for the employers. Muhammad (2013: 2) also agrees with the belief of the workers saying that '… no owner has ever faced impartial legal ramifications for their wrong doings, it seems that they have a free hand to do whatever they like'.

The workers' representatives are also of the opinion that the provisions of punishment are more applied to the workers. The employers very often escape even grave charges for the over lenient attitude of the government and concerned government agencies (KII WR 15). A key informant states that 'law is there, provisions for offences and punishments are there but all those lack proper execution. Low punishment for the owners/employers for the violation of labour law provisions is a big problem but the bigger problem is the non-execution of those provisions' (KII WR 2).

The employers and their representatives are of the view that the imprisonment of owner as punishment is not proper. One of the employers' representatives argues that:

> In most of the cases, the owners are not directly involved in running a factory. They cannot be imprisoned for the wrongs of the management officials who are employees of the owners. Mistakes may be there but owners cannot be always responsible for that. It is the responsibility of the concerned government authority/agency to find out the offences and the offenders to try for justice (KII ER 1).

The above discussion proves that the punishment system and the procedure to apply them are not satisfactory to both the parties—employers and workers. There are short comings in legal provisions, imbalance in the measure of punishments and there is also non-execution of the provisions for the employers/owners. To sum up, it is suffice to say that the punishment system in labour governance in Bangladesh is both insufficient and ineffective.

ENFORCEMENT MECHANISMS

Democratic regulatory framework—accumulating the democratic norms, values and principles of rule of law—is not enough to ensure democratic governance unless those principles and norms are impartially applied and executed by an efficient system of labour administration. Establishment of sound, impartial, efficient and effective system of labor administrations are promotional tools to ensure proper enforcement of the provisions of labour laws. The system of labour administration in Bangladesh consists of two types of labour administrations—labour administrations for industries outside the EPZs and labour administrations for industries within the EPZs—under the Ministry of Labour and Employment (MoLE).

The labour administrations for the factories and establishments outside the EPZ areas are constituted under the BLA 2006 and the labour administrations for the factories and establishments are constituted under the Bangladesh Export Processing Zones Authority Act 1980 (BEPZA Act 1980, ACT NO. XXXVI OF 1980). The BLA 2006 has constituted the two authorities—Directorate of Labour (DoL) and Chief

Inspector of Factories and Establishment (CIF&E)—to enforce the provisions of labour law. The BEPZA Act 1980 confers the administrative and law enforcing responsibility to the Executive Chairman and Executive Council of the EPZ Authority.

DIRECTORATE OF LABOUR (DOL)

The Directorate of Labor (DoL) is a subordinate body of the MoLE and the principal agency responsible for overall administration and implementation of labour policies, laws and programs. Though the center of Bangladesh's labor law and policy formulation and implementation body is the MoLE, the quality of work and workplace governance is determined partially by the efficiency of the DoL. It is the body that enforces and monitors the labour laws and puts forward the feedbacks to the MoLE for further steps necessary to facilitate labour governance.

Functions of the DoL

The functions assigned to the DoL, as a state mechanism to enforce labour law provisions, are crucial in the sense that it acts as a bridge between the workers and employers. The Director of Labour is the key person to take necessary action towards the creation of platforms for workers' participation through the registration of trade union, the prevention of unfair labour practices both by the employers and workers, and the monitoring of the functions of institutional mechanisms like workers' participation committees.

However, The provisions of labour law 2006, assign to the Director of Labour the following functions—(a) to register trade unions and maintain a register; (b) to lodge complaints with the Labour Courts for action against any offence or any unfair labour practice or violation of any provisions; (c) to determine the question as to which one of the trade unions in an establishment or group of establishments is entitled to be

certified as the collective bargaining agent in relation to that establishment/group of establishments; (d) to supervise the election of trade unions executives and the holding of any secret ballot ; (e) to act as conciliator in any industrial dispute ; (f) to supervise the functioning of participation committees ; and (g) such other powers and functions as are conferred by this Act or Rules [Sec. 317(4)].

Process of Discharging the Functions

The BLA 2006 provides provisions on the process of discharging the functions of the Director of Labour. It is stated in the law that the Director of Labour must receive an application for trade union registration signed by the president and secretary of the concerned union (Sec. 177) in a prescribed form[1]. After receiving such application, he will send a copy along with the list of officers of the union to the concerned employer for information [Sec.178 (3)] and will verify the conditions of trade union registration as specified in the law[2].

An important condition of trade union registration is the 'constitution of the trade union' that must incorporate the rules on—the manner in which the constitution shall be amended, varied or rescinded ; the safe custody of the funds of trade union, its annual audit, the manner of audit and adequate facilities for inspection of the books

[1] Section 178: Requirements for application: (2) The application shall be accompanied by−(a) a statement showing—(i) the name of the trade union and the address of its head office ; (ii) date of formation of the union ; (iii) the names, ages, addresses, occupations and the posts in the union of the officers of the trade union ; (iv) statement of total paid membership ; (v) the name of the establishment to which the trade union relates and the total number of workers employed or engaged therein ;

[2] Section 179: Requirements for registration: (1) A trade union shall not be entitled to registration unless the constitution thereof provides for the following matters, namely: (a) the name and address of the trade union ; (b) the objectives for which the trade union has been formed ; (c) the manner in which a worker may become a member of the trade union specifying therein that no worker shall be enrolled as its member unless he or she applies in the form set out in the constitution declaring that he or she is not a member of any other trade union ; (d) the sources of the fund of the trade union and statement of the purposes for which such fund shall be applicable ; (e) the conditions under which a member shall be entitled to any benefit assured by the constitution of the trade union and under which any fine or forfeiture may be imposed on him; (f) the maintenance of a list of the members of the trade union and of adequate facilities for the inspection thereof by the officers and members of the trade union.

of account by the officers and members of trade union ; the manner in which the trade union may be dissolved ; the manner of election of officers by the general body of the trade union and the term, not more than two years, for which an officer may hold office; the number of members of the executive which shall not be less than five and more than thirty-five as may be prescribed by rules; the procedure for expressing no confidence in any officer of the trade union ; and the meetings of the executive and of the general body of the trade union, so that the executive shall meet at least once in every three months and the general body at least once every year (Sec. 179).

No doubt that these rules are democratic and conducive to foster democratic practices within the union. However, if the Director of Labour is satisfied that a trade union has complied with all the requirements, he will register the trade union in a register and issue a registration certificate in the form prescribed by rules within a period of sixty days from the date of receipt of the application for registration [Sec.182(1)].

The Director of labour can also cancel registration of a trade union following the provisions of law on grounds of—(a) application for cancellation of registration; (b) ceased to exist ; (c) obtained registration by fraud or by misrepresentation of facts ; (d) contravened any of the basic provisions of its constitution ; (e) committed any unfair labour practice ; (f) a membership which has fallen short of the number of membership required under this Chapter ; and (g) contravened any of the provisions of this Chapter or the Rules [Sec.190 (1)]. To cancel the registration, the Director of Labour is required to investigate the specific cause. If he is satisfied after enquiry that the registration should be cancelled, he will submit an application to the Labour Court praying for permission to cancel the registration. With the approval of the court, he will cancel the registration within 30 days [Sec. 190(2 & 3)].

The Director of labour is empowered to determine the CBA for an establishment. If there is only one trade union in an establishment, he will declare that union to act as the CBA for that establishment. Where there are more than one trade union, the Director of Labour is empowered to hold election through secret ballot to determine the CBA if he is requested by any trade union or by the employer (Sec. 202). Along with these, the Director of Labour is entitled to supervise the activities of the participation committee. According to the provision of law, the proceedings of every meeting of the Participation Committee shall be submitted to the Director of Labour and the Conciliator within seven days of the date of the meeting [Sec.207(2)] .

Effectiveness of the Functions

The Directorate of Labour is assigned with the vital functions related to labour governance and to establish the institutional mechanisms that enhance democratic practices. Therefore, the democratization of labour governance rests on a large part on the efficiency of the administration and effectiveness of the functions of the DoL. The effective execution of labour laws, policies, and programs depends on a number of factors—the role of the government, the cooperation of the employers and the strength of the workers organizations as well as industrial and labor relations' norms and practices. In Bangladesh the efficacy of the labor administration system and the effectiveness of the DoL seem to be weaker as its contribution to proper execution of laws and to vitalize the democratic institutional mechanisms is very poor. In terms trade union registration, the role of the DoL is very negligible. Since 1969 to 2010, the DoL has so far registered only 7,188 basic trade unions. In 2009 and 2010 it has conducted 16 and 08 elections respectively to determine the CBA (DoL, 2010).

The views of the academics, government officials, employers, and workers' representatives are different on the poor performance and negligible contribution of the DoL to democratize industrial and labour relations system and to enhance democratic practices in labour governance. Morshed (2007: 108) observes that 'while labour administrations exist in Bangladesh, they are neither efficient nor updated'. The government officials deny their inefficiency and claim that their low performance is not due to their fault. One of the Informants says that:

> The low coverage of unions in the industries of Bangladesh is due to the non-cooperation and hostility of the employers towards unionization and the negligence of the lager federations to provide the newly formed unions with adequate support during the period of registration. It is not that the DoL is the last resort to vitalize unions through registration, there is also Labour Court to help workers with the restoration of union rights. It is our duty to verify the list of workers under a proposed union via the employer. If the workers lose their jobs on grounds of criminal offences like stealing clothes or other materials and face criminal cases before submission of application we have nothing to do (KII GR 1).

Another informant informs that the workers are not always sacked by the employers for being an officer or member of a proposed union. In the factories like readymade garments the average monthly turnover of workers is nearly 10%. Workers change their jobs and factories for higher salaries or any other cause and in times of enquiry they are not found. The list submitted often proves to be false and the union fails to get registration (KII GR 3). The workers and their representatives complain that the legal provisions fail to save workers during the period of registration and officials related to the registration process do not maintain secrecy. One of the workers' representatives says that the DoL can verify the list of members and officers of a proposed union prior to send it to the employer. In reality, they act contrary to it. After getting the list the employer terminate the jobs of the officers on grounds of criminal offence in a prior date that hampers the registration of union as well as the livelihood of the workers (KII WR 5).

On the other hand, some employers and their representatives agree that trade union is a basic right of the workers but due to many reasons they do not allow workers to form or join union. One of the employers of garment industries says that some sectors have culture to adopt trade unions because they have such scope but in garment factories trade union is not accepted because introduction of union in this sector may lack managerial control over the workers (KII ER 6). Another employer says that the workers of garment industry is not yet capable to form and run union that is helpful for both workers and industries, Most of the garment factory owners discard any attempt of unionization on this ground(KII ER 7). In contrast, the management of jute industries both publicly and privately owned justifies that workers organization—trade union or CBA—is helpful for the factory to manage the workers. One of the employers' representatives comments that 'CBAs make it easy for us to discuss over any issue related to the factory or workers. At any time and on any issue we can call on the CBA members and can solve any issue without any involvement of the outsiders—state and non-state bodies for conciliation or arbitration (KII ER 9, 11).

From the above discussion it can be concluded that the functions—to execute the provisions of labour laws, to establish democratic institutions of labour governance, to monitor the activities of the institutional mechanisms, and to enforce workers' right—assigned to the Director of Labour in the BLA 2006 are poorly discharged. There are some reasons behind this poor performance. The lack of updated system of administration, inefficiency, non-cooperation of the employers, negligence of the workers' federations, and weaker role of the government are explored as the principal causes.

INSPECTORATE OF FACTORIES AND ESTABLISHMENT

The Inspectorate of Factories and Establishment is an attached department of the Directorate of Labour and a subordinate body under the Ministry of Labour and Employment. The Key person of this agency is the Chief Inspector of Factory and Establishment (CIF&E) and he is allied by a number of other inspectors to discharge the functions and responsibilities. This is the prime body that ensures compliance of labour law provisions through proper inspection and monitoring in the shops, establishments, and other commercial and industrial factories across the country.

Functions and Responsibilities of the CIF&E

The BLA 2006 has assigned the CIF&E the functions and responsibilities to enforce and ensure the compliance issues of labour law provisions. According to section 319 of the BLA 2006, the CIF&E is assigned the following primary functions:

(a) if he thinks fit; to enter, inspect and examine any place, premises, vessel or vehicle, at any reasonable time, which is, or which he has reason to believe to be, an establishment or used for an establishment;

(b) to seize, inspect, examine and copy the registers, records, certificates, notices and other documents kept or maintained in pursuance of this Act or the rules, regulations, orders or schemes;

(c) to make such examination and enquiry as may be necessary to ascertain whether the provisions of this Act or the rules, regulations, orders or schemes in respect of any establishment or any worker employed therein are complied with ;

(d) to sign the record of such examination by way of verification ;

(e) to ask for explanation from the employer or any person employed by him in respect of any registers, record, certificates, notices or other documents kept or maintained by him as he deems necessary ;

(f) to exercise such other powers and functions as are conferred by this Act or may be prescribed;

(g) to call for, or to seize, any record, register or other document of any employer relevant to the enforcement of the provisions of this Act or the rules, regulations or schemes as he may consider necessary for the purpose of carrying out his functions under this Act and the rules, regulations or schemes; and

(h) to lodge complaint with the Labour Courts for action against any person for any offence or violation or any provisions of this Act or of any rules, regulations or schemes.

Besides, the law compels the employers (i) to furnish such means as may be required by an Inspector for entry, inspection, examination, enquiry or otherwise for the exercise of the powers under this Act, and the rules, regulations, orders or schemes; and (ii) to produce for inspection by an Inspector all records, registers and other documents required to be kept or maintained for the purposes of this Act and the rules, regulations and schemes, and shall furnish any other information in connection therewith as may be required by such Inspector.

Democratic Norms of Labour Inspections

Effective and quality inspection system is supposed to incorporate some democratic norms and obligations. These norms include participation of employers and workers or their representatives in times of inspection; collaboration among inspectorate(s) and other enterprise based joint committee(s)—the CBA, WPC, trade union or other organization(s); confidentiality of the source of complaints; detachment or impartiality of the inspectors; and system of enhanced penalty to restrict frequent violation of provisions effectively.

Participation of Employers and Workers

The participation of employers and workers in inspection visits is socially desirable and enhances the effectiveness of labour inspection. Workers' and employers' respective organizations and plant level institutions are primarily concerned with the problems of working conditions and health and safety issues (ILC/100v, 2011).

Besides, the workers can have a voice to put the problems to the inspectors for immediate solution if they are included in the inspection system. The notification of defects noted by the inspector during the course of inspection visit can be better solved at the workplace level by the employer and the representatives of the workers (Sahraoui, 2002). The BLA 2006 fails to carry out such provisions to include the workers or their representatives in the process of inspection.

A key informant informs that among the industrial sectors in Bangladesh the ready-made garment industries are more vulnerable and less compliant in respect of working conditions and health and safety issues due to lack of plant level workers' organization(s). He adds that if there were trade unions of workers in the factories, the inspections could be more fruitful (KII GR 4). The workers of RMG factories discussed in group meetings in Dhaka, Chittagong and Gazipur state that they cannot express problems to the inspectors due to three reasons—firstly, the inspectors do not talk to them during their visit; secondly, the management officials force them not to inform anything contrary to the factory's interests; and thirdly, they lack any organization to represent them in the inspection process. One of the workers says that 'the management officials threaten us saying that if we say against the interest of factory to anybody, we will be licked out' (FGD: Chittagong 1).

The workers of BJMC and BJMA jute mills inform that the inspection visits are rare than regular in the factories. They say that the inspectors talk with the management officials and CBA members but they are skeptic about the effectiveness of the inspection system as they do not see any development (FGD: Khulna 1 & 2, Rajshahi 1). The CBA members also agree that they put so many complaints to the inspectors regarding the malpractices of the management but the inspectors cannot compel the management to take necessary steps to change the situation (KII WR 16, 19 & 20). On the other hand workers of a BJSA mill inform that they have never seen any inspector to come and visit the factory (FGD: Rajshahi 2).

The workers of shrimp processing factories say that often they hear somebody to come to visit the factory but no inspector exchanges views with them. Most of the workers inform that the factory officials forbid them to speak anything that goes against the management (FGD: Khulna 4 & Cox's Bazar 2).

Collaboration between Employers and Workers and Their Organizations

Labour inspection requires measures to be taken by the competent authority to promote collaboration between officials of the labour inspectorate and employers and workers or their organizations (Art.5b, C81). ILO Recommendation No. 81 also emphasizes that collaboration in the field of occupational safety and health should be enhanced through the establishment of joint safety committees or similar bodies within each enterprise or establishment authorized to collaborate, under conditions determined by the competent authority, in investigations carried out by the inspection services in the event of industrial accidents or occupational diseases (Paragraphs 4 and 5).

In practice, the collaboration between the workers and employers are of different types in the industrial sectors in Bangladesh. The collaboration is hardly seen in the ready-made garment sector as there is lack of workers organizations or any institution to represent the workers at large. One of the employers' representatives of RMG sector informs that in lieu of trade unions, some factories have WPCs and this committee act as safety committee and compliance committee in in collaboration of the employers representatives (KII ER 6).

In contrast, the workers and workers' representatives are of the view that the WPC cannot be the substitute of trade unions and cannot perform the functions of safety and compliance committee effectively and impartially. One of the workers' representatives says that 'participation committees are not the representative body of the workers. The members of these committees are chosen by the employers to act for their favour, not for the workers' (KII WR 1).

In the jute industries—publicly and privately owned—CBA formation is a common practice. In most of the factories the CBAs act as safety committee and compliance committee. It is reported that the management officials are more cooperative and collaborative in the state owned jute mills but the owners of private jute mills are less cooperative (KII WR 16 & 21). One of the workers' representatives of BJMA mills comment that 'the owners are not in their grip. They are politically and economically powerful and do not always follow the suggestions of the CBAs in matters of safety or compliance. Yet, we are happy that we can have dialogues with them and we let the workers know that we are working for them' (KII WR 19). Some of the employers' representatives of privately owned jute mills agree that the owners do not always accept the demands of the CBAs but in most of the cases the owners collaborate with the CBAs and try to solve the problems through democratic deliberations (KII ER 9 & 11).

The workers of the shrimp processing plants are of the view that the employers are the only channel to manage safety or compliance issues. One of the female workers says that 'we have no organized voice but we personally seek help from the employer and often they accept our demands. It would be better for us to have organizations which could ensure compliance of labour law in the factory regarding uniformity of shift-time and minimum wages' (FGD: Khulna 4). One of the employers' representatives strongly disagrees that inspectors or workers' organizations have any role to comply with labour law provisions. He says that 'it is the employer who ensures compliance. The inspectors can be managed without complying labour law' (KII ER 4).

Confidentiality of the Source of Complaints

Inspections are not only surprise visits or a routine work. It may also happen following any complaint by any employee. It is the obligation of labour inspectors to keep confidentiality concerning the source of complaints. It is an essential prerequisite for the collaboration of employees in supervising the application of labour provisions relating to occupational safety and health. If they are not safeguarded against the risk of reprisals by the employer, employees would hesitate or even fail to report defects and the supervision of the inspectors would be all the more ineffective (Sahraoui, 2002: 482).

It is a norm that can be practiced by the workers where industrial relations are cooperative and the jobs of the workers are well protected under the law. In this study, no such workers are found who have put any complaint to the inspectors to be complied with. All of the workers say that they have never thought of any such ways. Most of the RMG and shrimp workers say that 'they have no contact with the inspectors' whereas the veteran workers of the state owned jute mills say that the know some of the inspectors but they doubt the confidentiality of the inspectors and never put any allegations to them by themselves (FGD: Rajshahiu 1).

Detachment

The obligation of detachment imposed upon inspectors by the instruments under examination constitutes an essential guarantee of the impartiality necessary for the performance of their duties. These have to be set out by national legislation, either in a general manner by adopting the wording of the relevant provisions. The obligation of detachment should be extended to offers of gifts or services made by employers or workers, which may have been made or proposed with a view to corruption (Sahraoui,

2002: 481-82). It would be desirable for measures to be taken to verify that inspectors are complying with their obligation of detachment and for any breach to be punishable, as in the case of any professional misconduct, by an appropriate disciplinary penalty (ILC/100v, 2011).

Regarding the norms of detachment, government officials say that the inspectors are supposed to be punished for doing contrary to it. One of the government representatives says that 'maybe there are some officials who are not impartial and have bad dealings with the employers but without evidence and complaint, the authority cannot any punishment. In reality, most of the workers believe that the inspectors are not impartial and they take bribe from the employers.

Enhanced Penalties for Repetitive Violations

ILO Convention No. 81 urges that adequate penalties must be provided for by national laws or regulations for violations of the legal provisions enforceable by labour inspectors and for any obstruction of labour inspectors in the performance of their duties (Art.18). The BLA 2006 also provides that 'if any person who has been convicted of any offence punishable under this Act or under any rules, regulations or schemes is again convicted of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with double the punishment provided for that offence: Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the subsequent offence (Sec. 308).

Adequate penalties are those which are fixed at a sufficiently high level to have a dissuasive effect with a view to reducing the number of violations. The amount of fines should be determined so as to prevent employers from being tempted to prefer to pay them rather than taking the required measures, which are more costly, to remedy the violation. Moreover, it is not sufficient for such penalties to be envisaged

and imposed, but measures also have to be taken by the competent administrative and judicial authorities to ensure that they are effectively applied with a view to reinforcing the credibility and authority of labour inspectors. It is important in this respect that the central labour inspection authority seeks the cooperation of the judicial authorities for this purpose (Sahraoui, 2002: 486).

In practice, the provision of labour law is rarely applied. No employer has, till to date, been given such exemplary punishment. The inspectors in this regard seem to be reluctant or weak in their role to play.

Inspection: Scope and Issues

The scope of inspection has been specified as some 'premises' which includes workshop[1], factories[2], shop[3], and establishment—commercial and industrial—in the BLA 2006. It has been declared that 'any premises where five or more workers ordinarily work on any day of the year' should comply with the provisions of labour law. All the premises fulfilling the criteria should fall under the purview of inspection by the CIF&E or any other person authorized by him. According to the provision of law 'establishment' means any shop, commercial establishment, industrial establishment or premises in which workers are employed for the purpose of carrying on any industry [Sec.2 (xxxi)]. In the law 'commercial establishment' has been defined as an establishment in which the business of advertising, commission or

[1]'workshop' means any premises, including the precincts thereof, wherein any industrial process is carried on [Sec. 2(vi)].

[2]'factory' means any premises including the precincts thereof whereon five or more workers ordinarily work on any day of the year and in part of which a manufacturing process is being carried on [Sec. 2(vii)].

[3]'shop' means any premises used wholly or in part for the whole-sale or retail sale of commodities or articles either for cash or credit, or where services are rendered to customers, and includes an office, store-room, godown, warehouse or workplace, whether in the same premises or elsewhere, mainly used in connection with such trade or business, and such other premises as the Government may, by notification in the official Gazette, declare to be a shop for the purpose of this Act [Sec. 2(xxi)].

forwarding is conducted or which is a commercial agency, and includes—the office establishment, a club, a hotel or a restaurant or an eating house of a person who for the purpose of fulfilling a contract with any commercial establishment or industrial establishment employs workers [Sec. 2 (xli)].

An 'industrial establishment' means any workshop or other establishment in which articles are produced, adapted or manufactured or where the work of making, altering, repairing, ornamenting, finishing or packing or otherwise treating any article or substance, with a view to their use, transport, sale, delivery or disposal, is carried on or such other class of establishments which the Government may, by notification in the official Gazette, declare to be an industrial establishment for the purpose of this Act[1][Sec. 2(lxi)].

Above discussion shows that the scope of inspection is wider as any workplace that engages five or more workers is under the purview of inspection. Besides, the issues to be inspected are also many in umbers. According to ILO inspection modalities, the issues related to 'working hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors' (Art.3 a, C81, 1947). According to the BLA 2006, the provisions—under Chapter II 'Conditions of Service

[1] Section 85: Powers of Inspector in case of certain danger : (1) If, in respect of any matter for which no express provision is made by or under this Act, it appears to the Inspector that any establishment or any part thereof or any matter, thing or practice in or connected with the establishment or with the control, management or direction thereof, is dangerous to human life or safety or thereof, is dangerous to human life or safety or defective so as to threaten, or tend, to the bodily injury of any person, he may give notice in writing thereof to the employer of the establishment, and shall state in the notice the particulars in respect of which he considers the establishment, or part thereof, or the matter, thing or practice, to be dangerous or defective and require the same to be remedied within such time and in such manner as he may specify in the notice. (3) If the Inspector is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any establishment or part thereof, he may, by an order in writing containing a statement of the grounds of his opinion, prohibit, the employer concerned, until he is satisfied that the danger is removed, the employment in or about the establishment or part thereof of any person whose employment is not, in his opinion, reasonably necessary for the purpose of removing the danger.

and employment', Chapter III 'Employment of Adolescent', Chapter IV 'Maternity Benefit', Chapter V 'Health and Hygiene', Chapter VI 'Safety' and Chapter VII 'Special Provisions Relating to Health, Hygiene and Safety'—are subject to inspection. A key person of the inspectorate informs that:

> The inspectors cannot inspect on all the provisions under these chapters. Usually they emphasize on some general issues like employment letter and identity cards, service book, employee register, pay register, working hours and overtime, unfair labour practices, child laour, cleanliness, ventilation and temperature, overcrowding, lighting, drinking water, latrines and urinals, safety of building and machinery, firefighting equipment exit facilities, floors and stairs, precautions against dangerous fumes and other conditions appear to be dangerous to the inspectors under (Sec. 85) [1] (KII GR 4).

Compliance of the General Issues

Though the law provides wider scope and many issues to be complied with through effective inspection, in practice it is limited and the inspectors focus on some general issues. Yet, the overall picture of inspection and compliance seems to be grimy. An inspector says that:

> We have only 92 inspectors who are responsible for inspection over 60,000 premises. To inspect over 11,000 industrial establishments, there are only 51 inspectors out of 103. It is hardly possible for the inspectors to maintain a regular visit to every establishment. Usually we visit 10 factories a month and go for special visit where problems arise (KII GR 3).

[1] Section 85: Powers of Inspector in case of certain danger : (1) If, in respect of any matter for which no express provision is made by or under this Act, it appears to the Inspector that any establishment or any part thereof or any matter, thing or practice in or connected with the establishment or with the control, management or direction thereof, is dangerous to human life or safety or thereof, is dangerous to human life or safety or defective so as to threaten, or tend, to the bodily injury of any person, he may give notice in writing thereof to the employer of the establishment, and shall state in the notice the particulars in respect of which he considers the establishment, or part thereof, or the matter, thing or practice, to be dangerous or defective and require the same to be remedied within such time and in such manner as he may specify in the notice.
(3) If the Inspector is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any establishment or part thereof, he may, by an order in writing containing a statement of the grounds of his opinion, prohibit, the employer concerned, until he is satisfied that the danger is removed, the employment in or about the establishment or part thereof of any person whose employment is not, in his opinion, reasonably necessary for the purpose of removing the danger.

A recent study also claims that the number of inspectors in Bangladesh is insufficient to enforce working standards. The ILO recommends 1(one) inspector per 40,000 workers in less developed countries. It is 1 (one) per 780,000 workers in the labour force in Bangladesh (LO/FTF, 2012:8). The ILO Committee of Experts on the Application of Convention and Recommendation (CEACR) in its 2007 report noted that the human and material resources for inspection in Bangladesh were hardly changed in last two decades, whereas the number of registered premises and number of workers in those premises have increased by 67 percent and 140 percent respectively. Notwithstanding the regulatory obligation of the Government to appoint requisite number of inspectors for investigating workplace activities (BLA 2006, Article 318), only 92 inspectors are responsible for carrying out inspections in all the 25000 registered factories of the sector (cited in Hossain 2012).

With this few workforce, there is also shortage of transportation facilities and inspection equipment. One of the CIF&E informant points out that due to lack of transportation facilities, the inspection in time becomes impossible in a city like Dhaka where movement is very slow. He claims that their inspectors are sincere and they try to ensure the proper execution of labour law provisions (KII GR 4). On the other hand, the existing conditions of workplace and the perceptions of the workers of different sectors seem to be contrary to the claims. The current state of enforcement of labour law provisions and the compliance of general issues are discussed below:

Working Hours, Overtime and Night Duty

According to the provision of law no adult should be allowed to work in an establishment more than eight hours in a day (Sec.100) and this working hours can be extended to maximum 10 hours. The extended period of working time will be counted as overtime and should be paid double the normal rate [Sec. 108(1)]. Regarding weekly working hours, the provision of law fixes that it can be extended to sixty hours in any week and on the average fifty-six hours per week in any year (Sec.102). The law also

makes provision on the limitation of hours of work for women, which says that, 'No women shall, without her consent, be allowed to work in an establishment between the hours of 10.00 p.m. and 6.00 a.m. (Sec.109). In practice, the rules are not always followed exactly in the industries across the country. In most of the garment factories the workers work more than 12 hours a day in a single shift with a break of one hour (FGD: Gazipur 1, Dhaka 1 & 2). A worker informs that in some firms the workers work for 10 hours (8 hours usual duty + 2 hours overtime) and in some big factories workers work even for 13 hours (8 hours normal duty + 5 hours overtime) (KII WR 11).

Regarding night duty, the female workers say that they are never asked about it and usually they do not refuse it. The employers and their representatives are of different views about women workers' night duty. A key informant says that:

> At present night duty is almost off. In previous years there were many factories that continued till mid night and often whole night. Nowadays, whole night operation is restricted and maximum factories end their work by 10:00 pm except emergency (KII ER 8).

Still some firms continue to work till mid-night (2:00am) for emergency period to meet the target as agreed with the buyer(s) and in such situation the workers remain in the factory till 6:00 am. Due to insecurity in the street, no employer(s) allows the workers to go out at dead of night; rather they arrange separate places for male and female workers to take rest or sleep in the factory premises for the left part of night—from 2:00 am to 6:00am (KII ER 7).

In the jute mills—under BJMC, BJMA and BJSA—working hours are different. Mills under BJMC and BJMA run production in three shifts—two shifts at day and one shift at night—each consists of eight hours. The day shifts are in discrete order—divided in two distinct time series—and workers work for every four hours. (FGD: Rajshahi 1 and Khulna 2). On the other hand, some mills under BJSA maintain

two eight-hours shift with four hours compulsory overtime. This routine is in practice in Dhaka, Narayangonj, Chittagong, and Khulna regions where there is shortage of eligible workers (KII ER 9). In exception to it, some BJSA mills maintain three eight-hour shifts. In these mills every shift ends in eight consecutive hours (KII ER 9 & 11).

In the shrimp processing plants also there is no uniformity of 'shift' hours. In some plants, shift consists of eight working hours, some maintain 10 hours, and some factories have 12 hours shift. Some of the workers say that the firms that maintain 10 hours or 12 hours shift do not have any overtime and no extra pay but the salary is a little bit higher (FGD: Cox's Bazar 2 and Khulna 4). The workers under contractors also claim that they are employed in a fixed salary for eight-hours working day but they are to work 10 to 16 hours in peak season (FGD: Cox's Bazar 1 and Khulna 5). One of the contract workers justifies the longer period of work saying that:

> We in live in the house adjacent to and provided by the company. Without work, we have nothing to do except gossiping, sleeping, and watching TV. We work in the first shift of the day as compulsory duty and then come to the lodge *(barak)*. After bath, we eat and sleep. Then we go for night shift as overtime duty. After closing work, we come back to the lodge along with our contractor, sub-contractor and co-workers. We face no problem working for 16 hours, even till mid-night (FGD: Cox's Bazar 1).

Emergency Medical Aids

Most of the garment workers inform that they have no registered doctors in the factories but every factory has first-aid box. They state that every factory preserves some emergency medicine like painkiller tablets and bandage equipment but they are rarely provided (FGD: Dhaka 1). Some workers say that often they are provided with bandage kits and disinfectants in case of minor injury (FGD: Gazipur 1). Some of the workers in EPZ area state that they have little medical facilities and often those are provided by the management officials (FGD: Chittagong 2). A few workers of EPZ garment industries say that they have registered doctor and emergency medicine in the factory but the doctor is not always available (FGD: Chittagong 3).

In the jute mills there are a separate medical unit but there is no medicine and registered doctors. Most of the workers say that they buy emergency medicine from the medical unit employees' who keep some medicine personally to sell them to the workers (FGD: Rajshahi 1). The mill authority does not supply any medicine but in case of serious diseases like Tuberculosis (TB), the authority manage medical checkup and supply workers with proper medicine or pay for the cost of medicine (KII WR 19). Another CBA member says that the mill authority shows no regard for day to day medical facilities of the worker (KII WR 15).

In the shrimp processing plants the first-aid appliances are too scanty to provide any facilities to the workers. Both the permanent and contract workers say that medical facilities in their factories are not available but some of the factories supply medicine like painkillers (FGD:Khulna 4).

Canteen Facilities and Rest Room

Most of the RMG factories have canteen facilities with water supply and separate rest room with toilets for male and female workers. Some of the canteens supply foods for workers with reasonable price but most of the canteens do not supply foods and the workers use the canteen as dining room (FGD: Chittagong 1, Dhaka 1, and Gazipur 1). Most of the RMG workers complain that the canteen/dining room is not specious enough to sit more than 50 people at a time. Due to hunger and hurry, they often take meal standing on the stair or on the roof (FGD: Dhaka 1).

On the other hand, some workers of Gazipur say that in many factories there are canteen or dining room where 100 people can sit at a time but due to large number of workers the space falls short (FGD: Gazipur 1). Almost all of the garment workers say that they have rest room but they cannot use them as they have no leisure time to take rest. The workers of EPZ garment industries say that some of the factories have good canteens and they supply good foods but price is higher than normal (FGD: Chittagong 2 & 3).

The workers of jute mills say that every factory provides rest room for workers but the physical condition of rest room and toilets is so odd that workers feel disinterest to take rest there (FGD: Rajshahi 1 and Khulna 2). One key informant comments that the authority does not pay heed to the workers need to take rest because it may cause less production (KII WR 17). Another CBA leader says that many times the workers have requested the authority and the inspectors during inspection to develop the conditions of rest room and toilets but the authority does not care for it. He also asserts that sometimes at night some workers go asleep in the rest room leaving the machine running (KII WR 16).

In the shrimp processing plants also there are washing room, supply of pure drinking water, canteen, and rest room, and separate toilet for men and women. The workers says that some factories allow workers to use rest room to take rest but some factories keep the rest room locked and deprive the workers to take rest even at night (FGD: Cox's Bazar 2 and Khulna 4).

Child Care Room

Almost all of the compliance factories of RMG sector provide child care room. There is an attendant also but the female workers usually do not bring their children in the factory. Some workers say that the management officials do not allow bringing children to the factory and often show reluctance to it (FGD: Chittagong 1). Some of the workers are of the view that children do not feel comfort to remain in the child care room (FGD: Cazipur 1).

On the contrary, the female workers of EPZ say that some women bring children in the workplace and time to time go to the room to feed the baby (FGD: Chittagong 2). The child care room is also available in the jute mills also but it is not

used mainly for two reasons—(i) the number of female workers are few in the jute mills and (ii) noisy atmosphere and lack of cleanliness of the factory area. One of the key informants says that due to lack of proper caring facility and mechanical environment prevent women workers to bring children in the factory (KII WR 18).

The workers of the shrimp processing plants inform that many factories have child care room but very often they are locked. Some women workers say that due to chlorinated atmosphere and cool environment they do not usually bring their children in the factory besides the room is not interesting to the children (FGD: Cox's Bazar 2 and Khulna 4).

In fine it can be said that the system of inspection in Bangladesh is not effective enough to enforce the existing regulation. The effectiveness of inspection service is limited for a number of reasons—

Firstly, the absence of democratic norms makes the inspection meaningless as the inspectors collect information only from the employers in most of the cases.

Secondly, lack of adequate numbers of inspectors make it nearly impossible to inspect over the general, technical and health issues.

Thirdly, the lack of proper allocation of resources including budget and transport facilities create impediments to adequately inspect and carry out labor law provisions.

Fourthly, compliance of labour law provisions in enterprise level depends on the awareness of the workers, employers, and their respective organizations.

Fifthly, the weak enforcement of labour law by the labor administration is due to the discretionary scopes. Investigation into any complaint and subsequent action largely depend upon the discretion of the inspector(s) due to lack of well-defined rules of inspection procedures.

There are provisions in the labour law that 'the Government shall take such steps as may be necessary to organize training courses on this Act for officer of trade union of workers and employers and the employer of every establishment in which fifty or more workers are ordinarily employed shall undertake training course on labour law when invited by the appropriate authority' (Sec. 348) but the provision is hardly applied. Due to the lack of awareness of the mass workers and the lack of workers' organizations, the employers get the opportunity to non-compliance of the labour law provisions.

DISPUTE SETTLEMENT MECHANISMS

Mechanisms to handle grievances effectively and to settle disputes impartially come next to regulatory framework and enforcement mechanisms. Disputes are inevitable in any industrial relations system and require effective mechanisms and transparent procedure to handle them efficiently by the dispute settlement bodies. It not only ensures rule of law but also contribute to the development of human resource management policies. Disputes are of different types—rights disputes, interest disputes, individual disputes, and collective disputes. Broadly they are categorized into two types—individual and collective disputes. Both the disputes can be handled differently by the application of different adjudicatory and non-adjudicatory mechanisms.

It is noteworthy that the labour law has differentiated between individual and collective disputes but does not define them anywhere. On the other hand, no differentiation is made between rights' dispute and interest dispute; both are considered as dispute under law. According to the BLA 2006 an 'industrial dispute' means any dispute or difference between employers and employers or between employers and workers or between workers and workers which is connected with the

employment or non-employment or the terms of employment or the conditions of work of any person'[Sec. 2 (lxii)]. Both rights dispute and interest dispute can be taken to the Labour Court under the BLA 2006 (Al Faruque, 2009: 52).

The law provides that, individual disputes cannot be taken to court by the CBA as industrial disputes[1] (Sec.209). Individual dispute should be initiated and settled by the individual worker and employer. The BLA 2006 provides that 'Any worker, including a worker who has been laid-off, retrenched, discharged, dismissed, removed, or otherwise removed from employment, who has grievance in respect of any matter, and intends to seek redress thereof, shall submit his grievance to his employer, in writing, by registered post within thirty days of being informed of the cause of such grievance [Sec. 33(1)]. Such disputes can be brought before the Labour Court on the ground of violation of any right and only 'If the employer fails to give a decision or if the worker is dissatisfied with such decision, he may make a complaint in writing to the Labour Court within thirty days from the date of the decision [Sec. 33(3)]. On the other hand, industrial disputes shall be brought before the court by an employer or a collective bargaining agent and such disputes will go through a series of settlement procedures from bipartite employer-employee initiative to tripartite mechanisms involving a third party.

However, the BLA 2006 makes provisions to handle grievances through the formation and operation of some bipartite and tripartite mechanisms to provide justice and to ensure rule of law. The prime motive of all these mechanisms is to settle industrial dispute through a negotiation or by signing a memorandum of understanding (MoU) and to promote industrial peace and establish a harmonious and cordial relationship between employers and employees. The institutional mechanisms to settle disputes are designed and set up by both the non-state actors of industrial relations and by the state.

[1] Section 209: Raising of industrial disputes: No industrial dispute shall be deemed to exist, unless it has been raised by a collective bargaining agent or an employer.

NON-STATE DISPUTE SETTLEMENT MECHANISMS

The non-state dispute settlement mechanisms are non-adjudicatory and bipartite in nature. These include the employer(s), and the employees or their representatives. Any industrial disputes can be brought to notice in writing by the trade union that is elected or declared by the government authority (DoL) as the CBA or by the employer(s). According to the provisions of law, at any time, an employer or a collective bargaining agent finds that an industrial dispute is likely to arise between the employer and the workers or any of the workers, the employer, or the collective bargaining agent shall communicate his or its views in writing to the other party [Sec. 210(1)]. In this process, a meeting for collective bargaining by the authorized representatives of the parties on the issue raised in the communication should be arranged within fifteen days of the communication with a view to reaching an agreement thereon [Sec. 210(2)].

If the parties reach a settlement on the issues discussed, a memorandum of settlement shall be recorded in writing and signed by both the parties and a copy thereof shall be forwarded by the employer to the Government, the Director of Labour and the Conciliator [Sec. 210(2)]. If no settlement is reached through dialogue within a period of one month from the date of the first meeting for negotiation, or, such further period as may be agreed upon in writing by the parties, any of the parties, may, within fifteen days from the expiry of the period may report the matter to the Conciliator and request him in writing to conciliate in the dispute [Sec. 210(4b)].

In practice, this process is not at play in the industrial sectors equally because there is lack of trade unions at large and the existence of CBAs in particular. Among the sectors under this study, the workers of garment industries and the shrimp processing plants suffer from lack of basic trade unions and CBAs. The workers of these sectors do not have the chance to bring out any industrial dispute to notice for negotiation. Though there are claims that in the garment sector 80 basic trade unions

operate and some of them have formed CBAs, the workers discussed in different areas of Bangladesh do not report about the functions of any such trade union or CBAs. The workers of garment industries say that they cannot bargain collectively in the factory premises over any work related issue. They make the federation leaders to handle their grievances at times (FGD: Chittagong 1 & Gazipur 1). The garments workers of Dhaka reports that they often put their grievances to the management officials and they rarely consider their grievances regarding financial matters like wage increase or promotion (FGD: Dhaka 2).

The federation leaders also assert that the trade union or CBAs are not in practice in the garment sector. One of the federation leaders says that the workers affiliated to their federation very often come to them to settle over some issues related to employment conditions or job termination (KII WR 7). Another leader of trade union federation informs that factory level collective bargaining in the garment industry for dispute settlement or grievance handling is individual in nature and it is done by the management only as there is no trade union or CBAs (KII WR 10). A member of Labour Court comments that:

> The workers of Bangladesh suffer from effective mechanisms of grievance handling. There are many reasons. Some industrial sectors like RMG and Shrimp Processing Plants do not allow the formation of trade union or CBAs. The workers in these sectors have no opportunity to handle their grievances or settle their disputes by themselves. Some sectors like privately and state owned jute mills allow the formation of CBAs but in times of bargaining they fail either for their flaws or for the authoritarian attitude of management. Besides, there are problems of unfair dealings among the workers leaders (KII WR 9).

A leader of national federation also asserts that in case of national or industry level collective bargaining for dispute settlement the workers' representatives lack the necessary experience and leadership skill. Along with this the political interference and the employers' tendency to buy off the bargaining agents destroy the spirit of dispute settlement. To him, same is the case with plant level grievance handling procedures (KII WR 1).

Along with this CBA-employer approach, there is another non-state dispute settlement mechanism in the RMG sector. The mechanism is known as 'Arbitration Committee' of the BGMEA. The committee comprises the national federation leaders, employers' representatives, neutral members and a retired District Judge as Chairman. Here the aggrieved workers are allowed to submit an application to settle any of the disputes under labour law. A member of this committee informs that about 98 percent of the disputes are settled with fair judgment and the workers are given their dues/compensations properly. He thinks the committee to be a good one and comments that it is good for both the workers and employers (KII WR 2).

DISPUTE SETTLEMENT MECHANISMS OF THE STATE

The dispute settlement mechanisms of the state comprise both non-adjudicatory and adjudicatory authorities. These authorities are tripartite in nature and there is an active involvement of the government. The non-adjudicatory mechanisms include the conciliator and the arbitrator while the adjudicatory (judicial) authorities include Labour Court and Labour Appellate Tribunal. The state mechanisms for the settlement of disputes start with conciliation and ends up with the adjudication by the court. The unsettled individual disputes come from the non-state mechanisms to the labour court while the unsettled industrial disputes are put to the non-adjudicatory authorities and, if unsettled, referred to the adjudicatory authorities.

Non-adjudicatory Authorities of Dispute Settlement

The non-adjudicatory processes—conciliation and arbitration—are applied to settle industrial disputes only, not to individual disputes. Both the processes are arranged by the state according to the provisions of labour law. These mechanisms are tripartite in nature and there is an active involvement of the government. The formation, procedures and effectiveness of the non-adjudicatory authorities are discussed below:

Conciliation: Formation, Process and Effectiveness

The conciliation as a dispute settlement machinery is very important for industrial relations system. Conciliation in industrial dispute becomes necessary mainly when the settlement of disputes fail at the bipartite negotiation level. In fact conciliation can be taken as an extension of the function of collective bargaining or simply as 'assisted collective bargaining' in which the conflicting parties can have a fair chance of settlement of industrial disputes through the services of expert negotiators (Al Faruque, 2009: 53).

The conciliation is an extended function of the Directorate of Labour. Usually the divisional offices of the DoL act as the conciliators. The Government of the People's Republic of Bangladesh through gazette notifies the names of conciliator with their respective jurisdiction. The conciliators are authorized to conciliate in industrial disputes related with matters of interests [Sec. 210(5)].

The process of dispute settlement through conciliation is compulsory before declaring any industrial action—strikes or lock outs. According the provisions of law, after the failure of bipartite negotiation, any of the parties concerned may request the conciliator, in writing, to conciliate the dispute within 15 days from the date of the failure of collective bargaining [Sec. 210(2)]. The Conciliator, upon receipt of the request, shall start conciliation within 10 days and shall call a meeting of the parties to the dispute for the purpose of bringing about a settlement [Sec. 210(6)]. The disputants are bound to appear before the Conciliator in person or they can be represented by person(s) nominated by them and authorized to negotiate and enter into an agreement binding on the parties [Sec. 210(7)]. The conciliator's role is only to find out a compromise between workers and the employer(s). The Conciliator

cannot impose a solution on either of the party. If any settlement of the dispute is arrived at in the course of the proceedings, the Conciliator shall send a report thereof to the Government together with a memorandum of settlement signed by the parties to the dispute [Sec. 210(8)]. A conciliation process can continue for a month and if there is no solution, the parties may extend time for conciliation.

The conciliation process of dispute resolution is democratic in the sense that it allows the conflicting parties to express their grievances by themselves or by the authorized representatives. Besides, 'the conflicting parties can have a fair chance of settlement of industrial disputes through the services of expert negotiators' (Al Faruque, 2009: 53). However, the success of conciliation depends on the willingness of the two sides to resolve their differences. Hossain (2012: 226) agrees that '…when conciliation is utilized as means of dispute settlement, it works effectively'. He shows that over the years, the conciliation process has settled a good number of disputes. Since 1990 to 2010, 246 cases per year have gone through conciliation and 57% of which have been settled (50% fully and 7% partially). One of the leaders of national federation comments that:

> The conciliation as process of dispute settlement is well but the conciliator is empowered to find out suggestions not to devise solutions. Besides, its reward lacks any binding force. In most of the cases, the employers do not agree with the suggestion given by the conciliator. So, it fails to resolve effectively the industrial disputes (KII WR 1).

On the other hand a responsible government official says that the conciliation fails not only for the arrogance of the employers but also for the irrational claims, demands, and attitudes of the CBA leaders (KII GR 1). The CBA members deny such allegations saying that the owners are powerful and the conciliators always try to favour them. The CBA members cannot slaughter workers' interests for the success of a conciliator (KII WR 14 & 19).

Arbitration: Formation, Process and Effectiveness

Arbitration as a process of dispute settlement takes place after the failure of conciliation. The BLA 2006 provides that 'If the conciliation proceeding fails, the Conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator [Sec. 210(10)]. If the disputant parties agree to settle dispute through arbitration, they shall make a joint request in writing for reference of the dispute to an arbitrator agreed upon by them [Sec. 210(12)]. In this case, the arbitrator may be a person borne on a panel to be maintained by the Government or any other person agreed upon by the parties [Sec. 210(13)].

It is stated that the Arbitrator will give award within a period of thirty days from the date on which the dispute is referred to him or such further period as may be agreed upon in writing by the parties to the dispute but the law does not provide the process through which he will declare award. Besides, the award of the Arbitrator is binding for two years for both the parties. After declaration of an award, the arbitrator shall forward a copy thereof to the parties and to the Government. The award of the arbitrator is final and no appeal shall lie against it. Therefore, neither the employers nor the workers refer the dispute to the Arbitrator. In practice the parties feel interested to go to the Labour Court for the resolution of the dispute. One of the labour court advocates remarks that the arbitration as a process of industrial dispute resolution is not popular in Bangladesh. He points out two important reasons—

Firstly, the law does not make it clear about the qualification of the arbitrator; *Secondly*, the arbitrator may be chosen from the list prepared by the government to which the parties may not be interested (KII WR 22). A civil society member states that:

> The arbitration is not attractive to the disputant parties due to lack of democratic character of the process. The law does not make it clear whether the arbitrator will allow the aggrieved parties the opportunity to self-defense. Besides, the award of arbitrator is binding for two years and the parties cannot appeal against it. The process suffers from the lack of trust on the arbitrator's award (KII CSO 3).

Adjudicatory Mechanisms of Dispute Settlement

The adjudicatory mechanisms are Labour Courts and Labour Appellate Tribunal. These are tripartite institutional mechanisms of settling both individual and industrial disputes following formal judicial procedures. The formation, dispute resolution procedures, and effectiveness of the mechanisms are discussed below:

Labour Court

The Labour Court is the prime body of settling both individual and industrial disputes through adjudication. After the exhaustion of previous processes—bipartite negotiation, conciliation and arbitration—the disputant parties may resort to settling their dispute by referring it to the Labour Court. The court retains the power to dismiss or decide over any disputes. It is stated that 'the Government shall, by notification in the official Gazette, establish as many Labour Courts as it considers necessary [Sec. 214(1)]. In Bangladesh there are currently seven labour courts of which three are in Dhaka, two in Chittagong, one in Khulna and one in Rajshahi.

Formation of Labour Court

The Labour Court is constituted with a Chairman and two Members to advise him, however, in the case of trial of an offence or adjudication of any matter under Chapters Ten (Wages and Payment) and Twelve (Workmen's Compensation for Injury by Accident) it shall consist of the Chairman alone [Sec.214(3)]. The Chairman of the Labour Court shall be appointed by the Government from amongst the District judges or an Additional District judges [Sec. 214(4)]. The terms and conditions of appointment of the Chairman and members of the Labour Court shall be determined by the Government [Sec. 214(5)].

The members of the Labour Court shall be the representative of employers and the representatives of the workers [Sec. 214(6)] and they shall be appointed from two panels consisting six members for employers' representatives and six members for workers' representatives [Sec. 214(8)]. The Government shall constitute the panels by notification in the official Gazette [Sec. 214(7)] and the panels shall be reconstituted after every two years, notwithstanding the expiry of the said period of two years, the Members shall continue on the panels till the new panels are constituted and notified in the official Gazette [Sec. 214(8)]. The Chairman of the Labour Court shall, for hearing or disposal of a case relating to a specific industrial dispute, select one person from each of the two panels and persons so selected, together with the Chairman, shall be deemed to have constituted the Labour Court in respect of that specific industrial dispute [Sec. 214(9)].

Jurisdiction of the Labour Court

The jurisdiction of the labour court is stated in the subsection 10 under section 214. The section reads as 'A Labour Court shall have exclusive jurisdiction to−

(a) adjudicate and determine and industrial dispute or any other dispute or any question which may be or has been referred to or brought before it under this Act ;

(b) enquire into and adjudicate any matter relating to the implementation or violation of a settlement which is referred to it by the Government ;

(c) try offences under this Act ; and

(d) exercise and perform such other powers and functions as are or may be conferred upon or assigned to it by or under this Act or any other law.

Procedures and Powers of the Labour Court

The procedures and powers of the labour court differ according to the nature of trial—trial of offences and trial of matters other than offences. To try over criminal cases (offences) the procedures and powers of the court are as follows (Sec. 215):

(1) while trying an offence, a Labour Court shall follow as nearly as possible summary procedure as prescribed under the Code of Criminal Procedure.

(2) a Labour Court shall, for the purpose of trying an offence under this Act, have the same powers as the vested in the Court of a Magistrate of the first class under the Code of Criminal Procedure.

(3) Notwithstanding anything contained in sub-section (2), for the purpose of imposing penalty a Labour Court shall have the same powers as are vested in a Court of session under that Code of Criminal Procedure.

(4) a Labour Court shall, while trying an offence hear the case without the members.

On the other hand, while a Labour Court tries over matters other than offences under this Act, be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure. Its procedures and powers should be as follows [Sec. 216(1)]:

(a) enforcing the attendance of any person, examining him on oath and taking evidence ;

(b) compelling the production of documents and material objects ;

(c) issuing commissions for the examination of witnesses or documents ;

(d) delivering ex-parte decision in the event of failure of any party to appear before the Court;

(e) setting aside ex-parte decision ;

(f) setting aside order of dismissal made for non-appearance of any party.

Effectiveness of the Labour Court

The effectiveness of the labour court is judged primarily by its capacity to enhance the scope of access to judicial system and to deliver justice to the parties of industrial relations—workers and employers—within the timeframe fixed by law. Besides, particularly for the labour courts, there is another important thing to consider. Labour Courts are established not only to deliver justice in time but also to foster democratic practices among the employers and workers. Regarding these issues, the researchers, workers, workers' representatives, employers and their representatives, labour court members, labour court judges, and advocates of labour courts are of different views.

Giving focus on the capacity and efficiency of the labour courts to deliver justice in time to the disputant parties, Al Faruque (2009:57) finds that the courts are less effective as they fail to dispose the cases within the statutory time limit (i.e. 60 days). He shows that 'about 50per cent of the cases took a time period ranging between 12 months and 36 months. The time required for 25per cent of the cases ranged between three years and five years. About 8 per cent of the cases took more than five years'. He indicates some causes behind this backlog of cases. The most prominent causes are—

(a) Inadequacy of Courts for dealing with labour disputes,

(b) Huge number of cases, (c) The Judges of the Labour Court usually do not have any prior experience in dealing with labour issues

(d) The absence of members cause unnecessary delay in disposing of the case,

(e) The practicing lawyers of the Labour Court are habituated in filing frequent time petitions which create unreasonable delay in disposing of the case, and

(f) Lack of logistic support of the Labour Court.

In the same way, Hossain (2012:325) finds that the labour courts are inefficient to handle the huge number of cases that are filed for disposal. Analyzing data from the year 2001 to 2010, he shows that annual average number cases filed are 7261 of which only 2503 cases are disposed within the year and 4758 cases remain pending at the end of the year. The figure signifies that only one-third of the cases are disposed of during a period 12 months. Beyond this efficacy and efficiency issues, this study focuses on the democratic aspects of effectiveness of the labour courts. Unlike other courts, the labour courts are designed to be more democratic as the courts involve the representatives of workers' and employers' as members to 'advise' the judges. No doubt that the principle is democratic but the way the representatives are nominated by the government is not democratic at all. The members of labour court lack the democratic character as they are neither elected nor nominated by the class they represent. One of the advocates of labour courts states that the representation system is not democratic and it should be abolished. He argues that:

> The representatives are not the part of judgment; they are part of the advocates. It is not fair to share the act of judgment with anybody who has no background on legal expertise. As the law permits the workers' and employers' associations to act as advocate in the legal proceedings, the representatives are unnecessary (KII WR 22).

In contrast, a labour court member says that the members are needed not only to advise the Chairman of the court but also to assist the worker by providing opinion about the trial that is to be highlighted by the judges. He agrees that the current system of selecting the members is not democratic and for this the workers cannot rely on the assistance of their representatives in the court. He suggests that the government may prepare the list of members through election or through the nomination from the national federations of workers (KII WR 9). Another former member of labour court says that:

> The representatives of the workers in the labour court are not made by the workers. The government makes the list with the workers of their own party. It hampers both the representation system and trial process. In most of the cases, the members are not conscious of the problems of workers and they lack the basic knowledge of labour law which is very essential for a member of labour court. The representation system has to be democratic and it can be done either by the election within the territory of a labour court or by the nomination of the national level federations (KII WR 26).

CONCLUSION

From the above discussion on the principles of rule of law, it can be summed up that the regulatory framework of labour governance in Bangladesh has both democratic strengths and democratic deficits. The strengths are that the BLA 2006 and the EWWSIRA 2010 provide provisions on employment security, rights, punishment for violation of the labour law, protection from forced and compulsory labour, protection of adolescent and elimination of child labour, social security measures, enforcement mechanisms and dispute settlement mechanisms. The deficits are that the labour laws fail to provide employment security to all categories of workers, exclude certain categories of workers from the right to freedom of association and collective bargaining, restrictions on the right to strike and lock outs, insufficient and even irrational system of punishment, no provision on pension and medical and life insurance of workers, and compulsory provisions on security measures.

In addition to these deficits there is inefficiency of the enforcement mechanisms for which the employment security of the workers cannot be ensured, workers' rights cannot be established, and the social security measures cannot be provided. Due to the restrictions on the rights to strikes the workers cannot get their demands passed through collective bargaining. For the lack of efficient inspection system and sufficient number of inspectors, the enforcement of labour law becomes weak. Besides, the lack of democratic norms in inspection, the social compliance

cannot be ensured and the workers are deprived of the compensation facilities provided in the labour law. There is imbalance in the measure of punishments and there is also non-execution of the provisions for the employers/owners. The functions of the labour administration to execute the provisions of labour laws, to establish democratic institutions of labour governance, to monitor the activities of the institutional mechanisms, and to enforce workers' right are poorly discharged. The lack of updated system of administration, inefficiency, non-cooperation of the employers, negligence of the workers' federations, and weaker role of the government are explored as the principal causes of the weak enforcement and non-compliance of labour law.

The dispute settlement mechanisms are also weak as it lacks sufficient manpower and logistic supports. There is also lack of democratic character of the dispute settlement mechanisms. The law provides that the industrial disputes can only be raised either by the collective bargaining agent or by the employer. In practice, most of the sectors lack trade unions without which no CBA can be formed. The labour administration as well as the government fails to establish workers right to form union in the factories. Besides, the law provides democratic provision of worker' and employers' representation in the labour courts but the representatives are selected by the government which is undemocratic.

CHAPTER IV
EXISTENCE AND EXERCISE OF WORKERS' RIGHTS IN BANGLADESH

Rights are claims that are socially recognized, constitutionally guaranteed, and statutory protected. In every structure of democratic governance, there must have some active and positive democratic rights for the governed and those rights should be exercised democratically. In the context of labour governance, the existence and exercise of some rights—rights to work, rights at work, and rights through work— are imperative to workers' participation, emancipation and self-development as human being. These rights can contribute to the democratization of workplace and labour governance if they are allied with the rights to equality, right to opinion and expression, and right to association and collective bargaining. However, workers fundamental rights derive from various national and international sources or routes. These routes include national constitution, national labour policy, and some internationally accepted and endorsed conventions, corporate codes of conduct, and other trade linked labour standards.

In Bangladesh workers' rights are defined, specified and regulated by mandatory domestic rights legislation. It is obligatory for rights legislation to encompass the fundamental rights enshrined in the constitution, to incorporate the basic objectives set in the national labour policy and to adopt and adjust internationally recognized conventions particularly the conventions of the ILO. The workers' rights in Bangladesh, thus, are supposed to cover and translate a wide range of principles from domestic—national constitution and national labour policy—and international—binding and voluntary—conventions. All these sources pave the premises, provide guidelines and indicate directive principles for rights legislation for the people at work to practice democracy.

THE CONSTITUTION AS SOURCE OF WORKERS' FUNDAMENTAL RIGHTS

The constitution of Bangladesh provides some fundamental principles of state policy in part II, and some fundamental rights and freedom in part III, for the citizen in general and for the working people in particular. The fundamental principles include the emancipation of 'the toiling messes—the peasants and workers—and backward sections of the people' from all forms of exploitation (Art 14)[1], the right to work at a reasonable wage (Art.15 b), right to reasonable rest, recreation, and leisure (Art.15 c), and right to social security (Art.15 d). Besides, work has been declared 'a right a duty and a matter of honour for every citizen who is capable of working' (Art.20).

The fundamental rights and freedom, enshrined in the constitution in relation to the people at work, can be split into four main categories—(i) right to equality (ii) right to freedom of association (iii) right to free choice of occupation and (iv) right to be free from forced labour. The rights to equality include—equality before law (Art.27), equality (non-discrimination) irrespective of religion, race, caste, sex or place of birth (Art. 28 a), equality of opportunity in public employment (Art.29), equal right to protection of law (Art.31), equality of protection of right to life and personal liberty (Art. 32), and equal protection in respect of trial and punishment (Art.35).The rights to Freedom of Association (FoA) include—right to form associations or unions (Art.38); right toassemble and to participate in public meetings and processions peacefully and without arms (Art.37); and right to freedom of speech and expression (Art. 39 a), and freedom of press (Art. 39b). All forms of forced labour are prohibited in article 34 of the constitution.

[1]It shall be a fundamental responsibility of the State to emancipate the toiling masses the peasants and workers and backward sections of the people from all forms and exploitation.

THE LABOUR POLICY AS GUIDING PRINCIPLES OF WORKERS' RIGHTS

The National Labour Policy 2012 intends to uphold welfare and rights of the working people (Sec.1.02). It also promises to respect, as a member state, the ILO conventions, and other international labour standards (Sec.1.03). To meet the challenges of ongoing internal and external changes, the policy pledges to ensure the conditions of decent work and to democratize labour governance through massive participation of the working people (Sec.1.04). The policy sets a number of goals—to improve the living standards of the workers; to ensure and improve social security, healthy and safe working environment, to remove gender discrimination, to eliminate all forms of hazardous child labour, to modernize the labour and employment administrations and so on (Sec.4.02).

In addition, the policy seeks to achieve some targets—to uphold the dignity of labour, workers' rights, and life standard (Sec.5.00); security of employment and occupation (Sec.5.01); to improve occupational health and safety including workers' physical, mental and economic security (Sec.12.00); to create and preserve industrial peace through collective bargaining and social dialogue, to form trade union/worker welfare association (Sec.13.00); enhancing the role and function of the Workers' Participation Committee (WPC) to exercise democracy, to improve employer-employee relation and bipartite consultations at enterprise level (Sec.14.00); to discourage unfair labour practice and to speed up the conflict resolution through conciliation and arbitration (Sec.15.00); strengthening tripartism—involvement of government, employer, employee—to formulate or amend labour laws and policies (16.00).

THE ILO CONVENTIONS AS MEANS OF WORKERS' RIGHTS PROMOTION

The ILO, since 1919, has adopted 189 conventions and a good number of recommendations with a view to protecting and ensuring workers' rights at work and workplace all over the world. Bangladesh has, so far, ratified 33 ILO Conventions including seven of the eight core/fundamental labour rights conventions. It is binding for Bangladesh to incorporate and adjust these conventions into the labour

regulations. Thus, the BLA, 2006 and the EWWAIRA 2010 are supposed to incorporate provisions on workers' fundamental rights and freedom—rights to work, rights at work, and rights through work—in line with the fundamental rights of the constitution of Bangladesh.

It is hardly known whether and to what extent the BLA 2006 and EWWAIRA 2010 have adopted workers' fundamental rights and freedom in relation to the fundamental rights of the constitution of Bangladesh. It is also neither known whether the existing labour laws are capable to promote democratization of workplace and labour governance through the democratic practices of workers' rights.

This chapter aims to explore the nature of existence of workers' fundamental rights and freedom in the BLA 2006 and EWWAIRA 2010, and tries to mark out how far those rights are exercised democratically. The objective of this chapter is, thus, to assess the outcomes of the existence and exercise of workers' fundamental rights and freedom in terms of democratization of labour governance in Bangladesh. I argue in this chapter that either the fundamental rights of the workers are poorly embodied in the existing labour laws that leave narrow space and scope for workers to exercise those rights democratically or there is availability of rights in the laws but due to constraints both from state and non-state actors the workers cannot exercise those rights and freedom democratically.

This chapter consists of four sections on four fundamental freedom and rights. The following section focuses on the right to equality; second section highlights the rights to opinion and expression, third section documents the right to association and fourth section describes right to collective bargaining. Each section combines the existing legal provisions and their practices and finally assesses the deficits.

RIGHTS TO EQUALITY

Rights to equality comprise primarily three specific issues—(i) equal application of the provisions of law without discrimination on grounds of religion, race, caste, sex or place of birth, (ii) equal opportunity for all, and (iii) equal protection for all under law. To explore the existence and exercise of the rights to equality, I focus on some conditions/provisions of law related to—(a) employment and Contract (b) protection against all forms of discrimination and oppression (c) annual and maternity leave with wage (d) unfair labour practices from the part of employers (f) wage and wage related benefits and (f) promotion. These are areas where laws are not applied equally for all; distribution of equal opportunity differs; discriminations occur; and workers are mostly deprived of the right to equal protection under law. The aspects rights to equality with existing provisions and practices are discussed below:

EQUAL APPLICATION OF THE PROVISIONS OF LAW

Right to equality implies that the provisions of law should be applied equally and impartially without discrimination. It is seen that there are some provisions in the BLA 2006 relating to employment, termination, unfair labour practices, wage and increment, and non-discrimination which are not applied equally. This lack of equality of application of the laws and differential treatment destroy the democratic character of governance and create discontent and frustration among the workers of different sectors and finally lead to labour unrest. The following are the major issues unequally applied:

The Provisions on the Conditions of Employment and Contract

Unequal application of the provisions of law relating to employment and contract are found in different industrial sectors. The provisions of employment and contract in the BLA 2006 are of two categories—(i) provisions on the conditions of employment contract and (ii) provisions on the conditions of termination of employment. The conditions of employment include—issuing of employment letter and identity cards with photograph, providing Service book to all workers other than an apprentice, badli

or casual worker (Sec.6), maintenance of Worker Register, and supplying all workers with tickets and cards containing information on the type of employment, name of department, and identification number of the worker [Sec.9(c)]. The state of art of the provisions across the industries is discussed below:

Letter of Appointment and Identity Cards

It is proclaimed compulsory for the employer(s) to provide letter of appointment to all categories of workers[1] and 'No employer shall employ any worker without giving such worker a letter of appointment and every such employed worker shall be provided with an identity card with photograph' (Sec.5). In practice, the application of this provision varies across industrial sectors and even factory to factory within a particular industrial sector. Regarding the compliance of employment letter and identity card, there are diverse views among the workers, workers' representatives, employers, employers' representatives, government officials, workers' rights activists and civil society members.

The workers in the apparel sector[2]— RMG industries, Knitwear industries and workers working in the garment factories of EPZs—are of different views regarding the issue of appointment letter. The RMG workers say that all factories do not issue

[1]Classification of workers and period probation: (1) Workers employed in any establishment shall be classified in any of the following classes according to the nature and condition of work;namely—(a) apprentice, (b) badli, (c) casual, (d) temporary, (e) probationer, and (f) permanent.

[2]The private apparel/textile sector in Bangladesh consists of two sub-sectors—ready-made garment (RMG) industries primarily the cutting and sewing factories and knitwear industries producing sweaters, socks, and knitting of fabric and making of knitwear using the fabric thus knitted. Currently the number of RMG factories in Bangladesh is nearly 5700 of which 2923 factories are members of the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) which represents the RMG sector (BGMEA 2011). The knitwear factories are represented by the Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA) which has currently 1888 member factories (BKMEA 2013).

appointment letter to all workers. Only some of the compliance factories[1] issue appointment letters to all workers. Some of the RMG workers inform that there are many compliance factories that do not issue appointment letter to all workers. They also say that few non-compliance factories also issue employment letters to some workers (FGD: Chittagong 1, Gazipur 1, and Dhaka 1). The workers working in the knitwear industries say that only 'A' category factories[2] issue appointment letter to all workers, 'B' category factories issue appointment letters to some workers, and 'C' category factories issue appointment letters to very few number of workers (FGD: Dhaka 2). The workers working in garment industries in the EPZ areas say that they all have appointment letter (FGD: Chittagong 2 & 3).

Almost all of the workers of these industries agree that very few factories issue appointment letter at the time of employment. Most of the factories issue letter of employment after six months to two years of joining (FGD: Chittagong 1, Dhaka 1, Gazipur 1). In contrast, the employers of apparel sectors say that they issue appointment letters after six months of joining in case of apprentices and for skilled workers they issue it at the time of joining (KII ER 6 & 7). The statement of another key informant comes closer to the views of the workers. He informs that in many cases the apparel workers who have served for long four to five years in a particular factory cannot establish their claims in the labour court due to lack of employment letters (KII WR 9).

[1] The RMG factories are mainly divided into two categories—compliance and non-compliance factories. The factories enlisted in the BGMEA are compliance factories (KII ER 6). The BGMEA has adopted some criteria/codes the maintenance of which labels a factory as compliance factory. These include good housekeeping storage, well organized storage, efficient operations and handling, improving work efficiency, improving monitoring and controlling system to minimize mistakes, designing responsible and flexible jobs, removing fatigue to keep workers alert and productive, appropriate production layout of organization, encouraging group work, practices of diversity management, production progress controlling system, providing equal employment opportunity,absence of employee harassment by top level executives, violence free workplace, and acceptable use of information technologies (Rahman &Hossain , 2010:77-78).

[2] The BKMEA has divided its members into three categories—A, B, and C. This categorization is based on the compliance of institutionally set codes and other issues (KII ER 7).

The workers engaged in the jute industries[1] also have different views regarding the letter of appointment. The workers engaged in the jute mills are, in general, divided into three categories— permanent, badli, and casual. According to the provisions of law, all categories of workers are entitled to have employment letters. The permanent and badli workers both time rated and piece rated under BJMC mills and BJMA mills say that they have employment letters but the casual workers do not have employment letter (FGD: Rajshahi 1, Khulna 1, 2 &3). The workers engaged under BJSA mills say that they do not have appointment letter (FGD: Rajshahi 2). Some of the management officials say that in many BJSA mills there are no permanent workers so they do not issue appointment letter but some of the BJSA mills have both permanent and badli workers and there the workers are provided with appointment letter (KII ER 9, 10 & 13). A BJSA member comments that most of the spinning mills are new and small in size. The workers there work as daily basis. The employers do not issue such workers any appointment letter but they maintain a form containing the name and address of the worker, designation and department of the worker and rate of salary (KII ER 11).

The workers employed in the shrimp processing plants[2] are also confused over their employment status whether it is formal or informal. The workers engaged in these plants are two types—permanent workers[3] employed by the employer(s) and workers

[1]The Jute Industries in Bangladesh are mainly two types—'state owned enterprises (SOEs)' under the authority of Bangladesh Jute Mills Corporation (BJMC) and privately owned jute mills. The private jute mills are under the membership of Bangladesh Jute Mills Association (BJMA) and Bangladesh Jute Spinners Association (BJSA). According to an estimate of BJSA (2013), there are 230 jute mills are in operation of which 93 under BJSA, 110 under BJMA and 27 under BJMC. A recent report shows that, 'there are about 240 jute mills in the country, of which 120 are under BJMA, 90 under BJSA and 22 under BJMC (The Financial Express on April 20, 2013).

[2]The shrimp processing plants are one of the four sub-sectors of shrimp industry and considered to be the most important industrial sub-sector of fish and frozen foods industries in Bangladesh. Currently, Bangladesh has 148 shrimp processing plants of which 88 plants are licensed by the government and 74 plants are approved by the European Union.

[3]The employers claim the numbers of permanent workers to be 50% (KII ER 3) in contrast the labour contractors claim that to be 20% to 30% of the total workforce engaged in the shrimp processing plants (KII CS 3).

under contractors[1]. Some permanent workers inform that they have employment letters and some inform that they do not know whether they have any such letter. Some of the workers say that they have appointment letter but not in their possession, it is preserved in the company offices (FGD: Cox's Bazar 2 and Khulna 4). One of the permanent workers says that:

> I worked in a factory for last two years. Few months back I changed the factory and joined another one as a worker in the panning section. I have an identity card with a photograph. I don't know whether I have any appointment letter in the office. I have never asked for the letter (FGD: Khulna 4).

The fact seems to be true from the Khulna Shrimp Industry Workers' Welfare Association's (KSIWWA) seven point charter of demand[2] presented to the State Minister for MoLE, on May 19, 2012. The issue of employment letter is introduced as the first problem of the workers. The association claims that most of the workers are not provided with employment letter at the time of employment according to the provisions of labour law. Due to this lack, the workers do not know their grade, their rate of wage, and the time and mode of payment. They asked for the minister to solve the problem to ensure workers' tights to work.

The situation is grimmer for the workers under contractors. Any of them has hardly seen or got any appointment letter. All of the contract workers feel that they should have a written document of their appointment but the contractor does not provide such documents. The workers work for the contractor in a farm or in a number of farms on verbal agreement (FGD: Cox's Bazar 1 and Khulna 5). The contractors are of the view that:

> It is really hard to provide the workers with appointment letters. Most of the workers are seasonal and some are hired from other professions. The company does not agree to issue appointment letters to such people and we also do not provide any such written document. The workers also do not ask for any such letters (KII CR 1 & 3).

[1] The workers under contractors constitute nearly 80% of total workforce (KII CR 1 & 2).
[2] During the Minister's visit to Khulna, the KSIWWA presented the seven point charter of demand on May 19, 2012.

The management officials claim that they provide workers with appointment letters at the time of employment, as per law. Some of the employers and employers' representatives consider the employment letter to be less important and argue that:

> Work and timely payment for work is more important to the workers than letter of appointment. Yet, every employer provides the workers with appointment letters. Some of the workers keep their letters in the office locker for safety and some keep it to themselves. We never force them to keep their letters to our custody (KII ER 1 & 2).

In relation to partial compliance of provisions of appointment letter, the employers of all industrial sectors—apparel industries, jute industries, and shrimp processing plants—comply more with the provisions of identity cards. Almost all the workers of RMG factories, jute mills and shrimp processing plants discussed in focus group say that they have identity cards containing a photograph along with the name of the factory, name and address of the worker, designation of the worker and authorized signature. Some of the RMG workers say that there are factories that don not issue identity cards for a certain period of time and usually it is provided after three to six months of joining (FGD: Dhaka 1 and Gazipur 1).

The workers discussed in Chittagong and Dhaka regard the identity cards as something less important against appointment letter. To them, in matters outside the factory, it does not prove to be an effective document to save a worker from harassment. In case of any criminal matter, the authority regards the cards as false or old ones. Even, in any proceedings of labour court it is not a strong safeguard for the workers (FGD: Chittagong 1 and Dhaka 1 & 2).

Service Book and Employee Register

The provisions of service book and worker resister are not always applied equally. In some industries and factories they are maintained and updated regularly and in some factories they are not maintained and not up-to-date. Regarding the issue of service book and employee register the views of employers, employees, and government officials are different. Almost all of the workers, engaged in apparel sector, are confused whether they have any service book in the factory but they say that their factory maintains employee register in which their absence or presence is counted (FGD: Chittagong 1, 2, and Dhaka 1). A few of the workers say that they have both service book and worker register (FGD: Chittagong 1, 3 and Gazipur 1). The workers of jute mills under BJMC and BJMA inform that all the permanent workers have service book and worker register (FGD: Rajshahi 1 and Khulna 1, 2 & 3). The workers of jute mills under BJSA say that very few of them are permanent workers and have service books but they have attendance register in which the authority counts their presence, working hours, working shift or absence (FGD: Rajshahi 2). A key informant informs that:

> The development of BJSA mills in Bangladesh is comparatively new. In relation to the composite mills under BJMC and BJMA, they are smaller in functional units[1] and they have few categories of workers. The workers in those mills are not organized strongly. Due to these lacks, the mill authority feels less pressure from workers for promotion or other financial and non-financial issues. Therefore, most of the BJSA mills have small number of permanent workers. The majority of workforces in these mills are either contractual, or daily basis worker, or workers other than permanent (KII WR 19).

[1] A composite jute mill is divided into eight to 19 sides/unites of which four units—(i) mill side where threads are produced from raw jute (ii) factory side where different types of hessian are produced using the threads (iii) finishing & packing side where different jute goods are produced using hessian and packed for marketing or export or storage and (iv) mechanical side where different parts and tools of machines are made and repaired—are more important and worker intensive.

The workers of shrimp processing plants are of different opinions regarding the existence of service book but they inform that every factory maintains an employee register in which the authority marks the attendance or absence, and length of overtime, if any, of all workers (FGD: Cox's Bazar 2 and Khulna 4). The workers under contractor say that they do not have service book but every contractor maintains worker register through sub-contractor(s) to calculate the volume of work and payment of wages (FGD: Cox's Bazar 1 and Khulna 5).

The employers claim that they maintain both service book and employee resister of all employees and produce them before inspectors. Often they fail to update the service books due to the negligence of the workers as they leave jobs without notice when they manage new jobs (KII ER 7 & 8). The fact is also supported by the statement of an inspector who says that the workers do not bother for service books and due to workers turnover the books are not always up-to-date but many factories have regularly updated service book (KII GR 3).

Conditions of Employment Termination

The provisions of law on the conditions of job termination are two types—(i) job termination by employer and (ii) job termination by worker. Employer(s) can terminate the employment of employee(s) through—(1) Retrenchment (2) Discharge (3) Dismissal, and (4) Termination on other grounds.

Job Termination by Employer(s)

Employer(s) can terminate a worker on any of the above mentioned ways following some formal procedures—(i) by giving one month prior written notice indicating the reasons for retrenchment (ii) by giving wages and compensation or gratuity for the period of notice [Sec. 20 (2a)]. The law also empowers the employer(s) to dismissany worker without serving any prior notice or pay on two grounds—(a) if the worker is convicted for

any criminal offence ; or (b) if the worker is found guilty of misconduct[1] (Sec.23). Whatever be the grounds of termination other than criminal offence and misconduct, the employers are compelled to serve either one hundred and twenty days' notice for a permanent monthly rated worker, and sixty days' notice in case of other worker [Sec. 26(1a & b)], thirty days' notice for a temporary monthly rated work and fourteen days' notice in case of other worker [Sec. 26(2 a & b)] or paying wages for the notice period [Sec. 26(3)], and compensation at the rate of thirty days' wages for every completed year of service or gratuity with other benefit to which he may be entitled [Sec. 26(4)]. Besides, all workers, other than casual or badli, have the right to get a 'Certificate of service' from his employer at the time of his termination of service (Sec.31).

In practice, the conditions of job termination are not followed equally in different industrial sectors. Most of the RMG workers who participated in focus group discussion in Dhaka, Chittagong, and Gazipur; consider their job status as 'employment at-will' and at any time they can be terminated without serving any notice or paying financial dues as per law. Some workers say that very often they are terminated without serving any prior notice or paying the dues (FGD: Dhaka 1). Some EPZ workers say that there are some factories that do not serve prior notice but pay the pending salary at the time of termination (FGD: Chittagong 2 & 3). In contrast the workers discussed in Gazipur say that the management officials simply call them,

[1] Misconduct has been defined in Section 24 of the BLA 2006. The following acts of any worker will be regarded as misconduct—(a) willful disobedience, whether alone or in combination with others, to any lawful or reasonable order of the superior; (b) theft, fraud or dishonesty in relating to the employer's business or property; (c) receiving or giving bribe in connection with his or any other worker's employment under the employer; (d) habitual absence without leave or absence without leave more than ten days; Habitual late attendance; (e) habitual breach of any rule or law or legislation applicable to the establishment; (f) riotous or disorderly behavior in the establishment, or any act subversive of discipline; (g) habitual negligence in work; (h) habitual breach of rule of employment including behavior or discipline approved by chief inspector; and (i) falsifying, tampering with damaging or causing loss of official document of the employer.

seize their cards and give them a date to receive the dues but the factory does not pay the dues in time (FGD: Gazipur 1). One of the workers say that it takes even six months to get the pending salary and often we are to seek help from the federation leaders (KII WR 11 & 12).

The workers of jute industries under BJMC and BJMA are better organized and unionized. Job termination by employer(s) or management here is usually low. Sometimes, for severe misconduct compels the authority to sack or suspend a worker but termination is the final stage of action and in such cases the workers get their dues as per law (FGD: Rajshahi 1 and Khulna 1 &2). Workers of the jute spinning mills under BJSA are comparatively in weak position in this respect. Though there are CBAs in some factories, the members of those CBAs are mostly in favour of the management and usually do not bargain against the management. Besides, the numbers of permanent workers are few and most of the workers are employed as day labourer, therefore the employers can expel out workers without prior notice or financial dues (KII WR 17 & 19). The workers of a spinning mill say that they are daily basis employee and they never think of doing something that may irritate their management because any such annoyance may end their jobs without any prior notice or benefit thereof (FGD: Rajshahi 2).

Job termination by employer(s) in shrimp processing plants seems to be different from the views of workers, employers, contractors and workers' rights activists. Due to being a seasonal industry, the employers—factory management and labour contractors—get the chance to terminate workers on grounds of redundancy in off-peak season. The workers say that in off-peak season the employers (management) terminate workers on grounds of misconduct and even on grounds criminal offenses

like theft to avoid paying wages, compensation or gratuity (FGD: Cox's Bazar 2 and Khulna 4). A recent study identifies that due to lack of appointment letter the position of workers is weaker in any dispute and employers get the opportunity to terminate their jobs on ground of redundancy (Solidarity Center & SAFE 2012).

In contrast, the employers and their representatives say that in most of the cases the workers are paid at the time of termination or on a fixed date following the provisions of law (KII ER 8 & 14). One of the key informants says that 'nowadays the workers are more conscious than before. Often they are backed by some federation leaders who pledge for the dismissed workers and compel the factory to pay the dues and almost all of the employers pay the dues properly to the sacked workers (KII ER 7). Another key informant disagrees with such claims of the employers saying that there are hundreds of applications to the BGMEA arbitration committee to resolve the financial dues of the dismissed workers. He adds that the BGMEA has resolved such cases by paying nearly a crore of taka over the years (KII WR 2). Another worker representative says that 'very often we pledge to the high management officials for the payment of dismissed workers benefits' (KII WR 7).

The jute mills workers are paid weekly. In case of job termination, they hardly get their service benefits in time. The SOEs workers are entitled to get a number of service benefits including gratuity and amount of provident fund but the mill authority do not pay it in time and even it takes three to five years or more (FGD: Rajshahi 1 & Khulna 2). A key informant informs that at the end of the job the workers do not get their legal dues in time and suffer from the negligence of the authority of BJMC mills (KII WR 15). The workers engaged in the private sector jute mills get almost nothing at the end or termination of the job (FGD: Khulna 1 & 3 and Rajshahi 2). A key

informant says that the private jute mills are not regulated entirely following the BLA 2006. The law provides some benefits as group insurance, provident fund etc. that are not in practice equally in the privately owned mills. The workers in this sector become vulnerable at the end or termination of the jobs (KII WR 21).

In the shrimp processing plants also there is non-compliance of legal provisions regarding the termination benefits. The permanent workers say that some of the workers receive an amount of taka equal to the basic and no other benefit after termination and there are some factories that pay nothing to the workers (FGD: Khulna 4). In some cases, the dismissed workers seek help from the local labour office to get the gratuity they are entitled to (KII WR 24). A key informant states that the local labour organizations and labour federations cannot help the workers as the owners do not pay heed to the labour leaders (KII WR 23 and CS 13). Even the workers cannot seek help from any political or social organizations as the owners are very much powerful in the locality (KII WR 22, 24 & 25).

Causes of Job Termination by Employer(s)

Workers of RMG sector identify mistakes at work, consecutive absence for few days, and continuous late at work for few days are the principal causes of job termination by the employer(s) and this type of termination is sudden and follows no notice or financial clearance (FGD: Chittagong 1). Some of the female workers inform that often beautiful young girls and women are expelled for denial of sexual advancement offers of the management officials. Due to fear of scandal or rumor the management sacked them without notice (FGD: Chittagong 1). In addition to those, some workers point out the failure to achieve target and behavior unfavourable to the management are the causes of employment termination (FGD: Dhaka 1). One of the focus group participants describes that:

> I joined a factory as an apprentice and worked for two and a half month without any pay. One day, over a silly mistake, my supervisor got furious and used bad language. When I protested, he raised hand to slap me. Another official saw it and stopped him but could not save my job. At the end of duty, the supervisor called on me forbade to go to the factory from the following day. He told me to go to the office on the 15th of next month to receive my salary. I went for three times but the guard did not allow me go in. Still, I didn't get my dues (FGD: Dhaka 1).

Workers also inform that very often employers terminate worker's job on the allegations of joining union, commenting against the factory management, and conspiracy against the factory. Even, if a worker complains against any misbehavior of the management officials, the management terminates the worker (FGD: Gazipur 1). One of the participants says that:

> Once our factory delayed our payment for a few weeks and some of our co-workers were facing serious hardship. One day some of them gossiped that they will change the factory after getting the salary. This was reported to the management and after a few days they were called. The management seized their cards and dismissed them without giving them a single penny. Those workers went to a federation office to seek help getting the salary. After a few months they were given a lump-sum without following the provisions of law (FGD: Gazipur 1).

On the contrary, the employers of RMG sector are of the view that workers are often terminated for excessive mistakes, negligence to work, and misconduct as provided in the law. One of the employers says that:

> The sincere and skilled workers are not terminated. Skilled workers promote business but unskilled workers often bring bad name and losses for the company. Unskilled workers often cut the garment off while cutting thread. Some mistakes are severe in nature as wrong labeling and wrong marking for which the button position changes and such mistakes cannot be taken lightly. Even, we train them and try to make them efficient for the benefit of the factory. When they become skilled, they seek for new job for higher salary or for other reasons (KII ER 7).

The workers of Shrimp Processing Plants say that termination depends on the employers will. When they decide to expel someone, they manage a cause which is not often known to the workers (FGD: Khulna 4). Regarding job termination of the shrimp workers, a key informant informs that:

> The factory owners, in most of the cases, are usually intolerable to workers attitude, behaviour, and voice. They are ferocious and often very brute and rude to workers. They regard workers to be waged slaves. They dismiss any workers any time on words without any respect for law (KII WR 23).

The fact is asserted by one of the employers' representatives who says that in most of the cases, there are no strong causes behind the termination of jobs by employers. On trivial grounds, the management dismisses workers. He adds that:

> Most of the owners of processing plants lack the temperament needed to build better employer-employee relationship. After liberation a class has owned the shrimp processing factories without attaining any quality of employee management. They are not liberal enough to treat workers as a part of the factory. Very often they become vexed and lose tolerance that is required for better employer-employee relationship (KII ER 1).

Another key informant explains the issue of job termination by both employers and workers in a different way. He says that:

> Due to changes of cropping pattern, the supply of shrimp is not seasonal now and most of the shrimp processing plants are in operation for all the year round. Nowadays there is hardly any difference between peak season and off-peak season. Most of the factories in Khulna region remain closed at best 15 days for different occasions. Therefore, termination on grounds of redundancy has reduced significantly. Even, the factories that were closed for last few years are facing difficulty to restart operation for shortage of workers. Besides, work opportunity has grown for young people in other sectors which are more income generating than working in the processing plants. Such situation does not allow any employer to terminate a worker on simple ground rather the workers get the chance to leave jobs (KII ER 2).

Job Termination by Workers

The BLA provides procedures of employment termination by workers following some obligations—either by serving 60 days prior written notice for permanent workers and 30 days prior written notice for temporary workers or by paying wages to the employer for the notice period (Sec.27). Where a permanent worker resigns from service, (s)he will be paid compensation—(a) at the rate of fourteen days' wages for every completed year of service, if he has completed five years of continuous service

or more but less than ten years ; (b) at the rate of thirty days' wages for every completed year of service, if he has completed ten years of continuous service or more; in addition to any other benefit to which (s)he may be entitled [Sec. 27(4)].

In reality, due to ignorance most of the workers of RMG sector and workers of jute mills under BJSA do not follow the provisions of law and they deprive themselves from the benefits they are entitled to (FGD: Gazipur 1 and Rajshahi 2). The focus group participants explain that workers resign from the job mainly for two reasons—to join a new job or to leave the current job for serious illness. They consider illness as the principal cause for job termination by the workers. A worker informs that:

> Garment factories are not suitable for all men and women. Working here is very hard. There are nearly six sections of work in a normal garment factory and in a composite factory there are nearly 10 sections. Among these sections the workers of sewing and button section have the opportunity to work by sitting. The workers of cutting, quality control, dying, and finishing section are to work by standing. Working by standing for long 10 to 13 hours a day is really difficult. Though the workers can work by sitting, the management doesn't allow them to do so because sitting may cause lower production. Many of the workers of these sections become sick and end their job either by leaving the existing one or getting a new one. Whatever be the causes, termination does not always follow the benefits for workers (KII WR 11).

On the contrary, the workers of jute mills under BJMC and most of the workers under BJMA are conscious of their rights and claims. Due to unionization, they have CBAs who bargain for them and in any case of job termination—either by employer or by workers—they are able to press the authority to pay their benefits and dues as per law (FGD: Rajshahi 1 and Khulna 2).

NON-DISCRIMINATION

Right to equality denotes the absence of discrimination of all sorts. The constitution of Bangladesh strongly prohibits discrimination against any citizen on the grounds of religion, race, caste, sex or place of birth (Art.28). The ILO has adopted convention on 'Equal Remuneration Convention, 1951 (C100), and 'Discrimination (Employment

and Occupation) Convention, 1958 (C111)' to ensure workers' rights to have equal remuneration for work of equal value and discrimination free work and workplace. The convention indicates that equal remuneration can be ensured by means of—(a) national laws or regulations; (b) legally established or recognised machinery for wage determination; (c) collective agreements between employers and workers; or (d) a combination of these various means (Art.2, C100).

The Convention 111 defines discrimination as any distinction made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation [Art.1 a & b (C111)]. Following the constitutional obligation and ILO Conventions, the BLA 2006 has incorporated provisions of equal remuneration for work of equal value (Sec.345)[1] and has proclaimed discrimination in attitudes towards female workers as illegal and punishable offence (Sec. 332)[2].

In practice, discrimination in a number of forms—wages, attitudes, financial and non-financial benefits, work facilities including leave, rest, promotion etc.—are seen in different industrial workplaces. The types of discrimination explored in this study are as follows:

Discrimination in Wage Setting

In the apparel sector, where nearly 80% of the total workforce is female, gender discrimination in wage setting is a prevailing fact. Workers claim that female workers in some factories get less than their male counterpart. Even in case of annual increment, the female workers get lesser growth than male workers (FGD:

[1] In determining wages or fixing minimum rates of wages for any worker, the principle of equal wages for male and female workers for work of equal nature or value shall be followed and no discrimination shall be made in this respect on the ground of sex.

[2] Where any female worker is employed in any work of the establishment, irrespective of her rank or status, no one of that establishment shall behave with the female worker which may seem to be indecent or repugnant to the modesty or honour of the female worker.

Chittagong1 and Gazipur 1). The employer(s) and their representatives deny such discrimination and say that the salary is set on the basis of work efficiency not on the basis of sex. One of the key informants informs that the range of annual increment is 10% to 20% of the basic pay. Workers of equal position and equal experience get equal amount of salary increase (KII ER 6).

Another key informant justifies the discrimination in annual wage growth not on ground of gender but on the ground of efficiency. He goes on saying that:

> Generally 10% to 20% salary increase is normal and applicable to all workers. Yet, there are some workers who are equal in position but not equal in efficiency. The highly efficient workers often get 50% annual salary increase. This is rather justice than discrimination (KII ER 7).

Unlike the apparel sector, female workers are few in numbers in the jute industries under BJMC and BJMA. There are both time-rated and piece-rated female workers who are paid equally as their male counterpart. There is almost no gender discrimination in wage or attitude in these mills. (FGD: Rajshahi 1). In lieu of gender discrimination of wages, there is another form of wage discrimination in the jute mills under BJMC and BJMA. In these mills particularly in factory side, where hessian is produced using the thread, the workers are employed on piece rate. They earn according to their production. Most of the workers say that the machines they use are old ones and low productive. Besides, frequently those machines go out of order. Due to this mechanical problem the piece rated workers earn less than their time rated co-workers (FGD: Rajshahi 1, Khulna 2 & 3). A number of key informants say that the management knows the fact but does not take necessary steps to remove the old machines by setting new ones (KII WR 14, 15 & 16).

On the other hand, female workers in most of the jute spinning mills under BJSAare not equally paid. Though the mills authority claims that the female workers are paid equally (KII ER 13), a female worker informs the researcher that they are given tk-15 to 20 less per day than male workers[1]. Most of the workers discussed in focus group also assert that the female workers are paid less than their male counterpart (FGD: Rajshahi 2).

In the shrimp processing plants also there is wide spread gender discrimination in terms of wage. A recent study reports that the shrimp processing workers of southwestern Bangladesh are mostly women (77 percent of permanent workers and 97 percent of contract workers) of whom a major portion (65 percent of permanent workers and 54 percent of contract workers) thinks that they are not paid equal wage compared to their male counterparts (Solidarity Center & SAFE 2012). This research also finds that in relation to the male workers, the female workers are less paid though they are equal in experience and perform same kind of work. Most of the female workers discussed in the focus group comment that there is wide range of wage discrimination between male workers and female workers. Some workers indicate the range of difference in monthly salary is BDT 150 to 500. A female worker describes that:

> I have been working as a Panning Checker in a local factory for four years. I have eight years working experience in the sector. I receive Tk-3,650 per month as salary but my male colleagues with same experience get Tk-3,800 per month. There are many such instances (FGD: Khulna 4).

The wage discrimination among the workers under contractors seems to be more acute. Female workers under contractor inform that 'the minimum wage in the shrimp processing plants is BDT 2,645 but contractors pay them BDT 1,700 to Tk-

[1] While walking through and watching over the production process of the factory, the researcher talked to a female worker and got the information.

2,500 according to work efficiency and experience. The contractors pay the female workers less than their male counterpart though they are with same experience. The female workers claim that the wage gap often exceeds BDT 500 per month (FGD: Cox's Bazar1 and Khulna 5). In response a contractor argues that:

> Low wage allures the women workers for more overtime work which is very essential for contractors to make some profit from the business. Shrimp is a perishable thing that needs to be processed within a short span of time. When supply goes high, workers are to work often for 16hours a day. This is beneficial for both the workers and contractors and for the industry as well (KII CR 3).

Discrimination in Leaves and Promotion

Most of the workers of garments sector say that there is discrimination in granting leaves, and giving promotion. The officials often approve more leaves to workers who are in good terms with them and there are also some cases where the management seems to be stricter to approve leaves to someone who suffers from sickness or other emergency (FGD: Chittagong 1). A portion of the workers, discussed in Chittagong EPZ area, says that discrimination is also there in case of promotion. Often the management promotes inexperienced and lower skilled workers leaving more experienced and skilled workers (FGD: Chittagong 2 & 3). The workers discussed in Dhaka also confirm that there are discriminations on leaves and promotion on the basis of relations with the management officials and regionalism (FGD: Dhaka 1 & 2). One of the workers goes on saying that:

> One day I fell ill and asked for leave but the authority did not grant it. I left the factory before three hours and consequently the management absented me for consecutive three days. I did not protest such misdeed because doing so may bring me abusive language and job termination (FGD: Dhaka1).

Most of the workers say that there are some workers who are in good term with the management and they easily get facilities like leave and late present. On the other hand, some workers are very good and sincere at work but due to lack of good

relations with the management personnel, they are often punished for being late even for a single day and their salary is held up for 15 days. They consider it to be unfair and malicious towards workers (FGD: Dhaka 1).

The workers of the jute mills also say that there is regionalism to some extent in employing permanent workers from the badli workers (FGD: Khulna 1). Some workers condemn the CBA members for such discrimination (FGD: Khulna 2). The CBA members deny such allegations and say that:

> It is not our function to select or nominate the badli workers to employin the permanent posts. It is the function of the mill authority to employ the badli workers in the permanent posts considering seniority and working efficiency of the workers (KII WR 14 & 19).

Discrimination in Attitude towards Female Workers

In the apparel sector discrimination in the attitude towards female workers is also reported. Some of the workers say that the women workers are usually timid in nature. They are very often oppressed in different ways by the mid-level management official particularly by the supervisors. They frequently use slang language and often torture physically by slapping on the face (FGD: Dhaka 1).Some of the workers discussed in Chittagong say that often beautiful girls and women become subject to misbehaviour for denying proposal of sexual advancement by the young management personnel. In such cases the management officials use the strategy of changing the work and increasing the production target that is hard to meet and any failure results in termination. The workers regard such immoral behaviour as a conspiracy against the innocent and hard working women (FGD: Chittagong 1).

Racial Discrimination

Some tribal workers working in the apparel sector in Chittagong EPZ inform that often they face racial discrimination and they become subject to misbehaviour more than their non-tribal co-workers (FGD: Chittagong 2). Some of the tribal workers complain that particularly the tribal girls are very much oppressed by the mid-level management officials. The tribal girls inform that the management officials like supervisor, line chief, and floor in-charge often touch them inappropriately and stare at them indecently (FGD: Chittagong 2). The male tribal workers also inform that for silly mistakes they become subject to very offensive verbal abuse like calling them pig or bitch (FGD: Chittagong 2 & 3)[1]. One of the tribal workers says that:

> For several days, my supervisor used to call me by bad names like bitch and pig. One day I got furious and had a quarrel with him. My Human Resources Manager came to me and told me to cool down but the supervisor did not express even sorry for his misdeeds. The HR manager also did not express any condolence for my pain (FGD: Chittagong 2).

EQUAL OPPORTUNITY AND PROTECTION

Right to equality implies equal distribution of opportunity and equal protection under law. According to the provisions of law, the workers are entitled to opportunities like annual leave for one day with wage on every eighteen days of work for the workers of commercial or industrial establishment [Sec. 117(a)], maternity leave for 16 week (8 week before and 8 week after delivery) with wage [Sec.46 (1)], and two festival bonuses each of which is equal to the basic pay (practiced as usage under Sec. 336). In practice, the workers do not enjoy these opportunities equally.

The Workers of jute mills under BJMC enjoy all the above mentioned opportunities equally but the workers of jute mills under BJMA and BJSA enjoy those facilities partially and on some hard conditions. Some of the mill authorities allow

[1] The information could not be verified because the other participants neither supported nor denied the fact. A number of workers said that they have not seen or heard of such type of attitudes.

workers with annual leave and maternity leave with pay and some of the mills do not allow such opportunities (FGD: Khulna 1 and Rajshahi 2). The workers of privately owned jute mill are allowed festival bonus equal to the basic/average monthly pay once or twice in a year on the conditions of 1704 hours of annual work which was 1680 hours (KII WR 19).

The workers of a BJSA mill inform that they receive 50% of their basic/average monthly pay as festival bonus if they work for 1280 hour in a year and for 640 hours of work in a year they receive 25% of their basic/average monthly pay as festival bonus he gets half of the basic/average monthly pay as festival bonus (FGD: Rajshahi 1).

Inequality regarding the above mentioned opportunities is also seen in the RMG sector. Almost all the workers say that they do not enjoy annual leave or any benefit in lieu thereof. Some of the workers outside the EPZ say that very few factories allow maternity leave with pay (FGD: Chittagong 1 & Dhaka 1) but the workers of the EPZ say that almost all factories allow maternity leave with pay (FGD: Chittagong 2 & 3). Most of the workers say that they receive festival bonus equal to their basic twice a year and some workers say that they receive festival bonus twice a year but the amount is half of the basic salary (FGD: Dhaka 1 and Gazipur 1).One of the employers' representatives informs that:

> Festival bonus is not mandatory for industry like RMG. The factories allow such bonus following tradition and usage and particularly on human ground. All factories are not equally well-off. Therefore, some variations are not abnormal or unusual. Even then, almost all factories try to grant two basic pays for the workers as festival bonus (KII ER 14).

Another key informant remarks that the employers of Bangladesh very often try to ignore or avoid the mandatory provisions of law relating to workers' right to association, compliance of minimum wage and many such provisions let alone full

compliance of traditional rules. Yet, it is good to see that they kindly allow the hardworking poor once or twice a year festival bonuses either full or half (KII WR 3).

Equal protection for all against unfair labour practices form the part of the employer(s) is another aspect of the right to equality. According to section 195 of the BLA 2006, no employer or trade union of employers and no person acting on their behalf shall-

(a) impose any condition in a contract of employment to restrain the right of a person to join a trade union or continue his membership of a trade union ; or

(b) refuse to employ or refuse to continue to employ any person on the ground that such person is, or is not, a member or officer of a trade union ; or

(c) discriminate against any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is, or is not, a member or officer of a trade union ; or

(d) dismiss, discharge, remove from employment or threaten to dismiss, discharge or remove from employment a worker or injure or threaten to injure him in respect of his employment by reason that the worker is or proposes to become, or seeks to persuade any other person to become a member or officer of a trade union, or participates in the promotion, formation or activities of a trade union.

The EWWSIRA, 2010 also provides the workers with protection against any unfair means/labour practice from the part of the employer. It is stated in the law that ‘it will be an act of unfair practice for the employer, or person acting as employer, to

(a) impose any condition in a contract of employment to restrain the right of a person to join a society or continue his membership of a society;

(b) refuse to employ or refuse to continue to employ any person on the ground that such person is or is not, a member or officer of a society;

(c) discriminate against any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is or is not, a member or officer of a society; or

(d) dismiss, discharge, remove from employment or threaten to dismiss, discharge or remove from employment a worker or injure or threaten to injure him in respect of his employment by reason that the worker- (i) is or proposes to become, or seeks to persuade any other person to become a member or officer of a society; (ii) participates in the promotion, formation or activities of a society; (iii) exercise any right under this Act (Sec.33).

The ILO convention No. 98 (1949) also provides provisions on the protection of workers' right to organization. It is stated that 'workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment, and 'such protection shall apply more particularly in respect of acts calculated to—(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, within working hours (Art.1, C98). The convention proclaims that acts which are designed to promote the establishment of workers' organizations under the domination of employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this article (Art.2, C98).

Things in reality are contrary to the provisions of law. The workers of jute mills under BJMC have full protection in forming or joining trade union or other workers' association and the management authority allow them to do so. The workers of jute mills under BJMA and to some extent BJSA are also protected against any oppression due to form or join trade union or union of other forms. In contrast the

workers of RMG and shrimp processing plants are not duly protected against union activities. The employers of these sectors do not allow workers to join or even do not tolerate any worker who keep in touch with such worker association. The employers just kick out those workers on ground of misconduct (FGD: Gazipur1 and Khulna 4).

The above information makes it apparent that the rights to equality are not in uniformity across the industrial sectors. This differential treatment and lack of uniformity of treatment is in contrast to the constitutional obligation of equality—before law (legal protection), of treatment (non-discrimination), and in opportunity (termination and due process). The lack of these principles of equality rather inhibits than promotes democracy in the workplace.

The absence of equality in terms of power, makes the employers to decide over everything and makes the workers unable to protect them from forced and compulsory labour, to prevent employment at-will (hiring and firing), and to provide protection against all forms of discrimination. It is the observance and exercise of the rights to equality that make the workers a part of the enterprise.

The vision of the National Labour Policy (2012) to democratize workplace and labour governance through mass participation of the working people depends on the recognition of the workers as an equal party to the bipartite and tripartite institutional mechanisms of labour and industrial relations. This recognition can enhance the capability of the workers by providing them employment security, non-discrimination, equal opportunity and protection. This can also enable the workers to provide voice as a party in the decision making process at workplace and in other levels of governance structures. Workers' voice can protect them from compulsory and forced labour, prevent them from all forms of discrimination at work and workplace, and ensure a menace free work environment where employers' monopoly and arbitration in hiring and firing of workers becomes restricted.

RIGHT TO FREEDOM OF OPINION AND EXPRESSION

Rights to opinion and expression are associated with workers' fundamental right to information and consultation (Directive 2009/38/EC) which implies that the matters related to organization of work, workplace environment, and safety issues should be settled and implemented through the exchange of views and/or social dialogue between worker(s) and employer(s) at enterprise level. The implication of rights to opinion and expression in the context of workplace and labour governance is that workers want work not only to survive, but also to achieve personal and social fulfilment through the moral judgment that labour is not a commodity or article of commerce, they are dignified and honoured as an equal partner in social dialogue (Hepple 2005). It is justified on the ground that it replaces employment at-will with job security and empowers the workers to attribute their ills and problems outwardly in lieu of self-censorship and docility in the workplace (Morvan 2009).

Actualization of the rights to opinion and expression over work and work related matters requires legal provisions on the scope of consultation or dialogue, workers' knowledge of working conditions, and power to realize the risk and danger of their jobs and capacity to attribute opinion. Sharing of information and consultation between the actors—employers and employees—at enterprise level both the parties need organizations of their own and an atmosphere of tolerance. In this part, I focus on five specific issues of rights to opinion and expression—(i) scope of consultation and opinion (ii) workers' organizations (iii) employers' organizations (iv) dialogue and (v) Tolerance. The objective of this part is to find out whether the provisions of law provide any scope for workers' right to opinion and expression and to what extent it is practiced through democratic dialogue between the workers' and employers' organizations in an atmosphere of tolerance.

SCOPE OF CONSULTATION AND OPINION

A critical analysis of the legal provisions relating to organization of work, conditions and environment of work, occupational safety and health issues reveals that the law hardly provides any scope for workers' right to opinion or consultation on important issues. According to the provisions of law, an employer is required to consult with workers' representative(s) in fixing, if necessary, the wage rate of piece rated workers' overtime work [Sec.108(2)] . Another provision the law provides scope for women workers to express their concern—either consent or not—regarding night duty (Sec.109)[1].

The major issues like shift of work, organization of work, and length of overtime are left to the managerial prerogatives. In matters of welfare facilities, the law provides no scope for workers' opinion or consultation except for the management of canteen, if government feels it necessary, regarding the supply of foodstuffs and price. In matters of health, hygiene, and safety; the law empowers the Collective Bargaining Agents (CBAs) to bargain over the conditions of work [Sec. 202(24 a)] and assigns responsibility to the Workers' Participation Committee (WPC) to (i) ensure application of labour laws (ii) improve and maintain safety, occupational health and working condition [Sec. 206(b & c)] but the recommendations of the committee is non-binding to the employer(s). If there is no CBAs or WPCs in the factories, these issues could not be consulted and the mass workers are not allowed to express their opinion on those issues. It seems that the law does not provide enough scope to the workers to exercise the rights to opinion and expression.

Due to this lack of enough scope the civil society members, scholars, responsible government authority, workers and workers' representatives feel that safety issues must be monitored both by the employers and workers for the wellbeing

[1]No women shall, without her consent, be allowed to work in an establishment between the hours of 10.00 p.m. and 6.00 a.m. (Sec.109).

of the workforce as well as for the industry. One of the key resource persons comments that occupational safety is a matter that cannot rely only on the whim of the employer(s) or on any government agency alone, it should be monitored and complied by the cooperation of employer(s) and workers who work in the factory (KII CS 1). A responsible government official remarks that:

> The compliance of safety and health issues is a broad area of inspection; there are so many matters that are both general and technical in nature. Various agencies of the government are involved in the process of a complete inspection. It requires long time too. It is the primary concern of the employer to consult with the workers and workers' representatives on the organization of work, conditions of work, working hours and overtime, matters related to health, hygiene and safety, whether the provisions of law urges it or not. Only government cannot ensure a comfortable work environment in every workplace (KII GR 3).

WORKERS' ORGANIZATIONS

One of the basic instruments to exercise the right to opinion and expression in the enterprise level is the workers' organizations. Workers' interests relating to work and workplace safety are aggregated, articulated and negotiated by these organizations—plant level trade union(s), collective bargaining agents (CBAs), safety committee, and workers' welfare society (WWS) in the EPZs. The formation of workers' organizations across industrial sectors in Bangladesh is not similar to each other. Though the law approves workers of all industrial sectors to form union(s) or association of their own choice, the employers of different sectors consider it differently.

The employers of RMG sector and shrimp processing plants are very antagonistic to workers' trade unions and CBAs. While the employers of RMG sector approve workers' participation committee (WPC) to some extent, the shrimp processing plants do not allow such committee. The workers of EPZs are also entitled to form WWS but the complexity of formation process makes it next to impossible for the workers. In contrast the workers of jute mills are allowed to form and join any

association and the formation of CBAs is widely practiced. Due to this diversity of views over the workers' organizations, the workers of RMG and shrimp processing factories suffer severely for lack of plant level organizations or associations of any sorts.

However, available statistics shows that there are 5,242 basic trade unions (LO/FTF Council 2012) in all industrial sectors of Bangladesh. There are 139 basic unions out of over 5000 unit of garments factories[1], and eight basic unions out of 36 shrimp processing plants in Khulna region[2]. In jute sector there few factories where basic unions are active but almost all the workers are members of different workers' organizations like industrial federations. In the EPZs there are 186 WWS out of 415 industries[3]. From the above data, it is assumable that workers' association in RMG and shrimp processing factories are very negligible. Moreover, almost all of the workers and workers' representatives inform that the basic unions of the RMG factories are not active or dissolved.

A national federation leader says that the RMG employers do not allow trade unions to function and expel out the union members so the federations form committees in different factories by some workers who are unknown to the management (KII WR 2). A garment worker laments saying that 'We do not have people or organization either inside or outside the factory to see where we work and how we live' (KII WR 13). A high management official of the shrimp processing plant also informs that there is no active or functioning trade union in the region (KII ER 2). The workers participated in the group discussion affirm that they have unions in some plants but the leaders are not active because they may lose their jobs and may be harassed for being active unionists (FGD: Khulna4). In contrast, the CBAs of the jute mills are very active and they monitor almost everything happening in the factory.

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[1] Directorate of Labour (DoL), 2010

[2] Data provided by the Director, BFFEA, Khulna and Social Activities For Environment (SAFE), Khulna.

[3] Data provided by Public Relations Wing, BEPZA, Dhaka.

EMPLOYERS' ORGANIZATIONS

The employers of different industrial sectors are organized under one national federation namely Bangladesh Employers Federation (BEF) though employers of each sector have their own organization. The employers of apparel sector have two distinct organizations—Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and Bangladesh Knitwear Manufacturers & Exporters Association (BKMEA).The number of members are 2923[1] and 1888[2] respectively. The employers of shrimp processing plants have formed Bangladesh Frozen Foods Exporters Association (BFFEA) in 1984. The number of member firms is 96[3]. The jute sector is controlled by three distinct authorities. The state owned jute mills are controlled by Bangladesh Jute Mills Corporation (BJMC) and privately owned jute mills are organized under two separate association—Bangladesh Jute Mills Association (BJMA) and Bangladesh Jute Spinners Association (BJSA). Currently, there are 27 jute mills under BJMC, 126 jute mills under BJMA and 93 jute mills under BJSA. The Executive Body of these organizations is mostly elected by voter members for a fixed tenure.

DIALOGUE AND TOLERANCE

Dialogue is the soul of democracy. In matters of labour governance the right to freedom of opinion and expression is supposed to be exercised through dialogue. Dialogues may be of two types—(i) within organization by the participation of its members and (ii) dialogue between employer(s) and workers' representatives nominated or selected from workers' organizations (trade unions or CBAs). Along

[1] Total Members of BKMEA as of 15 March 2013: http://www.bkmea.com/member/index.php?Index=all&page=91
[2] BGMEA Members List as of 2013: http://www.bgmea.com.bd/member/memberlist
[3]http://www.bffea.net/member.htm

with dialogue, tolerance is also regarded as another indicating factor in practicing democracy. Dialogues within organization take place to aggregate members' interests, ills and problems relating to work and workplace hazards like organization of work, working environment and safety issues; and to devise the ways and means to address the problems and aspirations. On the other hand, dialogues between workers' representatives and employer(s) take place to articulate interests or problems specified in the law, resolve the issues, negotiate the terms and conditions, and implement the negotiated undertakings. In both the phases, tolerance determines the extent to which democracy is practiced.

As has been described earlier, the workers of RMG and shrimp processing plants have hardly any plant level organizations therefore they do not have the opportunity to exercise the right to freedom of opinion and expression. They have neither the chance to express their common interests within themselves nor the chance to attribute their problems to the employer(s) through collective voice. The RMG workers participated in the discussion meetings in Chittagong, Dhaka, and Gazipur express that they are badly in need of an organization of their own to channel their pangs to the management. Some workers informs that due to lack of organized voice, they often express their problems personally to the bosses but such channelling does not work always (FGD: Chittagong 1). Some of the workers describe that often they are in dialogues collectively with the management over some issues of mass discontent and agitation but such dialogues are not always fruitful. One of the FGD participants remarks that:

> The scope of factory level dialogue is limited because the management does not share any information with the workers and does not feel it necessary to consult anything with the workers. If workers call them for meetings, they usually do not respond and show reluctance and intolerance. Due to lack of organization, the workers cannot compel them to arrange dialogue formally by issuing letter. Therefore, the workers leave factory premises and go out to street protest (FGD: Gazipur 1).

The workers of Dhaka inform that many factories have ‘Complaint Box’ to express opinion in written form but no worker writes and drop any opinion therein.One of the workers explains that:

> Most of the workers do not know how to write and often seeks help from eligible one but nobody dares to write for others because there is obligation to put the card number of the complainer and the writer. Such form of expression does not bring any good and in most of the cases both the workers lose their jobs (KII WR 11).

The workers of EPZ area say that they have WWS but most of them are not active and cannot arrange any dialogue over the issues of workers wellbeing and very often they fail to handle workers’ grievances effectively (FGD: Chittagong 2 & 3).

The workers of shrimp processing plants also tell of the same thing about attributing their opinion. There is ‘Complaint Box’ but nobody writes and drops any letter. One employer justifies the fact saying that the sector runs peacefully and there is no complain in the box. He adds that the workers are relatively few in numbers and they all are acquainted with the management officials. They can seek any help personally so they need not form any organization (KII ER 1).

The workers of jute industries have membership of different workers’ organizations and CBAs. They exercise their right to freedom of opinion and expression both within their organizations and with the management via CBAs. The workers discussed in Khulna informs that almost all the workers are members of major jute workers federations like ‘Jute Mills Sromik League’ ‘Jute Mills Trade Union Kendra’ ‘Jute Mills Sromik Dal’ etc. Regarding their specific issues they meet themselves and then persuade their interests through the CBAs (FGD: Khulna 1 & 2 and Rajshahi 1). Regarding tolerance, the workers of jute mills under BJMC informs that the management is cooperative and usually tries to solve any problem through

dialogue because they fear industrial action like strike (FGD: Khulna 2 and Rajshahi 1). Contrary to it, the authorities of BJMA and BJSA mills are less tolerant and the CBAs do not create over pressure because the workers are afraid of industrial action like lockouts (FGD: Khulna 1 & 3).

OUTCOMES

Due to 'limited scope of consultation and opinion', 'differences in workers' and employers' organizational strength', 'lack of sufficient and effective dialogue and tolerance'; the outcomes of exercise of the right to freedom of opinion and expression are different across industries. Among the sectors, the RMG and shrimp processing plants lag behind in relation to other industrial sectors. Between the two, the RMG industries suffer more from the lack of exercise of the right to opinion and expression in matters of compliance with the occupational safety and health issues. As the employers do not allow workers to be organized and to be consulted, they always miss the cooperation of the workers' organizations which could help them to comply with the safety measures.

In recent years the safety of life and property in the RMG industries has been a global concern for a series of fire accidents and building collapses. In the global supply chain Bangladesh is the world's second largest exporter of ready-made garments after China. Despite this rapid growth and development, the industry is accident ridden and the workplaces are not still safe for the workers.

In a recent study Hossain (2012) finds that the availability and effectiveness of safety measures and equipment like fire-fighting instruments, spacious entrance and exits, emergency stairs, first aid, and accident protection kits are available at varied levels across factories. He adds that in most factories, emergency fire-exits have been

added after several accidents in the sector. The stairs are usually narrow, steel-made, and attached to a building. This is done more to comply with the law of the country than to ensure safe exits of workers at times of industrial accidents like fire. In such arrangement, he comments, workers are either trapped in fire or die in stampede in the emergency stairs.

The physical conditions of most of the RMG factories are featured with non-industrial structure, faulty design and construction, low load bearing capacity, over stressed with machinery, over crowded with workers and wrongly positioned machinery. Most of the factories are situated by a narrow road that obstructs the well and quick operation of fire service and rescue activities. The working conditions in these factories are, in most cases, terrible with lack of sufficient space and light. They are literally "death traps" with workers locked inside to prevent theft, leaving no way for workers to escape disasters or accidents like fire or factory collapse—the two most common accidents in RMG industry. In a recent move, the inspection team under the Ministry of Labour and Employment has inspected 2400 factories and closed 22 factories to avoid further accident and has identified 700 factories as risky. In another move, the inspection team of Fire Service and Civil Defence has inspected 797 factories and has identified 243 more factories as risky.[1] This findings establish the common belief that the factories are not willing comply with the safety provisions.

Why non-compliance?

In Bangladesh the non-compliance of safety provisions in the RMG industry is either an act of omission or an act of commission on the part of the government. Industrial establishments here operate without proper assessment, inspection and control processes. Muhammad (2013) argues that the government and its relevant agencies have the authority and obligation to ensure the accountability of factory and building

[1] Daily Ittefaq, May 13, 2013.

owners and mandate improvements. There are ministries, directorates, and divisions within government that give permission, monitor, and can take action within the industry. But in reality, government fails to ensure labour standards and proper working conditions for the workers either willingly or due to incapacity.

To identify the causes of non-compliance, As-Saber remarks that greed, profiteering, empire building, and a lack of transparency and morality prevents the owners to comply with the provisions of law (2013). Muhammad also agrees that no owner has ever ensured accountability to meet standards and faced impartial legal ramifications for their wrong doings. It seems that they have a free hand to do whatever they like. (2013). In Bangladesh the buyers' role to comply with the international labour standards is absent. They rather pressure for cheaper and faster delivery of their goods than pressure for safety and health issues. This makes the owners to cut or reduce the real wages of workers through increasing working hours, omitting benefits, and no further spending of money to improve working conditions (Muhammad 2013).

Consequences of Non-compliance

The consequences of non-compliance are multi-faceted of which the major ones are industrial accidents; negative image of the country across the world; refusal of consumers, buyers and retailers to buy and consume Bangladeshi products; cancellation or withdrawal of further work orders; joblessness and precariousness of the workers; and above all rising discontent and agitation of workers for job security, wage increase and improved working environment. This agitation and discontent has been fostered by some major industrial mishaps like factory fires and building collapse that caused deaths and injuries to thousands of workers.

Since 1990 to 2013 fire accidents have occurred more than 300 times in different factories and several buildings have collapsed. Throughout the history of industrial accidents across the world, Bangladesh ranks the 1st position both in fire accident and factory collapse. On November 24, 2012, fire broke out in Tazreen Fashion that burnt 112 workers alive and the collapse of Rana Plaza on 24 April, 2013 caused deaths to 1,130 workers. Both the accidents are considered to be the greatest disasters in the history of industrial accidents. According to some sources 414 garment workers have lost their lives in 213 fire accidents between 2006 and 2009.[1] However, with the increase of incidents deaths, injuries and workers' resistance are also increasing. According to an estimate of the Bangladesh Institute of Labour Studies (BILS), the number of deaths[2], accidents, and incidents of workers' resistance in the garments industry are shown below:

Year	Workplace Accidents	Incidents	Number of Death	Number of injuries
1990	---	---	32	---
1996	---		22	---
1997	---	---	44	---
2000	---		35	---
2002	---	---	10	---
2003	---	---	15	---
2004	---	---	25	---
2005	---	---	130	---
2006	---	---	121	---
2007	---	---	52	---
2008	209	358	19	2,395
2009	25	179	24	----
2010	43	175	73	988
2011	19	138	87	----
2012	---	---	155	80
2013	---	----	1,130	3,340
Total			1841	

[1]Asia Monitor Resource Centre (amrc), June 28, 2011.
[2]Data collected from Bangladesh Institute of Labour Studies (BILS).

Observing the prevailing situation scholars, academics, journalists, trade unionists, and workers' rights activists consider these accidents and deaths as the consequence of non-compliance of occupational safety and health issues in the workplaces. Most of them condemn the obliviousness of the workers to their rights; the greed of the owners; negligence of the government agencies; and the pressure of the buyers for cheaper production cost for the tradition to an extremely poor implementation of the labour legislation. All these factors offer privilege to the employers not to grant decent working conditions to their employees and not to share or consult or tolerate any counter opinion at workplaces. A scholar remarks that:

> '…most of the so-called "accidents" since 1990 reveal the faulty structure of factory buildings including weak electrical wiring, lack of fire exits and fire alarms, narrow stair and exit paths, poor foundation, and locked doors. These issues are enabled by inadequate or non-existent regulation and monitoring' (Muhammad 2013).

To get out of these unhappy accidents and incidents another scholar suggests the government to be more responsive to demands by activists to make the industry more transparent and accountable; to revisit the regulatory regime by making necessary amendments in the law to include the issues of working conditions consistent with ILO conventions; and to frame a network based inclusive governance model with participation from all concerned—foreign companies, local manufacturers, the government, the representatives of the worker unions, non-government organizations, and the ILO (As-Saber 2013).

In this current of thoughts on health and safety hazards, the garment workers provide views which prove that they are sceptic on the availability and effectiveness of safety measures in the factories. Most of the participants of discussion meetings say that almost all factories have fire-fighting equipment (fire extinguisher) and alternative stairs and gates to escape fire but the gates are locked during working

hours. In contrast many of the workers say that all factories do not have sufficient fire-fighting instruments and almost no factory has trained workers or any other employee to operate those instruments (FGD: Dhaka 1). A worker reacts that:

> Only hanging of the fire extinguisher at the entrance of every floor is not enough to protect workers from fire accidents. There must have specific person in every establishment to use them in times of need. Besides, every factory should ensure fire drill for all of its workers at regular interval for safe exit of the workers (FGD: Gazipur 1).

A responsible government official also agrees that that only some fire-fighting equipment and occasional visit of the inspectors are not enough to ensure safetymeasures in the factories. It should be done through the active cooperation of factory owners and workers organization(s) (KII GR 4).

The above discussion proves that the rights to freedom of opinion and expression are not sufficiently introduced in the provisions of law. While the standard practice urges that issues of organizing work, welfare facilities, safety and health measures and all other conditions of work relating to the development of working environment should be settled through the negotiation between employers(s) and employee(s) to ensure workers' rights to information and consultation, the law confers almost all powers to the hands of the CIF&E and to the owners of the factories. The workers are not given the scope and space to attribute their concern and express their opinion either individually or collectively over the issues related to their safety and health. The employers also do not feel it necessary to inform of or consult with the workers about the workplace environment. Leaving the prime issues beyond the reach of the workers, the law involves the working people to impart voices and opinions on some relatively less important issues. It is important to note that the workers of Jute mills under BJMC and most of the workers under BJMA and a small portion of the workers under BJSA factories have the chance to express their concern over the issues

of rights at work while the workers of RMG industries, workers of shrimp processing plants and most of the workers of Jute mills under BJSA are deprived of the right to opinion and expression. Therefore, the law fails to provide provisions that promote democratic participation or representation of the workers at large. This rather inhibits than promotes the exercise of the rights to freedom of opinion and expression.

FREEDOM OF ASSOCIATION

The right to freedom of association comes next to the right to equality and right to freedom of opinion and expression. Associations, as platform of workers' participation, empower and enable workers with collective voice for collective bargaining. Without free exercise of the right to association, the workers cannot organize themselves to constitute a party to play their roles and to raise their voices in the democratic institutional mechanisms—bi-partite and tripartite—devised in the law. To bargain effectively and on an equal footing over issues of industrial and labour relations, the workers need democratic, effective and organized associations and democratically elected representatives. In Bangladesh, workers' right to organize and bargain collectively is differentiated by separate laws—EWWSIRA, 2010 (ACT 43 of 2010) for workers inside the Export Processing Zones (EPZs) and BLA 2006 (ACT 42 of 2006) for workers outside the EPZs. Both the Acts have incorporated a number of provisions following the constitutional obligation and spirit of the ILO Conventions on the rights to freedom of association and right to collective bargaining.

The BLA 2006 has incorporated provisions on the right to freedom of association—formation of Trade Union and Collective Bargaining Agent (CBA)—in chapter XIII. The EWWSIRA, 2010 has also provided provisions on the formation of—Workers' Welfare Society' in chapter II and CBA in chapter III. To assess the

current state of freedom of association in the formal industrial sectors in Bangladesh, I focus on—(i) the process and formation of workers' trade union at enterprise level (ii) the process and formation of sector-wide and nation-wide federations and their affiliation to the international confederations (iii) the process of election of union leaders (iv) the activities of these trade unions (v) the formation of employers' associations and process of election for executive bodies. The elaborate discussion of these indicators will finally show whether the rights to freedom of association are being exercised democratically and to what extent they are able to contribute to the democratization of workplace and overall labour governance.

FORMATION, PROCESS AND COVERAGE OF ENTERPRISE LEVEL TRADE UNION(S)

The BLA, 2006 permits the employees and employers to form or join any association without any distinction, by their own choice to regulate the relations between workers and employers or workers and workers subject to the constitution of the respective trade union [Sec.176 (a & b)]. The EWWSIRA, 2010 also provides the workers of factories in the EPZs to form Workers' Welfare Society (WWS) [Sec. 5(I)]. The workers are permitted to form up to three trade unions in an establishment or in a factory outside the EPZs and only one WWS in a particular factory within the EPZs.

In practice, the workers of formal industrial sectors cannot exercise this right to form or join trade unions at large. The employers of different sectors and often some government officials are seriously in opposed to form trade unions in some sectors. A study finds that the exercise of the right to association in Bangladesh is very low due to a number of reasons—employers' hostility and strong-arm tactics to intimidate the union organizer(s); harder conditions of registration; lack of legal protection before registration; harassment for carrying out trade union activities;

dismissal on grounds of misconduct; and failure of the unions to take women workers' concerns seriously (Morshed, 2007). The employers of RMG industries put forward a number of excuses to resist the formation of trade unions in their factories. One employer comments that:

> Trade union is not a bad thing but in the context of RMG industries it is not applicable because the workers engaged in this sector are not eligible enough to form and run unions for the benefit of both the workers and industries. The workers who want to form union are not motivated by their own will and interest but by the instigation of some so-called political parties and Non-government Organizations (KII ER 7).

Another employers' representative argues that that the operation of trade union(s) will perish management control over the workers and the factories will lose the productive environment. He adds that:

> The introduction of trade unions and CBAs in the SOEs has caused heavy loss of capital, production and profit. It has also stopped the growth of industries in the country. The same thing will happen in the garments sector also if we permit unions to form and operate. An investor can never allow such thing to happen (KII ER 6).

The employers of shrimp processing plants also pose strong resistance to form unions in the factories. They argue that the plants are smaller in size and the number of workers also lesser in relation to other industries. Most of the firms employ 200 to 300 workers and there are few plants which employ more than 300 workers. Firms like this need not form union to handle workers wellbeing. They claim that the relations between employers and employees are so good in this sector that neither the workers have declared strike nor the employers have declared lockout even for a single day in its 40 years of operation (KII ER 1 & 3). One of the employers' representatives adds that:

> We do not have unions but every worker has free access to the Managing Director and to speak out their problems and in all cases we provide remedies. Traditionally, unions and CBAs in Bangladesh do not follow what they are supposed to be. There are organizations (NGOs) that teach workers' right to union but there is none to teach them their duties. Unions with rights without duties are dangerous for both workers and industries (KII ER 2).

The employers of jute mills under BJMA and BJSA are relatively liberal than the employers of other industrial sectors. Most of them hold a positive attitude towards workers' rights to association and permit workers to elect the CBA members regularly. They justify that CBAs help them handle workers problems at workplace level without hampering production and help them avoid any industrial action like work stoppages, strikes or lockouts. One of the employers says that:

> Formation of trade unions is not prohibited in the privately owned jute mills and no employer prevents or resists workers to form or join any union. Most of the workers are members of different industry level federations. Due to the existence of elected CBAs, the workers do not try to form other organizations like plant level trade unions (KII ER 9).

Often the responsible Government Officials also speak against the formation of trade unions at plant level. In a recent interview with the BBC, the Minister for Labour and Employment, Mr. Rajiuddin Ahmed Raju comments that 'formation of trade union will create problems for the garment sector. If unions are formed in every factory, there will be no work at all. For this reason, from the very beginning we wanted a strong federation to form for the sector[1].

The above information makes it clear that the employers of different sectors hold different views regarding the formation of plant level trade unions and it seems that the overall industrial environment is not congenial for workers to form or join unions except some SOEs. Along with this negative attitude of the employers, there are some other causes for which the workers fail to from unions at plant level. Among the causes, the complex procedure is a prominent one.

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[1] BBC, May 3, 2013;
http://www.bbc.co.uk/bengali/news/2013/05/130503_si_garment_trade_union.shtml

Process of Trade Union Formation/Registration

The BLA 2006 provides some provisions on the process of forming trade union at plant level. According to the provisions of law, the president and secretary have to apply for registration of the trade union to the Registrar of Trade Unions of the concerned area with a list of its member (Sec.177), the Director of Labour will send a copy of the list of officers and members of the union to the employer concerned for information [Sec. 178(3)], the number of members must be at least 30% of the workers of a particular factory/establishment to form a union [Sec. 179(2)], and a worker will not be eligible to be a member or officer of the trade union if (s)he is not employed or engaged in the establishment in which the trade union is formed [180 (1a)].

The EWWSIRA also imposes some condition to be fulfilled to form a WWS. It provides that at least 30% of the eligible workers should apply in a prescribed form to the Executive Chairman of the EPZ demanding formation of a Workers Welfare Society [Sec. 6(1)], the Executive Chairman will arrange a referendumof the eligible workers of the industrial unit within the Zone [Sec.7(1)], and if more than 50% (fifty percent) of the eligible workers do not cast votes, the referendum will be ineffective and WWS will not be formed [Sec. 7(2)]. If a referendum fails to form Workers Welfare Society, no further referendum shall be held for the same industrial unit until the expiry of one year since thereafter (Sec.8). If more than 50% of the workers cast votes, and more than 50% of the votes cast are in favour of formation of Workers Welfare Society, the workers acquire the legitimate right to form a society; and the Executive Chairman is obliged to accord registration to that society within 25 days of the date of the referendum [Sec. 7(3)].

It seems really hard to form basic union following these procedures. The workers, workers' representatives, Government officials, CSOs, academic scholars regard the legal complexity as the main obstacle for workers to exercise their right to association. In a recent report, the BBC quotes that:

> Formation of trade union under the existing laws is not possible. The registration process is the main obstacle to form trade unions because the law makes it compulsory for the Director of Labour (DoL) to send the members and officers list to the employer for enquiry and after getting the list, the employers expel out the workers. Even they file criminal cases against them. Therefore, the workers become busy to protect themselves and leave the struggle to exercise the right to union. The involvement of the employers in the registration process to be omitted and by laws it should be ensured that the concerned government officials must maintain secrecy[1].

In another report the BBC quotes a workers' rights activist who states that:

> Workers' right to association was always permitted in the garment industries but from the very beginning the owners openly resisted the workers to form association out of negative attitude towards unionism. The governments also supported the employers and created administrative complexities. Whenever the workers tried to form union, they faced various forms of harassment and torture. Sometimes, the national workers' associations did not want to form plant level unions. Consequently, the workers at times left the initiative to form union out of fear and often they failed to form association in this sector due to administrative non-cooperation[2].

A recent study also finds that some of the workers are disinterested or reluctant to form ors join unions as unions cannot change their fate and there is fear of harassment and job termination by the authority for joining or keeping in touch with any union activity (Hossain 2012).

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[1] Mr. Md. Israfil Alam, MP, & Chairman, Parliamentary Standing Committee on Labour & Employment, in an interview with the BBC, on May 13, 2013, http://www.bbc.co.uk/bengali/news/2013/05/130513_mrk_labour_law.shtml

[2]Mr. Syed Sultan Uddin Ahmmed, Assistant Executive Director, BILS, Dhaka, in an interview with the BBC, on May 3, 2013; http://www.bbc.co.uk/bengali/news/2013/05/130503_si_garment_trade_union.shtml

Coverage

Due to the above mentioned causes, the coverage of unionization is very poor in the formal industrial sectors. A study claims that less than 5 (five) per cent of male workers belong to trade unions (Kabeer 2004:28). The female workers' membership in trade union is around two percent. Hossian (2012:203) finds that in the RMG sector, the largest formal privatized sector in Bangladesh, around 3 percent workers claim to have membership to or associated with some forms of associations within their workplaces, and around 2.3 to 4.7 percent workers are members of trade unions outside of their workplaces. LO/FTF Council (2012) counts that 'the prominent and labour intensive readymade garment industry has many industrial conflicts. The industry only has around 63,000 unionized workers out of 3.5 million, mostly young women'. Saha and Alamgir (2013) estimate that trade union rights for workers in Bangladesh remain illusive as only 3.88 per cent of the employed workforce in the country are unionised. The workers of shrimp processing plants are almost out of unionization. From these estimates, it is apparent that the workers of formal industrial sector particularly the workers of RMG sector is deprived of the fundamental democratic rights to association.

THE PROCESS AND FORMATION OF FEDERATIONS AND CONFEDERATIONS

The BLA provides options to the trade unions of workers the right to form and join in a federation of their trade unions, and such unions and federations are permitted to affiliate with any international organization and confederation of trade unions [Sec.176 (c)]. According to the provisions of law any two or more registered trade unions formed in establishments carrying on, similar or identical industry may constitute a federation and apply for the registration of the federation [Sec. 200(1)] and not less than 20 trade unions formed in different types of industries may, jointly, constitute a federation on national basis [Sec. 200(5)].

The EWWSIRA also provides option to the WWS to constitute Federation of Societies if more than 50% of the societies in a Zone agree, they shall be entitled to form one Federation of Workers Welfare Societies in that Zone [Sec. 24 (1)] but a federation formed within the territorial limits of one Zone shall not affiliate or associate in any manner with another federation in another Zone or with any other federation beyond any Zone [Sec. 24(3)].

The ILO convention also supports workers' and employers' organisations right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers (Art.5, C87).

In Bangladesh, the trade unions of workers of different formal industrial sectors have formed industrial federations and national federations. According to an estimate the total number of registered trade unions in Bangladesh is as follows:

Categories	Total number of unions/federations	Number of unions included	Number of members
National federation	32	1,264	1,263,665
Industrial federation	108	721	640,221
Garments federation	26	80	50,149
Basic union	5,242	-	2,069,614

Source: A K M Ashraf Uddin, Country Report, BANGLADESH, 2011.

Another estimate shows that there are 35 national federations, and 166 trade union federations[1] in Bangladesh. Most of the national federations are affiliated to some international confederations of trade unions. In the jute sector there are five active federations—Jute Mills Sramik League, Jute Mills Sramik Dal, Jute Mils Trade union Kendra, Jute Mills Labour Federation, and Jute Mills Sramik Federation. In the garment

[1] LO/FTF Council, 2012.

sector there are 36 federations of which 16 federations are nation-wide and 20 federations are Dhaka based. Besides, there are nearly 30 unregistered trade unions and issue-based forums in the garment sector (Hossain, 2012: 236). In the Shrimp processing plants there are no registered sector-wide or national federation. The national federations are affiliated mostly with two international confederations—World Federation of Trade Unions (WFTU), International Trade Union Confederation (ITUC).

ELECTION OF UNION AND FEDERATION LEADERS

Election is the democratic means to determine leadership and to impose legitimacy to the leaders and their decisions. According to the provisions of the BLA 2006, both workers' and employers' trade unions have the right to draw up their own constitution and rules, to elect their representatives in full freedom and organize their administration and activities and formulate their programmes [Sec.176 (d)].

The EWWSIRA 2010 also permits the workers the right to elect their representatives to the WWS through the referendum approved and conducted by the Executive Chairman of the respective EPZ (Sec. 7(1)]. The WWS shall have the right to frame a constitution of the society by 'the Constitution Committee', formed by the Executive Chairman, consisting of not more than nine representatives with one of them as the Convener (Sec. 9(1)]. Every WWS will be run by an 'Executive Council' consists of not more than 15 members who will be elected by the registered members of the society through secret ballot for tenure of three years.

A comparative analysis of the two laws regulating industrial and labour relations in Bangladesh shows that the workers' associations of EPZs are supposed to be more democratic as there is no scope of being a member of the Executive Councils without elections at a certain interval of three years. On the other hand, workers' associations—

basic trade unions, industrial federations, and national federations—outside the EPZs are not so legally bound to elect representatives or to determine leaders through democratic process of voting through secret ballot on a regular interval.

Due to this difference in legal provisions, practices of democracy among the trade unions of workers are also different in the mainstream industrial sectors outside the EPZs. Unions of workers in Bangladesh are characterized by low coverage but high political connections. Most of the national and industrial level federations are workers' wings of mainstream political parties and run by the political leaders. There are few national and industrial level federations that are independent of political affiliations. There are allegations that political affiliation of trade unions rather inhibits than promotes democratic practices in workers' associations.

It is a common feature of the federations of trade unions that they do not change their leaders. One man with a few sub-ordinates holds the top post and controls the federation often without having any consent of the primary members. A recent study claims that 'Bangladesh has an antagonistic political environment between the major political parties. This also carries over to the trade union movement, which is fragmented into more than 32 trade union centres or federations with links to the rivalling political parties (LO/FTF 2012: 3). There are diverse views among the workers, workers' rights activists, federation leaders, and civil society members.

Regarding consent, almost all of the workers say that they do not have union(s) in their workplaces and cannot practice democracy to elect their representatives. Some workers who are members of federations say that the leaders of the top posts never arrange election to determine leader(s). In contrast, very few workers say that they elect their federation leaders through votes (FGD: Gazipur 1).

On the other hand, the federation leaders—national and industrial level—claim their leadership to be democratic in the sense that they arrange annual council and the members present in the council determine leaders for the next term. A president of one national federation justifies that:

> The primary members are neither active nor eligible to lead a nation-wide forum of workers. It requires quality which is achieved through continuous communication and engagement in matters related to workers. Every national federation has experienced executive members from different industrial sectors. These members determine top leaders through discussion in a council meeting. This process is followed by the national political parties also. It is not undemocratic (KII WR 3).

Another resource person agrees that all federations do not always determine leaders through elections but there are few independent organizations that practice democratic process. He identifies the lack of sufficient plant level trade unions as the root cause of undemocratic practices of electing federation leaders. He adds that:

> The primary members of basic trade unions elect, by direct voting, their leaders of and these leaders in turn elect the leaders of federations. It is a chain. Unfortunately, the workers of Bangladesh are deprived of the first and foremost democratic rights to form or join unions and to elect their representatives or leaders through democratic process (KII WR 2).

The employers particularly the employers of RMG and shrimp processing plants also deny workers fundamental rights to form or join unions and to elect their representatives in the factory premises. One of the employers' representative comments that:

> Industrial factories are not political places or institutions. It is the place to produce goods and services; it is not the place to exercise democracy. He agrees that if trade union systems were in practice in the industrial arena, the workers got the chance to practice election to determine their leaders or CBA members. He adds that in the RMG sector trade union formation is not in practice. Therefore, they cannot exercise democracy in the factories. They are allowed to practice it in the federations outside the factories (KII ER 7).

However, the demand of democratic practice flows from bottom to top. Workers organizations are like pyramids. Ideally, the leaders of basic unions are supposed to elect the leaders of industrial level federations and finally the federation leaders should elect the leaders of national level federations. In Bangladesh, the plant level unions are very few in relation to the number of industrial units. All the industry level federations claim that they include certain number of primary unions but in reality those unions have certain number of primary members. This study finds that most of the unions within federations are either dissolved or inactive.

ACTIVITIES OF TRADE UNIONS AND FEDERATIONS

The functions of basic trade unions are partly determined by the labour laws and partly by the constitution of the union. According to the BLA 2006, the trade unions are empowered to nominate members in the WPC [Sec. 205(4)] and to act as CBA or to elect the members of CBA (Sec. 202). The law also permits the federation of trade unions to act as CBAs on some conditions (Sec. 203)[1]. Besides, the basic unions, federation of trade unions and national federations perform some other functions in their respective constitutions. The common functions are—

1. Functions relating to Industrial Organization

- To maintain discipline inside industry
- To handle grievances, disputes and complaints
- To prevent unfair labour practices in the workplace
- To enforce statutory provisions beneficial to employees.
- To encourage cordial relations between employee and management

[1] (1) a federation of trade unions shallbe deemed to be the collective bargaining agent in any establishment or group of establishments, if its federatedunions by resolutions passed in their annual general meetings or in general meetings specially convened for thepurpose, by the votes of not less than the majority of the total membership of the union concerned authorise it toact as the collective bargaining agent on their behalf.

2. Functions relating to Trade Union organizations

- To impart training and education to members regarding effective leadership
- To prevent inter union rivalry and maintaining integrity of trade union movement
- To maintain industrial democracy
- To prevent trade union from exploitation of personal and political interest
- To maintain necessary records regarding meetings and other activities of trade unions

3. Functions relating to Trade Union members

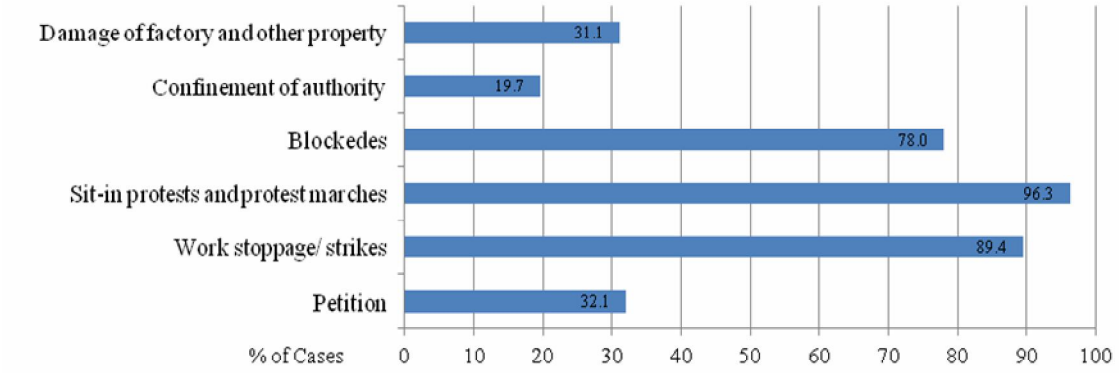
- To safeguard employees interest against all sort of exploitation
- To create awareness among workers regarding their rights and duties
- To ensure workers' meaningful participation and representation

4. Functions relating to Society

- To develop positive public opinion regarding trade unions in society
- To prevent social evils like nepotism, communalism, regionalism etc.
- To foster national programs like family planning, forestation, natural disaster etc.

To perform the functions—assigned in the laws and determined in the union constitutions—the trade unions have the right to exercise some legitimate democratic activities—addressing the issues through petition to the employer(s) and government authorities, demonstrations, sit in protests and protest marches, sending representatives to employer(s) to air workers' grievances, propose to arrange joint consultation, and finally declaration of industrial action of strike(s)—get their demand passed.

In reality, due to lack or often due to failure of democratic channels and activities of articulating demands, the workers of some sectors particularly the workers of RMG sector involve some illegitimate and undemocratic activities—blockades, confinement of authority, street protest, occupation or *gherao* of a manager's office or a factory, spontaneous and sporadic outburst, vandalism, and damage to factory and other property—to create pressure on the employers to get their demand passed. A recent study finds that during 2006 to 2010 the workers spontaneously left the sewing/knitting machines and walked out of the job to protest at the factory gate or in nearby roads, used confinement of authority, blockades of major transport arteries along with collective petition to amplify the public impact of their protest, and force the employers and government to take notice to their demands (Hossain 2012: 242-243). He has presented the data in the following chart:



Note: Multiple tactics recorded

Source: Jakir Hossain, (2012), PhD Dissertation, School of International Studies, University of Trento.

From the above discussion it is obvious that the workers of Bangladesh cannot exercise democracy either inside or outside the factory. The existing laws, institutional mechanisms, employers' attitudes, and overall governments' concerns and initiatives do not ensure working peoples' right to exercise democracy. This system of workplace and labour governance rather inhibits than promotes the practices of democracy in governance of labour and industrial relations.

PRACTICE OF DEMOCRACY IN EMPLOYERS' ASSOCIATIONS

Unlike workers' associations, the practice of democracy is more in the employers' associations. The employers of different industrial sectors are organized under the Bangladesh Employers' Federation (BEF) which is the national employer organization, representing 131 affiliates with around 90% of established employers in the private sector[1]. The three industrial sectors under the purview of this research have six different employers' associations. The apparel sector has two very active organizations—the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and the Bangladesh Knitwear Manufactures & Exporters Association (BKMEA). The jute sector comprises both state owned and privately owned jute mills. The state owned jute mills are controlled by the Bangladesh Jute Mills Corporations (BJMC) and the privately owned jute mills are organized under—the Bangladesh Jute Mills Association (BJMA) and the Bangladesh Jute Spinners Association (BJSA). The shrimp processing plants are organized under the Bangladesh Frozen Foods Exporters Association (BFFEA).

All of these organizations are controlled by 'Executive Body' or 'Board of Directors', elected by the voter members of the organizations, through democratic process of secret ballot. The BGMEA, the largest of all employers' associations, elects a Board of Directors consists of 27 members—20 from Dhaka and Seven from Chittagong—for two years. Usually, two panels contest election. The elected members further elect a president and four vice-presidents from the winner panel. Since its foundation, the BGMEA has elected the Board of Directors for 13 times. The latest election held on March 11, 2013 for the period of 2013-2014. The BKMEA elects a 27-member panel consists of a president, four vice-president, and 22 directors for tenure of two years. The latest election held on September 15, 2012 for 2012-2014 terms.

[1] LO/FTF Council, 2012.

The members of BJSA elect a 12-member executive committee and the committee elects a chairman and a vice-chairman for tenure of two years. Other members act as directors. In the latest election held on April 2, 2013, the members have elected the executive committee for two terms—2013-2014 and 2014-2015. The members of BJMA elect a chairman, a vice-chairman, and eight directors for tenure of two years. The latest governing body has been elected on December 28, 2011 for two terms at a time. The BFFEA, established in 1984, also elects a 15-member body of directors (8 members from Chittagong and 7 members from Khulna) for two tears term. The directors latter elect a President and two vice-presidents. The remaining 12 members act as directors of the governing body. Usually, two panels contest the elections but the latest election held on February 16, 1013 was uncontested as there was only one panel.

The members of employers' association call their elections to be free, fair and regular. Where two panels contest elections, every panel puts forward some priority areas of actions. These areas are mostly centred to employers' interests and business related. Almost none of the employers' association includes any interests of workers. Employers' representatives comment that directly no panel puts forward any agenda related to the development of workers but the organizations work for the development of business and compliance issues that ultimately brings wellbeing for both employers and employees (KII ER 2 & 7).

RIGHT TO COLLECTIVE BARGAINING

The right to Collective Bargaining (CB) empowers the workers to elect their representatives to the institutional mechanism of Collective Bargaining Agents (CBAs) for the purpose of social dialogue towards labour and industrial relations. Hyman (1997) argued that structures representing the interests of workers through collective bargaining provide legitimacy and efficacy to the decision making process. Freeman and Medoff (1984) have also noted that the efficacy of voice depends upon the way in which labour and management interact. In Bangladesh, union-management interaction is hardly seen.

The BLA 2006 provides that the right to collective bargaining can be exercised only through trade union (Sec. 202). Where there is only one trade union in an establishment, that trade union is supposed to act as collective bargaining agent (CBA) for the workers of that establishment [Sec.202(1)]. Where there are more trade unions than one in an establishment, the Director of Labour is empowered to arrange election through secret ballot to determine and declare a particular union as collective bargaining agent on the basis of application by any trade union or by the employer [Sec.202 (2)][1].

The EWWSIRA 2010 also declares that the Workers Welfare Society (WWS) in an industrial unit shall be the Collective Bargaining Agent (CBA) for that industrial unit [Sec. 37(1)]. Both the BLA 2006 and the EWWSIRA 2010 provide provisions for the workers to interact with the management through the CBAs but in practice such interaction rarely happens as there is negative attitude of the management towards union and CBAs on the one hand the unions lack the organizational strength to interact effectively on the other hand.

Though the right to collective bargaining is applicable to all industrial sectors—public and private—the practice of the right varies across industries. In Bangladesh, the nature and role of trade unions vary from sector to sector, industry to industry, and region to region (Mahmood, 2008: 29). In the RMG sector there is hardly any CBA in the real sense of the term. The workers, employers and employers representatives provide diverse views regarding the existence of the CBAs in the

[1] Where there are more trade unions than one in an establishment, the Director of Labour shall, upon an application made in this behalf by any such trade union or by the employer, hold a secret ballot, within a period of not more than one hundred and twenty days from the date of receipt of such application, to determine as to which one of such trade unions shall be the collective bargaining agent for the establishment.

sector. The workers discussed in Dhaka, Chittagong, and Gazipur inform that they have never voted for the CBA. Some of the workers state that they have CBAs in the factories but they do not know how that has been formed. A few of the workers say that in some factories there are some management–made employees' unions which act as the CBA (FGD: Gazipur 1). An employers' representative says that 'they have an elected WPC which act as the CBA for the workers' (KII ER 6). Another employers' representative asserts that in the garment industry there is no basic union and therefore there is no CBA in operation (KII ER 7). A member of an employees' union acting as a member of CBA in a garment factory describes that:

> We have nearly 17,000 workers in our factory. To control this large volume of workers, the workers and employees have jointly formed a union. The union elects a 25-members executive body comprising a president, and a vice-president with other members for two years. This body acts as the CBA in the firm (KII ER 8).

A key informant informs that CBA as a legitimate body of workers is not recognized in the RMG sector. The law does not provide any option for non-union CBA. Some employers often form CBAs for their own interest. These are not CBAs as per law (KII CS 3).

In the jute industries—state and privately owned—CBA is a common practice. Almost all jute mills have elected CBAs and they bargain with the management over issues related to workers' interests. According to available statistics there are 22 CBAs out of 27 jute mills under BJMC[1], 106 CBAs out of 126 jute mills under BJMA[2] and 85 CBAs out of 93 jute mills under BJSA[3]. Both the workers, employers and employers' representatives justify the practice of CBA as a good and effective mechanism of work and workplace management. A high management official says

[1] Data collected from the office of 'Jute and Jute Industry Protection Committee', Khulna.
[2] Data provided by the G S, Mohsen Jute Mill Workers' Union, Khulna.
[3] Data provided by the Secretary, BJSA, Dhaka.

that the management cannot always keep contact with individual worker and often cannot talk to all workers in case of any problem. The CBA acts as a bridge between the management and workers (KII ER 5). Another key informant informs that the CBA as a workers' channel helps to resolve any problem at the factory level without hampering production or wasting time (KII ER 9).

In the shrimp processing plants the practice of CBA is totally absent. The employers are of the view that they need not CBA to bargain for the workers' interests and they claim that the workers also never ask for the formation of CBA in the factory (KII ER 1). The response of the workers seems to be contrary to the claims of the employers. The participants in the discussion meetings inform that there was always a demand for the formation of CBA in the processing plants. Some of the workers took initiatives too. Due to antagonistic attitude of the employers, they have failed and most of them have lost their jobs and have been ousted from the region (FGD: Khulna 4). One of the participants describes that:

> It was 2010. Some of our colleagues took initiative to form trade union in some factories. Following due processes they applied and got registration. The factory management did not take it easily. Within two months of the formation of trade unions, most of the union leaders were forced to resign. A series of meeting took place with the involvement of the local labour department (JDL) but nothing could save our colleagues. Even the NGOs that instigated and encouraged the workers to form unions could not provide any support to them. Most of them were threatened, verbally and physically abused, and finally sacked on the charge of theft. The actual motif of those workers was to form CBAs to raise collective voice and to bargain for the benefit of theworkers (FGD: Khulna 4).

One of the employers asserts the fact and blames some NGOs for instigating the workers to form unions. He regrets that it was a bad example for the industry because in its history of operation for long five decades, the workers have never attempted to do so (KII ER 2).

SCOPE OF BARGAINING

It is interesting to note that the laws have provided the workers the right to collective bargaining with sufficient provisions on the formation of CBAs. A close reading proves that the scope of collective bargaining is very limited and not specified. Mahmood finds that the collective bargaining on pay and allowances is forbidden in the public sector as the government determines a single set of uniform pay scales and allowances for all the public sector enterprises. Trade unions are handling only industrial conflicts and some other issues like the application of labour laws, improvement of working conditions, adoption of welfare programmes of the workers. This limited scope of collective bargaining issues forces the trade unions to develop links with the influential actor i.e. government, to achieve their goals, and therefore, industrial relations involve interaction between political parties and trade unions rather than interaction between enterprise management and worker representatives (2008: 29). According to the BLA 2006, the CBA is authorized to:

- undertake collective bargaining with the employer or the employers on matters connected with the employment, non-employment or the conditions of employment;
- represent all or any of the workers in any proceedings;
- provide notice of and declare a strike in accordance with the provisions of the law
- nominate representatives of workers on the board of trustee of any welfare
- institution or provident fund and workers participation fund [Sec. 02(24)].

The EWWSIRA, 2010 provides that the CBA shall have the right to negotiate with the employer on wages, working hours and other terms and conditions of employment. No reasonable request for information from the society to the employer for negotiation purposes shall be denied [Sec. 37(2)]. The CBA in relation to an industrial unit shall further be entitled to:

(a) undertake collective bargaining with the employer on matters connected with employment, non-employment and the conditions of work of the workers;

(b) represent all or any of the workers in any proceedings; and

(c) give notice of, and declare, a strike [Sec. 37(3)].

A comparative analysis reveals that the provisions of the EWWSIRA, 2010 are more specific than they are in the BLA 2006. The right to collective bargaining is important mainly for two reasons—effective grievance handling and exercise the threat to strike—to secure the legal interests of the workers. Due to lack of specific areas of bargaining, there is conflict over the powers and functions of the CBAs where it is practiced. A key informant states that the CBAs are empowered to bargain over all issues related to work, worker, industry, and management. The BLA 2006 has not expressed clearly the issues under the purview of the CBAs (KII CS 1). The practice of collective bargaining is more in the jute mills under BJMC, BJMA and BJSA. A high management official of a BJMC jute mill comments that:

> The CBA comes to talk over everything that happens in the factory. Often they interfere with the prerogatives of the management. The areas of functions of the CBAs should be limited for the management to run the factory smoothly (KII ER 5).

On the contrary, the CBA members are of the opinion that the management never inform for anything to the CBA. Usually, almost all important decisions are taken unilaterally by the management. If anything goes wrong or against the interests of the workers or industry, the CBA formally approaches the management for dialogue. Very often the management tries to avoid such dialogue request of the CBA. One of the CBA members complains that:

> The management officials are very reluctant to the necessity of the CBA. In the establishments like jute mills the CBAs are watch dogs. The decisions of buying jute, opening of buying centers, repairing of machines and electric wirings, buying of tools and spare parts for the machines are matters of financial involvement and the management tries to do these things unilaterally. If the CBA members oppose these decisions, the management takes it for over stepping (KII WR 15).

However, bargaining takes place in many forms in different levels. These levels are not equal in nature therefore the involvement of CBA members and issues of priority are different at different levels. Usually, the issues involved in the plant level bargaining are different from industry or national level bargaining. The plant level collective bargaining involves issues like working conditions, leaves, promotions, job termination and benefit, attendance bonus, and often wages and wage related issues.

WORKERS' CAPACITY

Collective bargaining is a recognized way of creating a system of industrial jurisprudence. It includes not only negotiations between the employers and unions but also establishes rules which define and restrict the traditional authority exercised by the management. In Bangladesh the collective bargain takes place in three levels—plant level, industry level and national level. The plant level collective bargaining is bi-partite in nature and involves workers' representatives and employer's representatives. The industrial and national level collective bargaining is tripartite in nature and involves representatives of workers, employers and government.

Workers' capacity is more transparent and fair in the plant level bargaining as it involves the real representatives in the bargaining process. Yet, the capabilities of the workers to win equitable outcome from plant level bargaining are subject to factors that govern work and workplace as a whole. The factors that affect the equitable outcomes at plant level bargaining are independence of the workers' organization(s), attitude of the management, strength of the workforce, morale and rights consciousness, knowledge on the conditions of economic and technological changes, and job/employment security of the workers. The prime factor that imposes limitation on the workers' capacity at plant level collective bargaining is that it bars

the outsiders from being elected as CBA representatives or trade union leaders, and restricts any influence on the bargaining process from the outside. The fact is contained in the labour law and asserted by the national trade union federation leaders. One of the national federation leaders says that:

> Plant level bargaining agents suffer from lack of required knowledge and relevant information, bargaining skills, and independence. All these restrict workers' capacity to bargain effectively at the plant level' (KII WR 1).

In view of these factors it seems that the workers are the weaker party to the plant level collective bargaining. The workers cannot bargain effectively at plant level for a number of reasons—subordination of the workers to the management, lack of organizational independence and strength of unions, lack of workers' consciousness about the bargaining rights, management's freedom for arbitrary action, and lack of job security. Moreover, the workers engaged in garment factories, jute mills and shrimp processing plants lack the required knowledge and information in matters of economic and technological changes happening in the domestic and global industries and markets. The workers and workers' representatives discussed in different areas inform that in most of the cases the plant level bargaining is not fruitful or successful due to lack of job security and threat of lockouts.

Regarding the experience of collective bargaining, almost all FGD participants of the RMG workers inform that they have never bargain collectively with the employer because they have no CBAs in the factories. Some of them say that they have taken help from the immediate superiors like supervisor or line chief for seeking their personal interests (FGD: Chittagong 1 and Gazipur 1).

The workers of jute mills have the opportunity to bargain through their CBA members. The workers of jute mills under BJMC say that their CBAs can bargain effectively as they have relatively more secured jobs and their CBA members are relatively powerful to bargain in equal footing to the authority (FGD: Rajshahi 1 and

Khulna 2). One of the CBA member states that the management of BJMC mills usually accepts the rightful demand of the CBAs because there is threat of industrial action like strike (KII WR 14 and 26). The workers of jute mills under BJMA and BJSA mills are of the view that their CBAs are successful to some extent as they cannot bargain over all issues due to the employers threat of lockouts (FGD: Khulna 1 & 3).

In the shrimp processing plants the practice of CBA is totally absent and the workers always seek help to the management to pursue their interests. One of the employers says that there is no such issue in the shrimp processing plants that require CBAs. He confirms that every worker is allowed to go to the Managing Director and free to speak or seek anything they like. The management is lenient enough to look into the welfare and wellbeing of the worker (KII ER 2).

In industry and national level bargaining, the workers' capacity is more limited because the representatives of the workers lack sufficient knowledge on bargaining issues and often they lack the representative character. This limitation is further fostered by undue political influence, absence of paternalistic role of the government, and over manipulation of the employers' representatives. A recent study finds that the workers fail to obtain their legal outcomes from industrial and national level bargaining due to two reasons—first, lack of representation and second, lack of united voice (Hossain, 2012: 207). He explores that some workers perceive many of the labor leaders have no link with workers and thus unable to understand, prioritize, and channel workers' interests. Some of the workers observe that lack of unity among workers' associations often leads to inability to establish common demand, and accordingly workers' demands are used to gain favor for the leaders themselves.

Regarding workers' low capacity and negligible at industrial and national level bargaining the workers provide four views:

First; most of the workers think that their representatives cannot bargain for them effectively with the employers due to lack of their capacity and knowledge of workers primary issues.

Second; some of the workers are of the view that the employers are more powerful and they do not pay heed to their representatives. If the workers go on with violent movement then the employers bow down to their representatives.

Third; some workers say that their representatives are capable enough but due to non-cooperation of the government they fail to bring expected outcomes.

Fourth; there are some workers who say that the people who bargain for them are not their representatives at all. They sell themselves to the employers in return for money or other gifts. These people cannot hold a strong position in favour of the workers.

Interestingly, most of the workers' representatives assert all these views. A federation leader, who was present as an observer member in a meeting of the Minimum Wage Board (MWB) formed for the RMG workers in 2010, informs that:

> The employers' representatives are strong not only in economic and political power but also in knowledge and information. In the Bargaining table, they are far more prepared with research report, statistical data and information, and mathematical calculation than the representatives of the workers. They convince the board and win by their logic (KII WR 5).

Another trade union organizer says that the presence of the representatives in the bipartite and tripartite meeting is not enough to safeguard the rightful demands of the workers. These meetings should be followed by vigorous workers movement because the industrialist class of Bangladesh is responsive only when they face mass resistance (KII WR 6). The workers' representatives also complain that the government including the high officials represented in different bipartite and tripartite

meetings very often fails to play its neutral and paternalistic role in the bargaining process. They are always bent to the employers' side. This also hampers the workers' capacity to bargain effectively (KII WR 7). Often it is alleged that the workers' representatives are somehow managed by the employers. A former member of wage board asserts the fact and claims that in times of any bargaining, the employers try to bribe some workers' representatives and sometimes many of the so-called labour leaders go against the interests of the workers (KII WR 1).

From the above discussion it is evident that the right to collective bargaining is important for the workers to raise their voice collectively but in Bangladesh it is not observed equally in the industrial sectors. The application and observance of the right to collective bargaining is limited on two counts—firstly, the labour laws leave narrow scope of bargaining; and secondly, the employers do not respect the right at large. Among the three sectors, the plant level collective bargaining is seen to some extent in the jute industries as the industry allows the workers to form or elect the members of the CBAs. The RMG factories and the shrimp processing plants do not allow workers to form unions and without union(s) the right cannot be exercised.

CONCLUSION

Rights are the fundamental condition of emancipation and development. The people at work are granted by the Constitution to exercise their fundamental rights—Rights to Equality (equal application of the provisions of law without discrimination, equal opportunity, and equal protection under law), Rights to Freedom of Opinion and Expression, Rights to Association, and Right to Bargain Collectively—to develop their capacity as a party to the govern the work, workplace and overall labour governance. It is obligatory for every law of governance to incorporate those rights and provide ample

scope for workers to practice them. In Bangladesh, the workers at large are governed mainly by the BLA 2006 and the workers of the EPZs are governed through the EWWSIRA 2010. Practice shows both the laws have incorporated and prioritized the rights differently and they are being exercised differently.

The provisions on the rights to equality are not equally at play in the industries across the formal industrial sectors. While the state owned jute industries under BJMC ensure the equal application of the provisions on employment and contract—employment letter and service book, equal opportunity and protection, maternity and sick leaves, termination benefits—and maintain non-discrimination at workplace; the privately owned industries including the jute mills under the BJMA and BJSA, the garment factories under the BGMEA and BKMEA, the shrimp processing plants under the BFFEA comply partially the terms and conditions of employment and contract. This signifies that the rights to equality is ensured in the laws but those are not enforced equally in the industrial sectors at large.

Workers' rights to freedom of opinion and expression are hardly incorporated in the BLA 2006 and the practices are also negligible. Neither the workers of SOEs nor the workers of privately owned industries are given the scope to be informed and to be consulted about the physical conditions of workplace environment and occupational safety and health issues. A close reading proves that the matters are left to be decided by the employers and CIF&E. There are some provisions that allow workers to provide opinion and to express concerns over the safety issues but those can only be exercised by some institutional mechanisms like WPCs and CBAs. Almost all the workers engaged in the privately owned enterprises are deprived of the practice of WPCs and CBAs because those institutions cannot be formed without the existence of workers

associations like trade unions. The workers of SOEs and privately owned jute mills have trade unions and elected CBAs and they can attribute their ills and problems to some extent to the management. The lack of opportunity of the mass workers to express their opinion over the safety issues leads to the non-compliance of essential safety measures and results in frequent industrial accidents—factory fires and building collapse—killing and injuring thousands of workers every year.

Workers' rights to association particularly the formation of basic trade unions in Bangladesh are not prioritized at all. The provisions of law regarding the conditions and process of union formation are rather restrictions to the workers' rights to associations. Along with legal restrictions and impediments; the employers also use intimidations, firings, verbal and physical abuses, arbitrary lockouts, attacks of police and hired goons to resist unionism in the privately owned industries. Except SOEs and jute industries under BJMA and BJSA the workers associations are hardly found in the mainstream industries in Bangladesh. The absence of plant level unions and the lack of opportunity to exercise democracy in industrial and national level federations lead the workers to walk out of factories and workplaces spontaneously to express their discontents and grievances instead of channelling them formally to the management.

Worker's right to collective bargaining is also not respected in Bangladesh. The formation of CBA is subject to trade unions. If there is no union there can be no CBA. Due to this legal provision almost all workers of privately owned industries, lack the opportunity to bargain collectively with their employers on matters of wage and work related issues including the occupational safety and health measures of the workplaces. Traditionally the jute mills—state owned and privately owned—allow the workers to form CBAs through election and the workers in these mills are capable to

bargain collectively. Nonetheless the workers at large do not have the right to raise their voice and negotiate over issues related to their work and wages. Due to lack of practices of collective bargaining, the workers capacity is also lower. They do not have the opportunity to access information and to acquire knowledge needed to bargain effectively. Moreover, the representatives of the workers also lack the required organizational strength and legitimacy in the bargaining table arranged at industrial and national level.

To ensure democratic labour governance at workplace and national level for better industrial and labour relations, the workers should be given the right as granted by the constitution and supported by the ILO Conventions. The government should pay its just role to implement the provisions on the rights to equality, more scope and space should be allowed for workers to express their concerns over the issues related to work, working environment, and occupational safety and health. Above all, workers' should be given free trade union right to organize and to bargain collectively and effectively and only then the industrial peace and progress could be possible.

CHAPTER V
DEMOCRATIC LABOUR GOVERNANCE: WORKERS' PARTICIPATION AND REPRESENTATION

Workers' Participation and Representation including Work, Workplace, and Industrial Relations in Bangladesh are supposed to be regulated and governed by both directive and mandatory regulations. The directive regulations are the Constitution of Bangladesh, Bangladesh National Labour Policy 2012, and Conventions of Internal Labour Organization (ILO) particularly those ones ratified by Bangladesh. Mandatory regulations outside the EPZs include mainly the BLA 2006 and some other minor Acts, and within the EPZs there is the EWWSIRA 2010.

The Directive Principles for State provided in the constitution enshrine a number of rights for the working people. The exercise of those rights ensures them the opportunity to participate and represent in the making of decisions that affect them. The principles in the Constitution relating to working people are stated in Article 14, which requires the State to emancipate peasants and workers from all forms of exploitation; Article 15, which holds the State responsible to ensure the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work, and reasonable rest, recreation and leisure; Article 20(1), which recognizes work as a right. Besides, there are fundamental rights related to working people in Article 34, that prohibits all forms of forced labour and makes it a punishable offence; and in Article 38, which guarantees the right to freedom of association and to form trade unions. No doubt, all these principles are with democratic spirit and strength enough to ensure democratic labour governance in Bangladesh.

In the Labour Policy 2012 intentions have been expressed to ensure democratic labour governance by following and enforcing the international labour standards, and other conventions and charters. Article 1.03(5) expresses the intention to spread democratization through massive participation of the working people.

The ILO Convention No. 135 also provides protection measures for workers' representative either designated or elected by trade unions or elected freely by workers. Article 1 states 'Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements'. This is a promising regulation for practicing democracy in labour governance.

THE INSTITUTIONAL MECHANISMS OF LABOUR LAWS

In line with these directive principles, some institutional mechanisms have been set in the mandatory regulations in Bangladesh both outside and inside the EPZs. The BLA 2006 provides a number of institutions, outside EPZs, where workers' participation and representation has been accepted. The institutional mechanisms incorporated in the BLA 2006 for workers' interest representation are single-partite, bipartite and tripartite in nature, and operative from plant level to national level. The institutions are Collective Bargaining Agent, Participation Committee, Canteen Management Committee, Minimum Wages Board, Labour Court, and Tripartite Consultative Committee. The EWWSIRA 2010 also offers institution for workers' participation and representation inside the EPZs. These are Workers' Welfare Society, EPZ labour Tribunal, and EPZ Labour Appellate Tribunal. The latter two institutions have not yet established. So they are excluded from the discussion. The process of formation of these institutional mechanisms are discussed below-

1. CANTEEN MANAGEMENT COMMITTEE

The Canteen Management Committee (CMC) is a bipartite body and operative in enterprise level. The committee is formed under Article 92 of the BLA 2006. The number of its members and the process of appointment/recruitment are not specified in the law. According to Article 92 (1) the provision of canteen facility to be provided in establishment where at least one hundred employees are engaged.

Functions of CMC are given in sub-section (3) as 'the managing committee to be formed under the rules shall determine the foodstuff to be served in the canteen, and the charges therefor'.

2. MINIMUM WAGES BOARD

This is a tripartite body formed under Article 138 of the BLA 2006 and operative in industry/sector level to fix minimum wages for the sector. The board consists of six members with a chairman, an independent member, one member to represent the employers, and one member to represent the workers, one member to represent the employers of the industry concerned; and one member to represent the workers engaged in such industry.

Process of appointment

The process of members appointment is clarified in Article 138 (4) (5) and (6). The Chairman and the other members of the Wages Board shall be appointed by the Government (4). The Chairman and the independent member of the Wages Board shall be appointed from persons with adequate knowledge of industrial labour and economic conditions of the country who are not connected with any industry or associated with any trade union of workers or employers (5). The member to represent the employers and the member to represent the workers shall be appointed after considering nominations, if any, of such organizations as the Government considers to be representative organizations of such employers and workers respectively (6).

Provided that, if no nomination is received for the representatives of the employers or workers in spite of more than one effort, the Government appoint such persons whom the Government considers to be fit in its opinion to be representative of such employers and workers respectively.

3. COLLECTIVE BARGAINING AGENT

The Collective Bargaining Agent (CBA) is the single party body formed by trade union(s) under Article 202 of the BLA 2006. Its functions are limited to its enterprise. This is the body that is entitled to bargain for the workers benefit and welfare. Its main function is to represent workers interest inside the enterprise and handle grievance issues. The number of CBA members is not specified in the law but in practice it consists of 25 members. The tenure of the CBA is two years but in case of a group of establishments the tenure is three years.

The Formation of CBA

The formation of CBA is stated in Article 202 from sub-section (1) to (15). But the basic information is contained in the first three sub-sections.

Where there is only one trade union in an establishment, that trade union shall, be deemed to be collective bargaining agent for such establishment(1) .

Where there are more trade unions than one in an establishment, the Director of Labour shall, upon an application made in this behalf by any such trade union or by the employer, hold a secret ballot, within a period of not more than one hundred and twenty days from the date of receipt of such application, to determine as to which one of such trade unions shall be the collective bargaining agent for the establishment (2). Upon receipt of an application under sub-section (2), the Director of Labour shall, by notice in

writing call upon every trade union in the establishment to which the application relates to indicate, within such time, not exceeding fifteen days, as may be specified in the notice, whether it desires to be a contestant in the secret ballot to be held for determining the collective bargaining agent in relation to the establishment (3).

Functions of the CBA

The functions of CBA are clarified in the Article 202 (24). These are:

(a) undertake collective bargaining with the employer on matters connected with the employment, non-employment, the term of employment or the conditions of work ;

(b) represent all or any of the workers in any proceedings ;

(c) give notice of, and declare, a strike

(d) nominate representatives of workers on the board of trustees of any welfare institutions or Provident Funds, and of the Workers participation Fund

(e) To conduct cases on behalf of any individual worker or group of workers.

4. WORKERS' PARTICIPATION COMMITTEE

The Workers' Participation Committee (WPC) is a bipartite plant level body formed under Article 205 of the BLA 2006. The law provides provisions on the formation process, numerical conditions and bindings of the body, and functions of the committee. The committee will be formed by the employer where at least 50 workers are employed.

Formation Process of the WPC

The formation process of the committee is described from sub-section (2) to (9). The process is as follows-

(2) Such committee shall be formed with representatives of the employer and the workers.

(3) The number of representatives of workers in such committee shall not be less than the number of representatives of the employer,

(4) The representatives of the workers shall be appointed on the basis of nomination given by the trade unions in the establishment.

(5) Each of the trade unions, other than the collective bargaining agent, nominating equal number of representatives and the collective bargaining agent nominating representatives, the number of which shall be one more than the total number of representatives nominated by the other trade unions.

(6) In the case of an establishment where there is no trade union, representatives of the workers on a participation Committee shall be chosen in the prescribed manner from amongst the workers engaged in the establishment for which the Participation Committee is constituted.

(7) Where an establishment has any unit in which at least fifty workers are normally employed, a unit participation committee, may, on the recommendation of the Participation Committee, be constituted in the manner prescribed by Rules.

(8) Such unit committee shall consist of the representatives of the employer and the workers employed in or under that unit.

(9) The provisions of this section applicable in case of participation committee shall mutatis-mutandis apply to the unit participation committee.

Functions of the WPC

The functions of the PC are clarified in Article 206 (1) of the BLA 2006. The functions are as follows-

The Committee shall be to inculcate and develop sense of belonging and workers commitment and, in particular–

(a) to endeavour to promote mutual trust, understanding and co-operation between the employer and the workers ;

(b) to ensure application of labour laws ;

(c) to foster a sense of discipline and to improve and maintain safety, occupational health and working condition ;

(d) to encourage vocational training, workers education and family welfare training ;

(e) to adopt measures for improvement of welfare services for the workers and their families;

(f) to fulfill production target, improve productivity, reduce production cost and wastes and raise quality of products.

Meetings and Implementation of recommendations of Participation Committee: The committee will meet at least once in every two months and the proceedings of every meeting of the Participation Committee to be submitted to the Director of Labour and the Conciliator within seven days of the date of the meeting (Art.207). However, the recommendations of the committee are non-binding for the employer. Article 208 states that the employer and the registered trade union will take necessary measures to implement the specific recommendations of the participation committee within the period specified by the Committee. If, for any reason, the employer or the registered trade union finds it difficult to implement the recommendations within the specified period, they will make all out efforts to implement the same as early as possible.

5. LABOUR COURT

It is a tripartite dispute settlement mechanism and the highest body to deliver justice over interests and rights related individual and industrial disputes. This court is formed under Article 214 of the BLA 2006. The Labour Court consists of a Chairman and two Members to advise him. Sub-section (4) reads 'the Chairman of the Labour Court shall be appointed by the Government from amongst the District judges or an Additional District judges'. The appointment of members is clarified in sub-section (6) that says 'one of the two Members of the Labour Court shall be the representative of employers and the other shall be the representatives of the workers'.

Process of Appointment

The members to represent the workers and employers in the labour court is said to be selected/nominated by the government. The process is given in sub-section (7) which reads 'the Government shall constitute, in the manner prescribed by rules, by notification in the official Gazette, two panels, one of which shall consist of six representative of employers and the other of six representatives of the workers'. The procedure of attendance in the session to conduct hearing/disposal of a case is stated in sub-section (9) which reads 'the Chairman of the Labour Court shall, for hearing or disposal of a case relating to a specific industrial dispute, select one person from each of the two panels constituted under sub-section (7), and persons so selected, together with the Chairman, shall be deemed to have constituted the Labour Court in respect of that specific industrial dispute'.

Tenure and Functions of the Members

Regarding the tenure of the members Article 214 (8) says 'The panel of Members prepared under sub-section (9) shall be reconstituted after every two years, notwithstanding the expiry of the said period of two years, The Members shall continue on the panels till the new panels are constituted and notified in the official Gazette'. The main functions of the members are to assist the judge to deal with the cases brought to disposed of and to have a comment/opinion on the merit of judgment, Sub-section (11) says 'provided further that the opinions of the Members of both the sides shall be mentioned in the judgment'.

6. TRIPARTITE CONSULTATIVE COMMITTEE

It is a formal national tripartite institution that provides the opportunity to the workers to represent them. The committee is formed under the ILO Convention No. 144, 1976 [Tripartite Consultation (International Labour Standards) Convention, 1976] which was ratified by Bangladesh on April 17, 1979. Bangladesh constituted the Tripartite Consultative Committee to promote the implementation of International Labour

Standards, headed by the Minister for Labour and Employment. The committee is supposed to hold four sessions a year. It recommends the formulation of labour policy, amendment of existing labour laws, matters related to the improvement of industrial relations, and adoption of ILO Conventions. The committee consists of 60 members taking 20 representatives each from workers, employers, and government. The nomination/selection process to accommodate members to the committee is decided by the government. There are no criteria of selecting the members.

7. WORKERS WELFARE SOCIETY

It is a body formed under Article 5 of the EWWSIRA 2010. The requisites for the formation of WWS are described in Article 6. The sub-sections read as follows-

(1) If the workers in an industrial unit situated within the territorial limits of a Zone intend to form a society, not less 30% (thirty percent) of the eligible workers of the industrial unit shall apply in a prescribed form to the Executive Chairman demanding formation of a Workers Welfare Society.

(2) Upon receipt of an application under sub-section (1), the Executive Chairman shall verify and ascertain that not less than 30% (thirty percent) of the eligible workers have subscribed to the application by signature or thumb impression.

(3) A form signed by a worker under this section shall remain valid upto six months from the date of its signature.

(4) No employer shall in any manner discriminate against a worker for subscribing to an application under sub-section (I), should ultimately the Workers Welfare Society be not formed on the basis of the result of the referendum.

Procedures of Referendum

The procedures of the referendum are illustrated in Article 7. The sub-sections of the article are as follows-

(1) If the Executive Chairman is satisfied under sub-section (2) of section 6 that not less than 30% of the eligible workers have applied in prescribed forms demanding formation of society, he shall arrange to hold a referendum of the eligible workers of the industrial unit within the Zone, within a period not later

than five days from the date of receipt of the application under sub-section (1) of section 6 to ascertain the support of the eligible workers in favour of formation of Workers Welfare Society.

(2) If more than 50% (fifty percent) of the eligible workers do not cast votes, the referendum under this section shall be ineffective.

(3) If more than 50% (fifty percent) of the workers cast votes, and more than 50% (fifty percent) of the votes cast are in favour of formation of Workers Welfare Society, the workers in the said industrial unit shall, thereby, acquire the legitimate right to form a society under this Act; and the Executive Chairman shall be required to accord registration to that society within 25 (twenty five) days of the date of the referendum.

(4) The referendum shall be held through secret ballots and the Executive Chairman shall determine the necessary procedure in respect of holding of the referendum, if not, in the meantime, prescribed by regulations.

CHARACTERISTICS OF THE FORMAL INSTITUTIONAL MECHANISMS

From the above discussion of the formal institutional mechanisms formed under the mandatory legal framework in Bangladesh, some features can be drawn regarding their nature of participation and representation, scope of functions, democratic strengths and weaknesses, and process of formation. These features of any institutional mechanism build its prospect to be truly representative and to be practiced.

1. Multiple –Channel Approach

A critical review of the formation process of the institutional mechanisms shows that the existing regulatory framework of Bangladesh has accepted both single-channel and dual-channel approaches for workers participation and representation. The formation of CBA depends on the existence of trade union(s). If there is no trade union, there is no CBA. It is ideal that every establishment should have more than one trade union so that the workers get the chance to vote for the CBA. The PC can be formed in an establishment whether there are CBA and trade union(s) or not. This is a

paradox and it very often inhibits the practice of democracy in labour governance. The law provides no criteria to recruit members from the workers to form the CMC. This gives chance to the management to take members of their own not the representative of the workers.

Law provides for the recruitment of workers' representative in the MWB 'after considering nominations, if any, of such organizations as the Government considers to be representative organizations of such employers and workers respectively'[Art. 138(6)]. If there are no such nominations, 'the Government appoints such persons whom the Government considers to be fit in its opinion to be representative of such employers and workers respectively'.

In Bangladesh the workers federations and national federations are politically and ideologically divided and it is practically impossible to find out such nomination. The members to represent workers in the Labour Court and TCC are also chosen by the government, not by the workers. So the nature of workers' participation and representation in Bangladesh can be termed as multiple-channel approach—a combination of both single and dual channel approaches.

2. Narrow Scope Of Functions

Interest representation mechanisms in Bangladesh seem to be functionally weak due to their limited scope of functions. Hossian (2012: 224) argues that:

> The objective of setting up the Committee (PC) is narrow, only to inculcate and develop sense of belongingness and workers commitment. It leaves aside overriding issues of workers' interests— wages, overtime rate, working hours, working conditions; this, in effect, limit the scope for negotiation. Furthermore, the recommendations of the committee are non-binding. …the Canteen Management Committee is only accountable to the employers who employ more than one hundred workers. …scopes of participative representation are, thus, limited only in case of determination of foodstuff contents to be served, and charges to be made.

Power is the thing that allures individual to achieve it, compels to create scope for its application and makes individual functional. The scope of functions assigned to the workers' representatives in the institutional mechanisms is not attractive to the workers and for this they do not feel it necessary to be involved in these institutions.

3. Lack of Democratic Strengths and In-built Weakness

The institutional mechanisms in Bangladesh fall short of their democratic strengths and there is inherent weakness due to lack of representative characteristics. In most cases, except CBA, the representatives are not elected either directly or indirectly by the workers. Democratic strengths and legitimacy come out of election not by arbitrary choice. The tenure of the WPC is not fixed by law. Such institution cannot be the democratic institution in the real sense of the term, and so fail to articulate the interests of the workers. The member representing workers in the Labour Court, has virtually no function without sitting and hearing the arguments. He/she can express his/her opinion which is supposed to be highlighted in the judgment only.

The workers' representative in the MWB is not necessarily a worker. Such member lacks the characteristics of the broader community of workers, and so not the actual representative. From the above discussion, it is clear that the formal interest representation mechanisms in Bangladesh lack democratic strengths in respect of representative characters.

4. Complicated Process of Formation

Formation process is another thing that determines the attractiveness and functionality of a particular institution. Some of the representation mechanisms in Bangladesh are hard to establish following the due process of law. Even then, if established, it is harder to discharge the functions assigned to them, Hossian (2012: 224-225) states that:

> The EWWSIRA 2010 permits employers in the EPZs to form WWS. The law, however, sets up excessive and complicated requirements for minimum membership and referendum. It can delay the formation of WWS for a period of one year, if the first attempt fails to acquire sufficient support in a referendum. It also permits deregistration at the request of 30 percent of the workers even if they are not members of that particular association, and postpones the establishment of another association for a year.

Often it is hardly possible to form any interest representation mechanism like the CBA. Without operative trade union(s) in the enterprise/factory, it cannot be formed. In Bangladesh the private sector enterprises like Ready Made Garments, Shrimp Processing Plants, Jute Mills under Bangladesh Jute Mills Association (BJMA) hardly allow any trade union to operate in the plant level. In these sectors the, workers fail to represent their interest through the electing the CBA members. If there is any CBA in a particular plant, it experiences lengthy process to discharge its functions. In case of dispute settlement a CBA is to go through three concrete steps i.e., negotiation, conciliation, and arbitration. Hossain (2012: 226) regards that 'in terms of coverage, both the rights-based and interest-based dispute fall under its purview. The process, nonetheless, is cumbersome and dilatory'.

From the above mentioned characteristics of the formal institutional mechanisms for workers' participation and representation, it can be presumed that the institutions are inherently weak in respect of democratic strength. It is beyond doubt that governance through democratic norms, principles, and institutions brings significant benefits for employers and employees. Democratic institutions determine the practice of democratic norms, and consequently good practice ensures good effect. For this, the institutional mechanisms within the governance structure should be democratic so that the actors related to the mechanisms can exercise democracy for the greater interest of balancing conflicting interests of efficiency and voice. In this

section, the research intends to find out whether the existing formal institutional mechanisms ensures workers' participation and representation through interest articulation, leadership, and inclusive decision making, and whether these functions contribute to the democratic labour governance in Bangladesh.

WORKERS' PARTICIPATION AND REPRESENTATION: PRACTICES IN BANGLADESH

The practice of workers' participation and representation in institutional mechanisms for interest articulation and inclusive decision making suffers from denial of the employers and indifference attitude of the government in Bangladesh. It is both an action of omission and of commission. It is an act of omission in the sense that the government is not in line with the demands of the workers and so its role as a mediator is weak. On the other hand, it is an act of commission in the sense that the government is in the line of the employers and often acts for them, uses the state machinery to support them. In this section attempt has been taken to assess the practice of worker' participation in three major export oriented sectors of Bangladesh—Ready Made Garments industries, Jute Mills (both state owned and privately owned), and Shrimp Processing Plants.

Interests and disputes over securing the interests are an integral part of industrial and labour relations. Always and everywhere the employers and employees are antagonist actors and both the parties are in a perpetual conflict regarding their self-conflicting interest. In this state of affairs, the government is to act as a mediator by providing the vision and logic of action through the proper enforcement of regulatory provisions.

Industrial sector in Bangladesh is characterized by the weak enforcement of labour law, and this is equally true for the provisions of workers' participation and interest representation mechanisms. Plant level trade union is the basic institution and platform for workers' participation, and acts as the first channel to ensure workers' representation in other institutional mechanisms. Trade unions in Bangladesh have failed to be accepted particularly to the employers in private sector.

> We dislike trade union and do not consider it to be a good thing for business, industry, and workers as well. Workers also do not want to form it otherwise instigated by some workers' federations and political parties. Throughout the history of Bangladesh, we experience the trade unions to be ruinous for industrial growth and development. We cannot accept it in our industry to destroy it. We look after the workers enough. Trade union is unnecessary and an evil (KII ER 1).

On the other hand, workers consider trade union to be a good thing for both employers and employees but they do not get enough opportunity and support from the government and employers to form union in their factory. Workers say that:

Law has given enough rights to them but they cannot exercise those at all. Law permits them to form or join union, but the management terminates them if they try to form union. They should have CBAs to guard them against any oppression, exploitation, and discrimination. In practice they have none to protect them both in and outside the factory (FGD: Gazipur1, Dhaka1 & 2, and Chittagong1 & 2).

Regarding the existence of trade union at plant level the employers' and employees' views are different. It is the BLA 2006 that provides for the provisions of trade union at plant level. Article 176 reads 'subject to the provisions of this Chapter-

(a) Workers, without distinction whatsoever, shall have the right to form trade union primarily for the purpose of regulating the relations between workers and employers or workers and workers and, subject to the constitution of the union concerned, to joint trade union of their own choosing;

(b) Employers, without distinction whatsoever, shall have the right to form trade union primarily for the purpose of regulating the relations between employers and workers or employers and employers and, subject to the constitution of the union concerned, to join trade union of their own choosing ; and

(c) Trade unions of workers and employers shall have the right to form and join federations and any such union and federation shall have the right to affiliate with any international organization and confederation of worker's or employer's organizations.

(d) Trade unions and employers' associations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes'.

It is beyond doubt that considering the importance and necessity of the trade union(s) for workers' participation and representation, the law has provided for the provisions. But in practice, the existence of trade union in plant level in the main stream formal private sector is very few in number.

> 'It is the responsibility of the workers to form unions, not the owners or government. Workers often come to register trade unions, but due to lack of proper legal procedure they fail. This is why the number of basic trade unions in Bangladesh is very low' (KII GR 1).

From the above discussion, it is clear that the law has provided for the provisions of forming trade union(s) at plant level for the well-functioning of workers' participation and representation mechanisms i.e., CBA and WPC. But in practice these institutions are formed avoiding the trade union. How can be the effectiveness of those institutions in respect of workers' representation to secure the interests of both employers and employees, and making healthy industrial and labour relations? This is explained below-

INTEREST ARTICULATION: CHANNELS AND PROCESSES

It is very complex, indeed, without any well-formed institutional mechanism, to constitute, aggregate, resolve, mediate, and articulate the diverse interests of individuals and groups. The workers in Bangladesh lack the formal associational character due to the absence of plant level organizing institution. That is why they are scattered, unorganized, and anomic in nature. In such a situation they cannot follow the formal way to articulate their grievances, demands, aspirations, and inclinations. The workers do not have any opportunity to participate and represent themselves, to exchange their views with their owners, and to talk about their painful life (FGD: Chittaging-1, Dhaha-1). They have no union to put their grievances. Often they share their problems among the fellow workers, and it does not bring any result to them (FGD Chittagong-1, Dhaka-2, Gazipur1).

Channels: Why and How

As per law the workers should have a channel to handle their grievances, and help express their aspirations but actually they cannot articulate their demands. The provision of freedom of association is supported by the Constitution of Bangladesh, Bangladesh Labour Law 2006, and by the ILO Convention 87 & 98. But unfortunately the owners do not allow the exercise of the right at plant level except some state owned enterprises. Consequently 'the workers fail to channel their grievances; the owners get the chance to avoid the compliance of fundamental provisions of labour law, and mal-governance instead of democratic governance dominates the work and workplace. The most of unhappy events like labour unrest happens for the lack of freedom of association (FGD: Khulna 2). They often make complaints to the production managers or General Manager but such articulation brings no benefit.

The manager tells the workers to report to him or other management personnel about any of their problems. The workers also consider their manager, supervisors, line chiefs, and floor in-charge to be their appropriate authority to realize their demand. The workers very often report against oppression/ misconduct. Sometimes they take steps to redress it but most of the problems remain unheard and unsolved. When a worker loses his job, he goes to the manager but he cannot revive it (FGD: Chittagong 1).

The workers interests are not limited to the factory only. They have interests outside the factory also. They justify trade unions inside factory for their work related interests such as work and workplace environment, arbitrary dismissal, due wage and benefit, salary increase, misbehaviour and harassment, physical and mental abuse etc. On the other hand they justify trade union outside factory for creating a social safety-net. They think that membership of a trade union affiliated to broader federation and national federation can save them from many social problems and even from police cases. That is why they feel necessity to form trade union in plant level. A worker says 'the management looks after us as long as we are in the factory. When we are out of the gate, they do know us. They do not help us outside the factory. So, we need unions that can save us from many problems outside the factory (FGD: Chittagong 1). She goes on saying that:

> Yesterday, eight of our workers have been sacked on ground of misconduct. They met the manager and appealed to restore their jobs but they were denied. Today, I have lost my job. I will go to a 'dada' (older brother) who is engaged in a federation, to help me get back the job.

From the above discussion, it is clear that, in spite of the inclination from the employers, the workers want trade unions to articulate and to secure their multiple interests—inside factory, outside factory, and compliance of labour law provisions. But in general the Shrimp Processing Plants accept neither the union nor the CBA as a

mechanism for workers' participation and representation. The Jute Mills usually practice CBA and trade union as workers' participation mechanisms, and a general propensity to use Participation Committee as a mechanism for workers' involvement is seen in some of the ready-made garment industries. Due to lack of this channel, the workers are disunited, scattered, non-associational, and very often anomic. For this reason other channels of interest articulation and representation becomes dysfunctional.

Interest Articulation through Participation Committee

The employers consider the participation committee to be the substitute for trade union (KII ER-1, 2). But the committee is something different from union by spirit, legal status, and institutional character (KII WR 1, 2, CSR 1, 2). Trade union as a democratic institution secures interest of workers, employers, and business. On the other hand the participation committee is formed only to increase the belongingness of the workers. Its' function is not to articulate workers' demands and to create pressure to get those demands passed. Moreover, the members of participation committee may not be the workers' representatives if they are not selected by trade unions or elected directly by the workers. In such cases, the orientation of the committee to the workers may be different.

There are workers who do not know about the participation committee (FGD: Khulna). Some of the workers report that their factory has two female workers as leaders per floor to work for the workers wellbeing. Sometimes they protest against any oppressive activities of the management officials. Often they listen to the workers' grievances and try to solve their problems. But they do not know the name of the organization, designation of those leaders or the process of their being leaders (FGD Dhaka-1). Even there are workers who say that those leaders talk for workers'

interests but serve the interests of the owner (FGD: Gazipur). A worker says that ‘he has heard some names to be the member of participation committee, who are basically the informer of the employer. They inform the manager of the voice of other workers. Consequently, they cause harm to the workers (FGD Gazipur).

There are also some workers who notice that they have a committee in their factory. The committee at times holds meetings and exchanges views, writes down the recommendations and asks for implementation. The committee decides whether the factory will remain closed or open in weekly holidays, and matters relating to workers’ leaves (FGD Chittagong-1).

From the above discussion it can be summed up that an institution with such varied orientation cannot effectively represent workers interest.

Interest Articulation through the Collective Bargaining Agent

Workers consider Collective Bargaining as a democratic process of factory management. It helps the management to manage factory easily and smoothly. The CBA is a democratic body and a strong part of democratic labour governance (FGD: Khulna-1, 2, KII WR 1). On the other hand, employers consider it to be the same as trade union. It only creates undue interfere in the decision of the management. Those workers want to be the members of CBA, who want to earn money without work (KII ER 1). The CBA is essential for those factories where large number of workers work. It acts as a bridge between the management and the workers, and help exercising control over work and workplace. Only those condemn the CBA, who cannot handle it (KII ER 3).

However, CBA is a truly representative body if it is formed through trade union(s) as per law. The CBA is widely practiced in the state owned enterprises. The CBA can effectively bargain on the issue of workers legal dues, wage increase, overtime payment as per law, leave, sick leave with pay, maternity leave with pay,

promotion, termination benefit etc.(FGD Khulna-3) Workers say that the management fears the CBA as it prevents corruptions, protests wastage, and negligence (FGD Khulna-2). A CBA member says that:

> In most cases unhappy relations between management and CBA happen regarding purchase matters. The management always tries to buy low quality things/ equipment /raw materials for the highest price. This is corruption and so the CBA protest such actions. This month the authority has bought 30 tons of iron rods of 2.5mm which is not suitable for the machine pins. The actual requirement is 2mm rod which is calculated to be 5o pins/kg and 22 tons is enough for the factory requirement. But the authority has bought eight tons more which is undue expenditure (FGD: Khulna 1).

From the above discussion, it can be said that only those institutional mechanisms can be regarded as effective for workers' participation and representation, which is formed through the well organized and independent trade unions. Unions determine the workers associational character and this character in turn determine the process of interest articulation.

Interest Articulation: Processes

As the workers in Bangladesh are not organized through the plant level trade union, they lack the associational group character. So the workers' groups are mainly non-associational and anomic in nature. For this very character, they cannot articulate their demands legitimately and so failed to get their demands passed through deliberations and negotiations. This leads the workers to follow the illegitimate and coercive process of interest articulation. Very often the workers' resistance takes the form of Sit-in protests and protest marches, work stoppage, Strikes, blockades, damage to factory and other property, confinement of authority etc.

Outcomes

As the nature of workers' resistances is informal, they fail to achieve the expected results. Very often their resistances are suppressed through police actions, filing criminal cases, job termination, disappearance, and torture by the hired hooligans. Due to the unwritten character of their demands, and legitimacy gap of representation,

those demands do not get the chance to go to the table talk and signing of Memorandum of Understanding (MoU), and negotiation. Often those demands get verbal promises that are not kept later on. This leads the workers to go for further actions and this is followed by severe reactions. This has been a common fact for Bangladesh for last couple years. From 2006 to 2010 there have been 162 workers' collective resistances, on an annual average. Workers are of the view that one of the major causes of labour unrest in Bangladesh is the non-compliance of workers' participation and representation system (FGD: Khulna 1).

LEADERSHIP

It is beyond doubt that the practice of industrial democracy through participation and representation mechanisms workers' leadership grows. The practice of democratic norms in plant level, contribute to the enhancement of leadership quality for federation and national federation level. Due to lack of plant level trade unions, the workers do not get chance to practice democratic norms like election and to elect their representative. Like a pyramid, plant level trade unions form federations, federations form national federations. The elected officers of plant level unions elect the officers of federations.

In practice the plant level leaders are chosen by the workers on the basis of their courage and communication skill rather than leadership quality. 'We have no formal leader. We regard him leader, who can help us on the floor', says a worker (FGD: Chittagong 1). Workers have different perceptions regarding the leaders of the federation. Some workers do not know how the federations make their leaders (FGD: Dhaka 1). Some workers consider the federation leaders to be democratically elected because in every two or three years the federation holds election and the members

vote for them. Some say that the election is fair and every member is free to be candidate for any post, if she/he is suitable (FGD: Gazipur 1). Workers report that 'most of the federation leaders like to hold a particular post for long time, they are elected again and again (FGD: Khulna 2).

Same is the response regarding the CBA members. It is true that the members of the CBA are democratically elected by the workers, but the panel is not chosen and selected by the workers (KII WR 4). The leaders of the CBA are democratically elected by the workers through secret vote but they are not nominated by the workers. Panels are set for election from above. Workers involved in party politics are always given the chance to be elected (KII WR 5, FGD: Khulna-1, 2).One of the national level federation leaders comments that:

> The practice of democracy in a labour organization like federation is practically impossible. The base of federation is plant level trade unions. In our country most of the main stream workers' federations lack this base. The members only keep in touch with the federation level leaders to seek help if necessary. In such a situation, 'who will vote for whom'- is a problem (KII WR-6).

Therefore, a leader can be elected again and again. Another leader of national federation comments that 'it is not undemocratic for a leader to be elected for a number of terms/ tenures, if he/she is elected every time either by vote or by consent of the councillor' (KII WR 4).

From the above discussion it becomes clear that the worker' leader do not hold the democratic group strength because of their political affiliation and legitimacy gap. Such leadership can be considered as suitable partner for inclusive decision making in the negotiation table. So, very often the worker' leaders fail to secure the legitimate interest of the workers.

INCLUSIVE DECISION MAKING

In the context of labour governance, inclusive decisions are made in three levels. The decisions are bipartite and tripartite in nature. In plant level bipartite decisions are made between the workers and employer. The workers are presented either by trade unions or by the CBA and Participation Committee members. The participation committee lacks the legal strength to be effective as its recommendations are non-binding for the employers. On the other hand, due to the non-existence of trade union at plant level the workers suffer from being a powerful actor. In such cases, the employer either sits with the CBA or with all workers of the farm.

Workers are never called to discuss any problem regarding work and workplace issues. The management sometimes serves notice declaring the extension of working hour or curtail of week end holidays to meet the production target (FGD: Gazipur1, Chittagong 1, Dhaka 1, 2). Workers of a discussion meeting say that:

> We don't have any opportunity to participate in any issue of the firm, even with something that is inevitably ours. Once our factory delayed our payment for nearly two weeks and some of us talked about it outside the factory. This was reported to the Manager. The following day he came to our floor and asked for the leader, after three days two of our workers were sacked' (FGD: Gazipur1).

The workers and CBA members report that the management is not willing to discuss anything with the CBA. The authority does not consult or share information with the workers/CBAs. They fear that such step may bring out their record of corruptions. There are so many things that cause loss to the mill and the CBA officially send letter/application to the authority to enquire the matter. Sometimes the management forms probe committees but the report is not published. 'Actually the scope of inclusive decision making is very narrow at plant level. They think that such narrow scope of inclusive decision making is not suitable for democratic labour governance and democratic industrial relations' (FGD: Khulna-2, 3).

In the sector/industry level decision making, the workers suffer from the lack of institutional mechanism, as the BLA 2006 provides no such mechanism to take place. The Minimum Wages Board is the single tripartite mechanism to operate in sector level to fix minimum rates of wages and to recommend to the government. Government appoints one worker representative who is not necessarily a worker.

In this level often important tripartite meetings take place to settle over the grievance issues. Allegations are there that 'the government holds the meetings in the employers' association office and invites workers' leaders who do not represent the workers. The decision taken in these meetings go in favour of the employers' (KII WR-8). However, all the grievance issues over wage and overtime rates, unfair labour practice, arbitrary dismissal, right violation etc. are settled in this level.

National level decisions are made through a tripartite national body called Tripartite Consultative Committee (TCC). Its main function is to recommend the formulation of labour policy, amendment of existing labour laws, matters related to the improvement of industrial relations, and adoption of ILO Conventions. The labour Court is another tripartite national body to settle industrial disputes.

CONCLUSION

Countries across the world practice workers' participation and representation through various channels. Bangladesh has also introduced a number of institutions for workers' participation and representation in its labour laws. The BLA 2006 and the EWWSIRA 2010 have created a number of institutional mechanisms to ensure workers' participation and representation at plant level, sector/industry level and national level.

From the above discussion it is seen that the institutions introduced in the regulatory framework of labour governance in Bangladesh are democratic. Yet, the institutions are inherently weak and lack democratic spirit and strength enough to contribute to the practice of democracy within them. In practice, those institutions fail to ensure effective participation and representation of the workers in terms of articulating interests, creating leadership, and making inclusive decisions. Besides, there is negligence of both the state and non-state actors to enforce the regulations properly. Due to this lack of effective participation rights, the workers are being deprived of some other fundamental rights like freedom of association, and collective bargaining.

In the absence of these fundamental right the workers in Bangladesh are being exploited physically, mentally, and the greatest one economically. All these deprivations have taken a violent form in the last couple of years and have made the industrial and labour relations confrontational. Due to this confrontation, labour unrest has become a common phenomenon in the industrial sector of Bangladesh. So, it can be said in conclusion that the lack of democratic practice through workers' participation and representation, balancing the issues of efficiency and voice has been failed and that has finally failed the democratic labour governance in Bangladesh.

CHAPTER VI
CONCLUSION

Having an intensive and extensive study on the current state of democratic practices and deficits in Bangladesh's labour governance, I bring the findings together in this chapter. This research has analysed and investigated labour governance instruments—laws, policies, enforcement mechanisms, dispute settlement mechanisms, existence and exercise of workers' rights and participatory and representative bipartite and tripartite institutional mechanisms—to explore the regulatory arrangements and scope of democratic practices. The study has focused on the components and principles of democracy—Rule of Law, Fundamental Rights and Freedom, Participation and Representation—both in regulatory framework and in practice.

This chapter consists of four sections. The first section recaps the central questions of the study while the second section summarizes the key findings of the research. The third section refers to the broader implications of the findings, and the final section draws attention for the scope of future research.

THE CENTRAL QUESTIONS

For decades, the labour sector of Bangladesh is featured with massive unrest and this unrest is growing both in numbers and in scale of intensity. Bangladesh has democratically enacted labour laws, labour administration and inspection, and grievance handling mechanisms to execute and enforce the provisions of laws. The workers are given some constitutionally guaranteed rights that are protected in the labour laws. The laws provide the workers with a number of institutional mechanisms that are supposed to act as labour governing structures. These institutional mechanisms are designed to allow workers' voice, to express their demands and

grievances, to attribute their ills and problems, and to hold bipartite and tripartite dialogues towards democratic deliberations for solving problems and handling grievances. In practice, we see the workers protesting on the street with violent means vandalism to express their demands and to remedy their problems avoiding the democratic process of grievance resolution. We hardly knew whether the principles of rule of law have been incorporated in the regulatory framework and whether the workers were allowed to exercise the rights they are entitled to. We neither knew whether the mechanisms for workers' participation and representation are functioning.

The questions addressed in this dissertation are—whether the provisions of labour governance regulatory framework are enforced properly? To what extent the workers are allowed to exercise their democratic rights democratically, and whether and to what extent the application of laws and the exercise of rights contribute to the democratic practices in labour governance? The objectives of this dissertation are thus threefold—(i) to explore whether the labour regulatory framework ensures rule of law (ii) to examine whether the existence and exercise of workers fundamental rights promote or inhibit democratic practices in labour governance and (iii) to analyse whether the workers' participation and representation mechanisms contribute to the democratization in labour governance.

SUMMARY OF FINDINGS

To explore the incorporation of the principles of rule of law, I have examined the regulatory framework and investigated into the enforcement of those principles by the system of labour administration and inspection along with the dispute settlement mechanisms. From the investigation, I find that the regulatory framework of labour governance in Bangladesh has both democratic strengths and democratic deficits. The

strengths are that the BLA 2006 and the EWWSIRA 2010 provide provisions on employment security, rights, punishment for violation of labour law provisions, protection from forced and compulsory labour, protection of adolescent and elimination of child labour, social security measures, enforcement mechanisms and dispute settlement mechanisms.

The deficits are that the labour laws fail to provide employment security to all categories of workers, exclude certain categories of workers from the right to freedom of association and collective bargaining, impose restrictions on the right to strike and lock outs, offers insufficient and even irrational penalty for the violation of labour law provisions, lack any provision on pension and medical and life insurance of workers, and neglect compulsory provisions on security measures.

Along with these deficits there is weak enforcement of the labour laws for which the employment security of the workers cannot be ensured, workers' rights cannot be established, and the social security measures cannot be provided. Due to the restrictions on the rights to strikes the workers cannot get their demands passed through collective bargaining. For the lack of efficient inspection system and sufficient number of inspectors, the enforcement of labour law particularly the provisions on health, hygiene, and safety conditions are mostly not complied with. There is also lack of democratic norms of inspection—participation of workers' and employers' representatives, collecting information from the workers, collaboration of workers' and employers' associations, confidentiality of sources of information, detachment of the inspectors, and enhanced penalty for repetitive offences—the social compliance cannot be ensured. The study finds that the application of the laws is different across the industrial sectors. Among the three sectors the jute mills under

BJMC and BJMA comply the provisions related to employment security and workers' right to association more than other sectors. The jute mills under BJSA, garment industries and the shrimp processing plants hardly comply those provisions.

The study finds that the measure of punishments is imbalanced and insufficient and there is also non-execution of the provisions for which the workers are deprived of the compensation facilities provided in the labour law. The workers are terminated without prior notice, without any chance to self-defense and without any termination benefits.

The functions of the labour administration to execute the provisions of labour laws, to establish democratic institutions of labour governance, to monitor the activities of the institutional mechanisms, and to enforce workers' right are poorly discharged. The lack of updated system of administration, inefficiency, non-cooperation of the employers, negligence of the workers' federations, and weaker role of the government are explored as the principal causes of the weak enforcement and non-compliance of labour law.

The dispute settlement mechanisms are also weak as it lacks sufficient manpower and logistic supports. There is also lack of democratic character of the dispute settlement mechanisms. The law provides that the industrial disputes can only be raised either by the collective bargaining agent (CBA) or by the employer. In practice, most of the sectors lack trade unions without which no CBA can be formed. The labour administration as well as the government fails to establish workers right to form union in the factories. Besides, the law provides democratic provision of worker' and employers' representation in the labour courts but the representatives are selected by the government which is undemocratic. The study explores that the workers of jute

mills under BJMC, BJMA, and BJSA have the opportunity to form CBAs through election. The CBAs raise the industrial disputes—individual and collective—to the dispute settlement mechanisms for resolution. The workers engaged in the RMG industries and Shrimp Processing Plants do not have the opportunity as they have no CBAs to raise disputes or bargain over any disputed issues.

Rights are the fundamental condition of emancipation and development. The people at work are granted by the Constitution to exercise their fundamental rights—Rights to Equality (equal application of the provisions of law without discrimination, equal opportunity, and equal protection under law), Rights to Freedom of Opinion and Expression, Rights to Association, and Right to Bargain Collectively—to develop their capacity as a party to govern the work, workplace and overall labour governance.

In Bangladesh, the workers at large are governed mainly by the BLA 2006 and the workers of the EPZs are governed by the EWWSIRA 2010. Both the laws have incorporated and prioritized the aforesaid rights but due to legal complexity, non-cooperation of the employers and indifferent attitude of the government, the workers cannot exercise and enjoy those rights. The study finds that the right to equality is not equal across the industrial sectors and there are four forms of discriminations—(i) discrimination in leaves and promotion (ii) discrimination in attitude towards female workers (iii) discrimination in race and regionalism and (iv) discrimination in wage setting. Almost all the tree sectors have some sort of discrimination but the RMG sector is plagued with all forms of discriminations.

While the state owned jute industries under BJMC ensure equal application of the provisions on employment and contract—employment letter and service book, equal opportunity and protection, maternity and sick leaves, termination benefits—the

privately owned industries including the jute mills under the BJMA and BJSA, the garment factories under the BGMEA and BKMEA, the shrimp processing plants under the BFFEA comply partially the terms and conditions of employment and contract. This signifies that the rights to equality is ensured in the laws but those are not enforced equally in the industrial sectors at large.

Workers' rights to freedom of opinion and expression are hardly incorporated in the BLA 2006 and the practices are also negligible. Neither the workers of SOEs nor the workers of privately owned industries are given the scope to be informed and to be consulted about the physical conditions of workplace environment and occupational safety and health issues. The research explores that the matters related to health, hygiene, and safety are left to be decided by the employers and CIF&E. There are few provisions that allow workers to provide opinion and to express concerns over the safety issues but those can only be exercised by some institutional mechanisms like WPCs and CBAs. The paradox is that almost all the workers engaged in the privately owned enterprises are deprived of the practice of WPCs and CBAs because those institutions cannot be formed without the existence of workers associations like trade unions. The workers of SOEs and privately owned jute mills have trade unions and elected CBAs and they can attribute their ills and problems to some extent to the management. The lack of opportunity of the mass workers to express their opinion over the safety issues leads to the non-compliance of essential safety measures and results in frequent industrial accidents—factory fires and building collapse—killing and injuring thousands of workers every year.

Workers' rights to association particularly the formation of basic trade unions in Bangladesh are not prioritized at all. The provisions of law regarding the conditions

and process of union formation are rather restrictions to the workers' rights to associations. Along with legal restrictions and impediments; the employers also use intimidations, firings, verbal and physical abuses, arbitrary lockouts, attacks of police and hired goons to resist unionism in the privately owned industries. Except SOEs and jute industries under BJMA and BJSA, the workers' associations are hardly found in the RMG and shrimp processing plants. The absence of plant level unions affects and often prevents the industrial and national level federations to exercise democracy.

Worker's right to collective bargaining is also not respected in Bangladesh. The formation of CBA is subject to trade unions. If there is no union there can be no CBA. Due to this legal provision the workers of RMG and shrimp processing plants lack the opportunity to bargain collectively with their employers on matters of wage and work related issues including the occupational safety and health measures of the workplaces. Traditionally the jute mills—state owned and privately owned—allow the workers to form CBAs through election and the workers in these mills are capable to bargain collectively. Nonetheless the workers at large do not have the right to raise their voice and negotiate over issues related to their work and wages. Due to lack of practices of collective bargaining, the workers capacity is also lower. They lack access to information and required knowledge needed to bargain effectively. Moreover, the representatives of the workers also lack the required organizational strength and legitimacy in the bargaining table arranged at industrial and national level.

It is found that there is difference in the bargaining strength and scope among the CBAs in the state owned enterprises (SOEs) and privately owned enterprises. It has been explored that the CBAs in the privately owned enterprises—jute mills under BJMA and BJSA—have limited scope to bargain with their employers/management

because the management of these enterprises is less tolerant and go for lock out in tough bargaining situation. The CBAs fear lock outs because it affect their income security. In contrast the CBAs of SOEs—jute mills under BJMC—are relatively powerful and can bargain strongly with the management because the management fears any situation of strikes that may cause losses to the company.

Bangladesh has introduced a number of institutions for workers' participation and representation in its labour laws—in the BLA 2006 and the EWWSIRA 2010—to ensure workers' participation and representation at plant level, sector/industry level and national level. The institutions are democratic though they have inherent weakness and lack democratic spirit and strength enough to contribute to the practice of democracy. In practice the institutions are non-existent. The Canteen Management Committee (CMC) is hardly found and the WPC is rarely found in the factories. The study finds that some of the RMG factories have formed the WPC but is non-existent in the shrimp processing plants. In the RMG factories most of the WPCs are formed by the employer(s) and the mass workers are not concerned with it. Institutions with such weakness fail to ensure effective participation and representation of the workers in terms of articulating interests, creating leadership, and making inclusive decisions. There is also negligence of both the state and non-state actors to establish those institutions.

The Minimum Wages Board (MWB) is another representative body to determine the wages for the working people. There is opportunity for the workers to send their representatives to bargain for them. In practice, the workers' representatives are not elected or selected by the workers rather they are nominated by the government. These representatives lack legitimacy in the real sense of the term in one hand and lack representative character on the other hand as they are not necessarily workers and not well informed about the ills and anxieties of the workers. Due to this lack, they fail to bargain over the issue in favour of the workers.

In the absence of worker' fundamental rights exercise and dysfunctional non-democratic representative institutional mechanisms, the workers in Bangladesh are being exploited physically, mentally, and the greatest one economically. All these deprivations have taken a violent form in the last couple of years and have made the industrial and labour relations confrontational. Due to this confrontation, labour unrest has become a common phenomenon in the industrial sector of Bangladesh.

Finally, it can be said that the labour laws in Bangladesh have incorporated some democratic principles but those lack obligatory provisions. Consequently, the laws fail to provide social protection at large. The laws provide the workers with rights but they are not in practice. The negligence of the state and non-state actors of industrial relations to vitalize workers' participation and representation mechanisms ultimately prevents the workers from articulating their demands, aspirations, and grievances legitimately. Having no formal ways, the workers go for militant resistance movement which is followed by violence and counter violence. This destroys the democratic norms of dispute resolution through deliberations and fails to ensure democratic labour governance. To ensure democratic governance at workplace and in national level for better industrial and labour relations, the workers should be allowed to exercise the democratic rights democratically. The government should play its just role to implement the provisions on the rights to equality and ensure more scope and space for workers to express their concerns over the issues related to work, working environment, and occupational safety and health. Above all, workers at large should be given free trade union right to organize and to bargain collectively and effectively. Otherwise, democratic labour governance will never be possible.

IMPLICATIONS OF THE STUDY

The findings of the study put forward some implications. The study finds that the labour laws make no provision on forced labour. Forced labour is strongly prohibited in the Constitution of Bangladesh but the BLA 2006 neither defines nor prohibits forced labour and compulsory labour, I argue that due to this lack the employers are being benefited and the workers are being repressed, exploited and being compelled to work for longer period than usual working hours. The fault should be removed and the law should be amended in line with the Constitution and ILO convention.

The study explores that the labour laws provides the workers with a number of social security measures but there is lack of any binding provision for the employers to comply them. Due to this lack the workers are being deprived of the due benefits they are entitled to. Besides, most of the benefits require a certain number of workers to be engaged in an enterprise. This number binding privileges the employers towards non-compliance. I argue that the protective measures to be beneficial for the workers, the obligatory provisions to be inserted and the number binding should be removed.

The penalty structure of the BLA 2006 is also negligible. Often it seems the non-complying is more beneficial for the employers. I claim that this negligible penalty for non-compliance of labour law is the root cause of all problems. The penalty for violation of labour law provisions should be several times higher and harder and it should be progressive so that the employers dare not violate the provisions repetitively.

The research explores that the inspection service of the inspectorate is weak due to many reasons. Along with insufficient manpower and resources, there is lack of democratic norms of inspection. The workers are a party to the system of industrial

and labour relations but they are not consulted by the inspectors and they cannot raise their voices and ills to the inspectors for remedy. I argue that the democratic norms of inspection—participation, consultation, collaboration, detachment, and enhanced penalty—should be ensured to ensure quality inspection.

The study shows that the laws hardly provide the workers the right to opinion and expression. The workers are the main actors of a plant or factory. They face the hard conditions of work and workplace. They should be provided the right to compel the employers to comply with the working conditions as per law. The contrast is that, to settle over the working environment and to ensure the health, hygiene, and safety issues, the employers and the CIF&E are given all the responsibility. I argue that this only increases the ills of the workers and makes their security more vulnerable. Therefore, law should be amended in such a way that the workers can attribute their workplace related problems and contribute to the development of working environment.

The research shows that the institutional mechanisms of workers' participation and representation are to some extent democratic but they are not at play and dysfunctional. I argue that this lack of participation and representation of the workers compel them to take informal and violent ways to express their demands, aspirations, and grievances. They should be provided with the right to form proper platforms to participate and the mechanisms to represent the workers should be established. This will help organize the workers and avoid informal and violent means of protest.

AREAS OF FURTHER RESEARCH

To address the democratic practices and deficits in Bangladesh's labour governance, the dissertation focuses on three main components of democracy—Rule of Law, Fundamental Rights and Freedom, and Participation and Representation. These components have been searched in three formal industrial sub-sectors—the Ready Made Garment Industries (RMG), Jute Industries (under BJMC, BJMA, and BJSA),

and Shrimp Processing Plants. The study raises several issues—related to contextual differences, gender dimension, and issues other than democratic view point—for further research. As such, a separate study can be conducted in a cross country perspective on any other parts of the world with different socioeconomic background to explore the democratic practices and deficits and to compare the variations in relation to Bangladesh. While carrying out the study, I find some issues worthy of independent study. Undertaking initiative to study those issues may contribute to the generation and development of new knowledge and may contribute to new policy choice.

The study finds that the regulatory framework of labour governance in Bangladesh has both democratic strengths and weaknesses. I did not focus whether the strengths lessen the deficits and promote democratic practices or the deficits lessen the strengths and inhibit the practices of democracy. A separate study can be done to explore the interplay between democratic strengths and weakness.

In conducting the study, I came to know that extensive enforcement of labour laws through inspection to establish democratic norms and to comply with the labour standards creates job destructions and unemployment goes high. A government is to follow the policy to lessen unemployment. An independent study can be carried out to find out whether the compliance of labour standards and democratization of industrial relations creates job destruction and unemployment.

Further study may be carried on the gender dimension. The current research finds that the involvement of women workers in trade union activities and in the representation mechanisms is lower though they constitute nearly 80% of garment workforce and 70% of the shrimp industries.

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ANNEXES

ANNEX I **LISTS OF FOCUS GROUP DISCUSSIONS (FGDs)**

FGDs WITH READY MADE GARMENTS (RMG) WORKERS

FGD 1: Chittagong, Place: Pahartoli,
Participants: 11, Date: 05.06.2012

SL	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Md. Noman Mia	38	3	8
2	Moriom Begum	25	2	3
3	Ozifa Khatun	26	4	5
4	Rina Majumder	25	3	5
5	Rubi Akter	18	1	1
6	Aklima Akter	18	1	1
7	Munni Begum	18	1	1
8	Renu Begum	25	3	8
9	Kohinoor Akter	18	1	1
10	Dilip Kumar	35	3	8
11	Sukant Paul	35	2	4

FGD 2**:** Chittagong, Place: Halishahar,
Participants: 9, Date: 06/06/2012

SL	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Suman Chakma	28	5	5
2	Mich Chakma	24	3	3
3	Nayan Chakma	18	2	2
4	Riken Chakma	24	2	5
5	Rinu Chakma	23	4	4
6	Elin Chakma	22	3	5
7	Purno Vikash	31	7	7
8	Neuton Chakma	19	2	2
9	Nomita Chakma	20	2	2

FGD 3: Chittagong, Place: Halishahar,
Participants: 8, Date: 06/06/2012

SL	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Konika Chakma	23	1	2
2	Dibshi Chakma	23	3	5
3	Anaka Chakma	27	5	7
4	Remi	35	7	7
5	Rosy Akter	21	1	3
6	Snigdha Paul	24	2	2
7	Md. Ariful Islam	25	3	3
8	Md. Nasir Ali	23	1	2

FGD 1: Dhaka, Place: Malibagh,
Participants: 8, Date: 14/06/2012

SL	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Parveen Sultana	35	1	2
2	Roksana Akter	20	2	2
3	Rosina Khatun	22	2	2
4	Happy Akter	20	2	2
5	Sonda Khatun	25	1	5
6	Monira Begum	25	1	5
7	Pinki Akter	30	1	6
8	Minara Khatun	22	1	1

FGD 2: Dhaka, Place: Mirpur 10,
Participants: 9, Date: 16/06/2012

SL	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Belal Hossian	18	2	2
2	Md. Suman Howlader	23	4	5
3	Md. Mustafizur Rahman	35	3	8
4	Md. Shah Alam	19	1	2
5	Md. Raihan	21	1	1
6	Md. Delwar Hossain	26	1	1
7	Md. Mamun	18	1	1
8	Md. Ibrahim	20	3	3
9	Md. Russel	25	2	5

FGD 1: Gazipur, Place: Joydevpur,
Participants: 10, Date: 03/07/2012

SL	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Md. Noor Hossain	25	1	2
2	Most. Farida Begum	25	5	5
3	Most. Masuda Begum	25	6	6
4	Md. Jahid Hasan	28	2	7
5	Sheuly Akter	32	2	5
6	Lutfor Rahman	32	4	8
7	Jibon Sarker	26	2	4
8	Shamima Akter	30	2	5
9	Alpana Akter	24	1	6
10	Sultan Ahmed	32	5	8

FGDS WITH JUTE MILLS' WORKERS

FGD 1: Khulna, Place: Eastern Jute Mill, Atra,
Participants: 13, Date: 20/06/2012

SL	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Md. Alauddin,	55	32	32
2	Syed Jakir Hossain	50	32	32
3	Abdul Mazid Mollah	56	35	35
4	Md. Nazmul Ghazi	53	35	35
5	Md. Idris Ali	33	7	7
6	Md. Mozammel Huque	45	12	12
7	Md. Liakat Hosen	45	14	20
8	Md. Monirul Islam	40	12	15
9	Md. Abul Bashar	45	12	15
10	Md. Imlak Hossain	33	7	10
11	Md. Nazrul Islam	33	7	10
12	Nazrul Islam	35	7	10
13	Md. Salim Morol	33	7	10

FGD 2 Khulna, Place: Sonali Jute Mill, Mirerdanga,
Participants: 08, Date: 20/06/ 2012

SL	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Md. Sekander Ali Sheikh	51	34	34
2	Md. Zahurul Ialam	25	7	7
3	Md. Shahidul Islam	45	20	20
4	Md. Abul Kalam Azad	28	12	12
5	Md. Enaet Ali	38	14	14
6	S. M. Raju Hosen	22	7	7
7	Md. Azad	30	5	7
8	Rahmat Ali	45	20	20

FGD 3: Khulna, Place: Ajax Jute Mill, Khalishpur,
Participants: 10, Date: 20/06/2012

SL	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Md. Abdul Khaleque	50	35	40
2	Md. Abdur Rashid	73	45	48
3	Abul Hosen	60	45	45
4	Manik Hawlader	67	45	45
5	Md. Zakir Hossain	29	14	14
6	Md. Khalilur Rahman	48	26	26
7	Md. hanif	63	32	32
8	Abdus Sattar	72	46	46
9	Abdul Awal	55	30	30
10	Md. Lal Mia	72	44	44

FGD 1: Rajshahi, Place: Rajshahi Jute Mills,
Participants: 08, Date: 29/05/2012

SL	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Md. Abdul hakim	55	38	38
2	Md. Hafizur Rahman	56	30	30
3	Md. Abdul Hamid	52	30	30
4	Md. Nazrul Islam	50	32	32
5	Md. Anisur Rahman	50	35	35
6	Md. Mohor Ali	37	16	16
7	Nazrul Islam Mia	40	19	19
8	Md. Azgor Ali	34	14	14

FGD 2: Rajshahi, Place: Rahman Jute Spinners (pvt) Ltd. Puthia

Participants: 08, Date: 22/05/2013

Sl	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Abdul Wahed	35	2	2
2	Md. Abdul Momin	22	2	2
3	Shomsher Mollah	21	1	1
4	Abdus Sattar	23	2	2
5	Monirul islam	22	1	1
6	Siful Islam	24	1	1
7	Torikul Islam	24	2	2
8	Abdul barek	40	1	8

FGDS WITH SHRIMP PROCESSING PLANTS' WORKERS

FGD 1: Cox's Bazar, Place: BSCIC, Industrial Area.
Participants: 10 (Workers under Contractor), Dated: 08/06/2012

SL	Name	Age	Experience	
			Present Factory	In the Sector
1	Sajeda Begum	20	4	4
2	Morsheda Begum	16	1	1
3	Khurshida Akter	22	2	2
4	Saju Begum	21	1/2	1/2
5	Md. Joynal Mia	20	2	2
6	Md. Rofiqul Islam	40	5	8
7	Md. Bojol Ahmed	35	5	7
8	Md. Abul Kashem	32	3	7
9	Abdul Malek	35	1	3
10	Manik Howlader	32	1	2

FGD 2: Cox's Bazar, Place: BSCIC. Industrial Area.
Participants: 8 (Permanent Workers), Dated: 09/06/2012

SL	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Mst. Kulsuma Begum	28	3	3
2	Fatima Begum	22	2	2
3	Sonda khatun	25	2	5
4	Md. Raihan	23	1	3
5	Md. Delwar Hossain	26	2	6
6	Hafizur Rahman	42	6	6
7	Shafiqul Islam	39	4	5
8	Abdul Mannan	38	4	4

FGD 1: Khulna, Place: East-Rupsha, Bagmara,
Participants: 10 (Permanent Workers), Dated: 21/06/2012

SL	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Khadiza Begum	35	4	8
2	Pakhi Begum	35	4	9
3	Mst. Akhi Akter	14	1	1
4	Mst. Khushi Akter	24	1	2
5	Nazma Akter	18	3	3
6	Fahmida Yasmin	20	1	3
7	Sabina Akter Moyna	17	1	2
8	Md. Azad	30	1	2
9	Md. Hanif	33	2	3
10	Abdur Rashid	30	1	2

FGD 2: Khulna, Place: East-Rupsha, Bagmara.
Participants: 9 (Workers under Contractor), Dated: 23/06/2012

SL	Name	Age	Experience (Year)	
			Present Factory	In the Sector
1	Noman Mia	38	2	5
2	Morium Begum	25	2	3
3	Ruby Akter	16	1	1
4	Md. Nazrul Islam	35	3	3
5	Musa Mia	33	1	3
6	Salim Ahmed	30	2	2
7	Milon Hossain	28	1	1
8	Jahid Hossain	26	3	5
9	Golam Rahman	22	1	1

ANNEX II LISTS OF KEY INFORMANTS

WR	WORKERS' REPRESENTATIVE
WR 1	Md. Zafrul Hasan, Bangladesh Jatiyotabadi Sromik Dal (BJSD)
WR2	Ad. Delware Hossain, Bangladesh Labour Federation.
WR 3	Mujibor Rahman Bhuiyan, Bangladesh Mukto Sromik Federation.
WR 4	Dr. Wazedul Islam Khan, Bangladesh Trade Union Centre
WR 5	Shahidullah Badal, Bangladesh Garments Tailors Sromik Union,
WR 6	Joly Talukder, Garments Sramik Trade Union Centre
WR 7	K. M. Ruhul Amin, GS, Garments Sramik Trade Union Centre.
WR 8	S A Jalil, Secretary, Unite Garments Workers' Federation
WR 9	Topon Dutt, WR, Labour Court-1, Chittagong.
WR10	Pahari Bhattachriya, Bangladesh Trade Union Center, Chittagong.
WR 11	Md. Jahid Hossain, Textile Worker, Gazipur.
WR12	Md. Mustafizur Rahman, Garment Worker, Mirpur 10, Dhaka
WR13	Pinki Akter, Garment Worker, Malibag, Dhaka.
WR 14	Md. Alauddin, President, CBA, Eastern Jute Mill, Khulna
WR 15	Sayed Jakir Hossain, G S, CBA, Eastern Jute Mill, Khulna
WR 16	Mohammad Hossain, Crescent Jute Mill Workers' Union.
WR 17	Md. Siddiqur Rahman, Org. Sec. BLF, Crescent Jute Mill, Khulna
WR 18	Md. Abdul Hakim, Org. Sec. CBA, Rajshahi Jute Mills, Rajshahi
WR 19	Sk. Abdur Rashid, G. S.Mohsen Jute Mills Worker' Union, Khulna
WR 20	Md. Ajgor Ali, Member, CBA, Rajshahi Jute Mills, Rajshahi.
WR 21	Sekander Ali, Vice-President, Sonali Jute Mill Workers' Association
WR 22	Firoz Ahmed, Convenor, KSIWWCC, Khulna.
WR 23	Mujibur Rahman, M. S., KSIWWCC, Khulna
WR 24	Monira Sultana, GS, Chingri Shilpo Sromik Kollyan Shongho, Khulna
WR 25	Khadiza Begum, Worker, Shrimp Processing Plant, East-Rupsha,
WR 26	Abdul Hamid, Ex-Secretary, CBA, Rajshahi Jute Mills, Rajshahi
ER	**EMPLOYERS' REPRESENTATIVE**
ER 1	Humayun Kabir, Director, BFFEA, Khulna
ER 2	Khondoker Aynul Islam, MD, Southfield Fisheries Ltd, Khulna.
ER 3	Abu Taleb, Manager, Conception Sea Foods Ltd, Cox' Bazar.
ER 4	Azizul Huque, P. O., Kuliarchar Sea Foods Ltd. Coxs' Bazar.
ER 5	Mujibor Rahman Mollick, DGM, Crescent Jute Mills.
ER 6	Faizul Huque, AGM, Radiant Garments Ltd.
ER 7	Md. Enamul Huque, Director, Anarkoli Knitware Ltd.
ER 8	Dewam Asaduzzaman, Supervisor, Apex Holdings Ltd.
ER 9	Hemendra Kumar Shaha, Manager, Bengal Jute Industry Ltd.
ER 10	Ahmed Hossain, Ahmed Jute Mills (pvt) Ltd.
ER 11	Shahidul Karim, Secretary, BJSA
ER 12	M A Mannan, GM Rahman Jute Spinners (pvt) Ltd.
ER 13	Nazmul Huq, Rahman Jute Spinners (pvt) Ltd.
ER 14	Md. Abu Shihab, Manager Admn. Apex Lingerie Ltd.

GR GOVERNMENT REPRESENTATIVE

GR 1 Md. Enamul Huque, Deputy Director of Labour, DoL, MoLE.
GR 2 Mia Mohammad Sharif Hossain, Chairman, Labour Court-1, Dhaka.
GR 3 Mahfuzur Rahman Bhuiyan Department of Inspection for Factories and Establishment
GR 4 Obaidul Islam, Deputy Chief Inspector (Engineering), Department of Inspection.
GR 5 Yousuf Ahmed Chowdhury, Directorate of Labour.

CS CIVIL SOCIETY MEMBERS

CS 1 Syed Sultan Uddin, Ahmed, AED, Bangladesh Institute of Labour Studies (BILS), Dhaka.
CS 2 Jafrul Hasan Sharif, Program Manager, Manusher Jonno Foundation, Dhaka.
CS 3 Adv. A.K.M Nasim, Solidarity Centre, Dhaka.
CS 4 Khalid Hossain, G.S., Jute and Jute Industries Protection Committee, Khulna.
CS 5 Md. Asaduzzaman, P.O., SAFE, Khulna.
CS 6 Abdur Rahman Molla, TUC, Khulna.
CS 7 Ebadul Huque, Shrimp Supplier, Cox's Bazar.
CS 8 Gias Uddin Ahmed, President, Cox's Bazar Society.
CS 9 Idris Ahmed, Member, Cox's Bazar Society.
CS 10 Md. Joynal Abedin, President, Fish Traders' Association, Cox's Bazar.
CS 11 Md. Ekhlas Uddin Falir, P.C. HELP, Elimination and Prevention of Child Labour, Cox's Bazar.
CS 12 Md. Afzal Hossain, Research Officer, Bangladsh Institute of Labour Studies (BILS), Dhala.
CS 13 Mahmuda Yasmin, P. O., Social Activities For Environment,Khulna.

LABOUR CONTRACTORS' AND SUB-CONTRACTORS' REPRESENTATIVES

CR 1 Cont.Md. Nazrul Islam, Labour Contractor, Cox's Bazar
CR 2 Monir Hossian, Labour Contractor, Khulna
CR 3 Md. Bazlul Huque, Labour Sub-contractor, Cox's Bazar
CR 4 Kashem Ali, Labour Sub-Contractor, Khulna

ANNEX III: Ratifications for Bangladesh

33 Conventions

1. Fundamental Conventions: **7 of 8**
2. Governance Conventions (Priority): **2 of 4**
3. Technical Conventions: **24 of 177**
4. Out of **33** Conventions ratified by Bangladesh, of which **33** are in force, **No** Convention has been denounced; **none** have been ratified in the past 12 months.

Fundamental

C029 - Forced Labour Convention, 1930 (No. 29)	22 Jun 1972	In Force
C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	22 Jun 1972	In Force
C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	22 Jun 1972	In Force
C100 - Equal Remuneration Convention, 1951 (No. 100)	28 Jan 1998	In Force
C105 - Abolition of Forced Labour Convention, 1957 (No. 105)	22 Jun 1972	In Force
C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	22 Jun 1972	In Force
C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)	12 Mar 2001	In Force

Governance (Priority)

C081 - Labour Inspection Convention, 1947 (No. 81)	22 Jun 1972	In Force
C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	17 Apr 1979	In Force

Technical

C001 - Hours of Work (Industry) Convention, 1919 (No. 1)	22 Jun 1972	In Force
C004 - Night Work (Women) Convention, 1919 (No. 4)	22 Jun 1972	Not in force
C006 - Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	22 Jun 1972	In Force
C011 - Right of Association (Agriculture) Convention, 1921 (No. 11)	22 Jun 1972	In Force
C014 - Weekly Rest (Industry) Convention, 1921 (No. 14)	22 Jun 1972	In Force
C015 - Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)	22 Jun 1972	Not in force
C016 - Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	22 Jun 1972	In Force
C018 - Workmen's Compensation (Occupational Diseases) Convention,	22 Jun	In Force

1925 (No. 18)	1972	
C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	22 Jun 1972	In Force
C021 - Inspection of Emigrants Convention, 1926 (No. 21)	22 Jun 1972	Not in force
C022 - Seamen's Articles of Agreement Convention, 1926 (No. 22)	22 Jun 1972	In Force
C027 - Marking of Weight (Transport by Vessels) Convention, 1929 (No. 27)	22 Jun 1972	In Force
C032 - Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32)	22 Jun 1972	In Force
C045 - Underground Work (Women) Convention, 1935 (No. 45)	22 Jun 1972	In Force
C059 - Minimum Age (Industry) Convention (Revised), 1937 (No. 59)	22 Jun 1972	In Force
C080 - Final Articles Revision Convention, 1946 (No. 80)	22 Jun 1972	In Force
C089 - Night Work (Women) Convention (Revised), 1948 (No. 89)	22 Jun 1972	In Force
C090 - Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)	22 Jun 1972	In Force
C096 - Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)	22 Jun 1972	In Force
C106 - Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)	22 Jun 1972	In Force
C107 - Indigenous and Tribal Populations Convention, 1957 (No. 107)	22 Jun 1972	In Force
C116 - Final Articles Revision Convention, 1961 (No. 116)	22 Jun 1972	In Force
C118 - Equality of Treatment (Social Security) Convention, 1962 (No. 118)	22 Jun 1972	In Force
C149 - Nursing Personnel Convention, 1977 (No. 149)	17 Apr 1979	In Force

ANNEX IV

FGD AND KII CHECKLIST

[Translated from Bengali]

1. **Information Related to Regulatory Framework**

1.1 How far you know about the existing labour laws (Bangladesh Labour Law 2006/ EPZ Workers Welfare Society and Industrial Relations Act 2010)?

1.2 Would you please mention the consistencies/inconsistencies of labour law provisions with the Constitution of Bangladesh, National Labour Policy of Bangladesh, and the ILO Convention?

1.3 Which provisions are inconsistent (Rights, Discrimination, Inspection, Conditions of Employment and Contract, Occupational Safety and health)?

1.4 Do you think that there are provisions in the labour laws that are not democratic (Retrenchment, Termination, Self-defense, Compensation, Penalty Structure, Procedure to Impose Punishment, Rights and Restrictions)? If the laws provide so, how they impede the practice of democracy?

2. Information Related to Conditions of Work and Employment

2.1 Do you think/know that the factories (RMG/JUTE/Shrimp Processing Plants) ensure the conditions of workplace environment (cleanliness, light and air, separate toilets for men and women, safe drinking water, firefighting equipment, protective measures against dust and fume, emergency exit in case of accident, first aid appliances, canteen and rest room, and child care room)?

2.2 Do you think/know that there are discriminations in the factories on the basis of sex, race, creed, colour, political involvement, regionalism etc. in relation to wage and work related benefits, leave, promotion, termination, repression etc.? If so, how those discriminations impede the rule of law?

2.3 How far the conditions of employment and contract (appointment letter, identity card, attendance card, service book, employee register, timely payment, pay slip, actual pay, overtime pay rate as per law, exact calculation of working hours, leave with pay) are maintained? If the conditions are not complied with, how they affect the democratization of work and workplace relations?

3. Information Related to Labour Administration and Inspection

3.1 How do you evaluate the role of labour administration in executing the provisions of labour laws (inspection, enquiry, filing case to the labour court, fine, or any other punishment)?

3.2 How do you evaluate the effectiveness of inspection system? Do you find any kind of weakness in the inspection process (manpower, budget, logistics, corruption, participation, detachment, collaboration, confidentiality, political influence)?

4. Information Related to Minimum Wages Board

4.1 Do you consider the formation of the Minimum Wages Board as democratic? Comment on the nomination process of independent member and the members to represent the employers and workers to the board. How far such selection process promotes or inhibits democratic practices?

4.2 Do you think that the Minimum Wages Board considers the conditions of fixing wages as indicated in the labour law? If not, why?

4.3 To what extent the demands of the workers are considered in the Minimum Wages Board? If not, why? (employers' influence, lack of impartiality, weaker role of the government, weaker role of the workers' representatives, dishonesty of the employers). Do you think that partial fulfillment workers' demands instigate workers resistance?

4.4 Comment on the workers' or employers' role in the minimum wages board.

5. Information related to Dispute Settlement Process

5.1 Do you think that the rising process and settlement of disputes (individual and industrial) a modern and effective one?

5.2 Comment on the role and effectiveness of Conciliation and Arbitration as a dispute settlement or grievance handling mechanisms?

5.3 Dou you think that the formation and selection process of labour court members a democratic one? If not, how can it be more democratic and effective for both workers' and employers?

5.4 Comment on the efficacy and role of the Labour Court to deliver justice to the disputant parties. If the efficacy and effectiveness is weak, how can it be fostered?

5.5 Comment on the role played by the representative of the employers and workers in the judicial process? Can they improve the democratic practices?

6. Information on the existence and exercise of Fundamental Rights

6.1 Do you think that the fundamental rights (rights to equality and non-discrimination, Right to opinion and expression, right to association, and right to collective bargaining) as depicted in the Constitution have been incorporated in the labour laws?

6.2 Do you think that the rights permitted in the labour laws are sufficient or there are rights that should be incorporated?

6.3 Are the workers able to exercise the democratic rights democratically? What are the restrictions that impede the workers to exercise the democratic rights? Comment on the implications of the restrictions to rights.

7. Right to Equality

7.1 Comment on the existence of the right to equality (equal application of the provisions of labour laws, exercise of rights in different sectors, state of rights exercise by employers and employees, application of protective measures—pension, gratuity, insurance—in the sectors).

8. Right to Opinion and Expression

8.1 Do you think that the labour laws have given the workers enough scope to attribute their opinion and expression on matters of safety, health and hygiene issues?

8.2 Comment on the extent of right to opinion and expression in the workers' and employers' organizations. Do you think that absence of the right to opinion and expression instigates both non-compliance and labour unrest?

8.3 Comment on the extent of tolerance when the employer(s) or management and the workers go for bipartite discussion. Do you think that the bipartite discussion for negotiation allows difference of opinion?

9. Freedom of Association and Collective Bargaining

9.1 Comment on the current state of freedom of association among the employers and workers. Do you consider the formation process of workers' association democratic? If it is not democratic, how it affects the democratic labour governance?

9.2 Have you any workers' association/trade union in your factory? If not, why?

9.3 How do you evaluate the role of trade union both inside and outside the factory (preserving workers' and employers' interest, practice of democracy, building health labour and industrial relations, ensuring workers' participation, and goal achievement? 9.4. Do you think that political affiliation of workers' union and federation enhances democratic practices (regular and fair election of leaders/representatives, transparency, accountability, solidarity, and bargaining power)?

9.4 Do you think that the Collective Bargaining Agents (CBAs) are given enough powers and functions in the labour laws? If not, what are functions that to be given to the CBAs?

9.5 Do you think that the CBAs apply and exercise democratic means—deliberations, work stoppage, assembly, protest meeting, etc.—to get their demand passed?

9.6 How far the CBAs are effective to bargain for the workers? Do you think that the failure of the CBAs instigate labour unrest, work stoppage, production and job loss?

10. Means of raising grievances and their effectiveness. ,

10.1 What are the means you have in your factory to express your grievances or to articulate your interests (Trade Union, CBA, Workers Participation Committee, or other means) and how they put your demands (written form or unwritten form)?

10.2 Do you think that these means are effective enough to handle your grievances/ forward your interests?

10.3 Have you ever been a member of any bipartite or tripartite institutional mechanisms (CBA, CMC, WPC, MWB, TCC)? Evaluate their roles in executing labour laws, developing industrial relations, and safe guarding workers' interests. Do you consider these institutions conducive to democratize labour governance?

11. Election of the Representatives

11.1 Do you think that the selection process of leaders in the organizations of workers and employers democratic? If not, how does it affect democratic labour governance (increasing solidarity, unity, growth of organizations, responsibility, member recruitment, and support)?

12. Inclusive Decision Making

12.1 Do you think that the practice of inclusive decision making (participatory decision making) is prevailing in our industrial relations system? If so, are the parties (workers and employers) equal in the bargaining table?

12.2 If the workers are weaker as a bargaining partner, what do you suggest to enhance their capability?

12.3 Do you think that the workers organizations practice participatory decision making process and the workers' representatives maintain their commitment in industrial or national level bargaining? If they change their commitments, what happens?

12.4 Comment on the execution of sector or national level decisions that are taken through democratic deliberations.

12.5 If the decisions are not executed, why?

Thank You